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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 21/09; Petitions 965-98, 638-03, 1044-04
Session: Hundred Thirty-Fourth Regular Session (16 – 27 March 2009)
Title/Style of Cause: National Association of Discharged and Retired Employees of SUNAT v. Peru
Doc. Type: Decision
Decided by: President: Luz Patricia Mejia Guerrero;
First Vice President: Victor Abramovich;
Second Vice President: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo Carozza.
Dated: 19 March 2009
Citation: National Association v. Peru, Petition 965-98, Inter-Am. C.H.R., Report No. 21/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by: APPLICANTS: the Asociacion Nacional de Cesantes y Jubilados de la SUNAT and the Centro de Asesoría Laboral del Peru
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I. SUMMARY

1. On November 11, 1998, August 27, 2003 and on October 8, 2004, the Inter-American Commission on Human Rights (hereinafter also “the Inter-American Commission,” “the Commission” or “the IACHR”) received petitions lodged by the Asociacion Nacional de Cesantes y Jubilados de la SUNAT (National Association of Discharged and Retired Employees of SUNAT), a group of six persons,[FN1] and by the Centro de Asesoría Laboral del Perú (Labor Advisory Center of Peru) (hereinafter, “the petitioners”). The first and third petitions were lodged on behalf of the members of the Association (hereinafter also “the alleged victims”), whereas the second petition was lodged by the plaintiff. These petitions allege the violation by the Republic of Peru (hereinafter “Peru”, “the State” or “the Peruvian state”) of the rights enshrined in Article 8 (Judicial Guarantees), 24 (Equality before the law) and 25 (Judicial Protection) of the American Convention on Human Rights (hereinafter also “the American Convention,” “the Convention” or the “ACHR”), with regard to the obligations established in Articles 1.1 and 2 of the same instrument, as well as of the right recognized in Article 9 (Right to social security) of the Additional Protocol to the American Convention with regard to Economic, Social and Cultural Rights (hereinafter also “the Protocol of San Salvador”) and to Article XVI (Right to social security) of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”).

[FN1] Justa Virginia Lau Li, Rosa Elvira Cáceres Salazar, Julia Mercedes Alzamora Soto, Carmen Rosa Cristina Loo Reyes de Zegarra, José Leonidas Vásquez Rivera and Dulia M. Bernardo Villanueva.

2. The petitioners also indicated that the National Superintendence of Tax Administration (hereinafter also “SUNAT”) had refrained from enforcing the judgment issued by the Supreme Court of Justice on October 25, 1993, in favor of the alleged victims, which vacated the Third Transitional Provision of Decree Law No. 673 and reinstated their right to receive pensions adjusted to the salary scale of active employees of SUNAT, as well as payment of the increases they did not perceive. The petitioners also alleged that, within the framework of the process to enforce judgments, the judicial authorities were accomplices in the failure to enforce the judgment.

3. For its part, the Peruvian State argued that, in accordance with the law and the constitution in force, the alleged victims did not qualify for adjustments of pension based on the criteria used for their demand. The State also argued that domestic remedies had not been exhausted because the process was still in the enforcement of judgment stage where the victims had access to the appropriate mechanisms. The State also argued that the petition failed to meet the six-month filing deadline, counting from the date the sentence was issued on October 25, 1993, which, the State alleged, had not been served. Therefore, the State requested that the Commission rule the petition inadmissible.

4. After examining the position of the parties in light of the admissibility requirements established in Articles 46 and 47 of the American Convention, the Commission concluded that it was competent to hear the complaint lodged and that the petition was admissible based on the alleged violation of the rights enshrined in Articles 21, 8 y 25 of the American Convention with regard to the general obligations established in Articles 1.1 and 2 of the same instrument. The Commission also concluded that the petition was inadmissible with regard to the alleged violation of Article 24 of the American Convention, and of Article 9 of the Protocol of San Salvador. Therefore, the Commission decided to notify the parties, to make public this Admissibility Report and to include it in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

5. Due to the fact that the Commission decided to group together petitions 965/98, 638/03 and 1044/04, in May 2007 and in August 2007, processing before the Commission will be described separately for each petition until the date in which the parties were notified of the decision to group the petitions together.

Processing of Petition 965/98

6. The initial petition was received on November 11, 1998. On November 11, 1999 and on June 30, 2003, the petitioners submitted additional information. On May 8, 2006, the Commission forwarded the relevant sections of the petition to the State and, in accordance with

Article 30.3 of the Rules of Procedure, requested that the State submit a response within two months.

7. The Peruvian State submitted its observations on July 11, 2006, and on July 31, 2006, it submitted the attachments it had listed as forthcoming in the observations.

8. On August 28, December 13 and December 19, 2006, and on March 19, 2007, the petitioners submitted information. On the latter date, the petitioners informed the Commission that the Centro de Asesoría Laboral (Labor Advisory Center), (CEDAL), had become a co-petitioner. They also requested the grouping together of petitions 965/98, 638/03 and 1044/04, due to the fact that they were based on the same facts.

Processing of Petition 638/03

9. The initial petition was received on August 27, 2003, which was assigned registration number 638/03. On June 24, 2005, the Commission received an additional communication from the petitioners.

10. On April 27, 2006, the Commission forwarded the relevant sections of the petition to the Peruvian State and requested that, in accordance with Article 30.3 of the Rules of Procedure, the State submit its response within two months.

11. On July 7, 2006, the Peruvian State submitted its observations and added its position paper "General Report of the Peruvian State to the Honorable Inter-American Commission on Human Rights with regard to various complaints on the subject of pensions." On July 12 and July 31, 2006, the State forwarded the corresponding annexes.

12. On September 7, 2006, and on February 16, 2007, the petitioners submitted additional information.

13. On November 10, 2006, the State submitted its observations and on November 29, 2006, it forwarded the corresponding annexes. On March 26 and on April 3, 2007, the State submitted additional observations.

Processing of Petition 1044/04

14. On October 8, 2004, the Commission received a new petition alleging the violation of rights enshrined in Articles 8, 25, 24, 1.1 and 2 of the American Convention to the detriment of 654 former employees of SUNAT. The petition was assigned registration number 1044/04. On February 15, 2005, the petitioners presented additional information.

15. On March 29, 2005, the Commission forwarded the relevant sections of the petition to the Peruvian State and requested that, in accordance with Article 30.3 of the Rules of Procedure, the State submit its response within a period of two months. The State forwarded its observations on May 31, 2005, and the corresponding annexes on June 14, 2005. On September 2, 2005 and on April 5, 2006, the petitioners submitted additional information.

Processing since grouping the petitions together

16. On May 7, 2007, the Commission communicated to the parties that petition 1044/04 had been grouped together with petition 965/98. On August 24, 2007, the Commission notified the parties its decision to also group together petition 638/03 and petition 965/98. On September 28, 2007, the petitioners submitted additional information. On July 25 and on December 19, 2007, the Peruvian State submitted additional observations.

III. POSITIONS OF THE PARTIES

A. The Petitioners

17. The petitioners indicated that the National Association of Dismissed and Retired Employees of the National Superintendence of Tax Administration represented more than 600 retirees throughout the country who were covered under the retirement system established in Decree Law 20.530 of 1974, which provided for pensions and unemployment benefits on a par with the level of compensation for active employees. The persons identified as supposed victims are: Abanto Carrera Eduardo, Acha Vergara Luis Antonio, Acuña Gayoso Victor Guillermo, Adrianzen Palacios Carlos Augusto, Agüero Fitzgerald Estefania Dalmira, Agüero Granados Peter Manuel, Aguilar Nole Manuel Erasmo, Aguilar Obando Juan Manuel, Aguilar Ocampo Nilda Consuelo, Aguilar Torres Nora, Aguirre Medina Eduardo Dionicio, Aguirre Utos Francisco, Ajalcuña Cortez Herbig Victor, Alarcon Urquizo Primitiva Bertha, Albites Izquierdo Cesar Orlando, Alegre Sanchez Moises, Alejos Torres Niceforo, Aliaga Ambukka Aurelio, Aliaga Lozano Jorge Horacio, Alonso Clemente Bertha, Altuna Paredes Adrian Eginhardo, Alva Valderrama Alejandrina, Alvarez Flores Antonio, Alvarez Gonzales Darma Maximina, Alvarez Pacheco Leocadia Valeria, Alvarez Ramirez Glicerio, Alzamora Mendoza Martha Soledad, Alzamora Soto Julia Mercedes, Amado Tarazona Jesus Wilde, Ancaya Cortez Emilio Agustin, Antunez Solis Eduardo Manuel, Antunez Solis Eva Isabel, Antunez Solis Teofilo Miguel, Aquino Landa Geronimo Victor, Arambulo Castillo Carlos Enrique, Arana Arenas Elsa Betty, Arana Flores Pablo Eleazar, Arana Solsol Jose Cecilio, Arancibia Quintanilla Juan Andres, Araujo De La Cuba Maria Mercedes, Arenas Arce Luis Enrique, Arenas Medina Luz Esperanza, Arevalo Veramatos Rodrigo, Armas Toro Priscila Eugenia, Arrese Villalta Juan, Arriola Oliva Nelli Consuelo, Arteta Cornejo Aurora Manuela, Ascuña Caceres Hector Raul, Asencios Martel Pedro Constantino, Aspajo Tafur Max Julian, Astete Zamalloa Ruth Marina, Atarama Lonzo Cesar Augusto, Auqui Aguilar Celestino, Aybar Bravo Ezequiel Inmaculado, Ayo Sarmiento Cesar Adrian, Baissel Tapia Carmen Rosa, Bajonero Trujillo Fortunato, Balbin Calmet Victor Raul, Baltodano Sinues Julio, Balvin Limaymanta Marcos Rodolfo, Bances Gonzales Nila Cristina, Barreda Quiroz Florentino Erasmo, Barrera Bedoya Augusto, Barrera Cardenas Grimanesa, Barrios Escobar Carlos Enrique, Basauri Lopez Rita Mercedes, Bazalar Longobardi Carlos, Becerra Chara Jose Ernesto, Bedoya Martinez Julia Alicia, Bejar Canaza Oscar, Bello Zerpa Salvador, Benaducci Manrique Jose Francisco, Benavides Espinoza Fortunato Raul, Bernal Bustamante Jose Luis, Bernal Bustamante Juan Adriano, Bernardo Villanueva Dulia Maria, Bernuy Acosta Francisco Agelio, Berrocal Barraza Nelly, Berrospi Trujillo Jose Santos, Blas Navarro Jose Daniel, Bobadilla Rojas Nelida Zenaida, Bonilla Gavino Eudora, Bravo Falcon Patricio, Bravo Hermoza Jose Arnaldo, Bringas Rodriguez Oscar Alberto, Broncano

Vega Pedro Hernan, Bueno Bedregal Adrian Emigdio, Bustamante Fernandez Ramon Rene, Cabrera Landeo Maria Consuelo, Caceres Pelaez Sonia Eva, Caceres Salazar Rosa Elvira, Calderon Matta Luisa Amelia, Camino Williams Maria Carlota, Campos Serpa Oscar, Campos Tapia Anibal, Canales Danos Rosa Mercedes, Canchaya Camacho Margarita, Canchaya Camacho Virgilio Raul, Candela Levano Luisa Aurora, Candela Levano Victor Alfredo, Capuñay Martinez Carlos, Carmona Raez Cesar Teodoro, Carpio Chicoma Ketty Maria, Carranza Alfaro Constantino Percy, Carranza Alfaro Magno Alejandro, Carranza Martinez Victoria Estela, Carranza Ulloa Javier Roberto, Carrasco Ferrel Eloy, Carrasco Orosco Jamblico Vicente, Carreño Llanos Judith Yolanda, Carreño Llanos Luisa Elizabeth, Carreño Mosquera Jose Carmen, Carrera Sandoval Meisse Helvecia, Carrillo Granda Sara Cleofe, Casas Sandoval Emilio Leonardo, Cassana Bazan Mercedes Irma, Castillo Deza Bertha Cecilia, Castillo Sanchez Julia Manuela, Castro Bernales Maria Rosalinda, Castro Buendia Fotunato Felix, Castro Cardenas Hugo Heraclio, Castro Robles Zoila Rosa, Castro Vidal Maria Isabel, Castro Villalobos Santiago Neptali, Castromonte Ramirez Artidoro, Cavero Ramos Gilberto Victor, Ccalla Huañahui Antonio, Centeno Zavala Eva Marina, Cerna Palomino Manuel Marcial, Cerna Vasquez Cesar, Cespedes Vega Martin, Chaina Fernandez Ricardo Luis, Chanduvi Ramirez Nelly Ana Maria, Charahua Flores Edilberto Guillermo, Chavez Bernal Victor Francisco, Chavez Centti Miguel Angel, Chavez Diaz Angel Rosendo, Chicata Urquizo Maria Evangelina Salome, Chienda Bazo Victor Nicolas, Chiriboga Pardo Jesus Eduardo, Chirinos Arredondo Nancy Jesus, Chois Malaga Armando Juan, Chuquillanqui Dominguez Judith Elizabeth, Chuquisengo Castillo Marianella, Cipriani Rodriguez Jesus Jose, Cipriani Rodriguez Pablo Eusebio, Ciudad Amaya Francisco, Claros Chavera Manuel Williams Isaias, Cochachi Aguilar Sebastian, Collado Ore Jorge Percy, Concha Cervantes Luis Glider, Condor Quispe Rufina Teofila, Contreras Abanto Abdon Rufino, Contreras Gutierrez Jesús Hector, Contreras Ordoñez Rigoberto, Cordova Cordova Ismael Vicente, Cordova De La Cuba Victor Enrique, Cordova Diaz Marco Amador, Cori Borja Saturnino, Cornejo Calsina Marcos Delfin, Correa Meza Dalila, Corzo Moron Juan Alejandro, Costa Morales Rosina, Cruz Mac Lean Dante Salomon Guillermo, Cuba Torres Jose Luis, Cuervo Larrea Mario Antonio, Cueva Lluncor Jose Francisco, Cunti Bardales Nancy Ruth, Cunyas Pino Luis Antonio, Curse Montoya Jorge, Daga Soto Maximo , Davila Avellaneda Demetrio, Davila Mango Nemo Andres, Davila Ramirez Segundo Diomedes, Davila Reategui Jorge Alberto, De La Cruz Casos Oswaldo , De La Cruz Lopez Juan, De La Fuente Guzman Maria Adelina, Del Carmen Sanchez Martha, Del Pino Martinez Carmen Ofelia, Del Valle Gonzales Jorge Atilio, Delgado Coronado Rosalie, Delgado Pedrozo Samuel Daniel, Delgado Rojas Ledy Bessy, Diaz Calderon Sixto Wenceslao, Diaz Campoblanco Gladys Clorinda, Diaz Cornejo Gladys Isolina, Diaz Delgado Gloria Lucero, Diaz Reategui De Mayor Angela, Diaz Silva Judith Juana, Diaz Villavicencio Victor Augusto, Diez Cerruti Isabel Constanza, Dominguez Pando Santos, Dominguez Zavaleta Zene, Donayre Barrios Jose Carlos, Dugard Marquina Plutarco Julio, Dulanto Carrillo De Albornoz Enrique, Duran Picho Antonio Felix, Duran Rios Jorge Eleazar, Eche copar Davila Alberto Alejandro, Egocheaga Aguilar Prudencio, Eguiluz Mazuelos Efrain Sabino, Elguera Coronel Carlos Javier, Elias Cajo Reynaldo, Elias Herrera Luis Dictino, Enriquez Hilary Pedro Marcial, Enriquez Maguiña Orestes Constantino, Erazo Ramirez Jose Maria, Escobedo Juarez Celso, Espejo Aquije Delfin Fortunato, Espinoza Alvarado Armando Jorge, Espinoza Alzamora Manuel Antenor, Espinoza Chavarry Humberto Saul, Espinoza Eyzaguirre Maria Del Carmen, Espinoza Guanilo Hector Enrique, Espinoza Ramirez Manuel Demetrio, Estela Bravo Corina Elda, Esterripa Angeles Rolando Abdias, Estupiñan Ortiz Juan Alberto, Felipa Grimaldo Eduardo Donato, Fernandez

Lara Maria Soledad, Fernandez Marrero Vicenta Elvira, Fernandez Salazar Jorge Isabel, Figueroa Herbas Enrique Moises, Figueroa Herbas Jorge Roberto, Filomeno Landivar Jorge Nicolas, Flores Almeza Wilma Consuelo Juana, Flores Bermudez Magno Melecio, Flores Ferreyra Elmer, Flores Pastor Luis Manuel, Flores Plata Clemente Roberto, Flores Sandoval Victor Marcos, Fonseca Bernuy Enrique Manuel, Franco De Manrique Olga Leonidas , Fry Montoya Enrique Antonio, Galarza Fernandez Pablo Humberto, Galindo Espinoza Teresa De Jesus, Gallardo Flores Cesar Augusto, Gallegos Perez Norberto, Gallo Agurto Cesar Augusto, Galvez Mendoza Hernan Antonio, Gamarra Buendia Miguel Abilio, Gamarra Romero Simon Gustavo, Garcia Caballero Rafael Cristobal, Garcia Hermoza Isidro Juvenal, Garcia Muñoz Luisa Guadalupe, Garcia Tamariz Carlos Arturo, Garcia Valdizan Dora, Gavilano Mendoza Gertrudis Idilia, Geldres Salamanca Elizabeth Victoria Yraida, Gomez Castañeda Marcos, Gomez Lafaix Irene Violeta, Gomez Suarez Elsa Beatriz, Gonzales Grados Manuel Mariano, Gonzales Lombard Abrill Raul, Gonzales Rodriguez Fidel, Gonzales Rodriguez Leopoldo, Gotelli Lugo Ruben, Grande Bolivar Norma Estela, Grande Cangahuala Gladys Dora, Guerra La Torre Felix Fausto, Guerrero Diaz Cesar Lucio , Guerrero Lucas Humberto, Guevara Mucha Victor Luis, Guillen Zarzosa Raymundo Manuel, Guimet Garro German, Guinassi Paz Edgard Roman, Guiulfo Castillo Olga Isabel, Gutierrez Martinez Guillermo , Gutierrez Castro Armandina Viviana, Gutierrez Cerna Alvaro Augusto, Gutierrez Galvez Oscar, Gutierrez Tapia Tomas Wilbert, Guzman Reyes Carmen Victoria, Haro Suarez Gladys Marietta, Heredia Solis Miguel Eugenio, Hernandez La Fuente Abraham, Hernandez Miranda Ofelia, Herrera Centurion Carlos Manuel, Hidalgo Guevara Silvio Raul, Hinojosa Aybar Victor Hugo, Hopkins Cangalaya Jose Edwing, Horna Arnao Enrique, Hoyos Diaz Humberto Javier, Huaman Lozano Constanza, Huaman Torres Fermin, Huamani Serrano Asterio, Huambachano Anton Hugo Bernardo, Huapaya Mejia Julia Luz, Huaricanha Martinez Jose Luis, Huaygua Velasquez Lizardo, Huerta Perez Juan, Huilca Chipana Juan De Dios, Hunder Perlacios Bernabe Gene, Ibazett Villacorta German, Iberico Ventocilla Angelica Mercedes, Infantas Lovaton Americo, Infante Vargas Dulio, Ipanaque Centeno Rafael, Isla Zevallos Dora Elisa, Jara Loayza Jose Bernardo, Jara Salcedo Julia Constantina, Javier Mamani Wenceslao, Jimenez Bravo Ygnacio, Jimenez Cedano Cesar Enrique, Jo Wong Luis Alberto, Jordan Ortiz Elsa, Joy Garcia Norma Maria, Julca Herrera Alejandro Tiburcio, Koc Chavera Flossy Dolores, Kuramoto Huaman Maria Cruz, La Rosa Bardales Cesar Antonio, La Rosa Chagaray Clara, La Rosa Sanssoni Juan Francisco, La Torre Diaz Clara Gemina, Lara Flores Enrique Sixto, Larru Salazar Angelica Dina, Lau Li Justa Virginia, Lau Quintana Jose, Lazarte Santos Clavio Honorato, Lazarte Villanueva Graciela Carmen Lourdes, Lazo Bullon Carmen Nelly, Lazo Garcia Ezequiel Horacio, Leon Angeles Nelly Teodora, Leturia Romero Jose Nestor, Levano Salhuana Luis Alberto, Liberato Martinez Victoria Gladys, Liendo Sanchez Eliana Maria, Lituma Agüero Cesar Humberto, Llamas Ordaya Emma Raquel, Llontop Braco Cristina Del Pilar, Llontop Effio Juana Mercedes, Loayza Paucar Feliciano, Loayza Portilla Graciela, Lombardo Gonzales Francisco Gregorio, Loo Reyes Carmen Rosa, Lopez Cespedes Alejandro Ruben, Lopez Chu Tomas Emilio, Lopez Guerrero Dante A., Lopez Paredes Mauricio, Lopez Vera Gladys Lucila, Lora Reyes Wilfredo Absalon, Loyola Tordoya Nydia Liliana, Lucar Alba Lisandro Ernesto, Ludeña Cardenas Fausto, Luglio Mar Edgar Americo, Lujan Burgos Gregorio Higinio, Luna Rojas Jesus Nora, Macedo Granda Victor Jose, Macedo Medina Dora Emilia, Machicao Pereyra Jorge Guillermo Belizario, Makishi Inafuku Vicente, Manrique Alvarado Jorge Noe, Manrique Sanchez Lea Olga, Marin Carrera Clodomiro, Marmanillo Castro Walter, Marquez Morante Maria Delia, Marquez Vergara Jesus Antonio, Marro Ibarra Luis Ernesto Francisco, Martel Lopez Carlos Orlando , Martinez Luyo

Pedro, Martinez Poblete Ercilia, Masias Yarleque Victor, Matias Aguirre Mario, Matysek Icochea Vladimir, Mayhua Via Gregorio, Mayorca Poma Pedro Manuel, Medina Aguirre Alberto Alejandro, Medina Ayala Andres, Medina Chavez Bertha, Medina De La Roca Jose, Medina Del Rio Evorcio Claver, Medrano Tito Evangelina, Melgar Medina Gil Francisco, Mendoza Linares Luis Enrique, Mendoza Puppi Julia Josefina, Mendoza Puppi Rosa Amelia, Mendoza Yareta Andres Jesus, Mera Zavaleta Jose Francisco, Mescua Bonifacio Esther Primitiva, Mesones Carmona Virginia Victoria Magdalena Sofia, Mesones Nuñez Ana Emperatriz, Meza Suarez Beltran Abraham, Milla Figueroa Eduardo Gamaniel, Millones Mateo Luis Antonio Pedro, Miranda Coronel Weissen, Miranda Fontana Manuel Jesus Maximiliano, Miranda Sanchez Gloria Isabel, Misajel Yupanqui Jesus Bacilio, Mogollon Perez Wilfredo, Mondoñedo Valle Rosa Maria Jesus, Mondragon Melendez Anselmo Pedro, Mondragon Orrego Teodoro, Mondragon Vasquez Segundo Avelino, Mongrut Fuentes Antero Alfonso, Montes Ballon Sofia Edelmira, Monteza Saavedra Segundo Miguel, Montoro Bejarano Julio, Morales Cruzatti Luis Oswaldo, Morales Vargas Hector Alvaro, Moran Ascama Jorge Rufino, Moreano Casquino Carmen Bernardina, Moreno Araujo Eva Maria, Morillo Rojas Sara, Morocho Vasquez Rosa Adelguisa, Mostajo Pinazo Carmen Beatriz, Moy Pacora Alejandro Jose, Mozo Rivas Agustin, Muñoz Campos Ode Raul, Muñoz Chavez Angel, Muñoz Leguia Maria Rosa, Muñoz Zambrano Carlos, Napuri Rondoy Jorge Alberto, Navarro Aramburu Silvino Augusto, Navarro Ayaucan Raul Andres, Neyra Salas Luz Bari Miria, Noel Urbina Gilberto, Noriega Cossio Oscar, Nuñez Alatriza Gloria Ruth, Nuñez Barriga Juan Rolando, Nuñez Gonzales Yolanda, Nuñez Quispe Gregorio, Nuñez Talavera Gabriela Gladys, Oblitas Carrion Dina Augusta, Obregon Tello Erlinda, Ocrospoma Valdez Fermin Claudio, Ojeda Macedo Arturo, Ojeda Ovalle Joaquin Jacinto, Ojeda Y Lazo Luz Ysolina Juliana, Olivera Torres Iris Mabel, Olivera Torres Judith Manuela Victoria, Olortegui Angeles Cristin Rodrigo, Ordeano Villanueva Demetrio, Orihuela Herrera Luis Mariano, Orrala Farfan Manuel Jacinto, Orrillo Chavez Esau, Ortega Ponce Oda Judith, Ortiz Basauri Carmen Eufemia, Ortiz Leon Mabel Noemi, Oshiro Oshiro Rosa Yosiko, Osiro Matusaki Lilian Lucy, Otoya Torres Maria Gusmara, Otoya Velezmoro Miguel Antonio, Oviedo Gomez Carlos Humberto, Pacheco Camargo Juan, Pacheco Leyva Leonidas Flavio, Pacheco Tueros Luis Enrique, Paco Contreras Teodoro Ninfo, Pajuelo Villegas Elsa Haydee, Palma Flores Ricardo Enrique, Palma Flores Rosa Elvira, Pantoja Marroquin Hilda Teresa, Pardo Heredia Alejandro, Pardo Vega Jose Armando, Paredes Melendez Teresa Elizabeth, Paredes Panduro Luis, Parker Pacheco Estrella Luz, Parra Loli Wladimiro Hugo, Parra Sanchez Jose Santos, Pasco Fitzgerald Elva Hercilia, Pasquel Ormazza Francisco, Paulini Effio Elia Nora, Peña Flores Irma, Peppe Riega Nicolas, Peralta Zegarra Zoila Aurora, Pereyra Echegaray Elsa Rosario, Perez Alejos Vicente Wilson, Perez Castro Julian, Perez Choque Maria Victoria, Perez Frazer Maria De Lourdes, Perez Minaya Luis Mariano, Perez Salas Victor Raul, Perez Vergara Marina Herminia, Perleche Moncayo Pablo, Pinedo Lopez Lady, Placencia Carranza Hugo Alberto, Plasencia Torres Jorge Guillermo, Poblete Loayza Victor, Polleri Dongo Cesar Ernesto, Portilla Palacios Luis, Posso Tornero Eduardo, Povis Carvajal Gloria Luz, Prado Pantoja Jorge Luis, Pujazon Morello Humberto Ernesto, Pulgar Omonte Pedro, Puntriano Torres Rios Javier Gustavo, Queens Arias Soto Jesus Fernando, Quevedo Cabrera Maximo Valentin, Quevedo Revilla Servero Gaston, Quevedo Rivas Jorge Jose Gabriel, Quevedo Rivas Maria Emperatriz, Quezada Mejia Sandalio Diego, Quintana Palacios Flora Del Carmen, Quiñe Romero Rosa Elena, Quiroz Cauvi Maria Rosario, Quiroz Cervera Saul Orestes, Quiroz Ortiz Haydee Dehera, Quiroz Vallejos Carmen Mercedes, Rado Farfan Federico, Raez Guevara Ana Maria, Ramirez Bustos Damaso Aristides, Ramirez Hoyos Juan Alberto, Ramirez Perez Pablo Gilberto, Ramos

Ballon Julio Nazario, Ramos Camacho Francisco, Ramos Correa Carmen, Ramos Espino Pedro Leoncio, Ramos Pacheco Henry Oswaldo, Reategui Dubuc Rosa Ida, Reategui Solano Daniel, Rejas Gomez Jose Luis, Rengifo Hidalgo Ramon, Rengifo Pezo Carlos Advelcader, Renilla Herrera Raul Alberto, Renilla Herrera Segundo Camilo, Reque Cumpa Maximo, Retamozo Pareja Teofilo, Reyes Ato Rolando, Reyes Sosa Rosa Isabel, Reyna Savero Carmen Jeronima, Ribera Vargas Carlos , Rioja Sanchez Carmen Micaela, Rios Ramos Paulina Laura Pilar, Rios Zavaleta Fortunato David, Risso Colmenares Ramon, Rivas Lara Victor Raul, Rivas Puga Enrique, Rivera Egusquiza Andres Roberto, Rivera Egusquiza Augusto A., Rivera Valega Roman Rodolfo, Riveros Rivas Ruben Abelardo, Robles Ventocilla Clara Rosa, Roca Vega Blanca Haydee, Rocca Sanchez Julio Eduardo, Rodriguez Arana Manuel Humberto, Rodriguez Aguirre Julio Raul, Rodriguez Banda Angelica Josefina, Rodriguez La Madrid Eduardo, Rodriguez Marquez Jaime, Rodriguez Rodriguez Benjamin, Rojas Carriedo Yolanda Alejandrina, Rojas Gutierrez Olga Angelica, Rojas Rosales Aida Roberta, Rojas Rosales Delia Jacinta, Rojas Santos Luis Alberto, Rojas Sebastian Pedro Silvio, Rojo Villanueva Mauro Cristobal, Roman Espinoza Maria Eugenia, Romero Diaz Luis, Rosales De La Cruz Alejandro, Rosas Flores Juana Arminda, Rosas Salas Victor Adrian, Rubio Diaz Ezequiel Teodulo, Rubio Milla Luis Josue, Rueda Ruiz Luis Alberto, Ruiz Orellana Reddy Max, Ruiz Tecco Mirza, Ruiz Travezan Graciela Emma, Saavedra Miñan Jose Alfredo, Saenz Espinoza Guillermo Milciades, Saez Rodriguez Mirtha Rosa, Sagardia Marquina Higinio, Salas Paredes Julia Lourdes, Salas Ruiz Caro Edgar Walter, Salas Ruiz Caro Maria Elizabeth Ruth, Salazar Lozano Lucy Noemy, Salazar Quiroz Ricardo Hildebrando, Saldaña Malqui Alberto, Saldaña Serpa Filemon, Salhuana Sanchez Yolanda, Salinas Malaga Cesar Augusto, Salvador Chafalote Rosa Erlinda, Samaniego Gonzales Olinda Nora, Sanchez Apolinares Elias Eugenio, Sanchez Canchari Marina, Sanchez Gambetta Carlos, Sanchez Sanchez Antenor, Sanchez Villanueva Antonio, Sanchez Villanueva Gregorio, Sandoval Valdez Victor Daniel, Sansur Velarde Jorge, Santander Alvarez Leonidas Justo, Santillan Palomino Daniel Gabriel, Sarmiento Bendezu Federico Francisco, Segura Marquina Polidoro, Seminario Seminario Jorge Guillermo, Sihuay Sifuentes Elsa Paulina, Silva Flor Lourdes Mercedes, Silva Ludeña Julio Hildebrando, Solano Derteano Emma Francisca, Solis Espinoza Miguel, Soriano Pinche Maria Luisa, Sosa Andrade Marcial, Sosa Llacza Isabel, Sosa Rojas Victor Anibal, Stagnaro Narvaez Carlos Humberto, Stucchi Diaz Martha Raquel, Suarez Cuadrado Aquiles, Suarez Hernandez Ramon Antonio, Suarez Molina Susano Tauro, Suarez Palomares Benedicta, Taboada Baltuano Idalia Antonieta, Talavera Rospigliosi Laura Rosario, Tam Loyola Perla Edith, Tamara Rivera Orestes, Tapia Gutierrez Jose Enrique Leoncio, Tavera Chirinos Carlos Alberto, Tenorio Rodriguez Vilma Elisa, Teran Marquez Victor Manuel, Terrazas Mejia Rosi Jesus, Terreros Monteverde Haydee, Terrones Diaz Elba Nelly, Tipacti Aste Nelly Gabriela, Toledo La Rosa Ramon Lorenzo, Toledo Molina Pablo, Tompson Ruiz Rita Amparo, Torrejon Jimenez Luis Beltran, Torres Araujo Antonio Ramiro, Torres Lazarte Teobaldo Felix, Torres Policarpo Emiliano, Torres Sanchez Amancio, Tueros Del Risco Nicolas Matias, Ubillus Morales Juan Carlos, Uchofen Tiparra Giordano, Uchuya Valencia Lorenza Soledad, Ugaz Diez Canseco Julia, Unchupaico Godoy Julia Agustina, Urcia Larios Jose Higinio, Uribe Collazos Maria Francisca, Urquizo Mendez Miguel Leoncio, Vaccaro Quiñonez Jorge, Valdez Cuellar Maria, Valdivia Caceres Rosa, Valdivia Ruiz Eduardo, Valdivia Velasquez Saturnino Braulio, Valenzuela Huaman Santos Pablo, Valerio Aguirre Inocenta Teofila, Valverde Dancourt Juan Manuel, Valverde Proaño Zoila Rosa, Varela Alzamora Maria Asuncion, Vargas Cusi Justo Pastor, Vargas Guillen Manuel, Vargas Soriano Napoleon, Vargas Utrilla Eustaquio, Varias Hurtado Eleazar Antonio, Vasquez Euribe Isabel, Vasquez Giraldo

Carlomagno, Vasquez Rivera Jose Leonidas, Vasquez Vasquez Wilber Gonzalo, Velarde Ortiz Hector Raul , Velarde Ruesta Conrado Francisco, Velasquez Quezada Pedro, Velita Palacios Antonio Gamaniel, Venegas Sussoni Fernando Jose Elias , Ventocilla Ureta Rafael, Vera Rosas Jesus Eduardo, Vera Toro Juana Elvira, Vera Valderrama Vignar Nerio, Verastegui Oscategui Robin, Vicente Dulanto Maura Isabel, Vidaurre Guillermo Juan, Vidondo Cortez Jose, Vigil Urdiales Rita Maria, Vigo Flores Carlos, Vigo Noriega Andres Jose, Vilca Nieto Jaime Napoleon, Vilcas Palomino German, Vilchez Chavez Jose Isidro, Vilchez Ordoñez Manuel Isauro, Villacorta Bellota Nemesio, Villacorta Lozada Cesar, Villafuerte Rivera Nelly Marcela, Villalobos Garcia Ascencion, Villalobos Ruiz Saturnino Vicente, Villalta Castañeda Jorge Octavio, Villanueva Soriano Jose Reynaldo, Villanueva Vidal Carmelo Edmundo, Villar Calagua Isaura Maria, Villaran Cavero Carmen Rosa, Villavicencio Valdivia Jaime Alejandro, Villena Ponce Narda Luz, Vivanco Terry Yolanda Cristina, Weissel Santillan Teodoro, Wong Chang Jose German, Yabar Acurio Marina Mauricio, Yalta Mezquita Herman, Yana Siguacollo Pablo, Yoplac Caman Jose Segundo, Yoza Yoza Agustin, Zaldivar Carhuapoma Jorge, Zamora Capelli Olga Alicia, Zamudio Espinoza Silvestre, Zamudio Rojas Nancy Aurora, Zapana Mamani Florencio, Zapata Diez Canseco Percy Walter, Zavala Vela Gladys Emilia, Zavaleta Remy Rosa Maria Del Pilar, Zavalla Contreras Julio Victor, Zegarra Matos Mario Antonio, Zevallos Huamani Claudio, Zumaeta Reategui Clara Melita, Zuñiga Montes Julio Evaristo, Zuñiga Stranguich Hilda, Zuñiga Vasquez Mariano Claudio.

18. The petitioners pointed out that since the SUNAT failed to comply with the provisions of the aforementioned law, on December 19, 1991, they filed an amparo petition requesting non-enforcement of the Third Transitional Provision of Decree Law No. 673, which contravened the provisions of Decree Law No. 20.530.

19. The petitioners added that this amparo petition was definitively resolved by the Supreme Court of Justice on October 25, 1993, when it ruled that the petition had merit and ordered the reinstatement of the petitioners right to receive a pension on a par with the level of compensation for active service employees of SUNAT, as well as payment of the increases they had never received.

20. The petitioners alleged that, as a delaying tactic, on November 9, 1993, the Ministry of Economy and Finance lodged a petition for cassation with the Court of Constitutional Guarantees which, due to the fact that the court was in recess, took three years to issue a ruling. The petitioners pointed out that on June 25, 1996, the Court of Constitutional Guarantees ordered the enforcement of the judgment, concluding that the decisions in favor of the petitioners in the amparo process in which the State was a party, and which were awaiting resolution in the process of cassation in the Court of Constitutional Guarantees, were final and enforceable.

21. The petitioners indicated that the execution of the judgment in their favor issued on October 25, 1993, should have been initiated immediately but, instead, “a systematic series of actions and illegal maneuvers” had delayed and continued to try to impede compliance with the terms of the judgment which, the petitioners alleged, had caused grave and irreparable damage to the alleged victims.

22. The petitioners also pointed out that due to the fact that the State had lodged a petition for cassation of the judgment of October 25, 1993, and due to the disruption in the functioning of the Judicial Branch caused by the coup of 1992, it was not until January 21, 1997, that the process of executing the judgment was initiated by order of the Pension Benefits Court.

23. The petitioners pointed out that the decision of the Provisional Court ordered the Ministry of Economy and Finance “to comply within the ruling of the Supreme Court of October 25, 1993, in the period established by law.” The petitioners added that the aforementioned ministry lodged a petition for annulment of that decision alleging that it was not the ministry’s responsibility to comply with the order. Consequently, through a resolution issued on April 8, 1997, the SUNAT was ordered to comply with the judgment. The petitioners indicated that on August 18, 1997, this decision also was ruled null and void by the Superior Court and that, finally, on February 16, 1998, the petition for annulment lodged by the Ministry of Economy and Finance was ruled without merit.

24. The petitioners pointed out that as a result of other appeals lodged by the state entities being sued, on August 27, 1998 and on January 21, 1999, the Civil Law Chamber of the Lima Superior Court issued decisions vacating the decision of January 21, 1997, and ruling that the petition for enforcement of judgment filed by the association was inadmissible, “but reserved the right of the Association to exercise the recourse in the manner prescribed by law.” According to the petitioners, these decisions were based on grounds that the amparo decision had merely a declarative effect[FN2].

[FN2] The annexes supplied by the petitioners indicate that on August 27, 1998, in the framework of the process of enforcement of judgment, the Transitional Corporatist Public Law Chamber ruled that it was the Association that had lodged the complaint without identifying its members. The Court also pointed out that, although the right to receive a retirement pension or severance payment had been established by Decree Law 20.530, and that the reinstatement of that right had been ordered, including the adjustment based on the salary scale of SUNAT employees in active service, as well as payment of the increases they had never perceived, in order to make the enforcement of judgment possible (sic) “first of all, it should be borne in mind that the decision of the Supreme Court of Justice is declarative in nature and constitutes *res judicata* in the sense that restoring the situation to what it was before the complaint was lodged, rules it inapplicable and reinstates the rights derived from the provisions of the Third Transitional Provision of Legislative decree 673, that is, on the limits of transferring to the Ministry of Economy and Finance the obligation to pay the pensions. Second, although it is true that the action has been assigned by judicial decree to the Ministry of Economy and Finance and to the National Superintendence for Tax Administration, these agencies have not been sued directly; however, because they are involved in enforcing the law, they bear responsibility for its impact as, at the opportune time, so will the Pension Normalization Office because of the provisions of Decree Law 817 which approves the Pension System Law under State oversight and which goes into force on April 28, 1996. With this precedent, as the enforcement of judgment in this case proceeds, it is necessary for each member of the petitioning association, duly identified, to begin, at the administrative entity which holds the individual’s pension records, the appropriate proceedings established by law to adjust settlement payments and that

will fully comply with their rights which are jurisdictionally recognized by this court.” This decision vacated the ruling that ordered the Ministry of Economy and Finance to enforce the judgment.

25. The petitioners added that the Association filed an amparo petition challenging the decisions and on May 10, 2001, the Constitutional Court ruled in favor of the petitioners reversing the decisions of the Superior Court and ordering that the case be returned to the execution of judgment stage. The Court’s action reaffirmed the decision issued by the Provisional Court on January 21, 1997.

26. The petitioners pointed out that in enforcing the decision, on April 11, 2002, the Sixty-third Specialized Civil Court in Lima issued a ruling ordering that SUNAT and the Ministry of Economy and Finance be required to comply in full with the judgment of the Constitutional Court within a period of 10 days. The petitioners added that this order was reiterated on May 30 and on June 24, 2002.

27. The petitioners stated that, at their request and in light of the fact that the judgment was not being enforced, on September 25, 2002, the Court itself ordered the Public Ministry to oversee the enforcement of the judgment and the Congress to denounce the civil servants who enjoy the constitutional privilege to a preliminary hearing on the merits. The petitioners pointed out that the same decision launched a judicial investigation to bring the pensions on a par with the salaries of active employees and to compute the amount of the compensatory payments for increases that were never perceived.[FN3]

[FN3] The annexes submitted by the petitioners indicate that these decisions were adopted by different rulings of the same court. The first, on September 23, 2002, ordered an expert accounting report, and the second, on September 25, 2002, directing the Public Ministry to intervene due to the repeated refusals to enforce the judgment.

28. The petitioners indicated that on April 7, 2003, the expert submitted his report which was then challenged by SUNAT, in a written document, on April 23, 2003, which, SUNAT said, was not intended to attack the investigation but to question the content of the judgment being enforced.

29. The petitioners pointed out that the Sixty-sixth Civil Court in Lima, issued Resolution No. 80 which: i) found that SUNAT’s challenge of the expert report was groundless; ii) ordered the approval of the expert report; iii) ordered SUNAT to pay the pensions brought on a par with the salaries of active employees, on the third day after it had been notified; and iv) ordered SUNAT to pay the increases the members of the association had never received up to the date of compliance with the previous point.

30. Despite this resolution, the petitioners added, SUNAT refused to comply with the judgment and lodged an appeal challenging the ruling of the Sixty-six Civil Court in Lima. In

decisions dated May 5, 2005, and May 8, 2006, the first expert report was rejected in both first and second instance, and the criteria in which to base a new expert report were established. According to the petitioners, the new expert accountant followed the criteria to the letter.

31. Nevertheless, the petitioners said, SUNAT continued to obstruct and delay complying with the terms of the judgment, submitting observations and lodging challenges to this second expert report. The petitioners added that on July 24, 2006, the Sixth Civil Chamber of the Lima Superior Court ruled the second expert report null and ordered a third expert report aimed at excluding the remuneration of active service employees, even though it was precisely that exclusion that was ruled inapplicable in the amparo decision which sided with the petitioners. The petitioners alleged that the purpose of these decisions was to eliminate any impact the Supreme Court of Justice ruling of October 25, 1993 may have. In that regard, the petitioners emphasized that in the enforcement stage, judges are not allowed to modify, interpret or change the meaning of the terms of the judgment.

32. The petitioners alleged that the argument underpinning these decisions was not acceptable in the sense that, as a result of the pension reform of 2004, which eliminated the system provided for in Decree Law 20530, by “constitutional mandate” there are no legal grounds to adjust pensions to be on a par with the salaries of active employees of SUNAT. According to the petitioners, notwithstanding the fact that this constitutional reform constituted a clear regression in the level of protection of pension rights, this same reform could not be used as grounds to rule that previous legal judgments which ordered the restitution of the rights of tens of thousands of retired individuals in Peru were unenforceable.

33. With regard to the State’s argument, the petitioners alleged that the position that there are no legal grounds to adjust pensions to be on a par with the salary scale of private sector employees is irrelevant because, as stated in the second expert report, the computation of the amount by which the petitioners’ pensions needed to be adjusted was based on the salary scale of active employees of SUNAT regulated by the civil service system and not on the salary scale of those regulated by the private sector system.

34. With regard to the argument put forth by the Peruvian State that it was impossible to determine the total number of beneficiaries of this judgment, the petitioners contended that this matter was resolved by a ruling of the court executing the judgment on June 24, 2002, in which it determined that the judgment applied to all the accredited members of the association listed in the legalized copy of the association’s membership registry and to all the individuals included in SUNAT’s list of discharged employees, both of which are part of the case file.

35. The petitioners contended that their case is encased in a context of judgments unenforced by the State. The petitioners pointed out that this context was recognized by the Public Defender’s Office in Defense Resolution No. 62-98/DP, which made clear the almost universal position of the Judicial Branch of not ordering the enforcement of final judgments in cases such as this or to issue writs of attachment on government property.

36. The petitioners indicated that as a result of the judgment in their favor not being enforced, the alleged victims have been receiving an average pension of S/. 400.00 (400 Peruvian Nuevos

Soles), which amounts to a third of the money needed to purchase a family's basic basket of goods, and, therefore, affecting their access to a life with dignity. The petitioners added that the alleged victims were in an irreversible emotional state, aggravated by their age and by the fact that tens of beneficiaries of the judgment of October 25, 1993, have already died, some of them due to extreme poverty which prevented them from having access to "appropriate care."

37. With regard to the requirement to exhaust domestic remedies, the petitioners contended that the actions that the Peruvian State alleged were still pending were precisely the actions and measures being used by SUNAT to delay enforcing the judgment. In the petitioners' opinion, they were exempt from exhausting domestic remedies under the provisions of the exemptions enshrined in Article 46.2.a and 46.2.c of the American Convention.

38. In that sense, the petitioners alleged that the conclusion of the enforcement of judgment stage could hardly be stipulated as a requirement before lodging a petition with the Commission, because Article 25.2.c of the Convention does not impose as a condition the obligation of national authorities to guarantee compliance with the terms of the judgment by the completion of the enforcement of judgment stage; only that there be a favorable judicial decision.

39. In the petitioners' opinion, the facts described constituted a violation of the rights enshrined in Articles 21, 24, 8 and 25 of the American Convention with regard to the general obligations established in Articles 1.1 and 2 of the same instrument, as well as of the right recognized in Article 9 of the Protocol of San Salvador and of Article XVI of the American Declaration.

40. Finally, the petitioners alleged that the benefits of the judgment must cover all those members of the association whose acquired right is legally recognized and who were dismissed beginning in 1992 because otherwise, it would constitute a violation of the right to equality before the law and the principle of non-discrimination. In that regard, the petitioners pointed out that in the decision of June 3, 2005, which ordered the SUNAT to comply with the judgment, 102 members of the association were excluded which, in their opinion, constituted a violation of the right to equality before the law.

B. The State

41. With regard to the facts, the State provided a narrative of the amparo proceeding and of the enforcement of judgment proceeding similar to that described by the petitioners adding that the SUNAT objected to the expert report of April 7, 2003, because it considered that it was illegal and contrary to the jurisprudence of the Constitutional Court. The State pointed out that the argument was accepted by the corresponding judicial authority which, on May 5, 2005, rejected the "multimillion expert report" issued and made it absolutely clear that the pensions could not be adjusted based on the salary scale of SUNAT employees under the private labor system and ordering a new expert report.

42. The State pointed out that the association appealed the decision on May 23, 2005, and that on May 23, 2006, the appeal was resolved when the earlier decision was reaffirmed.

43. The State pointed out that the new expert report followed the same criteria that determined the rejection of the first expert report and that led to a resolution issued on March, 17, 2006, ordering SUNAT to adjust the pensions and pay the increases not received to 566 members of the association within three days of being notified. The State also pointed out that this resolution was appealed by SUNAT.

44. According to the State's narrative, on July 24, 2006, the Sixth Civil Chamber of Lima decided the appeal lodged by SUNAT ordering a new accounting expert report on grounds that the expert accountant had followed erroneous criteria in determining the amounts owed. The State pointed out that this ruling ordered that the new expert report should be conducted in accordance with current legislation and existing jurisprudence in this area, and reiterated the incompatibility of adjusting pensions under the system established by Decree Law 20.530 based on the salary scales of the private sector system.

45. The State indicated that, in accordance with the previous decision, on October 25, 2006, a new expert report was ordered "with guidance from Article 3.c of Decree Law No. 673, given that the adjustment must be based on the salary scale of the active civil service employee or worker in Public Administration of the same rank and pay level that the retired employee held at the time of dismissal (...)".

46. The State argued that these expert reports lacked legal grounds and veered away from the judicial rulings in this area because their implementation would mean that the Peruvian State would have to pay the members of the association amounts in the millions in pension adjustments and compensatory payments. The State indicated that the new expert report ordered by decision issued on July 24, 2006, is currently pending. The State added that the person that would carry out the expert accounting report was designated on December 19, 2006. As of December 19, 2007, the date of the most recent report submitted by the State, the new expert report had not been completed.

47. By virtue of the preceding, the Peruvian State argued that domestic remedies had not been exhausted. The State indicated that there are still actions pending in the enforcement of judgment stage and that the delay in the process was due to the fact that, at first, the Judicial Branch considered that in order to comply with the decisions issued, it was necessary for any individual who felt that, based on the rulings, had a right to compensation to file an individual petition in the administrative venue. The State added that another factor that contributed to the delay was the multiple petitions lodged by the parties on the following aspects: i) the lack of clarity as to who was a member of the association at the time the amparo petition was lodged; and ii) the controversy over the expert reports.

48. The State considers that the demands of the petitioners are being analyzed internally, and that, in that sense, a pronouncement by the Commission would make the Commission a fourth instance.

49. The State also contended that the requirement for lodging the petition on time has not been met because more than six months have elapsed between the date of the judgment, October 25, 1993, and the date the petition was lodged.

50. With regard to other admissibility requirements, the State argued that the facts that motivated the petition no longer exist because, based on the same facts, the association turned to the domestic jurisdiction lodging an amparo petition on April 23, 1999, with the Corporatist Public Law Chamber of the Superior Court of Lima, having obtained a favorable ruling from the Constitutional Court on May 10, 2001. The State contends that the preceding is evidence that the petition should not be considered by the IACHR because the motive for lodging it did not exist and does not subsist.

51. With regard to the alleged violations, the State pointed out, in general terms, that in the domestic judicial process the petitioners had had access to the various remedies afforded by the domestic legislation, and that the sole fact that, by virtue of the legislation in force and the jurisprudence in this area, the judicial rulings did not support the petitioners' allegations could not be construed as a violation of the right to judicial protection. The State also pointed out that the petitioners had not offered arguments with regard to the supposed violation of the right of equality before the law.

52. Finally, the State described its position regarding the internal controversy between the SUNAT and the association, indicating that the ruling of October 25, 1993, did not mean, as the petitioners pretended, that the adjustment of pensions must be achieved using as point of reference the salaries perceived by active employees under the private labor system who were not part of the civil service system and were, therefore, outside the pension system established under Decree Law No. 20.530. The State in effect pointed out that Article 3.c of Decree Law No. 673, established that the higher salaries received by employees as a result of the modifications to the employment system of the SUNAT, could not be used to determine retirement pensions for those employees covered by the pension system established by Decree Law No. 20.530.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence

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

53. The petitioners are authorized by Article 44 of the American Convention to lodge petitions on behalf of the alleged victims. The alleged victims in this case were under the jurisdiction of the Peruvian State from the moment the alleged facts began to be executed. For its part, the Peruvian State ratified the American Convention on July 28, 1978. Therefore, the Commission has competence *ratione personae* to examine the petition.[FN4]

[FN4] The alleged victims, identified before the IACHR, are named on Annex No. 1 of this report.

54. The Commission is competent *ratione loci* to hear the petition, because it alleges violations of rights protected by the American Convention that were said to have taken place within the territory of a State party to that treaty.

55. The Commission is also competent *ratione temporis* because the obligation to respect and guarantee the rights protected by the American Convention was already binding upon the State at the time that the facts alleged in the petition occurred.

56. Lastly, the Commission is competent *ratione materiae*, because the petition alleges that human rights protected by the American Convention were violated. The Commission takes note that the petitioners also alleged the violation of the right to social security enshrined in Article 9 of the protocol of San Salvador. In that regard, the Commission points out that Article 19.6 of that instrument provides for a limited competence clause in order that organs of the inter-American system may issue decisions on individual petitions regarding the rights enshrined in Articles 8.a and 13. In that respect, the Commission is not competent *ratione materiae* to rule on the possible violation of Article 9 of the protocol of San Salvador.

B. Exhaustion of Domestic Remedies

57. Article 46.1.(a) of the American Convention provides that for a complaint lodged with the Inter-American Commission in accordance with Article 44 of the Convention to be admissible, it is necessary to have pursued and exhausted the domestic remedies in accordance with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to hear about the alleged violation of a protected right and, if appropriate, to provide a solution before it is heard in an international venue.

58. The requirement of prior exhaustion of domestic remedies is applicable when within the domestic system there is effective and adequate recourse available to remedy the alleged violation. In this respect, Article 46.2 establishes that the requirement is not applicable when the domestic legislation of the State concerned does not afford due process of law for the protection of the right that has allegedly been violated; or when the remedies under domestic law were not accessible to the alleged victim; or when there has been unwarranted delay in issuing a decision under the aforementioned remedies. As provided for in Article 31 of the Rules of Procedure of the Commission, when the petitioner claims one of these exceptions, it is up to the State to prove that domestic remedies have not been previously exhausted, unless that is clearly evident from the record.[FN5]

[FN5] IACHR, Report N° 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 Community (Sumo) Awas Tingni. Preliminary Exceptions, para. 53; Durand and Ugarte Case. Preliminary Exceptions. Judgment of May 28, 1999. Series C No. 50, para. 33; and Cantoral Benavides Case. Preliminary Exceptions. Judgment of September 3, 1998. Series C No. 40, para. 31.

59. The Peruvian State lodged a lack of exhaustion of domestic remedies exception, alleging that in the process of enforcement of judgment there were still actions pending resolution. In the State's opinion, the petitioners' demands were under study in the domestic proceedings and, hence, a ruling issued by the Commission would, in effect, turn the Commission into a fourth instance. The three arguments offered by the State to justify the length of the process were: i) the initial position of the Judicial Branch that in order to execute the judgment it was necessary for the beneficiaries to file individual claims in the administrative venue; ii) the lack of clarity as to which persons were members of the Association at the time the amparo petition was lodged; and iii) the multiple challenges filed as a result of the controversy over the expert reports.

60. For their part, the petitioners alleged that the very actions that the Peruvian State alleges are pending are precisely the actions and measures being used by the SUNAT to delay the enforcement of judgment. In that respect, the petitioners requested that the Commission rule that the petitioners were exempt from exhausting the domestic remedies under the exemptions established in Article 46.2 (a) and (c) of the American Convention.

61. The Commission observes that since January 21, 1997, and during the subsequent four and a half years, the judicial authorities that intervened in the enforcement of judgment process limited themselves to trying to determine which authority was responsible for enforcing the judgment and what was the prescribed legal procedure to accomplish it. This indecision continued until May 10, 2001, when, as a result of an amparo remedy lodged by the Association, the Constitutional Court ordered the case reinstated in the enforcement of judgment stage, that is, back to the point when the ruling of January 21, 1997, was issued.[FN6]

[FN6] Constitutional Court. Judgment dated May 10, 2001. Doc. No. 104-2001-AA/TC. This decision states that: "no one (...) may vacate decisions that have been issued based on res judicata, nor end proceedings that are still in process, nor modify judgments or delay their enforcement; and this does not take effect when the magistrates being sued, through decisions that are being contested on appeals, pretend to vacate the decision issued by the Pension Court on January 21, 1997, which, in strict compliance with procedural law, orders the enforcement of the Supreme Court decision dated October 25, 1993, which is what these filings demand that it be done. 2. The Constitutional Court has the obligation to state that a final judgment based on the fulfillment of a guarantee, is a final judgment with the authority of res judicata, unchangeable ; and, for that reason, it must be executed according to the terms contained in that decision."

62. According to the information supplied by the parties, eleven months after the ruling on the amparo petition, on April 11, 2002, the Sixty-third Civil Court of Lima issued a decision ordering that the SUNAT and the Ministry of Economy and Finance enforce in full the judgment of the Constitutional Court within a prescribed period of time.[FN7] Information contained in the case file clearly indicates that, given the lack of response, this requirement was reiterated twice, on May 30th [FN8] and on June 24th, 2002.[FN9]

[FN7] Sixty-third Civil Court of Lima. Decision dated April 11, 2002.

[FN8] Sixty-third Civil Court of Lima. Decision dated May 30, 2002.

[FN9] Sixty-third Civil Court of Lima. Decision dated June 24, 2002.

63. The information contained in the case file also indicated that it was not until September 23, 2002, that a decision was made to request an expert report to calculate the amounts owed.[FN10] From that moment on, the expert reports were challenged by the SUNAT, an entity that, through a variety of legal avenues, objected to the criteria on which the expert reports had been based to date.

[FN10] Sixty-third Civil Court of Lima. Decision dated September 23, 2002.

64. It does not fall to the Commission to analyze if the criteria followed in the expert reports were appropriate or not, or to determine the specific amounts owed to the alleged victims because that is the role of the judicial authorities responsible for enforcing the judgment. The Commission's analysis must only determine whether the alleged victims had access to effective legal remedy to have the judgment in their favor enforced.

65. In that respect, and without prejudging the merits of the case, the Commission considers that the twelve and a half years delay, from October 25, 1996[FN11] to date, can be attributed prima facie to: i) the appeals filed by the state entities being sued; ii) the delay of the judicial authorities to rule on the remedies which, as evidenced by the available information, led to the process being held back for long periods of time; and iii) to the lack of clarity within the Judicial Branch with regard to the legal process to be followed to enforce the judgment. As indicated above, this confusion among the different judges which was finally resolved by the Constitutional Court consumed the first four years of the enforcement process.

[FN11] Date in which the judgment of October 25, 1993, was ruled enforceable.

66. Based on the preceding, the Commission considers that the petitioners are exempt from exhausting the domestic remedies because the enforcement of judgment process constituted an unjustified delay under the provisions of Article 46.2 (c) of the American Convention.

C. Deadline for submitting the petition

67. Article 46.1(b) of the Convention provides that for a petition to be admissible, it must be lodged within a period of six months from the date on which the interested party was notified of the final judgment in the domestic jurisdiction. This rule does not apply when the Commission finds that any of the exceptions to the exhaustion of domestic remedies established in Article 46.2 of the Convention is applicable. In such cases, the Commission must decide if the petition was filed within a reasonable period of time in accordance with Article 32 of the Commission's Rules of Procedure.

68. The Peruvian State alleged that this petition was not filed within the prescribed period of time, using October 25, 1993, as the date to determine the deadline. As the parties have asserted and the information contained in the case file confirms, this is the date in which the Supreme Court of Justice issued its decision on the amparo petition siding with the alleged victims. This is precisely the decision the petitioners allege has not been enforced. Therefore, the rights violations alleged by the petitioners would have taken place after the judgment was issued, given that the purpose of the petition was not the amparo proceeding – which was favorable to them – but the lack of enforcement of the final judgment. In that respect, the Commission considers that there are no grounds for this argument.

69. Taking into consideration the active role assumed by the alleged victims in the enforcement of judgment process as well as the fact that, because of its continued nature, the violation still remains unresolved, the Commission considers that the three petitions grouped together were submitted within a reasonable period of time.

D. Duplication of proceedings and international res judicata

70. Article 46.1(c) of the Convention establishes that the admissibility of petitions is subject to the requirement that the matter "is not pending in another international proceeding for settlement" and Article 47.d of the Convention establishes that the Commission will not accept a petition that is substantially the same as one previously studied by the Commission or by another international organization. In this case, neither party has argued that either of those reasons for inadmissibility exist, nor can that be inferred from the case file.

E. Characterization of the alleged facts

71. For the purpose of admissibility, the Commission must determine if the petition states facts that tend to establish a violation of rights as established in Article 47.b of the American Convention, if the petition is "manifestly groundless" or if it is "obviously out of order," as established in paragraph c of the same article. The standard to evaluate these limits is different than the standard required to decide on the merits of a complaint. The Commission must do a prima facie evaluation to examine if the complaint provides grounds to sustain the apparent or potential violation of a right guaranteed by the Convention but not to establish that a violation has occurred. That evaluation is a summary analysis which does not imply prejudging or advancing an opinion on the merits.

72. The Peruvian State argued that the facts that motivated the petition do not subsist because they were resolved by the Constitutional Court on May 10, 2001. From the information contained in the case file, the Commission notes that the decision cited by the State determined that the enforcement of judgment process was the appropriate legal avenue to remedy the petition. At the same time, it was decided to return the case to the State which, by judicial order, was required to direct the appropriate authorities to enforce the judgment.[FN12] Almost nine years have elapsed since that decision was issued and, to this date, the enforcement of judgment process has not been closed. The petitioners continue to allege that the amparo judgment in their favor has not been enforced. The Commission considers that the State's argument is without

grounds and that the available information clearly shows that the facts that motivated the petition subsist to this date.

[FN12] Constitutional Court. Judgment dated May 10, 2001. Doc. No. 104-2001-AA/TC.

73. In that respect, the Commission considers that if the alleged facts were true, these could constitute a violation of the rights enshrined in Articles 21[FN13], 8 and 25 of the American Convention, with regard to the obligations established in Articles 1.1 and 2 of the same instrument.

[FN13] The Commission considers that if it were proven that the alleged non-enforcement of judgment prevented the alleged victims to have access to effective recourse with regard to their property rights, especially with regard to the pensions adjusted in accordance with the system they were regulated by, the facts could constitute violation of the right to property. See: I/A Court H.R., Case of the “Five Pensioners”. Judgment of February 28, 2003. Series C No. 98.

74. Based on the information supplied by the petitioners, the Commission does not have sufficient elements to rule on the possible characterization of a violation of the right enshrined in Article 24 of the American Convention.

V. CONCLUSIONS

75. Based on the elements of fact and of law stated herein and, without prejudging the merits of the case, the Inter-American Commission concludes that this case meets the admissibility requirements established in Articles 46 and 47 of the American Convention and therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare admissible the petition under study, with regard to the rights enshrined in Articles 21, 8 and 25 of the American Convention in connection with the obligations established in Articles 1.1 and 2 of the same instrument.
2. To declare inadmissible the petition under study, with regard to the right enshrined in Article 24 of the American Convention and to Article 9 of the Protocol of San Salvador.
3. To notify the State and the petitioners of this decision.
4. To proceed with the analysis of the merits of the case.
5. To publish this decision and include in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on March 19, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Felipe González, Second

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Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo Carozza, members of the Commission.