REPORT No. 126/12
CASE 12.214
MERITS
CARLOS ALBERTO CANALES HUAPAYA *ET. AL.*
PERU
November xx, 2012

I. SUMMARY

1. The present report refers to two petitions filed on behalf of Carlos Alberto Canales Huapaya (P 12.214),[1] José Castro Ballena and María Gracia Barriga Oré (P 157-99)[2] [hereinafter also referred to as "the alleged victims"], alleging violation by the Republic of Peru (hereinafter also referred to as "Peru," "the State" or "the Peruvian State") of the rights enshrined in Articles 8.1 and 25.1 of the American Convention on Human Rights (hereinafter also referred to as "the American Convention" or "the Convention"). The petitioners asserted that the alleged victims were dismissed from their posts as Congressional employees by means of decree-laws and administrative resolutions issued as of April 1992, in a context of breakdown of democracy. They indicated that those dismissals breached the guarantees to due process of administrative laws and other rights protected in domestic constitutional law. It was claimed that the alleged victims filed petitions on constitutional grounds to be reinstated, but these petitions were dismissed by final judgments issued by the Constitutional Court. The petitioners alleged that, although the Peruvian State has been providing benefits to the employees dismissed irregularly in the nineties, during the administration of President Alberto Fujimori, it was not enough to repair material and moral damages that the alleged victims suffered from as a result of the arbitrary dismissal from their jobs.

2. The State alleged that, as of 2001, it had enacted laws and issued supreme decrees aimed at reviewing the irregular collective dismissals that took place in the nineties. It contended that the affected employees were entitled to participate in a Special Benefits Access Program (*Programa Extraordinario de Acceso a Beneficios*), governed by Law 27803 of July 28, 2002. Finally, it asserted that the allegations raised by the petitioners do not constitute a breach of the American Convention and requested the IACHR to declare the case groundless.

3. After examining the position of the parties, the Inter-American Commission concluded that the Peruvian State is responsible for the violation of the rights enshrined in Articles 8.1 and 25.1 of the American Convention, with respect to its obligations set forth in Articles 1.1 and 2 of the same instrument, to the detriment of Carlos Alberto Canales Huapaya, José Castro Ballena and María Gracia Barriga Oré.

II. PROCESSING BY THE IACHR

4. Petition 157-99 was received by the IACHR on April 5, 1999, whereas petition 12.214 was received on September 20 of that same year. The processing of both petitions until the decision on admissibility is explained in Admissibility Report No. 150/10 of November 1, 2010.[3] On that occasion, the IACHR decided to process the petitions jointly in the merits stage, under case No. 12.214. In Report No. 150/10, the IACHR stated that the claims of the petitioners were admissible with respect to a possible violation of the rights enshrined in Articles 8.1 and 25.1 of the American Convention, in connection with the obligations set forth in Articles 1.1 and 2 of the same instrument.

[1] Submitted September 20, 1999 on his own behalf.

[2] Submitted April 5, 1999 by José Castro Ballena.

[3] IACHR, Report No. 150/10, Petitions 157-99 and 12.214, Admissibility, José Castro Ballena and others, Peru, November 1, 2010, paras. 4 and 5, available at www.oas.org/es/cidh/decisiones/admisibilidades.asp#inicio.

5. On November 10, 2010, IACHR forwarded the Admissibility Report to the parties and granted the petitioners three months to submit their observations on the merits of the case. In the same communication, the Commission indicated that it would be at the disposal of the parties to reach a friendly settlement with regard to the case. On December 3, 2010, the petitioners indicated their interest in starting negotiations with the Peruvian State for the purpose of entering into a friendly settlement agreement. The State, however, did not indicate that it would be interested in starting procedures to reach a friendly settlement.

6. On February 26, 2011, the petitioners submitted their observations on the merits of the case and, on March 18 of that same year, additional observations were forwarded. On March 24, 2011, that information was forwarded to the Peruvian State, which was given three months to present its observations on the merits. On June 29, 2011, the State sent its response, providing additional information in briefs received by the IACHR on February 28, June 29, August 23, 2012. The petitioners presented additional communications on September 26 and October 12, 2011, May 5, July 9, October 12, 2012.

III. THE POSITIONS OF THE PARTIES

A. The petitioners

7. In its observations on the merits of the case, the petitioners reiterated their allegations that the State was responsible for breaching the rights provided for in Articles 8.1 and 25.1 of the Convention, because of the presumably irregular dismissal of the alleged victims from their employment. They indicated that this took place after the breakdown of democracy, with the coup d'état perpetrated by former President Alberto Fujimori on April 5, 1992. They indicated that, in that context, decree-laws were issued which, among other measures, provided for the dissolution and administrative restructuring of the Congress of the Republic. They indicated that on April 16, 1992, Decree-Law No. 25438 was published, establishing a Committee to Administer the Assets of the Congress of the Republic (*Comisión Administradora del Patrimonio del Congreso de la República*) (hereinafter referred as the Administrative Committee), which was in charge of a "staff streamlining process." They indicated that the process consisted of evaluating Congressional employees by means of a competitive examination so that they could have their employment confirmed or be dismissed if they did not obtain the minimum score required.

8. The petitioners asserted that, by means of Resolution No. 1239-A-92-CACL, it was provided that "the Committee to Administer the Assets of the Congress of the Republic would not consider any challenges to the results of the examination." They pointed out that, in the light of Decree-Law No. 25759, the evaluation process would conclude on October 18, 1992, but the first competitive examination was declared null and void after a series of reports in the media about the advanced sale of answers to the exam. They indicated that the examination was rescheduled for October 24 and 25, 1992, although at that time the Administrative Committee did not have a duly appointed standing chair.

9. The petitioners asserted that on November 6, 1992, Supreme Resolution 532-92-PCM, entrusting the chairmanship of the Administrative Committee to Reserve Army Colonel Carlos Novoa Tello, was published. They claimed that Article 87 of the Constitution of 1979, in force at the time, established that administrative resolutions would come into force the day after their publication; therefore the appointment of Mr. Novoa Tello came into force only on November 7, 1992. They pointed out that, after participating in the evaluation process, the alleged victims were dismissed from their jobs by means of Resolution 1303-B-92-CACL. They stressed that, although the above-mentioned resolution was published on December 31, 1992, it was effective retroactively to November 6, 1992, on which date the authority who issued the resolution, Mr. Carlos Novoa Tello, had not been instated as Chair of the Administrative Committee.

10. The petitioners asserted that failure to pass an evaluation process does not constitute a cause for dismissal of civil servants, as provided for in Legislative Decree No. 276, known as the Law for the Bases of the Administrative Career Stream. They added that the alleged victims enjoyed the right to

job stability as provided for in Article 48 of the 1979 Political Constitution and that the only cause for their dismissal would be severe wrongdoing as provided for in the disciplinary procedure, not a "staff streamlining process."

11. According to the allegations of the petitioners, the alleged victims filed administrative proceedings challenging Resolution 1303-B-92-CACL, but that neither the Administrative Committee nor the Democratic Constituent Congress, instated on December 30, 1992, issued any judgment on these proceedings. It was claimed that the alleged victims filed appeals on constitutional grounds (*amparo*), which were declared inadmissible by the Supreme Court of Justice and the Constitutional Court.

12. The petitioners stated that the adoption of a Special Benefits Access Program as a result of Law 27803 does not fully redress the material and moral damages caused by the dismissal of the alleged victims. Furthermore, they indicated that the inclusion of the above-mentioned program required waiving all court proceedings against the Peruvian State, not only domestically but also abroad.[4] They added that the alleged victims did not take part in the programs set up by the above-mentioned law, and they therefore did not benefit from any type of reparation.

13. With respect to the alleged victims, José Castro Ballena and María Gracia Barriga Oré, the petitioners asserted that, on July 2, 1992, they jointly filed proceedings on constitutional grounds, requesting that Resolution 1303-B-92-CACL be declared null and void. They indicated that these proceedings were declared with merit by the 23rd Civil Court of Law of Lima and by the Fifth Civil Chamber of the Superior Court of Justice, by means of resolutions issued on September 30, 1993 and November 30, 1994, respectively. They alleged that the Public Prosecutor of the Legislative Branch of Government filed a petition of annulment challenging the judgment of the second court with the Constitutional and Social Law Court of the Supreme Court of Justice, which considered that the respondent, Reserve Colonel Carlos Novoa Tello, had not been duly notified of the *amparo* appeal by the 23rd Civil Court of Law of Lima. They indicated that, after the case was returned to the above-mentioned court to remedy the error with respect to due notification, the Supreme Court of Justice issued its judgment on August 5, 1997, declaring that the *amparo* appeal was inadmissible. They pointed out that, on September 25, 1998, the Constitutional Court upheld the Supreme Court's judgment and that, on January 22, 1999, the judgment of the court of last resort was published in Peru's Official Gazette *El Peruano*. According to the petitioners, the Supreme Court of Justice and the Constitutional Court based their decisions on the fact that the Chair of the Administrative Committee, Mr. Carlos Novoa Tello, had confined himself to complying with Decree-Laws Nos. 25477, 25640 and 25759, and that this had not undermined any of the constitutional rights of the complainants.

14. The petitioners indicated that on August 1, 1995, the alleged victim María Gracia Barriga Oré was hired as a permanent civil service staff member of the Congress of the Republic. As for Mr. José Castro Ballena, they indicated that, although he worked for 12 months as staff of the inner circle of trust of Congresswoman Luz Doris Sánchez Pinedo, between 2000 and 2002; this did not mean that his job was restored to him, but rather it was a temporary contract that did not redress the damages caused by his dismissal in November 1992 as a permanent staff member of Congress.

15. As for the alleged victim Carlos Alberto Canales Huapaya, the petitioners indicated that on February 25, 1993, he filed proceedings on constitutional grounds (*amparo*) where he requested that Resolution 1303-B-92-CACL be declared null and void. On April 30, 1993, the 30th Civil Court of Law of Lima disqualified itself from hearing the case, indicating that the inferred claim pertained to a class action suit. They alleged that, after the filing an appeal, the Fourth Civil Court of Law declared that the court disqualification resolution was null and void and returned the briefs to the 30th Civil Court of Lima. They indicated that on January 25, 1995, that court declared that *amparo* proceedings were inadmissible and

[4] The fourth complementary provision of Law 27803 provides the following:

> The present law encompasses the irregular dismissals of those former employees who had court proceedings under way, as long as they waived their claims filed with the Judiciary System.

that on August 7, 1995, the Fourth Civil Chamber of the Superior Court of Justice of Lima amended the decision, declaring that the appeal that had been filed had merits.

16. The petitioners stated that, after the Public Prosecutor of the Legislative Branch of Government filed an appeal for annulment, the Constitutional and Social Chamber of the Supreme Court of Justice amended the decision of the second court, decreeing, on June 28, 1996, the inadmissibility of the proceedings on constitutional grounds (*amparo*). They indicated that this decision was upheld on August 6, 1998 by the Constitutional Court.

17. The petitioners asserted that, of the 1,117 Congressional employees who had been dismissed in December 1992, only two were able to be reinstated as a result of court proceedings, after filing a contentious-administrative complaint. They pointed out that hundreds of other employees who opted for this solution or who filed appeals on constitutional grounds (*amparo*) received adverse court rulings.

18. As for the allegations of law, the petitioners asserted that the decrees that governed the staff streamlining process of the Congress of the Republic prohibited the filing of administrative complaints against the competitive examination, thus breaching the right to judicial protection of the alleged victims. They highlighted that, at the time of taking the decisions with respect to the appeals on constitutional grounds (*amparo*) filed by the presumed victims of the Supreme Court of Justice and the Constitutional Court, the latter were under the influence of the Executive Branch of Government, thus violating the right of the alleged victims to be heard by an impartial court. Regarding this, they attached press clippings reporting criminal convictions and administrative penalties against former judges of the Supreme Court of Justice and Constitutional Court for alleged bribes and collusion with Vladimiro Montesinos Torres, at that time Advisor to the President of the Republic.

19. Finally, the petitioners highlighted that the dismissal and subsequent denial of justice to the detriment of the alleged victims took place in a situation that was identical to that of the victims of the case entitled Dismissed Congressional Employees v. Peru, ruled by the Inter-American Court in a judgment issued on November 24, 2006.

B. The State

20. The State attached reports of the Human Resources Director of Congress of the Republic, where the employment background of the alleged victims appeared. It asserted that when they were dismissed, they were employed on the basis of the terms of Legislative Decree No. 276, as permanent civil servants of the House of Representatives or Senate.

21. The State described the context in which the intervention of the Executive Branch of Government took place in the Congress of the Republic as of April 5, 1992. It stated that Decree-Law No. 25640 of July 21, 1992 authorized implementation of the Congressional staff streamlining process, which "included a series of incentives if the employee tendered his/her resignation voluntarily, a job transfer in the government or leave of absence." It indicated that "by means of Decree-Law 24640 it was also ruled that the appeal on constitutional grounds (*amparo*) aimed at challenging directly or indirectly the enforceability of the Decree-Law was not admissible…" It indicated that Decree-Law No. 25759 instructed the Committee to Administer the Assets of Congress to carry out a staff evaluation and selection process by means of qualifying examinations and that "the officials who did not obtain the score required or did not show up for the examination would be dismissed for the purpose of restructuring."

22. The State pointed out that, by means of Resolution No. 1239-A-92-CACL of October 13, 1992, the Chair of the Administrative Committee "adopted the new table of staff assignments, requirements, terms of reference and regulation for the evaluation and selection of staff of the Congress of the Republic." It added that the same resolution provided that the Administrative Committee "would not accept any challenges to the results of the examination." It indicated that Resolutions Nos. 1303-A-92-CACL and 1303-B-92-CACL, issued on November 6, 1992, were published on December 31, 1992. It pointed out that, by means of these resolutions "1,117 employees and officials of Congress who had

decided not to register for the competitive examination that had been called or because, although they had registered, they either did not show up for the examinations or failed to obtain satisfactory scores, were dismissed."

23. Peru provided an account similar to that of the petitioners on the results of the appeal on constitutional grounds (*amparo*) filed by the alleged victims. It asserted that José Castro Ballena was hired in the office of Congresswoman Luz Doris Sánchez Pinedo from August 2000 to July 2001 and then between March and April 2002, for a total number of twelve months as personal staff. As for María Gracia Barriga Oré, it indicated that she is working as a permanent staff member of the Congress of the Republic since August 1995.

24. With respect to Carlos Canales Huapaya, the State alleged that he was able to file his claims in various judiciary bodies, all of them competent, independent, impartial and respectful of guarantees of due process of law. It underscored that, when the Constitutional Court, as the court of last resort, ruled on the appeal filed by him, it deemed that it was not possible to reinstate him to his job in the Senate of the Republic, because this legislative body no longer existed as a result of the ratification of the 1992 Political Constitution. It claimed that it is impossible to try, by an appeal on constitutional grounds (*amparo*), to redress situations that, by their very nature, have become irreparable.

25. The State indicated that the contentious-administrative proceedings, and not the appeal on constitutional grounds, were the appropriate course to take to challenge the validity of Resolution 1303-B-92-CACL which led to the dismissal of the alleged victims. Regarding this, it described the case of two former officials of the Congress of the Republic, dismissed at the end of 1992, Messrs. Raúl Cabrera Mullos and Rosario Quintero Coritoma, who had filed contentious-administrative proceedings and obtained favorable court rulings.

26. The State contended that the Committee "cannot review judgments issued by national courts acting in the framework of their jurisdiction and applying guarantees for judicial protection […] lacking the competence to have its ruling replace that of national courts on matters involving interpretation and explanation of domestic law or appraisal of the facts."

27. The State asserted that, on June 21, 2001, Law 27487 was enacted, repealing the regulations authorizing the collective dismissals in the processes of restructuring government institutions, throughout the nineties. It indicated that that law provided for the establishment of special committees "in charge of reviewing the collective dismissals of staff affected by Decree-Law No. 26093 or restructuring processes authorized by express regulation." It alleged that, by means of Executive Board Agreement No. 463-2000-2001/MESA-CR, "the Special Committee in charge of Reviewing the Collective Dismissals Taking Place in the Congress of the Republic" was set up. According to the allegations, that committee found a series of irregularities during the process of streamlining the staff of the Congress of the Republic.

28. Peru pointed out that Law 27586 provided for the establishment of a Multisectoral Commission in charge of evaluating the feasibility of the suggestions and recommendations in the reports of the special committees in charge of reviewing the collective dismissals of staff, in conformity with Law 27487. It indicated that, on March 26, 2002, the Multisectoral Commission issued its final report, unanimously agreeing

> to consider irregular collective dismissals of employees who were subject to the system of Legislative Decree No. 276, those dismissals that were carried out without observing the legal procedures set in the four cases of dismissal contained in Legislative Decree No. 276, and failing to comply with the legal procedures for leave of absence as established by Decree-Law No. 26093.

29. The State asserted that, by means of Law 27803 of July 28, 2002, implementation of the recommendations made by the committees in charge of reviewing the collective dismissals in the public sector was approved. It indicated that that law provided that the former employees registered in the National Register of Irregularly Dismissed Employees are entitled to opt alternatively and exclusively for

the following benefits: a) reinstatement of employment or transfer, b) early retirement, c) financial compensation, and d) job training and reconversion. Peru indicated that the Ministry of Labor has published lists of former employees who had been dismissed irregularly, with a total of 27,187 employees whose dismissals were recognized as irregular. It stressed that, in the present case, "compensation that can be provided to the Dismissed Congressional Employees must be within the amounts set in Law No. 27803 […]." Peru underscored that:

> Considering the case law precedents of the Court with respect to calculating reparations for intangible damages related to cases whose issues are similar to the one dealt with in the present case, it is a matter of concern that the claims filed are aimed at securing a financial benefit although, internally, these have been redressed, granting a correct procedure for the recognition of benefits and the repeal of regulations that, at one time, breached the articles of the American Convention; on that basis, it can even be observed that there is malicious intent because, as mentioned above, the Inter-American System is aimed at protecting human rights and not at securing profits from them.

30. As for the obligation provided for in Article 2 of the Convention, Peru indicated that its domestic law "has been adjusted to the Convention and even in dealing with the case *sub litis*, laws and various administrative provisions were adopted requiring a review of the collective dismissals in order to grant irregularly Dismissed Employees the chance of calling for their rights."

31. The State argued that there is no breach of rights as alleged by the petitioners, because the alleged victims were able to gain access to the benefits provided by Law 27803. In this regard, it pointed out that the claim of the petitioners has been met in domestic courts and requested that the Commission declare the case without merits.

IV. REVIEW OF THE FACTS

A. Appraisal of the evidence

32. In application of Article 43.1 of its Rules of Procedure,[5] the Commission shall review the facts alleged by the parties and the evidence provided in the processing of the present case. It will also take into account information in the public domain, including laws, decrees, and other regulatory measures in force at the time of the incidents alleged by the parties.

33. Afterwards, the IACHR shall rule on the context in which the facts of the present case appear, as well as the specific facts that have been established and the Peruvian State's resulting responsibility in this case.

B. Facts deemed to have been proven by the Commission

1. Context in which the dismissal of the Congressional employees took place at the end of 1992

34. IACHR stressed that the present case has to do with the dismissal of 1,117 employees of the Congress of the Republic in December 1992, after the breakdown of democracy and constitutional rule of law after the coup d'état perpetrated by the then President Alberto Fujimori Fujimori on April 5, 1992. On November 24, 2006, the Inter-American Court of Human Rights issued its judgment in the Case of the Dismissed Congressional Employees (Aguado-Alfaro *et al.*) v. Peru. In the above-mentioned judgment, the Inter-American Court confirmed a series of facts preceding the dismissal of the congressional employees, as well as the adoption of laws and administrative resolutions aimed at redressing the irregular dismissals during the processes of restructuring public institutions carried out throughout the nineties. Various evidence and allegations on the basis of which the Inter-American Court issued its judgment of November 24, 2006 share the same characteristics as those brought before the Commission by the petitioners and the Peruvian State in the case *sub judice*.

35. In view of the above and since the file on the present case confirms this similarity, the IACHR takes into account the conclusions of the Inter-American Court on the historical context in which the dismissal of the 1,117 congressional employees took place in December 1992, among which can be found the victims of the present case, and the adoption of legislative and administrative measures, as of 2001, for the purpose of reviewing the collective dismissals during the administration of Alberto Fujimori. Relevant excerpts of the above-mentioned conclusions of the Inter-American Court when issuing its judgment in the Case of the Dismissed Congressional Employees are transcribed below.

> *Historical context of Peru at the time of the facts*
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> 89.1 On July 28, 1990, Alberto Fujimori Fujimori assumed the Presidency of Peru under the 1979 Constitution, with a five-year mandate.
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> 89.2 On April 5, 1992, President Fujimori Fujimori broadcast the "Manifesto to the Nation" in which he stated, *inter alia,* that he considered that he had "the responsibility to assume an exceptional approach to try and accelerate the process of […] national reconstruction and ha[d] therefore, […] decide[d] […] to temporarily dissolve the Congress of the Republic[, …] to modernize the public administration, [and] to reorganize the Judiciary completely." The following day, based on this manifesto, Mr. Fujimori established transitorily the so-called "Emergency and National Reconstruction Government" by Decree Law No. 25418, which stipulated:

[5] Article 43.1 of the Rules of Procedure of IACHR provides for the following:

The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

[…] Article 2. The institutional reform of the country is a fundamental goal of the Emergency and National Reconstruction Government, in order to achieve an authentic democracy. […] This reform seeks the following goals:

1) To propose the modification of the Constitution so that the new instrument will be an effective mechanism for development.
2) To improve the moral fabric of the administration of justice and related institutions; and the national control system, decreeing the comprehensive reorganization of the Judiciary, the Constitutional Court, the National Council of the Judiciary, the Attorney General's Office (Ministerio Público) and the Comptroller General's Office.
3) To modernize the public administration, reforming the central Government structure, public enterprise and the decentralized public agencies, so that they become elements that promote productive activities. […]

Article 4. To dissolve the Congress of the Republic until a new basic structure for the Legislature is adopted, as a result of the modification of the Constitution referred to in Article 2 of this Decree Law.

Article 5. The President of the Republic, with the affirmative vote of an absolute majority of the members of the Council of Ministers, shall exercise the functions corresponding to the Legislature, through Decree Laws. […]

Article 8. The articles of the Constitution and legal provisions that are contrary to this Decree Law are suspended.

89.3 As a result of various factors and in the context of the application of Resolution 1080 adopted by the OAS General Assembly on June 5, 1991, the instability led to the call for elections and the formation of the so-called "Democratic Constituent Congress" (CCD), which was supposed to draw up a new Constitution, among other matters. One of the first actions of this Congress was to issue the so-called "constitutional laws." The first of these, adopted on January 6, 1993, and published three days later, declared that the 1979 Constitution was in force, except in the case of the decree laws issued by the Government, and stated that they were in force until they were revised, modified or derogated by Congress itself.

89.4 At the time the facts of the instant case occurred, when the alleged victims filed the administrative and judicial recourses, several decree laws included a provision that prevented an action for *amparo* being filed to contest their effects; this denaturalized the *amparo* procedure, because situations outside jurisdictional control were established.

89.5 On October 31, 1993, a new Peruvian Constitution was adopted, promulgated by the so-called Democratic Constituent Congress on December 29, that year.

89.6 Alberto Fujimori Fujimori was re-elected President of Peru in 1995 and assumed the Presidency again in July 2000. In November 2000 he renounced the Presidency of his country from Japan; consequently, Congress appointed Valentín Paniagua Corazao, who was then President of Congress, as President of the transition Government, so that he could call elections.

The dismissal of the congressional employees

89.7 On April 16, 1992, the "Emergency and National Reconstruction Government" issued Decree Law No. 25438 establishing the Commission to Administer the Patrimony of the Congress of the Republic (hereinafter "Administrative Commission"), mandated "to adopt the administrative measures and prepare the personnel actions that [were] necessary."

89.8 On May 6, 1992, Decree Law No. 25477 stipulated that the Administrative Commission should "initiate an administrative streamlining process, to be concluded within 45 days of the publication of [the said] decree."

89.9 Decree Law No. 25640 of July 21, 1992, authorized the implementation of the process to streamline the personnel of the Congress of the Republic. This decree […] established, *inter alia*:

Article 2. […] Congressional employees subject to the labor regime of Legislative Decree No. 276 and its Regulation may request their termination by renouncing the administrative career, and claiming the payments that this law establishes.

Article 3. The personnel who terminate their employment pursuant to the preceding article shall receive: (a) a financial incentive, [and] (b) an additional incentive [for personnel subject to the pension regime of Decree Law No. 205300].

Article 4. […] the personnel who have not requested voluntary termination and who are declared to be surplus shall be placed at the disposal of the National Public Administration Institute (INAP), to be relocated among the public entities that need personnel. Once forty-five (45) calendar days have elapsed following their being placed at the disposal of INAP, the personnel who have not been relocated shall be terminated from the administrative career and shall only receive compensation for the time they have served and other benefits that correspond to them according to the law.

[…] Article 7. The personnel who terminate their employment claiming the benefit of the incentives established in this Decree Law, may not return to work in the Public Administration, Public Institutions or State Enterprises, through any way or type of employment or legal regime, for five years from the date of their termination. […]

Article 9. The action for *amparo* to contest the application of this Decree Law directly or indirectly shall be inadmissible.

Article 10. Any provisions that are opposed to this Decree Law shall be annulled or suspended, as applicable.

89.10 Decree Law No. 25759 of October 1, 1992, stipulated that "the streamlining process" would conclude on November 6 that year, and the Administrative Commission was mandated to conduct the "Personnel Evaluation and Selection Procedure" by means of examinations to classify the personnel. It also stipulated that the employees who passed the examination would occupy, "the posts established in the new Congress Personnel Allocation Table strictly in order of merit"; and that those who did not find a vacancy for the position they were applying for or who did not take the examination would be "terminated owing to the reorganization and [would] only have the right to receive their legally-established social benefits." This Decree Law derogated article 4 of Decree Law No. 25640 […].

89.11 Resolution No. 1239-A-92-CACL of October 13, 1992, issued by the acting President of the Administrative Commission, adopted the "new Congress Personnel Allocation Table"; the requirements for taking the selection examinations for the posts established on this table; the bases for the selection examinations, and the regulations for the congressional personnel evaluation and selection procedure. It also stipulated that the "Administrative Commission […] [would] not accept complaints concerning the results of the examination," and that this Commission would "issue resolutions declaring the termination of those employees who had not found a vacancy or who had not registered for the competitive examination."

89.12 The evaluation process was conducted by the Administrative Commission first on October 18, 1992, for the employees who had not availed themselves of the voluntary termination procedure and the financial incentives. However, it was reported "that the test [for the selection examination had been] sold to some employees two days before the date of the examination […] and, on the day itself, it [had been] detected that some employees arrived for the examination with the document completed." Consequently, this evaluation procedure was annulled and it was established that the examination would be held on October 24 and 25, 1992.

89.13 On November 6, 1992, the acting President of the Administrative Commission issued two resolutions under which 1,110 congressional officials and employees were dismissed […]:
a) Resolution No. 1303-A-92-CACL, published on December 31, 1992, by which the employees who "decided not to register for the competitive examination and/or those who, having registered, did not complete the corresponding examination," were dismissed "owing to reorganization," and
b) Resolution No. 1303-B-92-CACL, published on December 31, 1992, by which the employees "who did not find a vacancy on the personnel allocation table of the Congress of the Republic" were dismissed "owing to reorganization and streamlining."

89.14 On December 31, 1992, most of the employees who were dismissed by Resolutions Nos. 1303-A-92-CACL and 1303-B-CACL received cheques on the Banco de la Nación corresponding to the "payment of social benefits for 1992." […].

Facts subsequent to the administrative and judicial measures

89.31 […] following the installation of the transition Government in 2000 […], laws and administrative provisions were issued ordering a review of the collective dismissals in order to provide the employees dismissed from the public sector the possibility of claiming their rights […].

89.32 In this context, Act No. 27487 was issued on June 21, 2001, which established the following:

Article 1. Decree Law No. 26093 […,] Act No. 25536[, …] and any other specific norms that authorize collective dismissals under reorganization processes are annulled. […]

Article 3. Within 15 calendar days of the date on which this law comes into force, public institutions and agencies […] shall establish Special Committees composed of representatives of the institution or agency and of the employees, responsible for reviewing the collective dismissals of employees under the personnel evaluation procedure conducted under Decree Law No. 26093 or in reorganization processes authorized by a specific law.

Within 45 calendar days of their installation, the Special Committees shall prepare a report containing the list of the employees who were dismissed irregularly, if there are any, and also the recommendations and suggestions to be implemented by the Head of the sector or local government. […]

89.33 Supreme Decrees 021 and 022-2001-TR established the "terms of reference for the composition and operation of the Special Committees responsible for reviewing the collective dismissals in the public sector." Among them, the Special Committee responsible for reviewing the collective dismissals of congressional personnel under Act No. 27487 was established […] and, in its report of December 20, 2001, it concluded *inter alia*, that:

[…] The 1992 and 1993 processes of administrative streamlining and of reorganization and streamlining were implemented in compliance with specific norms.

Irregularities have been determined in the evaluation and selection of personnel in 1992 [… during which] the minimum number of points indicated in the Rules for the Competitive Examination was not respected [… and,] in many cases, the classification obtained by the candidates in the qualifying examination was not respected.

[…] The former employees who collected their social benefits and those who also availed themselves of incentives for voluntary termination accepted their dismissal, according to repeated acts of a labor-related nature.

[…] Pursuant to the [Peruvian] laws in force, the Special Committee has abstained from examining any claim that is before a judicial instance, in either the domestic or the supranational sphere.

Specifically, with regard to the dismissed employees involved in the proceedings before the Inter-American Commission, the Special Committee stated that:

Since this matter was being decided by a supranational instance, under the laws in force, it was unable to rule on it; particularly since a group of the said former employees have formally requested the international organ to rule on the merits; hence, it abstained from issuing an opinion in this regard. Moreover, it should not be overlooked that the 257 former employees were the only ones who exhausted the judicial proceedings.

In other words, the 257 alleged victims in this case were not included in the scope for the application of these supreme decrees.

> 89.34 Act No. 27586 of November 22, 2001, published on December 12, 2001, established that the latest date for the Special Committees to conclude their final reports was December 20, 2001 […]. The Act also created a Multisectoral Commission composed of the Ministers of Economy and Finance, Labor and Social Promotion, the Presidency, Health, and Education, as well as by four representatives of the provincial municipalities and by the Ombudsman, or their respective representatives. This Multisectoral Commission would be
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> […] responsible for evaluating the viability of the suggestions and recommendations of the Special Committees of the entities included within the sphere of Act No. 27487, and also for establishing measures to be implemented by the heads of the entities and for the adoption of supreme decrees or the elaboration of draft laws, taking into consideration criteria relating to administrative efficiency, job promotion, and reincorporation in the affected sectors; if necessary, it would be able to propose reinstatement, and also the possibility of a special early pension regime. […]
>
> The said Multisectoral Commission may, also, review the reasons for the dismissals and determine the cases in which the payment of earned or pending remuneration or social benefits is owing, provided these aspects have not been the object of legal action.
>
> 89.35 On March 26, 2002, the Multisectoral Commission issued its final report, concluding, *inter alia,* that "the norms that regulated the collective dismissals should not be questioned […], merely the procedures by which they were implemented." It also agreed "that any recommendation on reincorporation or reinstatement should be understood as a new labor relationship, which could be a new contract or a new appointment, provided that there are vacant budgeted posts in the entities or that such posts are opened up; that the employees comply with the requirements for these posts; that there is legal competence to hire, and that there is a legal norm authorizing appointments." Based on the Special Committee's recommendations, it considered that there had been 760 cases of irregular dismissals under the 1992 evaluation and selection procedure […], with regard to the employees dismissed from the Congress of the Republic […].[6]

36. On July 29, 2002, Law 27803 was enacted, granting those employees declared in a situation of arbitrary dismissal the option to accept one of the following benefits: reinstatement or job transfer, early retirement, economic compensation and job training.[7] For the purpose of providing said benefits, the same law established a National Register of Irregularly Dismissed Employees. Until July 2012, the Ministry of Labor and Employment Promotion had published four lists of former irregularly dismissed employees.[8] In the present case, the information submitted by the parties indicates that Carlos Alberto Canales Huapaya, José Castro Ballena and María Gracia Barriga Oré did not accept the benefits of Law 27803.[9]

37. The IACHR whishes to recall what was established by the Inter-American Court in the judgment in the Case of the Dismissed Congressional Employees. The Court observed that the Special Commission created to review the dismissal of 1,117 Congressional employees abstained from considering requests submitted by workers who had filed complaints before the IACHR. The Inter-American Court stated that the 257 victims of the aforesaid case did not comply with the requisites of statutes enacted after June 2001, aiming to redress irregular dismissal of public employees that took place throughout the 1990s. The Inter-American Court reached this conclusion because the 257 victims of the Case of Dismissed Congressional Employees had filed complaints before the IACHR, as in the case of the present alleged victims.

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[6] 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. 89. Internal quotes and references were removed from the original text.

[7] **Annex 1.** Law 27803 of July 29, 2002, Article 3, available on the Internet portal of the Congress of the Republic of Peru: www.congreso.gob.pe/ntley/Imagenes/Leyes/27803.pdf.

[8] The lists are available at www.mintra.gob.pe/mostrarContenido.php?id=196&tip=195.

[9] **Annex 2.** Official Letter No. 1078-2008-MTPE/2-CCC of July 30, 2008, subparagraph a), where the Advisor on Collective Dismissals of the Ministry of Labor and Employment Promotion points out that "[i]n the case of Messrs. José Castro Ballena and María Gracia Barriga Ore, they are not registered in the National Register of Irregularly Dismissed Employees [...]". Annex to the State's communication of July 3, 2009, received by IACHR on July 7 that same year.

38. The IACHR takes note of the Peruvian State's allegations with respect to the adoption of a regulatory framework as of June 2001 for the purpose of reviewing and redressing the irregular dismissals carried out during the administration of Alberto Fujimori. The Commission is in the process of evaluating other petitions and cases in which the alleged victims did accept the benefits provided for by Law 27803, after their dismissals had been declared arbitrary by special committees, in accordance with the terms of Law 27487 of June 21, 2001.[10] As will be explained in the legal review section, in the case *sub judice* the dispute brought to the IACHR does not refer to any possible arbitrariness in the dismissal of the victims, but to the alleged denial of justice claimed by the petitioners with respect to their access to domestic legal remedies and the effectiveness of these remedies. In that respect, in view of the circumstances of the present petition, it does not pertain to IACHR to rule on the possible irregularity of the dismissal of Messrs. Carlos Alberto Canales Huapaya, José Castro Ballena and María Gracia Barriga Oré or on the eventual adjustment of the regulatory framework adopted by the Peruvian State as of June 2001 to Inter-American human rights standards.

2. Dismissal of the victims in their jobs as career employees of the Congress of the Republic

39. On January 1, 1985, Carlos Alberto Canales Huapaya was hired as a driver of the motor vehicle operation unit of the Senate of the Republic. On June 1, 1985, he was appointed Driver I (Grade III – 5) of the above-mentioned unit, in the Senate as well. As of January 2, 1991 he held the position of Head of Security Unit of the Senate.[11]

40. On January 1, 1990, José Castro Ballena was hired as administrative assistant of the General Personnel Office of the Congress of the Republic, and his last position was head of the Assets Monitoring Unit (Unidad de Control Patrimonial).[12] On May 1, 1989, María Gracia Barriga Oré started working as an STA technician in the House of Representatives. On August 1, 1995, she was once again hired for an indefinite period of time as ST Technician, Level 5, assigned to the Department of the Treasury of the Congress of the Republic. Her second contract was entered into under the private-sector labor system, in accordance with Legislative Decree No. 728.[13]

41. As indicated earlier, on December 31, 1992, Resolutions 1303-A-92-CACL and 1303-B-92-CACL of November 6, 1992 were published in the Peru's Official Gazette *El Peruano*, ordering the dismissal of 1,117 employees. The victims of the present case did not accept the procedure of voluntary resignation and financial incentives as provided for by Article 2 of Decree-Law No. 25640, but were subject to the "staff evaluation and selection process" governed by Decree-Law No. 25759. The victims were dismissed from their jobs by means of Resolution No. 1303-B-92-CACL, which established, as the cause for dismissal, the "restructuring and streamlining of the employees who were unable to fill a vacancy in the Staff Assignment Table (Cuadro para Asignación de Personal—CAP) of the Congress of the Republic."

42. According to the allegations of the parties, when they were dismissed from their jobs, the victims were working under the labor system provided for in Legislative Decree No. 276 (Law for the Bases of the Public Sector Administrative Career and Remuneration).[14] The relevant parts of this decree provides for the following:

Article 4. The Administrative Career is permanent and is governed by the following principles:

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[10] Please see paragraph 35 *supra*.

[11] **Annex 3.** Technical Administrative Report No. 323-2009-CFRCP-AAP-DRH/CR of August 5, 2009. Annex to the State's communication of August 26, 2009, received by IACHR on August 27 of that same year.

[12] **Annex 4.** Technical Administrative Report No. 0602-2011-GFRCP-AAP-DRH/CR of April 26, 2011. Annex to the State's communication of June 29, 2011, received by IACHR on that same date.

[13] **Annex 5.** Technical Administrative Report No. 084-2008-ARCP-DAP-DRH/CR. Annex to the State's communication of July 3, 2009, received by IACHR on July 7 of that same year.

[14] See paragraphs 10 and 20 *supra*.

a) equal opportunity;
b) stability;
c) guarantee of employment level obtained; and
d) fair and equitable remuneration, as regulated by a consolidated officially accredited pay scale […].

Article 24. Career civil servants have the following rights:

a) to have a government career based on merit, without discrimination for political, religious, or economic reasons or because of race or gender, or for any other reason;
b) to enjoy stability. No civil servant may be dismissed or removed without cause as provided for by the Law and in accordance with established procedures […].

Article 35. The following are justifiable cause for the definitive dismissal of a civil servant:

a) age limit of seventy years of age;
b) loss of nationality;
c) permanent physical or mental disability; and
d) proven inefficiency or ineptitude to perform the duties of employment.[15]

43. The victims filed proceedings on constitutional grounds (*amparo*) against Resolution No. 1303-B-92-CACL, and the Peruvian courts ruled against their appeals.

3. The proceedings on constitutional grounds (*amparo*) filed by the victims of the case

Carlos Alberto Canales Huapaya

44. On February 24, 1993, he filed an appeal on constitutional grounds (*amparo*) against the Democratic Constituent Congress, requesting that he be guaranteed his right to freedom of work, jurisdiction and due process and the right to petition.[16] On May 5, 1993, the 30th Civil Court of Lima disqualified itself from hearing the appeal because it deemed that the inferred claim was tantamount to a class action suit.[17] On September 21, 1993, the Fourth Civil Chamber of the Superior Court of Justice of Lima ruled that the court disqualification resolution was null and void and ordered that the briefs be sent back to the original court so that the proceedings could continue.[18] On January 25, 1995, the 30th Civil Court of Lima ruled that the appeal was inadmissible because it had been submitted after the time-limits of 30 business days required by the Administrative Simplification Law had elapsed and because the complainant had not exhausted prior administrative remedies.[19]

45. Against the above-mentioned ruling, Mr. Canales Huapaya lodged an appeal on February 9, 1995.[20] On July 5, 1995, the head of the Fourth Civil Superior Attorney General's Office issued a

[15] **Annex 6.** Legislative Decree No. 276 of March 6, 1984, available on the Internet portal of the Congress of the Republic of Peru at: www.congreso.gob.pe/ntley/Imagenes/DecretosLegislativos/00276.pdf.

[16] **Annex 7.** Appeal on constitutional grounds (*amparo)* filed by Carlos Alberto Canales Huapaya on February 24, 1993. Annex to the State's communication of August 26, 2009, received by IACHR on August 27 of that same year.

[17] **Annex 8.** Resolution of April 30, 1993 by the 30th Civil Court of Lima, case file No. 3055-93. Annex to the State's communication of August 26, 2009, received by IACHR on August 27 of that same year.

[18] **Annex 9.** Resolution of September 21, 1993 by the Fourth Civil Chamber of the Superior Court of Justice of Lima, case file No. 1539-93. Annex to the State's communication of August 26, 2009, received by IACHR on August 27 of that same year.

[19] **Annex 10.** Judgment of January 25, 1995 by the 30th Civil Court of Lima, case file No. 3055-93. Annex to the State's communication of August 26, 2009, received by IACHR on August 27 of that same year.

[20] **Annex 11.** Appeal filed by Carlos Alberto Canales Huapaya on February 9, 1995. Annex to the State's communication of August 26, 2009, received by IACHR on August 27 of that same year.

decision, ruling that the judgment of January 25, 1995 by the 30th Civil Court of Lima should be overturned and the appeal on constitutional grounds declared with merits.[21]

46. On August 7, 1995, the Fourth Civil Chamber of the Superior Court of Justice of Lima ruled that the appeal was with merits and concluded that Resolution No. 1303-B-92-CACL was unenforceable.[22] The Public Prosecutor's Office of Legal Affairs of the Legislative Branch of Government and the Office of the President of the Council of Ministers filed an appeal against this ruling so that a declaration of annulment be issued,[23] and on March 12, 1996, the Supreme Prosecutor of the Contentious-Administrative Court ruled that the judgment which was being appealed should be declared null and void because the time-limits for submitting the appeal on constitutional grounds (*amparo*) had expired as provided for by Law No. 23506.[24] On June 28, 1996, the Constitutional and Social Law Chamber of the Supreme Court of Justice overturned the judgment of the Fourth Civil Chamber of the Superior Court of Justice of Lima and declared that the appeal on constitutional grounds (*amparo*) was inadmissible, basing itself on the evidence provided in this judgment by the Chief Prosecutor. The text of the judgment of the Supreme Court of Justice is provided below:

> *PREAMBLE; in conformity with the ruling of the lady whose reasoning is reproduced: They declared that the judgment from the hearing on folio three hundred three of August seven, nineteen hundred ninety-five,* ***WAS NULL AND VOID,*** *which overturns the appeal of folio two hundred forty of January twenty-five of that same year, and hereby declares that the appeal on constitutional grounds (amparo) filed by Mr. Carlos Alberto Canales Huapaya against the Democratic Constituent Congress and others has merits; after reviewing the hearing, they upheld the respondent who declares that the above-mentioned appeal of guarantee is* ***INADMISSIBLE****;* ***THEY ORDERED*** *that the present resolution be enforced by means of a writ of enforcement and published in Peru's Official Gazette "El Peruano" within the time-limits required by Article forty-two of Law twenty-three thousand five hundred six; and it was returned to them.*[25]

47. Against the above-mentioned final writ of enforcement, Mr. Canales Huapaya filed a special appeal with the Constitutional Court, which issued a final judgment on August 6, 1998, upholding the decision of the Supreme Court of Justice. Relevant excerpts of the Constitutional Court's judgment are provided below:

> BACKGROUND:
>
> On February twenty-five, nineteen hundred ninety-three, Mr. Carlos Alberto Canales Huapaya filed an appeal on constitutional grounds (*acción de amparo*) against the Democratic Constituent Congress, addressed personally to its Chair, Mr. Jaime Yoshiyama Tanaka, and against the Supreme Government, the State, indicating that, since the Congress of the Republic had been forcibly dissolved and that an alleged restructuring of the staff had been ordered, this was used to dismiss him from his employment in the Administrative Career Stream, underhandedly and illegally, claiming that a pseudo competitive examination was required to evaluate and select staff, which was tainted from very start as it was not substantiated by law *ipso jure*. That Resolution No. 1303-A-92-CACL and Resolution No. 1303-B-92-CACL, both dated November six, nineteen hundred ninety-two, published in Peru's Official Gazette *El Peruano* on Thursday, December thirty-one,

[21] **Annex 12.** Ruling No. 202-95 of the Fourth Superior Civil Attorney General's Office, July 5, 1995. Annex to the State's communication of August 26, 2009, received by IACHR on August 27 of that same year.

[22] **Annex 13.** Judgment of August 7, 1995 by the Fifth Civil Chamber of the Superior Court of Justice of Lima, case file No. 669-93. Annex to the initial petition of September 14, 1999, received by IACHR on September 20 of that same year.

[23] **Annex 14.** Appeal for annulment filed by the head of the Public Prosecutor's Office for Judicial Affairs of the Legislative Branch of Government and the Office of the President of the Council of Ministers, August 28, 1995. Annex to the State's communication of August 26, 2009, received by IACHR on August 27 of that same year.

[24] **Annex 15.** Ruling No. 541-96-MP-FSCA of March 12, 1996, issued by the Supreme Contentious-Administrative Attorney, case file No. 1934-95. Annex to the State's communication of August 26, 2009, received by IACHR on August 27 of that same year.

[25].**Annex 16.** Judgment of June 28, 1996 by the Constitutional and Social Law Chamber of the Supreme Court of Justice, case file No. 1934-95, single paragraph. Annex to the State's communication of August 26, 2009, received by IACHR on August 27 of the same year.

nineteen hundred ninety-two, were null and void because the Emergency and National Reconstruction Government itself, on December thirty, nineteen hundred ninety-two, by means of Decree-Law No. 26158, repealed the provisions of Decree-Laws No. 25481, Basic Law of the Emergency and National Reconstruction Government and No. 25684 amended by Decree-Law No. 25686. That Resolution No. 1239-A-92-CACL adopting the Regulation for the Staff Assignment Table, the Terms of Reference and the Regulations for the Process of Staff Evaluation and Selection of the Congress of the Republic, is null and void because, when it refers, under item II, to the legal grounds, which are based on Legislative Decree No. 276, it could in no way propose or regulate evaluations that are contrary to this legal and constitutional provision, because this law had not been amended or repealed by any other law or by Congress, much less amended by the Emergency and National Reconstruction Government.

That he bases his appeal on paragraphs 10), 11), 13) and 16) of Article 24 of Law No. 23506 on Habeas Corpus and Protection, in line with Article 306 of the Civil Procedures Code, and that his constitutional right to freedom to work, jurisdiction and due process was not observed or his right to petition the President of the Democratic Constituent Congress respected and because his Administrative Career was undermined. That Resolution No. 1303-B-92 is null and void, because by contravening the legal system it intends to apply a perverse retroactivity for the employee, because it was published on December thirty-one, nineteen hundred ninety-two, date on which the Democratic Constituent Congress was functioning, in addition to having repealed the Administrative Committee of Congress by means of Decree-Law No. 26158, of December thirty, nineteen hundred ninety-two.

He asserts that basically Resolution No. 1303-A-92 and Resolution No. 1303-B-92 are null and voice because they were published on December thirty-one, nineteen hundred ninety-two and therefore unlawfully encroached upon the duties pertaining to the Democratic Constituent Congress, because the latter was officially installed on December thirty, nineteen hundred ninety-two […].

GROUNDS:

1. That this appeal on constitutional grounds is filed against the Democratic Constituent Congress, requesting that its President, Mr. Jaime Yoshiyama Tanaka, be notified since the Democratic Constituent Congress was not at all involved in these incidents.

2. That the Chair of the Committee to Administer the Assets of the Congress of the Republic, Mr. Carlos Novoa Tello, as the person in charge who signed and authorized Resolutions No. 1303-A-92-CACL and 1303-B-92-CACL dated November six, nineteen hundred ninety-two, has not been cited as a respondent, in breach of the principle of the right to defense, which this person could have used.

3. That the decree-laws authorizing the Committee to Administer the Assets of the Congress of the Republic to implement a process to streamline the staff of the Congress of the Republic, such as Decree-Laws Nos. 25438, 25640, 25477 and 25759, are still fully in force, as provided by the Constitutional Law of January nine, nineteen hundred ninety-three, as they have not been revised, amended or repealed by the Democratic Constituent Congress.

4. That the complainant is requesting that the resolutions, where both he and other persons appear without benefiting from any representative power, be declared null and void and that it also be declared unenforceable with respect to himself alone, and he does so as well in his petition challenging Resolutions Nos. 1303-A-92-CACL and 1303-B-92-CACL of January twelve, nineteen hundred ninety-three, which he is submitting to the President of the Democratic Constituent Congress, whose unnotarized copy runs from pages seven to nine.

5. That, as this Constitutional Court has already indicated, it should not be ignored that, under current circumstances, with the 1993 Political Constitution of the State, the organizational structure of Congress and therefore its Staff Assignment Table has varied substantially compared to the one there was with the previous Constitution, specifically in the present case, the complainant was Head of the Security Unit of the Senators, for which there is no longer any parliamentary representation; it is not possible, on the basis of an appeal on constitutional grounds (*amparo*), to redress situations that by their very nature have become irreparable, which leads, under these circumstances, to the application of paragraph 1) of Article 6 of Law No. 23506.

> For these reasons, the Constitutional Court, by virtue of the powers conferred upon it by the Political Constitution of the State and its Organic Law;
>
> RULES:
>
> **UPHOLDING** the resolution issued by the Constitutional and Social Law Chamber of the Supreme Court of Justice of the Republic, pages forty-one of the Nullity Notebook, dated June twenty-eight, nineteen hundred ninety-six, stating that the appeal of August seven, nineteen hundred ninety-five, is null and void, declared the appeal on constitutional grounds (*amparo*) to be **INADMISSIBLE**. Instructions are given to notify the parties, publish it in Peru's Official Gazette *El Peruano* and return the legal briefs.[26]

José Castro Ballena and María Gracia Barriga Oré

48. On March 17, 1993, they filed an appeal on constitutional grounds (*amparo*) against the Democratic Constituent Congress, requesting they be guaranteed the right to freedom of work, jurisdiction and due process of law, as well as the right to petition. On September 30, 1993, the 23rd Civil Court of Lima declared that the appeal was with merits and that Resolution No. 1303-B-92-CACL was unenforceable.[27] After the appeal was filed, the Fifth Civil Chamber of the Superior Court of Justice of Lima issued a judgment on November 30, 1994, upholding the resolution of the 23rd Civil Court.[28]

49. On January 22, 1996, the Chamber Specializing in Public Law of the Superior Court of Justice of Lima upheld the resolution *ad quo.*[29] On August 5, 1997, the Constitutional and Social Law Chamber of the Supreme Court of Justice stated that said resolution was flawed and therefore null and void and concluded that the appeal on constitutional grounds (*amparo*) was inadmissible.[30] Against this writ of enforcement, the victims filed a special appeal with the Constitutional Court, which issued its final judgment on September 25, 1998, declaring that the *amparo* appeal was without merits. On relevant matters, the Constitutional Court indicated the following:

> BACKGROUND:
>
> Mr. José Castro Ballena and others file an appeal on constitutional grounds (*amparo*) against the Chair of the Committee Administering the Assets of the Legislative Houses, Retired Peruvian Army Colonel Carlos Novoa Tello, aimed at declaring the unenforceability of Resolution No. 1303-B-92-CACL, published December thirty-one, nineteen hundred ninety-two.
>
> They indicate that, up until April five, nineteen hundred ninety-two, at which time the coup d'état occurred, they were deemed to be permanent public service staff members of the House of Representatives of the Congress of the Republic; nevertheless, as of that date they were prevented from entering their workplace, in compliance with the provisions of Decree-Laws No. 25418; No. 25438; No. 25477; No. 25640; No. 25759 and No. 25684, whereby the Congress of the Republic was shut down and a Committee to Administer the Assets of the Legislative Houses was appointed to be in charge of evaluating and selecting the staff, with the deadline to complete this process set for November six, nineteen hundred ninety-two. Nevertheless, they allege that, after the above-

[26] **Annex 17.** Judgment of August 6, 1998 by the Constitutional Court, case file No. 705-96-AA/TC. Annex to the State's communication of August 26, 2009, received by IACHR on August 27 of that same year.

[27] **Annex 18.** Resolution of September 30, 1993 by the 23rd Civil Court of Lima, case file No. 2293-93. Annex to the State's communication of March 15, 2004, received by IACHR on March 17 of that same year.

[28] **Annex 19.** Resolution of November 30, 1994 by the Chamber Specializing in Public Law of the Superior Court of Justice of Lima, case file No. 204-94. Annex to the State's communication of March 15, 2004, received by IACHR on March 17 of that same year.

[29] **Annex 20.** Writ of enforcement of January 22, 1997 by the Chamber Specializing in Public Law of the Superior Court of Justice of Lima, case file No. 724-96. Annex to the State's communication of March 15, 2004, received by IACHR on March 17, that same year.

[30] **Annex 21.** Resolution by the Constitutional Court of September 25, 1998, case file No. 434-98-AA/TC, section entitled Background. Annex to the petitioners' communication of January 12, 2001.

mentioned deadline had expired, the Administrative Committee did not carry out the task of selecting the staff because, on November nine, nineteen hundred ninety-two, the Merits Table of the Evaluation Process was published in Peru's Official Gazette *El Peruano* from which it was inferred that the Chair of said Committee had committed the crime of Unlawful Encroachment upon Duties, because the mandate of his appointment extended only up to November six, nineteen hundred ninety-two. Furthermore, they claim that, on December twenty-nine of that same year, Mr. Jaime Yoshiyama Tanaka was sworn in as President of the Democratic Constituent Congress, which office was ratified on December thirty, nineteen hundred ninety-two, and therefore as of that date, the duties of the Chair of the Committee to Administer the Legislative Houses were terminated; nevertheless, obviating the fact that the resolution that is the subject of the present proceedings was published on December thirty-one, nineteen hundred ninety-two, as a result of which the respondent once again commits the crime of Unlawful Encroachment upon Duties, all the more so since, according to Article 42 of Decree-Law No. 26111 amending Supreme Decree No. 006-SC-67, administrative writs come into force the day after their notification or publication.

[…]

MERITS:

1. That, by means of the present proceedings, the complainants intend to declare the unenforceability of Resolution No. 1303-B-92-CACL by virtue of which they were dismissed from their employment in the Congress of the Republic as a result of restructuring and streamlining.

2. That, as inferred from the resolution being challenged in the writs, appearing on page one, which was issued within the time-limits stipulated in Article 1 of Law No. 25759, that is, November six, nineteen hundred ninety-two, date on which it was decided to dismiss the complainants subject of the present appeal on constitutional grounds (*amparo*).

3. That, furthermore, it cannot be alleged that the Retired Peruvian Army Colonel Carlos Novoa Tello had committed the crime of Unlawful Encroachment upon Duties because the resolution being challenged had been issued on November six, nineteen hundred ninety-two, while, according to Supreme Resolution No. 532-92-PCM, he held the office of Chair of the Committee to Administer the Assets of the Congress of the Republic, standing in for the President of the Council of Ministers since October twenty-two, nineteen hundred ninety-two, for a period of sixty days as of that date.

4. In this regard, the dismissal of the complainants stemmed from strict compliance with Law No. 25759 because they had not passed the staff selection examination.

5. For these reasons, the Constitutional Court, using the powers granted to it by the Political Constitution of the State and its Organic Law,

RULES:

TO OVERTURN the judgment issued by the Constitutional and Social Law Chamber of the Supreme Court of Justice of the Republic, appearing on page thirty-eight of the annulment notebook, on August five, nineteen hundred ninety-seven, resolving that there is Annulment and in the judgment from the hearing, hereby declares the appeal inadmissible; and *amending it* states that it is WITHOUT MERITS. Notification of the parties, its publication in Peru's Official Gazette *El Peruano* and the return of the briefs are hereby ordered.[31]

V. ANALYSIS OF THE LAW

A. Rights to a fair trial and judicial protection (Articles 8.1 and 25.1 of the American Convention) with respect to the obligations to respect and guarantee and adopt domestic legal effects (Articles 1.1 and 2 of the same instrument)

[31] **Annex 21.** Resolution by the Constitution Court of September 25, 1998, case file No. 434-98-AA/TC.

50. The articles of the American Convention referring to the title above provide for the following:

> Article 8.1 Right to a Fair Trial
>
> Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
>
> Article 25.1 Right to Judicial Protection
>
> Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
>
> Article 1. Obligation to Respect Rights
>
> The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.
>
> Article 2. Domestic Legal Effects
>
> Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

51. The bodies of the Inter-American System have pointed out that the States that are party to the Convention are required to provide effective legal remedies to the victims of human rights violations, and that these remedies must be supported by the rules of due process of law.[32] The Inter-American Court has provided that

> When establishing the international responsibility of the State for the violation of the human rights embodied in Articles 8(1) and 25 of the American Convention, a substantial aspect of the dispute before the Court is not whether judgments or administrative decisions were issued at the national level or whether certain provisions of domestic law were applied with regard to the violations that are alleged to have been committed to the detriment of the alleged victims of the facts, but whether the domestic proceedings ensured genuine access to justice, in keeping with the standards established in the American Convention, to determine the rights that were in dispute.[33]

52. The Inter-American Court has pointed out that, in the light of Article 8.1 of the Convention, all persons have the right to be heard by an impartial and competent body, with due procedural guarantees, which include the possibility of submitting allegations and supplying evidence. The same court has indicated that this provision of the Convention "means that the State must guarantee that the decision produced by the proceedings satisfies the end for which it was conceived. The latter does not mean that the right must always be granted, but rather that the capacity of the body to produce the result for which it was conceived be guaranteed.[34]"

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[32] IACHR. Access to justice as a guarantee of economic, social and cultural rights. OEA/Ser.L/V/II.129 Doc. 4, September 7, 2007, para. 177. 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. 106.

[33] 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. 106.

[34] I/A Court H.R. *Case of Barbani Duarte and Others v. Uruguay.* Merits, Reparations, and Costs. Judgment of October 13, 2011. Series C No. 234, para. 122.

53. With respect to Article 25.1 of the Convention, the Inter-American Court has pointed that this standard

> provides for the obligation of States Party to guarantee, to all persons under their jurisdiction, effective legal remedies for fundamental human rights violations. This effectiveness requires that, in addition to the formal existence of these remedies, they must also lead to results or responses to the violations of rights enshrined either in the Convention, the Constitution or the laws. In this regard, these remedies cannot be viewed as effective if, because of the country's general conditions or even because of the specific circumstances of a given case, they turn out to be unrealistic. This may occur, for example, when their uselessness has been proven in practice, because there are no means whereby the decisions that have been taken can be enforced or because of any other situation that is tantamount to a denial of justice. Thus, the process must tend to concretize protection of the right recognized in the court ruling by a suitable enforcement of said ruling.[35]

54. The Inter-American Court has established that, for an effective remedy to exist, it is not enough for it to be provided for by the Constitution or law or that it be formally admissible, but rather it is required that is must be truly suitable to determine whether a violation of human rights has occurred and to provide whatever is needed to remedy it.[36] As for the requirements of admissibility of a legal claim, the Court itself has pointed out that

> To ensure legal certainty, for the proper and functional administration of justice and the effective protection of human rights, the States may and should establish admissibility principles and criteria for domestic recourses of a judicial or any other nature. Thus, although these domestic recourses must be available to the interested parties and result in an effective and justified decision on the matter raised, as well as potentially providing adequate reparation, it cannot be considered that always and in every case the domestic organs and courts must decide on the merits of the matter filed before them, without verifying the procedural criteria relating to the admissibility and legitimacy of the specific recourse filed.[37]

55. As established, the victims of the present case filed appeals on constitutional grounds (*amparo*) for the purpose of rendering Resolution 1303-B-92-CACL null and void, a resolution that had dismissed them from their permanent employment as Congressional employees. With respect to Mr. Carlos Alberto Canales Huapaya, on August 6, 1998, the Constitutional Court ruled that his complaint was inadmissible, *inter alia*, because it considered that his claim could not be heard on the basis of an appeal on constitutional grounds (*amparo*). As for José Castro Ballena and María Gracia Barriga Oré, on September 25, 1998, the Constitutional Court declared that their appeal was without merits, because they felt that the dismissal ordered by Resolution No. 1303-B-92-CACL was in strict compliance with Law No. 25759 and did not in any way breach a tenet of the Constitution.

56. In accordance with what was indicated in paragraph 34 above, the facts of the present case have the same characteristics as those heard by the Inter-American Court in the Case of the Dismissed Congressional Employees (Aguado-Alfaro *et al.*) v. Peru. When assessing the legal remedies sought by the 257 victims of the above-mentioned case, the Inter-American Court observed that there was a regulatory framework in place that prevented them from having a clear view on what course to adopt in order to challenge their dismissal as career officials of Congress. The conclusions of the Inter-American Court on the violation of the rights enshrined in Articles 8.1 and 25.1 of the Convention are provided below.

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[35] I/A Court H.R. *Case of Abrill Alosilla and Others v. Peru.* Interpretation of the Judgment on the Merits, Reparations, and Costs. Judgment of November 21, 2011. Series C No. 235, para. 75. Internal quotes in the original text were omitted.

[36] I/A Court H.R. *Case of the Yakye Axa Indigenous Community*. Judgment of June 17, 2005. Series C No. 125, para. 61; *Case of the "Five Pensioners."* Judgment of February 28, 2003. Series C No. 98, para. 136, and *Case of the Mayagna (Sumo) Awas Tingni Community.* Judgment of August 31, 2001. Series C No. 79, para. 113.

[37] 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.126.

108. [T]his case is situated in a historical context during which numerous irregular dismissals took p[l]ace in the public sector. This was acknowledged by the State as of 2001 when it enacted "laws and administrative provisions ordering a review of the collective dismissals in order to provide the employees who had been dismissed irregularly with the possibility of claiming their rights" […]. Among these measures, one of the most important was Act No. 27487 of June 21, 2001, which ordered the establishment of Special Committees to review the collective dismissals carried out within the framework of personnel evaluation procedures. One of these was the Special Committee responsible for reviewing the collective dismissals of the congressional personnel […], even though it did not include the alleged victims in this case in its conclusions […]. In addition, a "Multisectoral Commission" was established, responsible, *inter alia,* for assessing the viability of the suggestions and recommendations contained in the final reports of the Special Committees; and Act No. 27586 was promulgated to implement its recommendations […]. Indeed, Peru asked the Court, should it declare that there had been a violation of the Convention, to accept the State's "commitment […] to establishing a Multisectoral Commission to review […] the respective dismissals and grant benefits […] to the employees considered [alleged] victims in the Inter-American Commission's application, following the guidelines established in the legal norms ordering the review of the collective dismissals" […]. These actions show that the State has acknowledged this context and has expressed its willingness to establish the possibility for those affected by this situation to claim or repair certain prejudicial consequences thereof, to some extent.

109. It has also been demonstrated […] that the independence and impartiality of the Constitutional Court, as a democratic institution guaranteeing the rule of law, were undermined by the removal of some of its justices, which "violated *erga omnes* the possibility of exercising the control of constitutionality and the consequent examination of the adaptation of the State's conduct to the Constitution." The above resulted in a general situation of absence of guarantees and the ineffectiveness of the courts to deal with facts such as those of the instant case, as well as the consequent lack of confidence in these institutions at the time.

110. Furthermore, the Court observes that the facts of the instant case occurred within the framework of the so-called "streamlining of the personnel of the Congress of the Republic," which was justified by the so-called Emergency and National Reconstruction Government, *inter alia,* as a reorganization or restructuring of the State legislature. The Court considers that States evidently have discretionary powers to reorganize their institutions and, possibly, to remove personnel based on the needs of the public service and the administration of public interests in a democratic society; however, these powers cannot be exercised without full respect for the guarantees of due process and judicial protection, because, to the contrary, those affected could be subjected to arbitrary acts. Despite the foregoing, the Court has indicated that it will examine the dispute in this case in light of the State's obligations arising from Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 thereof […]. Consequently, the Court will not examine the scope of this "streamlining process" as such, but whether, in the historical context mentioned above and according to the norms under which they were dismissed, the alleged victims could determine with legal certainty the proceeding to which they could and should resort to claim the rights they considered had been violated and whether they were guaranteed real and effective access to justice.

[…]

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* *

117. In relation to the norms applied to those who were dismissed, it has been established that article 9 of Decree Law No. 25640 expressly prohibited the possibility of filing an action for amparo against its effects […]. As the expert witness Abad Yupanqui has stated, at the time of the facts "in each of the decree laws where it was considered necessary, the Government began to include a provision that prevented the use of the *amparo* procedure" […].

118. Regarding the provisions called into question by the Commission and by the common intervenors in these proceedings, the State declared that:

[D]uring the period of the process to streamline the personnel of the National Congress of the Peruvian Republic, legal and administrative provisions were in force, which are at issue in these proceedings, that violated the rights embodied in Articles 1(1) and 2 of the American Convention.

Article 9 of Decree Law No. 25640, which has been called into question in these proceedings, violated the provisions of Articles 8(1) and 25(1) of the American Convention.

> […] [I]t could be understood that the mere issuance of article 9 [of the said] Decree […] and article 27 of Resolution 1239-A-92CACL were incompatible with the Convention.
>
> 119. The Court finds it evident that the alleged victims were affected by the provisions under consideration in the international proceedings. The prohibition to contest the effects of Decree Law No. 25640, contained in the said article 9, constituted a norm of immediate application, since the people it affected were prevented *ab initio* from contesting any effect they deemed prejudicial to their interests. The Court finds that, in a democratic society, a norm containing a prohibition to contest the possible effects of its application or interpretation cannot be considered a valid limitation of the right of those affected by the decree to a genuine and effective access to justice, which cannot be arbitrarily restricted, reduced or annulled in light of Articles 8 and 25 of the Convention, in relation to Articles 1(1) and 2 thereof.
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> 120. In the context described above, article 9 of Decree Law No. 26540 and article 27 of Resolution 1239-A-CACL of the Administrative Commission helped promote a climate of absence of judicial protection and legal security that, to a great extent, prevented or hindered the persons affected from determining with reasonable clarity the appropriate proceeding to which they could or should resort to reclaim the rights they considered violated.[38]

57. The IACHR stresses that the standards referred to in the excerpts of the judgment in the Case of the Dismissed Congressional Employees mentioned earlier were in force during the dismissal of the victims of the present case and during the decisions adopted with respect to the legal proceedings filed by them When ruling on the consequences of said standards with respect to the right of access to justice of the 257 victims of the Case of the Dismissed Congressional Employees, the Inter-American Court highlighted the following:

> 129. In conclusion, the Court observes that this case took place within the framework of practical and normative impediments to a real access to justice and a general situation of absence of guarantees and ineffectiveness of the judicial institutions to deal with facts such as those of the instant case. In this context and, in particular, the climate of legal uncertainty promoted by the norms that restricted complaints against the evaluation procedure and the eventual dismissal of the alleged victims, it is clear that the latter had no certainty 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*.
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> 130. In this regard, in *Akdivar v. Turkey*, the European Court of Human Rights found, *inter alia,* that the existence of domestic recourses must be sufficiently guaranteed, not only in theory, but also in practice; to the contrary, they would not comply with the required accessibility and effectiveness. It also considered that the existence of formal recourses under the legal system of the State in question should be taken into account, and also the general political and legal context in which they operate as well as the personal circumstances of the petitioners or plaintiffs.
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> 131. In this case, the existing domestic recourses were not effective, either individually or as a whole, to provide the alleged victims dismissed from the Peruvian Congress with an adequate and effective guarantee of the right of access to justice in the terms of the American Convention.
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> 132. Based on the above, the Court concludes that the State violated Articles 8(1) and 25 of the American Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of the 257 individuals listed in the Appendix to this judgment.[39]

58. It has been established that Carlos Alberto Canales Huapaya, José Castro Ballena and María Gracia Barriga Oré tried to challenge their dismissal from their employment by filing appeal on constitutional grounds, which were heard and ruled on within the same time framework as the appeals filed by the 257 victims of the Case of the Dismissed Congressional Employees v. Peru. In this regard, the three victims of the present case encountered the same obstacles to access to justice as those

[38] I/A Court H.R. Case of the Dismissed Congressional Employees (Aguado-Alfaro *et al.*). Judgment of November 24, 2006. Series C No. 158, paras. 108 to 120. The internal quotes and references were removed from the original text.

[39] I/A Court H.R. Case of the Dismissed Congressional Employees (Aguado-Alfaro *et al.*). Judgment of November 24, 2006. Series C No. 158, paras. 129 to 132. The internal quotes and references were removed from the original text.

observed by the Inter-American Court in its previously cited conclusions on law. In both cases, the victims filed their claims with competent administrative and judicial authorities, even though the decrees issued by the Emergency and National Reconstruction Government and the resolutions of the Administrative Committee prohibited the filing of any administrative complaints or appeals on constitutional grounds (*amparo*) aimed at challenging the failure of Congressional employees to pass the competitive examination governed by Resolution No. 1239-A-92-CACL of October 13, 1992.

59. IACHR also observes that the appeals on constitutional grounds filed by the victims of the present case were heard by the Constitutional Court when it was comprised of four justices, because Congress had removed the three other standing justices of the highest body of Peru's constitutional jurisdiction. When ruling on the impacts of the involvement of the membership of the Constitutional Court for the victims of the Case of the Dismissed Congressional Employees, the Inter-American Court pointed out the following:

> On May 28, 1997, the Congress in plenary session, dismissed the following Constitutional Court justices: Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano. On November 17, 2000, Congress annulled the dismissal resolutions and reinstated them in their posts. In another case, this Court has verified that, while this destitution lasted, the Constitutional Court "was dismantled and disqualified from exercising its jurisdiction appropriately, particularly with regard to controlling constitutionality […] and the consequent examination of whether the State's conduct was in harmony with the Constitution."[40]

60. In turn, in its Second Report on the Human Rights Situation of Peru of June 2000, the IACHR underscored that, since the breakdown of democracy and constitutional rule of law on April 5, 1992, various reforms of the Judiciary Branch of Government were undertaken, undermining its independence and autonomy, especially with respect to those matters that were sensitive to the interests of the Executive Branch of Government. IACHR stressed that more than 80% of Peru's judges had a provisional status and could be dismissed or removed from office without the need for stating the cause, by an Executive Committee on Court Judges, comprised of persons closely tied to the government administration at that time. Likewise, it stressed that three justices of the Constitutional Court had been removed from office by the Congress of the Republic of May 29, 1997, after issuing a ruling turning down the appeal on constitutional grounds (*amparo*) aimed at empowering the then president Alberto Fujimori to be a presidential candidate for election to a second term of office. On this occasion, IACHR underscored that the constant interference of other bodies of the State in the Judicial Branch of Government undermined the right of citizens to an adequate administration of justice in Peru.[41]

61. Ultimately, in view of the consistency between matters of fact and law in the present case with those ruled on by the Inter-American Court in its judgment of November 24, 2006, IACHR concludes that the Peruvian State is responsible for the violation of the rights protected by Articles 8.1 and 25.1 of the American Convention with respect to the obligations provided for in Articles 1.1 and 2 of the same instrument, all of which to the detriment of Carlos Alberto Canales Huapaya, José Castro Ballena and María Gracia Barriga Oré.

62. The IACHR stresses that in the Case of Dismissed Congressional Employees, the Inter-American Court pointed out that the proven facts had occurred:

> in the context of a situation of legal uncertainty promoted by laws that limited access to justice in relation to the evaluation procedure and eventual dismissal of the alleged victims, so that they did not have certainty about the proceedings they could or should resort to in order to claim the rights they considered had been violated. Consequently, without needing to determine the nature of the dismissals that have been verified, the Court found that the existing domestic recourses were

[40] 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. 89.27, which quotes the *Case of the Constitutional Court v. Peru. Competency.* Judgment of September 24, 1999. Series C No. 55, para. 112.

[41] **Annex 22.** IACHR, *Second Report on the Human Rights Situation in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev., June 2, 2000, Chapter II, B. Civil Jurisdiction: Judicial Reform, available at www.cidh.org/countryrep/Peru2000sp/capitulo2.htm.

> ineffective, both individually and collectively, to provide an adequate and effective guarantee of the right of access to justice, and therefore declared the State responsible for the violation of Articles 8(1) and 25 of the American Convention, in relation to Articles 1(1) and 2 thereof […][42].

63. In light of the violations of the American Convention found by the Inter-American Court, it asserted that the corresponding reparation that should be adopted by the Peruvian State consisted in guaranteeing

> […] the injured parties the enjoyment of their violated rights and freedoms through effective access to a simple, prompt and effective recourse. To this end, it should establish, as soon as possible, an independent and impartial body with powers to decide, in a binding and final manner, whether or not the said persons were dismissed in a justified and regular manner from the Congress of the Republic, and to establish the respective legal consequences, including, if applicable, the relevant compensation based on the specific circumstances of each individual[43].

64. The information received as a result of the follow-up on compliance with the above-mentioned judgment indicates that a "Special Committee to Enforce the Judgment in the Case of the Dismissed Congressional Employees" was set up and issued its final report on December 14, 2010. In its relevant aspects, said report confirmed the irregular and unjustified nature of the dismissal of the 257 victims of the case heard by the Inter-American Court and ordered, as measures of integral reparation, reinstatement of their employment or their transfer if they currently work for Congress; the payment of their accrued wages (including bonuses wherever relevant) from the time of their dismissal up until their effective reinstatement; recognition, for the purpose of retirement benefits, of the years they contributed to the pension system to which they were affiliated at the time of their dismissal; the payment of the contributions needed so that the employees and their families could restore their entitlement to Social Security and Health services and benefits; and recognition of the years they had not worked as employees because of their irregular dismissal as actual time of employment. The above-mentioned report also established compensation or retirement measures as alternatives to reinstatement. The report also ordered publication of the relevant parts of the judgment of the Inter-American Court in a daily newspaper with nationwide circulation, which was supposedly done on February 3, 2011. Likewise, a time-limit of 90 business days was set for the Congress of the Republic and the Ministry of Justice to comply with what had been ordered in the report.[44]

65. According to information provided by the State to the Inter-American Court, on July 20, 2011, the Executive Board of the Congress of the Republic ordered the definitive reinstatement of the employees referred to in the judgment of the Case of the Dismissed Congressional Employees v. Peru, which took place on December 21, 2011.[45]

VI. CONCLUSIONS

66. The Inter-American Commission has examined, in this report, all the elements available in the case file, in the light of the human rights standards of the Inter-American System and other applicable instruments, case law, and doctrine, in order to rule on the merits of the case that was submitted. IACHR concludes that the Peruvian State is responsible for the violation of rights enshrined in

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[42] 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. 146.

[43] 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. 148.

[44] **Annex 23.** Report No. 48-2012-JUS/PPES, Annex, Resolution of December 14, 2010 of the Special Committee for the Enforcement of the Judgment of the Inter-American Court of Human Rights in the Case of the Dismissed Congressional Employees, Articles two to five.

[45] **Annex 23.** Report No. 48-2012-JUS/PPES, Annexes, Congress of the Republic Resolution No. 041-2011-2012-OM/CR of February 9, 2012; and Document of Definitive Reinstatement of December 21, 2011, signed by the Head of the Human Resources Department of the Congress of the Republic, the Deputy Public Prosecutor of the Legislative Branch of Government and Mr. Ruben Manuel Reyes Caballero.

Articles 8.1 and 25.1 of the American Convention, with respect to Articles 1.1 and 2 of said international instrument.

VII. RECOMMENDATIONS

67. On the basis of the review and conclusions of the present report, the Inter-American Commission on Human Rights recommends that the Peruvian State:

> Adequately repair the tangible and intangible damages caused as a result of the human rights violations stated in the present report, in conformity with what was decided by the Inter-American Court of Human Rights in its judgment of November 24, 2006 in the Case of the Dismissed Congressional Employees and by the Special Committee established by the Peruvian State for the purpose of enforcing said judgment.