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File Number(s):	Report No. 67/07; Petition 127-03
Session:	Hundred Twenty-Eighth Session (16 – 27 July 2007)
Title/Style of Cause:	Manuel Francisco Portilla Vela v. Peru
Doc. Type:	Decision
Decided by:	President: Florentin Melendez; First Vice-President: Paolo Carozza; Second Vice-President: Victor Abramovich; Commissioners: Evelio Fernandez Arevalos, Clare K. Roberts, Freddy Gutierrez.
Dated:	27 July 2007
Citation:	Portilla Vela v. Peru, Petition 127-03, Inter-Am. C.H.R., Report No. 67/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANT: Dario Arroyo Yance
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## I. SUMMARY

1. On February 14, 2003 the Inter-American Commission on Human Rights (“the Commission,” “the Inter-American Commission,” or “the IACHR”) received a petition submitted by Mr. Dario Arroyo Yance (hereinafter “the petitioner”) on behalf of Manuel Francisco Portilla Vela (hereinafter “the alleged victim”) alleging the international liability of the Peruvian State (“Peru,” “the State,” or “the Peruvian State”) as the alleged victim was dismissed from his job on July 18, 2000 at the University of Lima, where he was president of the Frente Unitario de Trabajadores no Docentes de la Universidad de Lima (FUTNDUL—Unified Front of non-Teaching Workers at the University of Lima), and the Sindicato Único de Trabajadores de la Universidad de Lima (SUTUL—Single Workers Union of the University of Lima), and that this fact was not later rectified by the judicial bodies that heard the case.

2. The petitioner alleges that the State is responsible for violations of the rights set forth in Articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 24 (Right to Equal Protection), and 25 (Right to Judicial Protection) of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), in keeping with Article 1(1) of same. The petitioner also alleges that his complaint is admissible since he has exhausted all remedies available within the domestic jurisdiction for the reinstatement of the infringed upon rights. The State, in turn, alleges that the petitioner had the opportunity to pursue all remedies allowed by the domestic jurisdiction pursuant to legislation in force, and that the existence of a judicial ruling against him cannot be considered a violation of his human rights. The State also alleged that the petitioner had not exhausted all available domestic remedies regarding his right to receive compensation.

3. After analyzing the available information and verifying fulfillment of the admissibility requirements stated in Articles 46 and 47 of the American Convention, the Commission finds the case inadmissible since the facts stated by the petitioner do not describe a violation of the American Convention.

4. Therefore, based on Article 47(b) of the American Convention, the IACHR finds the petition to be inadmissible and decides to submit a report to the parties, to publish this decision, and to include it in the Commission's Annual Report.

## II. PROCEEDINGS BEFORE THE COMMISSION

5. The original complaint dated November 18, 2002 was received in the Executive Secretariat of the Inter-American Commission on February 14, 2003, and assigned Petition number 127-03.

6. Through submissions received on June 25, 2003, August 26, 2005, and March 8, 2005 the petitioner provided additional information about his complaint.

7. In a message dated April 5, 2005 the Commission proceeded to begin processing this petition and submitted the relevant parts of the complaint to the State, giving it two months to submit its reply according to the provisions of Article 30(3) of its Rules of Procedure.

8. On June 23, 2005 the State submitted its reply to the petitioner's allegations in Report No. 67-2005-JUS/CNDH-SE/CESAPI. In a message dated July 6, 2005 the IACHR transmitted the relevant sections to the petitioner, giving him a two-month deadline to submit observations.

9. The petitioner submitted additional information on his case in a message received in the Executive Secretariat of the IACHR on July 20, 2005. In a message dated August 9, 2005, the petitioner submitted observations on the State's reply, which were forwarded to the State on October 20, 2005 with a two-month deadline for submitting observations.

10. On November 21, 2005 the State requested an extension to submit observations on the information provided by the petitioner, which was granted by the IACHR on November 30, 2005.

11. In a note dated January 19, 2006 and received January 23, 2006, the State submitted Report No. 05-2006-JUS/CNDH-SE-CESAPI with observations regarding the petitioner's claim. Later, in a message received in the Executive Secretariat of the IACHR on February 15, 2006 the State provided additional information in Report No. 014-2006-JUS/CNDH-SE-CESAPI. In messages dated February 21 and 27, 2006 and March 2 and April 26, 2006 the petitioner provided new allegations on the subject of his petition.

## III. POSITIONS OF THE PARTIES

A. The petitioner

12. The petitioner argues that the alleged victim had been a staff member of the University of Lima, a private institution, since March 1, 1974, and that he served as president of the Frente Unitario de Trabajadores no Docentes de la Universidad de Lima (FUTNDUL) and was a member of the Sindicato Único de Trabajadores de la Universidad de Lima (SUTUL). On July 17, 2000 he drafted and disseminated a communiqué addressed to the workers affiliated with SUTUL, calling upon them to censure their bad leaders and proceed to elect new ones. He indicates that the communiqué contained both criticism of the leaders of the union and complaints regarding the University of Lima's alleged persecution of union members.[FN1]

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[FN1] The communiqué contains the following text: "... 2) The Union and the Officers of SUTUL do not exist to submit to the employers, but rather to defend the rights and aspirations of the workers. Therefore FUTNDUL rejects the solution of a tiny raise and the 8th clause of the list of complaints signed by the officers, calling on the unionized workers to speak at the General Assembly in favor of analyzing a solution to the 2000-2001 List of Grievances, and to take measures, if necessary, against the bad leaders who agreed to the list of complaints behind the backs of the workers. 3) Likewise, we denounce the policy of hostility imposed by the University (using retired military officers) against workers with seniority and specifically against the founders of SUTUL. A case in point is the harassment of our comrade Manuel Portilla Vela who was first demoted and recently was apprehended by the Chief of Security, retired Peruvian Army Colonel Pedro Pando Lozada, who threatened to fire him. We therefore request that the union lodge a complaint."

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13. The petitioner indicates that one day after the distribution of the aforementioned communiqué, the University of Lima sent him a note barring him from entering the workplace as of July 18, 2000, and a letter of dismissal dated July 25, 2000.[FN2] In this regard, the petitioner alleges that the cause of the alleged victim's firing was his reputed involvement in union activities, as well as dissemination of the communiqué addressed to members of SUTUL. For these reasons, the petitioner maintains that according to Peruvian labor law, "any dismissal for reasons of labor union affiliation or participation in union activities is illegal." [FN3] The petitioner asserts that the alleged victim was fired for his union activities and because he was a committee leader in the Frente Unitario de Trabajadores de la Universidad de Lima.[FN4]

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[FN2] Original petition dated November 18, 2002 and received in the Executive Secretariat of the IACHR on February 14, 2003.

[FN3] Article 29 of the Single Text Ordering Legislative Decree No. 728.

[FN4] Petitioner's submission of February 21, 2006, received in the Executive Secretariat of the IACHR on March 8, 2006.

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14. Regarding the judicial proceedings pursued, the petitioner argues that on August 16, 2000 the alleged victim filed a complaint to overturn an illegal dismissal before the 17th Labor Court of Lima, requesting that he be reinstated in his job and paid lost wages.[FN5] The petitioner

indicates that the trial court decision issued on July 5, 2001 found the complaint to be without cause because although the employer (University of Lima) had not proven just cause for the dismissal, it was not an illegal firing but rather an arbitrary one, which had not been alleged by the presumed victim before said Court.[FN6] The petitioner argues that according to the hypothesis by which the trial court's decision was drafted, the alleged victim cannot claim special compensation for arbitrary dismissal, in light of the 30-day statute of limitations set forth in Peruvian law.[FN7]

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[FN5] Original complaint dated November 18, 2002, received in the Executive Secretariat of the IACHR on February 14, 2003.

[FN6] In whereas clause 8 of the Trial Court's decision, the magistrate of the 17th Labor Court of Lima stated that "the employer has not verified the existence of just cause for the dismissal of the employee (though this was not the main issue discussed); and the complainant has not proven the illegality of his dismissal, which at any rate was an arbitrary dismissal, which was not alleged."

[FN7] Original complaint of November 18, 2002, received in the Executive Secretariat of the IACHR on February 14, 2003.

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15. The petitioner states that after filing an appeal, the First Corporate Labor Court of Lima Superior Court, through a decision on October 25, 2001, overturned the trial court's decision which had declared the complaint over illegal dismissal to be without cause. This court ordered that the alleged victim be reinstated in his job and paid lost wages.[FN8]

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[FN8] Original complaint of November 18, 2002, received in the Executive Secretariat of the IACHR on February 14, 2003.

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16. In response to that ruling, the petitioner explains, the employer filed another appeal with the Transitory Constitutional and Social Rights Division of the National Supreme Court which granted the appeal on June 21, 2002 by declaring that the appeal filed by the University of Lima had merit, which in the petitioner's opinion, reinstated the trial court's decision.[FN9] The petitioner asserts that this ruling by the Supreme Court constitutes exhaustion of domestic remedies in the present case.[FN10]

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[FN9] Original complaint of November 18, 2002, received in the Executive Secretariat of the IACHR on February 14, 2003.

[FN10] Message from the petitioner dated February 21, 2006, received in the Executive Secretariat of the IACHR on March 8, 2006.

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17. The petitioner alleges that upon acknowledging the existence of an arbitrary dismissal, the Peruvian courts should have ordered payment of compensation pursuant to Article 38 of

Supreme Decree No. 009-97-TR.[FN11] He states that the decision of the Supreme Court was not based on the merits of the trial nor on the law, and that it was a product of influence-peddling among the magistrates on the Court and senior officials at the University of Lima. Regarding these assertions, the petitioner indicates that he lodged complaints before the National Council of Magistrates,[FN12] the Juridical Committee of the National Congress, and the National Prosecutor's Office.[FN13]

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[FN11] Petitioner's brief dated August 11, 2005, pages 2 and 3.

[FN12] According to the documentation attached to the petition, this complaint was archived by a decision of the National Council of Magistrate's on July 11, 2002.

[FN13] According to the documentation attached to the petition, this complaint was dismissed through a decision of the National Prosecutor's Office on November 18, 2002.

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18. Furthermore, the petitioner argues that the Supreme Court did not consider all of the evidence produced during the trial[FN14] and issued an unfounded decision, which he alleges violated his right to a fair trial.[FN15] The petitioner also alleges that the Peruvian Judicial Branch did not consider the legal provision established in Article 29, paragraph (a) of Legislative Decree 728, approved by Supreme Decree 003-97-TR, which establishes that any dismissal motivated by "membership in a union or participation in union activities" is illegal. In the petitioner's opinion, this standard was not applied or correctly interpreted by the Peruvian Judicial Branch.[FN16] Consequently, the rulings made against him in the judicial proceedings involve violations of his right to due process of law. He alleges that within the proceedings held the company was never able to prove the serious infraction that the victim is alleged to have committed which would have justified his dismissal.[FN17]

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[FN14] Additional brief of the petitioner dated March 7, 2006.

[FN15] Original complaint of November 18, 2002, received in the Executive Secretariat of the IACHR on February 14, 2003.

[FN16] Message from the petitioner dated August 9, 2005, received in the Executive Secretariat of the IACHR on August 11, 2005.

[FN17] Petitioner's submission of August 9, 2005, received in the Executive Secretariat of the IACHR on August 11, 2005.

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19. In several submissions the petitioner maintains that in his case, as in others, acts of corruption were involved which prevented the Peruvian Judicial Branch from properly applying the law.

20. The petitioner indicates that the facts described above constitute violations of Article 8 (right to a fair trial), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention on Human Rights.[FN18] Furthermore, the petitioner alleges that the dismissal of the alleged victim constitutes a violation of his rights set forth in Articles 4 (right to life) and 5 (right to humane treatment) of the American Convention, Articles 3 and 23 of the

Universal Declaration of Human Rights, and Article 1 of ILO Convention No. 98 adopted on November 15, 1963.[FN19]

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[FN18] Original complaint dated November 18, 2002, received in the Executive Secretariat of the IACHR on February 14, 2003.

[FN19] Original complaint dated November 18, 2002, received in the Executive Secretariat of the IACHR on February 14, 2003.

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21. As regards the admissibility of the petition, the petitioner indicates that the remedies available under domestic jurisdiction have been exhausted. Thus he asks that the IACHR admit his petition.

B. The State

22. The State indicates that according to the information provided by the petitioner, Mr. Portilla Vela, former employee of the University of Lima, began to work at that institution on March 1, 1974 and was dismissed on July 26, 2000.[FN20]

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[FN20] State's submission of June 21, 2005, received in the Executive Secretariat of the IACHR on June 23, 2005.

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23. The State goes on to say that on August 16, 2000, the alleged victim lodged a complaint against the University of Lima to overturn an illegal dismissal, seeking a ruling by the judicial body that the dismissal had been illegal, that the employee should be reinstated in his job, and that he should be paid lost wages according to the mandate set forth in Article 40 of Supreme Decree 003-97-TR.[FN21]

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[FN21] State's submission of June 21, 2005, received in the Executive Secretariat of the IACHR on June 23, 2005.

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24. The State recounts the petitioner's brief, telling how the trial court ruled against the petitioner on July 5, 2001, and that this decision was appealed before the First Corporate Labor Court of the Superior Court of Lima. Said Court issued a decision on October 25, 2001, overturning the trial court's decision and declaring the dismissal to be illegal. [FN22]

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[FN22] State's submission of June 21, 2005, received in the Executive Secretariat of the IACHR on June 23, 2005.

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25. In response to this decision, the State indicates that the University of Lima filed an appeal before the Transitory Constitutional and Social Rights Division of the National Supreme Court. This court upheld the trial court decision of July 5, 2001, which had found the original complaint to be unfounded on all counts. [FN23]

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[FN23] State's submission of June 21, 2005, received in the Executive Secretariat of the IACHR on June 23, 2005.

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26. The State argues that pursuant to Article 27 of the Peruvian Procedural Labor Law, it is the employee's responsibility to prove the existence of a labor connection, the existence of a dismissal, its illegality if so alleged, and any hostility that the employee may have been subjected to. In the case of Mr. Portilla Vela, it has not been proven that his dismissal was illegally based on his membership in a labor union or his participation in union activities.[FN24] The State asserts that according to the petitioner's briefs, Mr. Portilla Vela had been a member of a trade union for many years and held a leadership position. Consequently, the alleged victim's union membership was not the cause of his dismissal. [FN25]

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[FN24] State's submission of June 21, 2005, received in the Executive Secretariat of the IACHR on June 23, 2005.

[FN25] Submission from the State dated June 21, 2005, received in the Executive Secretariat of the IACHR on June 23, 2005.

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27. The States continues that the alleged victim must demonstrate, by compiling sufficient evidence, that his alleged union activity motivated the University to fire him, as is established in Article 29 of Supreme Decree No. 003-97-TR. In the State's opinion, this did not occur. [FN26]

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[FN26] Submission from the State dated June 21, 2005, received in the Executive Secretariat of the IACHR on June 23, 2005.

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28. The State indicates that at no stage of the proceedings did the petitioner demonstrate the existence of the labor union to which he said he belonged. In fact, the State argues that the alleged victim never proved the existence of the so-called Frente Unitario de Trabajadores No Docentes de la Universidad de Lima. Furthermore, the State argues that the signatory of the flyer which caused the dismissal was Mr. Portilla Vela himself, and that the Frente Unitario de Trabajadores No Docentes de la Universidad de Lima never legally existed because it never fulfilled the requirements or procedures stipulated in Articles 16 and 17 of Decree Law No. 25593.[FN27] Furthermore, the State argues that the alleged victim had not been involved in union activities continuously, because he was not part of the Grievances Committee, and that he did not display any other form of participation, as was determined in the judicial decision of July 5, 2001 by the trial court. [FN28]

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[FN27] Submission from the State dated June 21, 2005, received in the Executive Secretariat of the IACHR on June 23, 2005.

[FN28] Submission from the State dated June 21, 2005, received in the Executive Secretariat of the IACHR on June 23, 2005.

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29. The State argues that these considerations were examined within the judicial proceedings followed in the Peruvian courts. The State therefore alleges that the Peruvian Judicial Branch fully interpreted the scope of Article 29 of Supreme Decree No. 003-97-TR. The State also indicates that the Judicial Branch concluded that Mr. Manuel Francisco Portilla Vela did not demonstrate a causal link between his dismissal and the alleged motive when presenting his case before the Peruvian courts. Rather, he limited himself to establishing in isolation one of the elements that would render the dismissal illegal, which is union affiliation. Thus the State points out that whereas clause nine of the Supreme Court's ruling establishes that "it does not suffice to establish the existence of an element that would render the dismissal illegal if it is not linked to the dismissal; in this case, it must be established that the petitioner's union activity motivated his employer to dismiss him." [FN29]

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[FN29] Submission from the State dated June 21, 2005, received in the Executive Secretariat of the IACHR on June 23, 2005.

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30. The State also mentions that the influence peddling which the petitioner alleges to exist among magistrates on the Supreme Court and staff of the University of Lima does not exist. The complaint in this regard is awaiting a decision before the corresponding Peruvian agencies. [FN30]

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[FN30] Submission from the State dated June 19, 2006, received in the Executive Secretariat of the IACHR on January 23, 2006. (sic)

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31. Regarding the admissibility requirements, the State asserts that the petitioner had the opportunity to avail himself of all the remedies afforded by domestic jurisdiction pursuant to the legislation in force. According to the State, the alleged victim did not exhaust domestic remedies with regard to the compensation to which he alleges he is entitled. If he truly felt he had a right to this, he could have asked the trial court judge, pursuant to Article 407 of the Civil Procedure Code, to rule on this point. Furthermore, the State argues that the alleged victim never submitted a request for compensation during the various judicial proceedings in Peru.[FN31]

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[FN31] Submission from the State dated June 19, 2006, received in the Executive Secretariat of the IACHR on January 23, 2006 (sic).



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32. The State also argues that the existence of an unfavorable judicial decision does not imply a violation of the rights enshrined in the American Convention on Human Rights. The facts described do not constitute a violation of the American Convention and the Commission cannot act as a court of review. [FN32]

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[FN32] Submission of the State dated June 21, 2005, received in the Executive Secretariat of the IACHR on June 23, 2005.

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33. The State argues that the petitioner exercised his constitutional rights to a fair trial and to judicial protection by intervening actively throughout the judicial proceedings and exercising his right to put on a defense. The facts presented and the information provided by the Judicial Branch do not describe or prove the alleged violation of the alleged victim's rights enshrined in Articles 8.1 and 25 of the American Convention. The State further argues that they do not describe or prove the alleged violation of the rights set forth in Articles 4, 5, and 24 of the American Convention on Human Rights. The State also alleges that there is no proof of the alleged violation of the Universal Declaration of Human Rights, nor Convention No. 98 of the International Labor Organization (ILO).[FN33] For these reasons, the Peruvian State asked the IACHR to declare this petition inadmissible. [FN34]

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[FN33] Submission of the State dated June 21, 2005, received in the Executive Secretariat of the IACHR on June 23, 2005.

[FN34] Submission of the State dated June 21, 2005, received in the Executive Secretariat of the IACHR on June 23, 2005.

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#### IV. ANALYSIS

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

34. The petitioner is entitled under Article 44 of the American Convention to lodge complaints before the IACHR. The petition shows the alleged victim to be an individual whose rights Peru has undertaken to respect and guarantee under the American Convention. Therefore, the Commission has competence *ratione personae* to review the petition.

35. The Commission has competence *ratione materiae* to review the subject of this complaint, which refers to alleged violations of the rights enshrined in the American Convention. Regarding the alleged violations of Articles 3 and 23 of the Universal Declaration of Human Rights and Article 1 of Convention No. 98 of the ILO, adopted on November 15, 1963, the Commission finds that it lacks competence to issue an opinion on potential violations of those instruments.

36. The Commission has competence *ratione loci* to examine the petition in that it alleges that rights protected by the American Convention were violated within the jurisdiction of a State party to said treaty. The Commission also has competence *ratione temporis* because the obligation to respect and guarantee the rights protected by the American Convention was in effect for the State on the date when the facts alleged in the petition occurred.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

37. Article 46(1)(a) of the American Convention states that in order for a complaint presented to the Inter-American Commission to be admissible under Article 44 of the Convention, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow the national authorities to be apprised of the alleged violation of a protected right so that, if appropriate, they can resolve it before it is put before an international body.

38. In the present case, the State asserts that the petitioner had the opportunity to avail himself of all the remedies afforded by domestic jurisdiction pursuant to the legislation in force. According to the State, the alleged victim did not exhaust domestic remedies with regard to the compensation to which he alleges he is entitled. The petitioner in turn argues that the decision of June 21, 2002 by the Transitory Constitutional and Social Law Division of the National Supreme Court granting the appeal filed by the University of Lima, constitutes exhaustion of domestic remedies in this case. Finally, the State alleges that the petitioner did not exhaust domestic remedies regarding his complaint to the National Council of Magistrates, the Juridical Committee of the National Congress, and the National Prosecutor's Office regarding the alleged crime of influence peddling.

39. The Commission finds that domestic remedies were in fact exhausted through the June 21, 2002 ruling of the Transitory Constitutional and Social Law Division of the National Supreme Court, whereby a decision of last instance was issued denying Mr. Portilla Vela his request, which gave rise to this international claim. In light of this, the Commission concludes that the requirement for exhaustion of domestic remedies has been fulfilled.

2. Time period for lodging a petition

40. Article 46(1)(b) of the Convention establishes that in order for a petition to be declared admissible, it must be lodged within six months from the date on which the party alleging violation of his rights was notified of the final judgment within domestic jurisdiction.

41. In the instant case, domestic remedies were exhausted with the ruling by the Supreme Court which granted the appeal against the alleged victim. This decision was notified on August 21, 2002, and the petition was lodged with the Commission on February 14, 2003. Therefore, the deadline established in Article 46(1)(b) of the American Convention was met.

3. Duplicate international proceedings and res judicata

42. There is no evidence in the file that this complaint is pending in any other international proceeding, nor has the Commission received any information to indicate such a situation, nor does it believe that this complaint is substantially the same as one previously studied by the Commission. For this reason, the requirements of Articles 46(1)(c) and 47(d) of the Convention are fulfilled.

4. Description of the alleged facts

43. Article 47(b) of the Convention stipulates that the Commission will declare a petition inadmissible if it does not state facts that tend to establish a violation of the rights guaranteed by the Convention. The Commission will thus proceed to analyze whether the facts reported on this occasion constitute a violation of the Articles of the Convention cited by the petitioner.

44. In the instant case, the petitioner has presented several arguments about the alleged violation of the rights enshrined in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention, pursuant to Article 1.1 (obligation to respect rights) of said instrument.

45. The petitioner particularly refers to the judicial proceedings whereby his dismissal, which he found to lack the judicial guarantees of due process, was not found to be illegal and that said violations were not corrected by the courts of domestic jurisdiction. The State, in turn, alleges that the aforementioned rulings in the Peruvian courts were rendered in keeping with domestic laws and all the guarantees of due process.

46. As is seen in the operative section of the June 21, 2002 decision by the Transitory Constitutional and Social Law Division of the National Supreme Court, the Court concluded that Mr. Portilla Vela had not proven “the existence of the labor organization to which he said he belonged, as is noted in the trial court’s decision.”[FN35] The Transitory Division also indicated that the evidence provided by the petitioner was not sufficiently compelling to prove the illegality of the dismissal as stipulated in Article 29 (a) of Supreme Decree No. 003-97-TR. It concluded that given the lack of convincing evidence, it was relevant for this to be reinforced by other evidence, which did not exist in the proceedings.[FN36]

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[FN35] Transitory Constitutional and Social Law Division of the National Supreme Court. Decision of June 21, 2002.

[FN36] Transitory Constitutional and Social Law Division of the National Supreme Court. Decision of June 21, 2002.

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47. Likewise, the Transitory Constitutional and Social Law Division of the National Supreme Court indicated that the causal link between the dismissal of Mr. Portilla Vela and the exercise of his labor union rights did not exist:

Consequently, the Superior Court committed a conceptual error when it called the dismissal illegal and arbitrary or unjustified, because it is not interpreting the full scope of Supreme Decree 003-97-TR, by failing to establish the causal link between the dismissal and its true motive. It does not suffice to establish in isolation the element which makes the dismissal illegal if it is not linked to the dismissal. In this case it must be established that the petitioner's labor union activity motivated his employer to fire him. [FN37]

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[FN37] Transitory Constitutional and Social Law Division of the National Supreme Court. Decision of June 21, 2002.  
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48. The IACHR deems it relevant to point out that the information in the file of this case shows that the petitioner had free access to the remedies of domestic jurisdiction to challenge his allegedly illegal dismissal.

49. Also the petitioner alleges that when the Peruvian courts acknowledged that the dismissal was arbitrary and not illegal, they should have applied Article 38 of Supreme Decree No. 009-97-TR. The Commission feels that to analyze such alleged irregularities would lead it to interpret the relevant labor and procedural laws to determine whether or not they were correctly followed by the domestic courts.

50. However, according to the jurisprudence of the inter-American system, the Commission is not empowered 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." [FN38] The Commission has repeatedly upheld 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 offer is intended to complement the protection afforded by the local courts. 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. [FN39]

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[FN38] IACHR Report No. 8/98, Case 11.671, Carlos García Saccone (Argentina), March 2, 1998, para. 53.

[FN39] IACHR Report N° 122/01, Petition 0015/00, Wilma Rosa Posadas (Argentina), October 10, 2001, para. 10.  
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51. In light of the above considerations, the Commission does not deem it appropriate to examine the alleged international liability of the Peruvian State based on an interpretation of the

Peruvian Judicial Branch's application of domestic law in the present case, nor an evaluation of the evidence produced. Consequently, the petitioner's mere disagreement with the interpretation that the Peruvian courts made of the relevant legal standards does not suffice to constitute violations of the aforementioned international instrument. Interpretation of the law, relevant procedure, and weighing of the evidence is, among other things, the function of domestic jurisdiction, which cannot be supplanted by the IACHR.[FN40]

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[FN40] IACHR Report N°39/05 (Peru), Petition 792/01, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre.  
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52. In summary, from the briefs of the parties and the evidence in the file there is no indication of judicial arbitrariness, nor evidence that the alleged victim was hindered from having access to the remedies of domestic jurisdiction with guarantees of due process.

53. Finally, regarding the alleged violations of Articles 4, 5, and 24 of the American Convention, the IACHR finds that the petitioner has not presented allegations of fact that would show any violations of said rights that could be considered in isolation from the aforementioned decisions of the Peruvian courts.

54. In light of the above, the Commission concludes that the alleged facts do not tend to characterize a violation of the rights recognized in the American Convention, and that the petition must therefore be declared inadmissible.

## V. CONCLUSIONS

55. Based on the arguments of fact and law set forth herein, the Commission finds that the petition is inadmissible under the requirements established in Article 47(b) of the American Convention, since it does not present facts that would constitute any violation of the rights protected by the Convention.

56. By virtue of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition inadmissible.
2. To notify the State and the petitioner of this decision.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 27th day of the month of July, 2007.  
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E.

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Abramovich, Second Vice-President; Evelio Fernández Arévalos, Clare K. Roberts and Freddy Gutiérrez, Commissioners.