REPORT No. 79/10
PETITION 12.119
INADMISSIBILITY
ASSOCIATION OF RETIRED OIL INDUSTRY WORKERS OF PERU - METROPOLITAN AREA OF LIMA AND CALLAO
PERU
July 12, 2010

I. SUMMARY

1. On November 13, 1998 the Inter-American Commission on Human Rights (hereinafter "the Commission," "the IACHR," or "the Inter-American Commission") received a petition submitted by Francisco Carlos Rodríguez Salcedo (hereinafter "the petitioner") in his own name and on behalf of Avelino Artemio Águila Chapilliquen, Luis Felipe Carrasco Mendoza, Juan Enrique Chambers Alzamora, Félix Falcón Canales, Ezequiel Gallarday Paredes, Renulfo Roncal Aliaga, and Manuel Froilán Zapata More (hereinafter "the alleged victims"),[1] alleging responsibility on the part of the Republic of Peru (hereinafter "Peru," "the Peruvian state," or "the State") based on judicial decisions on actions for constitutional protection (hereinafter "*amparo* suit"), in which the application of Law No. 25219 was denied to these workers. The law allows workers of the PETROPERÚ company who meet certain requirements to be included in the public retirement system provided in Decree Law No. 20530. The petitioner alleged that the Peruvian courts misinterpreted the scope of Law No. 25219, as well as other procedural laws, which he argued entailed a violation of human rights enshrined in Articles 8, 17, and 24 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

2. For its part, the State indicated that the alleged victims' assertion that Law No. 25219 applied to them has no legal basis and was thus rejected by all the courts to which the alleged victims applied. It maintained that these courts acted within the scope of their jurisdiction and with respect for due process. It emphasized that the *amparo* suits filed by the alleged victims were rejected for substantive as well as procedural reasons, and that they failed to utilize the challenge mechanisms that domestic law provides for remedying alleged violations of judicial guarantees. Finally, the State argued that the facts raised by the petitioner do not establish a violation of rights protected in the American Convention and asked that the petition be declared inadmissible in accordance with Article 47(b) and (c) of that instrument.

3. After analyzing the positions of the parties, the Commission concluded that it is competent to hear the complaint, but that the complaint is inadmissible in accordance with Articles 46.1(b) and 47(b) of the American Convention. The Commission decided to notify the parties of this report, to publish it, and include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

[1] On February 25, 1999 Mr. José Andrés Alegría Schiaffino, then President of the Association of Retired Oil Industry Workers of Peru –Metropolitan Area of Lima and Callao, sought to have the following persons incorporated as alleged victims: Raúl Aranibar Larrain, Jorge Juan Bouverie Miró, Juan Francisco Guillón Escalante, Manuel María Montero Suárez, Julio César Prado Manrique, and Humberto Arcadio Collantes Calvo. In a communication received on May 30, 2000, the petitioner, Mr. Francisco Carlos Rodríguez Salcedo, sought to have the following persons incorporated as alleged victims: José Andrés Alegría Schiaffino, José Bahamonde Infantas, Julio Cárdenas Rivera, Pablo Cock Fonseca, Víctor Cuyubamba Chuquirachi, Juan Delgado Vergara, Raúl Francisco Espinosa Sánchez, Ángel Pastor García Chiri, Manuel Arcángel Horna Aguinaga, Víctor La Rosa Vega, Guillermo Otoya Checkley, Benigno Oviedo Atocha, Antero Ramón Palacios Rivas, Francisco Aurelio Pérez Hernández, Juan Pescio Ramos, José Domingo Ponce Cruz, Carlos Roca López, Buenaventura Saavedra Vizcarra, Eduardo Sarmiento Gonzáles, Eugenio Torres Núñez, Manuel Val Mendoza, Pedro Leonel Vásquez Zapata, Segundo Alberto Acuña Vertiz, Luis Fransisco Burranca Pereda, Carlos Alfonso Damiani Damiani, Manuel José Dioses Vásquez, Manuel Vicente Dulanto García, Oscar Prieto Bardales, Victoria Rosa Sayán de Pajares, José Solórzano Vega, and Juan Vives Morillas. According to the complaint, the 45 alleged victims are all members of the Association of Retired Oil Industry Workers of Peru –Metropolitan Area of Lima and Callao.

4. The petition was received by the IACHR on November 13, 1998 and was assigned the number 12.119. On February 25, 1999, the petitioner submitted additional information. On March 23, 1999, the IACHR forwarded the relevant parts of that documentation to the State and granted a period of 90 days to submit its observations, in accordance with the Rules of Procedure then in effect.

5. On July 27, 1999, the State submitted its response, which was forwarded to the petitioner on August 13 of the same year. The State submitted additional arguments on February 3, August 20, and December 26, 2000 and on March 19, September 26, November 6, and December 3, 2001.

6. For its part, the petitioner submitted additional communications on June 1, May 3, July 9, October 4, November 5, and November 24, 1999; on February 9, March 4, May 5, May 30, October 12, and December 18, 2000; on February 15, May 14, July 16, August 23, September 10, and November 2, 2001; on April 8, 2002; February 27, June 26, and September 22, 2002; on January 17, April 14, August 26, October 17, and December 1, 2003; on April 22, June 2, July 7, August 10, August 26, and December 3, 2004; on July 12, August 8, September 6, and September 14, 2005; on September 8 and October 23, 2006; on August 7 and November 10, 2008; on May 20, June 12, August 7, November 9, November 16, December 2, December 21, and December 22, 2009; February 17, and May, 14, 2010.

III. POSITIONS OF THE PARTIES

A. The petitioner

7. The petitioner argued that the alleged victims were employees of the International Petroleum Company Limited, which was expropriated on October 9, 1968 under Decree Law No. 17066, and assumed the corporate name *Empresa Petrolera Fiscal* (EPF). The petitioner indicated that on July 25, 1969, pursuant to Law No. 17753, the alleged victims were assimilated into the *Petróleos del Perú* (PETROPERÚ) company, which went on to be called *Petróleos del Perú Sociedad Anónima* as of December 18, 1981, pursuant to Supreme Decree No. 034-81-EM-DGH.

8. The petitioner asserted that for various years the alleged victims worked as public employees for the EPF and PETROPERÚ companies, fully satisfying the pension requirements established in legislation then in effect.[2] They reached retirement in the 1970s and 1980s, and were incorporated upon retirement in the pension system for private employees regulated under Decree Law No. 19990. The petitioner stated that on May 24, 1990, the Congress of the Republic promulgated Law No. 25219, Article 1 of which establishes the following:

> The employees of the Petroleum Complex and similar private operations that were assimilated into PETROPERÚ up to July 11, 1962 are incorporated in the pension regime provided by Decree Law No. 20530, thus being put on the same level as the pensions for retired employees from the former Empresa Petrolera Fiscal.[3]

9. He stated that in view of the provision cited above, the alleged victims sought to be incorporated in the special pension system under the aegis of Decree Law No. 20530, which was denied by PETROPERÚ company. He indicated that on November 3, 1992 fourteen[4] alleged victims submitted an *amparo* suit before the Fourteenth Civil Court of Lima, asking that the effects of Law No. 25219 be extended to them. According to the information submitted, the action was rejected in the court of first instance. This decision was upheld by the Sixth Civil Chamber of the Superior Court of Justice of Lima

[2] The petitioner notes that the alleged victims had met the requirements provided in the following laws: General Law of 1850, Law No. 8435 of 1936, Decree Law No. 11377 of 1950, Decree Law No. 14473 of 1963, and Decree Law No. 20530.

[3] Communication from the petitioner received on October 4, 1999, Annex 11, Official Journal, *El Peruano,* of May 31, 1990, Law No. 25219, promulgated on May 24, 1990.

[4] These persons are Manuel María Montero Suárez, Avelino Artemio Águila Chapilliquen, Raúl Aranibar Larrain, Jorge Juan Bouverie Miró, Luis Felipe Carrasco Mendoza, Humberto Arcadio Collantes Calvo, Juan Enrique Chambers Alzamora, Félix Falcón Canales, Ezequiel Gallarday Paredes, Juan Francisco Guillón Escalante, Renulfo Roncal Aliaga, Julio César Prado Manrique, Manuel Froilán Zapata More, and Francisco Carlos Rodríguez Salcedo.

and affirmed on January 9, 1994 by a decision of the Constitutional and Social Chamber of the Supreme Court of Justice, declaring inadmissible an appeal for nullification filed by the plaintiffs.

10. The petitioner maintained that the above-mentioned courts made their decisions based on a failure to exhaust prior administrative remedies and the existence of statute of limitations. However, the petitioner indicated that Peruvian law and superior court jurisprudence waive these requirements on *amparo* suits aimed to protect pensions' rights.

11. The petitioner stated that the fourteen alleged victims filed an extraordinary appeal for reversal challenging the final decision of the Supreme Court of Justice of January 9, 1994, which was referred to the Constitutional Court on March 7 of the same year. According to the allegations, on December 22, 1998 the Constitutional Court declared the appeal for reversal groundless, maintaining that Law No. 25219 would apply only to workers actively employed when the law took effect on June 1, 1990, and would not apply to former employees who were already receiving pensions within the framework of Decree Law No. 19990. In addition, the Constitutional Court based its decision on the fact that the fourteen alleged victims had simultaneously filed their claim through the ordinary labor law channels, which would make the *amparo* suit inadmissible under the terms of Article 6(3) of Law No. 23506. According to the petitioner, the decision of the Constitutional Court was published in the official journal on July 30, 1999.

12. The petitioner stated that the Constitutional Court's decision of December 22, 1998 was adopted with a quorum of four judges, since the other three justices had been unconstitutionally removed from their positions in May 1997. He indicated that Article 201 of the Political Constitution of Peru establishes that the Constitutional Court must be made up of seven judges and concluded that the decision of December 22, 1998 is null. He added that the four judges of the Constitutional Court sought to favor the government in power and the respondent, PETROPERÚ. He maintained that during the government of Alberto Fujimori the Judicial Branch lacked independence and members of the superior courts did not act impartially. He stated that starting in late 2000, in the context of the transition to democracy, he sent a series of communications to the Constitutional Court requesting a review of the decision of December 22, 1998.[5] The record does not contain information regarding any response from the Constitutional Court to the petitioner's communications.

13. Regarding the rejection of the *amparo* suit based on simultaneous filing of an ordinary labor law action, the petitioner maintained that the Constitutional Court mistakenly raised Article 6(3) of the Law on Habeas Corpus and *Amparo* (Law No. 23506). In this regard, he stated that:

> In October 1994 we filed individual labor complaints with the Labor Court, in accordance with the special procedure […] in which the subject areas are entirely different from any issue involving constitutional violations, which are proper to the *amparo* suit procedure.
>
> […]
>
> In this regard, we assert that the Constitutional…Court has invoked a law that is allegedly applicable, i.e., Article 6(3) of Law No. 23506 – The Habeas Corpus and *Amparo* Law. Under such procedural circumstances, the members of that court have committed the offense [of] judicial prevarication.[6]

14. The petitioner argues that the Constitutional Court's interpretation in its decision of December 22, 1998, to the effect that Law No. 25219 applies only to employees in service at the time of the law's promulgation, involves arbitrarily different treatment to the detriment of the alleged victims as

[5] In a communication received on May 14, 2001, the petitioner attached copy of the communications sent to the Constitutional Court. Those communications were submitted under the name of Mr. Francisco Carlos Rodríguez Salcedo and are dated December 29, 2000, March 30, 2001, and April 20, 2001, and seek nullification of the decision of December 22, 1998, as well as a new date for review of the case.

[6] Communication from the petitioner received on October 4, 1999, para. 9.14.

former employees in retirement. He alleged that Peruvian courts have ordered that other former employees of PETROPERÚ in a presumably similar situation be included in the pension system provided by Decree Law No. 20530.[7] He concluded that the result is a violation of the right provided in Article 24 of the American Convention. The petitioner maintained that the decision of the Constitutional Court caused injury to the assets of the alleged victims, the effects of which extended to their families. He indicated that this situation results in the violation of the right enshrined in Article 17 of the Convention.

15. In a communication received on May 30, 2000, the petitioner sought the inclusion as alleged victims of another thirty-one members of the Association of Retired Oil Industry Workers of Peru – Metropolitan Area of Lima and Callao. He indicated that of this group of persons, twenty-two[8] filed an *amparo* suit on November 12, 1992, claiming the application of Law No. 25219 of May 24, 1990 for their benefit. On May 4, 1993, the other nine[9] alleged victims filed an *amparo suit* in which they made the same claim.

16. According to the allegations, the suit filed on November 12, 1992 was rejected on March 16, 1993, and the respective appeal was rejected on March 18, 1994 by the Third Civil Chamber of the Superior Court of Lima. The petitioner stated that the *amparo* suit filed on May 4, 1993 was declared groundless in the first instance court on January 4, 1994, and that decision was confirmed by the Fourth Civil Chamber of the Superior Court of Justice of Lima on May 10, 1995. Regarding these two actions, the petitioner asserted that:

> The respective filings before the Constitutional and Social Chamber of the Supreme Court were not exhausted due to procedural economy and because this Chamber had already ruled against our first suit of *amparo* on January 19, 1994 …[10]
>
> If the Supreme Court had ruled that our first suit of *amparo* was inadmissible, the same Supreme Court was obligated to rule that the second and third actions were inadmissible as well […]. Given these unworthy and unjust circumstances, there was no point to appealing to the Supreme Court regarding the decisions on the second and third suits of *amparo*.[11]

17. Finally, the petitioner described and attached copies of a series of laws and decrees in the area of pensions adopted between 1850 and 1970[12] that in his judgment demonstrate the alleged victims' right to be included in the retirement system established under Decree Law No. 20530. He maintained that the courts that heard the *amparo* suit filed by the alleged victims circumvented those legal provisions.

---

[7] In various submissions to the IACHR, the petitioner described court rulings within the framework of actions seeking constitutional protection, administrative challenges, ordinary labor proceedings, or administrative decisions, in which Law No. 25219 had been applied to employees in situations allegedly similar to that of the alleged victims.

[8] These persons are José Andrés Alegría Schiaffino, José Bahamonde Infantas, Julio Cárdenas Rivera, Pablo Cock Fonseca, Víctor Cuyubamba Chuquirachi, Juan Delgado Vergara, Raúl Francisco Espinosa Sánchez, Ángel Pastor García Chiri, Manuel Arcángel Horna Aguinaga, Víctor La Rosa Vega, Guillermo Otoya Checkley, Benigno Oviedo Atocha, Antero Ramón Palacios Rivas, Francisco Aurelio Pérez Hernández, Juan Pescio Ramos, José Domingo Ponce Cruz, Carlos Roca López, Buenaventura Saavedra Vizcarra, Eduardo Sarmiento Gonzáles, Eugenio Torres Núñez, Manuel Val Mendoza, and Pedro Leonel Vásquez Zapata.

[9] These persons are Segundo Alberto Acuña Vertiz, Luis Fransisco Burranca Pereda, Carlos Alfonso Damiani Damiani, Manuel José Dioses Vásquez, Manuel Vicente Dulanto García, Oscar Prieto Bardales, Victoria Rosa Sayán de Pajares, José Solórzano Vega, and Juan Vives Morillas.

[10] Communication from the petitioner received on May 30, 2000, page 11.

[11] Communication from the petitioner received on October 12, 2000, page 10.

[12] The legal provisions attached and referred to by the petitioner include: the General Law on Retirement and Termination Indemnities of Public Employees of January 1850, Law No. 8435 of July 1936, Decree Law No. 11377 of May 1950, Law No. 11725 of January 1952, Decree Law No. 14473 of May 1963, Law No. 16674 of July 1967, Decree Law No. 17066 of October 1968, Decree Law No. 17753 of July 1969, Decree Law No. 17995 of November 1969, Decree Law No. 18664 of December 1970, Decree Law No. 20530 of February 1974, Legislative Decree No. 43 of March 1981, Supreme Decree No. 009-81EM/SG of May 1981, and Supreme Decree No. 034-81-EM/DGH of December 1981.

B. The State

18. The State asserted that the alleged victims are all former employees of the International Petroleum Company who were assimilated into the *Empresa Petrolera Fiscal* and subsequently into PETROPERÚ and upon retirement were included in the pension system under Decree Law No. 19990, from which they have regularly received the respective benefits. The State indicated that on the day after Law No. 25219 was published in the Official Journal, the petitioners sought to be included in the scope of that law, which was denied by PETROPERÚ. It indicated that on November 3, 1992, two years after being notified by PETROPERÚ, an initial group of fourteen alleged victims filed an *amparo* suit with the Fourteenth Civil Court of Lima. The statements of the facts made by the State are similar to that of the petitioners regarding the decisions issued by the Fourteenth Court and Civil Chamber of Lima, the Supreme Court of Justice, and the Constitutional Court with respect to *amparo* suit filled on November 3, 1992.

19. The State maintained that Law No. 25219 is special in nature and its application is limited to employees who i) were actively employed by the PETROPERÚ company as of June 1, 1990, the date the law took effect; ii) had joined the Petroleum Complex prior to July 12, 1962; and iii) had been assimilated into PETROPERÚ due to the expropriation of the assets of the International Petroleum Company in 1969. According to the allegations, none of the alleged victims meets all the requirements of Law No. 25219, particularly because as of June 1, 1990 they were already benefiting from a pension system established and declared pursuant to Decree Law No. 19990.

20. The State asserted that Decree Law No. 20530 applies exclusively to employees subject to the public service employment system and who have contributed to that system. It emphasized that the alleged victims are former employees of PETROPERÚ S.A., whose employment system belongs to the private sector and it pointed out that they have never contributed to the benefit system under Decree Law No. 20530. It concluded that the alleged victims' request to be included in the public benefits system has no basis in domestic law.

21. The State alleged that the unfavorable ruling on the *amparo* suits filed by the alleged victims does not involve a violation of rights protected by the American Convention. It asserted that the petitioners had unlimited access to domestic judicial bodies, which acted within the framework of their jurisdiction and applied the relevant laws. With respect to the allegations regarding the right to a fair trial, the State maintained that the alleged victims did not challenge the lack of impartiality and independence of the courts or judges that heard the *amparo* suits. It emphasized that they failed to exhaust the remedies provided by domestic law, such as the proceeding for nullification of fraudulent *res judicata* or an *amparo* suit to safeguard due process.

22. Regarding the allegation that the Constitutional Court's decision of December 22, 1998 was null because it was adopted by four of seven judges, the State indicated that Article 201 of the Peruvian Constitution does not stipulate the specific quorum for deciding appeals for reversal in *amparo* suits. However, it indicated that Article 4 of the Organic law of the Constitutional Court establishes that the court "decides and adopts agreements through a simple majority of votes cast, except to rule on the inadmissibility of the petition for unconstitutionality or to issue a decision declaring the unconstitutionality of a provision […], cases in which six affirmative votes are required."

23. Regarding the letters sent to the Constitutional Court by Mr. Francisco Carlos Rodríguez Salcedo seeking review of the decision of December 22, 1998, the State asserted that Article 59 of the Organic Law of the Constitutional Court establishes that "the decisions of the Court are not subject to appeal …"

24. Regarding the second and third group of alleged victims, who submitted *amparo* suits on November 12, 1992 and May 4, 1993, the State alleged that the decisions of the Third and Fourth Civil Chambers of the Superior Court of Justice of Lima were not challenged in an appeal for nullification before the Supreme Court of Justice. In this respect, it asserted that the rejections of both suits were affirmed between 1994 and 1995.

25. The State described judicial decisions from superior courts rejecting *amparo* suits wherein the plaintiffs' claims and factual situations were, the State argued, identical to those of the alleged victims. Finally, it argued that the facts related in the petition do not constitute violations of rights protected in the Convention and asked the IACHR to declare the petition inadmissible in accordance with Article 47(b) and (c) of that instrument.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

26. The petitioner is empowered by Article 44 of the American Convention to submit petitions to the Commission. The petition indicates individuals as the alleged victims, with respect to whom the Peruvian State committed to respect and guarantee rights enshrined in the Convention. Peru ratified the American Convention on July 28, 1978. As a result, the Commission is competent *ratione personae* to examine the petition.

27. The Commission is competent *ratione materiae* and *ratione loci*, in that the petition alleges violations of rights protected in the American Convention occurring within the territory of a state party to that convention.

28. Finally, the Commission is competent *ratione temporis* since the obligation to respect and guarantee the rights protected by the American Convention was already in effect for the State on the date when the events alleged in the petition would have occurred.

B. Exhaustion of domestic remedies

29. Article 46.1(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission pursuant to Article 44 of the Convention to be admissible, domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to afford national authorities the opportunity to learn about the alleged violation of a protected right and, if appropriate, to resolve the matter before it is heard by an international body. This petition refers to three *amparo* suits filed separately against the PETROPERÚ company and the Ministry of Energy and Mines, by groups of fourteen, twenty-two, and nine alleged victims, seeking to have Law No. 25219 applied to them.

30. According to the allegations of the parties, the *amparo* suit filed by the first group of alleged victims[13] was denied in the final instance by the Constitutional Court on December 22, 1998, and the decision was published in the Official Journal *El Peruano* on June 30, 1999. In turn, the suits filed by the groups of twenty-two[14] and nine[15] alleged victims were rejected by the Third and Fourth Civil Chamber of the Superior Court of Justice of Lima, on March 18, 1994 and May 10, 1995, respectively, without the plaintiffs' having submitted subsequent appeals for nullification or extraordinary appeals for reversal.

31. The Commission notes that the principal question posed before this international body, the alleged applicability of Law No. 25219 to the alleged victims, was presented to the domestic courts and definitively decided by the Constitutional Court in the first case. In the other two cases the *amparo* suits were rejected in the first and second instance courts, before which the alleged victims considered it unnecessary to file additional remedies, in that the Supreme Court of Justice and the Constitutional Court

[13] See *supra* note 4.

[14] See *supra* note 8.

[15] See *supra* note 9.

had already ruled negatively on the same question and under identical circumstances. The State noted that those persons failed to exhaust appeals for nullification and extraordinary appeals for reversal, but did not respond to the petitioner's argument to the effect that higher courts had already established their position under circumstances similar to those of the two groups of alleged victims. Under these circumstances, the Commission concludes that the domestic remedies are exhausted in accordance with the requirements of Article 46.1(a) of the American Convention.

C. Deadline for submission

32. Article 46.1(b) of the Convention establishes that in order for a petition to be declared admissible it must have been submitted within a period of six months from the date the interested party was notified of the final decision exhausting the domestic jurisdiction.

33. As indicated in paragraphs 30 and 31 *supra*, the domestic remedies were exhausted by the first group of fourteen alleged victims on June 30, 1999, after the date when the petition was submitted to the IACHR. In this respect, compliance with the requirement established in Article 46.1(b) of the American Convention is inherently linked to the exhaustion of domestic remedies, and is satisfied.

34. With respect to the groups of twenty-two and nine alleged victims whose *amparo* suits were rejected in the second instance by the Superior Court of Justice of Lima on March 18, 1994 and May 10, 1995, the petitioner asserted that they did not submit additional remedies, for which reason the decisions on appeal remained final. Given that this petition was submitted on November 13, 1998, the IACHR concludes that it is inadmissible, pursuant to Article 46.1(b) of the Convention, with respect to the referenced groups of alleged victims, Messrs. José Andrés Alegría Schiaffino, José Bahamonde Infantas, Julio Cárdenas Rivera, Pablo Cock Fonseca, Víctor Cuyubamba Chuquirachi, Juan Delgado Vergara, Raúl Francisco Espinosa Sánchez, Ángel Pastor García Chiri, Manuel Arcángel Horna Aguinaga, Víctor La Rosa Vega, Guillermo Otoya Checkley, Benigno Oviedo Atocha, Antero Ramón Palacios Rivas, Francisco Aurelio Pérez Hernández, Juan Pescio Ramos, José Domingo Ponce Cruz, Carlos Roca López, Buenaventura Saavedra Vizcarra, Eduardo Sarmiento Gonzáles, Eugenio Torres Núñez, Manuel Val Mendoza, and Pedro Leonel Vásquez Zapata, whose suit was rejected in the final instance on March 18, 1994; and Segundo Alberto Acuña Vertiz, Luis Fransisco Burranca Pereda, Carlos Alfonso Damiani Damiani, Manuel José Dioses Vásquez, Manuel Vicente Dulanto García, Oscar Prieto Bardales, Victoria Rosa Sayán de Pajares, José Solórzano Vega, and Juan Vives Morillas, whose suit was rejected in the final instance on May 10, 1995.

D. Duplication of proceedings and res judicata

35. Article 46.1(c) of the Convention provides that the admission of petitions is contingent upon the matter's not "being pending in another international proceeding for settlement" and Article 47(d) of the Convention stipulates that the Commission will not admit a petition that is substantially the same as one previously studied by the Commission or another international organization. In the instant case, the parties have not indicated the existence of either of these two circumstances nor can they be inferred from the record.

E. Characterization of the facts

36. Article 47(b) of the Convention establishes that the Commission will declare a petition inadmissible when it does not state facts that tend to establish a violation of rights guaranteed in the Convention. Before analyzing whether this petition satisfies the provisions of that article, the IACHR deems it necessary to refer to the subject of the complaint brought to its attention on November 13, 1998 in the light of the allegations made by the parties.

37. In the original complaint, the petitioner alleged that the Superior Court of Justice of Lima and the Supreme Court of Justice had rejected the *amparo* suit submitted by the alleged victims on November 3, 1992, based on judgments that violated domestic procedural rules. In addition, the petitioner asserted that the Constitutional Court had been delaying for more than three years its decision on an

appeal for reversal. After the final decision in the *amparo* proceeding, through the ruling of the Constitutional Court of December 22, 1998, the petitioner claimed three different situations: i) an alleged lack of independence and impartiality of the courts and judges that heard the *amparo* suit; ii) an alleged irregularity in the decision of the Constitutional Court of December 22, 1998, given that only four judges participated in the decision, and iii) an alleged misapplication of domestic legislation on the part of the Constitutional Court.

38. With respect to point i), the petitioner mentioned that during the government of Alberto Fujimori the actions of the Peruvian Judicial Branch, and particularly the superior courts, were entirely subordinated to the Executive Branch. The IACHR notes that such allegations are general and have not been sufficiently explained or linked to the specific case so as to provide an understanding of the potential impact on the action filed by the alleged victims. Thus, they do not tend to establish the violation of rights enshrined in the Convention. As for point ii), the IACHR has no information on the measures taken by the alleged victims to question the quorum of judges on the Constitutional Court who heard the respective extraordinary appeal for reversal. In addition, the evidence presented by the parties does not allow a *prima facie* evaluation of whether the quorum that participated in the decision of December 22, 1998 would be incompatible with domestic legislation and would thus establish a possible violation of the right provided in Article 8.1 of the Convention.

39. As for point iii) indicated in paragraph 37 *supra*, the petitioner described and attached copy of a series of laws and decrees in the area of pension law that in his judgment were not considered by the Constitutional Court and would demonstrate the alleged victims' right to be included in the benefits system established under Decree Law No. No 20530. On this point, the IACHR emphasizes that the purpose of the *amparo* suit filed by the alleged victims on November 3, 1992 was to render ineffective the letters sent by the PETROPERÚ company to the alleged victims, in which they were denied the application of Law No. 25219 promulgated on May 24, 1990. A reading of the decision of the Constitutional Court of December 22, 1998 indicates that the court limited itself to analyzing whether the alleged victims were covered by Law No. 25219, in addition to asserting that the *amparo* suit was inadmissible under the terms of the Article 6(3) of Law No. 23506. In the relevant section, the Constitutional Court indicated as follows:

> [T]he petitioners seek to be included in the enjoyment and benefits granted by Law No. 25219, so that they would receive the same retirement and pension benefits as the employees retired from the former Empresa Petrolera Fiscal, and seek to have the services they rendered to the petroleum complex and similar entities added to those already recognized by the State-owned company Petróleos del Perú S.A. – Petroperú S.A., in accordance with the pension rules under Decree Law No. 20530.
>
> […]
>
> [T]he referenced law [Law No. 25219] established in Article 2 that the contribution corresponding to the Pension Fund would be determined after deduction of the contributions made to the system under Decree Law No. 19990, seeking to emphasize that this incorporation could only be made effective for an active employee who was making the corresponding contributions to this system; consequently, it could not be applicable to the petitioners, in that since they were former employees who were enjoying their pensions, it would be impossible for them to make the contributions referred to in the article cited.
>
> […]
>
> The record shows […] that the petitioners have used the ordinary labor channels and the procedures for granting pensions and social benefits are under way, so that Article 6(3) of Law No. 23506 is applicable.[16]

[16] Communication from the petitioners received on July 9, 1999, attachments, Decision of the Constitutional Court of December 22, 1998, reported on June 11, 1999, file No. 027-95-AA/TC, para. 5 and 7.

40. Although the petitioner maintained that the Constitutional Court violated the right of the alleged victims to be covered under the pension system of Decree Law No. No 20530, the IACHR notes that the *amparo* suit decided in the final instance on December 22, 1998 did not have the purpose of directly establishing pension rights but rather to discuss the application of Law No. 25219 to the alleged victims. Although the petitioner indicated that the alleged victims filed ordinary labor law actions starting in 1994, he did not specify the results obtained via this judicial route and indicated that it was through the *amparo* suit, and not the ordinary labor law action, that the alleged victims exhausted the domestic remedies for purposes of admissibility of the complaint before the IACHR.

41. The petitioner alleged that in the decision of December 22, 1998 the Constitutional Court misinterpreted the scope of Law No. 25219 and improperly applied the grounds for rejecting the *amparo* suit as provided in Article 6(3) of Law No. 23506. Regarding such allegations, the IACHR confirms its doctrine according to which it is not its role to replace domestic judicial authorities in the interpretation of applicable rules of procedural and substantive law.[17] The IACHR has asserted that it cannot act as an extraordinary judicial instance to examine alleged errors of law and fact that domestic courts may have committed within the scope of their competence.[18]

42. In the context of the system of petitions provided in Article 44 of the American Convention, the IACHR is competent to analyze the compatibility of laws, policies, and practices with someone's rights under the referenced international instrument. However, in the instant petition the question raised, first in the domestic jurisdiction and later before the IACHR, focuses on the scope of application of Law No. 25219 in the light of Peruvian law. The petitioner has not explained why the Constitutional Court's decision of December 22, 1998 on the scope of application of the referenced law would be incompatible with the standards of the American Convention. In addition, the petitioner's allegations regarding the right to protection for the family refer to the potential consequences of the decision regarding the inapplicability of Law No. 25219 to the alleged victims. In the absence of evidence indicating how that decision would have produced a potential violation of Article 17 of the American Convention, the IACHR considers that such points do not meet the requirement provided in Article 47(b) of the Convention.

43. Regarding the allegations that other former employees of PETROPERÚ have been covered by Law No. 25219, the IACHR does not have sufficient information to establish whether the factual situation of such former employees was similar to that of the alleged victims, whether their alleged incorporation within the scope of Law No. 25219 was derived from decisions adopted by the Constitutional Court based on judgments contrary to those applied to the alleged victims, or whether their claims are similar in terms of the procedural route and the applicable requirements as the one established in Article 6(3) of Law No. 23506.

44. Based on the preceding considerations, the IACHR concludes that the allegations and evidences set forth by the petitioner do not tend to establish the violation of rights protected in the American Convention, and thus the complaint does not meet the requirement provided in Article 47(b) of that instrument.

V. CONCLUSIONS

45. Based on the factual and legal arguments presented above, the Commission considers the petition inadmissible in accordance with Articles 46.1(b) and 47(b) of the American Convention, and accordingly,

[17] IACHR, Report No. 27/07, Petition 12.217, Peru, José Antonio Aguilar Angeletti, March 9, 2007, paras. 41 and 43; and Report No. 39/05, Petition 792-01, Peru, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre, March 9, 2005, paras. 52 and 54.

[18] IACHR, Report No. 45/04, Petition 369-01, Peru, Luis Guillermo Bedoya de Vivanco, October 13, 2004, para. 41; Report No. 16/03, Petition 346-01, Ecuador, Edison Rodrigo Toledo Echeverría, February 20, 2003, para. 38; Report No. 122/01, Petition 15-00, Argentina, Wilma Rosa Posadas, October 10, 2001, para. 10; and Report No. 39/96, Case 11.673, Argentina, Santiago Marzioni, October 15, 1996, para. 71.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition inadmissible under the terms of paragraph 34 *supra*, pursuant to Article 46.1(b) of the American Convention, with respect to the alleged victims José Andrés Alegría Schiaffino, José Bahamonde Infantas, Julio Cárdenas Rivera, Pablo Cock Fonseca, Víctor Cuyubamba Chuquirachi, Juan Delgado Vergara, Raúl Francisco Espinosa Sánchez, Ángel Pastor García Chiri, Manuel Arcángel Horna Aguinaga, Víctor La Rosa Vega, Guillermo Otoya Checkley, Benigno Oviedo Atocha, Antero Ramón Palacios Rivas, Francisco Aurelio Pérez Hernández, Juan Pescio Ramos, José Domingo Ponce Cruz, Carlos Roca López, Buenaventura Saavedra Vizcarra, Eduardo Sarmiento Gonzáles, Eugenio Torres Núñez, Manuel Val Mendoza, Pedro Leonel Vásquez Zapata, Segundo Alberto Acuña Vertiz, Luis Fransisco Burranca Pereda, Carlos Alfonso Damiani Damiani, Manuel José Dioses Vásquez, Manuel Vicente Dulanto García, Oscar Prieto Bardales, Victoria Rosa Sayán de Pajares, José Solórzano Vega, and Juan Vives Morillas.

2. To declare the petition inadmissible with respect to the other alleged victims, due to the failure to comply with the requirement provided in Article 47(b) of the American Convention.

3. To notify the State and the petitioners of this decision.

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 12th day of the month of July, 2010. (Signed: Felipe González, President; Paulo Sergio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, Rodrigo Escobar Gil, and Luz Patricia Mejía Guerrero, members of the Commission).