I. SUMMARY

1. On November 13, 1998, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition lodged by Armando Sosa Peceros, Edgardo Horna Ugaz, Nestor Manuel Castillo Salazar and Marco Antonio Saldaña García (hereinafter "the petitioners" or "the alleged victims") against the Republic of Peru (hereinafter "Peru," the "Peruvian State" or the "State") In their petition, the alleged victims assert that they were arbitrarily dismissed from their jobs in the Peruvian Social Security Institute (IPSS) in a downsizing of administrative personnel. The petitioners further assert that their right to defense was violated in the process. The petitioners contend that having attempted to obtain a judicial remedy to their dismissal, they were purportedly the victims of discrimination as a result of judicial decisions biased against them because they were leaders of organized labor.

2. The petitioners allege that the State violated their rights to equal protection (Article 24) and judicial protection (Article 25) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), in relation to the general obligation to respect and ensure the Convention-protected rights, established in Article 1(1) thereof. As for the admissibility requirements, the petitioners contend that they pursued and exhausted the remedies under domestic law until obtaining a ruling from the Constitutional Court, of which they were notified on August 10, 1998. They lodged their petition within the six-month period following notification of that decision. The petitioners argue that they also satisfied the other admissibility requirements established by the American Convention and the Commission's Rules of Procedure (hereinafter "the Rules").

3. The State, for its part, requests that the Commission declare the petition inadmissible under Articles 46(1)(b) and 47(a) of the American Convention on the grounds that it was lodged after the six-month time period established by those provisions. The State further argues that the facts alleged do not tend to establish violations of the rights protected by the Convention, inasmuch as, to begin with, the petitioners had allegedly consented to the administrative decisions by collecting the compensation package offered by the employer; and following this, the four petitioners had, of their own volition, accepted the solution offered by the State through the process that Law 27803 established.

4. After analyzing the information available and verifying compliance with the admissibility requirements set forth in Articles 46 and 47 of the American Convention, the Commission declared the case inadmissible as the facts stated by the petitioner do not tend to establish a violation of the American Convention or of the Pact of San Salvador. Therefore, based on Article 47(b) of the American Convention, the IACHR decides that the petition is inadmissible. It further decides to forward the report to the parties, to publish it, and to order its publication in its Annual Report.

II. PROCESSING WITH THE COMMISSION

5. On November 13, 1998, the Commission received a petition lodged by Armando Sosa Peceros, Edgardo Horna Ugaz, Néstor Manuel Castillo Salazar and Marco Antonio Saldaña García. On March 29, 1999, the Commission forwarded the petition to the State and invited it to submit its observations within the appropriate time period. On July 8, 1999, the State presented its initial position on the question of whether the petition was in compliance with the admissibility requirements. On July 19, 1999, the Commission forwarded the State's response to the petitioners. On January 12, 2000, the petitioners asked the Commission to convene a hearing to discuss the question of the petition's admissibility. On February 4, 2000, the Commission informed the petitioners that it would not, at that time, be able to grant the petitioners' hearing request. On March 15, 2000, the petitioners again requested a hearing. On September 14, 2000, the Commission advised the petitioners that due to the high number of requests, it would not be able to grant the requested hearing.

6. On October 30, 2000, the Commission forwarded to the State the additional information that the petitioners had supplied on March 15, 2000. It asked the State to present whatever observations it deemed appropriate. On December 14, 2000, the State requested an extension of the time period for presenting its response. By way of a communication dated March 20, 2001, the Commission granted the State a one-month extension. On June 4, 2001, the petitioners supplied additional information, which was then forwarded to the State on July 10 of that year. The petitioners supplied additional information on February 12 and 29, 2002.

7. On March 25, 2004, the IACHR asked the petitioners to provide up-to-date information on their petition. The petitioners responded to the Commission's communication on April 19 and September 9, 2004. On December 1, 2004, the Commission forwarded to the State the information received from the petitioners in notes received on April 19 and September 9. On March 23, 2005, the State presented its observations on the information that the petitioners supplied.

8. A working meeting was held at Commission headquarters on March 8, 2006, to discuss issues relating to the petition's admissibility. On March 22, 2006, the State presented additional observations. On August 23, 2007, the IACHR forwarded to the State the updated information supplied by the petitioners. On September 28, 2007, the State requested an extension on the time period for presenting its reply. On October 2, 2007, the Commission granted the State a one-month extension.

9. By communication dated the 2nd and 11th of October 2007 the State provided its response, which the IACHR forwarded to the petitioners on the 15th of November 2007.

III. THE PARTIES' POSITIONS

A. The petitioners

10. The petitioners contend that they served as employees of the Peruvian Social Security Institute (IPSS) until November 20, 1992, the date on which they allege they were arbitrarily and wrongfully dismissed as a consequence of an administrative downsizing process. The petitioners point out that on July 23, 1992, the Peruvian Government, by Decree Law No. 25636, authorized the Peruvian Social Security Institute to conduct a reduction-in-force among administrative personnel, but not among clerical or services personnel.

11. The petitioners state that in the initial phase of the downsizing process, a retirement program was developed that offered financial incentives. The alleged victims were not part of that process. They point out that for the second stage of the process, a selection and evaluation program was allegedly devised, that concluded with a test of the employees administered on November 15, 1992. The petitioners state that at no time did the Institute notify them that they were required to take the test and yet, they contend, they were dismissed from their positions along with some 20,000 other workers.

12. The petitioners are alleging that their rights were violated because the procedure used to dismiss them did not apply to employees in their positions. They contend that the downsizing was intended only for the IPSS' administrative staff,[FN1] whereas their positions were as clerical assistants, security technicians and maintenance workers. They allege further that although not informed –personally and in writing- that they had to undergo the evaluation process, they were dismissed because they did not appear for the evaluation.[FN2] Lastly, the petitioners allege that the dismissals were carried out without regard for the special protections that the petitioners enjoyed as leaders of organized labor, and that the judicial authorities did not take that factor into account when the court rulings were delivered.[FN3]

[FN1] Article 1 of Decree Law No. 25636, which read as follows: "The Peruvian Social Security Institute is hereby authorized to conduct a process of downsizing its administrative personnel."
[FN2] Directorial Resolution No.1865DG-HM-ERM-IPSS-92, which provided the following: "Once the qualification and selection tests have been conducted, authorization is hereby given to issue a resolution dismissing any listed staff members who did not show up for said tests."

[FN3] The petitioners allege that Mr. Armando Sosa Peceros was a union local officer serving as secretary at the "Eduardo Rebagliati Martins" National Hospital; Mr. Nestor Castillo Salazar was union local officer serving as organization secretary at the "Eduardo Rebagliati Martins" National Hospital; Mr. Edgardo Eustaquio Horna Ugaz was a union local officer serving as secretary for external affairs at the "Eduardo Rebagliati Martins" National Hospital, and Mr. Marco Antonio Saldaña was a union local officer serving as its secretary of control and discipline at the "Eduardo Rebagliati Martins" National Hospital. All were members of the Union Labor Central of the Peruvian Social Security Institute.

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13. When this situation developed, on February 3, 1993 the petitioners became part of a group of 24 plaintiffs who filed a petition seeking amparo relief. The petitioners make it clear that the purpose of the February 3, 1993 petition was to demand that their constitutional rights to liberty and job stability, violated by the IPSS' decision, be restored. The petitioners state that on June 4, 1993, Lima's 26th Civil Court granted the writ of amparo and ordered that all the petitioners be reinstated in their positions and that any salary and benefits owed be paid. According to the petitioners, the Institute appealed the decision, whereupon the Fifth Civil Chamber of the Lima Superior Court confirmed the lower court decision on November 15, 1993.

14. According to the petitioners' allegation, the IPSS then filed a cassation appeal and on October 4, 1994, the Constitutional and Social Chamber of the Supreme Court upheld the decision with regard to 17 of the plaintiffs, but did not confirm the decision in the case of the remaining seven workers, among whom were the four petitioners. According to the petitioners, the Court based its decision to deny those seven workers' claims on the fact that they had collected a special compensation package granted by the IPSS, which the petitioners describe as modest social benefits.

15. The petitioners note that on January 26, 1995, the four people affected by the ruling filed a special remedy with the Constitutional Court, which was decided on April 2, 1998. The parties were notified of the ruling on August 10, 1998. The petitioners allege that the Constitutional Court's ruling was that the petition filed by the four petitioners was unfounded and employed the same argument that the Constitutional and Social Chamber of the Supreme Court had made, which was that they had previously received social benefits.

16. The petitioners allege that the Constitutional Court's conduct was biased and unlawful. They assert that the Constitutional Court's decision to deny the petition filed by the four petitioners was because they were leaders of organized labor. According to the petitioners, at least one of the three people whose petition was granted had collected the very same benefits that the petitioners received, but none of those three was a leader of organized labor. Consequently, the petitioners allege, the benefits received was an excuse for the Constitutional Court to punish those who were exercising their right to unionize.

17. Regarding this, the petitioners expressly acknowledge that they did in fact collect that compensation. However, they argue that the IPSS made the payment ex gratia and voluntarily. They assert that payment of this special compensation was made after their rights had already been violated and at a time when their family circumstance was desperate, in a crisis caused by

their dismissal. The petitioners point out that a compensation given of the employer's own volition "cannot be assigned more weight than the right to life that was then in jeopardy as a result of the salaries withheld by the company."

18. According to the petitioners, subsequent to the rulings delivered by the domestic courts, the State unilaterally admitted that the dismissals of which the four petitioners were victim were wrongful. This acknowledgement was done by including the petitioners' names on the lists of former employees dismissed wrongfully, done pursuant to laws 27452, 27586 and 27803.

19. Summarizing, the petitioners allege that their wrongful dismissals and the decision by the Constitutional and Social Chamber of the Supreme Court to uphold those dismissals violated their right to equal protection and their right to judicial protection, protected by the American Convention. The petitioners contend that the State later admitted these violations by including the petitioners' names on the official lists of employees wrongfully dismissed in the 1990-2000 decade.

20. Finally, as to the admissibility requirements, the petitioners state that they pursued and exhausted the remedies under domestic law until the Constitutional Tribunal delivered its decision. Having been notified of that decision on August 10, 1998, the petitioners assert that they filed their petition within the six months following that decision, and complied with other requirements established in the American Convention and the Rules of Procedure.

B. The State

21. The State alleges that in 1992, the Peruvian Social Security Institute (now the ESSALUD) downsized its staff, pursuant to Decree Law No. 25636. Messrs. Armando Sosa Peceros, Edgardo Horna Ugaz, Néstor Manuel Castillo Salazar and Marco Antonio Saldaña García and another 20 former civil servants were dismissed in the downsizing process.

22. In 1993, the 24 dismissed employees filed a petition seeking amparo relief, petitioning the court to order them restored in their posts. The State contends that these same people also sought a precautionary measure asking for immediate reinstatement pending a decision on the merits. The domestic courts granted this precautionary measure and the Institute took steps to reinstate them until proceedings on the principal case concluded. The State observes that the petition of amparo was decided in favor of 17 of the plaintiffs; the other seven former employees filed a Special Petition with the Constitutional Court, which granted the petition in the case of only three of the plaintiffs, and dismissed it in the case of Armando Sosa Peceros, Edgardo Horna Ugaz, Néstor Manuel Castillo Salazar and Marco Antonio Saldaña García.

23. According to the State, the Tribunal arrived at this decision after establishing that these individuals had collected their benefits and thereby consented to the termination of the employment relationship. In effect, the State points out that the Tribunal held that:

By virtue of Article 56 of Law No. 26435, this Tribunal learned, through a report from the IPSS, that the petitioners […] collected their benefits, as evident from the certified documents attached to the brief that this Constitutional Court received on May eleven of the year nineteen hundred

ninety-eight, and specifically the release forms they signed; no evidence of receipt of benefits was shown in the case of the other petitioners.

In that regard, the State adds that, under Peruvian law, the collection of benefits implies consent to termination of the labor relationship. In that connection, the State indicates that Article 55 of Legislative Decree No. 728 (adopted on November 8, 1991) provides that:

The decision to terminate a labor relationship by waiver of both contracting parties must be set forth in writing or take the form of the collection of benefits due.

24. Thus, the State argued, when the final decision was delivered, the precautionary measure ended for the individuals in question and they were dismissed. According to the State, as long as the precautionary measure was in effect the former employees were paid their salaries. Furthermore, the State adds that although the petitioners allege before the IACHR that the Peruvian Constitutional Court failed to take into account that they were not included under the Private Labor Sector of Law No. 4916, repealed in 1997 by Supreme Decree No. 003-1997-TR, they would have then been included in the Labor Sector of the Civil Service Statute and Ranking Law according to the provisions of Law No. 11377, in accordance with the General Law of the Peruvian Institute of Social Security. This being the case, the IACHR will find it is not authorized to review the ruling delivered by the domestic courts, which act within their jurisdiction and in accordance with the demands of due process.

25. The State maintains that in the pending case the Commission should consider, as previously established, that the petitioners had at their disposal a legal avenue to redress their alleged violated rights. The judicial remedies were delivered through proceedings established by Peruvian law, and the rulings were revised though the courts on the two occasions that the petitioners appealed the decisions. The fact that the petitioners failed to obtain a ruling in their favor does not automatically indicate that that the rules established in the American Convention have been violated. For this reason, the petition should be declared inadmissible.

26. As for the alleged violation of Article 24 of the Convention, the State observes that at no time did the Constitutional Tribunal discriminate against the alleged victims. According to the State, there was no case of discrimination, as the situation of the four petitioners was different from that of the other 20 co-plaintiffs who brought the petition seeking amparo relief. Both the Supreme Court of Peru and the Constitutional Tribunal did nothing more than enforce the laws in effect at the time the events occurred, without this entailing any violation of the petitioners' rights.

27. The State also argues that to make reparations to employees wrongfully dismissed during the 1991-2000 period, it has, since June 2001, enacted various laws and provisions that have served to identify the wrongful dismissals and enact measures for reparation. After a process that began with the enactment of laws repealing the provisions that authorized the wrongful collective dismissals and the creation of special committees that identified the dismissed workers, Law No. 27803 was enacted on July 27, 2007. That law implemented the recommendations stemming from the special committees. The law created a "National List of Wrongfully Dismissed Employees" and established four benefits that the workers could claim.

Workers could choose among the following four, mutually exclusive options: i) job reinstatement or relocation; ii) early retirement; iii) financial compensation, and iv) job training and re-conversion.

28. In this specific case, the State argues, the four petitioners asked to have their names entered on the National List of Wrongfully Dismissed Employees. The State reports that based on the information supplied by the Office of the Vice Minister of Labor of Peru, the petitioners have been the beneficiaries of the following measures:

a) Mr. Armando Sosa Perceros "…the Ministry of Labor and Employment Promotion included his name on the third list of beneficiaries of Law No. 27803 because his name was included in the Final Report of his employer's Special Committee. That former employee opted to be reinstated."
b) Mr. Edgardo Horna Ugaz "…The Ministry of Labor and Employment Promotion included this individual on the second list, as his name was included in the final report of his employer's Special Committee. This employee opted for economic compensation", which was received in its totality.
c) Mr. Néstor Manuel Castillo Salazar "…was included on the first list. We have no information on his classification. He opted for reinstatement."
d) Mr. Marco Antonio Saldaña García "This person's name does not appear on any list; however, according to ESSALUD he did file his request for review of dismissals up to July 23, 2001."

29. Based on the foregoing information, the State alleges that it is clear that at least three of the petitioners voluntarily accepted the solution offered by the State. Thus, based on the principle of subsidiarity of the inter-American system for the protection of human rights, the State's view is that the Commission ought to allow the alleged violations to be settled within the domestic venue, since it has afforded measures of reparation to solve the problem of workers wrongfully dismissed and that the petitioners have consented to these measures by accepting the solution offered.

30. Notwithstanding the aforementioned, the State considers it important to emphasize that in the present case the petitioner's claim that the fact that some were included in a list of wrongfully dismissed employees constitutes evidence that their dismissal was unlawfully executed is false. The State specifies that the entries on the list of wrongfully dismissed employees were approved by a resolution of the Ministry of Labor and Employment Promotion which "in no way negates" a res judicata ruling issued by the Peruvian Constitutional Court. This ruling declared the petitioner's request inadmissible after having established their consent to the termination of their employment based on their collection of social benefits. The State points out that it is in conformity with the relevant provision set forth in the Constitution, which establishes that "no authority can (...) render null and void sentences with the authority of res judicata."

31. The State therefore alleges that the facts set forth in the petition do not characterize violations of the rights guaranteed under the American Convention, which under Article 47(b) is grounds to declare the petition inadmissible.

32. Finally, it is important to note that the State alleges that the petitioners did not exhaust the remedies under domestic law inasmuch as "it can not be considered that a petitioner has duly satisfied the requirement of previous exhaustion of domestic remedies if the rejected remedies are based on reasonable, and not arbitrary, procedures", as well as alleging that their petition was lodged extemporaneously, that is to say, outside of the allowed six month period. Specifically, the State indicates that the ruling issued by the Constitutional Court on the 2nd of April 1998, which signified the end of domestic proceedings, was delivered to the petitioners on the 12th of August 1998 and published in the official daily paper "The Peruvian" on the 14th of August 1998. The first communication issued by the IACHR to the Peruvian State lodging the petition was dated the 29th of March 1999. This indicates that six months and fifteen days had passed before the petition was filed, rendering it incompliant with the aforementioned conventional requirements.

IV. ANALYSIS OF ADMISSIBILITY

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

33. The petitioners have standing under Article 44 of the American Convention to lodge petitions with the Commission. The petition names as alleged victims Armando Sosa Peceros, Edgardo Horna Ugaz, Néstor Manuel Castillo Salazar and Marco Antonio Saldaña García, whose Convention-protected rights the Peruvian State undertook to respect and ensure. 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.

34. 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

35. Article 46(1)(a) of the Convention provides that in order for a petition or communication filed with the Inter-American Commission under Article 44 of the Convention to be admissible, the remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law. This requirement ensures every state party the opportunity to settle human rights cases within its own system of justice before the case is taken up by an international body. The prior exhaustion requirement applies when the domestic system affords remedies that are adequate and effective to remedy the violation being alleged. In this sense, Article 46(2) specifies that the requirement shall not be applicable when (a) the domestic legislation of the state concerned does not afford due process for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has

been denied access to the remedies under domestic law or has been prevented from exhausting them, or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

36. Under the principles of international law, as reflected in the case law established by the Inter-American Commission and the Inter-American Court, a State may waive invocation of this rule, either tacitly or expressly.[FN4] Secondly, to be timely, the objection asserting failure to exhaust the remedies under domestic law must be made during the early stages of the proceedings with the Commission; if not the presumption will be that the interested State has waived its right to enter that objection.[FN5] Third, in keeping with the principle of the burden of proof, the State that alleges a failure to exhaust the remedies under domestic law must show what domestic remedies remain to be exhausted and provide evidence of their effectiveness.[FN6]

[FN4] IACHR, Report Nº 69/05, Petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, par. 42; I/A Court H.R., Case of Ximenes López. Preliminary Objection. Judgment of November 30, 2005. Series C No. 139, par. 5; Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, par. 49; and the Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, par. 135.

[FN5] 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.

[FN6] IACHR, Report No. 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, March 7, 2005, paragraphs 33-35; 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; Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, par. 33; and Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, par. 31.

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37. On the issue of fulfillment of the rule requiring exhaustion of the remedies under domestic law, set forth in Article 46(1) (a) of the American Convention, the petitioners claim to have pursued and exhausted the remedies under domestic law with the ruling issued by the Constitutional Tribunal. They were allegedly notified of this decision on August 10, 1998. The State, for its part, indicated that the IACHR has established in its jurisprudence that "it can not be considered that a petitioner has duly satisfied the requirement of previous exhaustion of domestic remedies if the rejected remedies are based on reasonable, and not arbitrary, procedures." For

this reason the State contends that the petitioners did not exhaust the remedies under domestic law.

38. For purposes of determining what the appropriate procedural avenue in the domestic legal system is, the Commission needs to make a preliminary determination of the purpose of the petition presented to it for consideration. In the instant case, the petition is based on alleged violation of the alleged victims' guarantees of due process, judicial protection and equal protection in the process that ended in their dismissal from the jobs they were performing in a state enterprise. On this point, the Commission finds that the petitioners used the petition of amparo as a valid avenue for litigating the violations of the rights and guarantees established by the Constitution. It is important to point out that under the Peruvian legal system, the petition seeking amparo relief is an action to claim constitutional guarantees[FN7] to "restore the situation that existed prior to the violation or threat of violation of a constitutional right."[FN8] The Commission observes that the law governing the remedy of amparo makes it admissible in those cases in which "the violation or threat is based on a provision that is not compatible with the Constitution."[FN9]

[FN7] Constitution of Peru, Title V: Constitutional Guarantees, Art. 200.
[FN8] Law No 23506 (art.1).
[FN9] Law No. 23506 (art. 3).

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39. In the instant case, the Commission observes that this remedy was a valid avenue to attempt to reverse the violation in this case, which concerns the alleged violation of the constitutional right to due process and the right to work. The Commission observes that the petitioners made it clear to the local courts that they were seeking to recover their jobs, alleging violations of the constitutional right to due process and their right to job stability. Consequently, the IACHR considers that the issue was brought to the domestic courts via one of the remedies that could have been suitable and effective to settle situations of this type at the domestic level.[FN10]

[FN10] 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.

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40. The Commission observes that in the proceedings on the remedies filed in domestic courts, the petitioners did not allege violation of the right to equal protection as a result of being leaders of organized labor. The State therefore had no opportunity to remedy this issue in its domestic courts. This claim made in the petition must, therefore, be declared inadmissible.

41. Consequently, the Commission finds that the petition satisfies the rule requiring exhaustion of local remedies, set forth in Article 46(1) (a) of the American Convention with regard to the allegations made concerning violations of the right of defense and the right to due

process established in Articles 8 and 25 of the American Convention. On the other hand, because of a failure to exhaust domestic remedies, the Commission declares the petition inadmissible with regard to the alleged violation of the right to equal protection, established in Article 24 of the Convention. It will therefore not pursue any analysis of the characterization of the facts alleged in this regard.

C. Time period for lodging a petition

42. 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 venue. This six-month rule serves to guarantee legal certainty and stability once a decision has been adopted.

43. With regards to this matter the Commission observes that the evidence filed in the dossier of the IACHR indicates that the ruling of the Constitutional Court delivered the 2nd of April 1998, which terminated domestic jurisdiction in this case, was notified to the petitioners on the 10th of August 1998. Their petition was filed with the IACHR on the 13th of November 1998, that is to say, within the six month time period allowed by the Convention's requirements.

44. It is important to address the State's allegation that the petitioners failed to comply with the conventional requirement established by Article 46(1)(b) based on the argument that between the 10th of August 1998 and the 29th of March 1999 more than six months had passed. Regarding this matter, the Commission reiterates that between the date of notification of the sentence that terminated internal proceedings, and the date the petition was received by the Executive Secretary, less than the amount of time specified in Article 46(1)(b) of the Convention had transpired. The Commission notes that, as specified previously, the period of time referred to in clause b of Article 46.1 is calculated from the day following notification of a final sentence at the domestic level until the day a complaint is lodged with the Commission, and not from the date that the petition is forwarded to the State[FN11]. As a result, the Commission considers that the petition was lodged within the time period established by Article 46(1)(b) of the Convention.

[FN11] IAÇHR, Report Nº 95/01, Petition 12.203, Liliana Zambrano, Peru, October 10, 2001, par. 34.

D. Duplication of proceedings

45. 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 Articles 46(1)(c) and 47(d) of the Convention have been met.

E. Characterization of the alleged facts

46. Article 47(b) of the Convention provides that the Commission shall consider a petition inadmissible when it does not state facts that tend to establish a violation of the rights guaranteed in said Convention. Therefore, the Commission will analyze whether the facts denounced on this occasion tend to establish a violation of the articles of the Convention cited by the petitioner.

47. The petitioners state as facts tending to establish violation of their rights their wrongful dismissal through an inapplicable procedure, since it was to be used solely for IPSS administrative staff.[FN12] They allege that they were not informed personally and in writing that they had to undergo the evaluation process and that their employment was terminated for their failure to do so.[FN13] The petitioners allege violation of their rights to equal protection and to judicial protection, protected by the American Convention, as a result of their irregular termination and its subsequent confirmation by the judicial authorities. In the petitioners' view, said violations were subsequently acknowledged by the State through its inclusion of the petitioners on the official lists of workers wrongfully dismissed in the 1990 – 2000 period. The petitioners also state that the attempts made by the State to provide reparation for some of the consequences of the violations have no bearing whatsoever on the jurisdiction of the IACHR to process the case.

[FN12] Article 1 of Decree Law No. 25636, which provides: "The Peruvian Social Security Institute is hereby authorized to implement an administrative personnel streamlining process."
[FN13] Executive Resolution No. 1865DG-HM-ERM-IPSS-92, which provides: "The qualification and selection examinations having been conducted, resolutions shall be issued authorizing the termination of the employment of staff members listed herein who have failed to take the corresponding tests."

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48. The State argues that the rights of the petitioners were not in any way violated since they had the opportunity to seek remedy from impartial and independent national courts, which rejected their claims as without merit. The State indicates specifically that this was based on the fact that the petitioners collected their benefits.[FN14] It alleges that, in any event, the situation originally denounced by the petitioners has altered substantially since they voluntarily accepted some benefits provided by the State as reparation for the harmful consequences of termination. Therefore, the State argues that based on this, the object of study by the IACHR would become abstract.

[FN14] Executive Resolution No. 1865-DG-HN-ERM-IPSS-92 authorizes the IPSS to pay to each official whose employment was terminated: "the corresponding compensation for time of service for the period worked under the regime established in Legislative Decree No 276, in full and final settlement, as well as the other resulting benefits to which the workers involved in the instant resolution are entitled." In turn, Article 54 of Legislative Decree No. 276 (the law setting forth the rules for the administrative career service and on public sector remuneration) provides as follows: Compensation for Time of Service: "Officials with under 20 years of service appointed at the time of the dismissal shall be paid the amount of 50% of their principal remuneration, and officials with 20 or more years of service shall be paid the full amount of their

principal remuneration for each full year or fraction greater than 6 months, up to a maximum of 30 years of service."
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49. Regarding this, the IACHR notes that the initial complaint filed by the petitioners refers to the alleged international responsibility of the State for violation of the rights of four individuals to a fair trial and to judicial protection through the unlawful termination of their employment. The surviving facts relate to a series of measures taken by the State to repair the damage caused to former workers whose employment was terminated irregularly, including three of the current four petitioners. For its part, the State alleges that as a result of the application of these measures and the voluntary acceptance by three of the four petitioners in the case, of one of the benefit options made available under the program established in Law No. 27803, they agreed to the State measures adopted to resolve under national law the complaints arising from the collective termination. For their part, the petitioners allege that although some of them were registered in the National List of Wrongfully Dismissed Public Sector Employees and some of them did in fact collect the benefits granted to them under the aforesaid legislation, the benefits received do not meet the standards for reparation as they are not commensurate with the responsibility of the State.

50. In that jurisprudential context, the Commission notes that the facts alleged by the petitioners regarding the termination of their employment with the Peruvian Social Security Institute through the application of an administrative procedure based on inapplicable legislation and with some procedural defects, were brought by the petitioners before national courts through an action for amparo to restore the rights allegedly violated. Information provided by the parties and contained in the IACHR file shows that the Constitutional Court ultimately resolved the action for amparo in its judgment of April 2, 1998, rejecting the claims of the four petitioners herein as without merit based on the fact that they had collected their benefits. It should be noted that the submissions of the petitioners to the IACHR show that they acknowledge receipt of benefits, but they abstain from submitting information regarding amounts received or other considerations in connection with their quantity.

51. Transcribed below is the specific basis for the aforesaid judgment of the Constitutional Court as set forth therein:

1. The constitutional remedy sought by the appellants was denied by the Constitutional and Social Chamber of the Supreme Court, considering that they processed with the IPSS their request to collect their benefits, for which reason the right alleged in the instant action for constitutional guarantee is no longer of assistance to them;
2. The documentary evidence appearing on pages one hundred twenty-two to one hundred twenty-seven does not irrefutably establish that the plaintiffs have applied for and received their corresponding benefits, for which reason it is not established that they agreed to the termination of their employment;
3. In that regard, however, it is necessary to clarify this fundamental aspect in resolving this constitutional procedure. In that connection, by virtue of Article 56 of Law No. 26435, this Court learned, through a report from the IPSS, that the petitioners Marco Antonio Saldaña García, Edgardo Horna Ugaz, Armando Sosa Peceros, and Néstor Manuel Castillo Salazar collected their

respective benefits, as is shown by the certified documents attached to the brief that this Constitutional Court received on the eleventh of May, one thousand nine hundred and ninety-eight, and specifically the release forms they signed; this not having been established in the case of the other petitioners[.]

52. The Commission considers it important to note that in accordance with the jurisprudence of the inter-American system, the Commission cannot review "decisions handed down by national courts acting within their authority and applying the appropriate legal guarantees, unless it is found that there has been a violation of some right protected by the Convention."[FN15] In that regard, the Commission has repeatedly held that:

Under the preamble of the American Convention on Human Rights, the protection that the organs of the inter-American system for the protection of human rights offers is intended to complement the protection afforded by the local courts. The Commission cannot take upon itself the functions of an appeals court in order to examine alleged errors of fact or law that local courts may have committed while acting within the scope of their jurisdiction, unless there is unequivocal evidence that the guarantees of due process recognized in the American Convention have been violated.[FN16]

[FN15] IACHR, Report Nº 8/98, Case 11.671, Carlos García Saccone (Argentina), March 2, 1998, para. 53.
[FN16] IACHR, Report Nº 122/01, Petition 15/00, Wilma Rosa Posadas (Argentina), October 10, 2001, para. 10.

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53. Therefore, the Commission does not have jurisdiction to replace the judgment of national courts with its own in connection with matters involving the interpretation and explanation of domestic law or the evaluation of facts. Accordingly, the judicial protection as enshrined in the Convention includes the right to a fair, impartial, and speedy trial necessary to achieve, but never to require, a favorable outcome.[FN17]

[FN17] IACHR, Report Nº 39/96, Case 11.773, S. Marzioni, Argentina, October 15, 1996, Report Nº 48/98, Case 11.403, Carlos Alberto Marín Ramírez, Colombia, September 29, 1998, para. 42.

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54. Based on the foregoing considerations, the Commission considers that it is inappropriate for it to analyze the alleged international responsibility of the Peruvian State based on the interpretation of the Constitutional Court of the applicable domestic law regarding the means of dismissal or termination of a labor relationship and of the potential effects or impacts of the acts of employees in that regard with respect to the collection of benefits, since such analysis would involve interpretation of the pertinent national provisions to determine whether they had been correctly applied by national courts. In fact, the Commission notes that the issues raised by the petitioners would require the IACHR to review the Constitutional Court's interpretation in its

judgment of April 2, 1998 regarding the applicable labor legislation. It should be added that the Commission notes that the declaration of the inapplicability of amparo does not include all appellants in the aforesaid action, since the Court found in favor of the other employees who filed for amparo protection, based on the fact that it had not been established that they had received their benefits.

55. From such a perspective, the subject of the petition would constitute an application for review of the judgment of a national court, since no arbitrariness of procedure is evident, and the grounds for the judgment of the Constitutional Court are prima facie objective and reasonable. The IACHR also notes that during the processing of the action for amparo, the petitioners succeeded in obtaining a precautionary measure reinstating them in their posts, which remained in force until the date of final judgment in April 1998.

56. Therefore, the petitioners' mere disagreement with the interpretation of the Constitutional Court of the relevant legal provisions does not suffice to show violation of the above-mentioned international instrument. "The interpretation of the law, the relevant procedure, and the weighing of evidence is, among others, a function to be exercised by the domestic jurisdiction, which cannot be replaced by the IACHR."[FN18]

[FN18] IACHR, Report N° 39/05 (Peru), Petition 792/01, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre.

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57. To summarize, the allegations of the parties and the evidence contained in the file do not tend to establish any manifest judicial arbitrariness whatsoever, nor have the alleged victims been denied access to the remedies available under domestic jurisdiction with guarantees of due legal process.

58. In light of the foregoing, the Commission concludes that the facts alleged do not tend to characterize a violation of rights enshrined in the American Convention and hence the instant petition should be declared inadmissible.

V. CONCLUSIONS

59. Based on the foregoing arguments of fact and law, the Commission concludes that the instant petition is inadmissible in accordance with the requirements set forth in Article 47(b) of the American Convention since it does not state facts tending to establish any violation of the rights protected therein.

60. In view of the foregoing considerations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case inadmissible under Article 47(b) of the Convention.
2. To so notify the parties.
3. To publish this decision and to include it in its Annual Report 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.