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| Institution: | Inter-American Commission on Human Rights |
| File Number(s): | Report No. 59/08; Petition 11.277 |
| Session: | Hundred Thirty-Second Regular Session (17 – 25 July 2008) |
| Title/Style of Cause: | Eduardo Carlos Carrillo Hernandez, Amalia Wahibe Mariategui Succar and Rodolfo Hugo Castro Valcarcel v. Peru |
| Doc. Type: | Decision |
| Decided by: | Chairman: Paolo Carozza;<br>First Vice-Chairwoman: Luz Patricia Mejia Guerrero;<br>Second Vice-Chairman: Felipe Gonzalez;<br>Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich. |
| Dated: | 24 July 2008 |
| Citation: | Carrillo Hernandez v. Peru, Petition 11.277, Inter-Am. C.H.R., Report No. 59/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008) |
| Represented by: | APPLICANTS: Asociacion Pro Derechos Humanos, Carolina Loayza Tamayo |
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## I. SUMMARY

1. On December 17, 1993, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received a petition lodged by Eduardo Carlos Carrillo Hernández, Amalia Wahibe Mariátegui Succar, and Rodolfo Hugo Castro Valcárcel[FN1] (hereinafter "the petitioners" or "the alleged victims")[FN2] against the Republic of Peru (hereinafter "Peru," "the Peruvian State" or "the State") alleging the international responsibility of the State for the presumed arbitrary dismissal of the alleged victims from their posts in the Diplomatic Service of Peru.

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[FN1] On January 10, 2008, Mr. Rodolfo Hugo Castro Valcárcel notified the Executive Secretariat that he was withdrawing his petition before the IACHR as he considered that the grounds for it no longer existed. In accordance with the terms of Article 35 of its Rules of Procedure, the IACHR proceeded to extract the aspects of the petition related to Mr. Hugo Castro Valcárcel and set them aside.

[FN2] In a note dated January 17, 1994, the original complainants reported that they had designated the Asociación Pro Derechos Humanos (APRODEH) as their representative for the proceedings in this matter. In a note dated December 20, 2006, Ms. Amalia Wahibe Mariátegui Succar reported that she had designated attorney Carolina Loayza Tamayo as her legal representative.

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2. The petitioners claim to have been dismissed from the Diplomatic Service of the Republic in an illegal, unwarranted, and arbitrary manner, together with 114 other diplomatic officials, without having been granted due legal guarantees. The petitioners assert that they lodged administrative appeals for reconsideration before the Ministry of Foreign Affairs to which they received no response, and had brought amparo actions before the courts. They contend that in light of these circumstances, the State violated, to their detriment, the rights to a fair trial, protection of honor and dignity, equal protection before the law, and judicial protection enshrined in Articles 8, 11, 24 and 25 of the American Convention, all in relation to the general obligation to respect and ensure set forth in Article 1(1) of that instrument.

3. The State, for its part, requests the IACHR to permanently set aside the petition, given that, in its opinion, the grounds that gave rise to the petition no longer existed, in accordance with the provisions of Article 48(1)(b) of the American Convention and Article 30(6) of the Commission's Rules of Procedure. The State claims that pursuant to Law No. 27550, the diplomats who had been dismissed illegally and unconstitutionally were reinstated to active service, and it was arranged so that those officials had the right to special promotion, separate from the regular promotion process.

4. In this report, the Commission examines the available information in light of the provisions of the American Convention and concludes that the petition does not meet the requirement set forth in Article 46(1)(a) of the American Convention. In addition, the Commission takes the view that the petition is inadmissible in accordance with the requirements set forth in Article 47(b) of the American Convention, since it does not describe facts that would tend to establish a violation of the rights protected by the Convention. Therefore, pursuant to Article 47(a) and (b) of the American Convention, the IACHR decides that the petition is inadmissible; it also decides to forward this report to the parties, publish it, and order its publication in its Annual Report.

## II. PROCESSING BEFORE THE COMMISSION

5. On November 17, 1993, the IACHR received a complaint lodged by Eduardo Carlos Carrillo Hernández, Amalia Wahibe Mariátegui Succar, and Rodolfo Hugo Castro Valcarcel. On March 23, 1994, the IACHR forwarded the complaint to the State, granting it a 90 day period in which to submit its response in accordance with the regulations in force at that time. On March 23, 1994, the original claimants reported that the Asociación Pro Derechos Humanos (APRODEH) would represent them before the IACHR. On May 24, 1994, the IACHR received the response from the State. In notes dated August 19, 1994, June 22, 1995, January 31 and April 16, 1996, the petitioners submitted additional information and legal arguments relating to their complaint.

6. On April 29, 1996, the IACHR requested that the State submit its observations on the petitioner's response. On November 16, 1998, the IACHR sent a communication to the petitioners asking them to report as to whether the grounds that gave rise to the petition still existed and whether they were still interested in pursuing the case. On November 15, 1999, the

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petitioners expressed their interest in continuing to process the petition and provided additional information.

7. In notes dated October 24, 2000, March 23 and August 3, 2001, the petitioners provided updated information concerning the petition. On December 20, 2001, the IACHR acknowledged receipt of the communications submitted by the petitioners. On March 7, 2002, the IACHR received a report containing the State's observations, which was forwarded to the petitioners on April 4, 2002. On January 10, 2003, the IACHR requested that the parties send updated information. On March 5, 2003, the State submitted updated information. On November 19, 2004, the IACHR requested that the petitioners submit updated information on the circumstances contained in the petition. On December 11, 2006, the petitioners forwarded the information requested.

8. On December 20, 2006, Ms. Amalia Mariátegui Succar informed the IACHR that from then on she would be represented by attorney Carolina Loayza Tamayo. In notes dated November 30 and December 11 and 20, 2006, January 20, February 9, and May 3, 2007, the representative of Ms. Mariátegui Succar and Mr. Carrillo submitted additional information. On May 11, 2007, the IACHR forwarded to the State the information submitted by the petitioners. On June 15, 2007, the State requested an extension to submit its response. On August 8, 2007, the State forwarded a report reiterating its position with respect to the petition, which was duly forwarded along with a request for the pertinent observations from the petitioners. On October 1, 2007, the petitioners submitted their response to the State's observations. On November 28, 2007, the IACHR forwarded the petitioners' observations to the State for its consideration. On January 10, 2008, Mr. Rodolfo Hugo Castro Valcárcel notified the Executive Secretariat that he was withdrawing his petition before the IACHR since in his view the grounds that had given rise to it no longer existed.

9. With a communication dated January 28, 2008 the State presented additional information. On February 6, 2008, the IACHR forwarded it to the petitioners. In the same opportunity, the IACHR forwarded to the State the additional information presented by the petitioners with communications dated June 19 and 22, 2007; October 18, 2007 and January 29, 2008.

10. With communications dated February 19, 2008 and March 12, 2008, the IACHR acknowledged receipt of the communications submitted by the petitioners on October 5 and 23, 2007; November 2, 2007 and February 7 and 15, 2008.

## III. POSITIONS OF THE PARTIES

### A. Position of the petitioners

11. The petitioners' report states that on December 29, 1992, pursuant to Supreme Resolution No. 453/RE, the alleged victims were dismissed from the Diplomatic Service of the Republic in an illegal, unwarranted, and arbitrary manner, together with 114 other diplomatic officials, without having been granted due legal guarantees. The petitioners assert that they lodged appeals for reconsideration before the Ministry of Foreign Affairs, to which they received no reply. They point out that under these circumstances, the State violated, to their detriment, the rights to a fair

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trial, protection of honor and dignity, equal protection before the law, and judicial protection, enshrined in Articles 8, 11, 24 and 25 of the American Convention, all in relation to the general obligation to respect and ensure set forth in Article 1(1) of that instrument.

12. In view of this situation, the petitioners claim to have brought amparo actions which were resolved in their favor but were disregarded by the Ministry of Foreign Affairs. The petitioners claim that the latter therefore had failed to duly comply with judicial decisions, which served to prolong the violation of their rights.

13. Moreover, the petitioners state that after experiencing these violations for nearly ten years, Law No. 27550 was published on November 7, 2001, restoring the democratic institutionalism of the Diplomatic Service and providing for the establishment of a Special Committee to review the dismissals.[FN3] They state that pursuant to the aforementioned law, the three alleged victims were reinstated to their posts at that time, but, in their judgment, there rights were not fully redressed.

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[FN3] The Special Commission was established by Ministerial Resolution No. 0888-RE of November 7, 2001, in compliance with the provisions of Law 27550.

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14. The specific circumstances in each of the three cases, as related by the petitioners, are summarized below:

15. Eduardo Carrillo Hernández: On February 2, 1993, he brought an amparo action before Civil Court 23 of Lima, requesting that his dismissal be reversed. On December 20, 1993, the first instance judge ruled in favor of the claimant, finding that his right to a defense had been violated and the action giving rise to the complaint contravened the Constitution. On August 15, 1994, the First Civil Chamber of the Superior Court of Lima upheld the ruling in the first instance. On August 15, 1994, the prosecutor responsible for the judicial matters of the Ministry of Foreign Affairs filed an appeal before the Supreme Court for the annulment of the judgment handed down in the second instance. The Supreme Court refused to review the verdict, leaving it final and enforceable.

16. On April 18, 1995, Civil Court 23 of Lima initiated procedures to carry out the ruling. According to the petitioner, from that date forward, the State's public prosecutor undertook different actions to prevent the ruling from being carried out, including the request for annulment and the lodging of appeals in matters previously adjudicated by the courts. The petitioner asserts that the ruling was never effectively carried out.

17. On December 29, 1995, by means of Ministerial Resolution No 0890/RE, the Ministry of Foreign Affairs again retired Mr. Carrillo on the grounds of "length of service in the rank of Minister." On March 4, 1996, the petitioner lodged a second amparo action before Specialized Civil Court 17 of Lima. The suit was declared without merit in the first instance and the respective appeal was found to have been filed outside of the prescribed period. The petitioner claims that the decision violated his rights, since when calculating his length of service the

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judges took into account the three years that the petitioner had been removed from the Diplomatic Service.

18. Nonetheless, he states that on December 9, 2001, pursuant to Ministerial Resolution No. 0978/RE, Mr. Carrillo was reinstated to active status in the Diplomatic Service. On January 3, 2002, Supreme Resolution No. 004-2002-RE was issued promoting Mr. Carrillo to the rank of Ambassador. On January 21, 2002, the petitioner was appointed Special and Plenipotentiary Ambassador of Peru in the Republic of Nicaragua. On April 8, 2002, the petitioner assumed his post. According to the petitioner, this appointment must be understood as a regular promotion to which the petitioner was entitled and not as a form of reparation, as the State contended.

19. Finally, the petitioner claims that on October 19, 2006, Mr. Carrillo finished his term as ambassador in Nicaragua and was transferred to Peru. On March 19, 2007, he was appointed Advisor to the General Directorate for Mexico, Central America, and the Caribbean of the Undersecretariat for American Affairs.

20. Amalia Mariátegui Succar: On the date of her dismissal, the petitioner held the rank of Minister in the Diplomatic Service and was assigned as Consul General in Rome, Italy. The petitioner states that she lodged an amparo action which was resolved in a July 13, 1993 judgment finding the complaint to be groundless. The petitioner states that she appealed the decision and that in a ruling on January 24, 1994, the First Civil Chamber of the Superior Court of Lima overturned the appealed ruling and declared the complaint to have merit.

21. The petitioner claims that, although the Supreme Court issued an order "to reinstate the actor to the duties she was performing prior to the infringement of her rights," on December 15, 1994, the petitioner was reinstated as the Ministry's Deputy Director of Treaties. The petitioner claims that the resolution appointing her to this post did not adhere to the amparo judgment. Because of this, the petitioner states that she filed a judicial appeal seeking compliance with the amparo decision. On January 6, 1995, the Judiciary required the respondent to comply with the provisions of the supreme tribunal "under the penalties prescribed by law" ["bajo apercibimiento"].

22. The petitioner alleges that on February 17, 1995, the Juridical Affairs Directorate of the Personnel Directorate requested the Promotions Department [Departamento de Escalafón] to reinstate the petitioner in the active diplomatic seniority roster, to be applied retroactively to December 29, 1992. She indicates that by means of Resolution No. 0300/RE of May 19, 1995, the petitioner was appointed to the Embassy of Peru in the Republic of Paraguay. The petitioner claims that during this mission she was subjected to workplace harassment by her immediate supervisor, who was one of the people involved in drafting the norms based on which 117 diplomats were dismissed in 1992. The petitioner asserts that her superior repeatedly gave her negative ratings in her performance evaluations which undercut her legitimate right to be promoted to a higher rank in the hierarchy.

23. The petitioner indicates that subsequently, on November 18, 2000, she brought an adversarial administrative action against the Ministry of Foreign Affairs in order to ensure that the time of service that the Ministry should calculate did not include the time during which she

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was arbitrarily terminated, as that could precipitate her retirement due to the age limit in that particular category. She also requested the reimbursement of back wages for the period she spent removed from her post as Peru's Consul in Rome. She claims that this action was declared inadmissible in February 2001.

24. Additionally, the petitioner contends that in contrast to other diplomatic officials whose rights were reinstated—including her co-petitioners—, in her case the State failed to comply strictly with Ministerial Resolution No. 0978/RE granting automatic special promotion to those who had been dismissed unconstitutionally. In effect, she notes that on November 10, 2003, she had requested that the Ministry of Foreign Affairs consider her within the scope of the Ministerial Resolution ordering the extraordinary promotion of officials. The petitioner reports that the Ministry then initiated a process for the promotion of the officials included in the resolution taking into account the performance evaluations from 2003. In that context, the petitioner indicates that on March 17, 2004, the Ministry notified her of the results of her evaluation and that on June 3, 2004, the petitioner reiterated her petition to the Ministry to grant her a promotion in accordance with the provisions of the Fifth Transitory Provision of the Diplomatic Service Law.[FN4] In this regard, she points out that by means of Vice-ministerial Resolution No. 9132 of July 19, 2004, the Ministry of Foreign Affairs declared her petition groundless arguing that the Ministry had discretional powers to grant promotions based on the needs of the service.

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[FN4] Law 27550.

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25. Finally, the petitioner mentions that she brought a new amparo action which was decided in her favor on December 7, 2005, and ordered the Ministry to issue a duly reasoned decision that would resolve the claimant's request. She indicates that this judgment was confirmed in a May 3, 2006 decision. She states that on September 8, 2006, the Ministry issued a decision denying her request for promotion. Based on these circumstances, the petitioner claims that she has been subject to discriminatory treatment relative to her colleagues and that she has not been compensated for her irregular dismissal.

B. Position of the State

26. The State requests that the petition be declared inadmissible in accordance with the provisions of Article 48(1) of the American Convention since, in its opinion, the grounds that gave rise to the petition no longer exist.

27. In support of this view, the State contends that Law No. 27550, issued on November 7, 2001, restored the affected rights of the petitioners and that ultimately reparations were made for the harm caused to the diplomatic officials who had been improperly dismissed. According to the State, in accordance with the provisions of the Joint Press Release signed by the Government of Peru and the IACHR on February 22, 2001, the Peruvian State recognized its responsibility and took corrective measures through the aforementioned laws. Pursuant to these laws, the State asserts, Mr. Carlos Carrillo Hernández, Mr. Rodolfo Hugo Castro Valcarcel, and Ms. Amalia

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Wahibe Mariátegui Succar were reinstated to active status in the Diplomatic Service of the Republic, restoring to them the affected rights and redressing the harm caused by the undue dismissal.

28. The State also claims that on December 27, 2001, in the Government Palace of Peru a public ceremony was held in apology to the members of the Diplomatic Service who were arbitrarily and unconstitutionally dismissed in 1992 and thereafter, as was the case of the petitioners.

29. The State points out that in the application of these laws, then-Minister Carrillo Hernández was promoted to the rank of Ambassador pursuant to Supreme Resolution No. 004/RE-2002 of January 3, 2002. Thus, after having been reinstated to the Diplomatic Service of the Republic, since January 1, 2002 Mr. Carrillo Hernández would have held the rank of Ambassador and enjoyed active status in keeping with the provisions of Law No. 28091. In the exercise of this position, pursuant to Supreme Resolution No. 021-2002/RE of January 21, 2002, the Ministry of Foreign Affairs appointed Ambassador Carrillo Ambassador Plenipotentiary of Peru in the Republic of Nicaragua. In virtue of this, and by means of Ministerial Resolution No. 032/RE-02 of April 1, 2002, the Ambassador was scheduled to assume his duties in the aforementioned mission on April 3, 2002.

30. Subsequently, according to the State, Supreme Resolution No. 375/RE-06 of October 19, 2006, ended Ambassador Carrillo's term in Nicaragua and Ministerial Resolution No. 1541/RE-06 of December 27, 2004, established January 19, as the date of termination of the mission and his transfer to the Ministry of Foreign Affairs [Cancillería]. The State reports that pursuant to Ministerial Resolution No. 0314/RE-07 of March 19, 2007, Ambassador Carrillo currently has been assigned as Advisor to the Directorate for Mexico, Central America and the Caribbean of the Undersecretariat of American Affairs, an appointment which took effect on the same date.

31. Based on these circumstances, the State contends that the petition for financial compensation lodged by the petitioner would be inadmissible because reparations have been made to him for the harm caused, which was carried out under democratic governments.

32. The State contends, with respect to Ms. Mariátegui Succar's contentions, that she has not been able to prove any act of discrimination or malice against her during the promotion processes described in her petition. The State argued that the evaluation ratings followed the normal guidelines established for that purpose pursuant to Ministerial Resolution No. 680-95-RE, Ministerial Resolution 469-96-RE, and Supreme Decree No 040-97-RE.

33. The State also observed that the ratings obtained by the petitioner in her annual evaluations for the years 1996, 1997, and 1998 were determined in accordance with the provisions of the Law of the Diplomatic Service of the Republic and the Regulations of the Diplomatic Service of the Republic, and no irregularity whatsoever was observed in their application. The State asserts that the petitioner had been included by the different evaluation committees in the respective merit charts as eligible for promotion to the rank of Ambassador. Nonetheless, taking into consideration her ranking in the merit-based system in those processes, it was determined that she was quite far from attaining one of the positions with hopes of being

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considered within the number of vacancies in the promotions chart corresponding to her category.

34. In this regard, the State explains that promotions of diplomatic officials were based not only on their evaluations, which are presented in a final Merits Chart, but in the case of promotions to ambassador, would also be decisions of the President of the Republic and the Minister of Foreign Affairs who are legally vested with the power to decide promotions. To date, therefore, although the petitioner has been found eligible to participate in promotion processes inasmuch as she meets the requirements set forth by the Law of the Diplomatic Service of the Republic and its Regulations, neither the Rating Committee [Comisión Calificadora] nor the current Personnel Committee [Comisión de Personal] has recommended her promotion to the rank of Ambassador in any of these processes. The State pointed out that in 2006, the petitioner ranked at 68 out of 78 officials deemed eligible.

35. The State concluded that its authorities have not engaged, nor are engaging in differential and/or discriminatory treatment of diplomatic officials in promotion processes, as the petitioner claimed.

## IV. ANALYSIS OF ADMISSIBILITY

### A. Competence ratione materiae, ratione personae, ratione temporis and ratione loci

36. The petitioners have standing under Article 44 of the American Convention to lodge complaints before the Commission. The petition indicates as alleged victims Eduardo Carlos Carrillo Hernández and Amalia Wahibe Mariátegui Succar, with respect to whom the Peruvian State has undertaken to respect and ensure the rights enshrined in the American Convention. The initial petition was also lodged on behalf of Rodolfo Castro Valcárcel. However, the Commission subsequently received no additional information with respect to this individual. On January 10, 2008, staff from the Commission's Executive Secretariat contacted Mr. Castro Valcárcel, who indicated that he was not interested in pursuing his international complaint since he had been reinstated in his position by means of a judicial decision. Based on these circumstances, the Commission shall not consider Rodolfo Hugo Castro Valcárcel an alleged victim. For its part, Peru has been a State party to the American Convention since July 28, 1978, the date on which it deposited its instrument of ratification. Therefore, the Commission has competence ratione personae to examine the petition.

37. Furthermore, the Commission has competence ratione loci to examine the petition inasmuch as it claims violations of rights protected in the American Convention that allegedly took place under the jurisdiction of the State. The Commission has competence ratione temporis inasmuch as the obligation to respect and ensure the rights protected in the American Convention was binding upon the State on the date that the events described in the petition allegedly occurred. Finally, the Commission has competence ratione materiae because the petition claims possible violations of human rights protected in the American Convention.

### B. Exhaustion of Domestic Remedies

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38. Article 46(1)(a) of the American Convention provides that in order for a complaint lodged before the Inter-American Commission in accordance with Article 44 to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The prior exhaustion of domestic remedies requirement is applied when the national system affords remedies that are adequate and effective to remedy the alleged violation. In this sense, Article 46(2) stipulates that this requirement shall not be applicable when: (a) the domestic legislation of the State does not afford due process of law for the protection of the right in question; (b) the party alleging the violation has been denied access to the remedies under domestic law; and (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

39. Under the principles of international law, as reflected in the case law established by the Commission and the Inter-American Court, in the first place the State concerned may waive invocation of this rule, either expressly or tacitly.[FN5] Second, the exception asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings before the Commission; if not the presumption will be that the interested State has waived its right to enter that objection.[FN6] Third, in keeping with the principle of the burden of proof, the State claiming non-exhaustion must indicate which domestic remedies should be exhausted and provide evidence of their effectiveness.[FN7]

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[FN5] IACHR, Report Nº 69/05, Petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, para. 42; I/A Court H.R., Ximenes López Case. Preliminary Exceptions. Judgment of November 30, 2005. Series C No. 139, para. 5; I/A Court H.R., Moiwana Community Case. Judgment of June 15, 2005. Series C No. 124, para. 49; and; I/A Court H.R., Case of the Serrano Cruz Sisters. Preliminary Exceptions. Judgment of November 23, 2004. Series C No. 118, para. 135.

[FN6] I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, par. 53; Castillo Petruzzi et al. Case. Preliminary Ojbections. Judgment of September 4, 1998. Series C No. 41, par. 56, and Loayza Tamayo Case. Preliminary Objections. Judgment of January 31,1996. Series C No. 25, par. 40. The Commission and the Court have written that "the first stages of the proceeding" must be understood to mean "the admissibility stage of the proceeding before the Commission, in other words, before any consideration of the merits. […]." See, for example, IACHR, Report Nº 71/05, Petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, citing I/A Court H.R., Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, par. 81.

[FN7] IACHR, Report Nº 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral et al (Persons Living with HIV/AIDS), Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., Mayagna (Sumo) Awas Tingni Community Case. Preliminary Exceptions. Judgment of February 1, 2000. Series C No. 66, para. 53; I/A Court H.R., Durand and Ugarte Case. Preliminary Exceptions. Judgment of May 28, 1999. Series C No. 50, para. 33; and Cantoral Benavides Case. Preliminary Exceptions. Judgment of September 3, 1998. Series C No. 40, para. 31.

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40. In the instant case, in order to establish the ideal remedy or remedies to legally contest the acts allegedly in violation of the Convention, it is first necessary to determine the object of the complaint lodged before this Commission. As a result, the Commission notes that the alleged victims in the case lodged their petition before the IACHR on December 17, 1993, claiming that they had been arbitrarily dismissed from their posts on December 29, 1992. On that occasion, the petitioners claim to have brought amparo actions denouncing the violation of their constitutional rights to a defense, honor, and job stability. They claim that on the date their complaint was lodged, over nine months after they had filed suit, the courts still had not handed down a ruling, which in their opinion constituted an unwarranted delay in their case.

41. The State, in its initial response to the petition, maintained that domestic remedies had not been exhausted. It claimed that the amparo proceedings initiated by the petitioners were still pending.[FN8]

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[FN8] With respect to each of the petitioners, the State indicated as pending:
Eduardo Carrillo Hernández: File No 0344-93 is in process. It is being processed before the First Civil Chamber of the Superior Court of Lima.
Amalia Mariátegui Succar, File No 218-93 is being processed before the First Civil Chamber of the Superior Court of Lima.
Rodolfo Castro Valcarcel's case is pending in the Third Civil Chamber of the Superior Court of Lima, with file No.185-AA-93.
Cfr. Government response to the Petition, signed May 4, 1994.

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42. From the documentation provided to the Commission by the parties, the Commission finds that the domestic courts eventually ruled on the amparo actions in favor of the plaintiffs. On August 15, 1994, the First Civil Chamber of the Superior Court of Lima ordered that Eduardo Carlos Carrillo be reinstated to active diplomatic service at the rank of minister. Moreover, on August 25, 1994, the Constitutional and Social Law Chamber of the Supreme Court of Justice ruled that the amparo action brought by Amalia Wahibe Mariátegui Succar was founded and ordered the respondent to "to reinstate the actor to the duties she was performing prior to the infringement of her rights."

43. As a result, the complaint originally submitted to the Commission was ultimately resolved in the domestic venue in a ruling that favored the petitioners and ordered the restoration of their rights. Nonetheless, the petitioners submitted new allegations concerning their dissatisfaction with the implementation of the judicial decisions ordering their reinstatement.

44. For his part, petitioner Eduardo Carlos Carrillo states that despite being reinstated to his post, the Ministry of Foreign Affairs retired him again on different grounds than those offered in the first incident. The petitioner claims that in view of this situation, he initiated a legal amparo proceeding to contest the decision. Nonetheless, the petitioner himself acknowledges that after receiving a denial at the first instance, he lodged an appeal extemporaneously, which was declared without merit on those grounds. In other words, the petitioner acknowledges that he

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failed to comply with the procedural requirements set forth in Peruvian law and that his appeal was denied for that reason.

45. In view of this situation, the Commission reiterates that the petitioner must exhaust domestic remedies in accordance with the procedures set forth in domestic law. The Commission is unable to take the view that the petitioner has duly satisfied the prior exhaustion of domestic remedies requirement if they have been rejected for reasonable, and not arbitrary, procedural grounds such as filing the appropriate remedies outside of the prescribed time period.[FN9] As a result, the Commission determines that in the case of Mr. Eduardo Carlos Castillo, the instant petition does not satisfy the prior exhaustion of domestic remedies requirement set forth in Article 46(1)(a) of the Convention. Consequently, the Commission declares the petition inadmissible with respect to the allegations concerning petitioner Eduardo Carlos Castillo.

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[FN9] IACHR, Report Nº 90/03, Petition 0581/1999, Inadmissibility, Gustavo Trujillo González, Peru, October 22, 2003, Para. 32. IACHR, Report No 48/04, Petition 12.210, Inadmissibility, Felix Román Esparragoza González and Nerio Molina Peñaloza, Venezuela, October 13, 2004, Para. 56. In this regard, the Inter-American Court has stated:
For reasons of juridical security and for the proper and functional administration of justice and the effective protection of individual rights, States can and must establish grounds and criteria for the admissibility of domestic remedies of a judicial or any other nature. Hence, while those domestic remedies must be available to the interested party and resolve the matter in question effectively and with legal basis, as well as eventually provide adequate reparation, it should not be construed that domestic organs and tribunals must always and in every case rule on the merits of the matter brought before them, without regard for the verification of the formal grounds of admissibility and the legal basis of the remedy being attempted.
Cfr. I/A Court H.R., Case of Dismissed Congressional Employees (Aguado Alfaro et al). Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158. Para. 126.

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46. Petitioner Amalia Wahibe Mariátegui Succar, for her part, claims that after having been reinstated to active diplomatic service, she was not reassigned to the same post she had previously held. The petitioner claims that on December 29, 1994, she asked the Court to demand that the Ministry of Foreign Affairs comply with the amparo judgment. According to the petitioner, on January 6, 1995, Civil Court 23 of Lima decided "to require the respondent to comply with the order from the Supreme Tribunal, under the penalties prescribed by law."[FN10]

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[FN10] Cfr. Civil Court 23 of Lima, Ruling of January 6, 1995. Annex 10 to the communication submitted by the petitioner on January 24, 2007. Available in the case file before the IACHR.

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47. That being the case, the Commission reiterates its doctrine, as set forth in previous cases, in which it has decided that when a decision in the domestic venue is binding no appeal is

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required to that end.[FN11] In the instant case, the petitioner argues non-compliance with a judgment handed down in an amparo proceeding ordering her reinstatement to her post. The petitioner claims that because the State has the obligation to fully comply with and apply the decisions handed down by its domestic courts, no subsequent legal remedy should be required to ensure that it abides by that obligation. The State abstained from presenting its observations on the matter.

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[FN11] IACHR, Report No 82/05, Petition 12.169 (Inadmissibility), Efraín Echeverría et al, para. 27 on. IACHR, Report N° 89/99 (Admissibility), Case 12.034, Carlos Torres Benvenuto et al., Peru, paras. 22 y 23; IACHR, Report N° 75/99 (Admissibility), Case 11.800, Cabrejos Bernuy, Peru, para. 22.

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48. Consequently, leaving aside the issue of characterization for examination by the IACHR in the relevant section, the Commission takes the view, with respect to the initial complaint concerning the removal of Ms. Mariátegui from active diplomatic service, that the petitioner exhausted the domestic venue by bringing the amparo action, which was decided at the highest instance by the Constitutional and Social Law Chamber of the Supreme Court of Justice in an August 25, 1994 ruling. In light of the foregoing, the Commission deems that the requirement set forth in Article 46(1)(a) of the American Convention has been met.

49. In addition, concerning the alleged failure to comply with the January 6, 1995 decision, it should be noted that the petitioner claims as violations of her rights a series of discriminatory acts allegedly perpetrated against her and that she was kept from promotion in the diplomatic seniority roster [escalafón diplomático], all of which was derived from her suspension from her post. Specifically, the petitioner claims that she was improperly rated in her performance evaluations while on mission in Paraguay. Second, she claims that in her case the State failed to comply strictly with Ministerial Resolution No. 0978/RE ordering the automatic special promotion of those who had been unconstitutionally dismissed.

50. In this regard, the Commission notes that, with respect to the first allegation, the petitioner provided no proof of having initiated at the time any type of administrative or judicial complaint against the alleged workplace harassment. Neither did the petitioner submit evidence of this harassment to the IACHR to substantiate her allegations.

51. With respect to the petitioner’s second allegation, the Commission finds that on November 10, 2003, the petitioner requested the Ministry of Foreign Affairs to consider her within the scope of the Fifth Transitory Provision of the Law of Diplomatic Service, claiming she had been discriminated against by not having received a special promotion. She also claimed that since the date she was dismissed until “the reinstatement of the institutionalism of the Diplomatic Service” she was evaluated by the authors of the dismissal. According to the information provided by the parties, the petitioner was part of a group of officials evaluated by a Committee to determine possible promotions. The petitioner was not deemed eligible for promotion in that process, nor in the regular promotion process in 2004. The relevant information shows that the petitioner subsequently brought an amparo action to obtain a duly

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grounded decision in her request for promotion. This action was declared founded and the Ministry of Foreign Affairs was ordered to comply with the petitioner's request, that is, to rule on her petition through a duly grounded decision. On January 31, 2005, by means of Ministerial Resolution No. 0653-RE-2006, the Ministry declared the petitioner's request groundless. The Resolution declared that any promotion in the ranks is carried out based on a prior evaluation of the eligible diplomatic official and always in compliance with the requirements set forth by the evaluations.

52. The Commission observes that the petitioner submitted no evidence that would indicate to the Commission that she initiated any judicial proceeding arguing her dissatisfaction with this administrative decision. Therefore, the Commission takes the view that the petitioner has consented to the decision and has not given the State a domestic opportunity to resolve the situation allegedly in violation of her rights. Along these lines, it does not fall to the Commission to evaluate in the characterization phase the two aforementioned aspects, with respect to which the IACHR concludes that exhaustion of domestic remedies did not occur.

C. Time period for submission

53. Article 46(1) of the Convention provides that in order for a petition to be admitted it must be submitted within the stipulated period, that is, within a period of six months from the date on which the party alleging a violation of his rights was notified of a final judgment at the domestic level. The six month rule guarantees legal certainty and stability once a decision has been adopted.

54. In the instant case, the subject of the complaint refers to the alleged failure to comply with judicial decisions. In this regard, the Commission confirms its doctrine, according to which:

(…) non-compliance with an unappealable judgment constitutes a continued violation by States that persists as a permanent infraction of Article 25 of the Convention, which establishes the right to effective judicial protection. Therefore, in such cases, the requirement concerning the period for submission of petitions stipulated in Article 46(1)(b) of the American Convention is not effective.[FN12]

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[FN12] IACHR, Annual Report 1998, Report N° 75/99 – Cesar Cabrejos Bernuy, Case 11.800 (Peru), para. 22.

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55. In light of the foregoing, the requirement concerning the period of time allowed for lodging petitions set forth in Article 46(1)(b) of the American Convention is not applicable in the instant case, in virtue of the particular circumstances of the petition, which include the alleged ongoing non-compliance with legal judgments and the fact that the State abstained from submitting arguments on this matter. In this regard the Commission takes the view that the petition under study was lodged within a reasonable period in the terms of Article 32 of its Rules of Procedure.

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D. Duplication of proceedings

56. There is nothing in the case file to suggest that the subject of the petition is pending in any other international proceeding or that it has been previously decided by the Inter-American Commission. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) have been met.

E. Characterization of the alleged facts

57. It is not up to the Commission at this stage of the proceedings to decide whether or not there has been an actual violation of the American Convention. For the purposes of admissibility, the IACHR must decide whether the facts described would tend to characterize a violation as stipulated in Article 47(b) of the American Convention and whether the petition is "manifestly groundless" or "obviously out of order," according to subparagraph (c) of that article.

58. The criterion for evaluating these points of law is different than that required to pronounce on the merits of a petition. The IACHR must conduct a prima facie assessment to examine whether the complaint entails an apparent or potential violation of a right protected by the Convention and not to establish the existence of a violation. This examination is a summary analysis that does not imply a prejudgment or preliminary opinion on the merits of the matter in question. The Commission's Rules of Procedure, by setting two clearly demarcated phases for admissibility and for merits, reflects the distinction between the evaluation that the Commission must conduct to declare a petition admissible and the assessment necessary to establish a human rights violation.

59. The petitioner claims that her rights to a fair trial, protection of honor and dignity, equal protection under the law, and judicial protection allegedly were violated through her arbitrary dismissal from active diplomatic service. According to the petitioner, the Ministry has refused to redress her rights in the same way it has redressed those of colleagues who faced similar circumstances, thus depriving her of advancement in her diplomatic career.

60. The State contends that the circumstances described by the petitioner concerning her arbitrary dismissal from active diplomatic service were corrected in decisions handed down in domestic courts and subsequently reaffirmed by Law No. 27550, which was enacted to make reparations for the harm caused to the diplomats who were improperly terminated. The State maintains that there is no objective basis to consider that any act of discrimination has been committed against the petitioner in the promotion processes in which she has participated and that she has had access to judicial forums to contest administrative decisions, where her initiatives have been rejected as no indications of irregularities have been detected in those decisions. Based on these arguments, the State concludes that the petition does not characterize violations protected by the American Convention.

61. First, according to the information provided by the parties, the Commission takes the view that following the decision of the Supreme Court of Justice which ordered "the reinstatement of the actor to the duties she was performing prior to the infringement of her right," The Ministry of Foreign Affairs, in a December 15, 1994 Ministerial Resolution, ordered as follows: "[a]ppoint the Minister in the Diplomatic Service of the Republic, Ms. Amalia

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Mariátegui Succar, Deputy Director of Treaties."[FN13] Likewise, on February 17, 1995, The Personnel Directorate of the Ministry of Foreign Affairs notified the Promotions Department [Departamento de Escalafón Diplomático] that

In compliance with the Supreme Final Judgment [Ejecutoria Suprema] declaring the amparo action brought by Minister Amalia Mariátegui Succar with merit, and pursuant to Report (JUR) No 142 of the Directorate General of Legal Affairs, we would be grateful if that Department would register the aforementioned official in the diplomatic seniority roster, with active status, retroactive to December 29, 1992.[FN14]

Additionally, the Commission takes note of the Ministerial Resolution issued on May 19, 1995, which resolved "[t]o appoint the Minister in the Diplomatic Service of the Republic, Ms. Amalia Mariátegui Succar to the Embassy of Peru in the Republic of Paraguay."[FN15]

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[FN13] Ministry of Foreign Affairs. Ministerial Resolution issued in Lima on December 15 1994. Annex 7 to the Communication submitted by the petitioner on January 24, 2007. Available in the case file before the IACHR.
[FN14] Ministry of Foreign Affairs. Memorandum (PER) No. 237, signed by the Directorate of Personnel in Lima on February 17, 1995. Annex 15 to the Communication submitted by the petitioner on January 24, 2007. Available in the case file before the IACHR.
[FN15] Ministry of Foreign Affairs. Ministerial Resolution issued en Lima el 19 de mayo de 1995. Annex 16 to the Communication submitted by the petitioner on January 24, 2007. Available in the case file before the IACHR.

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62. Based on the foregoing administrative proceedings, the Commission takes the view that the complaint originally lodged by the petitioner concerning her removal from the active Diplomatic Service in Peru was resolved through measures designed to comply with the decision of the Supreme Court of Justice in the amparo action brought by the petitioner parallel to the international petition. While the petitioner contends that the judicial decision should have been carried out by providing for her appointment as Consul of Peru in Rome, the Commission does not share that argument inasmuch as the judicial verdict ordered the inapplicability of Supreme Resolution No 453-RE of 1992 and the consequent reinstatement of the petitioner to the active Diplomatic Service. These points of law were effectively carried out.

63. In view of this situation and the State's subsequent approval of Law No 27.550 for the review of the improper dismissal of officials of the Diplomatic Service in order to make adequate reparations to them, the Commission finds that compliance with the legal decision and the approval and application of the aforementioned laws substantially changed the situation denounced in the international venue. As a result, the IACHR believes that the original matter submitted for the consideration of the Commission does not at this time tend to characterize a possible violation of the rights protected by the American Convention.

64. In view of the foregoing, the Commission concludes that the instant petition does not characterize alleged violations of the rights protected by the Convention inasmuch as the matter

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originally submitted to the Commission was previously resolved by the relevant domestic courts and entities.

## V. CONCLUSIONS

65. The Commission has established, on the one hand, that the instant petition does not satisfy the requirement set forth in Articles 46(1)(a) of the American Convention. Furthermore, the Commission takes the view that the petition is inadmissible in accordance with the requirements set forth in Article 47(b) of the American Convention, as it does not describe facts that constitute any violation whatsoever of the rights protected by that Convention.

66. Based on the foregoing arguments of fact and law

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant petition inadmissible.
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.

Done and signed in the city of Washington, D.C., on the 24th day of the month of July 2008. (Signed: Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez and Víctor E. Abramovich, members of the Commission.