

**REPORT ISSUED BY RAFAEL FERNÁNDEZ VALVERDE, MAGISTRATE OF THE SUPREME COURT OF THE KINGDOM OF SPAIN IN RELATION TO HIS PLACEMENT IN THE SUPREME COURT OF JUSTICE OF PERU, BETWEEN 21 AUGUST AND 2 SEPTEMBER 2017, AS A PARTICIPANT OF THE EXCHANGE PROGRAMME FOR JUDGES WITHIN THE INTERNATIONAL ASSOCIATION OF SUPREME ADMINISTRATIVE JURISDICTIONS**

Via a Resolution issued by the International Association of Supreme Administrative Jurisdictions (IASAJ), based in Paris, I was afforded the opportunity to participate in an Exchange Secondment or Placement in the Supreme Court of Justice of Peru between 21 August and 3 September 2017.

As a result, having concluded my participation in the exchange programme, I would like to thank and express my gratitude to the IASAJ for the assistance and collaboration provided when setting up my Placement, and for the benefits I feel that I have reaped, both in terms of the specific knowledge acquired of Peruvian Administrative Law and the judicial bodies that enforce it, and, on a personal level, for the immeasurable support provided by all of my Peruvian colleagues, commencing with the President of the Supreme Court of Justice, Dr Duberlí Apolinar Rodríguez Tineo, and those individuals who were more directly involved in my Placement and the drafting of the Programme followed.

As my Placement Tutor, the President assigned Dr José Antonio Neyra Flores, a Judge of the Supreme Court of Justice, with whom the Centre for Judicial Research within the Executive Council of the Judiciary and the Office for International Technical Cooperation of the Judiciary collaborated.

Dr Neyra Flores' degree of involvement during my Placement reached unsuspected levels, constantly providing legal information, introducing me to judges and jurists, explaining and clarifying specific details, whilst, by the same token, also ensuring my involvement in various meetings addressing the topics

outlined below. Therefore, the Placement Tutor's dedication went far and beyond requirements, implementing an intense programme to afford an understanding, not only of the operation of the Supreme Court of Justice, but also of other Peruvian institutions directly linked to law enforcement or the resolution of disputes.

The Centre for Judicial Research within the Executive Council of the Judiciary is overseen by Mr Helder Domínguez Haro, and it is a highly influential body in terms of the international relations of the Peruvian Judiciary and in terms of the dissemination of judicial actions, to which end it even possesses a television channel, on which I was interviewed. The supervision of the Placement, undertaken by Mr Domínguez, who at all times evidenced an active, collaborative and efficient manner, was irreproachable. My most direct contact was maintained with Mr Javier A. Escalante Gómez, a member of the Centre, who always accompanied me, from the outset, until my return to Madrid. I am obliged to draw attention to his punctuality, expertise and understanding, as a trustworthy collaborator with a great deal of international experience, who is respected in all the judicial bodies and all the institutions that I had the honour of visiting.

The Office for International Technical Cooperation meticulously and rigorously prepared for my arrival in Lima, the welcome reception of the President of the Judiciary and my introduction to an understanding of the Peruvian Legal System, which was exhaustively explained to me. Ms María Antonieta Delgado, the Head of the aforementioned Office, set up this collaboration whilst demonstrating a boundless degree of kindness and affability, collaborating directly with Ms Vivian Weiner Brandes, who proved to be an excellent liaison with the Court, from the point at which the Placement was assigned, providing extensive collaboration and sparing no effort.

The Programme commenced on 21 August 2017 in the offices of the Supreme Court of Peru, with a welcome reception given by the President of the Judiciary and the Supreme Court Judge Ramiro de Valdivia Cano, followed by an exhaustive explanatory introduction to the Peruvian Legal System provided

by the assigned tutor, Dr Neyra Flores. This was proceeded by a guided tour of the National Courthouse, under the ever attentive supervision of Mr Escalante Gómez, a member of the Centre for Judicial Research within the Executive Council of the Judiciary.

On Tuesday 22 August, I took part in a working session in the Second Transitory Chamber of Constitutional and Social Law within the Supreme Court of Justice, where I was received by its President, Dr Javier Arévalo Vela, forming a part of the Court during the various hearings that took place in the morning, and later being party to the ponderation and sentencing of the cases that had been heard, which mainly addressed employment matters linked to the different Public Administrations.

On Wednesday 23 August, the working session took place in the Chamber of Administrative Law of the Supreme Court, where there were two hearings of great interest:

a) The first hearing addressed the autonomy of the University of San Marcos in Cuzco, a case that had been resolved in first instance by the High Court of Justice of Cuzco, involving the possible creation, on the part of the Governing Board, of certain university bodies not envisaged in State legislation concerning universities. More specifically, the Vice-Chancellery for Economic Regulation and Deputy-Deanships were proposed with the aim of decentralising university management. In short, the case involved a conflict between university autonomy and the principle of legality. Over the course of the hearing, I was able to confirm that similar questions arise in relation to Spanish universities.

b) The second hearing, which is of great interest to the Judiciary, involved a challenge, grounded on fundamental rights, to a Determination made by the National Council of the Judiciary (a body similar to Spain's General Council of the Judiciary), affirming that an infraction that may be perpetrated by judges, namely a "lack of grounds" within judgments, could be extended to cases involving defective, insufficient or arbitrary grounds, which, according to the appealing group of judges, implied political control of the content of

judgments, via disciplinary channels, thereby affecting judicial independence through undue "ultra vires" action within sanctions that goes beyond the scope of disciplinary authority.

In the evening, I delivered a conference in the Plenary Chamber of the Judiciary on the regulation of the Administrative Jurisdiction in Spain, followed by an interesting discussion on the similarities and differences between the Peruvian and Spanish systems.

On Thursday 24 August, in the early morning I travelled to the city of Cuzco, where I was welcomed by the President of the High Court of Cuzco, who, along with other Judges attached to this Court, informed me of the manner in which the Judiciary was organised within the constitutional provinces, with visits to the central installations in the city. In the afternoon, I informed the judges attached to this Court of the manner in which Spain organised the administrative jurisdiction, examining, from a comparative perspective, the degree of judicialisation and review of administrative action in the two countries.

On Monday 28 August, at the behest of the President of the Judiciary, I participated in the inaugural ceremony of the "Congress of the National Programme for Access to Justice for Vulnerable Individuals and Justice in Your Community", which was attended by the aforementioned President, the President of the Constitutional Court, the Ombudsman of Peru (Dr Walter Gutiérrez Camacho) and the Presidents of all High Courts within Peru. This is an interesting and poignant initiative set in motion by the Supreme Court Judge Dr Janet Ofelia Tello Gilardi, National Coordinator of the National Programme for Access to Justice for Vulnerable Individuals and Justice in Your Community. When the congress was drawn to a close, I had the opportunity to share ideas with another Supreme Court Judge, Dr Elvira Barrios Alvarado, President of the Commission for Gender-based Justice.

Subsequently, I was received in the Constitutional Court of Peru by its President, Dr Manuel Jesús Miranda Canales, along with other Magistrates of this body, with whom I spent more than an hour comparing the Spanish and

Peruvian constitutional systems. I was presented with the Court's Gold Medal and an interesting work on the Constitutions of Peru.

On the same day, I visited the National Jury of Elections (JNE), an independent constitutional body within the Peruvian State assigned the duty of verifying the legality of the exercise of the right to vote, election processes and referenda, ensuring respect for the will of the people. As a result, this body is charged with announcing election results and issuing the corresponding acknowledgment or credentials to the elected authorities. It is also assigned the task of issuing determinations of a general nature, to regulate and establish rules within electoral provisions. I was welcomed by the body's current President, Mr Víctor Ticona Postigo, a jurist, previously a lawyer specialising in Civil Law and subsequently a Magistrate, having served as President of the Supreme Court of Peru between January 2015 and November 2016. In the offices of this body, I had the opportunity of visiting the world's first museum focusing on electoral matters, the "Museo Electoral y de la Democracia", and I was also interviewed there by the television channel JNE TV.

The morning of Tuesday 29 August was devoted to a meeting in the offices of the Executive Council of the Judiciary, where the President and General Secretary of this body informed me that, in accordance with article 72 of the Judiciary, the Executive Council of the Judiciary, along with the Plenary Chamber and the President of the Supreme Court, is the Judiciary's Management and Oversight Body, boasting its own General Management to perform the roles assigned to it. I was also informed that the Executive Council of the Judiciary is formed by the President of the Judiciary, who presides over this body and holds a casting vote, two Members of the Supreme Court appointed by the Plenary Chamber, one Member of the High Courts chosen by the Presidents of the High Courts of Justice of the Republic, a Presiding Judge who sits over a Specialised or Mixed Court and a representative appointed by the Senior Board of the Bar Associations of Peru.

In the afternoon, accompanied by the Tutor, Dr Neyra Flores, I visited the headquarters of the Judiciary, where the respective supervisors provided



detailed information on the operation of the body's modern computer system and the bibliographical resources of the Court Library.

On the morning of 30 August, I made an interesting visit to the Supervisory Agency for Investment in Energy and Mining (OSINERGMIN), where I was kindly received by the President of the body's Board of Directors, Mr Daniel Schmerier Vainstein, and by the Head of the Legal Advice Department, Mr José Luis Luna Campodónico. This public institution is charged with regulating and supervising companies within the electricity, hydrocarbon and mining sector, to ensure their compliance with the legal provisions governing the activities they undertake. It was created on 31 December 1996 and began to exercise its duties on 15 October 1997 to guarantee that electricity and hydrocarbon companies provide a high quality and safe permanent service. From 2007 onwards, Law No. 28964 extended its sphere of influence to take in the mining subsector, where it ensures that mining companies undertake their activities whilst adhering to health and safety regulations. Osinergmin has legal status as a domestic public law body and enjoys operational, technical, administrative, economic and financial independence. The institution's regulatory and supervisory duties are governed by technical criteria, whereby it contributes to energy development within the country and the protection of the interests of the people of Peru.

Subsequently, over the course of the same morning, I visited another interesting body, the National Institute for the Defence of Free Competition and the Protection of Intellectual Property (INDECOPI), the Peruvian body charged with enforcing legal regulations aimed at protecting the market from monopolistic practices that are overly controlling and restrictive of competition in relation to the manufacture and marketing of goods and the provision of services, and protecting the market from practices that give rise to unfair competition and actions that affect market agents and consumers. It is also charged with the defence of intellectual property rights, from trademarks and copyright to patents and biotechnology. I was warmly received by Dr Rosa Cabello Lecca, Head of Technical Cooperation and Institutional Relations, and

the Heads of the Legal Department, Mr Henry Alanzo Chávez and Mr Enrique Priori Santero.

At noon, I had a private lunch with the President of the Judiciary, Mr Duberlí Apolinar Rodríguez Tineo, and the assigned Tutor, Dr Neyra Flores, who showed a great deal of interest in the operation of Spanish legal institutions, primarily the General Council of the Judiciary, the Supreme Court and the National High Court.

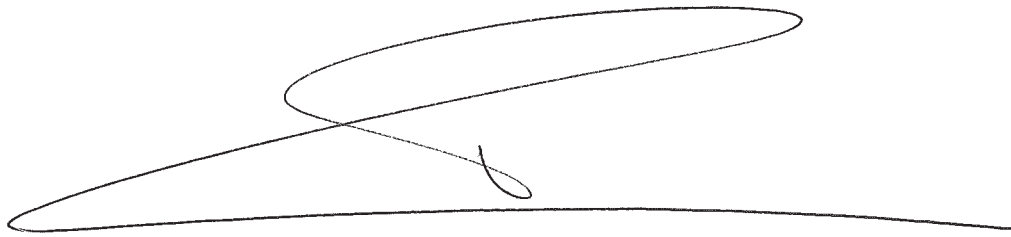
In the afternoon, in the Plenary Chamber of the Judiciary, I gave a conference on jurisdictional review of the prerogative of mercy, entailing pardon, which attracted a large audience, given the interest in and topicality of the issue in Peru.

Finally, on Friday 10 September I visited the National Council of the Judiciary (CNM), an autonomous constitutional body within the Republic of Peru, tasked with strengthening the system for the administration of justice, appointing and ratifying judges and state prosecutors, dismissing those who fail to properly perform their duties, thereby contributing towards the improvement of the administration of justice and the defence of legality within the country. It is an independent body governed by its own organic law, and is currently presided over by Dr Guido Águila Grados. I was informed by the President, who interrupted a plenary session to attend to me, that its members are chosen in the following manner: one is chosen by the Supreme Court, one is chosen by the Board of State Prosecutors attached to the Supreme Court, one is chosen by the National Bar Association, two are chosen by the remaining Professional Associations, one is chosen by the deans of public universities and one is chosen by the deans of private universities. Furthermore, the National Council of the Judiciary can increase its number of members to nine, with two additional members appointed by the Council itself. This was an important visit given my status as a Member of the General Council of the Judiciary of the Kingdom of Spain.

My Exchange Secondment or Placement drew to a close with an interview on Canal Justica TV and I had a positive closing evaluation, as did my Tutor, Dr Neyra Flores, to whom I am deeply grateful, gratitude that I extend to all of the individuals mentioned above who collaborated towards making my stay in Peru a fruitful experience.

Thus I conclude my report, with thanks to the International Association of Supreme Administrative Jurisdictions (IASAJ) for providing me with this opportunity.

In Madrid, for Paris, on 14 October 2017.

A handwritten signature in black ink, consisting of a long horizontal stroke with a large loop above it and a small flourish at the end.

Signed: Rafael Fernández Valverde

Magistrate of the Supreme Court

Member of the General Council of the Judiciary