Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 68/07; Petition 37-98
Session:	Hundred Twenty-Eigth Session (16 – 27 July 2007)
Title/Style of Cause:	Carlos Agripino Huerta Machuca v. Peru
Doc. Type:	Decision
Decided by:	President: Florentin Melendez; First Vice-President: Paolo Carozza; Second Vice-President: Victor Abramovich; Commissioners: Sir Clare K. Roberts, Evelio Fernandez Arevalos, Freddy Gutierrez.
Dated:	27 July 2007
Citation:	Huerta Machuca v. Peru, Petition 37-98, Inter-Am. C.H.R., Report No. 68/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANT: Manuel Diez

I. SUMMARY

1. On January 27, 1998, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR") received a petition submitted by Mr. Manuel Diez (hereinafter "the petitioner") in representation of Mr. Carlos Agripino Huerta Machuca (hereinafter “the alleged victim”) in which it is alleged that the Republic of Peru (hereinafter "Peru," "the Peruvian State,” or “the State") is responsible in view of the dismissal of Mr. Carlos Agripino Huerta Machuca as director of Sectoral Program III – Director, Category F-S of the Office of Administration and Finance of Customs of the Jorge Chávez International Airport, National Superintendency of Customs.

2. The petitioner alleges that the State is responsible for violating the rights enshrined in Articles 8 (right to a fair trial), 21 (right to property), 24 (equality before the law), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) in conjunction with Article 1(1). In addition, the petitioner alleges that his claim is admissible since he exhausted the remedies available in the domestic jurisdiction for reestablishing his rights that were violated. The State, for its part, asked the IACHR to find this petition inadmissible, arguing that the alleged victim had not exhausted domestic remedies.

3. In this report, the Commission analyzes the information available in light of the provisions of the American Convention and concludes that the petition does not tend to establish a possible violation of the rights guaranteed by the American Convention. Therefore, based on Article 47(b) of the American Convention, the IACHR decides that the petition is inadmissible;

it also decides to forward the report to the parties, make it public, and order its publication in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

4. The original petition was submitted to the IACHR by the petitioner on January 27, 1998. On February 4, 1998, the Commission asked the petitioner for specific and detailed information in relation to the facts of the claim. In response, the petitioner, by communication received at the Executive Secretariat of the IACHR on February 24, 1998, sent the information requested.

5. On November 12, 1998, the petitioner submitted additional information on the facts alleged.

6. By communication of June 18, 2001, the Commission asked the petitioner for detailed information regarding exhaustion of domestic remedies, in particular with respect to the actions or procedures carried out prior to the filing of the writ of amparo, and gave him 45 days to submit it. On September 13, 2001, the petitioner submitted additional observations with regard to the subject matter of the petition.

7. On December 18, 2001, the IACHR proceeded to process the petition; accordingly, the pertinent parts were transmitted to the State, which was given two months to submit observations.

8. By communication of February 15, 2002, the State requested an extension of the term previously referred to for submitting its observations, which was granted by the Commission on March 18, 2002, for an additional month. By communications received in the Executive Secretariat of the IACHR on April 22 and May 3, 2002, the State requested a new extension. The IACHR, by communication of August 16, 2002, granted the State an additional one-month period for submitting its observations.

9. In a communication dated September 19, 2002, received at the Executive Secretariat of the IACHR on September 20, 2002, the State forwarded report 65-2002-JUS/CNDH-SE, by which it presented its observations with respect to the petition filed by the petitioner; it was transmitted to the petitioner.

10. By communication of November 11, 2002, received at the Executive Secretariat of the IACHR on January 21, 2003, the petitioner submitted his observations regarding the State's response. In a note of October 11, 2003, the petitioner reiterated what was indicated in the note received in January 2003, referred to above.

11. The petitioner, by communication of November 15, 2004, received at the Executive Secretariat of the IACHR on November 30, 2004, asked the IACHR to make a pronouncement regarding the petition, and provided additional information on the claim. The Commission transmitted the pertinent parts of the information provided by the petitioner to the State.

12. By note of May 27, 2005, received at the Executive Secretariat of the IACHR on June 1, 2005, the State submitted report 63-2005-JUS/CNDH-SE/CESAPI, prepared by the Executive Secretariat of the National Council on Human Rights (Consejo Nacional de Derechos Humanos). Subsequently, by note of June 9, 2005, the State forwarded to the IACHR the annexes to that report, which were transmitted to the petitioner.

13. By communication of August 15, 2005, received at the Executive Secretariat of the IACHR on August 26, 2005, the petitioner expressed his considerations on the report submitted by the State, the pertinent parts of which were forwarded to the State by the IACHR. In addition, on September 12, 2005, the petitioner submitted additional information on his petition.

14. In a note of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006, the State forwarded report 17-2006-JUS/CNDH-SE/CESAPI, which was transmitted to the petitioner. In response, on January 12, 2007, the petitioner submitted his observations to that report by the State, which were transmitted to the State on May 15, 2007.

III. THE PARTIES' POSITIONS

A. The Petitioner's position

15. The petitioner alleges in his original petition that Mr. Huerta Machuca worked continuously for the Peruvian State for more than 22 years, and that as of 1991 he held the position of Director of Sectoral Program III – Director, Category F-S of the Office of Administration and Finance of Customs at the Jorge Chávez International Airport, National Superintendency of Customs.[FN1] The petitioner mentions that by Superintendency Resolution No. 00130 of January 13, 1992, in application of Supreme Decree No. 043-91-EF and Legislative Decree No. 680, the Superintendency declared, subsequent to a competitive personnel selection process, the dismissal of the alleged victim in the position of Director of Administrative System III Level F-3, National Superintendency of Customs, effective January 1, 1992.[FN2] It is noted that as a result of that competitive process, other workers of the National Superintendency of Customs were dismissed.

[FN1] Original complaint dated January 26, 1998, submitted by the petitioner on January 27, 1998.

[FN2] Original complaint dated January 26, 1998, submitted by the petitioner on January 27, 1998.

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16. The petitioner states that in the competitive selection process there were irregularities that violated the alleged victim's right to due process. The petitioner alleges that Mr. Huerta Machuca never received a failing grade in the competitive process, as the National Superintendency of Customs never showed the workers the results of the exams taken; moreover, the petitioner alleges that the workers who passed the written exam went on to have a "personal interview," which in the case of the alleged victim was conducted in the early morning hours.[FN3]

[FN3] Communication from the petitioner of August 15, 2005, received at the Executive Secretariat of the IACHR on August 26, 2005.

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17. The petitioner notes that the Universidad Nacional de Ingeniería (UNI), in charge of conducting the written exams, had delivered the exams to the National Superintendency of Customs on January 6, 1992. The petitioner alleges that there was a violation of the law, as the maximum period for delivering them lapsed on December 31, 1991.[FN4] The petitioner notes that the Special Commission in charge of reviewing collective dismissals in the National Superintendency of Customs reported that if it were shown the institution learned of the results of the evaluation on January 6, 1992, the dismissal ordered by Resolution No. 130-92 would be irregular.[FN5]

[FN4] Communication from the petitioner of August 15, 2005, received at the Executive Secretariat of the IACHR on August 26, 2005.

[FN5] Communication from the petitioner of January 12, 2007, received at the Executive Secretariat of the IACHR on January 24, 2007.

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18. Additionally, the petitioner indicates that the workers called to participate in the competitive process did not participate freely and voluntarily in it, but that they were coerced to participate under the threat of dismissal.[FN6] In that context, the petitioner mentions that he asked the National Superintendent of Customs to be ordered to refrain from carrying out the provision contained in National Customs Resolution No. 007924, which had ordered his dismissal, by means of a preliminary injunction. Nonetheless, the petitioner notes that the judicial branch declared that petition unfounded.[FN7]

[FN6] Communication from the petitioner of August 15, 2005, received at the Executive Secretariat of the IACHR on August 26, 2005.

[FN7] Communication from the petitioner of August 29, 2001, received at the Executive Secretariat of the IACHR on September 13, 2001.

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19. The petitioner alleges that in the face of this situation, the alleged victim, together with other workers in the same situation, filed a writ of amparo.[FN8] In this regard, the petitioner mentions that said writ was aimed at having the Competitive Examination for the Admission of Public Servants and Officials of the National Superintendency of Customs (Concurso de Ingreso para los Servidores y Funcionarios de la Superintendencia Nacional de Aduanas) declared unconstitutional, for, according to the petitioner's arguments, it was violative of the Peruvian Constitution, Legislative Decree No. 276 "Law on Terms and Conditions for the Administrative Career Service," as well as Legislative Decree No. 680 and Superintendency Resolution No. 007924, of November 14, 1991, which defined the terms and conditions of that competitive process.[FN9] In addition, the filing of the writ was an effort to have suspended the approval of

the new table for assignment of personnel drawn up on the basis of the results in the competitive process.

[FN8] Original complaint dated January 26, 1998, submitted by the petitioner on January 27, 1998.
[FN9] Original complaint dated January 26, 1998, submitted by the petitioner on January 27, 1998.

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20. The petitioner mentions that said writ of amparo, captioned as Case File No. 026-92, was heard in first instance by the 12th Civil Court of Lima, which declared the action well-founded in part, determining that the results of the competitive selection process that had already taken place were not applicable to the moving parties.[FN10] The petitioner notes that said judgment was subject to the remedies of appeal and nullity. Specifically, it notes that in that stage of the procedure the reports issued by the Office of the Superior Prosecutor of Lima dated March 26, 1992, as well as the report by the Supreme Prosecutor for Contentious-Administrative Matters of March 5, 1993, had indicated, on issuing their opinions on the remedies of appeal and nullity pursued by the Public Procurator of the State (Procurador Público del Estado) and by the staff of the National Superintendency of Customs, there had been violations of the workers' rights, and that it was not necessary to demand that the moving parties have recourse to the prior jurisdiction.[FN11] The petitioner mentions that despite those reports, the higher-ranking institutions declared the writ of amparo filed unfounded, accordingly they were forced to appeal to the Constitutional Court.[FN12] The Constitutional and Social Chamber of the Supreme Court of Justice found there was no nullity in the judgment appealed, by resolution of April 5, 1993, and in the face of that ruling a motion for cassation was filed before the Constitutional Court.

[FN10] Original complaint dated January 26, 1998, submitted by the petitioner on January 27, 1998.
[FN11] Communication from the petitioner of November 11, 2002, received at the Executive Secretariat of the IACHR on January 21, 2003.
[FN12] Original complaint dated January 26, 1998, submitted by the petitioner on January 27, 1998.

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21. The petitioner alleges that the Constitutional Court, by judgment of August 11, 1997, declared the writ of amparo unfounded, affirming the resolution of April 5, 1993. According to his arguments, the Constitutional Court had considered, on that occasion, that the appellants had not exhausted the prior jurisdiction, despite recognizing, according to the petitioner, the irregularities committed in the competitive process.[FN13] The petitioner notes that the resolution of the Constitutional Court is unlawfully based on the alleged failure to exhaust prior remedies, on noting as one of its grounds that:

… the writ of amparo is only proper when prior remedies have been exhausted, and in the instant case, as they had to be directed to the Chairperson of the Commission on the Competitive

Personnel Selection process, as well as the National Superintendent of Customs, as per the specific points of the challenges, and none of them has been done.[FN14]

[FN13] Original complaint dated January 26, 1998, submitted by the petitioner on January 27, 1998.
[FN14] Communication from the petitioner of November 11, 1998, received at the Executive Secretariat of the IACHR on November 12, 1998.

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22. The petitioner mentions that said Constitutional Court judgment had resolved the case erroneously and in a manner different from how similar cases with respect to the failure to exhaust prior remedies had been decided.[FN15] He adds that the Constitutional Court ruled mistakenly as the provisions appealed, Legislative Decree No. 680 and Superintendency Resolution No. 007924 of November 14, 1991, do not allow or provide for any prior remedy whatsoever. The petitioner adds that in any event, the supposed use of the administrative remedy had caused them "irreparable harm," rendering applicable, according to the petitioner, Article 28(2) of the Law on Amparo, Law No. 23,506.[FN16]

[FN15] Communication from the petitioner of February 23, 1998, received at the Executive Secretariat of the IACHR on February 24, 1998.
[FN16] Original complaint dated January 26, 1998, submitted by the petitioner on January 27, 1998.

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23. In addition, the petitioner mentioned that he had recourse to the prior administrative remedy, in which his right to be reinstated in the position he held prior to his dismissal was denied.[FN17] Nonetheless, he notes that the other workers who filed the writ of amparo had not had recourse to the administrative remedy.[FN18] The petitioner alleges that it is not proper to exhaust the supposed prior remedies by having recourse to the National Superintendency of Customs (SUNAD), prior to filing the writ of amparo, as exhaustion of the prior remedy would validate the acts being questioned.[FN19] The petitioner alleges that in any event, the writ of amparo includes an evidentiary stage that allowed for an analysis of the merits.[FN20]

[FN17] Communication from the petitioner of August 29, 2001, received at the Executive Secretariat of the IACHR on September 13, 2001.
[FN18] Communication from the petitioner of August 29, 2001, received at the Executive Secretariat of the IACHR on September 13, 2001.
[FN19] Communication from the petitioner of November 11, 2002, received at the Executive Secretariat of the IACHR on January 21, 2003.
[FN20] Communication from the petitioner of November 11, 2002, received at the Executive Secretariat of the IACHR on January 21, 2003.

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24. In addition, the petitioner mentions that the alleged victim and the other actors in the amparo proceeding filed a motion for clarification (recurso de aclaración), which was declared inadmissible by the Constitutional Court by resolution of September 10, 1997.[FN21]

[FN21] Communication from the petitioner of January 27, 1998.

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25. The petitioner alleges that on the other hand, the Constitutional Court recognized the violation of his rights, indicating:

as this writ of amparo was aimed at having suspended the new Table for Assignment of Personnel, drawn up on the basis of the results of the competitive process, as the respective rules were not applied to everyone equally, and, in other cases, those rules were not carried out, and some participants were selected who were reached by legal prohibitions, the results of the competitive process were not provided in the timeframe provided for, nor were the scores obtained on each test published, and cases of participants who failed the knowledge and psycho-technical tests, etc., were reconsidered. Those facts cannot be elucidated in this action to guarantee rights, which by its nature is exceptional and summary, but in the jurisdiction that is the suitable for those rights.[FN22]

[FN22] Constitutional Court of Peru. Judgment Case No. 179-93-AA/TC, Mercedes Quiroz Silva et al., Lima, August 11, 1997. Published in the official gazette El Peruano on September 3, 1997. Communication from the petitioner of February 23, 1998, received at the Executive Secretariat of the IACHR on February 24, 1998.

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26. The petitioner also notes that at the time the Constitutional Court issued the judgment appealed, Peru was not under the rule of law, since the Executive branch had dominated the other branches of government, including the Constitutional Court itself.[FN23]

[FN23] Communication from the petitioners of January 12, 2007, received at the Executive Secretariat of the IACHR on January 24, 2007.

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27. For his part, the petitioner notes that the Peruvian State itself recognized that the dismissal of the alleged victim was irregular and illegal, accordingly he was included in the second official list of former workers irregularly dismissed. The petitioner mentions that the alleged victim had availed himself of the benefits established by Law No. 28,703, only in the part that makes reparation, in some form, for the damages caused to persons irregularly dismissed, having received the sum of two thousand four hundred sols (S/. 2,400.00) in 2003 and nine thousand six hundred sols (S/. 9,600.00) in 2004, sums considered payment in compensation for arbitrary and illegal dismissal that would correspond to the alleged victim.[FN24] The alleged victim argues that workers' rights are unwaivable, and thus asks that

he be reinstated in the position he held when his irregular dismissal took place, or in a similar position.

[FN24] Communication from the petitioners of January 12, 2007, received at the Executive Secretariat of the IACHR on January 24, 2007.

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28. With respect to the admissibility of this claim, the petitioner alleges that his claim is admissible given that he exhausted the domestic remedies available for restoring his violated rights. Specifically, the petitioner alleges that the reasons for having recourse directly to the writ of amparo were the non-existence of a prior action, and that even in the event that it had existed, the filing of this remedy or action, instead of a writ of amparo, would have made the harm committed irreparable.[FN25] In addition, he notes that the requirements of Articles 46 and 47 of the American Convention and of Articles 32 and 41 of the Rules of Procedure of the Inter-American Commission on Human Rights have been met by his pursuit of domestic remedies.[FN26]

[FN25] Communication from the petitioner of August 29, 2001, received at the Executive Secretariat of the IACHR on September 13, 2001.
[FN26] Communication from the petitioner of November 11, 1998 received at the Executive Secretariat of the IACHR on November 12, 1998.

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29. The petitioner mentions that in this case, the so-called “fourth-instance formula” wouldn’t have been available, since he is not seeking to have the IACHR act as a court of review, but rather has taken recourse to the Commission considering the alleged victim had not been heard by a competent court in Peru. In this respect, the petitioner adduces that in his case, the Constitutional Court was made up of only four members, since three of its members had been removed by that time.[FN27]

[FN27] Communication from the petitioner of February 23, 1998, received at the Executive Secretariat of the IACHR on February 24, 1998.

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30. The petitioner alleges that the State is responsible for violating the rights enshrined in Articles 8 (right to a fair trial), 21 (right to property), 24 (equality before the law), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) in conjunction with Article 1(1).[FN28]

[FN28] Communication from the petitioner of November 11, 1998, received at the Executive Secretariat of the IACHR on November 12, 1998.

B. The State

31. The State alleges that by Supreme Decree of January 8, 1991 (published in the official gazette El Peruano on January 9, 1991) the Executive branch ordered the reorganization of all public entities encompassed within the central government, regional governments, decentralized public institutions, development corporations, and special projects. The State argues that this provision finds legal support in Article 211 of the Peruvian Constitution of 1979, and that it was issued attending to the oversized workforce and within the concept of efficient administration, strictly subject to the norms of austerity, to attain economic stability and financial equilibrium for the country.[FN29]

[FN29] Communication from the State of September 19, 2002 received at the Executive Secretariat of the IACHR on September 20, 2002.

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32. The State indicates that within this legal framework, by Supreme Decree No. 043-91-EF of March 14, 1991 (published in the official gazette El Peruano of March 15, 1991), the reorganization of the National Superintendency of Customs was ordered, so as to improve the customs service within the process of freeing up foreign trade. That process of reorganization considered, among other aspects, streamlining personnel, establishing that those persons who did not avail themselves of the Voluntary Retirement program would be declared excess and dismissed on grounds of the reorganization.[FN30]

[FN30] Communication from the State of September 19, 2002, received at the Executive Secretariat of the IACHR on September 20, 2002.

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33. The State alleges that the Superintendency of Customs, in the context of the reorganization process, after an evaluation of the personnel, including the complainant, resolved that he did not meet the conditions necessary for continuing in his position, which is why, by Superintendency Resolution No. 00130 of January 13, 1992, he was declared excess and dismissed effective January 1, 1992, from his position as Director of Administrative System III. The State alleges that said act was consistent with the legal provisions in force at the time.

34. In addition, the State notes that the Single Ordered Text of the Law of General Standards for Administrative Procedures, approved by Supreme Decree No. 02-94-JUS, indicated at Article 97 the classes of remedies for bringing challenges that could be invoked against resolutions that caused harm. These were reconsideration (reconsideración), appeal (apelación), and review (revisión); the other articles established the procedure to be followed and the conditions sine qua non for invoking them.[FN31]

[FN31] Communication from the State of September 19, 2002, received at the Executive Secretariat of the IACHR on September 20, 2002.

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35. The State also alleges that the Commission on Competitive Processes (Comisión de Concursos) was limited merely to undertaking the selection process, but not to authorizing or deauthorizing the workers who participated, since according to the provisions of Article 2(e) of Legislative Decree No. 680, that action was under the jurisdiction of the Special High-Level Commission.[FN32]

[FN32] Communication from the State of May 27, 2005, received at the Executive Secretariat of the IACHR on June 1, 2005.

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36. Finally, the State alleges, as regards the complainant's request to nullify Superintendency Resolution No. 00130 of January 13, 1992, that said resolution ordered that those workers who had obtained as non-passing grade in that internal competitive examination for selection of personnel, a group that included Mr. Huerta Machuca, should be declared excess and dismissed. The State indicates that upon the issuance of that resolution, the complainant did not pursue any remedy to challenge it, thereby consenting to it. In view of that consideration, the State argues that it is not proper to nullify the resolution, and, accordingly, order his reinstatement, especially when that resolution was not the subject of the writ of amparo that motivates this complaint.[FN33]

[FN33] Communication from the State of May 27, 2005, received at the Executive Secretariat of the IACHR on June 1, 2005.

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37. The State claims that there is no basis for arguing that the participation of the workers who were authorized to participate in the competitive exam was irregular, and in particular for arguing that the decision in that respect violated any right of the petitioner, when the alleged victim as well as all the other workers in the former customs department participated freely and voluntarily in said Competitive Examination for the Selection of Personnel. The State also argues that the complainant did not make any observation against the lists of workers authorized to participate, even though these were issued long before said exam. In this regard, the State argues that this is evidence not only of his lack of interest, but also of his failure to exhaust domestic remedies, and of the fact that his claim is time-barred, as it was only recently put forth in the amparo action filed upon culmination of the competitive process for selection of personnel, and of the whole reorganization of the former customs office which, according to Article 1 of Legislative Decree No. 680, according to the State, would culminate on December 31, 1990.[FN34]

[FN34] Communication from the State of May 27, 2005, received at the Executive Secretariat of the IACHR on June 1, 2005.

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38. In that context, the State argues that on January 14, 1992, the alleged victim, among other workers, submitted the writ of amparo and motion for injunction before the Twelfth Civil Court of Lima (Case No. 026¬92), against the Chairperson of the Commission on the Competitive Personnel Selection Process and the National Superintendent of Customs, seeking a declaration of non-application of the effects of Legislative Decree No. 680 considering that its provisions would entail a repudiation of their rights acquired through Legislative Decree 276.[FN35]

[FN35] Communication from the State of September 19, 2002, received at the Executive Secretariat of the IACHR on September 20, 2002.

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39. The State argues that on February 17, 1992, the Twelfth Civil Court of Lima declared the action filed well-founded in part, and, accordingly, declared that the results of the Competitive Personnel Selection Process already carried out did not apply to the moving parties. In addition, the Commission for the Competitive Process was ordered to abide by the provisions of Superintendency Resolution No. 007924. The State also indicates that the action was unfounded in respect of forwarding the documentation from the competitive process.[FN36]

[FN36] Communication from the State of May 27, 2005 received at the Executive Secretariat of the IACHR on June 1, 2005.

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40. The State argues that on June 26, 1992, the Second Civil Chamber of the Superior Court of Lima, in hearing the motion for appeal and considering that for writs of amparo to be well-founded, pursuant to Article 27 of Law No. 23,506, one must have exhausted prior remedies, decided to rule against the alleged victim's claim. This was because no administrative remedy had been brought to challenge the acts considered to be violative of the workers' rights. In that regard, the Court overturned the judgment appealed that had declared the action well-founded in part, and declared it unfounded in all respects. The State indicates that said resolution was the subject of a motion for nullity, which was granted by resolution of August 14, 1992.[FN37]

[FN37] Communication from the State of September 19, 2002 received at the Executive Secretariat of the IACHR on September 20, 2002.

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41. The State indicates that on April 5, 1993, the Supreme Court of the Republic ruled that in the instant case, the exception indicated at Article 25 of Law No. 23,506 was not present (not requiring exhaustion of prior remedies), and found that there was no nullity in the judgment of July 8, 1992, which, overturning the judgment appealed dated February 17, 1992, declared

unfounded the writ of amparo lodged by Ms. Mercedes Quiroz Silva et al. (which included Mr. Carlos Agripino Huerta Machuca) against the National Superintendency of Customs.[FN38]

[FN38] Communication from the State of September 19, 2002 received at the Executive Secretariat of the IACHR on September 20, 2002.

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42. According to the State, the alleged victim filed a special motion (recurso extraordinario) before the Constitutional Court (Case No. 179-93-AA/TC); by resolution it was published in the official gazette "El Peruano" on September 3, 1997. The Constitutional Court ruled that according to Article 27 of Law No. 23,506, a writ of amparo may only go forward once prior remedies have been exhausted, and that in the instant case they should have been directed to the Chairperson of the Commission on the Competitive Personnel Selection Process, as well as the National Superintendency of Customs, depending on the specific points of the challenges, and that none of them had been pursued.[FN39]

[FN39] Communication from the State of September 19, 2002 received at the Executive Secretariat of the IACHR on September 20, 2002.

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43. The State alleges that as shown by the resolutions issued by the different courts, in the different stages of the writ of amparo, the action filed was never declared well-founded in its entirety, as the action filed before the 12th Civil Court in first instance was only declared well-founded in part.[FN40] The State alleges that Peruvian legislation provided mechanisms for injured persons to file administrative remedies, which, if the subject of unfavorable rulings, would allow for the possibility of filing a writ of appeal or review. In that regard, the State alleges that prior to taking action before the judiciary, it was necessary to exhaust the corresponding administrative remedy, which in the case of the alleged victim did not happen.[FN41]

[FN40] Communication from the State of September 19, 2002 received at the Executive Secretariat of the IACHR on September 20, 2002.
[FN41] Communication from the State of September 19, 2002 received at the Executive Secretariat of the IACHR on September 20, 2002.

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44. In summary, the State argues that according to Article 27 of Law No. 23,506, one may only recur to the writ of amparo when the previous remedies have been exhausted, which was not done by the alleged victim who, despite calling into question acts of the Commission on the Competitive Personnel Selection Process, did not file any administrative remedy to challenge it.[FN42]

[FN42] Communication from the State of May 27, 2005, received at the Executive Secretariat of the IACHR on June 1, 2005.

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45. As regards the lack of suitability of the writ of amparo for taking cognizance of the acts that are the subject of the complaint, the complainant's position is contrary to the argument used by the Constitutional Court when it ruled and found that the facts that were the subject matter of the action could not be elucidated in an amparo, given the exceptional and summary nature of this action, which is aimed at guaranteeing rights.[FN43]

[FN43] Communication from the State of May 27, 2005, received at the Executive Secretariat of the IACHR on June 1, 2005.

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46. The State alleges that the petitioner's statement to the effect that in his case it was not necessary to exhaust prior remedies and that the exception established at Article 28(2) of the Law 23,506 applied to his case is the petitioner's personal opinion, as this can only be determined by the competent judges, within a judicial proceeding. In addition, the State alleges that the petitioner did not request, in his brief in the amparo action, or in any other brief within the judicial process, application of the exception at Article 28(2) of Law 23,506 (the article referring to the exception to the prior exhaustion requirement) to his particular case.[FN44]

[FN44] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.

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47. The State alleges that the 12th Civil Court of Lima, on February 16, 1992, issued a finding that the action was well-founded in part, and, as regards the requirement of exhaustion of prior remedies, offered the following consideration:

… as breach of Legislative Decree 680 is not at issue, but rather the breach of Superintendency Resolution 007924 (sic), which has been ignored by the Commission in charge of the Competitive Personnel Selection Process of the National Superintendency of Customs, and whose consummation would have an immediate and irreparable negative effect on the rights to labor stability of the moving parties, exhaustion of administrative remedies is not required, for setting it in motion would trigger measures by the Commission on the Competitive Process, which would clearly validate the acts that are called into question in this action, and which would unnecessarily produce antagonism, considering the vices incurred, thus a favorable ruling on the action is called for….[FN45]

[FN45] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.

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48. The State alleges that the petitioner did not establish how his right could have been irreparably affected if one first exhausted administrative remedies; to the contrary, the State indicates that the petitioner merely mentioned the existence of several irregularities in the evaluation to which they were subjected.[FN46] The State argues that the document which the alleged victim says he filed before the Superintendency of Customs initially has no date of receipt from the National Superintendency of Customs, which is why the petitioner has not proven sufficiently whether this document was properly presented. In addition, it is observed that said document, dated November 8, 2001, was submitted after the time required by the law for being able to challenge the aforementioned Resolution. In this regard, Peruvian legislation, in the opinion of the State, provides that the term for challenging administrative resolutions is 15 days with no extension; and that in the instant case that term should have been counted from the date of issue of Resolution No. 130-92, i.e. from January 13, 1992.[FN47]

[FN46] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.
[FN47] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.

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49. As regards the issues that go to the admissibility of this claim, the State alleges that the petitioner did not used the appropriate judicial remedies available, for reasons that do not entail the responsibility of the State; this is considering that the remedies applied by the petitioner were rejected on reasonable procedural grounds.[FN48] Thus the State considers that domestic remedies were not exhausted, as required by the provisions of the Convention and the practice of the Inter-American Commission.[FN49]

[FN48] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.
[FN49] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.

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50. As regards the violation of the rights alleged by the petitioner, the State argues that the petitioner's claim was analyzed by the Peruvian courts on four occasions, in keeping with the provisions pre-established in Peruvian legislation and international provisions.[FN50] The State argued that the Commission could not replace its own evaluation of the facts by that of the domestic courts, since, as a general rule, it is up to the Peruvian courts to evaluate whether there was compliance with the formal requirements established in Peruvian law.[FN51] Moreover, the State argues that the fact that the alleged victim did not obtain a favorable ruling does not imply an automatic violation of his right to access to justice as set forth in Article 25 of the American Convention, or of his right to due process, provided for in Article 8 of that Convention.[FN52]

[FN50] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.
[FN51] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.
[FN52] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.

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51. As regards the case-law cited by the petitioner, in order to establish that the Constitutional Court has accepted the exception to the prior exhaustion requirement in other cases, the State indicates that the cases cited by the petitioner refer to situations that can be distinguished from the alleged victim's situation.[FN53]

[FN53] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.

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52. The Peruvian State argues that in order to make reparation to the workers who were dismissed irregularly during the 1991-2000 period, since June 2001 it has been promulgating several laws and provisions that have made it possible, first, to identify the cases in which there were irregular dismissals, and second, to promulgate reparatory measures. Accordingly, Laws 27,452 and 27,586 created two commissions in charge of reviewing those collective dismissals, and Law 27,803 instituted a Special Benefits Program to benefit the former workers who qualify and have been entered in the National Registry of Workers Dismissed Irregularly.[FN54]

[FN54] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.

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53. The State mentions that said program establishes the following benefits, which are voluntary, alternative, and mutually exclusive:

(1) Reinstatement or reassignment;
(2) Early retirement;
(3) Economic compensation; and
(4) Job training and reconversion.[FN55]

[FN55] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.

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54. In this respect, the State indicated that the alleged victim had opted to request the benefits of Law No. 27,803, and that in that regard, at his own initiative, he accepted availing himself of

the solution provided by the State.[FN56] The State argues that the benefits established in Law 27,803 were the result of the consensus among the representatives of the Executive branch, the members of the Working Committee of the national legislature, and the representatives of Peru's main trade union federations.[FN57]

[FN56] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.
[FN57] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.

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55. In view of the foregoing, pursuant to the principle of subsidiarity of the inter-American system for the protection of human rights, the State indicates that the Commission should give the state the opportunity "to resolve the possible violations within the domestic jurisdiction," especially when the petitioner himself has taken the initiative to avail himself of the solution that the State has offered, globally, to all the former workers who were dismissed from 1991 to 2000.[FN58]

[FN58] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.

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56. In view of the foregoing considerations, the State asks the Inter-American Commission to find this petition inadmissible.[FN59]

[FN59] Communication from the State of February 17, 2006, received at the Executive Secretariat of the IACHR on February 23, 2006.

IV. ANALYSIS OF ADMISSIBILITY

57. The Commission now analyzes the admissibility requirements established by the American Convention.

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

58. The petitioner is authorized, in principle, by Article 44 of the American Convention, to submit petitions to the Commission. The petition indicates as the alleged victim a natural person with respect to whom the Peruvian State undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission observes that Peru has been a state party to the American Convention since July 28, 1978, the date on which it deposited its

respective instrument of ratification. Accordingly, the Commission is competent ratione personae to examine the petition.

59. In addition, the Commission is competent ratione loci to take cognizance of the petition, insofar as it alleges that violations of rights protected in the American Convention took place under the jurisdiction of the State. The Commission is competent ratione temporis to study the claim insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the Peruvian State on the date when the facts stated in the petition are alleged to have occurred. Finally, the Commission is competent ratione materiae, because the petition alleges possible violations of the human rights protected by the American Convention.

B. Requirements for the Admissibility of the Petition

1. Exhaustion of domestic remedies

60. Article 46(1)(a) of the American Convention provides that for a complaint filed with the Inter-American Commission pursuant to Article 44 of the Convention to be admissible, one must have pursued and exhausted domestic remedies in keeping with the generally recognized principles of international law. This requirement has as its purpose affording the national authorities an opportunity to take cognizance of the alleged violation of a protected right and, if appropriate, to resolve it before it is taken up by an international body.

61. In the instant case, the petitioner has alleged that he exhausted domestic remedies, which culminated with the judgment of August 11, 1997, by the Constitutional Court of Peru finding the writ of amparo unfounded, and that he subsequently filed a motion for clarification (recurso de aclaración) that was also declared unfounded. The State's arguments indicate that Mr. Carlos Agripino Huerta Machuca failed to properly exhaust domestic remedies. Specifically, the State indicates that the petitioner had an opportunity to pursue the relevant judicial remedies to uphold his rights and challenge them in due course; in that regard, the State notes that the fact that the petitioner did not properly use the domestic remedies available would not give rise to responsibility of the State, this considering that the remedies were rejected on reasonable grounds, and in keeping with the domestic legislation.

62. In this respect, the Commission now offers a series of considerations. First, based on the analysis of the objection invoked by the State, it appears that its arguments refer to the failure of Mr. Agripino Huerta to properly exhaust domestic remedies due to the alleged failure to exhaust prior administrative remedies before filing the writ of amparo.

63. Second, the Commission observes that the purpose of the claim submitted to the IACHR refers to the alleged violation of the American Convention, which might be entailed in the interpretation rendered by the Constitutional Court of the domestic provisions relating to exhaustion of remedies prior to filing a writ of amparo in the case of Mr. Agripino Huerta Machuca. Accordingly, if the Commission were to proceed to take cognizance of and decide on the objection raised by the State of failure to exhaust domestic remedies, it would be tantamount

to issuing a pronouncement on the merits, which would be an anticipated judgment of the case at the admissibility stage.

64. In light of the foregoing considerations, and for the purposes of considering the admissibility of this claim in relation to the prior exhaustion requirement, the Commission will analyze whether the petitioner had judicial remedies in the domestic jurisdiction to call into question the Constitutional Court's interpretation. In this respect, the Commission observes that the provision of Article 45 of Law 26,435, in force in Peruvian legislation at the time of the facts alleged, established that "the Constitutional Court hears in the final and definitive instance actions to guarantee rights referred to in sections 1, 2, 3, and 6 of Article 200 of the Constitution," which includes the writ of amparo. The foregoing provision is evidence that the decision of the Constitutional Court, which the petitioner considers to be in violation of the Convention, is not subject to any appeal whatsoever in the domestic jurisdiction, and constitutes a final decision; accordingly, the Commission concludes that the requirement of prior exhaustion has been satisfied. Nonetheless, it should be noted that the petitioner filed a motion for clarification against that judgment that was declared unfounded by resolution of September 10, 1997, and which was published on October 8, 1997, in the official gazette "El Peruano."

2. Time period for submitting the petition

65. Article 46(1)(b) of the Convention establishes that for the petition to be found admissible, it is necessary that it be submitted within six months counted from the date on which the interested person was notified of the final decision in the domestic legal system.

66. In consideration of the above-stated rule, the Commission understands that for the purposes of counting the six-month period, one must consider the decision of the Constitutional Court of August 11, 1997. According to the annexes to the petition under study, that ruling was published in the official gazette "El Peruano" in its September 3, 1997 issue, and considering that the petition was filed with the IACHR on January 27, 1998, the Commission concludes that the six-month requirement has been met in the instant case.

3. International duplication of procedures and res judicata

67. It does not appear from the record that the subject matter of the petition is pending decision before another procedure for international settlement, or that it reproduces a petition already examined by this or any other international organization. Accordingly, it should be considered that the requirements established at Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

4. Characterization of the facts alleged

68. Article 47(b) of the Convention establishes that the Commission will find inadmissible a petition when it does not state facts that tend to establish a violation of the rights guaranteed in the Convention. In this regard, the Commission will proceed to analyze whether the facts alleged make out a violation of the articles of the Convention invoked by the petitioner.

69. In the instant case, the petitioner has submitted a series of arguments on the alleged violation of his rights to judicial guarantees, equality before the law, and judicial protection, enshrined in Articles 8, 21, 24, and 25 of the American Convention. In particular, the petitioner states that the interpretation of the domestic legislation in relation to the exhaustion of domestic remedies by the Constitutional Court is violative of his rights to judicial guarantees and judicial effective protection given that it implies the arbitrary denial of a hearing on the merits of the writ of amparo filed. For its part, the State alleges that the decision of that Court was in keeping with its domestic legislation and the guarantees of due process.

70. First, the IACHR considers that it should cite the considerations made by the Constitutional Court in denying the writ of amparo filed by the alleged victim. That ruling expressly states:

… That, as provided for by Article 27 of Law No. 23,506, the writ of amparo may only go forward to the extent that prior remedies have been exhausted, and in the instant case they should have been directed to the Chairman of the Commission on the Competitive Personnel Selection Process, as well as to the National Superintendency of Customs, as per the specific points of the challenges, and none of these has been done.

That as the writ of amparo is aimed at having approval of the new Table for Assignment of Personnel, developed based on the results of the competitive process suspended, as not all the provisions in this respect were applied, and, in other cases, those provisions were not abided by, as some participants were selected who were reached by the legal prohibitions, the results of the competitive process were not provided in the time frames set, nor were the scores obtained on each test published, and cases of participants who failed the knowledge and psycho-technical exam, were reconsidered, etc., those facts may not be raised in this action to guarantee rights, which, by its nature, is exceptional and summary, but in the procedural jurisdiction that is most suitable for protecting those rights.

Accordingly, there has been no violation or threat of any constitutional rights established as an act whose performance is obligatory, thus the provision of Article 2 of Law No. 23,506 applies….[FN60]

[FN60] Constitutional Court of Peru. Judgment No. 179-93-AA/TC, Mercedes Quiroz Silva et al., Lima, August 11, 1997. Published in the official gazette El Peruano, September 3, 1997. Communication from the petitioner of February 23, 1998 received at the Executive Secretariat of the IACHR on February 24, 1998.

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71. The Commission observes that the Constitutional Court, by the above-mentioned judgment of August 11, 1997, found that the writ of amparo filed did not meet the requirements established for making use of that remedy, particularly exhaustion of prior remedies. Accordingly, the Constitutional Court declared the writ of amparo unfounded in a judgment by a court of last resort, in keeping with the provisions of Law 23,506 on habeas corpus and amparo.

72. In this respect, according to the case-law of the inter-American system, the Commission is not authorized to review "decisions handed down by national courts acting within their authority and applying the appropriate legal guarantees, unless it is found that there has been a violation of some right protected by the Convention."[FN61] The Commission has held repeatedly that:

Under the preamble of the American Convention on Human Rights, the protection that the organs of the inter-American system for the protection of human rights offers is intended to complement the protection afforded by the local courts.[4] The Commission cannot take upon itself the functions of an appeals court in order to examine alleged errors of fact or law that local courts may have committed while acting within the scope of their jurisdiction, unless there is unequivocal evidence that the guarantees of due process recognized in the American Convention have been violated.[FN62]

[FN61] IACHR, Report No. 8/98, Case 11,671, Carlos García Saccone (Argentina), March 2, 1998, para. 53.
[FN62] IACHR, Report No. 122/01, Petition 0015/00, Wilma Rosa Posadas (Argentina), October 10, 2001, para. 10.

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73. In light of the foregoing considerations, the Commission considers that it is not appropriate to analyze the alleged international responsibility of the Peruvian State based on the interpretation that the Constitutional Court had rendered of the domestic legislation on when a writ of amparo may go forward. In effect, the Commission observes that the issues raised by the petitioner would require that the IACHR review the interpretation of the procedural laws applicable to the case in order to determine the appropriateness of the procedural paths chosen by the petitioner to satisfy his claims.

74. In addition, the Commission considers it pertinent to note that it is not appropriate to get into the analysis of the arguments presented by the petitioner regarding the purpose of the claim insofar as the writ of amparo filed by him did not constitute a suitable remedy for controverting, in the domestic legal system, the situation alleged. Accordingly, the facts of the instant case do not tend to establish violations of due process given that the remedy used was not adequate for controverting the issues raised in the domestic jurisdiction.

75. Accordingly, the petitioner's mere discrepancy with the Constitutional Court's interpretation of the relevant legal provisions does not suffice for constituting violations of said international instrument. The interpretation of the law, the relevant procedure, and the weighing of the evidence is, among others, for the domestic jurisdiction, which cannot be replaced by the IACHR.[FN63]

[FN63] IACHR, Report No. 39/05 (Peru), Petition 792/01, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre.

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76. In summary, based on the documentation provided, there does not appear to have been any judicial arbitrariness whatsoever, nor does it appear that the alleged victim was kept from accessing the domestic remedies with the guarantee of due process. Similarly, in relation to Article 24 of the Convention, the facts alleged to not make it possible to consider possible unequal treatment within the meaning of this provision. Finally, with respect to the arguments relating to the violation of Article 21 of the American Convention, it is considered that its characterization cannot be analyzed independent of the results set forth in that judgment.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case inadmissible for failure to state facts that tend to establish the violations alleged.
2. To notify the parties of this decision.
3. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.