

**REPORT N° 75/02(bis)[1]**  
FRIENDLY SETTLEMENT  
CASE 12.035  
PABLO IGNACIO LIVIA ROBLES  
PERU  
December 13, 2002

**I. SUMMARY**

1. On April 27, 1998, Mr. Pablo Ignacio Livia Robles (hereinafter "the petitioner") filed a petition with the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission" or "the IACHR") wherein he alleged that the State of Peru (hereinafter the "State", the "Peruvian State" or "Peru") had violated his right to humane treatment (Article 5), his right to a fair trial (Article 8), his right to have his honor respected and his dignity recognized (Article 11), his right to equal protection under the law (Article 24) and his right to judicial protection (Article 25), all in relation to the general obligation to respect the rights (Article 1) established in the American Convention on Human Rights (hereinafter "the Convention" or the "American Convention").

2. The petitioner alleged that by decree law N° 25446 of April 24, 1992, he was summarily dismissed from his post as Principal Provincial Prosecutor of Lima; he was given no hearing of any kind prior to his dismissal and was thus denied his right to defend himself. The petitioner further stated that within a few days of his dismissal, he appeared before a Lima Civil Court to petition for *amparo* relief; the court refused to grant cert on the grounds that under decree law N° 25454 of 27 April 1992 petitions of *amparo* could not be used to challenge the effects of the application of decrees laws Nos. 25423, 25442 and 25446 to which the present petition refers.

3. On February 22, 2001 the Peruvian State and the Inter-American Commission on Human Rights issued a joint press release wherein the State undertook to promote a friendly settlement in some cases pending before the Commission, one of them being the instant case, in keeping with the provisions of Articles 48(1)(f) and 49 of the American Convention on Human Rights. The friendly settlement was reached on July 25, 2002, when the parties signed the respective friendly settlement agreement.

4. The present friendly settlement report, done in conformity with Article 49 of the Convention and Article 41(5) of the Commission's Rules of Procedure, contains a brief summary of the facts alleged by the petitioner and the solution reached. It also contains an agreement to publish the report.

**II. PROCEEDING WITH THE COMMISSION**

5. The petitioner filed his petition with the IACHR on April 27, 1998. It was then forwarded to the State on July 16, 1998. The State submitted its response to the complaint on October 15, 1998. The State's response was sent to the parties, whereupon the exchange of information provided for in the American Convention, in the Statute and Rules of Procedure of the Commission got underway.

6. On February 22, 2001 the Peruvian State, by way of a press release issued jointly with the Inter-American Commission on Human Rights, announced that it was acknowledging its responsibility in the present case, based on Articles 1(1), 2, 8, 23, 24 and 25 of the Convention, and that it would "promote a friendly settlement in keeping with the provisions of Articles (48)(1)(f) and 49 of the American Convention."

7. Given the commitment undertaken by the State, the parties held a number of meetings to define the terms of the agreement. Finally, the friendly settlement was concluded on July 25, 2002 when the parties signed the agreement document in Lima. The parties asked the Commission to ratify their friendly settlement agreement in all its parts.

### III. THE FACTS

8. The petitioner stated that after competing for the announced position, he won an appointment to the post of Principal Provincial Prosecutor of Lima. The appointment came from the Constitutional Government of Fernando Belaúnde Terry, through Resolution N° 061-84JUS of January 25, 1984. The petitioner took his oath of office on February 3 of that same year. He alleged that after eight years in office, he was, for no reason, unjustly terminated on April 24, 1992, under decree law N° 25446 issued by the "National Emergency and Reconstruction Government" that emerged in the aftermath of the April 5, 1992 civil and military coup. As no hearing or formality of any kind was observed prior to his dismissal, the petitioner was unable to exercise his right of self-defense.

9. The petitioner stated that decree N° 25454 was issued shortly thereafter, on April 27, 1992 and disallowed any petition of *amparo* to challenge the effects of the application of Decree Law N° 25446.<sup>[2]</sup> He pointed out that because of that decree law, when he appeared before a Lima court to file the petition of *amparo* the court refused to grant certiorari on the grounds that decree N° 25454 expressly prohibited the petition of *amparo* in such a case.

10. The petitioner observed that under the *Habeas Corpus* and *Amparo* Act, "the petition seeking *amparo* relief must be filed within 60 working days of the matter affecting one's interests, provided the circumstances at the time make it possible for the interested party to take such action; if, however, some impediment prevents the interested party from petitioning the court for relief within that time frame, then the time period for filing shall begin as of the date on which the impediment is removed."<sup>[3]</sup> The petitioner alleged that the decrees invoked to remove him from his post and the decree law that prevented him from exercising the *amparo* remedy were the work of the Government that emerged on April 5, 1992, in the wake of the civil military coup. The petitioner argued that because that government remained in place until July 28, 1995 the removal of the impediment referred to in the *Habeas Corpus* and *Amparo* Act occurred on that date, when free and general elections were held, thus ending the interruption of constitutional government. The petitioner states that he filed his petition of *amparo* within 60 working days of the restoration of constitutional government.

11. The petitioner also pointed out that the Sixth Lima Civil Court declared the *amparo* petition to be inadmissible on December 18, 1995 on the grounds that it was time-barred. The Lower Civil Court's decision was then upheld by the First Civil Chamber of the Supreme Court on October 31, 1996. The

petitioner then challenged that decision with the Constitutional Tribunal, which on November 13, 1997 upheld the First Civil Chamber's ruling; it held that the petition was inadmissible since, given the diffuse model of constitutionality review used in Peru, the petitioner's individual right was always available to him; therefore, the remedy filed was without merit because the petitioner failed to show that he was prevented from filing a petition seeking *amparo* relief." In this connection, the petitioner made the point that criminal charges were brought against two judges on Lima's lower civil bench precisely because they granted certiorari to petitions of *amparo* filed to challenge the effects of decrees laws 25446 and 25454. This was, he said, unmistakable proof of an impediment preventing him from filing petitions of *amparo* to seek relief from the effects of those laws.

12. Finally, the petitioner alleged that he had exhausted all the remedies under domestic law and that the remedies were denied on purely procedural grounds, never material grounds. Those remedies had, therefore, been ineffective in rectifying the unjust and unlawful situation created by those decrees laws, which violated his rights as recognized in the American Convention.

#### **IV. FRIENDLY SETTLEMENT**

13. The State and the petitioners signed a friendly settlement agreement, the text of which reads as follows:

##### **ONE: BACKGROUND**

On April 24, 1992, Dr. Pablo Ignacio Livia Robles, Provincial Prosecutor with Lima's Thirty-sixth Criminal Prosecution Office, was removed from his post under Decree Law N° 25446. He filed a petition seeking *amparo* relief, which the Constitutional Tribunal declared inadmissible on December 13, 1997.

Dr. Pablo Ignacio Livia Robles presented a petition to the Inter-American Commission on Human Rights, which on July 17, 1997 opened the case under classification number 12,035. The petition alleged violation of the following rights: the right to humane treatment, the right to a fair trial, the right to have one's honor respected and dignity recognized, the right to equality before the law, the right to judicial protection, and the obligation to respect the rights recognized in the American Convention (Articles 5, 8, 5, 8, 11, 24, 25 and 1).

On February 22, 2001 the Peruvian State signed a joint press release with the Inter-American Commission on Human Rights, wherein the State pledged to promote a friendly settlement, which would be done in accordance with Articles 48(1)(f) and 49 of the American Convention on Human Rights.

##### **TWO: RECOMMENDATION**

Mindful that unqualified protection of and respect for human rights is the foundation of a just, decent and democratic society, in strict compliance with the obligations undertaken with signature and ratification of the American Convention on Human Rights and other

international human rights instruments to which Peru is party, and conscious that any violation of an international obligation that has resulted in damages or injury carries with it the duty to make adequate reparation—which in the instant case means restoring the victim to his post-, the State acknowledges its responsibility for violation of Articles 1(1), 2, 8, 23, 24, 25 of the American Convention on Human Rights, to the detriment of victim Pablo Ignacio Livia Robles.

That acknowledgement is explicitly stated in the Joint Press Release that the Peruvian State and the Inter-American Commission on Human Rights signed on February 22, 2001, wherein the Peruvian State acknowledges international responsibility for the facts in question and undertakes to restore the violated rights and/or make reparations for the harm caused.

### **THREE: COMPENSATION**

The Peruvian State shall pay the victim the sum of twenty thousand U.S. dollars (US\$20,000.00), as compensation for material and moral damages and *lucrum cessans*. For his part, the beneficiary pledges not to file any other claim against the State, either directly or indirectly or by any other avenue. Nor will the beneficiary bring suit against the Peruvian State intended to hold it jointly and severally liable or as a third-party defendant in a civil or any other type of action, although this shall not impair the beneficiary's right to pursue legal action against the authorities or officials responsible for the arbitrary decision taken against him.

### **FOUR: NONMONETARY DAMAGES**

The Peruvian State agrees to restore Dr. Pablo Ignacio Livia Robles to his post as Lima's Principal Criminal Prosecutor, thereby nullifying the effect of Article 3 of Decree Law N° 25446, published in the Official Gazette "El Peruano" on April 24, 1992 as it pertains to Dr. Pablo Ignacio Livia Robles and issuing the pertinent norm.

### **FIVE: OTHER TYPES OF REPARATION**

The Peruvian State pledges to recognize the years of service that the victim was unable to work because he was removed from his post. That period begins on April 24, 1992 -the date of his dismissal- and runs to the present.

## **SIX: RIGHT TO BRING ACTION**

The Peruvian State reserves its right, under the laws currently in effect, to bring action against those persons whom the competent national authority finds to be the responsible parties in the instant case.

## **SEVEN: TAX EXEMPTION, PERFORMANCE and DEFAULT**

The pecuniary damages awarded by the Peruvian State shall not be subject to any taxation, contribution or assessment currently in existence or eventually created, and are to be paid within six months from the date on which the Inter-American Commission on Human Rights serves notice that it has ratified the present agreement. If payment is not made by the time that six-month period is up, the State shall be in default and shall pay the maximum compensatory interest rate that domestic law provides for and/or allows for cases of delinquency.

## **EIGHT: LEGAL BASES**

The present agreement is signed in conformity with the provisions of Articles 2 (paragraphs 1 and 24, subparagraph h), 44, 55, 205 of Peru's Constitution and its Fourth Final Transitory Provision; Articles 1205, 1306, 1969, 1981 of Peru's Civil Code; Articles 1, 2 and 48(1)(f) of the American Convention on Human Rights, and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights.

## **NINE: INTERPRETATION**

The meaning and scope of the present Agreement are interpreted in accordance with Articles 29 and 30 of the American Convention on Human Rights, where pertinent, and the principle of good faith. In the event of any doubt or disagreement between the parties concerning the content of the agreement, the Inter-American Commission on Human Rights will decide what the interpretation shall be. The Commission shall also verify compliance with the agreement, for which purpose the parties shall be required to report to the Commission every three months on its status and performance.

## **TEN: RATIFICATION**

The parties to this agreement undertake to bring this friendly settlement agreement to the attention of the Inter-American Commission on Human Rights, so that the latter might confirm and ratify it in all its parts.

## **ELEVEN: ACCEPTANCE OF TERMS**

The parties signing this agreement state that of their own free will they agree with and accept the terms of each and every clause of this

agreement, and expressly stipulate that this agreement settles the dispute between them and any claim concerning the Peruvian State's international responsibility for the human rights violations of which Mr. Pablo Ignacio Livia Robles was victim.

Signed in quadruplicate, in the city of Lima, the twenty-fifth day of the month of July in the year two thousand two.

#### **V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE**

14. The IACHR observes that under Articles 48(1)(f) and 49 of the Convention, this procedure is done "with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The State's consent to pursue this avenue is evidence of its good faith to honor the Convention's purposes and objectives, based on the principle of *pacta sunt servanda*. According to that principle, States must perform the obligations undertaken in treaties in good faith. The IACHR also wishes to point out, once again, that with the friendly settlement procedure provided for in the Convention, individual cases can be settled in a non-contentious manner. In cases involving a number of countries, the friendly settlement arrangement has proven to be a useful vehicle that both parties can use to advantage.

15. The Inter-American Commission has closely monitored the development of the friendly settlement arrived at in the present case. The Commission greatly appreciates the efforts that both parties made to reach this settlement, which is compatible with the object and purpose of the Convention.

#### **VI. CONCLUSIONS**

16. For all the foregoing reasons and in keeping with the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to state that it is very grateful for the efforts made by the parties and is pleased that the friendly settlement arrived at in the present case is consistent with the object and purpose of the American Convention.

17. For the reasons and based on the conclusions explained in this report,

#### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

#### **DECIDES:**

1. To approve the terms of the friendly settlement agreement that the parties signed on July 25, 2002.

2. To continue to monitor and supervise each and every point of the friendly settlement agreement; accordingly, to remind the parties of their obligation to report to the IACHR every three months on the performance of this friendly settlement.

3. To make the present report public and include it in the Commission's annual report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., this 13th day of the month of December in the year 2002. (Signed): Juan Méndez, President; Marta Altolaguirre, Second Vice President; Commission members Robert K. Goldman, Julio Prado Vallejo, Clare Kamau Roberts and José Zalaquett.