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Decided by:	Chairman: Paolo Carozza; First Vice-Chairwoman: Luz Patricia Mejia Guerrero; Second Vice-Chairman: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich.
Dated:	24 July 2008
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I. SUMMARY

1. On March 8, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received a petition lodged by Gloria Nila Amabelia Moreno Cueva and another 14 former employees of the Ministry of the Economy and Finance (MEF) (hereinafter "the petitioners" or "the alleged victims') against the Republic of Peru (hereinafter "Peru," the "Peruvian State" or the "State"). The petition claimed that the 15 alleged victims had been dismissed through a reduction-in-force alleged to be based on a law that was contrary to the Convention. It also claimed that the alleged victims had been denied the opportunity to exercise their right to defend themselves against the dismissal decision.

2. The petitioners are alleging that the State of Peru violated the rights to a fair trial and to juridical protection, upheld in Articles 8 and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), and in so doing violated the general obligations to respect and ensure the Convention-protected rights, as established in Article 1(1) of the Convention, and the obligation to adopt domestic legislative measures, established in Article 2 of that instrument. As for the admissibility requirements, the petitioners claim to have exhausted the remedies under domestic law, but point out that they were not afforded judicial protection in a number of venues to which they turned. The petitioners further point out that the State purportedly acknowledged its responsibility for the violations alleged when it enacted Law No. 27803, which ordered a review of the collective dismissals effected in the State-owned enterprises that were being opened up to private capital. The petitioners assert that despite the State's acknowledgement of responsibility, the benefits ordered under the law do not meet the criteria established by international case law to qualify as full reparations.

3. The State, for its part, is asserting that the petitioners allegedly had access to the mechanisms afforded under the laws in force in Peru. The State's contention is that the petitioners did not use the available remedies in a timely manner, which was a lack of diligence on the part of each complainant, but not the State. The State is therefore asking the Commission to declare the petition inadmissible, pursuant to Article 47(b) of the American Convention and in keeping with Article 31(1) of the Commission's Rules of Procedure.

4. Without prejudging the merits of the petition, the IACHR concludes in this report that because it meets the requirements set forth in Article 46 of the American Convention, the petition is admissible with regard to Gloria Nila Amabelia Moreno Cueva, Eliana Zavala Urbiola, Nidia Luisa Blanco Castro, Fortunato Crispín Crispín, Hernán Suárez Aparcana, Fanny Rosa Pinto Loaces, Rafael Fritz Poma Guerra, Eduardo Colán Vargas, Marissa Paulina Huamán Valle, Walter Neyra Huamanchumo, Jaime Díaz Idrogo, Segundo León Barturén, Luís A. Del Castillo Florián, Julia Flores Hilario, and Lucio Chávez Quiñones. The Inter-American Commission therefore decides to notify the parties and proceed to the analysis of the merits of the alleged violations of the rights to a fair trial (Article 8) and to judicial protection (Article 25), recognized in the American Convention, in relation to the general obligation to respect and ensure the Convention protected rights, established in Article 1 thereof, and the duty to adopt domestic legislative measures, established in Article 2. The IACHR also decides to order the publication of the present report and its inclusion in the Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On May 8, 2002, the Commission received a petition lodged by Gloria Nila Amabelia Moreno Cueva and another 14 former employees of the Ministry of the Economy and Finance (MEF). On August 13, 2002, January 9, 2004 and October 26, 2004, the petitioners supplied additional information relevant to their petition. The IACHR forwarded the petition to the State on April 22, 2005, and gave it two months to present whatever observations it deemed pertinent.

6. On August 24, 2005, the State asked the IACHR to grant it an extension on the time period for presenting its observations. On September 1, 2005, the Commission gave the State a one-month extension for submission of its observations. On October 4, 2005, the State presented its position on the complaint that the petitioners had lodged. On December 29, 2005, the petitioners presented their observations on the State's position, which the IACHR forwarded to the State on February 6, 2006. On February 14 and August 15, 2006, the petitioners filed additional observations which were then forwarded to the State by notes of March 23 and September 5, 2006.

7. On April 10, 2007 the petitioners asked the IACHR to adopt a decision on the petition's admissibility, pursuant to Article 37 of the Commission's Rules of Procedure. On May 2, 2007, the Commission informed the petitioners that it was taking note of the information supplied, which would be entered into the case record for the corresponding purposes.

8. By a communication received at the Commission on October 19, 2007, the petitioners expressed their willingness to arrive at a friendly settlement with the State on the matter at issue

in their petition. On January 14, 2008, the Commission asked the State to provide whatever observations it deemed pertinent within one month's time. On February 15, 2008 the State requested an extension to present its observations. On the February 20, 2008 the IACHR granted an extension of the allowed period as requested by the State.

9. With a note dated January 15, 2008 the IACHR forwarded to the State the communication from the petitioners received by the Executive Secretary on November 30, 2007.

10. Through communication dated January 11, 2008 the petitioners requested that the IACHR grant them a hearing during the 131° ordinary session. On February 20, 2008 the IACHR informed the petitioners that due to the high number of requests, it would not be able to grant the requested hearing.

11. On March 3, 2008 the State presented its observations, which the IACHR then forwarded to the petitioners through communication dated March 11, 2008. On May 12, 2008 the petitioners supplied additional information which was forwarded to the State on May 15, 2008.

III. POSITIONS OF THE PARTIES

A. The petitioners

12. The petitioners claim to have been employees of the Ministry of the Economy and Finance who were dismissed without the guarantees of legal due process, during the reorganization of government institutions in the 1990s. In the petition they allege that in the wake of the auto-coup of former president Alberto Fujimori, various abuses were committed against government employees, such as the decommissioning of the National Civil Service Tribunal (which was the administrative venue to which state servants could turn) and of the National Public Administration Institute, and the take-over of Office of the Comptroller General of the Republic.

13. The petitioners contend that they were initially under the labor system of Legislative Decree No. 275, which Article 276 provides that "no public employee shall be dismissed or removed except for the causes that the law stipulates and in accordance with the established procedure". The petitioners allege that despite that provision, in December 1991 a governmental reorganization was instituted by Decree-Law No. 26093; pursuant to that Decree-Law, Ministerial Resolution No. 123-97-EF of July 3, 1997, approved an evaluation system whereby staff of the Ministry of the Economy and Finance who did not pass the exam could be declared redundant staffing. The petitioners allege that they underwent numerous evaluations between 1991 and 1997, when it was decided that they should be entered into a training program. The petitioners allege that they participated in the program, underwent academic evaluation, and took a test at the end of the course which, the petitioners contend, they passed.

14. According to the petitioners' allegations, subsequent to this process, Vice Ministerial Resolution 037-97-EF/13, dated December 22, 1997, ordered that the evaluation of the Ministry's staff was to include an academic and psychological evaluation. The petitioners allege that in their case, this resolution was applied retroactively, since they had already completed their

evaluation process. The petitioners claim that their technical psychological tests were administered on December 26, 1997, and that they were not informed of the results.

15. The petitioners also allege that in the days that followed, they received telephone calls from Ministry authorities to pressure them into tendering letters of resignation. They claim that they reported these incidents to the Minister of Economy and Finance and to the Ombudsman's Office.

16. The petitioners allege further that on December 31, 1997, by circular 065-97-EF/43.40, they were told that they had not passed their academic and psychological evaluations. The petitioners allege that these grades were tampered with and that the final grade was arrived at by assigning double weight to the psychological evaluation, a fact of which the petitioners were unaware.

17. With that background information, the petitioners contend that by Ministerial Resolution 234-97-EF/10, dated December 31, 1997, they were dismissed on the grounds that they were redundant staffing, which they were notified of on January 8, 1998. The termination had allegedly taken effect on January 2, 1998, prior to the date on which the petitioners were notified of the decision. They indicate further that on January 7, 1998, the petitioners were barred from entering their workplace, leading them to file a complaint with the Office of the Police Commissioner.

18. On March 23, 1998, the petitioners filed an action seeking amparo relief, requesting that they be immediately reinstated in their jobs; they argued that due process of law had not been observed in their dismissal. The petitioners argue that while the First Transitory Tribunal Specializing in Public Law declared the objection unfounded, citing failure to exhaust domestic remedies, it also declared the complaint itself unfounded. The petitioners contend that they then filed an appeal with the Transitory Tribunal Chamber Specializing in Public Law, which upheld the lower court's decision. They then filed a extraordinary appeal with the Constitutional Court which, on January 29, 2001, declared that the complaint had merit in the case of Mirtha Jesús Ruiz Domínguez, as her contract had been suspended due to job disability. However, the Constitutional Court declared that the action was unfounded with respect to the other plaintiffs, since the case ought not to have been pursued by means of an action seeking amparo relief as a proceeding of that nature does not involve an evidentiary phase. The Court also ruled that none of the petitioners' constitutional rights had been violated.

19. The petitioners allege further that on October 1, 2001, they filed an adversarial administrative action and that on October 5, 2001; the Labor Chamber of the Lima Superior Court ruled that the complaint was inadmissible because it was not filed within the legal time period. The petitioners allege that this decision closed off any possibility of their obtaining judicial remedy through the domestic remedies. The petitioners state further that they were notified of this ruling on January 3, 2002. To be in compliance with the Convention's requirements, the petitioners lodged their international complaint within two months of the date on which they were notified of that decision.

20. The petitioners argue that by virtue of the facts described, the Peruvian State violated their right to due process, particularly their right to defend themselves, and their right to judicial protection. They also contend that by so doing, the State violated its duty to respect and ensure the Convention protected rights and its duty to adopt domestic legislative measures.

21. In subsequent communications, the petitioners indicated that the Peruvian State had acknowledged the arbitrary nature of Decree Law No. 26093, which had led to their dismissal. The acknowledgment came in the form of enactment of Law No. 27487, which repealed the decree law and held that the dismissals of public employees affected on the basis of that decree law had been irregular. The petitioners contend that despite this acknowledgment, the mechanisms for redressing the rights of the employees that were violated as a consequence of the application of unconstitutional laws, did not satisfy the standards of what constitutes full reparation, as determined by the Inter-American Court of Human Rights in similar cases, such as the Case of Baena Ricardo et al.

22. The petitioners also observed that Law No 27803, which the respondent State claims corrected the irregularities committed, was enacted four months after the petitioners filed their case with the IACHR. The petitioners contend that the measures adopted pursuant to that law and the possible administrative remedies mentioned by the State, were not available at the time the violations occurred and that those violations required an effective judicial remedy. Lastly, they point out that these were not remedies they had to exhaust.

23. Regarding the current situation of the alleged victims, the petitioners note that Lucio Chávez Quiñones and Segundo León Barturén were added to the National List of Irregularly Dismissed Employees and that they requested to be reinstated to their former positions in the Ministry of Economy and Finance under Law No. 27803. Their request has remained unattended to despite the fact that three years have passed since the list including their names was published. Apropos of these circumstances, they indicate that they filed an adversarial administrative action with the goal of achieving reinstatement, as well as precautionary measures requesting provisional reinstatement pending the resolution of the case. They add that they have not received a response from the State despite the fact that the allowed time period has expired.

24. Regarding Mr. Eduardo Bernardo Colán Vargas, they indicate that he has been reinstated in the aforementioned Ministry of Economy and Finance, and that questions pertaining to the regularization of the procedure for reinstatement are exclusively the responsibility of the State, and not of the petitioner.

25. As far as the twelve alleged victims that were not registered on the National List of Wrongfully Dismissed Employees, the petitioners argue that the State did not treat them equally in relation to the benefits provided for by Law No. 27803. In fact, they indicate that Mr. Lucio Chávez Quiñones and Segundo León Barturén, representatives of the alleged victims, were dismissed by the same ministerial resolution that resulted in the dismissal of the other petitioners, but were the only two whose names appeared on the List of Dismissed Employees. They add that the State offered no explanation regarding this situation, and that despite the fact that the petitioners submitted further requests for inclusion on the List of Dismissed Employees on July 11 and 18, 2007, they were not incorporated on the final list of beneficiaries published in March

2008. For this reason, they indicate that many of the petitioners lodged appeals for reconsideration in order to be included in the final list of beneficiaries.

26. To this effect, the petitioners argue that given that the State is responsible for the arbitrary dismissals carried out during the former administration of Fujimori, and that this has been recognized with the issuing of Law No. 27803, among others, the State should therefore fill the vacant positions in the Ministry of Economy and Finance with the victims of said wrongful dismissals, such as the alleged victims in this case.

B. The State

27. The State argues that Law No. 27478, published June 23, 2001, repealed Decree Law No. 26093 and the other legal provisions that authorized the collective dismissals on the pretext of the reorganizations. It also asserts that under the law, commissions were to be formed to review the collective dismissals in the public sector, and to then prepare a report on the employees irregularly dismissed.

28. The State points out that Law No. 27803 was published on July 28, 2002. Through this law, the recommendations of the commissions created under laws 25452 and 27586 were implemented. This law, the State explains, created a special benefits program that irregularly dismissed employees could apply for. Such employees could choose one of the following alternatives: i) job reinstatement or relocation; ii) early retirement; ii) financial compensation and iv) job training and job re-conversion.

29. According to the State, in compliance with the law, the Executive Commission and the Ministry of Labor and Employment Promotion proceeded to examine and publish lists of former employees who had been irregularly dismissed. According to the information supplied, lists were allegedly published in the Official Gazette ´El Peruano" on three occasions: the first list on December 22, 2002; the second list, December 27, 2003; and the third list, October 2, 2004. The State contends that the administrative avenue was exhausted with the third list; in other words, that neither the Ministry of Labor and Employment Promotion nor the Executive Commission would have the authority to decide the cases of former employees who were not included on any of those lists. According to the State, those persons who believed themselves to have been wronged by these measures had the power to bring legal actions to challenge the administrative action created by the Executive Commission and formalized by the Ministry of Labor and Employment Promotion. The State alleges that the challenge could be made either through a constitutional process of "amparo" or an adversarial administrative proceeding.

30. In this regard, the State argues that under Article 44 of the Code of Constitutional Procedure, the time period for lodging the application seeking amparo relief is 60 working days from the date of harm, provided the aggrieved party had knowledge of the act that inflicted the harm and would be able to file the complaint. Thus, as the Third List was published on October 2, 2004, all those dissatisfied with the process could have availed themselves of the remedy within the legal time period. As for the filing of an adversarial administrative action, the State alleges that the petitioners had the opportunity to exhaust this remedy within the time period allowed by the law regulating the adversarial-administrative process. According to the State,

under that law the time period that a complainant has to challenge a measure is three months from the date he learned or was notified of the measure being challenged.

31. Regarding this specific case, the State contends that the petitioners opted for the procedures established for all irregularly dismissed workers. Those procedures were conducted in complete observance of the principle of legality, equality before the law and the guarantees of due process. In one of the initial stages of the process before the IACHR, the State alleged that a review of the lists of dismissed employees who have gained some benefit makes it clear that of the employees reinstated at the Ministry of the Economy and Finance, five are petitioners in the current case: Lucio Chávez Quiñones, Segundo Gilberto León Barturén, César González Montero, Atiliano Hidalgo Meza and Eduardo Bernardo Colán Vargas.

32. Subsequently, the State specified the circumstances of the alleged victims of the case, indicating that Mr. Lucio Chávez Quiñones and other petitioners filed adversarial administrative action against the Ministry of Economy and Finance before the Labor Chamber of the Lima Superior Court and that said court declared their request inadmissible on the 5th of October 2001. As a result of the petitioners failure to file an appeal to challenge the decision the court allegedly declared the ruling final, resulting in the case's retirement.

33. The State notes that Mr. Lucio Chávez Quiñones and Segundo León Barturén were inscribed on the National List of Irregularly Dismissed Employees and that they chose the option of reinstatement. Regarding the situation of Mr. Eduardo Bernardo Colán Vargas, the State specifies that he was inscribed on the National List of Irregularly Dismissed Employees, and that despite not having opted for any of the benefits he had been reinstated in his post with the Ministry of Economy and Finance. It should be noted that in order to regularize his information, this employee should supply certified copies of the affidavits presented at the time, in which he indicates the benefit being chosen.

34. As far as the other employees of the Ministry of Economy and Finance, alleged victims in this case, the State points out that the available information indicates that they were allegedly not included on the National List of Irregularly Dismissed Employees, despite having presented a request for review. For its part, the State specifies that in the case of Luisa Blanco Castro, no request for the review of her dismissal was submitted.

35. The State alleges, moreover, that the petitioners lodged their complaint with the IACHR subsequent to publication of the law authorizing formation of the committees charged with reviewing the collective cases. In other words, according to the State the present petition was allegedly filed "at a time when each state agency was fully engaged in a review of the cases of the former employees who had been irregularly dismissed." As of the date on which the petition was filed, this remedy was available to the petitioners and was effective, as evidenced by the fact that some of the petitioners won a favorable decision, as previously noted.

36. As for the violation of Articles 8 and 25 of the Convention alleged by the petitioners, the State's contention is that the fact that the complainants' claims were dismissed or declared out of order does not mean that their rights were violated. The State argues that the petitioners had access to all the remedies that the domestic law afforded to them, as corroborated by the

allegation made in the petition and the documents appended thereto. The decision to dismiss the administrative law suit was due to the fact that it was filed too late, but not because the petitioners were denied access to that avenue to file such a suit. The State's contention is that actions must be filed in accordance with the law; every citizen, without exception, must comply with the legal requirements to file claims in domestic venues.

37. Based on these arguments of fact and of law, the State requests that the IACHR declare the petition inadmissible under Article 47(b) of the American Convention, pursuant to Article 31(1) of its Rules of Procedure.

IV. ANALYSIS ON ADMISSIBILITY

A. The Inter-American Commission's competence ratione materiae, ratione personae, ratione loci and ratione temporis

38. The petitioners have standing under Article 44 of the American Convention to lodge petitions with the Commission. The petition names as alleged victims Gloria Nila Amabelia Moreno Cueva, Eliana Zavala Urbiola, Nidia Luisa Blanco Castro, Fortunato Crispín Crispín, Hernán Suárez Aparcana, Fanny Rosa Pinto Loaces, Rafael Fritz Poma Guerra, Eduardo Colán Vargas, Marissa Paulina Huamán Valle, Walter Neyra Huamanchumo, Jaime Díaz Idrogo, Segundo León Barturén, Luís A. Del Castillo Florián, Julia Flores Hilario, and Lucio Chávez Quiñones, whose Convention-protected rights the Peruvian State undertook to respect and guarantee. Peru has been a State party to the American Convention since July 28, 1978, the date on which it deposited its instrument of ratification. The Commission therefore has competence ratione personae to examine the petition.

39. The Commission also has competence ratione loci, inasmuch as the petition alleges violations of rights protected by the American Convention, said to have occurred within the territory of a State party. The Commission has competence ratione temporis to examine the petition inasmuch as the obligation to respect and guarantee the rights protected by the Convention was already binding upon the State at the time the facts alleged in the petition were said to have occurred. Lastly, the Commission has competence ratione materiae, because the petition alleges possible violations of human rights protected by the American Convention.

B. Exhaustion of the remedies under domestic law

40. On the matter of compliance with the rule requiring prior exhaustion of the remedies under domestic law, provided for in Article 46(1)(a) of the American Convention, the petitioners allege that they initiated and exhausted a petition seeking amparo relief. They assert that the final decision on that petition was delivered by the Constitutional Court on January 29, 2001. They also claim to have filed an adversarial administrative action, which the Labor Chamber of Lima's Superior Court dismissed on October 5, 2001, on the grounds that it was lodged after the statutory deadline. The petitioners emphasize that the final decision on the petition seeking amparo relief was delivered three years and nine months after the suit was filed and held that this forum was not the appropriate avenue for the petitioners' claim. The petitioners argue that by that time they could not seek protection in the domestic courts. The State, for its part, alleges

that with enactment of Law No. 27803, all those persons who were not in agreement with the lists of employees irregularly dismissed and/or the benefits that the law established, could file a constitutional remedy seeking amparo relief or an adversarial administrative action.

41. The Commission should begin by pointing out that in order to determine whether the Convention rule requiring exhaustion of domestic remedies has been satisfied, the purpose of the petition must be determined and the remedies used to contest the situation denounced must be analyzed. The Commission observes that the purpose of the petition in the current case concerns the alleged arbitrary dismissal of the petitioners from the jobs they were performing in the Ministry of the Economy and Finance, alleging a failure to observe due process and the resulting lack of judicial protection.

42. Regarding the foregoing considerations, the Commission reiterates that to comply with the requirement established in Article 46(1)(a) of the Convention, if the alleged victim raised the question via any of the appropriate remedies under the domestic legal system and the State had an opportunity to remedy the matter in its courts, the purpose of the international provision has been served.[FN1] In the present case, the IACHR finds that the petitioners did avail themselves of the petition of amparo, which, under the Peruvian system, is a suit seeking protection of constitutional guarantees[FN2] to "restore the situation that existed prior to the violation or threat of violation of a constitutional right."[FN3] The Commission observes that in the present case, this was a valid remedy to attempt to correct the legal right violated in this case, concerning the alleged violation of the right to due process.

[FN1] IACHR, Report No. 70/04 (Admissibility), petition 667/01, Jesús Manuel Naranjo Cárdenas et al., Venezuela, October 15, 2004, par. 52; IACHR, Report No. 57/03 (Admissibility), petition 12.337, Marcela Andrea Valdés Díaz, Chile, October 10, 2003, par. 40.
[FN2] 1993 Constitution of Peru, Title V: Constitutional Guarantees, Art. 200.
[FN3] Law 23506 (Article 1).

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43. Also, the Commission observes that to reclaim their violated rights, the petitioners initially opted to file a petition seeking amparo relief, since their claims involved a violation of constitutional rights. When the Constitutional Court dismissed the petition, they attempted to file an adversarial administrative action, which the Constitutional Court had indicated was the proper remedy for protection of their rights. Despite making every effort to get their claim settled under the domestic legal system, their adversarial administrative action was dismissed on the grounds that it was filed after the legal deadline. The Commission, however, considers that based on the foregoing, it was reasonable for the petitioners to file the petition seeking amparo relief and then to file the adversarial administrative action since, based on the domestic case law on the subject, it was not clear which procedural avenue was the appropriate one to follow. It is important to note that this lack of clarity was affirmed by the Inter-American Court in its case law concerning a case of a similar nature that occurred during roughly the same time period as that of the present case in Peru. It was established that, considering the framework of practical and normative obstacles to the assurance of real access to justice, "the alleged victims had no certainty about the proceeding they should or could use to claim the rights they considered

violated, whether this was administrative, under administrative-law, or by an action for amparo."[FN4]

[FN4] I/A Court H.R., Case of the Dismissed Congressional Employees. (Aguado-Alfaro et al.). Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, par. 129.

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44. In this regard, it is the Commission's consideration that in the present case the petitioners exhausted the adequate and effective remedies available to reverse the denounced situation, thereby fulfilling the requirements set forth. In that case, the IACHR considers that under the Convention's requirements, the present conventional requirement is fulfilled with the exhaustion of the available means of action, without needing to exhaust other remedies that may be available afterwards.

45. The Commission therefore finds that in the present case, the petitioners exhausted the recourses that were available to them to remedy their situation and thus finds that the requirement set forth in Article 46(1) of the American Convention has been met.

C. Deadline for lodging a petition

46. Under Article 46(1)(b) of the Convention, a petition must be presented in a timely manner to be admitted, specifically within six months from the date on which the complaining party was notified of the final judgment from the domestic court. This six-month rule serves to guarantee legal certainty and stability once a decision has been adopted.

47. In the present case, the final judgment delivered at the domestic level was the decision handed down by the Labor Chamber of the Lima Superior Court on October 5, 2001 and reported to the petitioners on January 3, 2002. The Commission received the petition on March 8, 2002. The State did not enter an objection asserting a failure to comply with the six-month rule. Therefore, the Commission concludes that the petition was lodged within the period established in Article 46(1)(b) of the Convention.

D. Duplication of proceedings

48. Nothing in the case file suggests that the subject matter is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by the Commission or by another international organization. Therefore, the Commission considers that the requirements established in 46(1) (c) and 47(d) have been met.

E. Characterization of the facts alleged

49. As the Commission has held in previous cases, at this stage of the proceeding, it is not called upon to establish whether a violation of the American Convention actually occurred. For admissibility purposes, the Commission must determine only whether the petition states facts

that, if proven, would establish violations of rights protected by the American Convention, as Article 47(b) stipulates, or whether a petition is "manifestly groundless" or "obviously out of order", as Article 47(c) stipulates. The standard for assessing admissibility is different from the one used to decide the merits of a petition. For admissibility, the Commission need only make a prima facie analysis, which does not imply any prejudgment or preliminary opinion on the merits. By distinguishing two clearly demarcated phases –one for admissibility and the other for the merits- the Commission's own Rules of Procedure reflect the distinction between the assessment that the Commission must make for purposes of declaring a petition admissible, and the one required to establish whether a violation has in fact occurred.

50. The petitioners point out that the complaint states facts that, prima facie, would establish violations of their rights. They state that the law upon which the dismissals were based violated their right of defense, as it not only prevented them from gaining access to information that was important to understanding the evaluation process, but also established outright that the findings of the evaluation were not subject to appeal. They also point out that the law and other measures taken by the executive branch of government to co-opt the judicial branch created a climate of judicial insecurity and lack of judicial protection that prevented them from obtaining a judicial solution, despite having turned to the courts. The petitioners also indicate that the efforts the State made to redress some of the consequences of the violations in no way affect the Commission's jurisdiction to remain seized of the case.

51. The State argues that the situation that the petitioners originally denounced has changed considerably due to the fact that a number of the petitioners voluntarily accepted some of the benefits that the State offered as a way of redressing the ill-effects experienced by the dismissed employees. Therefore, by the State's line of reasoning, the point of the case that the Commission has under study would be moot.

52. The Commission considers pertinent to review this allegation, based on the information supplied by the parties, and the decisions of the Commission and the Court on the subject.

53. First, the Commission recalls the case law that the Inter-American Court introduced in the Case of the Gómez Paquiyauri Brothers vs. Peru where the Court wrote that:

The international responsibility of the State arises immediately when the internationally illegal act attributed to it is committed, although it can only be demanded once the State has had the opportunity to correct it by its own means. Possible subsequent reparation under domestic legal venue does not inhibit the Commission or the Court from hearing the case that has already begun under the American Convention. Therefore, the Court cannot accept the position of the State that it duly investigated, to find that the State has not violated the Convention.[FN5]

[FN5] I/A Court H.R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8 ,2004. Series C No. 110, par. 75.

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54. The violations of the American Convention alleged by the petitioners were said to have been committed in December 1997 and thereafter; the petition was lodged with the Commission on March 8, 2002, that is to say, subsequent to the enactment of laws that established commissions for the review of dismissals, and prior to the emergence of results stemming from the compensation awarded to five of the petitioners through the program established by law No. 27803. Therefore, the Commission may take cognizance of the matter to determine, by examining whether the State had the opportunity to redress the harm caused and what measures it adopted to that end, whether or not an international violation attributable to the State occurred and if so whether its international responsibility has been engaged.

55. Under Article 48(b) of the Convention, before proceeding to its analysis of a case's merits, the Commission must "ascertain whether the grounds for the petition or communication still exist." Thus, the legal question that must be answered is whether the petitioners' acceptance of the measures offered by the State altered the petition originally filed to an extent that the grounds for the petition no longer exist.

56. The original claim brought by the petitioners alleged the State's international responsibility for violation of the rights of due process, the principle of legality and judicial protection, by virtue of its wrongful dismissal of the 15 persons named as victims in the petition. Subsequently, a number of measures were adopted by the State to redress the damage caused to the irregularly dismissed former employees. The State's contention is that as a result of these measures and the voluntary acceptance of them by some of the petitioners in the case, those that consented to the measures taken by the State to find a domestic solution to the claims resulting from the collective dismissal. For their part, the petitioners allege that while a number of them entered their names on the National List of Irregularly Dismissed Former Government Employees and several had allegedly received the benefits that the law in question granted, those benefits were allegedly not commensurate with the degree of harm caused by the violation of their rights under the Convention.

57. Having established that the existence of a program of compensation does not preclude its examination of the case, the Commission will follow the case law established by the Inter-American Court of Human Rights in the Case of the Dismissed Congressional Employees v. Peru. In that decision, the Court held that "in … international proceedings, determination of the effects of some of the alleged victims having returned to work in the institution from which they had allegedly been dismissed, and also the validity of their claims for reinstatement, correspond to considerations that belong to the stages on merits and, possibly, reparations."[FN6] The Commission will defer its analysis of the measures adopted by the State until its examination of the merits of the case.

[FN6] I/A Court H.R., I/A Court H.R., Case of the Dismissed Congressional Employees, Judgment of November 24, 2006, (Preliminary Objections, Merits, Reparations and Costs), Judgment of November 24, 2006. Series C No. 158, par. 70.

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58. The Commission will analyze the claims made in relation to the alleged violation of the rights of due process and judicial protection during the merits stage. The IACHR considers it pertinent to highlight that failing to protect these rights could implicate State responsibility, therefore resulting in an obligation to adopt reparatory measures. To this end, the existence of a process to review appeals made by workers dismissed in the 90's wouldn't be, as alleged by the petitioners, irrelevant. It is relevant inasmuch as it would affect the current situation of the petitioners, and as a means of understanding what measures it might be necessary that the State adopt in order to repair the damage that some or all of the petitioners have suffered. As a result, the Commission will review the compensation program established subsequent to the dismissals and whether it would have comprised a fair and independent revision of the appeals lodged by the petitioners, and if it would have taken into account their individual circumstances. This analysis would occur at the merits stage, and would have to take into consideration that, according to the available information, the majority of the victims consider their complaints to be unresolved.

59. The Commission thus considers that the facts alleged by the petitioners concerning their dismissal from the jobs they performed in the Ministry of the Economy and Finance through use of an administrative procedure in which the guarantees of due process and any effective judicial recourse were lacking, could tend prima facie to establish a violation of Articles 8 and 25 of the American Convention, all in relation to the obligations established in Articles 1(1) and 2 of the American Convention.[FN7]

[FN7] Cf. I/A Court H.R., Case of the Dismissed Congressional Employees. (Aguado-Alfraro et al.). Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, par. 129 et seq. See also: I/A Court H.R., Case of Baena Ricardo et al. Judgment of February 2, 2001. Series C No. 72, pars.. 124 and 125; Case of Claude Reyes et al. Judgment of September 19, 2006. Series C No. 151, par. 118.

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60. In conclusion, the Commission finds that the facts denounced could tend to establish, prima facie, violations of rights protected by the Convention. It therefore concludes that the facts denounced, if proven, could establish violations of the rights protected by Articles 8 and 25 of the American Convention, both in relation to the general obligations to respect and ensure the Convention-protected rights and to adopt domestic legislative measures, undertaken in Articles 1(1) and 2 of that international instrument. It is therefore declaring the petition admissible with respect to those facts.

V. CONCLUSIONS

61. The Commission concludes that the case is admissible and that it is competent to examine the petition lodged by the petitioners concerning alleged violations of Articles 8 and 25 of the Convention, in relation to Articles 1(1) and 2 thereof, as it satisfies the requirements established in Articles 46 and 47 of the American Convention.

62. Based on the arguments of fact and of law expressed above and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the case under analysis admissible with respect to Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 thereof.
2. To notify the State and the petitioners of this decision.
3. To proceed to its examination of the merits of the petition.
4. To publish this decision and include it in the Annual Report to be presented to the OAS General Assembly.

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.