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File Number(s): Report No. 55/08, Petition 532-98  
Session: Hundred Thirty-Second Regular Session (17 – 25 July 2008)  
Title/Style of Cause: Workers Dismissed from Empresa Nacional de Puertos, S.A. (ENAPU) v. Peru  
Doc. Type: Decision  
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  
Citation: Workers Dismissed from ENAPU v. Peru, Petition 532-98, Inter-Am. C.H.R., Report No. 55/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)  
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## I. SUMMARY

1. On November 2, 1998, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by the National Workers Federation of the Empresa Nacional de Puertos, S.A. [National Port Company] (ENAPU), (hereinafter “the petitioners”) on behalf of 25 dismissed workers[FN1] (hereinafter “the alleged victims”) against the Republic of Peru (hereinafter “Peru” or “the State”) claiming that the 28 alleged victims had been laid off as part of the privatization of State-owned companies that was based on legislation that patently violated their constitutional rights. The petitioners alleged that the workers were collectively dismissed in a process that applied legal standards that violated the Constitution and prevented them from exercising their right to defense against the dismissal decision.

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[FN1] The original petition involved 28 alleged victims. Through a note dated February 13, 2006, the petitioners informed the Commission that Mrs. Gloria Cahua Ríos, Mr. César Bravo Garvich, and Mr. Ernesto Yovera Álvarez were not interested in pursuing their complaint.  
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2. The petitioners argue that the State violated their rights to a fair trial, to freedom from ex post facto laws, to equal protection, and to judicial protection, established in Articles 8, 9, 24, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in accordance with the general obligation to respect and guarantee rights set forth in Article 1.1 and the duty to take domestic measures as stipulated in Article 2 of

the Convention. With respect to admissibility requirements, the petitioners say they have exhausted all domestic judicial remedies but claimed that they did not obtain judicial protection from any of the courts to which they had recourse. The petitioners say that the State had recognized its responsibility for the alleged violations when it issued Law No. 27803, which was adopted to review collective dismissals at State-owned companies undergoing private investment promotion processes. They further state that, despite that acknowledgement, the benefits provided for under the said law did not meet the criteria for comprehensive reparations set forth under international jurisprudence.

3. The State claims that the case should be declared inadmissible, pursuant to Article 47(a) of the Convention, it indicates that the petition had been lodged without fulfilling the requirement to have first exhausted domestic remedies, set forth in Article 46(a) of the Convention. It argues that domestic judicial proceedings observed all due process standards and guarantees—guarantees also observed during the privatization of State-owned companies and in the program to reduce and streamline staffing at ENAPU, S.A. Also, the State alleges that after the democratic constitutional regime was restored in Peru, the State took internal steps to provide reparations to approximately 28,000 workers dismissed irregularly from 1990 to 2000. The State noted that several of the petitioners in the present case had accepted those benefits and that the others could as well. The State therefore says that its domestic legislation has an appropriate mechanism for resolving the complaint set forth in this petition.

4. Without prejudging the merits of the case, the IACHR hereby concludes that the case is admissible, as it meets the requirements set forth in Article 46 of the Convention, with respect to Víctor Acuña Dávila, Alberto Esteban Antonio Chala, Justo Esteban Azcárate Noguera, Abraham Cano Rebaza, Marco Antonio Castro Martínez, Gladis María Delgado Arriola, Rogelio Delgado Quijano, David Desiglioli Sánchez, Juan Leslie Espinoza Eyzaguirre, Jorge Federico García Farías, Carlos Alberto Lizarbe Nieto, Nancy Giomar Mac'Gregor Alvis, Juan Carlos Marraguerra Ayllon, Honorato Mayorga Blanco, Ernesto Meza Vargas, José Ricardo Nolasco Milla, Fernando Antonio Padilla Cancino, Cecilio Alberto Ríos Rodríguez, Eduardo Rivadeneyra Alva, Antonio Tomás Rodríguez Valdivia, Isi Antonia Rosas Meléndez, Renzo Torero Lizarbe, José Fermín Urcia Cruzado, Alfredo Vásquez Colacci, and Rufino Ysique Reque. The Commission has therefore decided to notify the parties of this decision and continue to examine the merits of the case with respect to the alleged violations of the right to a fair trial (Article 8) and the right to judicial protection (Article 25), established in the American Convention, in relation to the general obligation to respect and guarantee rights set forth in Article 1.1 and the duty to undertake the measures enshrined in Article 2 of the Convention.

## II. PROCESSING BY THE COMMISSION

5. On November 2, 1998, the Commission received a complaint lodged by the National Workers Federation of the Empresa Nacional de Puertos, S.A. On July 10, 2001, it asked the petitioners to present additional information on their complaint, which they did through notes dated June 28 and August 23, 2001, August 18 and November 4, 2002, April 16 and August 26, 2003, May 11, 2004, and January 24 and March 1, 2005.

6. On April 8, 2005, the IACHR transmitted the petition to the State, giving it two months to submit its comments. On June 16, 2005, the State presented its position on the petitioners' complaint. On June 28, 2005, the Commission provided the State with the additional information from the petitioners. On August 11, 2005, the State presented its comments on that information. On October 4, 2005, the petitioners asked the IACHR to make itself available to the parties to explore a possible friendly settlement agreement. Through a letter dated November 11, 2005, the Commission made itself available to the parties to begin the friendly settlement process.

7. On March 8, 2006, the IACHR held a working meeting at its headquarters with the parties to explore their positions on a possible friendly settlement agreement. On February 13, 2006, the petitioners informed the Commission that three of the alleged victims did not wish to continue with the proceedings before the Commission.[FN2] On April 5, 2006, the IACHR asked the State to provide notification, within one month, of its position on the agreement of understanding discussed by the parties at the meeting. On August 11, 2006, the Commission received additional information from the petitioners. On September 5, 2006, the petitioners asked the IACHR to convene a working meeting. On October 20, 2006 that meeting was held at Commission headquarters, with both parties. On March 9, 2007, the petitioners presented new information on the case, which was forwarded to the State through a note dated March 20, 2007. On June 13 and July 26, 2007, the petitioners submitted additional information. On August 13, 2007, the IACHR informed the parties that, as of that date, its involvement in trying to reach a friendly settlement agreement had concluded. Also on that date, the Commission asked the State to provide any comments it deemed appropriate, within one month.

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[FN2] Gloria Cahua Ríos, Cesar Bravo Garvich, and Ernesto Yovera Álvarez.

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8. In communications dated September 18 and October 3, 2007, the petitioners submitted additional information, for which the IACHR acknowledged receipt and transmitted a copy to the State for its file.

9. In a communication dated January 7, 2008 the petitioners requested that the IACHR convene a hearing on the referenced petition during the Commission's 131st period of sessions. In a communication dated February 15, 2008, the IACHR informed the petitioners that due to the large number of hearings requested it would not be possible, for the moment, to grant the requested hearing.

### III. POSITION OF THE PARTIES

#### A. Position of the petitioners

10. The petition said that the 28 initial and 25 current alleged victims were former workers at Empresa Nacional de Puertos S.A. (ENAPU) who were dismissed under a special program to promote private investment that was based on a legal norm that was not in effect at the time it was applied. The petitioners indicated that this irregular dismissal procedure violated their right to due process and denied them ab initio the opportunity to challenge that measure

administratively. The petitioners allege that, having appealed to domestic courts, they did not obtain any type of judicial protection, because the administrative and judicial authorities' lacked independence and impartiality.

11. Specifically, the petitioners allege that on November 23, 1992, the Executive Branch, under then-President Alberto Fujimori, issued Decree-Law No. 26120, amending the Law to Promote Private Investment in State-owned Companies.[FN3] Article 7 of that decree authorized, with the agreement of the Privatization Commission and via Supreme Decree, that all measures be taken for economic, financial, legal, and administrative restructuring—including streamlining staffing—at the companies involved in the private investment promotion process set forth in the Law to Promote Private Investment in State-owned Companies. According to the petitioners, that law violated the workers' right of defense and right to equal protection because the dismissals made under that decree failed to implement the legal norms on collective dismissals set forth in the Job Training and Promotion Act.[FN4]

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[FN3] Legislative Decree No. 674.

[FN4] Legislative Decree No. 728.

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12. Subsequently, on July 18, 1995, the petitioners claimed that Law No. 26513 was passed, amending the Job Training and Promotion Act, specifically to create a new procedure to regulate collective dismissals. They maintain that with this amendment the provisions of Decree-Law No. 26120 were tacitly repealed, since Law No. 26513 stated that “any other provisions contradicting this law” were repealed.

13. According to the petitioners, even though Decree-Law No. 26120 had already been repealed, on January 19, 1996 the Executive Branch issued Supreme Decree 003-96-PCM authorizing ENAPU's Board of Directors to implement a plan to streamline staffing pursuant to Decree-Law No. 26120 mentioned above. The petitioners alleged that this resulted in the implementation *ultra activa*, to the workers' detriment, of a regulation that had already been repealed, violating the principle of freedom from *ex post facto* laws established in the American Convention.

14. The petitioners also maintain that the procedure set forth under Decree-Law No. 26120 violated their right to due process by establishing a procedure that did not provide for the possibility of challenging the resolution of the administrative authority ordering the dismissal. Instead it stipulated that the administrative labor authority simply approve the collective dismissal of the workers without informing the other party, in opposition of the provisions of Article 82 of the Job Training and Promotion Act. The petitioners alleged that through these actions the principle of equal treatment was violated, *inter alia*, by “not providing this group of workers the right to a defense or to challenge a decision by the administrative authority”.

15. With respect to the requirement that domestic remedies be exhausted, the petitioners said that on January 31, 1996 they lodged an *amparo* alleging the violation of their right to work, right to equal protection, right to equal opportunity, right to nondiscrimination, right to

protection against arbitrary dismissal, and right to due process. On December 6, 1996, the First Civil Court in Callao ruled that the amparo was groundless. According to the information provided by the petitioners, the Court based that decision on the argument that the employer had strictly enforced the law; moreover, it maintained that there were special courts for processing and resolving labor-related cases. The Civil Chamber of the Callao Superior Court upheld that decision in a judgment handed down on March 18, 1997. The petitioners claim that they then filed an extraordinary appeal to the Constitutional Tribunal, which eventually upheld the decision of the two lower courts through a judgment dated March 3, 1998.

16. The petitioners also maintain that since 2001 the State had recognized its responsibility for the facts of this case. They argue, however, that the State's recognition of its responsibility had not translated into actual reparations for the rights violated. Thus, the petitioners say that the January 2, 2002 Final Report of the Special Commission on Collective Dismissals, mandated by Law No. 27452 and chaired by the Ministry of Labor, stated the following:

The procedure [...] set forth in Article 47 of Decree-Law No. 26120, as well as all decree-laws containing that same procedure, violated the right to due process, by failing to allow for the workers to exercise their right to contest and right of defense. It also violated other constitutional rights, such as right to information and to nondiscrimination [...].

17. According to the petitioners, this recognition of responsibility was reiterated through Law No. 27803 of July 29, 2002, which was enacted to resolve the irregularities in collective dismissals by the government. They allege that, in fulfillment of that law, on October 15, 2002, the Deputy Minister of Transportation and Communications recognized, through letter 767-2002-MTC/15.02, that the petitioners were dismissed irregularly. Consequently, the 25 petitioners were included in the Second List of Workers Dismissed Irregularly, published on March 27, 2003. As a result of this, in August 2003, ten of the alleged victims were rehired,[FN5] as were nine others in August 2004.[FN6]

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[FN5] Justo Esteban Azcárate Noguera, Alberto Esteban Antonio Chala, Juan Leslie Espinoza Eyzaguirre, Jorge Federico García Farías, Ernesto Meza Vargas, José Ricardo Nolasco Milla, Cecilio Alberto Ríos Rodríguez, Isi Antonia Rosas Meléndez, José Fermín Urcia Cruzado, Ernesto Yovera Álvarez.

[FN6] Gloria Nelida Cahua Ríos, Víctor Acuña Dávila, Antonio Tomás Rodríguez Valdivia, Renzo Torero Lizarbe, Marco Antonio Castro Martínez, Honorato Mayorga Blanco, Rogelio Delgado Quijano, Carlos Alberto Lizarbe Nieto, Cesar Eduardo Bravo Garvich.

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18. The petitioners say that despite the aforementioned acknowledgements of responsibility in the domestic system, the alleged victims did not receive comprehensive reparations for damages. They say that the alleged "rehiring" of 19 of the alleged victims did not produce the necessary legal effects to be considered reparations, since they were engaged as new hires, which did not allow them to recover their labor rights, including total years of service in the position, post, functional level, remuneration, and vacation days for seniority.

19. The petitioners indicate that the State's attempts to provide reparations to some of the petitioners while the Commission was processing the case in no way affected the Commission's competence to continue hearing the case. On the contrary, the petitioners maintain that those efforts constitute recognition of the violations. They claim that the State's opportunity to provide reparations to the alleged victims through its own means was when the alleged victims pursued and exhausted domestic remedies before turning to the Commission. In that regard, the petitioners disputed the State's allegation that they had available to them the domestic remedies set forth in Law No. 27803. According to the petitioners, "the requirement to exhaust the so-called legal mechanisms provided for under Law No. 27803 before having recourse to an international body is not enforceable because they are not adjudicatory."

20. According to the latest information presented to the IACHR by the petitioners, the current situation of the 25 alleged victims continuing with the international complaint is as follows: 16 are working at the company, three are deceased,[FN7] two have retired,[FN8] and four have not yet obtained any of the benefits under Law No. 27803.[FN9]

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[FN7] Abraham Cano Rebaza, Nancy Mac'Gregor Alvis, and Fernando Padilla Cancino.

[FN8] Eduardo Rivadeneyra Alva and José Fermín Urcia, who were hired back in August 2003 and retired on May 10, 2007 because they had turned 70.

[FN9] Gladys María Delgado Arriola, Rufino Ysique Reque, Juan Carlos Marraguera Ayllon, and David Desiglioli Sánchez.

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21. In view of the foregoing arguments of fact and law, the petitioners requested that the Commission declare this complaint admissible based on the alleged violations of the rights set forth in Articles 8, 9, 24, and 25 of the Convention, in accordance with the general obligation to respect and guarantee rights set forth in Article 1.1 and the obligation to undertake domestic legal measures pursuant to Article 2 of the Convention.

#### B. Position of the State

22. The State did not dispute or deny the arguments of fact and law presented by the petitioners with respect to the dismissals. It focused its responses on the actions taken by the Ministry of Labor and Job Promotion and ENAPU to rehire the workers dismissed irregularly. In that regard, the State says that the petition should be declared inadmissible in accordance with Article 47(a) of the Convention, in relation to Article 46(a) thereof.

23. The State says that it took steps to provide reparations to all the former workers who were dismissed irregularly from 1990 to 2000—approximately 28,000. To that end, it said that on July 28, 2002 Law No. 27803 was published implementing the recommendations of the commissions created pursuant to Law Nos. 25452 and 27586. That Law, according to the State, established a special program of benefits for the workers dismissed irregularly, who would have the option of one of the following benefits: (i) rehiring or job replacement; (ii) early retirement; (iii) monetary compensation; or (iv) vocational training and job retraining.

24. The State claims that Empresa Nacional de Puertos S.A. (ENAPU) strictly complied with the legal provisions for cases of rehiring former workers who were dismissed in what was considered an irregular manner and, in accordance therewith, has gradually hired them back. In that regard, the State reports that of the 28 initial alleged victims, 20 had been hired back, and 19 of them were still working for the company.[FN10] The State alleges that in accordance with the decision of the Ministry of Labor and Job Promotion, ENAPU had only to rehire persons on the list of workers dismissed irregularly, as was the case of the petitioners.

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[FN10] The State said that the resolution to rehire Alfredo Pio Vásquez Colacci was null and void because he was receiving a disability pension from the Office of Professional Standardization.  
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25. The State maintains that three petitioners in the original group of 28 were deceased and that “it had learned that two of the 28 petitioners (Juan Carlos Marraguerra Ayllon and Eduardo Rivadeneyra Alva) were residing abroad, which made it difficult to locate them and this meant that they did not necessarily need to be hired back”.

26. Based on these considerations, the State concludes that it has taken the legislative and administrative steps to address the complaints of the former workers from ENAPU, S.A. According to the State, the individuals that had not yet been rehired could opt for a measure not set forth under Law No. 27803 and, “therefore, as there were domestic remedies that had not been exhausted, the State considers that the complaint does not meet the admissibility requirements.”

#### IV. ANALYSIS OF ADMISSIBILITY

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

27. Under Article 44 of the American Convention, the petitioners are authorized to lodge a complaint with the Commission. The petition names as alleged victims 25 individuals whose rights under the American Convention the Peruvian State had undertaken to respect and guarantee.[FN11] Peru has been a State Party to the Convention since July 28, 1978, when it deposited its instrument of ratification. The Commission, therefore, has competence *ratione personae* to examine the complaint.

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[FN11] The petitioners initially identified 28 alleged victims. Subsequently the petitioners notified the Commission that three of the persons said they were not interested in proceeding with the processing of the case before the Commission (Cfr. Note 1). As a result, according to the lists submitted by the representatives for the victims, the IACHR notes that the petition names the following alleged victims: Víctor Acuña Dávila, Alberto Esteban Antonio Chala, Justo Esteban Azcárate Noguera, Abraham Cano Rebaza, Marco Antonio Castro Martínez, Gladis María Delgado Arriola, Rogelio Delgado Quijano, David Desiglioli Sánchez, Juan Leslie

Espinoza Eyzaguirre, Jorge Federico García Farías, Carlos Alberto Lizarbe Nieto, Nancy Giomar Mac'Gregor Alvis, Juan Carlos Marraguerra Ayllon, Honorato Mayorga Blanco, Ernesto Meza Vargas, José Ricardo Nolasco Milla, Fernando Antonio Padilla Cancino, Cecilio Alberto Ríos Rodríguez, Eduardo Rivadeneyra Alva, Antonio Tomás Rodríguez Valdivia, Isi Antonia Rosas Meléndez, Renzo Torero Lizarbe, José Fermín Urcia Cruzado, Alfredo Vásquez Colacci, and Rufino Ysique Reque.

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28. The Commission is competent *ratione loci* to hear the petition, as it alleges the violation of rights protected under the American Convention that would have occurred in the jurisdiction of the State. The Commission is also competent *ratione temporis* to hear the complaint, because the obligation to respect and guarantee the rights protected under the American Convention was already in effect for the State on the date of the events alleged in the petition. Lastly, the Commission is competent *ratione materiae*, because the petition alleges possible violations of human rights protected by the American Convention.

B. Exhaustion of domestic resources

29. Regarding fulfillment of the requirement to exhaust domestic remedies set forth in Article 46(1)(a) of the American Convention, the petitioners allege that they had initiated and exhausted a petition seeking amparo relief to the Constitutional Tribunal, which handed down its final judgment on March 3, 1998. The petitioners indicated that, with a judiciary largely dependent on the Executive Branch, they pursued multiple appeals in the domestic system to give the State the opportunity to resolve the violations through its own means. The petitioners indicate, however, that the requirement was to exhaust ideal, adequate, effective remedies and that such remedies did not exist in Peru at the time these events occurred.

30. The State, in turn, alleges that the petitioners did not use all legal mechanisms provided for under domestic legislation. Specifically, it argues that the petitioners “still had available to them the legal mechanisms established in Law No. 27803”.

31. In this regard, the Commission considers pertinent to note firstly that in order to determine fulfillment of the requirement under the Convention that domestic remedies be exhausted, the subject of the complaint must be specified and the remedies that were pursued must be analyzed. Along these lines, the Commission said that the subject of the complaint in this case is the alleged arbitrary dismissal of the petitioners from their positions at ENAPU due to failure to observe due process and the ensuing lack of judicial protection.

32. In order to determine the appropriate domestic procedural steps to follow, the Commission deems it appropriate to consider that the present petition is based on the alleged violation of the guarantees of due process and judicial protection in the process that culminated with the alleged victims' dismissal from the posts they held in a State-owned company. The Commission finds that the petitioners lodged a petition seeking amparo relief as a valid means of challenging violations of guarantees and rights established in the Constitution. In that regard, the IACHR considers it important to underscore that such an action is provided for under Peru's legal system as a way to protect constitutional guarantees[FN12] aimed at “returning the

situation to how it was prior to the violation or threat of violation of a constitutional right.”[FN13] The Commission also notes that the Law regulating amparo procedures provides for its use even in cases in which “the violation or threat of violation is based on a legal norm not consistent with the Constitution.”[FN14] The Commission notes that this appeal constituted a valid means of seeking to redress the legal situation in this case regarding the alleged violation of the constitutional rights to due process, the principle of freedom from ex post facto laws, and the right to equal protection. The Commission observes that the petitioners clearly stated to the local courts their aim to be returned to their positions, alleging violations of due process and job stability. Thus, the Commission finds that the subject of the complaint brought before it was presented to the domestic courts through an ideal, effective domestic remedy for resolving such situations.[FN15]

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[FN12] 1993 Constitution of Peru, Title V: Constitutional Guarantees, Art. 200.

[FN13] Law No. 23506 (Art.1).

[FN14] Law No. 23506 (Art. 3).

[FN15] IACHR, Report No. 70/04 (Admissibility), petition 667/01, Jesús Manuel Naranjo Cárdenas et al., Venezuela, October 15, 2004, para. 52; IACHR, Report No. 57/03 (Admissibility), petition 12.337, Marcela Andrea Valdés Díaz, Chile, October 10, 2003, para. 40.  
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33. 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.

34. As a result, the IACHR finds that in the present case the petitioners pursued the remedies that were available to resolve their situation and therefore finds that the requirement set forth in Article 46(1) of the American Convention was fulfilled.

#### C. Deadline for submission

35. Under Article 46.1 of the Convention, for a petition to be admitted, it must be presented by the stipulated deadline, namely six months from the date on which the party alleging violation of his rights was notified of the final judgment at the national level. This rule guarantees legal certainty and stability once a decision has been taken.

36. In this case, the Commission observes that the judgment that exhausted domestic remedies was handed down by the Constitutional Court on March 3, 1998, and the petitioners were notified on May 6, 1998.[FN16] The OAS’s office in Peru received the petition on November 2, 1998 and forwarded it to IACHR headquarters that same day. The Commission concludes that the petition was lodged by the deadline set forth in Article 46(1)(b) of the Convention.

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[FN16] In consideration of the notice the petitioners contributed as Annex 1-K to their original complaint.

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D. Duplication of proceedings

37. There is no indication in the file that the petition is pending a decision in another proceeding for international settlement, or that it duplicates a petition that has already been examined by the Commission. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been fulfilled.

E. Characterization of the facts alleged

38. As the Commission has already indicated in other cases, at this point in the process it is not necessary to determine whether or not there was an actual violation of the American Convention. For the purposes of admissibility, the Commission must simply decide whether the allegations set forth facts that could constitute a violation of the Convention, pursuant to Article 47(b), and whether the petition is “manifestly groundless” or “obviously out of order,” pursuant to subparagraph (c) of that article. The standard for assessing these extremes is different from that for deciding on the merits of the complaint. At the present stage, the IACHR must perform a *prima facie* evaluation that does not involve a prior judgment or advanced opinion on the merits. The Commission’s Regulations reflect this distinction between the evaluation that must be performed to declare a petition admissible and that required to determine whether the State was responsible, by establishing clearly differentiated stages for studying the admissibility and the merits of the case.

39. The petitioners state that the petition presents facts that, *prima facie*, characterize violations of their rights. They say that the legislation on which the dismissals were based violated their right of defense by preventing them not only from gaining access to important information from the evaluation process, but also firmly established that the results of that evaluation could not be appealed. They say that due to that legislation and to other actions taken by the Executive Branch to co-opt the judiciary, a climate of failure to provide legal protections and of legal uncertainty was created, preventing them from receiving a judicial remedy even though they had turned to the courts. The petitioners also say that the State’s attempts to provide reparations for some of the consequences of the violations did not in any way affect the Commission’s competence to continue processing the case.

40. The State argues that the situation originally denounced by the petitioners had changed substantially because several of the petitioners voluntarily accepted some of the benefits offered by the State as a means of providing reparations for the detrimental effects of the dismissals. The State argues therefore that the subject of the matter being studied by the Commission was now abstract.

41. The Commission considers that it should examine that argument, based on the information obtained by the parties and decisions by the Commission and the Inter-American Court on the matter.

42. The Commission bears in mind the doctrine of the Inter-American Court, begun in the case of the *Gómez Paquiyauri Brothers v. Peru* in which the Court stated that:

the international responsibility of the State arises immediately with the internationally unlawful act attributed to it, even though it can only be enforced after the State has had an opportunity to make reparation for it by its own means. A possible subsequent reparation carried out under domestic law does not keep the Commission or the Court from taking cognizance of a case that has already been initiated under the American Convention.[FN17]

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[FN17] I/A Court H.R., Case of the *Gómez Paquiyauri Brothers*. Judgment of July 8, 2004, para. 75.

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43. Indeed, the violations of the American Convention alleged by the petitioners would have been committed starting in January 1996; however the petition was lodged with the Commission before the State issued the regulations it cites as the source of compensation for the petitioners. Consequently, the Commission can hear the matter in order to determine whether or not the State committed an internationally unlawful act and, if so, its international responsibility is enforceable based on if it had the opportunity to provide reparations for the damage and what measures it took in that regard.

44. In accordance with Article 48(b) of the Convention, the IACHR shall determine “whether the grounds for the petition or communication still exist” before examining the merits of the case. Thus, the legal question at hand is whether the petitioners’ acceptance of the measures offered by the State changed the complaint originally lodged with the Commission to such an extent that the grounds that gave rise to it no longer exist.

45. The petitioners’ initial complaint mentioned the State’s alleged international responsibility for violating the right to due process, the principle of freedom from ex post facto laws, and the right to judicial protection for the illegal dismissal of 25 individuals. The subsequent events deal with a number of measures taken by the State to provide reparations for the damages to the former workers who were dismissed irregularly, including 19 petitioners in this case. The State alleges that, as a result of application of these measures and 19 petitioners’ voluntary acceptance thereof, the latter had accepted the measures taken by the State to resolve domestically the complaints stemming from the collective dismissal. The petitioners, in turn, allege that although several of them registered with the National Registry of Former Public Sectors Workers who were Dismissed Irregularly, and several of them even collected the benefits offered under the aforementioned legislation, several dismissed workers did not receive any reparations, and they consider that what the State offered did not fulfill its obligation.

46. In that regard, once the Commission had established that the facts that had come to light did not alter its understanding of the matter, in this case it will follow the doctrine of the Inter-American Court in the *Dismissed Congressional Employees v. Peru*. In that decision, the Court found that: in international proceedings, a decision on the effect of one or more of the victims returning (or not) to work at the same institution from which they were allegedly dismissed, as well as the basis of their claims for reinstatement to their jobs, was part of the merit phase, and potentially the reparations phase.”[FN18] In that regard, the Commission will set aside analysis of the measures alleged by the State until the merits phase.

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[FN18] 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, para. 70.

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47. Thus, the Commission considers that the events alleged by the petitioners regarding their dismissal from their jobs at *Empresa Nacional de Puertos S.A. (ENAPU)* through an administrative process that did not allow them to exercise their right of defense to challenge their dismissal, as well as the lack of effective judicial remedies could, *prima facie*, characterize a violation of Articles 8 and 25 of the American Convention, with respect to the obligations stemming from Articles 1.1 and 2 of the Convention.[FN19]

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[FN19] Cfr. 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, para. 129 et seq. See also: I/A Court H.R., *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, paras. 124 and 125. I/A Court H.R., *Claude Reyes et al. Judgment of September 19, 2006*. Series C No. 151, para. 118.

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48. The Commission finds that the petitioners did not substantiate autonomous acts that could constitute violations to the right to equal protection established in Article 24 of the Convention. Moreover, it considers that the petitioners did not present sufficient evidence to prove, *prima facie*, a violation of the principle of freedom from *ex post facto* laws established in Article 9 of the Convention. The Commission therefore declares inadmissible the complaint regarding those rights.

49. In conclusion, the Commission finds that nonetheless the facts denounced could still characterize, *prima facie*, violations to rights protected by the Convention. It therefore concludes that the events denounced, if proven, could constitute violations to the rights protected in Articles 8 and 25 of the American Convention, both with regard to the general obligation to respect and guarantee rights and the duty to undertake domestic measures pursuant to Articles 1.1 and 2 of that instrument, and hence the petition in that regard is admissible.

## V. CONCLUSIONS

50. The Commission concludes that the case is admissible and that it is competent to examine the complaint lodged by the petitioners regarding the alleged violations of Articles 8 and 25 in accordance with Articles 1.1 and 2 of the Convention, in keeping with the requirements set forth in Articles 46 and 47 of the Convention.

51. On the basis of the factual and legal arguments set forth above, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare admissible the petition under consideration, in relation to Articles 8 and 25 of the Convention, in keeping with Articles 1.1 and 2 of the Convention.
2. To notify the State and the petitioners of this decision.
3. To begin procedures on the merits of the case.
4. To publish this decision and include it in the Annual Report to be submitted 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.