

REPORT No. 150/10
Petitions 157-99 – José Castro Ballena, María Gracia Barriga Oré Et Al.
12.214 – Carlos Alberto Canales Huapaya
ADMISSIBILITY
PERU
November 1, 2010

I. SUMMARY

1. This report refers to two petitions filed in representation of José Castro Ballena, María Gracia Barriga Oré, Luz Angélica Soria Cañas and Dunsara Amelia Campos Ramírez (P 157-99)¹ and Carlos Alberto Canales Huapaya (P 12.214)² (hereinafter also "the alleged victims"), alleging the violation by the Republic of Peru (hereinafter also "Peru," "the State" or "the Peruvian State") of rights enshrined in the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention"). The petitioners asserted that the alleged victims were dismissed from their positions as employees of the Congress by decree-laws and administrative resolutions issued as of April 1992, in a context of the rupture with the democratic-constitutional order. It is indicated that those dismissals violated the guarantees of administrative due process and other rights protected in the constitutional provisions. It is adduced that the alleged victims filed *amparo* actions for the purpose of getting reinstated, which were dismissed in final decisions of the Constitutional Court. The petitioners alleged that while the Peruvian State has been granting benefits to the workers who were irregularly dismissed during the presidency of Alberto Fujimori, such benefits would not suffice to redress the material and moral damages said to have been suffered by the alleged victims due to their arbitrary dismissal.

2. The State alleged that as of 2001, laws and supreme decrees have been issued aimed at reviewing the irregular collective dismissals that took place between 1992 and 1993. It argued that the workers harmed by those dismissals qualify for participation in Special Program for Access to Benefits. It asserted that two alleged victims in petition 157-99 have accepted the benefit of economic compensation, while the remaining alleged victims had resumed their employment with the Congress of the Republic. It argued that these circumstances ended the controversy addressed in petition 157-99, and asked the IACHR to archive it pursuant to Article 48(1)(b) of the Convention. Finally, it alleged that the facts narrated in the two petitions do not tend to establish a violation of the American Convention and asked that the IACHR find them inadmissible pursuant to Article 47(b) of the same instrument.

3. After analyzing the parties' positions, the Commission concluded that it has jurisdiction to hear the petitions and that they are admissible in relation to the alleged violations of the rights enshrined in Articles 8(1) and 25 of the American Convention in relation to the obligations established in its Articles 1(1) and 2 thereof. Moreover, it concluded that the claims set forth in petition 157-99 on behalf of the alleged victims Luz Angélica Soria Cañas and Dunsara Amelia Campos Ramírez are inadmissible, pursuant to Article 47(b) of the Convention. The IACHR decided to join the two petitions and process them together in the merits phase under case number 12.214, which covers alleged victims José Castro Ballena, María Gracia Barriga Oré and Carlos Alberto Canales Huapaya. Finally, the Commission decided to give notice of this Admissibility Report to the parties, to make it public, and to include it in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

4. Petition 157-99 was received by the IACHR on April 5, 1999; the petitioner submitted additional information on January 16, 2001 and July 31, 2002. On April 29, 2003, the pertinent parts of that documentation were sent to the State with a time-limit of two months to submit a response. On March 17, 2004, the State sent its response, and on July 7 and December 22, 2009, it filed additional briefs. The petitioner sent additional communications on May 10, 2004,

¹ Filed on April 5, 1999, by José Castro Ballena.

² Filed on September 20, 1999 in his own name.

August 22, 2007, April 13 and August 24, 2009, and April 12, 2010. On June 14, 2010, the IACHR requested information from the petitioner as to whether the grounds for the complaint subsisted in relation to alleged victims Luz Angélica Soria Cañas, Dusnara Amelia Campos Ramírez and María Gracias Barriga Oré. On July 26, 2010, the petitioner sent observations on the request made by the IACHR.

5. Petition 12.214 was received on September 20, 1999, and on October 4, 1999, it was forwarded to the State, which was given 90 days to submit its response, in keeping with the Commission's Regulations then in force. On February 24, 2000, the State submitted its response, and on July 17, 2000, October 11, 2005, August 27, 2009 and August 20, 2010 it filed additional information. At the same time, the petitioner submitted additional briefs on May 1, 2000, May 13, 2005, January 17, 2006, December 3, 2008, January 22, 2009, June 8, August 3 and September 10, 2010.

III. THE PARTIES' POSITIONS

Preliminary issue

6. In the submissions considered in this report, the State and the petitioner described a series of decrees issued as of April 1992 which, among other measures, ordered the dissolution and administrative restructuring of the Congress of the Republic. They indicated that by means of administrative resolutions handed down under said decree laws, the alleged victims were dismissed from their positions as permanent employees of the Congress. Before narrating the parties' positions, the IACHR considers it necessary to refer to the normative context in which the events raised by them unfolded.

Context and normative framework in which the events alleged by the parties unfolded

7. On April 5, 1992, then-President of the Republic Alberto Fujimori Fujimori announced a series of measures aimed at "accelerating the process of ... national reconstruction," "modernizing the public administration," and "totally reorganizing the Judicial Branch."³ By Decree-Law No. 25418 of April 6, 1992, Alberto Fujimori instituted the "National Emergency and Reconstruction Government," temporarily dissolved the Congress of the Republic, intervened in the Judicial branch, Public Ministry, and Office of the Comptroller-General of the Republic, and derogated several provisions of the 1979 Constitution, then in force. The intervention of the organs of the administration of justice and other offices of the State was carried out by occupation of their facilities by members of the Armed Forces and the house arrest of opposition congresspersons, and high-level officials who were opposed to the break with the constitutional order.⁴

8. From April to October 1992, the National Emergency and Reconstruction Government issued Decree-Laws Nos. 25438, 25477, 25640, and 25759, which established a "Commission to Administer the Property of the Congress of the Republic" (hereinafter "the Administrative Commission"), which was in charge of carrying out a "process of streamlining personnel." Those decrees established a reduction in staffing that included: (i) economic incentives for resignation or voluntary retirement, (ii) relocation of workers to other government institutions, and (iii) holding a "Process for Personnel Evaluation and Selection," consisting of a merits examination for ratifying the workers who did not opt for one of the two foregoing modalities.

9. Decree-Law No. 25640, adopted on July 21, 1992, authorized implementation of said process of streamlining of legislative staff and established: "The *amparo* action aimed at challenging [its] application [was] out of order..."⁵ On October 13, 1992, the chairperson of the Administrative Commission adopted Resolution No. 1239-A-92-CACL, which established the new staffing structure for the Congress of the Republic, the rules for the merits exam, and the

3 Museum of the Congress of the Republic of Peru, Mensaje a la Nación del Presidente del Perú, Ingeniero Alberto Fujimori Fujimori, el 5 de abril de 1992, available at the link www.congreso.gob.pe/museo/mensajes/Mensaje-1992-1.pdf.

4 IACHR, Report on the Situation of Human Rights in Peru, OEA/Ser.L/V/II.83 Doc. 31, March 12, 1993, para. 54.

5 Decree-Law No. 25640 of July 21, 1992, Article 9.

procedures for filling job openings. That resolution determined that the Administrative Commission would not accept any claims brought against the results of the merits exam. On December 31, 1992, the chair person of the Administrative Commission made public resolutions 1303-A-92-CACL and 1303-B-92-CACL, which ordered the dismissal of 1,117 employees of the Congress.

10. In the context of democratic transition, begun in November 2000, several laws were adopted aimed at reviewing the collective dismissals that occurred under the government of Alberto Fujimori. On June 21, 2001, Law 27847 was issued; it established the bases for establishing special commissions in charge of reviewing the dismissals in the public sector, and of making recommendations to the respective ministry. The Special Commission entrusted with reviewing the dismissals of employees of the Congress of the Republic issued its final report on December 20, 2001, concluding, in the pertinent part, that:

It has been possible to determine the existence of irregularities in the evaluation and selection of personnel done in 1992 [... in which] [there was no respect for] the minimum scores indicated in the Rules of the Competitive Hiring Process [... and] in many cases the order of merits attained by the applicants in the examination of qualifications was not respected.⁶

11. On July 29, 2002, Law 27803 was promulgated, granting workers who had been arbitrarily dismissed the right to opt for one of the following benefits: reinstatement or relocation in another job, early retirement, economic compensation, or job training.⁷ For the purposes of executing such benefits, the same law created a National Registry of Irregularly Dismissed Workers.⁸

A. The petitioners

1. Common arguments

12. In the petitions considered in this report, it is argued that the alleged victims were career service staff of the Congress of the Republic when the Administrative Commission was constituted. As they did not avail themselves of the incentives of early retirement or relocation in other State institutions, they participated in the evaluation process provided for in resolution 1239-A-92-CACL. It is adduced that Decree-Law 25759 ordered that the evaluation process should conclude on October 18, 1992, but that the first merits exam was annulled after a series of reports in the media that the answers were being sold ahead of time. The petitioners indicated that the merits exam was rescheduled for October 24 and 25, 1992, without there being, at this moment, a duly appointed chairperson of the Administrative Commission.

13. The petitioners asserted that Supreme Resolution 532-92-PCM was published on November 6, 1992, entrusting the chair of the Administrative Commission to reserve Army Colonel Carlos Novoa Tello. They adduced that Article 87 of the 1979 Constitution in force at the time established that administrative rulings enter into force as of the day after their publication, accordingly the appointment of Mr. Novoa Tello did not become effective until November 7, 1992. They noted that the alleged victims, after participating in the evaluation process, were dismissed from their positions by resolution 1303-B-92-CACL. They noted that despite having been published on December 31, 1992, said resolution was applied retroactive to November 6, 1992, the date the authority who issued it, Mr. Carlos Novoa Tello, took over as chairperson of the Administrative Commission.

14. The petitions indicate that failing to pass an evaluation process is not one of the grounds for the dismissal of public employees established in Legislative Decree No. 276, known as the

⁶ Communication from the petitioner received January 22, 2009, in the context of petition 12.214, annexes, Informe de la Comisión Especial Encargada de Revisar los Ceses Colectivos de Personal del Congreso de la República (Report on the Special Commission Entrusted with Reviewing the Collective Dismissals of Staff of the Congress of the Republic), published December 20, 2001.

⁷ Law 27803 of July 29, 2002, Article 3.

⁸ Until October 2010 the Ministry of Labor and Job Promotion had published four lists of former workers irregularly dismissed. These lists are available at the link: www.mintra.gob.pe/mostrarContenido.php?id=196&tip=195.

Law of Foundations of the Administrative Career Service. They added that the alleged victims enjoyed the right to labor stability provided for in Article 48 of the 1979 Constitution, and that the only grounds for their dismissal would be a grave breach established in a disciplinary proceeding, and not a "process for streamlining personnel."

15. It is argued that the alleged victims filed administrative appeals to challenge resolution 1303-B-92-CACL, but that neither the Administrative Commission nor the Democratic Constitutional Congress, which was installed on December 30, 1992, ruled on those appeals. It is adduced that the alleged victims filed *amparo* actions, described below, which were declared unfounded by the Supreme Court of Justice and the Constitutional Court. The petitioners noted that those higher courts, when they issued those judgments, were made up of judges linked to the government. In this respect, they provided press clippings that describe the criminal convictions and administrative sanctions imposed on former members of the Supreme Court of Justice and the Constitutional Court for alleged bribery and collusion with then-presidential adviser Vladimiro Montesinos. The petitioners argued that those courts were not independent and that their members did not act impartially, especially in matters sensitive to the policies and interests of the government of Alberto Fujimori.

16. The petitioners alleged the adoption of a Special Program of Access to Benefits through Law 27803 does not fully cover the material and moral damages arising from the dismissal of the alleged victims. In addition, it is indicated that the inclusion in that program is contingent on waiving any type of judicial claim against the Peruvian State, both domestically and in supranational forums.⁹

2. Specific arguments

José Castro Ballena, Luz Angélica Soria Cañas, Dusnara Amelia Campos Ramírez, and María Gracia Barriga Oré (P 157-99)

17. The petitioner stated that on July 2, 1993, the alleged victims jointly filed an *amparo* action seeking annulment of resolution 1303-B-92-CACL. It is indicated that said action was declared well-founded by the 23rd Civil Court of Lima and by the Fifth Civil Chamber of the Superior Court of Justice of Lima, by resolutions of September 30, 1993, and November 30, 1994, respectively.

18. The petitioner asserted that the legal representative (*Procurador*) of the Congress filed a motion for annulment before the Constitutional and Social Law Chamber of the Supreme Court of Justice, which considered that the respondent, reserve Colonel Carlos Novoa Tello, had not been duly notified of the *amparo* action by the 23rd Civil Court of Lima. He indicated that after the case went back to that court, to cure the error in notice, the Supreme Court of Justice handed down a judgment of August 5, 1997, declaring the *amparo* action inadmissible. He noted that on September 25, 1998, the Constitutional Court ratified the decision referred to by the Supreme Court of Justice, and that on January 22, 1999, that decision was published by the official gazette *El Peruano*. According to the petitioner, the Supreme Court of Justice and the Constitutional Court grounded their decision on the fact that the chair of the Administrative Commission, Mr. Carlos Novoa Tello, did no more than carry out Decree-Laws Nos. 25,477, 25,640, and 25,759, without that having affected any constitutional right to the detriment of those filing the *amparo* actions.

19. The petitioner indicated that on August 1, 1995, alleged victim María Gracia Barriga Oré was hired as a permanent staff member of the Congress of the Republic. Petitioner stated that Luz Angélica Soria Cañas and Dusnara Amelia Campos Ramírez availed themselves of the benefit of economic compensation provided for in Law 27803. Petitioner and alleged victim, Mr. José Castro Ballena, stated that while he worked for 12 months in a position of trust in the office of Peruvian legislator Luz Doris Sánchez Pinedo, from 2000 to 2002, that did not mean he was reinstated, but rather that he was working under a temporary contract that did not

⁹ The fourth supplemental provision of Law 27803 establishes the following:
The irregular dismissals of those former workers who have judicial proceedings under way are covered by this law, so long as they refrain from bringing a judicial claim.

cure the damages resulting from his dismissal, in November 1992, as a permanent employee of the Congress.

20. Finally, the petitioner affirmed that the Peruvian State is responsible for violating the rights enshrined in Articles 8, 24, and 25 of the Convention.

Carlos Alberto Canales Huapaya (P 12.214)

21. Petitioner alleges that on February 25, 1993, Mr. Carlos Alberto Canales Huapaya filed an *amparo* action in which he called for the annulment of resolution 1303-B-92-CACL. On April 30, 1993, the 30th Civil Court of Lima disqualified itself from hearing the case, indicating that the claim does not make out an *amparo* action but rather an *acción popular*. It is argued that after the appeal was filed, the Fourth Civil Chamber set aside the ruling of disqualification and returned the case to the 30th Civil Court of Lima. It is indicated that on January 25, 1995, that court found the *amparo* action inadmissible and that on August 7, 1995, the Fourth Civil Chamber of the Superior Court of Justice of Lima amended the decision, declaring the *amparo* action well-founded.

22. The petitioner indicated that after the filing of the motion for annulment by the legal representative (*Procurador*) of the Legislative branch, the Constitutional and Social Chamber of the Supreme Court of Justice overturned the decision on appeal, decreeing, on June 28, 1996, that the *amparo* action was not well-founded. He stated that this decision was ratified on by the Constitutional Court on August 6, 1998. According to the information presented, Mr. Canales Huapaya was given notice of this last decision on March 26, 1999.

23. The petitioner argued that among the 1,117 workers of the Congress dismissed in late 1992, only two were able to secure their reinstatement judicially, after filing a contentious-administrative action. He indicated that hundreds of other workers opted to pursue a judicial claim or obtained adverse judicial decisions when pursuing *amparo* claims. Finally, he alleged that the Peruvian State is responsible for violation of the human rights enshrined in Articles II and XIV of the American Declaration of the Rights and Duties of Man, and Articles 8, 24, and 25 of the American Convention.

B. The State

1. Common arguments

24. The State provided reports from the Director of Human Resources of the Congress of the Republic, which show the labor history of the alleged victims. It argued that when dismissed, they were hired as permanent staff in the terms of Legislative Decree No. 276. It stated that the decree-laws that authorized the temporary dissolution and "administrative streamlining" ("*racionalización administrativa*") of the Congress were not amended or derogated by the Democratic Constitutional Congress, installed on December 30, 1992, or by the current Constitution of January 9, 1993.

25. It noted that the Special Program of Access to Benefits established by Law 27803 provides for different measures that have resulted in a "comprehensive solution to the irregular collective dismissals that occurred during the processes of reorganization carried out in 1992 and 1993."

26. The State rendered a narration similar to that of the petitioners with respect to the judicial proceedings around the *amparo* actions brought by the alleged victims. Finally, it alleged that the facts narrated in the petitions do not tend to establish the violation of rights protected in the American Convention and it asked that the IACHR find them inadmissible pursuant to Article 47(b) of that instrument.

2. Specific arguments

José Castro Ballena, Luz Angélica Soria Cañas, Dusnara Amelia Campos Ramírez, and María Gracia Barriga Oré (P 157-99)

27. The State alleged that José Castro Ballena was hired in the office of legislator Luz Doris Sánchez Pinedo from August 2000 to July 2001, and in March and April 2002, for a total of 12 months, in a position of trust. It indicated that María Gracia Barriga Oré has been working as a permanent employee of the Congress of the Republic since August, 1995.

28. The State indicated that Luz Angélica Soria Cañas and Dusnara Amelia Campos Ramírez have been included in the National Registry of Irregularly Dismissed Workers, and that both opted for the benefit of economic compensation. The State attached copies of receipts showing the payment of such compensation, issued by the Ministry of Labor and Job Promotion, in which the signatures of the alleged victims appear. It argued that the motives that gave rise to the claim by the four alleged victims no longer subsist, and it asked the IACHR to declare the archiving of the complaint, in light of Article 48(1)(b) of the Convention.

Carlos Alberto Canales Huapaya (P 12.214)

29. In its initial communications the State alleged that in the absence of a clarification by the IACHR on the date the petitioner filed his complaint, it should be considered the date of its transmittal by this international body, i.e. October 4, 1999. In this regard, it stated that the petition is covered by the grounds of inadmissibility provided for in Article 46(1)(b) of the Convention, insofar as notice of the decision of last resort by the Constitutional Court was given to Mr. Canales Huapaya on March 26, 1999; according to the State, he should have filed his complaint with the IACHR by September 26, 1999.

30. In subsequent communications, the State argued that the alleged victim could bring his claims before different judicial bodies, all with jurisdiction, independent, impartial, and respectful of the guarantees of due process. It noted that the Constitutional Court, in deciding, in last resort, the *amparo* action brought by Mr. Canales Huapaya, considered that it was not possible to reinstate him in his position in the Senate of the Republic, as that legislative chamber ceased to exist with the adoption of the 1993 Constitution. It adduced that one may not seek by means of an *amparo* action to restore situations which by their nature have become irreparable.

31. The State indicated that a contentious-administrative action, and not an *amparo* action, was the suitable means for challenging the validity of resolution 1303-B-92-CACL issued by the Administrative Commission. In this respect, it described the case of two former officers of the Congress of the Republic dismissed in late 1992 who had filed contentious-administrative actions and obtained favorable judicial rulings.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

32. The petitioners are authorized by Article 44 of the American Convention to submit petitions to the Commission. The petitions indicate as alleged victims natural persons with respect to whom the Peruvian State undertook to respect and ensure the rights enshrined in the Convention. Peru ratified the American Convention on July 28, 1978. Accordingly, the Commission is competent *ratione personae* to examine the complaints.

33. The Commission is competent *ratione materiae* and *ratione loci*, insofar as the petitions allege violations of rights protected in the American Convention said to have taken place within the territory of a state party to said treaty.

34. Finally, the Commission is competent *ratione temporis* as the obligation to respect and ensure the rights protected by the American Convention was already in force for the State as of the date on which the events alleged in the petitions are said to have taken place.

35. With respect to the allegations of petitioner Carlos Alberto Canales Huapaya (P 12.214), regarding alleged violations of Articles II and XIV of the American Declaration, the Commission observes that the rights that the Peruvian State undertook to respect as party to the Charter of the OAS, are stipulated in said instrument, which is a source of international obligations.¹⁰ Nonetheless, as of the moment Peru ratified the American Convention that instrument became its main source of obligations in the context of the inter-American system for the promotion and defense of human rights.¹¹ In that regard, and mindful that the American Convention enshrines the rights alleged by Mr. Carlos Alberto Canales Huapaya to have been violated, the analysis in the section on whether the allegations tend to establish a violation will be based on that instrument.¹²

B. Exhaustion of domestic remedies

36. Article 46(1)(a) of the American Convention provides that for a complaint submitted to the Inter-American Commission to be admissible under Article 44 of the Convention, one must have first pursued and exhausted domestic remedies in keeping with generally recognized principles of international law. This requirement is aimed at allowing the domestic authorities to take cognizance of the alleged violation of a protected right and, if appropriate, to have the opportunity to resolve it before it is brought before an international body.

37. The petitions considered in the instant report argue that the alleged victims filed *amparo* actions to challenge their dismissals, obtain their reinstatement, and secure payment of the salaries and benefits not received. As regards petition 157-99, the Peruvian State did not argue failure to exhaust domestic remedies; accordingly it tacitly waived that defense.¹³ The information available indicates that on September 25, 1998, the Constitutional Court declared the *amparo* action brought by the alleged victims in that petition to be unfounded, ending the judicial proceeding.

38. As regards petition 12.214, in its initial communications the State alleged that it was submitted after the time period established in Article 46(1)(b) of the Convention had lapsed. In subsequent briefs, it asserted that the alleged victim did not exhaust the suitable judicial remedy provided for in domestic legislation, which it said is the contentious-administrative action. In the *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, against Peru, the Inter-American Court of Human Rights indicated that the intervention in the organs entrusted with the administration of justice by the Executive Branch, as well as the legal restrictions on challenging the result of the process of evaluating the personnel of the Congress of the Republic resulted in an environment of uncertainty for the former workers of that institution "about the proceeding they should or could use to claim the rights they considered violated, whether this was administrative, under administrative law, or by an action for *amparo*."¹⁴

39. Based on the foregoing considerations, and mindful of the circumstances of the petitions under examination, the IACHR concludes that since they pursued the remedies that culminated in the decisions of the Constitutional Court, of September 25, 1998, in relation to petition 157-99, and August 6, 1998, in relation to petition 12.214, the alleged victims complied with Article 46(1)(a) of the American Convention.

10 I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, paras. 43 to 46.

11 *Id.*, para. 46.

12 IACHR, Report No. 38/09, Case 12,670, Peru, National Association of Ex-Employees of the Peruvian Social Security Institute et al., March 27, 2009, para. 68.

13 IACHR, Report No. 62/10, Petition 142-03, Jorge Sedano Faclón et al. (Peru), March 24, 2010, para. 31; and Report No. 10/09, Petition 4071-02, Mercedes Eladia Farelo (Argentina), March 13, 2009, paras. 36 and 37.

14 I/A Court H.R., Case of the Dismissed Congressional Employees (Aguado Alfaro et al.). Judgment of November 24, 2006. Series C No. 158, para. 129.

C. Deadline for submission

40. Article 46(1)(b) of the Convention establishes that for the petition to be declared admissible, it must have been submitted within six months from the date on which the interested person was notified of the final decision that exhausted domestic remedies.

41. In relation to petition 157-99, the parties indicated that notice of the judgment of the Constitutional Court of September 25, 1998, was given to the alleged victims on January 22, 1999. Given that the petition was filed on April 5, 1999, the IACHR considers that it satisfies the requirement provided for in Article 46(1)(b) of the Convention.

42. As for petition 12.214, the parties affirmed that the alleged victim was given notice of the resolution of the Constitutional Court of August 6, 1998, on March 26, 1999. In its initial briefs, the State asserted that in the note remitting the complaint of October 4, 1999, the IACHR did not indicate the date of its receipt. In this regard, it argued that there is a presumption that the petition was filed on the same date as the procedure was initiated, *i.e.* October 4, 1999, and it concluded that it should be declared time-barred. Regarding those positions, the IACHR clarifies that the record of petition 12.214 clearly shows that the original complaint was received September 20, 1999, accordingly it meets the requirement established at Article 46(1)(b) of the Convention.

D. Duplication of procedures and *res judicata*

43. Article 46(1)(c) of the Convention provides that the admission of the petitions is subject to the matter "is not pending in another international proceeding for settlement" and Article 47(d) of the Convention stipulates that the Commission shall not admit a petition that substantially reproduces a previous petition or communication already examined by the Commission or another international organization. In the petitions considered in this report, the parties have not argued the existence of either of those two circumstances, nor can they be deduced from the record.

E. Characterization of the facts

44. For purposes of admissibility, the Commission must decide whether the petition sets forth facts that could tend to establish a violation, as stipulated in Article 47(b) of the American Convention, if the petition is "manifestly groundless" or if it is "obviously out of order," as per Article 47(c). The standard of appreciation of these rules is different from that required for deciding the merits of a complaint. The Commission must render a *prima facie* evaluation to see whether the complaint establishes the apparent or potential violation of a right guaranteed by the Convention, and not to establish the existence of a violation. Such an examination is a summary analysis that does not entail any prejudice or anticipated opinion on the merits.

45. The Commission considers that the alleged dismissal of the alleged victims without due administrative process, as well as the alleged inefficacy of the judicial remedies pursued, due to the involvement of courts that lack autonomy, independent, and impartiality, could tend to establish a possible violation of the rights enshrined in Articles 8(1) and 25 of the American Convention, in relation to the obligations established in Articles 1(1) and 2 of that instrument, all to the detriment of José Castro Ballena and María Gracia Barriga Oré (P 157-99), and Carlos Alberto Canales Huapaya (P 12.214).

46. According to the parties' assertions, alleged victims Luz Angélica Soria Cañas and Dusnara Amelia Campos Ramírez (P 157-99) have accepted the benefits provided for in Law 27803. On June 14, 2010, the IACHR asked the petitioner to submit information as to whether the facts that motivated submission of the complaint subsisted, in relation to those persons. By communication received July 26, 2010, the petitioner reaffirmed that Ms. Soria Cañas and Ms. Campos Ramírez "opted for the benefit of economic compensation, that is, they had to waive any other request for a claim, judicial reinstatement, or constitutional proceedings under way, as established by the Fourth Supplemental Provision of Law No. 27803 on collective

dismissals...."¹⁵ In view of the foregoing considerations, the IACHR deems that the initial claims in relations to the referenced alleged victims have varied substantially, without the petitioner having submitted information as to the subsistence of those persons' claims before this international body, or additional arguments or factual information that tend to establish the violation of rights protected in the Convention to their detriment. Therefore, the IACHR concludes that the claims made in petition 157-99 are inadmissible, pursuant to Article 47(b) of the Convention with respect to Ms. Luz Angélica Soria Cañas and Ms. Dusnara Amelia Campos Ramírez.

47. In the merits stage the IACHR will evaluate the positions of the Peruvian State, according to which the alleged violations of the Convention as described in petition 157-99 with respect to the alleged victims María Gracia Barriga Oré and José Castro Ballena were cured upon the re-establishment of the employment relationship with Congress as of August 1995, for her, and upon the temporary contracting of him in a staff position of trust in the same legislative body.

48. As for the alleged violation of the right enshrined in Article 24 of the American Convention, the IACHR considers that these petitions do not contain elements that indicate the potential violation of that provision.

CONCLUSIONS

Based on the considerations of fact and law set forth above, and without prejudging on the merits, the Inter-American Commission concludes that petitions 157-99 and 12.214 satisfy the admissibility requirements set forth at Articles 46 and 47 of the American Convention, and, accordingly,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:

1. To declare admissible the claims set forth in petition 157-99 on behalf of the alleged victims José Castro Ballena and María Gracia Barriga Oré, in relation to Articles 8(1) and 25 of the American Convention, in connection with the obligations established in Articles 1(1) and 2 of the same instrument.
2. To declare admissible petition 12.214 in relation to Articles 8(1) and 25 of the American Convention in connection with the obligations established in Articles 1(1) and 2 of the same instrument.
3. To declare inadmissible the claims made in petition 157-99 on behalf of Luz Angélica Soria Cañas and Dusnara Amelia Campos Ramírez, pursuant to Article 47(b) of the American Convention.
4. To declare inadmissible the alleged violation of the right established in Article 24 of the Convention, with respect to petitions 157-99 and 12.214, pursuant to Article 47(b) thereof.
5. To notify the State and the petitioners of this decision.
6. To join the two petitions considered in this Admissibility Report as case 12.214 and to proceed to consider the case on the merits.
7. To publish this decision and include it in the Annual Report, to be presented to the General Assembly of the OAS.

Approved on the 1st day of the month of November, 2010. (Signed): Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez and Rodrigo Escobar Gil, members of the Commission.

¹⁵ See supra note 9.