

# Press Release

Inter-American Court of Human Rights

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## **PERU IS RESPONSIBLE FOR NON-PAYMENT OF PENSION TO AN OLD PERSON**

*San Jose, Costa Rica, May 2, 2019.*- In the judgment published on May 2, 2019 in the Case of *Muelle Flores v. Peru* the Inter-American Court of Human Rights (“the Court”) declared the international responsibility of *Peru* for not guaranteeing the victim’s right to pension for more than 27 years, which caused serious damage to the victim’s quality of life and had an impact on the health coverage of an old person in a situation of special protection and of disability. The official summary of the judgment can be found [here](#) and the entire text of the judgment [here](#) (in Spanish).

Mr Flores retired from the state-owned company Minera Especial Tintaya S.A. (“the company” or “Tintaya S.A.”) on September 30, 1990. On January 27, 1991 the Mr. Flores’ pension and compensatory scheme was suspended by the company’s Administration Division. Mr Flores lodged an *amparo* appeal with the Lima Civil Court no. 5, which ruled in his favor and ordered that the suspension be lifted. This decision was confirmed by the Second Civil Chamber of the Lima High Court of Justice and the Supreme Court of Justice, which on February 2, 1993 validated the first instance court ruling, declared that “the judgment was not void”, that the *amparo* appeal was well-founded and ordered that the suspension be lifted and that the victim’s rights should be restored to the state previous to the constitutional violation.

On February 17, 1993 the company ordered again the suspension of payment of some of its ex-workers’ pension, including the one belonging to Mr. Flores. Mr Flores lodged a second *amparo* appeal and requested the restitution of his right to continue receiving his pension, as well as an amount for the damages caused. Finally, the Constitutional Court ordered that the company pay the victim’s pension and declared the Mr. Flores’ claim for damages inadmissible.

Tintaya S.A., by means of a contentious-administrative action requested that the victim’s reintegration in the pension scheme be declared inadmissible. A court of first instance ruled in favor of the company. This decision was later confirmed by the Contentious-Administrative Chamber of the Lima High Court of Justice. As a result of a nullity plea lodged against this decision, the Supreme Court found that the company’s claim was not well-founded.

The executions proceedings initiated in 1993 concerning the judgment issued by the Supreme Court of Justice following the first *amparo* appeal lodged by the victim are still currently pending.

Tintaya S.A was privatised in 1994 in the framework of the Legislative Decree No. 674 “Law on the Promotion of private investment in state-owned companies”. This caused additional obstacles to the compliance with the judgments ordering the payment of the victim’s pension.

After having analyzed the elements of the present case, the Inter-American Court found that the State had not only the obligation to pay pension immediately, with special diligence and celerity –as it concerned a right which substituted a salary and had an alimentary nature– but it had to determine expressly and clearly which one would be the entity in charge of complying with the decision. It had also the obligation to ex officio send the request for compliance to the state institution in charge of the payments. This did not happen in the present case. On the contrary,

the responsibility to comply with the decisions was transferred to the victim. The Court also observed that since the judgments issued in 1993 and 1999 more than 26 and 19 years, respectively, had passed. This had caused an impact on the victim's (an old person who lacked financial resources) legal situation. In view of the above, the Court concluded that the judicial authorities did not comply with their duty to act in an expedient manner as the victim's situation of vulnerability requested. Therefore the judicial authorities did not comply with the duty to fulfill their duties within a reasonable time.

On the other hand the Court addressed for the first time the right to social security and, in particular, the right to pension as an autonomous right and as part of the Economic, Social, cultural and environmental rights. The Court indicated that from Article 45 of the OAS' Charter, interpreted in the light of the American Declaration as well as other treaties and international human rights instruments, and emerged the constitutive elements of the right to social security. For example, it is right that seeks to protect the person from future contingencies which, in case they occurred, could have damaging consequences on the person. Therefore some measures should be adopted in order to protect this person. In particular and as regards the present case, the right to social security seeks to protect the individual from situations that will occur in the future once he or she reaches a certain age where he or she will be physically or mentally impeded from obtaining the necessary means to have adequate living standards, which could deprive him or her of his/her capacity to fully enjoy the remaining rights. This also has a connection with the constitutive elements of the right, since social security must be enjoyed in a way that guarantees the conditions that secure decent living standards, health and economic status.

In the present case Mr Flores stopped receiving his pension in 1991. Due to the lack of compliance and execution of the judgments issued at a national level, the victim's right to pension was not duly protected. On the contrary, to this day these judgments have not been executed since the proceedings are still pending. Therefore, the existing mechanisms did not achieve the materialization of the victim's rights. These led to a violation of Mr Flores' right to social security.

Additionally, the Court established that, in a context of non-payment of a judicially-granted pension, the rights to social security, personal integrity and human dignity are inter-related and, in some occasions, the violation of one of them directly affects the other. This situation becomes accentuated in cases where the victim is an old person. The Court held that the lack of fulfillment of the victim's right to social security for more than 27 years caused a serious damaged on the living standards and health coverage of the victim, a person in a situation of special protection for being an old person with a disability. The infringements caused by the non-payment of the pension extended beyond reasonable time. The fact that this pension was the sole income of the victim in conjunction with the prolonged absence of the payments inevitably caused on the victim a situation of economic precariousness which affected the coverage of the victim's basic needs and subsequently his psychological and moral integrity, as well as his dignity.

Likewise, bearing in mind that the lack of judicial protection affected the victim's right to a pension belonging to him, the Court declared that State violated the right to private property as protected by Articles 21.1 and 21.2, in conjunction with Articles 25.1, 25.2.c), 26 and 1.1 of the American Convention.

In view of these violations, the Court ordered the following reparations: i) for the State to restore the victim's pension, which also includes to guarantee the victim's health care through the social insurance ESSALUC; (ii) to publish the judgment and the official summary and (iii) to pay the amounts fixed in the judgment for material and moral damage, loss of income connected to the victim's pension, the reimbursement of the costs and expenses, as well as the reimbursement of expenses to the Victims' Legal Assistance Fund.

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The Court's composition for the judgment included the following: Judge Eduardo Ferrer Mac-Gregor Poisot, President (Mexico); Judge Eduardo Vio Grossi, Vice-President (Chile); Judge Elizabeth Odio Benito (Costa Rica); Judge Eugenio Raúl Zaffaroni (Argentina); and Judge L. Patricio Pazmiño Freire (Ecuador). Due to force majeure reasons accepted by the Plenary of the Court, Judge Humberto Antonio Sierra Porto (Colombia) did not participate in the deliberation and adoption of this judgment. Judge Ricardo Pérez Manrique (Uruguay) did not participate in the deliberation and adoption of this judgment as well, since his mandate started on January 1, 2019, when the judgment was pending.

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