Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Julio Acevedo-Jaramillo et al. v. Peru
Doc. Type:	Judgement (Preliminary Objections, Merits, Reparations and Costs)
Decided by:	President: Sergio Garcia-Ramirez; Vice President: Alirio Abreu-Burelli; Judges: Oliver Jackman; Antonio A. Cancado Trindade; Cecilia Medina-Quiroga; Manuel E. Ventura-Robles; Javier de Belaunde-Lopez de Romana Judge Diego Garcia-Sayan, a Peruvian national, was not part of the Court in this case because at the time he was sworn in, the State of Peru had already appointed a judge ad hoc pursuant to the provisions of Article 10 of the Statute of the Inter-American Court of Human Rights.
Dated:	7 February 2006
Citation:	Acevedo-Jaramillo v. Peru, Judgement (IACtHR, 7 Feb. 2006)
Represented by:	APPLICANTS: Pablo Gregorio Gonza-Tito, Manuel Saavedra-Rivera, Alfredo Ruiz-Mimbela, Cristina Rojas-Poccorpachi, Hector Paredes-Marquez and Ruben Canales-Pereyra
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In the case of Acevedo-Jaramillo et al v. Peru,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 37, 56, 57 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers the following judgment.

I. INTRODUCTION TO THE CASE

1. On June 25, 2003, pursuant to the provisions of Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court an application against the State of Peru (hereinafter "the State" or "Peru") originating in petition No. 12.084, received by the Secretariat of the Commission on January 13, 1999.

2. The Commission filed the application for the Court to determine whether Peru was responsible for violating Article 25(2)(c) (Right to Judicial Protection) of the American Convention, in relation to the general obligation set forth in Article 1(1) (Obligation to Respect Rights) therein. The facts stated in the application refer to the alleged non-compliance with the judgments rendered between 1996 and 2000 "by the Judges of the city of Lima, the Corte

Superior de Justicia de Lima (Supreme Court of Justice of Lima) on appeal" and the Tribunal Constitucional del Perú (Constitutional Court of Peru) on an amparo for legal protection. According to the Commission, said judgments ordered the Municipality of Lima to "reinstate the workers [of the Municipality] dismissed on the grounds of having failed to attend or to pass the examinations convened by the municipality, [...] the individuals dismissed on the grounds of having participated in the strike organized by the union and which had been declared illegal[, and] the individuals dismissed as a result of the winding up of the Empresa de Servicios Municipales de [Limpieza de Lima]" (Lima Municipal Cleaning Services Corporation) (ESMLL). Likewise, according to the Commission, compliance was pending on the orders directing "that said workers were to be paid compensations, bonuses, allowances, incentives, and other benefits acknowledged in the agreements signed with the union between [1989 and 1995], […], nor have the premises of the union been surrendered to the workers […] and […] the plots of land in La Molina which were donated to the union for a housing program have not been adjudicated and registered […]." In submitting the case, the Commission stated that "it expresses its satisfaction over the State's acknowledgment of its international responsibility for having failed to observe the orders rendered by its judges, but in light of the persistent non-compliance by the State with the recommendation included in the report on the merits, the vain attempts […] to reach a friendly settlement and the creation of several commissions for such purpose that have failed to achieve effective results, the Commission has decided to submit the […] case [to] the jurisdiction of the Honorable Inter-American Court."

3. Likewise, the Commission asked the Inter-American Court to order the State, under Article 63(1) of the Convention, to adopt the specific reparation measures detailed in the application. Lastly, the Commission requested the Court to order the State to pay costs and expenses arising from the processing of the case in domestic legal proceedings and in proceedings under the Inter-American System.

II. JURISDICTION

4. The Court has jurisdiction to hear the instant case pursuant to Articles 62 and 63(1) of the Convention as Peru has been a State Party to the American Convention since July 28, 1978, and accepted the contentious jurisdiction of the Court on January 21, 1981.

III. PROCEEDING BEFORE THE COMMISSION

5. On January 13, 1999, the Inter-American Commission received a petition filed by the representatives of the workers.

6. On June 9, 1999, the Commission held itself available to the parties in order to try and reach a friendly settlement.

7. Between September, 1999 and June, 2000, the applicants and the State filed several briefs with the Commission in relation to the negotiations held towards a possible friendly settlement.

8. On November 20 and 24, 2000, the State and the petitioners, respectively, requested the Commission to close the friendly settlement process.

9. On April 6, 2001, Peru submitted a brief informing the creation of a multi-sector negotiation committee in charge of searching for alternatives to reach a friendly settlement. On June 4, 2001, the State informed the Inter-American Commission that by means of Ministerial Resolution No. 114-2001-PCM it had decided to consider the work of the multi-sector committee concluded and "surrender the instant case to the decision the Inter-American Commission might adopt."

10. On October 10, 2001, the Commission adopted Report No. 85/01, in which it decided to declare the admissibility of the instant case in relation to the possible violation of Articles 1(1) and 25(2)(c) of the American Convention.

11. On July 22, 2002, Peru submitted Report No. 54-2002/JUS/CNDH-SE issued by the Secretaría Ejecutiva del Consejo Nacional de Derechos Humanos (Office of the Executive Secretary of the National Council for Human Rights) on July 19, 2002, by which it stated, inter alia, that:

[…] it ratified the constructive acknowledgment of international responsibility asserted in the Joint Press Release of February 22, 2001, undertaking its international responsibility for the violation of the human rights of SITRAMUN workers pursuant to Article 25(2)(c) of the American Convention.
[…] considering the economic crisis the Peruvian State is currently undergoing and given the impossibility to comply with the compensations and reparations owed to the petitioners in the instant case, it feels obliged to request the Inter-American Commission on Human Rights to take the appropriate actions.

Likewise, it concluded that "[…] the Peruvian State submit[ted] the instant case to the best judgment of the Inter-American Commission."

12. On October 11, 2002, the Commission, under Article 50 of the Convention, adopted Report No. 66/02, by which it concluded that:

[…] the Peruvian State has violated the right to judicial protection established in Article 25[(2)](c) of the American Convention to the detriment of the workers of the Municipality of Lima and the Lima Municipal Workers Union, SITRAMUN. The above also entails a violation by the Peruvian State of the obligation set forth in Article 1(1) to respect and ensure the rights established in the Convention.

Likewise, the Commission recommended that the State should:

adopt such measures as may be necessary to effectively comply with the judgments referred to in paragraph 37 [sic] of the […] report.

13. On October 25, 2002, the Commission notified the above mentioned report to the State granting it two months, as from the notice date thereof, to inform the Commission of the measures adopted in compliance with the recommendations.

14. On October 25, 2002, the Commission notified the petitioners that the report had been adopted pursuant to Article 50 of the Convention and requested them to file, within two months, a statement of their position on the submission of the case to the jurisdiction of the Court.

15. On January 17, 2003, the State submitted a brief in answer to the recommendations of the Commission in its Report No. 66/02 (supra para. 12). Peru attached Report No. 101-2002-JUS/CNDH-SE issued by the Secretaría Ejecutiva del Consejo Nacional de Derechos Humanos (Office of the Executive Secretary of the National Council for Human Rights) on December 20, 2002, by which it stated, inter alia, that:

it ratif[ied] the statement in the Joint Press Release of February 22, 2001, undertaking its international responsibility for the violation of the human rights of the SITRAMUN workers pursuant to Article 25(2)(c) of the American Convention on Human Rights, as per Report No. 54-2002-JUS/CNDH-SE of July 19, 2002.

Likewise, it concluded, inter alia, that:

The Peruvian Government and the SITRAMUN workers wish to institute a new stage of negotiations by the creation of an Ad Hoc Working Commission; for this reason it has to requested to the Inter-American Commission on Human Rights that said are conversations be taken into consideration before a final decision is adopted […]

16. On January 23, 2003, the State requested a three-month time extension to comply with the recommendations made by the Commission in its Report No. 66/02 (supra para. 12), which was granted by the Commission up to April 19, 2003.

17. On April 17, 2003, the State submitted Report No. 34-2004-JUS/CNDH-SE issued by the Secretaría Ejecutiva del Consejo Nacional de Derechos Humanos (Office of the Executive Secretary of the National Council for Human Rights) on April 16, 2003, by which it requested a new extension of 65 days to comply with the recommendations made by the Commission in its Report No. 66/02 (supra para. 12), which was granted by the Commission up to June 19, 2003. In said brief, Peru notified that by means of Supreme Resolution No. 015-2003-JUS a "Working Commission for the development of a final proposal for a solution" was created. On April 28, 2003, the State filed with the Commission a copy of Official Note No. 515-2003-JUS/CNDH-SE addressed by the Secretaría Ejecutiva del Consejo Nacional de Derechos Humanos (Office of the Executive Secretary of the National Council for Human Rights) to the Director de Derechos Humanos y Asuntos Sociales del Ministerio de Relaciones Exteriores (Director of Human Rights and Social Matters of the Ministry of Foreign Affairs) by which it stated that "[t]he purpose of the application for an extension is that the Peruvian State may have an additional term to conclude the recently instituted negotiation process by [said] Working Commission to attempt to reach a friendly settlement in the instant case," as well as "to exhaust the mechanisms aimed at complying with the recommendations made by the IACHR in Report No. 66/02."

18. On June 19, 2003, the term for the State to submit the Report No. 66/02-related information became due. According to the Commission "the State failed to forward an answer or any kind of information."

19. On June 25, 2003, the Inter-American Commission decided to submit the instant case to the jurisdiction of the Court.

IV. PROCEEDING BEFORE THE COURT

20. On June 25, 2003, the Inter-American Commission filed an application with the Court (supra para. 1), together with documentary evidence and offered to submit testimonies of witnesses and expert witnesses as further evidence. The Commission appointed Marta Altolaguirre and Santiago A. Canton as delegates and Ariel Dulitzky and Pedro E. Díaz as legal counsel.

21. On September 16, 2003, the Secretariat of the Court (hereinafter "The Secretariat"), following instructions issued by the Court en banc pointed out to the Commission that, as regards the disagreement of the representatives of the alleged victims to designate a common intervener according to Article 23(2) of the Rules of Procedure of the Court, the Court decided to request the Commission to coordinate with the alleged victims so that they appoint a common intervener, as soon as possible, in order to proceed to serve the application.

22. On September 24, 2003, the Commission filed a brief wherein it stated, inter alia, that "as regards the designation of a common intervener [...], in spite of the numerous requests made by the Commission to the representatives of the victims, [...] they have expressed that they have not reached an agreement in that respect." The Commission requested the Court to "make the appropriate ruling pursuant to the provisions set forth in Article 23(3)."

23. On October 24, and November 3, 2003, the Secretariat, after a preliminary examination of the application by the President, served the said application and its appendixes on the State and on the common intervener for the representatives of the alleged victims (hereinafter "the common intervener") respectively. The Secretariat also notified the State of the term within which it had to answer the application and to appoint its agents in the proceedings. Likewise, following the instructions of the President, the State was informed of its right to appoint an ad hoc judge to participate in determining the case. Likewise, the Secretariat notified the parties that regarding the disagreement of the representatives to designate a common intervener according to Article 23 of the Rules of Procedure of the Court, the Court ruled that the common intervener to represent the alleged victims would be the one identified as group "a" in the application (powers of attorney granted to Ana María Zegarra-Laos, Manuel Antonio Condori-Araujo, Wilfredo Castillo-Sabalaga, Guillermo Nicolás Castro-Barlena, and Celestina Mercedes Aquino-Laurencio) due to the fact that they represented the greatest number of alleged victims that had granted powers of attorney. The Court further ruled that the common intervener had to submit only one brief with their requests, their arguments and their evidence, and also stated that it would be advisable that the different groups of representatives meet and try to submit, through the common intervener, only one single brief with their requests, their arguments and their evidence in the name and on behalf of all the groups of representatives designated in the

application. Regarding the alleged victims that were not represented or did not have representation, the Court ruled that the Commission had to see to the protection of their interests to ensure that they would be effectively represented in the different procedural stages before the Court.

24. On November 5, 8, and 20, 2003, respectively, Pablo Gregorio Gonza-Tito, Manuel Saavedra-Rivera, Alfredo Ruiz-Mimbela, Cristina Rojas-Poccorpachi, Héctor Paredes-Márquez and Rubén Canales-Pereyra, representatives of the alleged victims that do not form part of the common intervener, and Alejandro Hinostroza, Luis Arias-Tirado and Robin Elguera-Gancho, alleged victims, filed three statements by means of which they expressed their concern about the designation of a common intervener for the representatives of the alleged victims (supra para. 23.)

25. On November 10 and 21, 2003, the Secretariat, following instructions of the President, explained to Gonza-Tito, Saavedra-Rivera, Ruiz-Mimbela, Rojas-Poccorpachi, Paredes-Márquez, Canales-Pereyra, Hinostroza, Arias-Tirado and Elguera-Gancho (supra para. 24) the reasons for the designation of a common intervener and recommended them to try to coordinate with the said common intervener and with the other groups of representatives on the causes of action in the case so that the intervener could forward them with the Court.

26. On November 24, 2004, the State appointed Mario Pasco-Cosmópolis as agent.

27. On December 2, 2003 and March 18, 2004, Joseph Campos-Torres, Manuel Francisco Saavedra-Rivera and Cristina Rojas-Poccorpachi, in their capacity as representatives of the alleged victims that do not form part of the common intervener, filed two briefs requesting the Court to reconsider its decision to designate the group identified as group "a" in the application (supra para. 23) as common intervener. Appendixes were attached to said statements on December 2, 2003.

28. On December 5, 2003, the state appointed Javier de Belaunde-López de Romaña as ad hoc judge.

29. On January 15, 2004, after an extension that had been granted by the President, the common intervener submitted his brief of requests, arguments and evidence (hereinafter "the brief of requests and arguments") wherein, in addition to the violations alleged by the Inter-American Commission, the said common intervener alleged the violation of Articles 8(1), 25(1) and 26 of the American Convention, in connection with Article 1(1) thereof. Likewise, the common intervener also filed documentary evidence and offered to submit further testimony of witnesses and expert witnesses as evidence.

30. On March 26, 2004, after two time extensions that had been granted by the President (being one of them upon his own motion), the State filed a brief with its preliminary comments, its answer to the application and its comments on the brief of requests and arguments, together with documentary evidence, and also offered the testimony of witnesses and expert witnesses as further evidence. On March 30, 2004 he filed the appendixes to such brief.

31. On April 27, 2004, the Secretariat sent a note to Cristina Rojas-Poccorpachi and Joseph Campos-Torres, Manuel Francisco Saavedra and Héctor Paredes-Márquez, following the instructions of the Court en banc, with reference to the petitions filed on December 2, 2003 and March 18, 2004 (supra, para. 27,) and stated, inter alia, that since the alleged victims had not reached an agreement as to the designation of a common intervener, in compliance with the provisions set forth in Article 23(3) of the Rules of Procedure of the Court, the Court had to make the appropriate ruling and appoint a common intervener, for which it considered the representatives who held powers of attorney from the greatest No. of alleged victims that had granted them.

32. On May 5, 2004, the Commission filed its written arguments regarding the preliminary comments filed by the State.

33. On May 12, 2004, the common intervener filed the written comments on the brief of preliminary comments filed by the State and filed appendixes therewith. Likewise, the common intervener requested to be granted "a reasonable time" to "refer to the allegations on the merits put forth by the defendant State in its answer to the application."

34. On July 5, 2004, the State filed "a brief containing a written answer to the allegations regarding the preliminary comments that had been previously filed by the Commission and by the common intervener," to which it attached appendixes.

35. On July 23 and 26, 2004, respectively, the Secretariat served notice on the parties in order to notify them that both the request made by the common intervener in his brief of May 12, 2004 (supra para. 33) as well as the brief and appendixes filed by the State on July 5, 2004 (supra para. 34) had been submitted to the President of the Court for consideration, and the President had decided as follows: not to grant the common intervener a time period to make reference to the allegations on the merits made by the State in its answer to the application and in the comments to the brief of requests and arguments; and further, not to accept the said brief filed by the State, due to the fact that these are written procedural steps not contemplated in the Rules of Procedure of the Court, and also considering that both parties would have the opportunity to refer to the allegations made by the other parties at the time of making their final allegations in the public hearing to be convened in due time, as well as at the time of filing their final written arguments; and further decided that, in due time, upon entering the pertinent judgment, the Court would rule about the appropriateness of incorporating as documentary evidence the documents submitted by the State in the appendixes to the said brief.

36. On July 7, 2004, Joseph Campos-Torres, Manuel Francisco Saavedra-Rivera and Cristina Rojas-Poccorpachi, representatives of the alleged victims that do not form part of the common intervener, presented a brief with appendixes attached thereto, by means of which they requested the Court to reconsider the ruling that was notified by a communication of April 27, 2004 (supra para. 34,) regarding the designation of a common intervener for the representatives of the alleged victims.

37. On August 3, 2004, the Secretariat, following instructions of the Court en banc, sent a note to Messrs. Campos-Torres and Saavedra-Rivera and to Mrs. Rojas-Poccorpachi regarding

the requests contained in their brief of July 7, 2004, to communicate the said representatives that the Inter-American Court confirmed the terms stated in the notice of April 27, 2004 (supra para. 31,) with reference to the designation of the common intervener for the representatives in the instant case.

38. On October 14, 2004, the common intervener filed a brief with appendixes attached requesting the adoption of any "urgent protective provisional measures that may be in order to safeguard the full freedom and physical integrity" of Alejandro Hinostroza-Rimari (alleged victim,) Manuel Antonio Condori-Araujo (alleged victim,) Ana María Zegarra-Laos and Guillermo Nicolás Castro-Bárcena (the three latter being the representatives of the alleged victims that form part of the group that includes the common intervener.)

39. On November 23, 2004, the Court issued an Order, after having received the comments filed by the Commission and by the State regarding the request for provisional measures, as well as a new brief filed by the common intervener. In such Order, the Court decided to dismiss the request for provisional measures and pointed out that the President or the Court would consider the manner in which to act, if at the moment of calling the parties to a public hearing in the instant case, the Court were informed of the possibility that the said representatives would be effectively prevented from leaving the country.

40. On January 21, 2005, the State appointed César Gonzáles-Hunt as Deputy Agent.

41. On February 16, 2005, the common intervener filed a brief by means of which he referred to the case and did attach appendixes.

42. On April 29, 2005, the Defensoría del Pueblo del Perú (Office of the Ombudsman of Peru) filed a brief and the appendixes thereto in the capacity of amicus curiae.

43. On May 4, 2005, Joseph Campos-Torres, Manuel Saavedra-Rivera, Héctor Paredes-Márquez and Cristina Rojas-Poccorpachi submitted a brief with an appendix attached, by means of which they expressed their "concern about the legal status of Attorney Ana María Zegarra-Laos and Messrs. Manuel Antonio Condori-Araujo and Guillermo Nicolás Castro-Bárcena,", common interveners, since "there is a criminal complaint lodged against them before the Primer Juzgado Penal Especial Anticorrupción (First Special Anti-corruption Criminal Court)," and requested the Court to "reconsider and review the designation of the common interveners." The following day, the Secretariat informed them that, pursuant to the decision of the Court of November 23, 2004, if at the moment of convening the parties to a public hearing in the instant case, the Court were informed of the possibility that the said representatives would be effectively prevented from leaving the country, then, in that case, the President or the Court would consider the manner in which to act (supra para. 39.)

44. On May 13, 2005, the State filed a communication by means of which it referred to the brief filed by the Defensoría del Pueblo del Perú (Office of the Ombudsman of Peru) in the capacity as amicus curiae (supra para 42.)

45. On May 13, 2005, Peru filed another statement by means of which it requested the Court "that it may be pleased to consider the possibility of sending a request addressed to the Primer Juzgado Penal Especial (First Special Criminal Court) of the Corte Superior de Justicia de Lima (Supreme Court of Justice of Lima) in order for this criminal court to send, by a confidential public and guaranteed means, a certified copy of the testimony [rendered by María Angélica Arce-Guerrero and Matilde Pinchi-Pinchi, both secretaries of the former Advisor to the Servicio de Inteligencia Nacional (National Intelligence Service), Vladimiro Montesinos,] since it "would be highly enlightening for the judgment of this Honorable Court to get acquainted with the full content of such testimonies and, in view of its status as jurisdictional organ, access to such information could not be denied; even though, and for obvious reasons, the handling of such information shall be kept strictly confidential reserve." Furthermore, the State pointed out that "in case that the procedure requested was not admitted by the rules of the Honorable Court, [....] it is requested that the testimonies of the above-mentioned persons be admitted through affidavits made before a Notary Public, pursuant to the provisions set forth in Article 47(3) of the Court Rules of Procedure[...]."

46. On May 30, 2005, the Secretariat, following the instructions of the President, requested Peru to submit, not later than June 3, 2005, supplementary information to illustrate the relevance, regarding the facts and the object of the instant case, that it would have for the Court to get a copy of the testimonies rendered by María Angélica Arce-Guerrero and Matilde Pinchi-Pinchi before the Primer Juzgado Penal Especial (First Special Criminal Court) of the Corte Superior de Justicia de Lima (Supreme Court of Justice of Lima); and also requested the State to indicate which purpose would it serve to have an affidavit sworn to by those persons and also the pertinence of the same as regards the instant case.

47. On June 1, 2005, the State submitted the clarifications and information that had been requested by the President (supra para. 46,) as regards to the offering of the affidavits of María Angélica Arce-Guerrero and Matilde Pinchi-Pinchi (supra para. 45).

48. On June 10, 2005, the Commission filed its comments to the offering made by the State as regards to the affidavits of María Angélica Arce-Guerrero and Matilde Pinchi-Pinchi and as regards to the clarifications and information submitted by the State in that respect (supra paras. 45 and 47.) The Commission stated, inter alia, that the offering made by the State "should be dismissed on the grounds of being unjustified and irrelevant."

49. On June 14, 2005, the common intervener filed comments to the offering made by the State as regards the affidavits of María Angélica Arce-Guerrero and Matilde Pinchi-Pinchi (supra para. 45) and as regards to the clarifications and information submitted by the State in that respect (supra para. 46.) On June 24, 2005, the common intervener submitted Appendixes to the said comments. In this submission, the common intervener stated, inter alia, that "it would leave to the better judgment [of the Court] the decision about the pertinence of the request made by Peru to put on record the affidavits that the said State intends to incorporate to the instant case;" and "in case the Honorable Court would decide to uphold such request, [...] then the common intervener would, in equity, request it not to peruse only the two affidavits proposed by the defendant State, but also to consider all the testimonies rendered throughout the proceedings that caused the opening of this case N° 30-2004."

50. On June 27, 2005, the State submitted a statement, by means of which it made reference to the comments filed by the Commission and by the common intervener as regards to the offering made by the State regarding the testimonies of María Angélica Arce-Guerrero and Matilde Pinchi-Pinchi (supra paras. 45, 47 and 48.)

51. On August 1, 2005, the President issued an Order requesting Rogelia Rosario Agüero-Laos, Juan de Dios Berrospi-Pérez, Yeny Zully Cubas-Santos, Agustín Huanca-Gimio, Carmen Esperanza Yaranga-Lluya, Marcela Teresa Arriola-Espino and Wilfredo Castillo-Sabalaga, witnesses proposed by the Commission and by the common intervener, to render their testimony through affidavits. The President also ordered Josmell Muñoz-Córdoba, expert witness proposed by the Commission, and Alejandro Silva-Reina, proposed as expert witness by the common intervener, to render their expert opinions in the form of affidavits. Likewise, in such Order, the President summoned the parties to a public hearing to be held in the seat of the Inter-American Court, as from September 20, 2005, to hear the final oral arguments regarding the preliminary comments and possibly on the merits of the case, reparations and costs, as well as to hear the testimony of Corina Antonieta Tarazona-Valverde, who had been proposed as a witness by the common intervener, and of José Ugaz Sánchez-Moreno and Enrique Zileri-Gibson, who had been proposed as witnesses by the State, and also the expert testimony of Samuel Abad-Yupanqui, who had been proposed as an expert witness by the Commission. Likewise, by this Order, the President informed the parties that October 24, 2005 would be the deadline to submit their final written arguments regarding the preliminary comments and possibly on the merits of the case, reparations and costs. Likewise, the President decided to leave to the consideration of the Court the decision regarding the requests made by the State in relation to the affidavits by María Angélica Arce-Guerrero and Matilde Pinchi-Pinchi (supra paras. 45 to 49,) so the Court might rule about the appropriateness of allowing any of the two requests lodged by the State, after receiving the evidence to be submitted in the public hearing, and the Arguments by the parties in that hearing and after the parties had submitted their final written arguments, in which case, the Court might request the submission of such evidence pursuant to the powers set forth in Article 45 of the Rules of Procedure.

52. On August 12, 2005, the Public Attorney of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima), in the name and on behalf of such Municipality, filed a brief "in its capacity as amicus curiae." The Appendixes to that brief were filed on August 25 and 26, 2005.

53. On August 15, 2005, the State filed a brief stating that "Attorney José Ugaz Sánchez-Moreno [...] had reported that, due to force majeure reasons, and unanticipated circumstances beyond his control, he would be prevented from appearing as a witness at the public hearing" (supra para. 51) and he requested that "Attorney-at-law César Azabache-Carracciolo be authorized to appear as a witness, since he had acted as ad hoc Deputy Prosecutor and had a wide participation in the actions and investigations conducted by the Procuraduría Anticorrupción (Office of the Anti-Corruption Prosecutor-General); and in case the Honorable Court might, for some particular reason, consider that the appearance of Deputy Prosecutor Azabache would not be proper, then, he requested that Attorney César Julio Pantoja-Carrera, who had also acted as ad hoc Deputy Prosecutor, be authorized to appear before the Court[...]."

54. On August 19, 2005, the Commission forwarded a copy of the affidavits made by the following witnesses: Rogelia Rosario Agüero-Laos, Juan de Dios Berrospi-Pérez, Yeny Zully Cubas-Santos, Agustín Huanca-Gimio and Carmen Esperanza Yaranga-Lluya (supra para. 51.) By means of a note of August 23, 2005, the Secretariat, following instructions by the President, requested the Commission to send, as soon as possible, the expert opinion to be rendered by Josmell Muñoz-Córdoba (supra para. 51). On September 20, 2005, the Commission submitted the original of said affidavits.

55. On August 19, 22 and 23, 2005, the common intervener forwarded a copy of the affidavits containing the testimony of witnesses Wilfredo Castillo-Sabalaga and Marcela Teresa Arriola-Espino, and the expert opinion of Alejandro Silva-Reina (supra para.51.).

56. On August 25, 2005, after the expiration of the extension granted by the President, the Inter-American Commission filed a statement informing "that it did not have any comments to raise against the replacement of the testimony of José Ugaz Sánchez-Moreno by the testimony of César Azabache-Carracciolo" (supra para. 53.)

57. On September 1, 2005, the President issued an Order accepting the proposal made by the State to replace witness José Ugaz Sánchez-Moreno by witness César Azabache-Carracciolo and summoned this latter to render testimony at a public hearing to be held at the seat of the Court as from September 20, 2005 (supra para. 53.)

58. On September 2, 2005, the Commission filed a brief stating that "it waived the right to submit the expert opinion which was to be rendered by Josmell Muñoz-Córdoba" (supra paras. 51 and 54) and filed its comments about the statements of witnesses Wilfredo Castillo-Sabalaga and Marcela Teresa Arriola-Espino, and of expert witness Alejandro Silva-Reina (supra para. 55.)

59. On September 8, 2005, the State filed its brief containing the comments about the statements of witnesses Wilfredo Castillo-Sabalaga, Marcela Teresa Arriola-Espino, Rogelia Rosario Agüero-Laos, Juan de Dios Berrospi-Pérez, Yeny Zully Cubas-Santos, Agustín Huanca-Gimio and Carmen Esperanza Yaranga-Lluya (supra paras. 54 and 55.)

60. On September 13, 2005, the Commission filed a brief, to which it attached an appendix, by means of which it stated that "Samuel Abad-Yupanqui had informed the Commission that for reasons beyond his control it would be impossible for him to travel to the city where the Court has its seat in order to render his expert testimony on the date set for the hearing" (supra para. 51,) and therefore, "he had forwarded to the Commission his expert opinion in writing, which opinion was attached and submitted for the consideration of the Court."

61. On September 15, 2005, the Secretariat, following instructions by the President of the Court, granted a non-extendable term of ten days for the State and the common intervener to file any comments that they deemed necessary regarding the expert opinion of Abad-Yupanqui.

62. On September 16, 2005, the Commission filed a brief requesting "that the brief submitted by [the Municipality of Lima] (supra para. 52) in the capacity as amicus curiae be not admitted, since said municipal body was accused of not complying with the judicial orders and the Public Attorney of the Municipality was appointed by the State to participate in the public hearing.

63. On September 20, 2005, in the morning and prior to the commencement of the public hearing, the State submitted a compact disc containing a video edited by the State and requested authorization to use such video during the public hearing. On that same day, the Court decided that the State could not use the said video during the presentation of its final arguments at the public hearing since it considered the video as evidence. The Court decided not to receive said video and forward it to the other parties, on the understanding that it would be given consideration in due time after receiving any pertinent comments.

64. On September 20 and 21, 2005, the public hearing was held to deal with the preliminary objections, and possibly with the merits of the case, reparations and costs, and the following persons appeared: a) by the Inter-American Commission: Víctor H. Madrigal-Borloz and Manuela Cuvi-Rodríguez, legal counsel; b) by the common intervener: Ana María Zegarra-Laos, representative; Francisco Ercilio Moura, counsel; and Angélica Castañeda-Flores, assistant; and c) by Peru: Mario Pasco-Cosmópolis, agent; César González-Hunt, Deputy Agent; José Alberto Danós-Ordoñez, assistant, and Máximo Licurgo Pinto-Ruiz, advisor. Likewise, the following witnesses appeared before the Court: Corina Antonieta Tarazona-Valverde, witness proposed by the common intervener; César Azabache-Carracciolo and Enrique Zileri-Gibson, witnesses proposed by the State (supra para. 51.) Furthermore, the Court heard the final Arguments by the Commission, the common intervener and the State. During the public hearing, when presenting its final arguments, the State submitted several documents which were forwarded to the other parties.

65. On September 26, 2005, the State filed its comments to the expert opinion rendered in writing by Samuel B. Abad-Yupanqui (supra paras. 60 and 61.)

66. On September 27, 2005, the State filed a brief with comments on the request made by the Commission in its brief of September 16, 2005, in order to "not to admit the brief submitted [by the Municipality of Lima] in the capacity of amicus curiae on August 12, 2005]" (supra para. 62.)

67. On September 30, 2005 Josmell Muñoz-Córdoba "informed that he could not fulfil his duties as an [expert witness]" (supra paras. 51 and 58.)

68. On October 11, 2005, the State filed comments to the original statement of witness Juan de Dios Berrospi-Pérez (supra para. 54).

69. On October 14, 2005, the Secretariat, following instructions of the President, notify the parties about the documents or explanations that the Court requested them to provide after the final oral arguments at the public hearing (supra para. 64,) some of which the parties had to forward no later than October 24, 2005, which was the due date for filing the final written arguments. Likewise, and following instructions of the President, the parties were requested to

forward certain documents as evidence to facilitate the adjudication of the case and the State was also requested to submit explanations as regards the determination of the alleged victims.

70. On October 18, 2005, the common intervener filed a brief containing its comments to the compact disc submitted by the State on September 20, 2005 prior to the holding of the public hearing (supra para 63.) On November 23, 2005, the common intervener filed the appendixes to said comments.

71. On October 21, 2005, the Commission filed a brief containing its comments to the compact disc submitted by the State on September 20, 2005 prior to the holding of the public hearing (supra para 63.)

72. On October 24 and 25, 2005, the common intervener submitted the information that the Court had requested after the final oral arguments at the public hearing; and by note of October 14, 2005 (supra para. 69,) the common intervener informed that he was sending a copy of the requested documents to the parties as evidence to facilitate the adjudication of the case (supra para. 69.) It also submitted its final written arguments as regards the preliminary objections, and possibly on the merits of the case, reparations and indemnities, and attached documents as appendixes. On November 23, 2005, the common intervener presented said documentation and appendixes (infra para. 83.)

73. On October 24, 2005, the State filed its final written arguments regarding the preliminary objections and possibly on the merits of the case, reparations and costs, and also the information that the Court had requested after the final oral arguments at the public hearing and by note of October 14, 2005 (supra para 69,) and attached other documents as appendixes. The said appendixes were filed on October 31, 2005.

74. On October 24, 2005, the Commission filed its final written arguments regarding the preliminary comments and possibly on the merits of the case, reparations and costs, and also the information that the Court had requested after the final oral arguments at the public hearing and by note of October 14, 2005 (supra para 69.) The Commission stated that it was forwarding as appendixes the briefs submitted before the Commission by the alleged victims and the representatives, which were forwarded to the Court on a later date.

75. On November 3, 2005, the Commission sent a brief that had been submitted to it by Cristina Rojas-Poccorpachi together with its appendixes, and also submitted a statement filed before the Commission by Manuel Saavedra-Rivera, Héctor Paredes-Márquez and Carlos Cueva-Rojas (with no signatures,) and a note addressed to those persons by the Commission in which they were requested to submit the appendixes to such communications. On November 23, 2005, Manuel Saavedra-Rivera, Héctor Paredes-Márquez and Carlos Cueva-Rojas filed with this Court a note requesting the "correction" of certain mistakes contained in the statement they filed before the Commission.

76. On November 9, 2005, the Commission forwarded the original brief dated October 24, 2005, filed with such organ by Manuel Saavedra-Rivera, Héctor Paredes-Márquez and Carlos Cueva-Rojas, along with its appendixes (supra, para. 75).

77. On November 10, 2005, the Secretariat, following the instructions of the President, sent notice to the State requesting the submission, not later than November 29, 2005, of a detailed explanation of the scope of the acknowledgment of international responsibility made while the case was being processed before the Court, clearly stating the names of the alleged victims, former ESMLL workers, in regards to whom the State acknowledged its international responsibility; and further requested the State to inform whether the said acknowledgement of responsibility extended to all the violations to the American Convention alleged by the Inter-American Commission and by the common intervener for the representatives of the alleged victims. Likewise, following instructions of the President, the State was requested to submit on or before November 29, 2005, all the documents evidencing the information included in a schedule identified as "Persons that must be excluded from the application," which was submitted as appendix 23 to the brief of preliminary objections, answer to the application and comments to the brief of requests and arguments.

78. On November 17, 2005, the Commission sent a statement dated October 24, 2005 and appendixes thereto, that had been filed with the Commission by a group of alleged victims.

79. On November 17, 2005, the Commission filed "the original of a statement dated October 24, 2005, that had been received by the Secretariat [of the Commission] on October 28, 2005, and that had been sent as an appendix to the final written Arguments by the Inter-American Commission."

80. On November 18, 2005, the Commission sent a statement dated October 24, 2005 and appendixes thereto, that had been filed before the Commission by Sara Vásquez-Rodríguez, Calixta Sánchez-Cabello, Yolanda Alata de Cabezas y Maximiliana Carrillo-Palacios, all of them alleged victims in relation to the instant case.

81. On November 18, 2005, the Commission forwarded a copy of the statement dated October 24, 2005, and appendixes thereto that had been filed before the Commission by Sara Vásquez-Rodríguez, Yolanda Alata de Cabezas, Maximiliano Carrillo-Palacios and Calixto F. Sánchez-Cabello, "in relation to the instant case."

82. On November 23, 2005, the common intervener submitted the documentary evidence and appendixes to its final written arguments (supra para. 72.)

83 On November 23, 2005, Peru filed a brief requesting the Court "to set aside the final written Arguments by the common intervener" of the representatives of the alleged victims, alleging that the failure to submit the appendixes to such final written argument "placed Peru in a situation of a virtual impossibility to examine the said final written arguments and to submit elementary considerations within the term that had been set for such purpose."

84. On November 24, 2005, the Commission sent a statement and its appendixes that had been filed before it by Cristina Rojas-Poccorpachi and its respective appendixes.

85. On November 29, 2005, the Secretariat, following instructions of the President, notified the parties that due to the time elapsed from the filing by the common intervener of his final arguments until the filing of the appendixes thereto (supra paras. 72 and 82,) the Court decided to extend the term up to December 12, 2005 to grant an extended term for the Commission and the State to file any comments they deemed fit to the clarifications, explanations and documentary evidence that the other parties had filed in compliance with the order issued by the Court after the final oral arguments at the public hearing and by means of notes of October 14, 2005, as well as the documents submitted as an appendix to the final written arguments.

86. On November 29, 2005, the State filed a brief containing a petition addressed to the Court to issue a new request to the Commission and the common intervener for a detailed analysis of the alleged victims, since it considered that the information that had been submitted did not comply with the request that the Court had made (supra paras. 69, 72 and 74.)

87. On November 29, 2005, the State filed another brief requesting again that the Court might call upon the evidence relating to the state,emts of Matilde Pinchi-Pinchi and María Angélica Arce (supra para. 45.) The Secretariat notified the parties that, as regards to the requests regarding evidence filed by the State, such request would be informed to the Court; to the pertinent effects, and following the instructions of the President of the Court, the Secretariat further informed the State that the Court would request the submission of such documentary evidence only if it considered it would be proper and convenient to grant any of the requests made by the State.

88. On December 2, 2005, the common intervener filed a brief with its comments to the clarifications, explanations and documents submitted by Peru (supra para. 73.) By means of a note of December 22, 2005, the Secretariat, following the instructions of the President, requested the common intervener to forward the appendixes to such comments as soon as possible. On January 4, 2006, the common intervener submitted such appendixes.

89. On December 6, 2005, the State filed a brief and an appendix attached thereto, informing the Court that " it submitted the listing of former workers comprised within the judgment by the Tribunal Constitucional (Constitutional Court) (07/08/98) and disclaimed any responsibility", with reference to the explanatory statement regarding the scope of the acknowledgment of responsibility that had been requested by the President (supra para. 77.)

90. On December 6, 2005, the State filed another brief, to which it attached an appendix in order to submit information to provide evidence in support of the schedule of "Persons that must be excluded from the application" included in Appendix 23 of the brief of preliminary objections, regarding the information that had been requested by the President (supra para. 77.)

91. On December 12, 2005, the State filed a statement with reference to the report that had recently been issued by "the Fiscalía Superior Especializada de Lima (Office of the Specialized Superior Public Prosecutor of Lima) in case No. 039-2004, pending before the Tercera Sala Penal Especial de la Corte Superior de Lima (Third Special Criminal Chamber of the Superior Court of Lima)", and the State informed that "it had requested a certified copy signed by a Public Notary in order to be submitted in full to the Honorable Court."

92. On December 16, 2005, the Commission filed a copy of the original statement filed on November 3, 2005, which had been submitted to the Commission by Manuel Saavedra-Rivera, Héctor Paredes-Márquez and Carlos Cueva-Rojas, as well as its corresponding appendixes.

93. On December 19, 2005, Peru filed a brief containing "preliminary comments to the clarifications, explanations and documents that had been submitted by the other parties, in answer to the request made by the Court after the final oral arguments at the public hearing and by means of notes dated October 14, 2005, as well as its comments to the documents attached to the final written arguments (supra paras. 72, 74 and 85.)

94. On December 21, 2005, the State filed a brief together with an appendix by means of which it submitted a certified copy of the report issued on November 10, 2005 by the Tercera Fiscalía Superior Especializada de Lima (Office of the Third Specialized Superior Public Prosecutor of Lima) in case No. 039-2004, and also a copy of the Official Letter N° 764-2005 of the ad hoc Public Prosecutor (supra para. 91.)

95. On December 21, 2005, the State filed another brief with appendixes in order to submit a "schedule of correlation of cases and causes." On that same day, it filed another brief informing about an "omission of the common intervener to submit appendixes to the final arguments."

96. On December 22, 2005, the Secretariat, following the instructions of the President, granted an extension until to January 9, 2006 to the Commission and the common intervener so they could send the comments they might deem fit regarding the documents filed by the State on December 21, 2005.

97. On December 22, 2005, the Inter-American Commission filed its comments to the clarifications, explanations and documents that had been submitted by the other parties, in response to the request made by the Court after the final oral arguments at the public hearing and through notes dated October 14, 2005, as well as the comments to the documents attached to the final written arguments (supra paras. 72, 73 and 85.)

98. On December 28, 2005, the State filed two briefs together with their corresponding appendixes in order to make reference to "court files that have been closed due to discontinuance" and to "Evidence (court judgments) regarding the corruption network."

99. On January 6, 2006, following instructions of the President, a term was granted, extending to January 12, 2006 for the Inter-American Commission and the common intervener to forward the comments that they might deem fit regarding the aforementioned briefs submitted by the State on December 28, 2005 and their appendixes (supra para. 98.)

100. On January 4, 2006, the common intervener filed a brief, along with its appendixes, in order to submit some appendixes, that were still pending, to the final written arguments and requested that "some omissions and errors be corrected" "regarding the identification of the alleged victims" (supra paras. 72 and 82.)

101. On January 4, 2006, the common intervener forwarded the pending appendixes to its comments to the clarifications, explanations and documents submitted by Peru (supra para. 88.)

102. On January 9 and 12, 2006, the Inter-American Commission filed its comments to the briefs filed by Peru on December 21 and 28, 2005 (supra paras. 94 and 98.)

103. On January 10 and 16, 2006, the common intervener for the representatives filed its comments to the brief submitted by Peru on December 21, 2005 and to one of the briefs submitted on December 28, 2005 (supra paras. 94 and 98.)

104. On January 17, 2006, the President requested the parties to produce evidence to facilitate the adjudication of the case.

105. On January 17, 2006, the common intervener filed its comments to one of the briefs filed by the State on December 28, 2005 (supra para. 98.)

106. On January 20, 2006, the common intervener forwarded the evidence to facilitate the adjudication of the case that had been requested by the President (supra para. 104.)

107. On January 20, 2006, the Inter-American Commission filed a brief to inform that the evidence to facilitate the adjudication of the case that had been requested by the President (supra para. 104) was being forwarded by the common intervener.

108. On January 25, 2006, the State filed a statement informing that the briefs and documents it had filed before December 22, 2005 contained its comments to the clarifications, explanations and documents that had been submitted by the Commission and the intervener (supra paras 72 and 74.)

109. On January 27, 2006, Peru filed a statement containing a request to convene a second public hearing, due to the existence of "new matters of fact and evidence thereof having occurred after the first hearing had been held." The State informed that these new matters and evidence were: a) the opinion issued by Tercera Fiscalía Superior Especializada en Delitos de Corrupción de Funcionarios (Office of the Third Superior Public Prosecutor Specialized in Crimes of Corruption by Public Servants), in case No. 039-2004 pending before the Tercera Sala Penal Especial de la Corte Superior de Lima (Third Special Criminal Chamber of the Superior Court of Lima), in which case an accusation is made against an alleged victim and three representatives in this case as first-degree accomplices of the crime of peculation; b) "the refusal of [...] CEDAL to continue representing the alleged victims;" [FN1] c) "the evidence that the alleged acknowledgment of responsibility by the State is not such, since it stems from a report prepared by the Secretaría del Consejo Nacional de Derechos Humanos del Perú (Secretariat of the National Council for Human Rights of Peru), wherein an alleged tacit acknowledgment of international responsibility made through a press release is "ratified", but in fact, in such press release merely offered to foster a friendly settlement; in addition, the state official that made such a statement "did not act within the authority of a previous supreme resolution, nor pursuant to any other resolution;" d) the Commission and the common intervener had not duly complied with the request made by the Court to submit more precise information regarding the alleged

victims, something which "is mandatory and [...] is absolutely necessary to determine the scope of the claims;" and e) "during the four months elapsed between the first hearing and the abovementioned date, a great deal of documentary evidence had been produced" and such evidence "should be dealt within an oral presentation."

[FN1] According to the information submitted to the Court, the Centro de Asesoría Laboral del Perú (CEDAL) (Labor Counseling Center of Peru) is the organization that rendered legal counseling to the common intervenor in the proceeding before the Court. By statement filed on December 15, 2005, CEDAL informed the Court that it would no longer provide legal counseling to the common intervenor with reference to the instant case.

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110. On January 30, 2006, the State filed two briefs, to which it attached appendixes, whereby it forwarded the evidence to facilitate the adjudication of the case that had been requested by the President (supra para. 104,) and made reference to "court records that have been archived due to discontinuance."

111. On January 30, 2006, the common intervener filed two briefs containing the appendixes to the briefs filed on January 10 and 16, 2006 (supra para 103) and filed comments to the brief filed by the State on December 6, 2005, (supra para 90.)

112. On February 2, 2006, Francisco Ercilio Moura filed a statement requesting the Court to order in its judgment, direct payment to the Centro de Asesoría Laboral del Perú (CEDAL) (Labor Counseling Center of Peru) of the costs and expenses that the Court may, in its discretion, estimate for the professional services rendered to the [alleged] victims in the instant case [...] before the Inter-American system of protection of Human Rights."

113. On February 3, 2005, the common intervener filed a statement referring to the brief filed by Peru on January 27, 2006, in which he requested the Court to dismiss the petition for a public hearing made by the State (supra para. 109.)

114. On February 6, 2006, the Inter-American Court issued an Order in which it decided:

1. To dismiss the petition made by the State to hold a second public hearing in the Case Acevedo-Jaramillo et al.
2. To dismiss, on account of its being time-barred, the new argument submitted by Peru in its brief of January 2006, regarding "the evidence that the alleged acknowledgment of responsibility by Peru [before the Commission] is not such.

[…]

V. PRELIMINARY OBJECTIONS

115. In the brief containing the answer to the application and the comments to the brief of requests and arguments, the State submitted the following preliminary objections:

1. "lack of exhaustion of previous domestic remedies;" and
2. "lack of right to act of the persons signing the complaint."

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FIRST PRELIMINARY OBJECTION
"failure to exhaust the previous domestic remedies"

116. Arguments by the State:

a) this objection is filed "regarding the cause of action in the case of Empresa de Servicios Municipales de Limpieza de Lima (Lima Municipal Cleaning Services Corporation) - ESMLL. This case […] has been improperly or unduly included among the cases to which this proceeding refers and should be excluded therefrom." In the instant case the domestic remedies have not been exhausted. The domestic case is at the stage where the judgment is being enforced, within the procedures provided for by the domestic legislation regarding appeals for legal protection [enforcement of the constitutional guarantee for protection of civil rights]. The judgment rendered by the Tribunal Constitucional (Constitutional Court) ordered the reinstatement of the applicants who had not collected their social benefits to their jobs, and therefore the issue being discussed at the enforcement phase is the determination of the identity of those who collected such benefits;
b) a decision by the Corte Superior de Justicia de Lima (High Court of Justice of Lima) is pending regarding the motion of appeal filed on September 3, 2003 by "ESMLL corporation (in process of winding up)", against the ruling issued by the 64º Juzgado Especializado en lo Civil de Lima (64th Specialized Juzgado Especializado en lo Civil (Court Specializing in Civil Matters) of Lima), wherein it ordered the reinstatement of 61 applicants to their jobs; and
c) "the list of persons stated in the application does not include any former ESMLL worker."

117. Arguments by the Commission

The Inter-American Commission requested the Court that the objection be "dismissed" as "it is not based on factual and legal grounds" and pointed out that:

a) the Arguments by the State are time-barred and groundless. The objection should be dismissed on the grounds that it was not filed in due time before the Commission and that it ignores the express decision adopted by the Commission on the matter of admissibility in Report No. 85/01 adopted on October 10, 2001. The State expressed its will to abide by the decision to be adopted by the Commission. In such report, the Commission examined carefully the compliance with the conventional admissibility requirements and, after considering the parties' views and the evidence produced and having in mind that the petition addressed the non-compliance with judicial decisions, it considered that the requirement set forth in Article 46(1)(a) of the American Convention was met;
b) at its present evolutionary stage, the Inter-American system provides for important justifications for the Court not to examine the matters on admissibility that have been examined

by the Commission, thus avoiding the duplication of a proceeeding which was conducted with all procedural guarantees;
c) such objection is also unjustified pursuant to the estoppel principle, since during the proceeding before the Commission the State acknowledged its international responsibility for the factual substance of the case, which prevents Peru from alleging before the Court the failure to exhaust all previous domestic remedies;
d) "all judgments which compliance is requested in the instant case are final and unappealable and have had the effects of res judicata for over six years, notwithstanding the fact that some of them are still at the enforcement phase." In pointing out that a motion of appeal is still pending before the domestic jurisdiction at the enforcement phase regarding the former ESMLL workers, "the State acknowledges that after […] more than five years have passed since the highest judicial authority in the country acknowledged the rights of the former ESMLL workers and ordered the Municipality of Lima to reinstate those workers who had not collected their social benefits to their jobs, […] such workers have not been reinstated, i.e., it has not complied with the judgment in point;"
e) the former ESMLL workers to whom the judgment rendered by the Tribunal Constitucional (Constitutional Court) on July 8, 1998 makes reference are included in the application. Their situation was described by the Commission in paras. 98-100 of the application, when referring to the judgments which have not been complied with by the State, stating the names of those former workers in the footnote of page No. 48. Likewise, in para. 145 of the application the violation of their rights to judicial protection (Article 25 of the Convention) was alleged. "Besides, such persons are included in the list of those who are entitled to be redressed [,] which is included in para. 163 of the application." Likewise, the powers of attorney "granted by the former ESMLL workers" were filed; and
f) at the public hearing held before the Court "the State acknowledged that the judgment [regarding the former ESMLL workers] was valid and had not been fulfilled, whereby it implicitly desisted from the preliminary objection raised."

118. Arguments by the common intervener of the alleged victims' representatives

The common intervener requested the Court that the objection had to be dismissed and argued that:

a) the amparo for legal protection filed by the former ESMLL workers was adjudged and a final and enforceable judgment supporting such workers' claims was rendered by the Tribunal Constitucional (Constitutional Court) on July 8, 1998;
b) in the processing of the case before the Commission, the State did not contest the facts, challenge the admissibility of the petition made or invoke in its favor the objection filed with the Court; and
c) as to the former ESMLL workers "it has been proven that the domestic remedies have been exhausted, but […] these have been patently unsuccessful." Furthermore, given the time that has passed, an exception to the right to object on the basis of non-exhaustion of the domestic remedies is applicable due to the unwarranted delay in the enforcement of the judgment.

Considerations of the Court

119. The Arguments by the State as regards the objection for "failure to exhaust the previous domestic remedies" are based on two main points: a) the failure to exhaust the domestic remedies as regards the judgment rendered by the Tribunal Constitucional (Constitutional Court) on July 8, 1998 on the dissolution and winding up of Empresa de Servicios Municipales de Limpieza de Lima (Lima Municipal Cleaning Services Corporation) – ESMLL, wherein it ordered the reinstatement of the workers who had not collected their social benefits to their jobs; and b) the fact that "the list of persons stated in the application does not include any former ESMLL worker."

a) failure to exhaust the domestic remedies

120. In its brief containing the answer to the application and in its submission of comments on the petitions and arguments, Peru claimed before the Court the failure to exhaust the remedies "regarding the cause of action in the case of Empresa de Servicios Municipales de Limpieza de Lima – ESMLL (Lima Municipal Cleaning Services Corporation)", since "the […] case […] is at the midst of the enforcement phase."

121. The American Convention provides that the Court exercises full jurisdiction over all matters pertaining to a case, including jurisdiction over the procedural prerequisites which are the basis of its authority to hear a case. [FN2]

[FN2] Cf. Case of the Serrano-Cruz Sisters v. El Salvador. Preliminary Objections Judgment of November 23, 2004. Series C No. 118, para. 132; Case of Tibi v. Ecuador. Judgment of September 7, 2004. Series C No. 114, para. 47; and Case of Herrera-Ulloa v. Costa Rica. Judgment of July 2, 2004. Series C No. 107, para. 79.

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122. Article 46(1)(a) of the Convention provides that in order to decide on the admissibility of a petition or communication filed before the Inter-American Commission pursuant to Articles 44 or 45 of the Convention, it is necessary that all domestic remedies have been filed and exhausted, according to the generally recognized principles of international law. [FN3]

[FN3] Cf. Case of Ximenes-Lopes v. Brazil. Preliminary Objection. Judgment of November 30, 2005. Series C No. 139, para. 4; Case of the Moiwana Community v. Suriname. Judgment of June 15, 2005. Series C No. 124, para. 48; and Case of the Serrano-Cruz Sisters v. El Salvador. Preliminary Objections, supra note 2, para. 133.

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123. The Court has argued that Article 46(1)(a) of the Convention provides that domestic remedies must be filed and exhausted according to the generally recognized principles of international law, which implies that not only should such remedies formally exist, but also be adequate and effective, as it is derived from the exceptions set forth in Article 46(2) of the Convention. [FN4]

[FN4] Cf. Case of the Serrano-Cruz Sisters v. El Salvador. Preliminary Objections, supra note 2, para. 134; Case of Tibi v. Ecuador, supra note 2, para. 50; and Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, para. 53.

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124. The Court reaffirms the criteria regarding the filing of the objection for failure to exhaust the domestic remedies, criteria which is to be considered in the instant case. First, the Court has pointed out that the matter of the failure to exhaust remedies is one of pure admissibility and that the State which alleges it must express which domestic remedies should be exhausted, as well as prove the effectiveness thereof. Second, for the objection of failure to exhaust the domestic remedies to be held timely, it should be filed at the admissibility stage of the proceeding before the Commission, that is, before any consideration of the merits of the case; otherwise, the State is assumed to have waived constructively its right to resort to it. Third, the respondent State may waive, either expressly or implicitly, the right to raise an objection for failure to exhaust the domestic remedies. [FN5]

[FN5] Cf. Case of Ximenes-Lopes v. Brazil. Preliminary Objections, supra note 3, para. 5; Case of the Moiwana Community v. Suriname, supra note 3, para. 49; and Case of the Serrano-Cruz Sisters v. El Salvador. Preliminary Comments, supra note 2, para. 135.

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125. The Court has noted that during the proceeding before the Commission the State did not invoke the failure to exhaust the domestic remedies. On the contrary, it acknowledged its international responsibility for the violation of Article 25(2)(c) of the Inter-American Convention. The Commission examined the admissibility of the petition and issued the Report on Admissibility No. 85/01 on October 10, 2001, wherein it stated, inter alia, that "[th]e State [had] not filed any objection regarding the requirement to exhaust the remedies of the domestic jurisdiction."

126. Therefore, as a consequence of having failed to file a procedurally timely objection for failure to exhaust the domestic remedies, the Court concludes that Peru has implicitly waived its right to invoke it, whereby it dismisses the preliminary objection filed by the State.

127. The Court has noted that the above order of amparo has been in the enforcement phase for seven years and a half. Since there might be an unwarranted delay in the enforcement of judgment, this matter is closely related to the merits of the case, whereby it will be examined together with the alleged violations of the Convention.

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b) "the list of persons stated in the application does not include any former worker of Empresa de Servicios Municipales de Limpieza de Lima - ESMLL (Lima Municipal Cleaning Services Corporation)"

128. The Court dismisses this argument of the State as irrelevant in that it has no bearing on the alleged objection for "failure to exhaust the previous domestic remedies."

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SECOND PRELIMINARY OBJECTION ("lack of legal standing of the complainants to act")

129. Arguments by the State

a) it "supports" its objection on Articles 23(1) and 37 of the Court's Rules of Procedure and on Agreements No. 87 and 98 of the International Labor Organization, which set forth trade union autonomy and bar the commission of acts of interference designed to violate it. The complainants are not workers of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima)), nor are they the current representatives of the Sindicato de Trabajadores Municipales de Lima - SITRAMUN-LIMA (Lima Municipal Workers' Union), as they have claimed to be before the Court;
b) there is no identity or link between those entitled to the rights under discussion and the complainants, a prerequisite for the existence of a valid procedural relation between the parties to a case;
c) "[n]one of the persons who have unlawfully claimed before [the] Honorable Court to be the current representatives of SITRAMUN and of the alleged victims ever achieved the status of a leader of such trade union neither at the moment of its registration with the Municipalidad Metropolitana de Lima (Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima)) nor thereafter;"
d) "the current complainants availed themselves of a coarse subtlety to usurpate the capacity as trade union leaders and ascribe it to themselves before third parties, thus breaching the trade union freedom of the members of the only and true SITRAMUN and the trade union autonomy of this organization. Thus, the complainants sought to — and successfully did — register the so-called Asociación Sindicato de Trabajadores Municipales de Lima (Lima Municipal Workers Union Association) before the Registro de Personas Jurídicas de los Registros Públicos de Lima y Callao (Registry of Legal Entities of the Registros Públicos de Lima (Public Registries of Lima) and Callao) […], a private civil association which could not legally replace SITRAMUN, which was registered as a labor trade union organization in good standing before the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima)) and which was the only organization authorized to act in the capacity of labor representative. The abovementioned Asociación Sindicato de Trabajadores Municipales de Lima (Lima Municipal Workers Union Association) is a private association which has no legal capacity to represent the workers and former workers of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima), despite its endeavors to create confusion both before the judicial organ of Peru and the Court. The members of the "Complainant association" are not at present workers of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima), which prevents them from joining the true Municipal Workers Union, let alone to represent it; and
e) the Asociación Sindicato de Trabajadores Municipales de Lima (Lima Municipal Workers Union) cannot be considered as having either the legal capacity to act as a trade union organization or to be the representative of the alleged victims "since it is not a trade union

organization and since it has not been granted with any powers of attorney by the alleged victims."

130. Arguments by the Commission

The Inter-American Commission requested the Court that the objection be dismissed "as it is not based on factual and legal grounds" and pointed out that:

a) the objection was not filed in time before the Commission and disregards the express decision on admissibility adopted by the same Commission in the instant case. The Commission reasserts the allegations made in its arguments to the first objection "which justifies that the […] Court not reexamine the matter;"
b) in application of the estoppel principle, the State is hindered from challenging the legal standing of those who acted as petitioners in the case during its processing before the Inter-American Commission, since it sought to reach a friendly settlement with such persons during the negotiations carried out between September, 1999 and June, 2000. Additionally, in application of the above principle, the acknowledgement of international responsibility made by Peru prevents if from challenging the petitioners' legal standing to act;
c) the State seems to be challenging the legal standing of the persons who filed the petition before the Commission. As it was stated in the Report on Admissibility of January 13, 1999, the Inter-American Commission "received a petition from the Sindicato de Trabajadores Municipales de Lima - SITRAMUN-LIMA (Lima Municipal Workers Union), the Federación de Trabajadores Municipales del Perú - FETRAMUNP (Municipal Workers Federation of Peru), and the Comité de Despedidos de la Empresa de Servicios Municipales de Limpieza de Lima - ESMLL (Committee of Dismissed Workers of the Lima Municipal Cleaning Services Corporation)." The entities which filed the petition were authorized under Article 44 of the American Convention to file complaints before the Commission. "Since the entities involved are, in any case, groups of persons, they would anyway have the legal standing to file petitions before the Commission;"
d) the application was filed regarding certain individual persons and not regarding the entity or the entities which may group them or might have grouped them. The alleged victims mentioned in the application "are individual persons who have obtained a judgment pronounced in their favor;"
e) the State has not challenged the fact that the entities which filed the petition before the Commission are legally recognized in Peru; and
f) the alleged victims have granted powers of attorney to be represented by individual persons and not by legal entities. The State has not challenged any of the powers which have been forwarded to the Court by the Commission, "nor has it identified which persons the Asociación" Sindicato de Trabajadores Municipales de Lima (Lima Municipal Workers Union Association) would allegedly be representing. Neither has the State challenged the representation exercised by the Commission regarding the alleged victims who have not granted a power of attorney to be represented.

131. Arguments by the common intervener of the alleged victims' representatives

The common intervener requested the Court that the objection be dismissed and argued that:

a) in the processing of the case before the Commission and "when the instant proceedings were already submitted to the jurisdiction of [the …] Court", Peru acknowledged the legal capacity and legal standing of the applicants to act. To support this argument, parts of several official notes sent by the State agents to some of the representatives who were designated as common intervener and to the Inter-American Commission, three records of meetings held by the "Working Commission" created by Supreme Order, and the report addressed by the Chairwoman of such Commission to the Minister of Justice in connection with the instant case are referred to and transcribed; and
b) according to the "doctrine of one's own acts" "it is legally and procedurally inadmissible […] that a party to a case seeks to support its actions by invoking factual and legal grounds which oppose its own acts, assuming a position which contradicts its legally relevant previous conduct".

Considerations of the Court

132. Peru raised an objection before the Court on the grounds of the "lack of legal standing of the complainants to act", basing its arguments on two main points: the legal standing to file a complaint before the Commission and the representation of the alleged victims by the Asociación Sindicato de Trabajadores Municipales de Lima (Lima Municipal Workers Union Association).

133. Article 44 of the Convention provides that

[a]ny person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

134. Article 23 (Participation of the alleged victims) of the Court's Rules of Procedure provides that:

1. When the application has been admitted, the alleged victims, their next of kin or their duly accredited representatives may submit their briefs containing pleadings, motions, and evidence autonomously, throughout the proceedings.
2. When there are several alleged victims, next of kin or duly accredited representatives, they shall designate a common intervener who shall be the only person authorized to file briefs containing pleadings, motions and evidence during the proceedings, including the public hearings.
3. In case of disagreement, the Court shall make the appropriate ruling.

135. The scope of the provisions in the foregoing Articles of the American Convention and of the Rules of Procedure should be construed by the Court in accordance with the object and purpose of such treaty, which is the protection of human rights [FN6] and in accordance with the principle of the effectiveness (effete utile) of legal rules. [FN7]

[FN6] Cf. Case of YATAMA v. Nicaragua. Judgment of June 23, 2005. Series C No. 127, para. 84; Case of Ricardo Canese v. Paraguay. Judgment of August 31, 2004. Series C No. 111, para. 178; and Case of 19 Merchants v. Colombia. Judgment of July 5, 2004. Series C No. 109, para. 173.
[FN7] Cf. Case of YATAMA v. Nicaragua, supra note 6, para. 84; Case of the Serrano-Cruz Sisters v. El Salvador. Preliminary Comments. Judgment of November 23, 2004. Series C No. 118, supra note 2, para. 69; and Case of Baena-Ricardo et al (270 workers v. Panama). Judgment of November 28, 2003. Series C No. 104, para. 66.
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136. As to the filing of the complaint before the Commission, the Court has noted that the petitioners were the Sindicato de Trabajadores Municipales de Lima (Lima Municipal Workers Union), the Federación de Trabajadores Municipales del Perú (FETRAMUNP) (Municipal Workers Federation of Peru) and the Comité de Despedidos de la Empresa de Servicios Municipales de Limpieza de Lima – ESMLL (Lima Municipal Cleaning Services Corporation Dismissed Workers Committee).

137. Regarding the argument put forward by the State that the complainants are not from workers of the Municipality of Lima and that there is no identity or link between those entitled to the rights under discussion and the complainants, it is necessary to point out that the Court has established that, under the provisions of Article 44 of the Convention, the complaint may be filed by a person other than the alleged victim [FN8], as well as by a "group of persons." The Court has further argued that

[the] access of the individual to the Inter-American System for the Protection of Human Rights cannot be restricted on the basis of the requirement to have a legal representative. The Court has stated that "the formalities that characterize certain branches of domestic law do not apply to international human rights law, whose principal and determining concern is the just and complete protection of those rights." [FN9]

[FN8] Cf. Case of YATAMA v. Nicaragua, supra note 6, para. 82.
[FN9] Cf. Case of Castrillo-Petruzzi et.al. v. Peru. Preliminary comments. Judgment of September 4, 1998. Series C No. 41, para. 77.
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138. Furthermore, it has been proven in the body of evidence that during the processing before the Commission, Peru filed no objection as regards the legal standing of those who filed the complaint. The State even held communications and meetings with representatives of the petitioners for the purpose of reaching a friendly settlement.

139. Based on the foregoing, the Court deems that the complaint has been filed before the Commission in accordance with the provisions of Article 44 of the Convention.

140. On the other hand, as to the representation of the alleged victims before the Court, it is necessary to remember that when the Commission brought the case to the jurisdiction of the

Court it attached the powers of attorney of over 800 alleged victims and that most of them did not grant a power of attorney. Such powers were granted to seven different groups of representatives.

141. In such power of attorney granted by the alleged victims the capacity of the grantors, the names of the attorneys —who, in all power of attorney were individual persons— the subject-matter of the power of attorney and the will of the former to be represented by the latter were clearly stated. Though it is true that on the top margin of the powers of attorney granted to Manuel Antonio Condori-Araujo, Wilfredo Castillo-Sabalaga, Celestina Mercedes Aquino-Laurencio, Ana María Zegarra-Laos and Guillermo Nicolás Castro-Barcena there is a letterhead which reads "Sindicato de Trabajadores Municipales de Lima" (Lima Municipal Workers Union), such powers of attorney were granted to the above five individuals.

142. Due to the lack of agreement of the various representatives as to the appointment of a common intervener, the Court, pursuant to subparagraph two of Article 23 of the Court's Rules of Procedure, appointed a common intervener for the representatives (composed of Manuel Antonio Condori-Araujo, Wilfredo Castillo-Sabalaga, Celestina Mercedes Aquino-Laurencio, Ana María Zegarra-Laos and Guillermo Nicolás Castro-Barcena), who was the only representative authorized to take part in the proceeding before the Court. In that regard, the Court made such appointment taking into consideration which group represented the greatest number of alleged victims who had granted a power of attorney. Notwithstanding, the Court stated that it deemed it advisable that all groups of representatives join and submit, through the common intervener, a single pleading containing the petitions and arguments on behalf of all the groups of representatives appointed in the application. Likewise, the Court stated that "[i]n the case of the alleged victims who do not or may not have a representative, the Commission should safeguard their interests so as to ensure that they are effectively represented throughout all procedural stages before the Court."

143. Therefore, the representation of the interests of the alleged victims in the instant case has been exercised by the Inter-American Commission, by the common intervener, and by other groups of representatives, who have been able to submit their arguments and evidence through the Inter-American Commission. Furthermore, it is necessary to point out that the appointment of a legal representative in the proceeding before this Court is a right and not an obligation of the alleged victims. [FN10]

[FN10] Cf. Case of YATAMA v. Nicaragua, supra note 6, para. 86.

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144. On this matter the Court has established that:

The foregoing Article 23 of the Court's Rules of Procedure, which regulates the participation of the alleged victims in the Court proceedings as from the admission of the application, contains one of the most important regulatory amendments introduced by the Rules and adopted on November 24, 2000, and which came into effect as of June 1, 2001. This rule recognizes the right of the alleged victims and their next of kin to participate autonomously throughout the

proceedings. The previous Rules of Procedure did not recognize the alleged victims and their next of kin such an extensive legal standing. The Court may not construe the above Article 23 of the Rules of Procedure as restricting the rights of the alleged victims and their next of kin and cease hearing the case when they do not have a duly accredited representative. [FN11]

[FN11] Cf Case of YATAMA v. Nicaragua, supra note 6, para. 85.

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145. Likewise, the Court has stated that it is not essential that the power of attorney granted by the alleged victims to be represented in the proceeding before the Court conform to the same formalities established by the domestic laws of the respondent State. [FN12] The Court has further stated that:

The usual practice of this Court as regards to the representation rules has been governed by [such parameters] and, therefore, has been flexible and has been broadly applied […].
[…] This latitude in accepting the representation instruments has, however, certain limits dictated by the use which the representation itself will have. First, the instruments must clearly identify the party bestowing the power of attorney and reflect a lucid and unambiguous manifestation of free will. They must also name the person to whom the power of attorney is granted and, finally they must specifically state the purpose of the representation. In the opinion of this Court,, the instruments that meet these requirements are valid and have full effect once submitted before the Court . [FN13]

[FN12] Cf. Case of YATAMA v. Nicaragua, supra note 6, para. 94; Case of Castillo-Páez v. Peru. Reparations (art. 63(1) of the American Convention on Human Rights). Judgement of November 27, 1998. Series C No. 43, paras. 65 and 66; and Case of Loayza-Tamayo v. Peru. Reparations (art. 63(1) of the American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, paras. 97, 98 and 99.
[FN13] Case of YATAMA v. Nicaragua, supra note 6, para. 94. Furthermore cf. Case of Castillo-Páez v. Peru. Reparations, supra note 12, paras. 65 and 66; and Case of Loayza-Tamayo v. Peru. Reparations, supra note 12, paras. 97 and 99.

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146. Taking into consideration that the power of attorney granted to the common intervener were given in favor of five individual persons whose names are specifically mentioned, though at the top margin these powers of attorney have a letterhead which reads “Sindicato de Trabajadores Municipales de Lima” (Lima Municipal Workers Union), the Court considers that they are not vitiated by any flaw which may render them invalid before this Court.

147. The Court has understood that the Asociación Sindicato de Trabajadores Municipales de Lima (Lima Municipal Workers Union Association) is not the current Sindicato de Trabajadores de la Municipalidad de Lima (Lima Municipal Workers Union), and that the pleadings it may have submitted in the international proceedings have not been submitted on behalf of the members of the current trade union. As to what has been claimed by Peru regarding the alleged

violation of the trade union freedom of the members of the "true SITRAMUN", it is not incumbent upon this Court to render a decision on this matter.

148. On the basis of the foregoing considerations, the Court dismisses the second preliminary objection.

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149. Once dismissed the two preliminary objections raised by the State, the Court will proceed to examine the merits of the case.

VI. ACKNOWLEDGMENT OF RESPONSIBILITY BY THE STATE AND ALLEGATION OF "NEW MATTER"

150. The Court will now proceed to establish the scope of the acknowledgment of international responsibility made by the State before the Commission, and to issue a ruling on the "new matter" alleged before the Court, on the basis of which the State has changed its position, whereby it now declares that "it considers that there is no responsibility."

A) Acknowledgment of international responsibility made by the State before the Commission

151. On October 10, 2001 the Commission issued Report No. 85/01, wherein it deemed the petition to be admissible "as regards the possible violations of Articles 1(1) and 25(2)(c) of the American Convention." In such petition the alleged non-compliance by the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) with twelve judgments rendered by the Sala Corporativa Especializada en Derecho Público (Corporate Chamber Specialized in Public Law) and by the Tribunal Constitucional (Constitutional Court) was denounced.

152. On July 22, 2002, nine months after the Commission adopted the Report on Admissibility No. 85/01, Peru forwarded to the Commission a report issued by the Secretaría Ejecutiva del Consejo Nacional de Derechos Humanos (Office of the Executive Secretary of the National Council for Human Rights) on July 19, 2002, wherein it stated, inter alia, that

> […] it ratifi[ed] the implicit acknowledgment of international responsibility made in the Joint Press Release of February 22, 2001, whereby it acknowledged its international responsibility for the violation of the human rights of the SITRAMUN workers, as provided for in Article 25(2)(c) of the American Convention.
> […] due to the economic crisis that the Peruvian State is undergoing and the impossibility to respond to compensations and reparations in the instant case, it is forced to request the Inter-American Commission of Human Rights [that] that it undertakes the appropriate measures.

And it concluded that:

> […] the Peruvian State submits the instant case to the best judgment of the Inter-American Commission of Human Rights.

153. On October 11, 2002 the Commission issued the Report on the Merits No. 66/02, wherein it concluded that

[…] the Peruvian State is responsible for the violation of the right to judicial protection established in Article 25(2)(c) of the American Convention, against the workers of the Municipality of Lima and the Sindicato de Trabajadores de la Municipalidad de Lima - SITRAMUN (Lima Municipal Workers Union). The foregoing was further deemed to be a violation by the Peruvian State of the obligation imposed on it by Article 1(1) to respect and guarantee the rights established in the Convention.

The Commission recommended the State:

To adopt such measures as may be deemed necessary to secure the effective compliance with the judgments referred to in para. 37[sic] of the […] report.

In such report "the admissibility was extend[ed] to other facts alleged in due time by the petitioners", who claimed the non-compliance with other judgments, the victims of which have [allegedly] been the SITRAMUN workers."

154. On January 17, 2003 the State issued a report in answer to the recommendations made by the Commission in its Report No. No. 66/02 pertaining to Article 50 of the Convention. The State report was issued by the Secretaría Ejecutiva del Consejo Nacional de Derechos Humanos (Office of the Executive Secretary of the National Council for Human Rights) on December 20, 2002, which stated, inter alia, that

it ratifi[ed] what had stated in the Joint Press Release of February 22, 2001, acknowledging its international responsibility for the violation of the human rights of the SITRAMUN workers, as provided for in Article 25(2)(c) of the American Convention, which was stated in report [...] of July 19, 2002.

Likewise, it concluded, inter alia, that:

The Peruvian government and the SITRAMUN workers wish[e]d to start a new stage of negotiations based on the creation of an Ad Hoc Working Commission, whereby the Inter-American Commission of Human Rights is requested to consider these conversations before adopting a final decision […].

155. On February 26, 2003 ""El Peruano" official gazette published Supreme Decree No. 015-2003-JUS, whereby it was established to create a Working Commission, which would be in charge of drawing up the final proposal for the solution regarding the Case 12.084 Sindicato de Trabajadores Municipales de Lima (Lima Municipal Workers Union). It was decided that such commission should hold regular meetings until the conclusion of the negotiations aimed at reaching a proposed solution and would be composed of representatives of the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Labor and Social Advancement, the

Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) and the Sindicato de Trabajadores Municipales de Lima (Lima Municipal Workers Union).

156. On June 19, 2003 the period established for Peru to submit information on its compliance with the recommendations contained in Report No. 66/02 expired. According to the Commission, "the State did neither reply nor submit any information."

157. In referring the case to the Court, the Commission pointed out that

It appreciates the attitude of the Peruvian State to acknowledge its international responsibility for disregarding the decisions rendered by its judges, but, due to the State's repeated failure to comply with the recommendation contained in the report on the merits, to the unsuccessful attempts since the petition was filed before this Commission, through the friendly settlement process, and through the creation of various commissions to that purpose which yielded no tangible results, the Commission has decided to bring this case to the jurisdiction of the Honorable Inter-American Court.

B) ALEGATION OF NEW MATTER BEFORE THE COURT

158. In its brief containing the preliminary objections, the answer to the petition, and the submission of comments on the brief containing the petitions and arguments, the State argued that "it considers that there is no responsibility" in the instant case, since it gained knowledge that corruption connections were in place among the leaders of SITRAMUN, the Servicio de Inteligencia Nacional (SIN) (National Intelligence Service)) and members of the Judiciary, for which reason "disclaims the legal validity, the binding authority [,] or the executive merit of decisions resulting from collusion, bribery and corruption which oppose the decisions rendered by the highest judicial and constitutional authorities which have acquired the force of a final and enforceable pronouncement." Peru argued that there was a "vicious circle" created from the SIN to "demolish the image" of the major of Lima, who was a "prospective political opponent" of Fujimori, wherefore "artificial labor conflicts were created, the major was harassed with accusations and complaints and, finally, all legal actions, particularly those started by previously well-briefed trade union leaders were adjudicated against the Municipality […], thus causing a situation of permanent social instability, and generating high costs resulting from litigation as well as large debts for rights allegedly derived from such legal actions." According to the State "[th]at is the true source and substance of the decisions the compliance with which is sought."

159. To the same effect, at the public hearing held at the Court, Peru stated that a "new matter had arisen of which it had absolutely no knowledge two years before" and "which explains why the Peruvian State had previously acknowledged its responsibility for the non-compliance and violations of rights and why at present […] it requests that the Court take into consideration this new matter […] which […] makes it necessary to reexamine the situation from the standpoint of the seriousness of the fact itself." In its written final arguments it insisted on this matter, stating that "[i]n the previous decade, a general corruption system had been implemented from the Servicio de Inteligencia Nacional -SIN- (National Intelligence Service) under Vladimiro Montesinos-Torres, [… w]ithin wh[ich …] the total control of the Judiciary by means of money was a key factor." It added that "[…] as part of this corruption system, trade union leaders of the

Sindicato de Trabajadores Municipales –Sitramun- (Lima Municipal Workers Union) were bribed with sums of money amounting to at least […] US$ 24,000.00 to engage in activities" "aimed at discrediting Major Andrade" of the Municipality of Lima.

160. As to the allegation of this "new matter" (supra paras. 158 and 159), both the Commission and the common intervener of the alleged victims' representatives requested the Court that it be dismissed. The Commission stated, inter alia, that "considering estoppel, the acknowledgment made by the Peruvian State before the Commission should be construed and have effects as it was made" and that "the subsequent limitations or restrictions thereon are not admissible." Likewise, the common intervener stated that the facts related to the merits of the instant case "were explicitly accepted by [the State] through the acknowledgment of its international responsibility for the commission thereof."

161. The State submitted various documents and other supporting evidence aimed at showing the alleged corruption practices that took place among the leaders of SITRAMUN, the SIN and the members of the Judiciary, as well as the "illegal nature" of the judgments which allegedly have not been complied with. Without the intention to make an exhaustive count, the Court has noted that such evidence mainly refers to: 1) convictions and criminal proceedings against members of the Judiciary; 2) the four-judge composition of the Tribunal Constitucional (Constitutional Court) which delivered twelve out of the twenty-four judgments in the instant case; 3) reports of the Inter-American Commission on the situation of the Judiciary in Peru during the last decade; 4) the judgment rendered by the Inter-American Court in the Case of the Tribunal Constitucional (Constitutional Court) v. Peru ; 5) the affidavit submitted by the former Chief of the SIN; 6) the statements given by Maria Angélica Arce-Guerrero and Matilde Pinchi-Pinchi, former secretaries to Vladimiro Montesinos; 7) the criminal proceedings instituted against an alleged victim and three representatives [FN14] of the instant case before the Primer Juzgado Penal Especial (First Special Criminal Court) of the Corte Superior de Justicia de Lima (High Court of Justice of Lima) as alleged first-degree accomplices of peculation, particularly the prosecutorial pleading issued in November, 2005; 8) the testimony given by the witnesses at the public hearing held at the Court; and 9) the alleged jurisprudential changes of the Tribunal Constitucional (Constitutional Court) to favor the SITRAMUN workers regarding the dismissals resulting from their assessments. Likewise, the State requested the Court to address the Criminal Court where the criminal proceedings for peculation is pending to request a copy of the statements given by the two former secretaries to Montesinos, or that it authorize the statements given by such two persons to be submitted via an affidavit.

[FN14] Two of these representatives (Alejandro Hinostroza-Rimari and Manuel Condori-Araujo) are also alleged victims in the instant case.

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162. As regards the evidence on the alleged corruption rings, the Commission stated that "as a matter of fact it […] verified the serious restrictions introduced to the independence, autonomy and fairness of the Peruvian Judiciary during the '90s, and, naturally, it considers such characteristics crucial to the compliance with judicial proceedings with the obligations established by the American Convention." However, the Commission emphasized that "it has

neither been proven before this international Court nor before the domestic system that the judgments rendered in the instant case regarding the former SITRAMUN workers have been a direct consequence of corruption." Furthermore, it requested the Court "that it refuse to examine the State's arguments on the alleged errors in fact or in law which the domestic courts may have made," since the State "seeks that the Court act as a court of fourth instance by reviewing the decisions rendered by the domestic Peruvian Courts." It further pointed out that "it considers that the Peruvian State has incurred in an unexplainable contradiction in acknowledging its international responsibility regarding the judgment of the case of ESMLL but not regarding the other judgments of the instant case, many of which were rendered by the same Court in the same year." Besides, the Commission stated that the Municipality of Lima availed itself of all available remedies and "[i]f it had sustained its opposition to the final judgment which dismissed [the] remedy, it could have availed itself of extraordinary remedies such as sham res judicata. The State does so acknowledge, and furthermore, it has proven to have done so before this Court. If these legal extraordinary remedies do not exist under legal provisions or are not effective, it is, in any case, the Responsibility of the State."

163. In its turn, the common intervener stated, inter alia, that Peru "has not judicially proven, in any case whatsoever, that the judgments the enforcement of which it has disregarded have resulted from an act of illegal collusion between the legal representatives of SITRAMUN-Lima or the legal advisor thereof and the jurisdictional authorities who rendered such judicial decisions." Likewise, it added that "[it] does not suffice […] that a judgment were rendered in times which, in general, were characterized by corruption and intimidation; but rather, each case has to be examined within a particular context which allows for individualizing the ensuing legal responsibilities." It further pointed out that "it is unfortunate that, based exclusively on the statement given by persons who have been prosecuted for corruption and who have availed themselves of the Effective Collaboration mechanism, the Peruvian State seeks to justify before this Honorable Court its non-compliance with its the international obligations, through an assumption which would affect the entire production of the Peruvian judicial system at the time."

164. The Court has examined the abovementioned evidence submitted by Peru, the arguments related thereto and the comments made by the Commission and the common intervener, particularly as regards the following matters:

a) On December 9, 2002 the Tribunal Constitucional (Constitutional Court) dismissed the petitions wherein the Municipality of Lima requested "the review or annulment" of three judgments rendered in the instant case by the Tribunal Constitucional (Constitutional Court) between 1997 and 1999, when it was composed of four members (infra para. 204(93), and pointed out that "the validity of such judgments was endorsed […] for reasons of domestic legal certainty […];"
b) in referring to the decision made by this Court in the Case of the Tribunal Constitucional (Constitutional Court) v. Peru the State omits an important part of the legal grounds regarding the breach of the principle of fairness; in such case the Court did not state that the membership of four, instead of seven, in the Tribunal Constitucional (Constitutional Court) implied in itself a breach of the principle of fairness;
c) the Municipality of Lima filed a petition for the annulment of the sham res judicata regarding one of the final judgments rendered in the instant case; however, the petition was

dismissed as groundless on June 30, 2003, by the Décimocuarto Juzgado Civil (Fourteenth Juzgado Especializado en lo Civil (Court Specializing in Civil Matters)) of the Corte Superior de Justicia de Lima (High Court of Justice of Lima) and on June 9, 2005, the Sexta Sala Civil (Fifth Civil Chamber) of the Corte Superior de Justicia de Lima (High Court of Justice of Lima) upheld the judgment on appeal (infra paras. 204(72), 204(73) and 204(74);

d) as to the statements given by María Angélica Arce-Guerrero and Matilde Pinchi-Pinchi, former secretaries of former advisor to the Servicio de Inteligencia Nacional (National Intelligence Service), the Court did not consider it advisable to grant the petition filed by the State (supra para. 45), taking into consideration that both those persons have given testimony in a criminal proceedings which have not yet ended and wherein other witnesses have allegedly given testimony and further evidence has allegedly been admitted, all of which should not be assessed by the Court but rather by the domestic criminal court;

e) in the documents submitted regarding the criminal proceedings instituted for peculation against an alleged victim and three representatives, including the criminal charge, no reference is made to corrupt practices to obtain the judgments whereby the petitions for guarantees were admitted and which, according to the claims made before the Court, have not been complied with;

f) it has been proven that regarding the alleged jurisprudential changes of the Tribunal Constitucional (Constitutional Court) to favor the SITRAMUN workers, regarding the dismissals resulting from their assessment or redundancy, the factual and legal grounds of the judgments are, in the case of the Municipality of Lima, different from those in other cases presented by the State; and

g) it is necessary to point out that at the public hearing, upon a question made by the Court and in reference to the alleged participation of SITRAMUN leaders in the "corruption network", the State asserted that "[i]f it had tangible evidence, it would render it to the Court […] immediately and the instant case would be adjudicated. As it does not h[a]v[e] such evidence, it [h]a[s] to appeal to common sense. [… A]s it is obvious, it c[annot] prove its case with tangible evidence which may exist, but which it h[as] not found."

165. As to the State's claim as regards the allegation of a "new matter", in its final written and oral arguments Peru stated that it does not seek that the Court annul, review, modify or set aside the judgments rendered by Peruvian courts, but rather that "those judgments be examined from the noble perspective of justice and not in terms of mere formality" and that the Court assess if such judgments which are of an "illegal nature" should be complied with pursuant to Article 25 of the Convention.

166. This Court considers that the arguments and supporting evidence submitted by the State regarding the allegation of a "new matter" are aimed at invalidating the legitimacy of the judgments which in the instant case have been claimed not to be complied with and the authority of final judgment thereof, despite its assertion that it does not seek that the Court annul, review, modify or set aside the judgments rendered by Peruvian courts.

167. The Court considers that a judgment which has enforceable authority should necessarily be complied with since it entails a final decision, thus giving rise to certainty as to the right or dispute under discussion in the particular case, its binding force being one of the effects thereof. Eventually, the authority of a decision as a final judgment may be challenged when it infringes

individual rights which are protected by the Convention and it has been proven that there are grounds for challenging such authority of final judgment [FN15], something which has not happened in the instant case.

[FN15] Cf. Case of Gutiérrez-Soler. Judgment of September 12, 2005. Series C No. 132, para. 98; Case of Carpio-Nicolle et al., Judgment of November 22, 2004. Series C No. 117, para. 131; and Case of Genie Lacayo. Petition for Judgement Review of January 29, 1997. Order by the Court of September 13, 1997. Series C No. 45, paras. 10-12.

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168. Based on the foregoing considerations, the Court does not admit the argument of Peru regarding the alleged "new matter", of which it claimed not to have cognizance when it acknowledged its responsibility in the processing of the case before the Commission and, therefore, the Court considers that no supporting evidence has been given to deprive the judgments, claimed to have been non-fulfilled, of their legal force.

C) Legal effects of acknowledging responsibility before the Comission

169. After dismissing Peru's argument concerning the alleged "new matter", the Court will now address the acknowledgment of international responsibility made by the State in the processing of the case before the Commission (supra para. 152 and 154), according to which "it assum[ed] its international responsibility for violating the human rights of the SITRAMUN workers provided for in Articles 25(2)(c) of the American Convention […]."

170. On several occasions in the proceeding before the Court, the State admitted to making such acknowledgment before the Commission. For instance, in the public hearing before the Court, Peru stated that "a matter of fact completely unknown two years ago" had arisen, "which accounted for the Peruvian State's acknowledging the non-compliances and violations, whereas now […] it prays the Court to take this new matter into consideration […]."

171. This Court observes that in the brief wherein it answered the complaint Peru contended that the domestic judgments non-compliance with which is alleged in the instant case would be contrary to law. Later, in the public hearing held before the Tribunal, Peru stated that "it recognizes that the procedure in the case of ESMLL has been regular, although the judgment has been adverse to the State," for which reason it "recognizes its validity." In addition, the State claimed that "in spite of its dissenting legal opinion" concerning the Tribunal Constitucional (Constitutional Court) court order of December 10, 1997 (infra, para. 204(54)), "the Municipality of Lima complied with such judgment" as regards payment to the workers of the amount that had been witheld when the reduction in their salaries was effected. In addition, in such brief it also stated that "the only cases in which it admits having infringed upon employers' rights are those determined by the ad hoc Commissions" (supra par. 204(28) to 204(33).

172. In answer to a request for clarification made by the President, the State pointed out that "[i]n relation to the purported international responsiblity […], it consider[ed] necessary to make it clear that, in the instant case, it has not complied with the judgment pronounced [by the

Tribunal Constitucional (Constitutional Court) on July 8, 1998 concerning the ESMLL workers,] nor has it incurred in any responsibility, [since s]uch judgment […] is currently in the enforcement phase" and "even though it disagrees with the content of the judgment, it has not challenged and it does not challenge the judgment issued […] and submits to the enforcement thereof," "[which] declaration does not imply the acknowledgment of responsibility for violating the right to judicial protection." Moreover, the State stated to the Court that it does not recognize what has been ordered in the judgments on dismissals, but it only "submits to the conclusions of the Multi-Sector Committee" established by Law No. 27,586 (infra, par. 204(28) to 204(33)).

173. The Tribunal, in exercise of its inherent powers to exercise international judicial protection of human rights, may determine whether the acknowledgment of international responsibility made by a State which is brought as a respondent before the Inter-American human rights protection system organs is sufficient to provide grounds under the American Convention to proceed or not with the trial on the merits and with the determination of any applicable reparations. [FN16] To this end, the Tribunal analyzes the state of affairs in each case individually.

[FN16] Cf. Case of García-Asto and Ramírez-Rojas. Judgment of November 25, 2005. Series C No. 137, para. 58; Case of the "Mapiripan Massacre." Judgment of September 15, 2005. Series C No. 134, para. 65; and Case of Huilca Tecse. Judgment of March 3, 2005. Series C No. 121, para. 42..".

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174. Firstly, the court deems necessary to emphasize that the processing of each individual complaint seeking a jurisdictional decision by the Court requires the protection system established by the American Convention to work as an institutional whole. Before a contentious case can be brought before the Court alleging human rights violations by a State Party who has recognized the Court's contentious jurisdiction, a proceeding must be instituted before the Commission, which starts by filing a petition with the Commission. [FN17] The proceeding before the Commission provides for safeguards both for the respondent governement and for the alleged victims, their next of kin or their representatives, among which safeguards it is worth underscoring those concerning the requirements for the admissiblity of the petition and those concerning the principles of adversary procedure, procedural equality and juridical certainty. [FN18] It is during the proceeding before the Commission when the respondent State initially submits the information, allegations and evidence it deems relevant to the petition, and the evidence rendered in adversarial procedure may later be put on the record of the case before the Court. The position taken up by the State in the proceeding before the Commission also determines to a large extent the position of the alleged victims, their next of kin or their representatives, which in turn affects the course of the proceeding, where even a friendly settlement may be reached.

[FN17] Cf. Case of Viviana Gallardo et al. Series A No. G 101/81, Legal Considerations 12(b), 16, 20, 21 and 22.

[FN18] Cf. Control of Legality in the Practice of Authorities of the Inter-American Commission of Human Rights (Arts. 41 and 44 of the American Convention on Human Rights). Advisory Opinion OC-19/05 of November 28, 2005.Series A No. 19, para. 25–27.

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175. As regards of the instant case, it is worth noting that during the proceeding before the Commission, Peru acknowledged its international responsiblity on July 22, 2002, after the issuance of the Report on Admissibility, and it repeated such acknowledgment on January 17, 2003, after the issuance of the Report on the Merits (supra para. 152 and 154), and a "Working Commission" was established to prepare a final solution proposal in the case. In its pleading of July 22, 2002 the State alleged that it could not afford the compensations and the further reparation measures sought by the petitioners as a result of the economic crisis it was undergoing. Based on such acknowledgment and owing to the failure by the State to comply with the recommendations of the Report on the Merits, the Commission decided to refer the instant case to the Court.

176. In line with prior decisions, this Court takes the view that, once a State has adopted a position producing certain legal effects, may not, under the principle of estoppel, later assume a position in contradiction to the former one and changing the state of affairs upon which the other party relied. [FN19] The general principle of estoppel has been recognized and applied both in general international law and in the international law of human rights. [FN20] This Court has applied such principle both to reject objections raised by a state before the Court when the state had failed to raise such defenses in the proceeding before the Commission, and to grant full effects to the acknowledgment of responsibility made by the State or to an agreement entered into by such State which it purported to disavow in subsequent stages of the proceeding. [FN21] The European Court on Human Rights has also applied the principle of estoppel with respect to objections concerning jurisdiction and admissibility raised belatedly by the States. [FN22]

[FN19] Cf. Case of the Moiwana Community, supra note 3, para. 58; Case of Huilca Tecse, supra note 16, para. 56; and Case of Neira Alegría et al. Preliminary Objections. Judgment of December 11, 1991. Series C No. 13, para. 29.

[FN20] Cf. Case concerning the Territorial Dispute (Lybia/Chad), I.C.J Reports 1994, Judgment of 13 February 1994, paras. 56, 68, 75; Nuclear Tests (Australia v. France), I.C.J Reports 1974, paras. 42-46; and Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), I.C.J Reports 1962, Judgment of 15 June 1962, para. 32.

[FN21] Cf. Case of Gómez-Palomino. Judgment of November 22, 2005. Series C No. 136, para. 36; Case of Huilca Tecse, supra note 16, para. 54–59; and Case of the Caracazo. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, para. 52; Case of Mayagna (Sumo) Awas Tingni Community. Preliminary Objections, supra note 4, para. 57; and Case of Durand and Ugarte. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 38.

[FN22] Cf. Mizzi v. Malta, No. 26111/02 (Sect 1)(Eng), § 43-48, E.C.H.R (12/01/2006); Tuquabo- tekle and others v. The Netherlands, (preliminary objections) No. 60665/00, § 26-32, E.C.H.R (1/12/ 2005); Artico v. Italy (preliminary objections) (13/05/1980) § 25- 28, E.C.H.R,

Series A No. 37; y De Wilde, Ooms and Versyp v. Belgium, § 58-59, E.C.H.R (18/06/1971), Series A No. 12.

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177. In the instant case, each act of acknowledgment made by Peru before the Commission created estoppel. Therefore, by admitting the legitimacy of the claim asserted in the proceeding before the Commission through a unilateral juristic act of acknowledgement, Peru is barred from adopting a contradictory position thereafter. The alleged victims and their representatives, as well as the Inter-American Commission, acted in the proceeding before the latter body on the basis of the position of acknowledgment taken up by the State.

178. Applying the estoppel rule to the instant case, and based on the foregoing, this Court gives full effects to and admits the acknowledgement of responsibility, as a result of which the State is responsible

[…] for infringing the SITRAMUN workers' human rights set forth in Articles 25(2)(c) of the American Convention on Human Rights. [FN23]

[FN23] Cf. brief of January 17, 2003 submitted by Peru to the Commission, and Report No. 66/02 issued by the Commission on October 11, 2002.

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179. Before the Court, said acknowledgment of responsibility is partial, since the common intervener has alleged before the Tribunal the infringement of Articles 16, 25(1), 26, 1(1) and 2 of the American Convention, which are outside of the scope of such acknowledgment.

180. The State's acknowledgement of responsibility for violating Article 25(2)(c) of the Convention implied the acknowledgement of responsibility with respect to the 24 final judgments that are part of the instant case. As far as concerns the judgment issued by the Sala Especializada de Derecho Público (Public Law Specialized Chamber) on June 6, 1997 (infra para. 204(15)), which is one of the 24 judgments mentioned above, the Court has noted that it was not included in the Report on the Merits No. 66/02. However, the Commission did include it in the Admissibility Report No. 85/01 and in the application, so Peru knew that it was alleged that it had failed to comply with the judgment when it acknowledged its international responsibility after the Admissibility Report was issued (supra para. 152), and Peru failed to raise any objection in such respect to the Court.

181. In the following Articles the Court will analyze the merits of the case and any applicable reparations concerning which the dispute over the responsibility of the State is still open , and all other items that the Court deems necessary to analyze either because they have been alleged or because they have arisen only during the processing of the case before the Court.

VII. EVIDENCE

182. Before examining the evidence tendered, the Court will state, in the light of the provisions set forth in Articles 44 and 45 of the Rules of Procedure, a No. of points arising from precedents established in the precedents of the Tribunal, and applicable to the instant case.

183. Evidence is governed by the adversary principle, which embodies due respect for the parties' right to defense. This principle underlies Article 44 of the Rules of Procedure, inasmuch as it refers to the time when evidence must be tendered, so that equality among the parties may prevail. [FN24]

[FN24] Cf. Case of Blanco-Romero et al. Judgment of November 28, 2005. Series C No. 138, para. 37; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 82; and Case of Gómez-Palomino, supra note 21, para. 45.

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184. In accordance with Court practice, at the beginning of each procedural stage, the parties must state, at the first opportunity granted them to do so in writing, the evidence they will tender. Furthermore, the Court or the President of the Court, exercising their discretionary authority under Article 45 of the Rules of Procedure, may ask the parties to supply additional items, as evidence to facilitate adjudication of the case, without thereby affording a fresh opportunity to expand or complement their arguments, unless by express leave of the Court. [FN25]

[FN25] Cf. Case of García-Asto and Ramírez-Rojas, supra note 16, para. 83; Case of Palamara-Iribarne. Judgment of November 22, 2005. Series C No. 135, para. 50; and Case of the "Mapiripan Massacre", supra note 16, para 72.

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185. The Court has also pointed out before that, in taking and assessing evidence, the procedures observed before this Court are not subject to the same formalities as those required in domestic judicial actions and that admission of items into the body of evidence must be effected paying special attention to the circumstances of the specific case, and bearing in mind the limits set by respect for legal certainty and for the procedural equality of the parties. The Court has further taken into account international precedent, according to which international courts are deemed to have authority to appraise and assess evidence based on the rules of a reasonable credit and weight analysis, and has always avoided rigidly setting the quantum of evidence required to provide the grounds for a decision. This criterion is valid regarding international human rights courts, which enjoy ample authority to assess the evidence submitted to them bearing on the pertinent facts, in accordance with the rules of logic and based on experience. [FN26]

[FN26] Cf. Case of Blanco-Romero et al., supra note 24, para. 39; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 84; and Case of Gómez-Palomino, supra note 21, para. 46.

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186. Based on the above, the Court will now examine and assess the body of evidence in the instant case, which includes documentary evidence submitted by the Commission, by the Representatives and by the State, evidence requested by the Court or the President of the Court, on their own motion, to facilitate adjudication of the case, and testimonial and expert evidence rendered before the Court at the public hearing. In doing so, the Court will follow the rules of reasonable credit and weight analysis, within the applicable legal framework.

A) DOCUMENTARY EVIDENCE

187. Among the documentary evidence submitted by the parties, the Commission and the common intervener forwarded written testimonies and an expert opinion, in compliance with the provisions in the Order of the President of August 1, 2005 (supra para. 51). In addition, the Commission forwarded a written expert opinion from an expert witness who had been summoned to give his opinion at a public hearing (supra para. 60 and 61). Such testimonies and expert opinions are summarized below:

TESTIMONIES

a) Proposed by the Inter-American Commission

1. Rogelia Rosario Agüero-Laos, alleged victim

She commenced her employment with the Municipality of Lima on December 1, 1976 at the Dirección de Bienestar Social (Social Welfare Department) and was later relocated to the Dirección de Registros Civiles (Vital Statistics Registers Department). Her job was to manage the registration of entries of births, marriages, etc and the issuance of certificates within the jurisdiction of Lima.
The Municipality dismissed her along with other 230 employees, upon being declared "redundant" as a result of a "wrongly termed" staff assessment process. She was not informed neither of the result of the assessment nor of what her shortcomings had been.
As a result of her dismissal, she filed an appeal for legal protection through the SITRAMUN. After several months of litigation, she obtained a favourable judgment, which meant a great satisfaction for her, because she thought that "justice had been done and that [she] would go back to work, that [her] children could resume their education, and that [they] would be able to cover the pressing needs they [had]." However, the Mayor of Lima failed to comply with the court judgments ordering the "restoration of workers' rights," which caused in her "great frustration" and "impotence." The dismissed workers had to resort to all-night public meetings and demonstrations, and they turned to the media, the National Congress, the Catholic Church and the Ombudsman. She felt anger and impotence, as in her country "there [was] no justice and the courts [were not] even capable of enforcing their own judgments." She felt beaten and was "enraged" to know that the Municipality spent thousands of dollars on legal counsel to prevent the enforcement of judgments that could have changed her life.
Her dismissal in October 1996 distabilized her financial and moral stability. In September 1999 she was diagnosed with a breast cyst, but she could not be treated, and in 2001 she was told she had breast cancer. The witness mentioned the difficulties she went through because she did not have social security, which forced her to purchase private health insurance. In July 2002, "when

they learnt that she had to undergo surgery," "she was paid her October, November and December 1995 salaries, which were in arrears." She had to borrow money from her relatives to survive. Because she was dismissed at the age of 44, it was impossible for her to find a similar job or even a steady job. She was forced to sell cosmetics and food on the streets. She has also been unable to provide medical treatment to a sick daughter, and she is in "deep sorrow" for not having been able to pay for her two younger daughters' higher education. There was a time in which "she wished she would die from her health problems and was terrified to leave her younger daughters helpless." She had to resort to psychotherapy.
The witness prays for "international justice to redress all the damage caused to her."

2. Juan de Dios Berrospi-Pérez, alleged victim

He commenced his employment with the Municipality of Lima on August 22, 1974. At the time he was dismissed he worked as Assistant Clerk in the Dirección de Ecología (Ecology Department), and his last salary was S/. 1,500, approximately 480 U.S. dollars today."
From January 1996 relations between the Municipality of Lima and the Workers' Union became unstable. In March 1996, 186 employees were dismissed. On April 1, 1996, the union called on a strike for an indefinite period of time to claim for the reinstatement of the dismissed employees and for the restoration of the employees' rights. "In retaliation", the mayor dismissed around 500 employees. After that, the witness "stepped down from the strikes and went back to his work." In October 1996, the Municipality imposed a staff assessment exercise involving redundancy as a possible outcome. The witness passed the assessment and 231 workers were declared redundant and dismissed. A month later, "inexplicably and in disregard for the Law," the Municipality scheduled another staff assessment for December, which he failed. He was "unfairly and abruptly" dismissed in December 1996 together with other 300 workers, on the grounds of redundancy.
He filed an appeal for legal protection together with other 42 dismissed workers. A year later, they obtained a favourable judgment. He felt "more frustrated than ever in his life before" to see that the court judgments were "a dead letter" because the authorities did not comply with them. Together with the Union leaders, he turned to the Church, the Ombudsman, the Bar Association and the National Congress, "to ask them to intercede … and have the court judgments that favoured [them] be complied with." However, "none of it was of any use." He felt "sad, resentful, frustrated and impotent."
The financial consequences of his dismissal have been "devastating," as they "ruined [his] life and cast [him] into incapacity." After his dismissal he found it very hard to get a steady job, as he was 45 years old. His children were the most affected; three of them had to drop out of secondary school so that thew could work and support the household. As a consequence of the distress, his wife left in January 2001. As a result, he suffered a "brain stroke which caused him hemiplegia, paralyzing the entired left side of [his] body." He has had to resort to the financial aid of his sister to meet the cost of the treatment. As a result of his illness, he requested the Municipality of Lima to pay him what was owed to him. However, "they showed total unconcern for [his] delicate situation" and argued that "they were unable to pay [him] and that [he should] wait until there [would be] sufficient budget allocations." He currently receives tips and some provisions by occasionally helping his brother with his plastic products stand in the market.
In 2003, the Municipality started to make him part payments for the monthly salaries owed for October, November and December 1995. In Februrary 2004, after a judgment by the Tribunal

Constitucional (Constitutional Court), he was reimbursed the amount of the 30% reduction that had been applied to his salary during 1996.
The witness requested that "international justice enforces the judgments for the poor and that [his] rights would be restored."

3. Yeny Zully Cubas-Santos, alleged victim

She started working at the Municipality of Lima on June 1, 1979 in the Dirección de contabilidad del Área de Conciliación Bancaria (Accounting Department of the Bank Auditing Area). When she was dismissed she held the position of an "E-class" professional.
Her dismissal occurred on March 29, 1996 with a notice from a notary public, through which she was sent a copy of the Municipality Resolution No. 423 dismissing her "on the grounds of redundancy," because she had failed to attend the staff assessment. Even though the assessment scheduled for March had been cancelled by the mayor himself, 186 union workers were dismissed.
She filed an appeal for legal protection together with 30 co-workers. The trial court issued a favourable judgment. Later, the Sala de Derecho Público (Public Law Chamber) set aside the court of original jurisdiction decision, so the workers resorted to the Tribunal Constitucional (Constitutional Court), which "finally issued a favourable decision." At the same time, the Union had succeeded in having the Courts set aside the Municipality Resolution providing for the assessment.
The Mayor kept refusing to comply with the court decisions. She felt "frustrated and disappointed because of the lack of justice." They went to the Ombudsman, to the Church and to human rights organizations.
At the time she was dismissed she was 37 years old, and she had two daughters aged 9 and 5. Following her dismissal, she had to send them to a different school.
Because of her dismissal she had to work in many different areas, including bus ticket seller, baby sitter, and cleaning houses. She is currently working as a vendor in a street market. She had to spend more time away from her daugthers, neglecting them. The witness and her family have serious health problems, for which they have not been able to afford treatment. She is living with a relative and her income is barely enough to pay the electricity and water bills. She feels "bad, tired, sick, frustrated and burdened by a financial needs she cannot satisfy."
In May 2003 she was advanced 500 new soles as salary payments owed her for October, November and December 1995, and later "[they] paid off the entire debt."
Now "that [she] know[s] that this high court of justice is hearing [her] case, [her] hopes of justice have revived and [she] believe[s] the reinstatement judgments of the Peruvian courts will now be complied with."

4. Agustín Jimio-Huanca, alleged victim

His employment with the Municipality of Lima started in 1985. He worked in the cleaning corporation as a solid waste collection assistant. In 1996 he lost his job and his salary: "[his] only income to feed his family and to educate [his seven] children."
He filed an action of amparo together with other co-workers. After several years of litigation, the Tribunal Constitucional (Constitutional Court) issued a judgment ordering the ESMLL to reinstate them. However, the judgment was never carried out.

A year after the issuance of the judgments, "[he] suffered from insomnia, headaches, and depression, and felt sad and angry." At present, he fears for his health and for his family. In 1988 he had an accident on the job. In 1989, his health got worse and he had to be admitted at the hospital. He had three surgeries on his leg and "each time they had to cut [his] leg off further up, because it kept decaying." He has not had any health insurance ever since he was dismissed.
After he was dismissed he had no money for food or paying the water and energy bills. Soon after his dismissal, his son Juan Miguel had to go to hospital for three months because he had poliomyelitis. He had to "borrow from everyone to survive and to help his son with medicines." He was forced to work in the street hawking sweets for three years. He has defaulted on two months' water and energy bills, and he has not paid the property tax on his home since 1996. He had to quit working because his diabetes and leg problems got worse. His three children had to give up their studies.

5. Carmen Esperanza Yaranga-Lluya, alleged victim

Her employment with the Municipality of Lima started in 1981. She worked cleaning public areas on the night shift. She worked until June 30, 1996 when, after finishing with her cleaning duties, she found the doors of ESMLL closed. "[T]hey would not let in any worker, and [they] told [them] that the corporation had closed down."
Like her co-workers, she filed an appeal for legal protection. After several years, a Tribunal Constitucional (Constitutional Court) judgment ordered the ESMLL to reinstate them. The Municipality of Lima, which is the "owner of ESMLL," refused to comply with the Tribunal Constitucional (Constitutional Court) judgment and went on to "attack the leaders." The Union leaders took steps to have the Municipality of Lima comply with the judgment. They went to the Ombudsman, the ILO, the Bar Association of Lima, and various human rights organizations.
She felt helpless because she "needed money to buy [her children] school supplies, feed [them], and because her water and electricity supply was cut off for two years." She went out for any job she could find, being forced to leave her children alone. She tries to make a living hawking goods, but sometimes she does manage to sell anything.
She was forced to "collect the sum ESMLL figured out and tendered."
In 1999, she worked on a temporary contract as a cleaning woman, but her earnings were scarce, and she was not paid any social benefits. By 2000, she felt extremely depressed, to the point of considering suicide. She was diagnosed with tuberculosis, so she spent nine months under treatment, unable to work. In 2001 she was taken on by the Municipality of Jesús María as a cleaning woman.

b) Proposed by the common intervener

6. Marcela Teresa Arriola-Espino, former Executive Secretary of the Consejo Nacional de Derechos Humanos del Perú (National Council for Human Rights of Peru)

She learnt of the SITRAMUN case while being the Executive Secretary of the Consejo Nacional de Derechos Humanos (National Council for Human Rights) and because she was a member of the Working Commission for reaching a friendly settlement, which was established through Supreme Resolution No. 015-2003-JUS published on February 26, 2003 in the official gazette "El Peruano", for the purspose of preparing a final proposal for settling the case. This Working

Commission was originally composed of a representative of the Ministry of Justice, of the Ministry of Foreign Affairs, of the Ministry of Labour and Employment Promotion, a representative of the Metropolitan Municipality of Lima and a representative of the applicants. Later, three more representatives were incorporated through Supreme Resolution No. 075-2003-JUS published in the official gazette "El Peruano" on June 26, 2003, i.e., a representative of the Ministry of Economy and Finance, a representative of the Ministry of Education and a representative of the Ministry of Health. The witness was the representative of the Ministry of Justice and acted as President over the Commission.
The Working Commission was established on April 16, 2003. No friendly settlement was reached while the witness was president of the Working Commission. On July 4, 2003, both the State and the applicants submitted solution proposals. "[T]hese proposals were to be debated in the Commission in order to reach a solution commensurate with the capabilities of the Peruvian government with the consent of the applicants." The solutions put forward by the Commission included the Municipality of Lima's proposal that the compensation should be a lump sum. When the witness resigned, a new President was appointed, and he continued the efforts to reach a friendly settlement.

7. Wilfredo Castillo-Sabalaga, alleged victim

In order to figure out the sums to be paid mentioned in Appendixes No. 17, 18 and 22 to the brief containing the petitions and arguments, he has applied "as reference and basis 7 judgments" with which Peru has not complied, included in the Inter-American Commission's application.
The reason for the acounts he reckoned is that the Court order the State "to pay the amounts owed to the [alleged] victims" pursuant to the aforementioned judgments, the amount owed as compensation for pecuniary damage (back pay), other worker's entitlements in accordance with the Court's case law, and "to pay all amounts owed including statutory interest under Law No. 25,920."
The liquidated sums included in Annex No. 17 to the brief containing the petitions and arguments refers to the payment of a debt of S/. 24,176.20 "incurred as a result of unpaid salaries of the [alleged] victims in the instant case for October, November and December 1995, and other worker's entitlements […] under the Collective Bargaining Agreements executed between the Municipality of Lima and the SITRAMUN, in accordance with the judgment of November 18, 1998, Case No. 261-97." The liquidated sum involved 1,548 alleged victims.
The final liquidated sum contained in Appendix No. 18 to the brief containing the petitions and arguments refers to the payment of the debt arising from the 30% salary reductio, as provided in the Judgment by the Tribunal Constitucional (Constitutional Court) of December 10, 1997. The liquidated sum involved a total 818 alleged victims.
The final liquidated sum contained in Appendix No. 22 to the brief containing the petitions and arguments refers to the "payment of the compensation for pecuniary damage or back pay, and it has been made pursuant to the Inter-American Court's case law."
The aforementioned calculations have included statutory interest set forth in Law No. 25,920 until November 18, 2003.

EXPERT OPINIONS

a) Proposed by the Inter-American Commission

1. Samuel Abad-Yupanqui, Adjunto al Defensor del Pueblo en Asuntos Constitucionales (Assistant Ombudsman for Constitutional Affairs)

Ever since he took office at the Ombudsman's Office he has witnessed a large number of judgments that have not been complied with or that have been partially complied with. Between September 11, 1996 and September 11, 1998, 101 complaints against various State entities were processed. Judgments pending enforcement have been pronounced in constitutional, administrative and labour cases. In Peru, "non-compliance with judgments has taken many forms. In some cases, the authority refused to comply with the judgment without giving any reason; in other cases it claimed that it lacked the financial means to do it or that it did not have any vacancy […]. In addition, there have been cases in which the authority appeared to comply with the judgment but then it repeated the aggression towards the plaintiff."
The right to have judgments enforced is set forth in Article 139 of the 1993 Peruvian Constitution. The principle that the Budget may only be derived from a law of Congress must not be construed as to allow the State to fail to comply with judgments or to arbitrarily defer their enforcement. The Tribunal Constitucional del Perú (Constitutional Court of Peru) has noted that it is hard to speak about the existence of the rule of law when court judgments and orders are not complied with.
The expert witness stated that "the laws in force and their application do not provide a consistent balance between the fundamental rights and the principle that the Budget may only be derived from a law of Congress" and made reference to the "regulations and conducts of the State administration so indicating."
"[T]he Executive Branch of Government —and the State as a whole— do not have a reliable, updated and truthful record of all the judgments pending enforcement, of the reasons behind the failure to comply therewith, or the partial compliance with the judgments, the delay in doing so and the amounts involved where money is the subject-matter." "The Government and the Congress are inclined to passing laws and regulations enacting restrictions to the enforcement of judgments, which the Tribunal Constitucional (Constitutional Court) has been eliminating or clarifying."
"In the instant case, the Ombudsman took part from the outset, recommending the Mayor of Lima to cause the court judgments sustaining the application to be enforced. Unfortunately in this case no favourable result was forthcoming, and that was why it submitted an 'amicus curiae' report both to the Commission and to the Inter-American Court."
The expert witness made reference to the "procedures set forth in the Peruvian laws to annul or deny res judicata effects to final enforceable judgments," and "technical and regulatory proposals that may contribute to the compliance with judgments by the Peruvian government," noting the guildelines proposed by the Peruvian Ombudsman.

b) Proposed by the common intervener

2. Alejandro Silva-Reina, Executive Secretary of the Coordinadora Nacional de Derechos Humanos del Perú (CNDDHH) (National Coordinating Board for Human Rights of Peru)

The expert witness noted the importance of the effectiveness of judgments both domestically and internationally. The right to effectiveness guarantees compliance with court judgments and that

"the party who has obtained a protection decision by means of a favourable judgment, should have their rights restored and receive compensation, if applicable, for the damage sustained." "[A]s with all fundamental righs, the right to the effectiveness of court judgments is not an absolute right, i.e., its exercise is not unconditional, unlimited or unrestricted." Judges pronouncing the judgments or responsible for enforcing them "are under the duty to take the […] necessary and appropriate steps to cause the judgments to be fully complied with, pursuant to the applicable procedures."
The expert witness made reference to the Ombudsman´s Report No. 19 of October 1998 entitled "Non-compliance with judgments by the Public Administration", noting that "from the start of its work assisting citizens up to August 1998, the Ombudsman's office processed 101 complaints submitted against various State entities for failure to comply with final judgments against them."
The expert witness made reference to the main constitutional rights affected by the failure to enforce judgments resulting from the non-compliance therewith by State entities, including the rights to effective judicial protection, to the due process of the law and to equality.

B) TESTIMONIAL EVIDENCE

188. On September 20, 2005, the Court received in a public hearing the testimony of three witnesses proposed by the common intervener and by the State (supra para. 64). Below is a summary of the relevant parts of such testimonies.

TESTIMONIES

a) Proposed by the representatives' common intervener

1. Corina Antonieta Tarazona-Valverde, former employee of the Empresa de Servicios Municipales de Limpieza de Lima (ESMLL) (Lima Municipal Cleaning Services Corporation)

She worked for the Empresa de Servicios Municipales de Limpieza de Lima (Lima Municipal Cleaning Services Corporation) from 1980 to 1996. One day in 1996, she went to work only to find that the corporation was closed. She and her co-workers were denied access to the premises. She did not receive any written notice when she was dismissed. She was not informed of the institution of any proceedings to wind up the corporation. ESMLL representatives told them that "there [was] no work for [them]." She "supported [her] household" and she had five children.
They filed an appeal for legal protection and the Peruvian Tribunal Constitucional (Constitutional Court) sustained it and ordered their reinstatement. So far such reinstatement has not been carried out, nor has she received any compensation after she was dismissed from the ESMLL. She derives her income from washing clothes, since she has not found any formal employment.

b) Proposed by the State

2. César Lino Azabache-Caracciolo, former member of the Procuraduría Anticorrupción (Office of the Anti-Corruption Prosecutor)

He worked for the Procuraduría Anticorrupción (Office of the Anti-Corruption Prosecutor) from its creation in November 2000 until February 2002. He was in charge of the cases involving drug trafficking and human rights violations, as weel as cases involving the purchase of military equipment and well as preparing the cases of corruption involving the "Montesinos network" linked to the Judiciary and to the Office of the Attorney-General.

He made reference to the creation of the Procuraduría Anticorrupción (Office of the Anti-Corruption Prosecutor) as an outcome of the political crisis occurred in November 2000 in Peru, triggered by the discovery of videos evidencing corrupt relations between Montesinos-Torres, then a public official and the most important advisor of president Fujimori, and certain people in the political community, and by the discovery of undeclared accounts belonging to Montesinos-Torres. The Minister of Justice at the time had a legal team set up to handle the actions that had to be instituted against Montesinos-Torres, as it was widely known that he formally controlled the Judiciary and the Office of the Attorney-General. Since the public prosecutors were under the authority of the Attorney-General, it was deemed necessary to create a Special Prosecuting Office.

He pointed out that Montesinos-Torres exerted influence over the Judiciary. In 1995 a "judicial reform" was carried out, allowing for the creation of different governmental bodies than those established by the organic laws. Interim judges were appointed by some officials of the Supreme Court of Justice, "showing signs of a network around Montesinos-Torres." In 1997, Montesinos-Torres "orchestrated a restructuring" of the Salas de Derecho Público (Public Law Chambers) in charge of decisions on writs of habeas corpus and on appeals for legal protection [enforcement of the constitutional guarantee for protection of civil rights] cases, and he "imposed the appointment of a No. of persons later proved to have received illegal payments from Montesinos-Torres on a permanent basis." Two court of original jurisdictions and one Sala de Derecho Público (Public Law Chamber) were created.

One of the earliest pieces of evidence of the relationship between Montesinos and members of the Judiciary was a fax sent to Montesinos from the drug enforcement prosecuting office, asking him to make the monthly remittances as due. In addition, there is a series of statements made by members of "the organization" who accepted a plea agreement in exchange for cooperation with the authorities and by lower rank officials without any real capacity to have been involved in criminal acts. About 39 former judges have been indicted, and three main criminal proceedings are pending. One former member of the Tribunal Constitucional (Constitutional Court) one former member of the Corte Suprema de Justicia (Supreme Court of Justice) and the former National Attorney-General have been convicted. All judges who heard cases involving constitutional guarantees after March 1997 are currently facing trial. Such judges include members of the Supreme Court, the National Attorney-General, members of the National Elections Jury and members of the Tribunal Constitucional (Constitutional Court).

While he was a prosecutor, "no conclusive evidence was put together" of the connection between the corruption network in the Judiciary and the appeal for legal protection filed by the former workers of the Lima Municipality. Around January 2001, one of the secretaries of Montesinos-Torres testified before a prosecutor about payments to fund activism against the then mayor of Lima, even though she failed to state to whom the money was handed or the organizations being supported. While the witness worked at the Procuraduría Anticorrupción (Office of the Anti-Corruption Prosecutor), "that was all [they] could get" from Montesinos' former secretary. During the witness' term of office, there was no evidence of Mr. Montesinos tampering with the amparo cases heard by the Public Law courts, nor did they find "any direct evidence concerning

the specific proceedings of the SITRAMUN case." However, at that time, the Procuraduría Anticorrupción (Office of the Anti-Corruption Prosecutor) sought to find "direct links between the organization headed by Montesinos-Torres and the judges considered individually."
The judges of the Sala de Derecho Público (Public Law Chamber) , the two specialized lower-court judges and the three Justices composing the appellate division of the Sala de Derecho Público (Public Law Chamber), who heard the amparo for legal protection cases, are now facing criminal trials over the discovery of evidence concerning a clandestine spreadsheet of permanent payments to judges out of secret accounts handled by the Servicio de Inteligencia Nacional (National Intelligence Service).

3. Enrique Alberto Zileri-Gibson, journalist, director of Caretas magazine

Vladiminiro Montesinos, an Intelligence advisor with the Fujimori administration, "handled" many issues, including the second re-election of president Fujimori. Potential presidential candidates would be persecuted. One of the strategies used for such purpose was to discredit the rivals. One of such rivals was the then mayor of Lima, Alberto Andrade, because of the prestige he had earned as mayor, thus becoming an enemy of the regime.
Under the Fujimori regime a system of extorsion was deployed to dominate the media, particularly television broacasters. Many media would insult and defame the main opponents to the regime. If any of the victims of defamation and insults turned to the courts, the case would be dismisssed, as the Judiciary was controlled by Montesinos. Montesinos "sued Caretas magazine" at the beginning of the Fujimori administration, because of the attention drawn by the magazine to Fujimori's negative background. The court "ruled against" the magazine, because in such circumstances there was no way of winning a case, but "when the regime came to an end, the judgment was subject to review and annulled."
The premises of Caretas magazine are just next to the Municipality of Lima. Both buildings are located in the Plaza de Armas. Such location of the magazine's offices, allowed him to witness the demosntrations carried out by the SITRAMUN, which were remarkable "not only for their frequency and the degree of vandalism, but also because of the attitude of the police." Whilst the police was severe in other situations, it was passive towards the SITRAMUN demonstrations. He made reference to the demonstrations made in 2000. Tire-burning was permanent, megaphones were used, and the mayor's residence was broken into, with the police reacting tardily. They thought it was evident that some kind of political move was behind all that, designed to erode the exposure or the image of a potential candidate, for which reason they devoted some articles to the issue.

C) EVIDENCE ASSESSMENT

Documentary Evidence Assessment

189. In the instant case, as in others [FN27], the Court recognizes the evidentiary value of the documents submitted by the parties at the appropriate procedural stage, which have neither been disputed nor challenged, and whose authenticity has not been questioned.

[FN27] Cf. Case of Blanco-Romero et al, supra note 24, para. 43; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 88; and Case of Gómez-Palomino, supra note 21, para. 45.

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190. As to the documents forwarded as evidence, clarifications and explanations to facilitate the adjudication of the case (supra paras. 69, 72, 73, 74, 77, 104, 106 and 110), the Court admits them into the body of evidence pursuant to Article 45(2) of the Rules of Procedure, taking into consideration the comments submitted by the parties (supra paras. 86, 88, 89, 90, 93, 97 and 108).

191. As to the sworn statements which have not been given before a public official whose acts command full faith and credit by seven witnesses the Commission and the common intervener proposed and by an expert witness the common intervener proposed, the Court admits them inasmuch as they serve the purpose set forth by the Order of the President issued on August 1, 2005 and assesses them as a whole with the rest of the body of evidence, applying thereto the standards of reasonable credit and weight analysis and taking into consideration the comments filed by the State. On other occasions the Court has admitted sworn statements not given before a public official with authority to confer full faith and credit to the acts passed before him provided that legal certainty and the procedural equality between the parties [FN28] are not impaired. In addition, the Court admits the waiver made by the Commission of the right to submit the expert opinion which was to be rendered by Josmell Muñoz-Córdoba (supra para. 58).

[FN28] Cf. Case of García-Asto and Ramírez-Rojas, supra note 16, para. 92; Case of Palamara-Iribarne, supra note 25, para. 57; and Case of the "Mapiripán Massacre", supra note 16, para. 82.

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192. The State challenged the statement given by expert witness Samuel Abad-Yupanqui, submitted by the Commission on September 13, 2005 (supra paras. 60 and 65), due to, inter alia, "the sudden modification of the form such expert opinion was rendered, which turned an oral statement into a mere written pleading, thus impairing […] the State's capacity to defend itself, [… which] would otherwise have had the option and the right to request the expert witness to make clarifications" at the public hearing. In this regard, the Court finds that the expert opinion of Mr. Abad-Yupanqui may be useful for the determination of the facts by the Court in the instant case inasmuch as it is in accordance with the purpose set forth by the Order of the President issued on August 1, 2005, (supra para. 51), and therefore it assesses it as a whole with the rest of the body of evidence, applying thereto the standards of reasonable credit and weight analysis and taking into consideration the comments filed by the State (supra para. 65). As to the impossibility to "request the expert witness to make clarifications regarding his opinion" due to the written form of the expert opinion, the Court reaffirms what has been previously stated in the sense that the submission of statements or expert opinions by means of a written sworn statement, whether it is given or not before a public official whose acts command full faith and credit, does not allow the parties "to cross-examine" witnesses or expert witnesses, but rather, as the State did in its pleading of September 26, 2005 regarding the statement given by Abad-Yupanqui (supra para. 65), a procedural opportunity is given them to file the comments they may deem relevant pursuant to the principle of the adversary proceedings. [FN29]

[FN29] Cf. Case of Palamara-Iribarne, supra note 25, para. 58.

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193. As to the compact disc submitted by the State before the public hearing was held (supra para. 63), the Court admits it into the body of evidence, pursuant to Article 45(1) of the Rules of Procedure. Notwithstanding, the Court will assess the contents of the above mentioned disc [FN30] in the context of the body of evidence, taking into consideration the comments submitted by the common intervener and by the Commission, as well as the fact that it contains a video edited by the State (supra paras. 70 and 71).

[FN30] Cf. Case of Serrano-Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 40.

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194. On the other hand, the State has tendered evidence regarding a fact which is supervening to the filing of the application (supra paras. 94 and 98), pursuant to Article 44(3) of the Rules of Procedure, whereby the Court admits it into the body of evidence, taking into consideration the comments filed by the parties (supra paras. 102, 103 and 105), and assesses it as a whole with the rest of the body of evidence. [FN31]

[FN31] Cf. Case of García-Asto and Ramírez-Rojas, supra note 16, para. 90; Case of Palamara-Iribarne, supra note 25, para. 56; and Case of YATAMA, supra note 6, para. 113.

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195. As to the requests regarding the statements given by María Angélica Arce-Guerrero and Matilde Pinchi-Pinchi (supra paras. 45, 47 and 87), after admitting the evidence tendered at the public hearing, the oral and written final arguments by the parties and other supervening evidence tendered by Peru, the Court finds that, taking into consideration the body of evidence produced in the instant case and the comments filed by the Commission and by the common intervener (supra paras. 48 and 49), it is neither relevant nor necessary to admit the requests under Article (45(1) of the Rules of Procedure of the Court.

196. The Commission filed objections to the brief and the attachments submitted "as amicus curiae" by the Public Attorney of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) on its behalf (supra para. 52), since it is the body to which the non-compliance with judgments is attributed and the Municipality Public Attorney was accredited by the State to take part at the public hearing (supra para. 62). In this regard, the Court admits the foregoing brief, since the attachments thereto contain useful and relevant information about the factual substance of the instant case, taking into consideration the objections filed by the Commission. Therefore, it is admitted into the body of evidence pursuant to Article 45(1) of the Rules of Procedure.

197. As to the brief and the attachments thereto filed by the Office of the Ombudsman of Peru on April 29, 2005 as amicus curiae (supra para. 42), the Court finds them useful and assesses such documents as a whole with the rest of the body of evidence, applying thereto the standards of reasonable credit and weight analysis and taking into consideration the comments filed by the State, and that they were forwarded by a Peruvian state agency. [FN32] Therefore, they are admitted into the body of evidence pursuant to Article 45(1) of the Rules of Procedure.

[FN32] Cf. Case of YATAMA, supra note 6, para. 113; and Case of the Serrano-Cruz Sisters, supra note 30, para. 40.

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198. The Court finds useful for the adjudication of the instant case the briefs and documents submitted by the Commission regarding groups of alleged victims who were not represented by the common intervener (supra paras. 74, 75, 76, 78, 79, 80, 81, 84 and 92), the authenticity or truthfulness of which were not challenged, whereby the Court admits them into the body of evidence, pursuant to Article 45(1) of the Rules of Procedure.

199. As to the press documents submitted by the parties, this Court has considered that they may be assessed insofar as they contain public and notorious facts or statements given by State officials or confirm aspects related to the case. [FN33]

[FN33] Cf. Case of Blanco-Romero et al, supra note 24, para. 48; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 93; and Case of Gómez-Palomino, supra note 21, para. 53.

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200. Likewise, pursuant to Article 45(1) of the Rules of Procedure, the Court admits Law No. 27,803 of July 28, 2002 into the body of evidence, since it is useful for the adjudication of the instant case.

201. By Order issued on February 6, 2006 (supra para. 114) the Court decided to dismiss the request for a new hearing submitted by the State in the brief it filed on January 27, 2006, as well as the new argument presented therein regarding the acknowledgment of responsibility made before the Commission (supra para. 109).

202. The Court finds the brief filed by the State on January 30, 2006 on "judicial [p]roceedings closed due to their discontinuance" (supra para. 110) to be time-barred, whereby it has not been admitted into the body of evidence in the instant case.

Testimonial evidence assessment

203. As regards to the statements made by the witness proposed by the common intervener and by the witnesses proposed by the State (supra paras. 64 and 188), the Court admits them inasmuch as they are in accordance with the purpose of the examination established by the President in Order of August 1, 2005 (supra para. 51), and recognizes their evidentiary value,

taking into consideration the comments filed by the parties. The Court considers that the statement given by Corina Antonieta Tarazona-Valverde (supra paras. 64 and 188), which is useful in the instant case, cannot be assessed separately for she is an alleged victim with an interest in the outcome of the instant case, but rather that it must be assessed as a whole with the rest of the body of evidence in the case. [FN34]

[FN34] Cf. Case of Blanco-Romero et al, supra note 24, para. 50; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 95; and Case of Gómez-Palomino, supra note 21, para. 50.

VIII. PROVEN FACTS

204. Based on the evidence produced, and taking into consideration the statements made by the parties, as well as the acknowledgment of responsibility made by Peru (supra paras. 169-180), the Court finds the following facts to be proven:

A) REGARDING DISMISSALS FOR REDUNDANCY OR STAFF ASSESSMENT

204(1) On December 28, 1992 Decree-Law No. 26093 was promulgated which provided that the Ministers and public officials in charge of Ministries and Decentralized State Agencies "shall implement half-yearly staff assessment programs," and according to which the staff who would not qualify for their jobs might be dismissed on the grounds of redundancy. [FN35]

[FN35] Cf. Decree-Law No. 26093 (case file of appendixes to the application brief, appendix 11, folio 122).

204(2) On December 29, 1992 the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima)) and the Sindicato de Trabajadores de la Municipalidad de Lima - SITRAMUN-LIMA (Lima Municipality Workers Union), executed "Exception Minutes" or collective labor agreement, wherein the Municipality agreed to "respect the job stability and the administrative career of the permanent worker." [FN36]

[FN36] Cf. Exception Minutes signed by the Municipalidad Metropolitana de Lima (Metropolitan Municipalidad de Lima (Municipality of Lima) and SITRAMUN-LIMA on December 29, 1992 (case file with appendixes to the application brief, appendix 12, folio 124).

204(3) On December 12, 1995 the 1996 Public Sector Budget Act, Law No. 26553, [FN37] was enacted, whose eighth Provisional and Final Provision included local governments within the scope of Law No. 26093 (supra para. 204(1)), whereby municipal governments were authorized to start assessment and classification processes of their employees and workers. [FN38]

[FN37] Cf. 1996 Public Sector Budget Act, Law No. 26553 (case file with appendixes to the application brief, appendix 13, folio 130).
[FN38] Cf. 1996 Public Sector Budget Act, Law No. 26553 (case file with appendixes to the application brief, appendix 13, folio 130).

204(4) On January 28, 1996 Lima Mayoral Resolution No. 033-A-96 of January 16, 1996 was published, wherein it was established that the Staff Assessment Program of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) pursuant to Law No. 26553 of 1995 and Decree-Law No. 26093 of 1992 (supra paras. 204(3) and 204(1)), and the Bases for the aforementioned program, contained in Attachment 1 thereto, were adopted. According to the provisions of the above Resolution, such program encompassed "all the staff —supervisory, professional, technical, administrative and operative—, workers and employees." [FN39]

[FN39] Cf. Lima Mayoral Resolution No. 033-A-96 issued on January 16, 1996 (case file with appendixes to the application brief, appendix 14, folio 147).

204(5) The Bases of the foregoing Staff Assessment Program provided that on March 22 and April 12, 1996 a job assessment of employees and workers respectively was to be carried out. Furthermore, it was set forth that "those workers who do not qualify according to the assessment process, as well as those who decide not to undergo the assessment and/or fail to sit for the pertinent exams, would be declared redundant pursuant to Decree-Law No. 26093." [FN40] Said Bases were not published before the dates for which the assessment was scheduled. [FN41]

[FN40] Cf. Bases of the Staff Evaluation Program of the Municipalidad de Lima Metropolitana (Lima Metropolitan Municipality) (brief filed on August 12, 2005 by the Public Attorney of the Municipalidad de Lima Metropolitana (Lima Metropolitan Municipality) on its behalf, appendix 3, folio 5099).
[FN41] Cf. Judgments rendered by the Chamber Specializing in Public Law on February 6 and June 6, 1997 (case file with appendixes to the application brief, appendixes 17 and 19, folios 861 and 1093).

204(6) The assessment process was entrusted to Universidad Privada San Martín de Porres (San Martín de Porres Private University) pursuant to Lima Mayoral Resolution No. 4102-96. [FN42]

[FN42] Cf. Lima Mayoral Resolution No. 4102-96 (case file with appendixes to the brief containing the answer to the application, appendix 11, folio 4172); contracts for services entered into by the Municipalidad de Lima (Municipality of Lima) and Universidad San Martín de Porres (San Martín de Porres University) (case file with appendixes to the brief containing the answer to the application, appendixes 12 and 13, folios 4174-4178).

204(7) The Municipality of Lima did not carry out the assessment scheduled for March 22, 1996 (supra para. 204(5)). [FN43]

[FN43] Cf. Judgments rendered by the Tribunal Constitucional (Constitutional Court) on April 9 and August 20, 1999 (case file with appendixes to the application brief, appendixes 20 and 21, folios 1275 and 1322).

204(8) On March 25, 1996 some workers stated in writing that they had failed to appear voluntarily on the date the assessment was scheduled and reaffirmed their intention not to undergo such assessment. [FN44]

[FN44] Cf. Lima Mayoral Resolutions of March 27, 1996, wherein the dismissal for redundancy was ordered (case file with appendixes to the application brief, appendixes 16, 18, 19, 20 and 21, folios 237-812 and 880- 312).

204(9) On March 27, 1996 the Municipality of Lima issued several Mayoral Resolutions, whereby some workers who are alleged victims of the instant case were declared redundant on the grounds that they had expressed their intention not to sit for the assessment. [FN45]

[FN45] Cf. Lima Mayoral Resolutions No. 463, 397, 448, 398, 428, 380, 506, 381, 508, 429, 466, 430, 431, 467, 432, 433, 469, 382, 509, 426, 384, 472, 402, 473, 449, 474, 450, 511, 435, 383, 560, 512, 477, 401, 478, 480, 481, 482, 436, 462, 495, 515, 390, 484, 440, 486, 516, 564, 488, 552, 517, 490, 405, 427, 389, 518, 519, 520, 492, 451, 493, 521, 453, 494, 522, 495, 409, 523, 454, 501, 562, 502, 408, 503, 525, 455, 392, 504, 386, 567, 552, 461, 442, 528, 418, 529, 443, 533, 534, 536, 422, 537, 538, 393, 540, 444, 555, 445, 542, 543, 544, 546, 559, 411, 556, 547, 548, 557, 561, 413, 550, 415, 468, 505, 424, 470, 510, 385, 475, 403, 446, 459, 404, 460, 438, 489, 491, 439, 496, 500, 526, 457, 532, 535, 558, 554, 387, 419, 479, 412, 414, 507, 465, 434, 471, 400, 399, 423, 513, 485, 437, 406, 407, 498, 499, 391, 527, 441, 396, 456, 530, 531, 388, 539, 541, 447, 420, 395, 458, 421, 417, 545, 563, 416, 448, 398, 511, 436, 523, 501 and 461 of March 27, 1996 (case file with appendixes to the application brief, appendixes 16, 18, 19, 20 and 21, folios 237-812, 880-1057, 1078-1091, 1100-1263, and 1280-1312).

204(10) The Municipality of Lima rescheduled the assessments to be carried out during the first semester of 1996. Said assessment process ended on October 6, 1996, [FN46] and resulted in further dismissals. [FN47]

[FN46] Cf. Payment receipt and services order of June 28, 1996, issued by the Municipalidad de Lima (Municipality of Lima) to Universidad San Martín de Porres (San Martín de Porres University) (case file with appendixes to the brief containing the answer to the application, appendix 14, folio 4180); and judgments rendered by the ProvisionalSala Corporativa Transitoria Especializada en Derecho Público (Corporate ProvisionalProvisional Chamber Specializing in Public Law) on September 23, 1998 and on June 23, 1999 (case file with appendixes to the application brief, appendixes 22 and 23, folios 1339 and 1366).
[FN47] Cf. Lima Mayoral Resolutions No. 2339, 2336, 2340, 2341, 2342, 2343, 2344, 2345, 2347, 2346, 2349, 2352, 2353 and 2431 of July 18, 1996 and No. 3143 of October 4, 1996 (case file with appendixes to the application brief, appendix 16, folios 813-853).

204(11) Many of the workers who had been declared redundant filed appeals for legal protection [protection of constitutional guarantees and rights] per se or represented by SITRAMUN, whereby they requested that the above Mayoral Resolutions of March 27, 1996 providing for their dismissal (supra para. 204(9)) and Mayoral Resolution No. 033-A-96 (supra para. 204(4)) [FN48] be set aside.

[FN48] Cf. Judgments rendered by the Sala Transitoria Especializada en Derecho Público (Corporate Chamber Specializing in Public Law)Provisional on February 6 and June 6, 1997 (case file with appendixes to the application brief, appendixes 17 and 19, folios 861 and 1093); and judgments rendered by the Tribunal Constitucional (Constitutional Court) on August 20 and April 9, 1999 (case file with appendixes to the application brief, appendixes 20 and 21, folios 1272 and 1320).

204(12) Said appeals for legal protection [protection of constitutional guarantees and rights] were finally found to be admissible by two judgments rendered by the Sala Especializada de Derecho Público (Chamber Specializing in Public Law) on February 6 and June 6, 1997 and by two judgments rendered by the Tribunal Constitucional (Constitutional Court) on April 9 and August 20, 1999, [FN49] which are referred to in the following paragraphs.

[FN49] Cf. Judgments rendered by the ProvisionalChamber Specializing in Public Law on February 6 and June 6, 1997 (case file with appendixes to the application brief, appendixes 17 and 19, folios 861 and 1093); and judgments rendered by the Tribunal Constitucional (Constitutional Court) on August 20 and April 9, 1999 (case file with appendixes to the application brief, appendixes 20 and 21, folios 1272 and 1320).

204(13) On February 6, 1997 the Sala Especializada de Derecho Público (Chamber Specializing in Public Law) rendered a judgment wherein it found “Mayoral Resolution No. 033-A-96 […] of January 16, 1996 to be non-applicable to the applicants” (supra para. 204(4)). The above Chamber based its decision on the grounds that

[…] the failure to publish Attachment 01 to the Mayoral Resolution examined, which [..] contained the adopted bases of the Staff Assessment Program is a violation of […] the principle of publicity […;] the respondent has not proven that the workers have otherwise been informed of such bases [… f]rom which it is derived that the right of the applicants to be duly informed of any act which may affect in any way their right to stay in the jobs they have freely chosen should be protected […]. [FN50]

[FN50] Cf. Judgment rendered by the Chamber Specializing in Public Law on February 6, 1997 (case file with appendixes to the application brief, appendix 17, folios 861-868).

204(14) On June 13, 1997 the Juzgado Especializado en lo Civil (Court Specializing in Civil Matters) of the Corte Superior de Justicia de Lima (High Court of Justice of Lima) issued an Order wherein it requested the legal representative of the Municipality of Lima "that the effects of Mayoral Resolution No. 0-33 of January 16, 1996 regarding the members of such Municip[ality] workers union who were affected by the aforementioned municipal order be set aside and that, had such workers been dismissed, they be reinstated to their jobs within three days under the same conditions and in identical situation as they were before the violation which is the subject matter of the claim." [FN51] The respondent Municipality filed an objection to such request based on the grounds that "the 1997 Public Sector Budget Law forbids, as a rule of public spending abatement, appointments [and …], the creation, modification or reclassification of positions […]" [FN52]. In judgment rendered on March 31, 1998 the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) declared groundless the objection filed by the Municipality of Lima on basis that

the Municipality cannot allege the prohibitions set forth by the 1997 Budget Law to decline the compliance with a judicial decision having the authority of a final pronouncement […;] it has been recognized by doctrine that the conduct established by the Res Judicata principle prevails on the conduct established by law [; otherwise] legal certainty would simply not exist […]. [FN53]

The above mentioned Chamber ordered "that the respondent reinstate the applicant workers to their jobs in compliance with the judgment." [FN54]

[FN51] Cf. Order issued by the Juzgado Especializado en lo Civil (Court Specializing in Civil Matters) of the Corte Superior de Justicia de Lima (High Court of Justice of Lima) on June 13, 1997 (case file with appendixes to the application brief, appendix 17, folio 863).
[FN52] Cf. Judgment rendered by the ProvisionalSala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on March 31, 1998 (case file with appendixes to the application brief, appendix 17, folio 868).
[FN53] Cf. Judgment rendered by the Provisional Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on March 31, 1998 (case file with appendixes to the application brief, appendix 17, folio 868).

[FN54] Cf. Judgment rendered by the Provisional Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on March 31, 1998 (case file with appendixes to the application brief, appendix 17, folio 869).

204(15) On June 13, 1996 thirty workers who had been dismissed filed an amparo for legal protection in order that they be reinstated to their jobs. On June 6, 1997 the Sala Especializada de Derecho Público (Chamber Specializing in Public Law) rendered a judgment wherein it annulled the dismissals effected by the Municipalidad de Lima Metropolitana (Metropolitan Municipality of Lima))" and ordered that "the [30] plaintiffs be reinstated to their usual jobs and that back payment of lost wages and other benefits be made." [FN55] The above mentioned Chamber based its decision on the grounds that

[…] the bases of such assessment procedure were not published; therefore, the applicants did not know that such violation would be a ground for dismissal provided for in the bases contained in Attachment 01 to Mayoral Resolution No. 033-A-96 […;] Decree-Law No. 26093 […] does not establish the failure to sit for such assessment as another ground of dismissal […;] the dismissal ordered in the instant case was not an act set forth in the above Law, whereby it is deemed to be an unfair dismissal […].

[FN55] Cf. Writ of amparo filed on June 13, 1996 (case file on preliminary comments and possible reparations and legal costs, volume XI, folio 3763); and judgment rendered by the Chamber Specializing in Public Law on June 6, 1997 (case file with appendixes to the application brief, appendix 19, folio 1094).

204(16) The judgment rendered by the Tribunal Constitucional (Constitutional Court) on April 9, 1999 found "Mayoral Resolutions No. 461, 501, 523, 511, 448, 398 and 436 of March 27, 1996 [ordering the applicants' dismissal] to be non-applicable to the [7] plaintiffs" and ordered that the Municipality "reinstate them to the jobs they had or to similar ones, without back payment of lost wages and other benefits." [FN56]

[FN56] Cf. Judgment rendered by the Tribunal Constitucional (Constitutional Court) on April 9, 1999 (case file with appendixes to the application brief, appendix 21, folio 1322).

204(17) The judgment rendered by the Tribunal Constitucional (Constitutional Court) on August 20, 1999 found "Mayoral Resolutions No. 421, 416, 395, 563, 485, 545, 423, 465, 447, 437, 531, 539, 391, 471, 396, 527, 541, 420, 406, 388, 513, 407, 400, 499, 434, 530, 458, 417, 498, 441, 399, 456 and 507 of March 27, 1996 [ordering the dismissal of the plaintiffs] to be non-applicable to the [33] plaintiffs" and ordered that the Municipality "reinstate them to the jobs they had or to similar ones, without back payment of lost wages and other benefits." [FN57]

[FN57] Cf. Judgment rendered by the Tribunal Constitucional (Constitutional Court) on August 20, 1999 (case file with appendixes to the application brief, appendix 20, folio 1275).

204(18) The Tribunal Constitucional (Constitutional Court) based its decision to find the appeals for legal protection [protection of constitutional guarantees and rights] admissible in the judgments it rendered on April 9 and August 20, 1999 (supra paras. 204(16) and 204(17)) on the grounds that even though the Bases of the Assessment Program provided that those workers "who decided not " to sit for the scheduled assessment would be declared redundant, the fact that such assessment was not carried out ruled out the grounds for their dismissal on the grounds of redundancy. [FN58]

[FN58] Cf. Judgments rendered by the Tribunal Constitucional (Constitutional Court) on April 9 and August 20, 1999 (case file with appendixes to the application brief, appendixes 21 and 20, folios 1322 and 1275).

204(19) On January 28, 2000 the Primer Juzgado Corporativo Transitorio Especializado de Derecho Público (First Corporate Provisional Court Specializing in Public Law) issued an Order, whereby it requested the Municipalidad de Lima (Municipality of Lima) to comply with the enforceable judgment rendered by the Tribunal Constitucional (Constitutional Court) on August 20, 1999 (supra para. 204(17)). [FN59]

[FN59] Cf. Order issued by the First Corporate Provisional Court Specializing in Public Law on January 28, 2000 (case file with appendixes to the application brief, appendix 20, folio 1277).

204(20) On November 4, 1996 the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) issued Mayoral Resolution No. 3364, wherein it set forth a new staff assessment program for such Municipality, to be carried out during the second semester of 1996, which was scheduled for November 11-15, 1996 for the assessment of employees and for November 18, 1996 for the assessment of workers, and adopted the Bases for such assessment program contained in Attachment 1 to the foregoing Resolution. Such Resolution and Attachment 1 thereto were published in ""El Peruano"" official gazette on November 9, 1996. [FN60]

[FN60] Cf. Lima Mayoral Resolution No. 3364 of November 4, 1996 (case file with appendixes to the application brief, appendix 22, folio 1329).

204(21) Within the framework of the assessment programs carried out in the second semester of 1996, on December 5, 1996 the Municipality of Lima issued Mayoral Resolution No. 3776, whereby it dismissed 318 workers on the grounds of redundancy because they "had not

qualified in the above assessment process" "pursuant to the provisions contained in the foregoing Assessment Program Bases of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima)." [FN61]

[FN61] Cf. Lima Mayoral Resolution No. 3776 of December 5, 1996 (case file with appendixes to the application brief, appendix 22, folio 1333).

204(22) Sixty-eight out of all the workers who had been dismissed filed appeals for legal protection [protection of constitutional guarantees and rights] requesting, inter alia, that Mayoral Resolution No. 3776 (supra para. 204(21)), as well as all the administrative acts derived therefrom, be found non-applicable. Finally, said appeals for legal protection [protection of constitutional guarantees and rights] were found to be admissible by two judgments delivered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on September 23, 1998 and on June 23, 1999. [FN62] The judgments rendered by the above Chamber declared "Mayoral Resolution No. 3776 not applicable to the [174] plaintiffs [and] joint plaintiffs" and ordered that the "respondent reinstate all of them to their jobs, under the same conditions and with the same rights and benefits they were entitled to until the time they were dismissed, reserving the right of the plaintiffs and of the joint plaintiffs to require via the pertinent proceedings the back payment of lost wages and other benefits from the date they were dismissed to the date they were effectively reinstated to their jobs." The Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) based its decision to find the appeals for legal protection [protection of constitutional guarantees and rights] filed by the workers admissible on the grounds that:

the Municipality has not respected the peremptory time period set forth in Decree-Law 26093, in the sense that the assessments would be carried out every six months, since the assessment carried out in the first semester ended in October and the second one, corresponding to the second semester of 1996, was started in November.

[FN62] Cf. Judgments rendered by the Provisional Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on September 23, 1998 and on June 23, 1999 (case file with appendixes to the application brief, appendixes 22 and 23, folios 1338 and 1365).

204(23) The Primer Juzgado Corporativo Transitorio Especializado de Derecho Público (First Corporate Provisional Court Specializing in Public Law), in charge of the enforcement of judgments rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on September 23, 1998 and June 23, 1999, by virtue of Orders of November 23, 1998 and October 5, 1999 requested the Municipality of Lima to comply with such judgments. [FN63]

[FN63] Cf. Orders issued by the Primer Juzgado Corporativo Transitorio Especializado de Derecho Público (First Corporate Provisional Court Specializing in Public Law)Provisional November 23, 1998 and October 5, 1999 (case file with appendixes to the application brief, appendixes 22 and 23, folios 1344 and 1369).

204(24) The Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) filed three objections to enforce the judgment rendered on September 23, 1998, which were found to be groundless by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) in the judgments rendered on June 4 and 11, and August 6, 1999. [FN64] Such Chamber based its decision, inter alia, on the grounds that:

the Municipality cannot allege the prohibition in the 1998 Budget Law to be excused from complying with a court order having the authority of a final pronouncement […;] it has been recognized by doctrine that the conduct established by the Res Judicata principle prevails on the conduct established by the law that would render Res Judicata invalid.
in order to restore the situation back to its former state the workers who acted as plaintiffs should be reinstated to their jobs and the failure to comply with this on the grounds of the objection based on reasons of austerity cannot be admitted, since such impossibility would only take place when the aggression becomes irreparable, which has not occurred, for if that had been the case, the claim would have become unsustainable, something that would have been noted by the judges.

[FN64] Cf. Judgments rendered by the Provisional Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on June 4 and 11 and on August 6, 1999 (case file with appendixes to the application brief, appendix 22, folios 1345 to 1351).

204(25) On July 4, 1997 the Municipality of Lima issued Ordinance No. 117 "which regulates the assessment and reinstatement of the staff of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) and the district Municipalities of the province of Lima," whose Article 4 provided that "the municipal staff who start an administrative career for any reason or motive, including the reinstatement to their jobs by virtue of a court order and who were not assessed pursuant to Decree-Law No. 26093 in 1996 or whose assessment was set aside, should be assessed, wherefore the authorities will issue the pertinent regulations […]." By Resolution No. 3746 of October 21, 1997 the Bases for the Staff Assessment Program for the reinstated staff of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) were adopted. [FN65]

[FN65] Cf. Lima Municipal Ordinance No. 117 of July 4, 1997; and Lima Mayoral Resolution No. 3746 of October 21, 1997 (case file with appendixes to the application brief, appendix 34, folios 1732, 1733, 1737-1746).

204(26) On January 19, 1998 the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Corporate Provisional Court Specializing in Public Law) admitted "the amparo for legal protection filed by SITRAMUN on behalf of its member workers and, therefore, […] Ordinance [No. 117], Mayoral Resolution [No. 3746 …] and all acts derived therefrom were found to be non-applicable to the plaintiff union and the members thereof, whereby the situation was restored to its former state." This judgment was upheld on July 27, 1998 by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law). [FN66]

[FN66] Cf. Judgment rendered by the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Corporate Provisional Court Specializing in Public Law)Provisional on January 19, 1997; and judgment rendered by the Provisional Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on July 27, 1998 (case file with appendixes to the application brief, appendix 34, folios 1737-1743).

204(27) On January 7, 2002 the 63° Juzgado Especializado en lo Civil de Lima (63rd Specialized Civil Court of Lima) of the Corte Superior de Justicia de Lima (High Court of Justice of Lima) ordered that Case file No. 3010-97, wherein judgment of July 27, 1998 (supra para. 204(26)) was rendered, be forwarded to the Depósito Transitorio de los Juzgados Civiles (Civil Courts Provisional Safekeeping Office) to be "temporarily archived", since "over four months of non-suit have passed." [FN67]

[FN67] Cf. Order issued on January 7, 2002 by the 63° Juzgado Especializado en lo Civil de Lima (63th Specialized Civil Court of Lima) of the Corte Superior de Justicia de Lima (High Court of Justice of Lima) (case file on preliminary objections and merits of the case, reparations and costs, volume VIII, folio 2410).

204(28) On June 23, 2001 Law No. 27487 "revoking Decree-Law No. 26093 and authorizing the creation of Committees which would be charged with examining the collective dismissals effected by the Public Sector" [FN68] was published in the official gazette. In Article 3 thereof on "Collective dismissals in the public sector and local governments" it provided that:

Public sector institutions and government agencies, state companies which are not subject to private investment promotion processes, as well as local governments and municipal entities shall create Special Committees composed of representatives both of such institutions, agencies, companies and government entities, and of the workers thereof, within 15 (fifteen) running days

as from the effective date of this Law and which will be charged with reviewing the collective staff dismissals resulting from the staff assessment processes under Decree-Law No. 26093 or from reorganization processes authorized by express legal regulations.

Likewise, it provided that the above Special Committees should draw up "a report containing a listing of the workers who have been irregularly dismissed, if any, as well as recommendations and suggestions to be implemented by the Head of the Sector or the local government."

[FN68] Cf. Final report of the Multi-sector Committee of March 2002 (case file on preliminary comments, reparations, and costs, volume VIII, folios 2563 to 2613).

204(29) The Special Committees heard only the requests for revision filed by the dismissed workers within the time period allowed for such purpose. [FN69]

[FN69] Cf. Final report of the Multi-sector Committee of March 2002 (case file on preliminary comments, reparations, and costs, volume VIII, folios 2563 to 2613).

204(30) On December 12, 2001 "El Peruano" official gazette published Law No. 27586, which provided the creation of a Multi-Sector Committee, which would be composed of representatives of the Ministries of Economy and Finance, Labor, Health and Education; a representative of the Ministry of the Presidency; four representatives of the Provincial Municipalities; the Ombudsman and three representatives of the Confederaciones Nacionales de Trabajadores (National Confederations of Workers). The Multi-Sector Committee was empowered to review the grounds on which the dismissals had been made and to establish in which cases back payment of unpaid wages and other benefits was due, provided that such matters had not been the subject of any legal claims. [FN70]

[FN70] Cf. Final report of the Multi-sector Committee of March 2002 (case file on preliminary comments, reparations, and costs, volume VIII, folios 2563 to 2613).

204(31) In March 2002, the Multi-Sector Committee issued its final report, wherein it made recommendations and proposed the creation of a "Registro Nacional de Ex Trabajadores del Sector Público cesados irregularmente" ("National Register of irregularly dismissed Former Public Sector Workers"), based on the information on former workers irregularly dismissed that every public sector institution or government agency in which they had worked had to submit. [FN71]

[FN71] Cf. Final report of the Multi-sector Committee of March 2002 (case file on preliminary comments, reparations, and costs, volume VIII, folios 2563 to 2613).

204(32) Under Law No. 27803 of July 28, 2002 "which implements the recommendations made by the Committees created by Laws No. 27452 and No. 27586," it was provided that the workers who were found to be irregularly dismissed or declared redundant would be entitled to opt on an exclusive and alternative basis among the following: their reinstatement to their jobs or to similar ones, their early retirement, economic compensation or training, and retraining, and the "National Registry of Irregularly Dismissed Workers was created." [FN72]

[FN72] Cf. Law No. 27803 of July 28, 2002 (evidence to facilitate the adjudication of the case admitted by the Inter-American Court).

204(33) On December 22, 2002, March 27, 2003 and December 24, 2003 the first, second and last lists of Irregularly Dismissed Former Workers was published pursuant to the provisions of Laws No. 27452, No. 27586 and No. 27803. [FN73]

[FN73] Cf. Lists of irregularly dismissed former workers (case file with appendixes to the brief containing the answer to the application, appendixes 81, 82 and 83, folios 4542 to 4600).

B) REGARDING DISMISSALS FOR PARTICIPATION BY THE WORKERS IN DEMONSTRATIONS AND ADMINISTRATIVE MISCONDUCT

204(34) On March 11 and 22, 1996 some Lima municipal workers organized a protest demonstration against the Staff Assessment Program (supra paras. 204(4) and 204(5)). By Mayoral Resolutions No. 308 of March 15, 1996 and No. 372 of March 22, 1996 administrative disciplinary proceedings were instituted against some workers. Later on, the Municipality issued Mayoral Resolutions No. 625 of April 10, 1996 and No. 638 of April 12, 1996, whereby such workers were dismissed. [FN74]

[FN74] Cf. Lima Mayoral Resolutions No. 308 of March 15, 1996, No. 372 of March 22, 1996, No. 625 of April 10, 1996 and No. 638 of April 12, 1996 (case file with appendixes to the application brief, appendix 39, folios 1901 to 1909).

204(35) Eleven dismissed workers filed appeals for legal protection [protection of constitutional guarantees and rights], on the grounds that they had been dismissed in violation of the due process provided for in the Reglamento de la Ley de Carrera Administrativa y de Remuneraciones del Sector Público (Regulations Implementing the Civil Service Career and Public Sector Compensation Law). [FN75]

[FN75] Cf. Judgments rendered by the Tribunal Constitucional (Constitutional Court) on November 18 and December 21, 1998 and April 9, 1999 (case file to the appendixes to the application brief, appendixes 39, 40 and 41, folios 1912, 1944 and 1956).

204(36) In January and February 1996 the Staff Department of the Municipality of Lima issued official letters regarding the alleged taking or disappearance of the attendance control cards belonging to several workers. Under Mayoral Resolution No. 297 of March 13, 1996 administrative disciplinary proceedings were instituted against the workers who were allegedly guilty of such misconduct. Later on, the Municipality issued Mayoral Resolution No. 680 of April 25, 1996, whereby such workers were dismissed. Four of them filed appeals for legal protection [protection of constitutional guarantees and rights] alleging they had been dismissed in violation of the due process. [FN76]

[FN76] Cf. Lima Mayoral Resolutions No. 297 of March 13, 1996, No. 308 of March 15, 1996 and No. 680 of April 25, 1996 (case file with appendixes to the application brief, appendixes 39 and 40, folios 1903, 1907 and 1932).

204(37) On November 18 and December 21, 1998 and on April 9, 1999 the Tribunal Constitucional (Constitutional Court) rendered three judgments wherein it found the above appeals for legal protection [protection of constitutional guarantees and rights] (supra paras. 204(35) and 204(36)) to be admissible and the Mayoral Resolutions which provided the plaintiffs' dismissal to be non-applicable to fourteen out of the fifteen plaintiffs and ordered the Municipality of Lima that they be reinstated to the jobs they had or to similar ones "without back payment of lost wages." As to the grounds for such decisions, the Tribunal Constitucional (Constitutional Court) stated that the Comisión Permanente de Procesos Administrativos Disciplinarios (Comisión Permanente de Procesos Administrativos Disciplinarios (Committee on Administrative Disciplinary Procedures)) had not rendered a decision in the administrative proceedings instituted by the Municipality of Lima against the plaintiffs as it should have pursuant to Articles 152 and 166 of the Reglamento de la Ley de Carrera Administrativa y de Remuneraciones del Sector Público (Regulations Implementing the Civil Service Career and Public Sector Compensation Law), whereby the right to a due process had been violated. Furthermore, in the above judgment of December 21, 1998 the Tribunal Constitucional (Constitutional Court) added that the report of the Comisión Permanente de Procesos Administrativos Disciplinarios (Comisión Permanente de Procesos Administrativos Disciplinarios (Committee on Administrative Disciplinary Procedures)) submitted in these proceedings had been issued after the date the Mayoral Resolution which provided the plaintiff's dismissal was issued and released, and it further stated that the right to work had been violated. In addition, in judgments rendered on November 18, 1998 and on April 9, 1999 the Tribunal Constitucional (Constitutional Court) stated that "the plaintiff is entitled to exercise the right to defend himself throughout the proceeding and not merely at one of the stages thereof." [FN77]

[FN77] Cf. Judgments rendered by the Tribunal Constitucional (Constitutional Court) on November 18 and December 21, 1998 and April 9, 1999 (case file with appendixes to the application brief, appendixes 39, 40 and 41, folios 1912, 1944 and 1956).

204(38) On November 9 and 15, 1999 the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Corporate Provisional Court Specializing in Public Law) issued two Orders, whereby it requested that the Municipality of Lima comply with the judgments rendered by the Tribunal Constitucional (Constitutional Court) on November 18, 1998 and on April 9, 1999 (supra paras. 204(37)). [FN78]

[FN78] Cf. Resolutions No. 6 and 11 issued by the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Corporate Provisional Court Specializing in Public Law) on November 9 and 15, 1999 (case file with appendixes to the application brief, appendixes 39 and 40, folios 1917 and 1948).

C) WITH RESPECT TO THE DISMISSALS OR DECLARATIONS OF REDUNDANCY FOR DECLARING AN ILLEGAL STRIKE

204(39) The Lima Municipal Workers Union, SITRAMUN-Lima, called a general work stoppage for March 13, 1996, which was declared illegal by means of Mayoral Resolution No. 239 of March 8, 1996, wherein administrative sanctions were established for workers participating in the strike. The union postponed the strike to March 15, 1996. On March 14, 1996 the Municipality issued Mayoral Resolution No. 305 extending the scope and operation of Resolution No. 239 to include the postponed strike. The union postponed the strike again until April 1, 1996. By means of Mayoral Resolution No. 575 of April 1, 1996 the new postponement of the strike was brought within the scope and operation of Resolution No. 239, confirming the declaration of illegality. Resolution No.575 likewise resolved:

"to declare the strike called by the organization known as "Sitramun-Lima" and Mr. Hinostroza Alejandro Rimari, which has been taking place since March 29, 1996, illegal [,… and] to find civil servants joining said illegal work stoppage guilty of gross disciplinary misconduct and therefore liable to the appropriate disciplinary sanction […]." [FN79]

[FN79] Cf. Lima Mayoral Resolution No. 575 of April 1, 1996 (file of appendixes to the application, Appendix 24, folio 1373).

204(40) The strike that had been called by the SITRAMUN began on April 1, 1996. [FN80]

[FN80] Cf. Judgment rendered by the Sixth Civil Court of Lima on December 13, 1996, and judgment rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on November 16, 1998 (file of appendixes to the application, Appendix 24, folios 1392 and 1400).

204(41) In April and May 1996, the Municipality of Lima issued several Resolutions, by means of which administrative disciplinary proceedings were instituted against the workers who joined in the strike. [FN81] Subsequently, the Municipality issued Mayoral Resolutions, dismissing the workers. [FN82].

[FN81] Cf. Lima Mayoral Resolutions No. 639 of April 12, 1996, No. 671 of April 24, 1996, No. 709 of May 2, 1996 and No. 1247 of May 24, 1996 (file of appendixes to the application, Appendix 24, folios 1375 through 1390).

[FN82] Cf. Lima Mayoral Resolutions No. 914, 1041, 1028, 1048, 1085, 1249, 1255, 1254, 1250, 1259, 1300, 1306, 1370, 1963, 1970, 1971, 911, 1037, 1051, 738, 943, 1034, 1045, 1031, 1071, 1103, 1111, 1257, 1305, 1369, 1968, 796, 741, 1159, 1154, 879, 989, 803, 1063, 1990, 1987, 828, 1161, 1367, 740, 1298, 809, 979, 1118 and 924 of May 7, 8, 9, 10, 13, 17, 24, 28 and 31, 1996 and June 11, 1996 (file of appendixes to the application, appendixes 25, 27, 28, 29, 30, 31 and 32, folios 1432-1470, 1513-1515, 1535, 1555-1585, 1620-1658, 1678 and 1696; (file of preliminary comments, merits, reparations and costs, Volume X, page 3457; and appendix 1 to the explanatory brief submitted by the common intervener on October 24, 2005, folio 6184); judgments of the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) of July 14, 1998, December 22, 1999 and March 31, 1999 (file of appendixes to the application, appendix 26, folio 1493; appendix 31, folio 1686; and appendix 32, folio 1702); and judgments by the Tribunal Constitucional (Constitutional Court) of April 3, 1998, May 13, 1998, October 16, 1998, August 20, 1999 and November 11, 1998 (file of appendixes to the application, appendix 25, folio 1482; appendix 27, folio 1523; appendix 28, folio 1546; appendix 29, folio 1594; and appendix 30, folio 1665).

204(42) The SITRAMUN-Lima filed an amparo for legal protection against the Municipality of Lima. By means of judgment of December 13, 1996, the Sexto Juzgado Civil de Lima (Sixth Civil Court of Lima) sustained the an amparo for legal protection, and ordered that "Resolution No. 575 of April 1, 1996 […], which declares illegal the strike called by the Sindicato de Trabajadores de la Municipalidad de Lima - SITRAMUN-LIMA (Lima Municipality Workers Union) which started on April 1, 1996, as well as all other provisions contained therein, be set aside, and back pay for the affected workers be paid." The abovementioned Court pointed out that:

"Mayoral Resolution [No. 575…] was challenged by the Union […,] without sufficient evidence of any decision on such challenge having been reached by the employing entity; therefore, the Resolution may not be deemed unchallenged or enforceable; notwithstanding the forgoing, the provisions contained in Article 3 of the challenged resolution have been enforced, i.e. administrative disciplinary proceedings have been instituted against a large No. of municipality

civil servants […,] in the instant case there was no unchallenged or enforceable judgment or a cease-and-desist order requiring employees to return to work; therefore, the commencement of Administrative Disciplinary Proceedings was unwarranted […]."

Said judgment was affirmed by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on November 16, 1998. [FN83]

[FN83] Cf. Judgment rendered by the Sexto Juzgado Civil de Lima (Sixth Civil Court of Lima) on December 13, 1996, and judgment rendered by the Provisional Corporate Chamber Specializing in Public Law on November 16, 1998 (file of appendixes to the application, Appendix 24, folios 1392 and 1400).

204(43) The dismissed workers filed an amparo for legal protection against the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima), requesting that the Mayoral Resolutions that ordered their dismissals be held inapplicable and unenforceable. Said appeals for legal protection [protection of constitutional guarantees and rights] were sustained by three final judgments rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on July 14, 1998, March 31, 1999 and December 22, 1999 (infra para. 204(44) and five judgments rendered by the Tribunal Constitucional (Constitutional Court) on April 3, 1998, May 13, 1998, October 16, 1998, August 20, 1999 (infra para. 204(45) and November 11, 1998 (infra para. 204(46), which are described in more detail in the following two paragraphs. [FN84]

[FN84] Cf. Judgments rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on July 14, 1998, December 22, 1999 and March 31, 1999 (file of appendixes to the application, appendix 26, folio 1493; appendix 31, folio 1686; and appendix 32, folio 1702); and judgments of the Tribunal Constitucional (Constitutional Court) of April 3, 1998, May 13, 1998, October 16, 1998, August 20, 1999 and November 11, 1998 (file of appendixes to the application, appendixes 25, 27, 28, 29 and 30, folios 1482, 1523, 1546, 1594, 1665).

204(44) In its judgments of July 14, 1998, March 31, 1999 and December 22, 1999, the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) held "the Mayoral Resolutions [which ordered their dismissals] and any ensuing administrative actions inapplicable to the [7] plaintiffs, and ordered their reinstatement to their jobs with the same rights and benefits they had prior to dismissal." In addition, the aforementioned judgment of March 31, 1999 ordered "back payment of lost wages and other benefits they had failed to receive from the date of issuance of the […] resolution." As regards the grounds for its decisions, the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) stated that the Comisión Permanente de Procesos Administrativos Disciplinarios (Committee on Administrative

Disciplinary Procedures) failed to issue an pronouncement on the administrative proceedings instituted by the Municipality of Lima against the plaintiffs for having observed the strike called by the SITRAMUN, as set forth in Article 166 of the Reglamento de la Ley de Carrera Administrativa y de Remuneraciones del Sector Público (Regulations Implementing the Civil Service Career and Public Sector Compensation Law). In the aforementioned Judgment of March 31, 1999, the Court further stated that even though the Municipality declared "the illegality of the strike scheduled for April 1, 1996, it is no less true that it was published on April 6, 1996, that is, after the beginning of the strike. Therefore, the strike was perfectly viable and legal." [FN85]

[FN85] Cf. Judgments rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on July 14, 1998, December 22, 1999 and March 31, 1999 (file of appendixes to the application, appendix 26, folio 1493; appendix 31, folio 1686; and appendix 32, folio 1702).

204(45) In its judgments of April 3, 1998, May 13, 1998, October 16, 1998 and August 20, 1999, the Tribunal Constitucional (Constitutional Court) held "the Mayoral Resolutions [which ordered their dismissals] inapplicable to the [33] plaintiffs, and ordered the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) to reinstate plaintiffs to their jobs or similar positions, without back pay for lost wages." As regards the grounds for its decisions, the Tribunal Constitucional (Constitutional Court) pointed out that the Comisión Permanente de Procesos Administrativos Disciplinarios (Committee on Administrative Disciplinary Procedures) failed to deliver an opinion in the administrative proceedings instituted by the Municipality of Lima against the plaintiffs for having observed the strike called by the SITRAMUN, as it should have pursuant to Article 162 and 166 of the Reglamento de la Ley de Carrera Administrativa y de Remuneraciones del Sector Público (Regulations Implementing the Civil Service Career and Public Sector Compensation Law). In the aforementioned Judgment of October 16, 1998, the Tribunal Constitucional (Constitutional Court) further added that, in the case of the plaintiff, the report of the Comisión Permanente de Procesos Administrativos Disciplinarios (Committee on Administrative Disciplinary Procedures) submitted in the proceeding was issued after the adoption of the Mayoral Resolution ordering the plaintiff's dismissal. [FN86]

[FN86] Cf. Judgments of the Tribunal Constitucional (Constitutional Court) of April 3, 1998, May 13, 1998, October 16, 1998, August 20, 1999 (file of appendixes to the application, appendix 25, folio 1482; appendix 27, folio 1523; appendix 28, folio 1546; and appendix 29, folio 1594).

204(46) On November 12, 1997, the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) dismissed the complaint for lack of merit with respect to eleven plaintiffs and upheld the complaint in respect of three plaintiffs, and ordered in relation to the latter that "the Mayoral Resolutions directing

their dismissals […] and any ensuing resolutions be set aside; therefore the defendant shall reinstate the plaintiffs to their jobs with the same rights, benefits and conditions of employment they enjoyed prior to dismissal, with back pay for lost wages and other benefits from the date of implementation of said resolutions to the date of reinstatement." [FN87] The Municipality of Lima and the workers in respect of whom the complaint was dismissed for lack of merit filed an extraordinary appeal for judicial review on constitutional grounds of some aspects of the decision. On November 11, 1998, the Tribunal Constitucional (Constitutional Court) affirmed part of "the decision of the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) […] of November 12, 1997 […, and] reversed the part that dismissed the complaint for lack of merits," and, in amending the decision, the Court held "the Mayoral Resolutions [ordering their dismissals…] inapplicable to the [11] plaintiffs and ordered the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) to reinstate the plaintiffs to their jobs or similar positions, without back pay for lost wages." [FN88]

[FN87] Cf. Judgment rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on November 12, 1997 (file of appendixes to the application, appendix 30, folio 1664).

[FN88] Cf. Judgment rendered by the Tribunal Constitucional (Constitutional Court) on November 11, 1998 (file of appendixes to the application, appendix 30, folio 1669).

204(47) On August 26, 1998, November 30, 1998, February 4, 1999, June 18, 1999, August 13, 1999, September 15, 1999 and May 10, 2000, the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Provisional Corporate Court Specializing in Public Law) issued Orders, directing the Municipality of Lima to comply with the final judgments rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on July 14, 1998, March 31, 1999 and December 22, 1999 and those rendered by the Tribunal Constitucional (Constitutional Court) on April 3, 1998, May 13, 1998, October 16, 1998 and November 11, 1998 [FN89] (supra para. 204(43).

[FN89] Cf. Orders issued by the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Corporate Provisional Court Specializing in Public Law) on August 26, 1998, June 18, 1999, May 10, 2000, February 4, 1999, November 30, 1998, August 13, 1999 and September 15, 1999 (file of appendixes to the application, appendixes 25, 26, 27, 28, 31 and 32, folios 1487, 1495, 1527, 1549, 1688 and 1704; and file of preliminary comments, merits, reparations and costs, Volume XI, page 3822).

204(48) The Municipality filed objections to the requirements to enforce the judgments rendered of July 14 and October 16, 1998 (supra para. 204(47), on the grounds of, inter alia, budgetary austerity regulations. [FN90]

[FN90] Cf. Judgment rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) Law on June 11, 1999; and Order rendered by the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Corporate Provisional Court Specializing in Public Law) on May 10, 2000 (file of appendixes to the application, appendixes 26 and 28, folios 1496 and 1549).

204(49) On June 11, 1999, the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) rendered a decision, declaring the objection to enforce the judgment rendered on July 14, 1998 without merit, on the grounds, inter alia, that:

"the Municipality may not rely on the prohibitions laid down in the 1998 Budget Act to avoid compliance with a court decision with authority of final judgment […;] legal authorities generally agree that conduct determined in a final judgment prevails over conduct prescribed by law, for otherwise the final judgment would be invalidated […]." [FN91]

[FN91] Cf. Order rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on June 11, 1999 (file of appendixes to the application, appendix 26, folio 1496).

204(50) On May 10, 2000, the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Provisional Corporate Court Specializing in Public Law) rendered a decision, declaring the objection to enforce the judgment rendered on October 16, 1998 without merit, on the grounds, inter alia, that:

"Article 1 of the Political Constitution stresses the importance of the individual over interests; especially if we take into account that this is not about the creation of a new job opening, but of the restoration of a right that existed before it was infringed […;] compliance with the court's decision does not entail a violation of the regulations mentioned above, nor does it give rise to administrative responsibility on the officers that comply with it, insofar as the decision enforced or complied with emanates from a judicial body […]." [FN92]

[FN92] Cf. Order rendered by the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Corporate Provisional Court Specializing in Public Law) on May 10, 2000 (file of appendixes to the application, appendix 28, folio 1549).

204(51) In its decisions of June 16 and 22, 1999, the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) declared two new objections to enforce the judgment dated July 14, 1998 filed by the Municipality of Lima without merit. The Court, in its decision of June 22, 1999, ordered "to

request, for the last time, the Mayor of the Provincial Council […] to proceed to reinstate the workers to their jobs, with the same rights and benefits they enjoyed prior to dismissal, within a delay not exceeding three days." [FN93]

[FN93] Cf. Orders rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on June 16 and 22, 1999 (file of appendixes to the application, appendix 26, folios 1498 and 1499).

D) WITH RESPECT TO THE APPLICATION OF COLLECTIVE BARGAINING AGREEMENTS

D(1)) Reduction in compensation

204(52) On January 17, 1996, the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) issued Mayoral Resolution No. 044-A-96, ordering, inter alia, to:

Article 1: Implement an immediate review of the payroll as well as all accounting documents in connection with salaries, social benefits, pensions and any other items related to the labor issues of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) for the purpose of determining, in accordance with applicable statutory provisions, the amounts due as well as those that may have been paid in excess.
Article 2: Establish, while the review provided for in Article 1 above is performed, provisional wage brackets, operative as of this month, the details of which are attached hereto as Appendix 01 […].
Article 4: Request the opinion of the Contraloría General de la República (Office of the Comptroller-General of Peru) on "covenants", "contracts", "agreements" and/or "memoranda of agreement" entered into by the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) and the SITRAMUN-LIMA and SITRAOMI unions between 1988 and 1995 […]. [FN94]

[FN94] Cf. Lima Mayoral Resolution No. 044-A-96 of January 17, 1996 (file of appendixes to the application, appendix 33, folio 1707).

204(53) The Municipality of Lima implemented Article 2 of Mayoral Resolution No. 044-A-96 from January 1996 through October 1997. [FN95]

[FN95] Cf. Lima Mayoral Resolutions No. 00681-99 of July 20, 1999, No. 00799-99 of August 26, 1999, No. 6257 and No. 6258 of May 17, 2000 (file of appendixes to the answer to the application, appendixes 31, 33, 35 and 36, folios 4331, 4338, 4344 and 4347).

204(54) On April 15, 1996, the SITRAMUN-LIMA filed an amparo for legal protection against the Municipality of Lima, on behalf of the union members, requesting, inter alia, that Resolution No. 044-A-96 be found inapplicable on the grounds that its implementation entailed a reduction of 30% in their compensation, in complete disregard of the collective bargaining agreements providing for several increases in compensation, with the aggravating factor that the provisional wage brackets had not been published or notified. [FN96]

[FN96] Cf. Judgment rendered by the Tribunal Constitucional (Constitutional Court) on December 10, 1997 (file of appendixes to the application, appendix 33, folio 1721).

204(55) On December 10, 1997, the Tribunal Constitucional (Constitutional Court) found the amparo for legal protection "sustained in part" and "Article 2 of Mayoral Resolution No. 044-A-96 inapplicable to the members of the union insofar as it establishes wage brackets," and ordered "the Mayor of the Municipality to pay the difference resulting from the reduction in pay, for the period effectively worked while such resolution had been implemented." [FN97] The Court based its decision on the following grounds:

"pursuant to Law No. 26553, Article 15, whereby the 1996 Public Sector Budget is approved, the payroll may only be affected by the deductions prescribed by law or by court order, or as a result of an administrative loan, and other items agreed on by the civil servant or dismissed worker [,] and the reduction implemented by the Municipality of Lima at its discretion does not fall within any of these […,] especially if we consider that subsequent Public Sector Budget laws authorized Local Governments to make cost-of-living adjustment raises through collective bargaining processes."

[FN97] Cf. Judgment rendered by the Tribunal Constitucional (Constitutional Court) on December 10, 1997 (file of appendixes to the application, appendix 33, folio 1721).

204(56) By means of Mayoral Resolution No. 3499 of August 24, 1999, the Municipality of Lima resolved, inter alia, "to set aside Article 2 of Mayoral Resolution No. 044-A-96 of January 17, 1996, as from the effective date of the resolution" and "to determine the difference in amount of the total compensation of the Officers and Civil Servants of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) from January 1, 1996, and for the period actually and effectively worked […,], establishing the No. of workers affected and the total amount due." [FN98]

[FN98] Cf. Lima Mayoral Resolution No. 3499 of August 24, 1999 (file of appendixes to the answer to the application, appendix 32, folio 4334).

204(57) On October 19, 1998, the Court responsible for enforcing the judgment issued an Order, directing the Municipality of Lima to comply with the judgment rendered by the Tribunal Constitucional (Constitutional Court) on December 10, 1997 (supra para. 204(55). [FN99]

[FN99] Cf. Order issued by the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Corporate Provisional Court Specializing in Public Law) on July 17, 2000 (file of appendixes to the application, appendix 33, folios 1726-1728).

204(58) On November 2, 1998, the Municipality of Lima formally objected to Order of October 19, 1998 (supra, para. 204(57). On July 17, 2000, the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Provisional Corporate Court Specializing in Public Law) issued a decision dismissing the abovementioned objection. [FN100] On June 18, 2001 the Sala de Derecho Público (Public Law Chamber) affirmed said decision on the grounds that "it is mandatory to enforce final judgments, and no entity may be exempted from compliance […] objections may only be grounded on discharge or termination of the obligation." [FN101]

[FN100] Cf. Order rendered by the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Corporate Provisional Court Specializing in Public Law) on July 17, 2000 (file of appendixes to the application, appendix 33, folios 1726-1728).

[FN101] Cf. Order rendered by the Sala de Derecho Público (Public Law Chamber) on June 18, 2001 (file of appendixes to the application, appendix 33, folio 1729).

204(59) The Municipality of Lima issued several Mayoral Resolutions between July 1999 and November 2002, authorizing Staff and Treasury Offices to make payments for wage and salary readjustments. [FN102] The State complied with the court order of December 10, 1997 in respect of the workers active at the municipality and of those who receive a pension, [FN103] as well as with respect to some workers that were not reinstated. [FN104]

[FN102] Cf. Lima Mayoral Resolutions No. 00681-99 of July 20, 1999; No. 00799-99 of August 26, 1999; No. 6257 and No. 6258 of May 17, 2000; No. 12067-2000 and No. 12068-2000 of December 20, 2000; No. 00760-2001 of May 30, 2001; No. 19973 of June 26, 2001; No. 21664 of June 28, 2001; No. 35286 of November 9, 2001; No. 38036 of December 18, 2001; No. 3210 of January 16, 2002; No. 10469 of May 9, 2002; No. 11336 of June 19, 2002; No. 14779 of August 13, 2002; and No. 16409 of November 5, 2002; and the Final Minutes of the Employer-Employee Committee of the SITRAMUN-LIMA, 2000 (file of appendixes to the answer to the application, appendixes 31, 33, 35, 36, 38-46 and 48-51, folios 4331, 4338, 4344, 4347, 4352 to 4372 and 4379 to 4388).

[FN103] Cf. Public hearing held at the seat of the Court on September 21 and 22, 2005, answer of the Commission and the common intervener to a question posed by the Court.

[FN104] Cf. Statement by witness Juan de Dios Berrospi-Pérez (file of preliminary objections, merits, reparations and costs, Volume V, folios 1517-1522).

D.2) Compensation Benefits

204(60) The SITRAMUN filed an appeal for legal protection against the Municipality of Lima, requesting compliance with collective bargaining agreements entered into between 1989 and 1995. On December 13, 1996, the Sexto Juzgado Civil de Lima (Sixth Civil Court of Lima) sustained the complaint, ordering:

The Municipalidad de Lima Metropolitana (Municipality of Metropolitan Lima) to comply with the Collective Bargaining Agreements entered into with the Lima Municipal Workers Union - SITRAMUN, from 1989 to 1995, which directly affect wages, allowances, bonuses and other employee benefits, and likewise to pay the workers who are members of that union the amounts due for such items during 1992 through 1995, an average of twenty four thousand, one hundred seventy-six and twenty (24,176.20) nuevos soles for each worker as well as unpaid monthly wages from September through December 1995. [FN105]

[FN105] Cf. Judgment rendered by the Sexto Juzgado Civil de Lima (Sixth Civil Court of Lima) on December 13, 1996 (file of appendixes to the application, appendix 36, folio 1802).

204(61) On November 18, 1998, the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) rendered judgment, affirming the decision of the Sexto Juzgado Civil de Lima (Sixth Civil Court of Lima) of Lima entered on December 13, 1996. [FN106]

[FN106] Cf. Judgment rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Provisional Corporate Chamber Specializing in Public Law) on November 18, 1998 (file of appendixes to the application, appendix 36).

204(62) The Municipality paid part of the outstanding amounts due for October, November and December, 1995 [FN107] to some former employees, alleged victims in this case, and paid off the total debt in respect of one of them. [FN108]

[FN107] Cf. Statement by witness Juan de Dios Berrospi-Pérez (file of preliminary objections, merits, reparations and costs, Volume V, folios 1517-1522).

[FN108] Cf. Statement by witness Yeni Zully Cubas-Santos (file of preliminary objections, merits, reparations and costs, Volume V, folios 1523-1528).

204(63) On November 17, 2004, the Primer Juzgado Especializado en lo Civil (First Court Specializing in Civil Matters) of the Corte Superior de Justicia de Lima (Supreme Court of Justice of Lima) issued Decision No. 63, declaring that the order of the appeal for legal protection of November 18, 1998 (supra para. 204(61) inures to the benefit "of those workers who were members of the SITRAMUN LIMA at the time the complaint was filed", and included considerations regarding the procedure to determine which individuals would be entitled to such benefit. [FN109]

[FN109] Cf. Order No. 63 rendered on November 17, 2004 by the Primer Juzgado Especializado en lo Civil (First Court Specializing in Civil Matters) of the Corte Superior de Justicia de Lima (Supreme Court of Justice of Lima) (file of appendixes of preliminary objections and possibly merits, reparations and costs, Volume VIII, folio 2657).

E) REGARDING TO THE LAND LOCATED IN THE DISTRICT OF LA MOLINA

204(64) On September 22, 1987, the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) issued Mayoral Resolution No. 1757, [FN110] ordering the registration "with the Registro de la Propiedad Inmueble de Lima (Land Registry of Lima), in the name of the Municipalidad de Lima Metropolitana (Municipality of Metropolitan Lima), of the land, totaling 85,200.00 square meters, […] located in the area known as Pampa El Arenal, district of La Molina, Province and Department of Lima […,] and "to award directly and for no consideration to […] SITRAMUN-LIMA the [aforementioned] land to be used for urban development to the benefit of its members." The Resolution further provided that "in the event the beneficiaries of this award fail to comply with the provisions set forth in Article 24 of Executive Order No. 004-85-VC as grounds for lapsing or termination, the land shall revert to the Municipality of Lima, without any compensation therefore." Said award was registered with the Registros Públicos de Lima (Public Registries of Lima) under entry no. 2-C, Record No. 257334. [FN111]

[FN110] Cf. Lima Mayoral Resolution No. 1757 of September 22, 1987 (file of appendixes to the closing argument brief of the common intervener, appendix 86, folio 6038).
[FN111] Cf. Notarial deeds of accord and satisfaction and sale and purchase of land executed by the SITRAMUN on April 11, 1998 and July 20, 1998 (file of appendixes to the answer to the application, appendixes 52 and 53, folios 4395 and 4407).

204(65) On April 28, 1993, the Municipality of Lima issued Mayoral Resolution No. 399, granting a three-year extension for the completion by the SITRAMUN of the relevant processes and of the urban development of the land awarded to the union. [FN112]

[FN112] Cf. Lima Mayoral Resolution No. 399 of April 28, 1993 (file of appendixes to the submission of comments by the common intervener submitted on January 4, 2006, Appendix

3(2), folio 6714); Lima Mayoral Resolution No. 822 of March 2, 1999 (file of appendixes to the submission of closing arguments by the common intervener, appendix 101, folio 6091); and Lima Mayoral Resolution No. 267 of January 16, 1998 (file of appendixes to the application, appendix 38, folio 1869).

204(66) On December 28, 1995, Resolution No. 265-95 was issued and published in the Official Gazette ""El Peruano"" of February 16, 1996. By means of this resolution, the Urban Development Director of the Municipality of Lima authorized the SITRAMUN "to complete in a period […] not exceeding 24 months [,] following notice of the […] Resolution, the Urban Development works, the projects of which are cleared" in the same resolution. [FN113]

[FN113] Cf. Resolution No. 265-95-MLM/SMDU-DMDU issued by the Directora Municipal de Desarrollo Urbano (Urban Development Municipal Director) of the Municipalidad de Lima (Municipality of Lima) on December 28, 1995 (file of appendixes to the submission of closing arguments by the common intervener, appendix 90, folios 6046 to 6050); and Judgment rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Provisional Corporate Chamber Specializing in Public Law) rendered on August 19, 1999 (file of appendixes to the application, appendix 38, folio 1880).

204(67) On January 16, 1998, the Municipality of Lima issued Resolution No. 267, [FN114] declaring the award of the land located in the district of La Molina to have lapsed, for failure to complete the urban development works within the stipulated term, and ordering cancellation of the registration with the Land Registry. In said Resolution, it was further resolved that the land would remain reserved "for the implementation of a Municipal Housing Program for municipal workers providing sufficient proof of being in need of a dwelling." By means of Mayoral Order No. 005-98 [FN115] of January 16, 1998, the Municipal Housing Program was created, based on the land reverted to the Municipality. In addition, it established that "in the case of land plots transferred to third parties, where the transferee has completed more than 60% of the construction work and provided that the transferee does not own another piece of property, the transferee may purchase title to the land directly from the Municipality at the market price, which shall be determined by an expert appraiser."

[FN114] Cf. Mayoral Resolution No. 267 of January 16, 1998 (file of appendixes to the application, appendix 38, folio 1869).

[FN115] Cf. Mayoral Order No. 005-98 of January 16, 1998 (file of appendixes to the submission of closing arguments by the common intervener, appendix 93, folio 5794).

204(68) During 1998, some owners of plots in said land registered "notices" on the land title "due to the existence of curable defects consisting of lack of a final official approval of finished works in connection with the urban development project and authorization to sell the plots therein freely." [FN116]

[FN116] Cf. Notes registered with the Registro de la Propiedad Inmueble de Lima (Land Registry of Lima) (file of appendixes to the submission of comments by the common intervener submitted on January 4, 2006, Appendix 3(8), folio 6731).

204(69) On January 19, 1999, the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Provisional Corporate Court Specializing in Public Law) granted the amparo for legal protection filed by the SITRAMUN-LIMA, and ordered "to set aside Mayoral Resolution No. 267 and Mayoral Order No. 005-98, […], restoring the conditions existing prior to the constitutional violation claimed." The Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) affirmed this decision on August 19, 1999, stating, inter alia, that "defendant, in issuing Mayoral Resolution No. 267 and Mayoral Order No. 005-98, both of January 16, 1998, failed to notice that Resolution No. 265-95 […], published on February 16, 1996 was in full force and effect" (supra para. 204(66); therefore, termination of the award of the land could not have been ordered." [FN117]

[FN117] Cf. Judgment rendered by the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Corporate Provisional Court Specializing in Public Law) on January 19, 1999; and judgment rendered by the Sala Corporativa Transitoria Esp[ecializada en Derecho Público (Provisional Corporate Chamber Specializing in Public Law) on August 19, 1999 (file of appendixes to the application, appendix 38, folios 1872 and 1880).

204(70) On March 2, 1999, the Municipality of Lima issued Mayoral Resolution No. 822, declaring "Resolution No. 267 accepted and therefore final (supra para. 204(67) and ordered "to request Empresa Municipal Inmobiliaria de Lima S.A (EMILIMA S.A) (Lima Real Estate Municipal Corporation) and the Dirección Municipal de Desarrollo Urbano (Office of the Urban Development Municipal Director) to implement this Resolution." [FN118]

[FN118] Cf. Lima Mayoral Resolution No. 822 of March 2, 1999 (file of appendixes to the submission of closing arguments by the common intervener, appendix 101, folio 6091).

204(71) On January 28, 2000, the Tribunal Registral (Registrations Court) issued Decision No. 018-2000, directing the registration of Mayoral Resolution No. 822 [FN119] (supra para. 204(70).

[FN119] Cf. Order No. 018-2000 rendered by the Tribunal Registral (Registrations Court) on January 28, 2000 (file of appendixes to the submission of closing arguments by the common intervener, appendix 105, folio 6097).

204(72) On October 20, 2000, the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Provisional Corporate Court Specializing in Public Law) rendered a decision, declaring "Mayoral Resolution No. 822, issued on March 2, 1999 and Tribunal Registral (Registrations Court) Decision No. 018-2000 of January 28, 200[0 (supra para. 204(70) and 204(71)] inapplicable on the grounds that they are contrary to and constitute an attack against the claims asserted in the […] proceeding", regarding of the compliance with the judgment rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on August 19, 1999 (supra para. 204(69). [FN120]

[FN120] Cf. Order rendered by the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Corporate Provisional Court Specializing in Public Law) on October 20, 2000 (file of appendixes to the submission of closing arguments by the common intervener, appendix 102, folio 6093).

204(73) On July 7, 2000, the Municipality of Lima instituted an action before the Décimo Cuarto Juzgado Civil (Fourteenth Civil Court) of the Corte Superior de Lima (Supreme Court of Lima) to annul a fraudulent decision with authority of a final judgment, against the Asociación Sindicato de Trabajadores Municipales de Lima (Lima Municipal Workers Union Association), the judge of the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Provisional Corporate Court Specializing in Public Law) of the Corte Superior de Lima (Supreme Court of Lima), court members of the Sala Especilaizada en Derecho Público (Chamber Specializing in Public Law) of the Corte Superior de Lima (Supreme Court of Lima) and the Public Attorney in charge of the affairs concerning the Judiciary, asserting that the judgments of January 19 and August 19, 1999 (supra para. 204(69) are contrary to the legal system. The Municipality of Lima claimed in the complaint that said Decisions were defective, to wit: "Fraud as to the alleged Right to Property", because it upheld SITRAMUN's right to property even though it was subject to a condition and "Fraud as to Legal Standing", for the land was awarded on September 22, 1987 and the registration of the fake SITRAMUN as Association was made on July 3, 1998; therefore such Association could have never been the beneficiary of the awarded land. [FN121]

[FN121] Cf. Action to annul a fraudulent decision with the authority of a final judgment (file of preliminary objections and merits, reparations and costs, Volume VIII, folios 2485 to 2503).

204(74) On June 30, 2003, the Décimo Cuarto Juzgado Civil (Fourteenth Civil Court) of the Corte Superior de Lima (Supreme Court of Lima) rendered Decision No. 30, "dismissing the complaint filed by the Municipality for lack of merit" (supra para. 204(73), on the grounds that "the facts […] described do not support the fraud allegation; they rather show disagreement with the entity given by the judge to the right claimed by the union, which should have been argued in

the same proceeding by filing the relevant remedy on appeal provided for by the law to annul or reverse the judgment if the aggrieved party considered that the judgment has been rendered in disregard of the law or of the proceedings." For the court to hear the action "it is not only necessary to show the existence of an error but also that such error result from the fraudulent conduct of the judge, or of the parties, or of the former with the latter, which has not been proven here." [FN122]

[FN122] Cf. Order No. 30 rendered by the Décimo Cuarto Juzgado Civil (Fourteenth Civil Court) of the Corte Superior de Lima (Supreme Court of Lima) on June 30, 2003 (file of preliminary objections and merits, reparations and costs, Volume VIII, folio 2507).

204(75) On August 18, 2003, the Municipality of Lima lodged an appeal against the judgment of June 30, 2003 [FN123] (supra para. 204(74). On June 9, 2005, the Sexta Sala Civil (Sixth Civil Chamber) of the Corte Superior de Justicia de Lima (Supreme Court of Justice of Lima) affirmed the appealed judgment. The court grounded its decision on the fact that in the complaint to annul judgment "there is no indication of the conduct, whether by act or omission, unilateral or collusive, by the parties to the lawsuit, by third parties, by the judge or by court assistants which involve harmful disregard of the proceeding, in whole or in part; in other words, there is no description of the alleged fraud or collusion." [FN124]

[FN123] Cf. Appeal lodged by the Municipalidad de Lima (Municipality of Lima) on August 18, 2003 (file of preliminary objections and merits, reparations and costs, Volume VIII, folio 2512).
[FN124] Cf. Judgment rendered by the Sixth Civil Chamber of the Supreme Court of Justice of Lima on June 9, 2005 (file of appendixes to the submission of comments by the common intervener submitted on January 4, 2006, Appendix 3(23), folio 6934).

F) REGARDING THE PREMISES OF THE UNION HEADQUARTERS

204(76) By means of Resolution No. 905 of October 16, 1980, the Municipality of Lima transferred the use, temporarily and for no consideration, of the property located at Jirón Lampa No. 170, to the SITRAMUN-LIMA and the FETRAMUN. It was established that they were to return said property when the Consejo Provincial de Lima (Provincial Council of Lima) so required to carry out works of public interest, and that they would be relocated to any other municipal property. [FN125]

[FN125] Cf. Lima Mayoral Resolution No. 905 of October 16, 1980 (submission by the Attorney General of the Metropolitan Municipalidad de Lima (Municipality of Lima) on its behalf on August 12, 2005, appendix 5, folio 5348).

204(77) A Direct Deal Memorandum or Collective Bargaining Agreement was signed on December 13, 1988, whereby the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) agreed, in Article 19, "to adopt the necessary measures to have the SITRAMUN-LIMA headquarters, located at Jirón Lampa No. 170, ground floor and upper stories, […] transferred by gift. [FN126]

[FN126] Cf. Memorandum of Agreement of December 13, 1988 (file of appendixes to the application, appendix 37, folio 1816).

204(78) On November 26, 1996, Agreement-in-Council No. 129 was executed and published on January 2, 1997, whereby it was established that all transfers of use of property owned by the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) were to be terminated. [FN127]

[FN127] Cf. Judgment rendered by the Supreme Court of Justice of Lima on March 19, 1998 (submission by the Attorney General of the Metropolitan Municipalidad de Lima (Municipality of Lima) on its behalf on August 12, 2005, appendix 5, folio 5349).

204(79) The Empresa Municipal Inmobiliaria de Lima S.A –EMILIMA-, responsible for the management of Municipality-owned real estate, instituted eviction proceedings against the SITRAMUN-Lima. By means of Judgment of March 19, 1998, the Corte Superior de Justicia de Lima (Supreme Court of Justice of Lima) upheld the complaint on the grounds that "even though the plaintiff undertook to adopt all necessary measures to transfer the property by gift to the defendant union, pursuant to the Direct Deal Memorandum, […], it is also true that said agreement does not bar termination of the transfer of use insofar, for both legal relationships are independent." [FN128]

[FN128] Cf. Judgment rendered by the Supreme Court of Justice of Lima on March 19, 1998 (submission by the Attorney General of the Metropolitan Municipalidad de Lima (Municipality of Lima) on its behalf on August 12, 2005, appendix 5, folio 5349); and judgment rendered by the First Provisional Corporate Court Specializing in Public Law on September 21, 1998 (file of appendixes to the application, appendix 37, folio 1823).

204(80) SITRAMUN-Lima filed suit against the Municipality of Lima to enforce compliance with, inter alia, Article 19 of the Direct Deal Memorandum of December 13, 1988 (supra. para 204(77). On March 11, 1999, the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) rendered a decision, allowing the complaint and ordering "the defendant Corporation to comply, in a period not exceeding ten days, with the relevant measures for the headquarters of the Sindicato de Trabajadores Municipales de Lima - SITRAMUN-LIMA (Lima Municipality Workers Union),

located at Jirón Lampa No. 170 – Lima - , ground floor and upper stories, be transferred by gift, together with all other provisions contained in Article 19" of the abovementioned Memorandum, on the grounds that the abovementioned Direct Deal Memorandum constitutes an administrative act in force because it has not been annulled and is independent of the decision taken in the eviction proceedings (supra para. 204(79). [FN129]

[FN129] Cf. Judgment rendered by the Sala Corporativa Transitoria Especializada de Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on March 11, 1999 (file of appendixes to the application, appendix 37, folio 1827).

204(81) On June 1, 1999, the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Provisional Corporate Court Specializing in Public Law) rendered a Decision, ordering the Municipality of Lima to comply with the enforceable judgment of March 11, 1999 entered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) (supra para. 204(80). [FN130] The Municipality of Lima filed an objection to enforce the judgment of March 11, 1999. On June, 23, 2000, the abovementioned Chamber rejected the objection. [FN131]

[FN130] Cf. Order rendered by the Primer Juzgado Corporativo Transitorio Especializado de Derecho Público (First Provisional Corporate Court Specializing in Public Law) on June 1, 1999 (file of appendixes to the application, appendix 37, folio 1832).

[FN131] Cf. Judgment rendered by the Sala Corporativa Transitoria Especializada de Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on June 23, 2000 (file of appendixes to the application, appendix 37, folio 1833).

204(82) On March 10, 2003, the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) and the SITRAMUN-LIMA signed the Final Memorandum of the Employer-Employee Committee Sitramun-Lima, wherein it was stipulated, in Article 11, that "the Municipality of Lima shall continue to transfer the use of the premises located in the Basement of the Municipality Hall to the Sindicato de Trabajadores Municipales de Lima, SITRAMUN, (Lima Municipality Workers Union) to be used as a union office." [FN132]

[FN132] Cf. Final Memorandum of the Employer-Employee Committee Sitramun – Lima of March 10, 2003 (file of appendixes to the answer to the application, appendix 60, folio 4445).

G) REGARDING THE WINDING-UP OF THE EMPRESA DE SERVICIOS MUNICIPALES DE LIMPIEZA DE LIMA (ESMLL) (LIMA MUNICIPAL CLEANING SERVICES CORPORATION)

204(83) Collection, sweeping, transportation and final disposal services regarding the solid waste generated by the District of Lima was in charge of the Empresa de Servicios Municipales de Limpieza de Lima (ESMLL) (Lima Municipal Cleaning Services Corporation). [FN133] Said corporation was established by means of Decree-Law No. 22918 of March 4, 1980, under domestic law, as a public legal entity, with administrative and financial autonomy. [FN134]

[FN133] Cf. Opinion of the Comisión de Servicios a la Ciudad y Medio Ambiente (Comisión de Servicios a la Ciudad y Medio Ambiente (Commission of Services to the City and the Environment)) of the Municipalidad de Lima (Municipality of Lima) (appendixes to the submission by the Public Attorney of the Municipalidad de Lima Metropolitana (Municipality of Metropolitan Lima) on its behalf on August 12, 2005, appendix 6, folio 5354).
[FN134] Cf. Judgment rendered by the Tribunal Constitucional (Constitutional Court) on July 8, 1998 (file of appendixes to the application, appendix 35, folio 1797).

204(84) The Municipality of Lima entered into an agreement with the VEGA-UPACA-Empresa RELIMA Consortium, whereby it was established that such corporation was to take over the functions of ESMLL as of July 1, 1996. [FN135]

[FN135] Cf. Opinion of the Comisión de Servicios a la Ciudad y Medio Ambiente (Commission of Services to the City and the Environment) of the Municipalidad de Lima (Municipality of Lima) (appendixes to the submission by the Public Attorney of the Metropolitan Municipalidad de Lima (Municipality of Lima) on its behalf on August 12, 2005, appendix 6, folio 5354).

204(85) On June 28, 1996, the Concejo Metropolitano (Metropolitan Council) of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) issued Agreement-in-Council No. 036, wherein the Council agreed to "dissolve and subsequently wind up the business of the Empresa de Servicios Municipales de Limpieza de Lima (ESMLL) (Lima Municipal Cleaning Services Corporation) due to the completion of its purpose, as provided for in the Ley General de Sociedades (General Business Entities Law), Article 359, paragraph 2." On July 1, 1996 the corporation was closed down. [FN136] On July 4, 1996, Agreement-in-Council No. 036 mentioned above was published in the Official Gazette "El Peruano." [FN137]

[FN136] Cf. Appeal for legal protection filed with the Décimo Cuarto Juzgado Especializado en lo Civil de Lima (Fourteenth Court Specializing in Civil Matters of Lima) on August 8, 1996 (file of appendixes to the submission of comments by the common intervener submitted on January 4, 2006, Appendix 2(18), folios 6636-6637).
[FN137] Cf. Agreement No. 036 of the Metropolitan Council of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) published in the Official Gazette "El Peruano" on July 4, 1996 (file of appendixes to the submission of requests and arguments, appendix 13, folio 3695).

204(86) On August 8, 1996, 273 employees of the ESMLL filed an appeal for legal protection, [FN138] requesting to stay the closing down of ESMLL as well as the effects of Agreement-in-Council No. 036 (supra para. 204(85). On July 8, 1998, the Tribunal Constitucional (Constitutional Court) declared there were grounds to file the writ and held "Agreement-in-Council No. 036 of June 28, 1996 inapplicable, ordering the reinstatement of the workers who have not collected their social benefits." [FN139] The Tribunal Constitucional (Constitutional Court) pointed out that:

Given that the Empresa de Servicios Municipales de Limpieza de Lima (Lima Municipal Cleaning Services Corporation) was established by means of Decree-Law No. 22918 […,] its WINDING-UP should have been effected by means of an instrument of the same hierarchy, pursuant to Article 103 of the Constitución Política del Estado (Political Constitution of the State) and Article 23 of Law No. 24948, Ley de la Actividad empresarial del Estado (State Business Activity Act) […].
The purpose of said corporation (ESMLL) is the collection, transportation and final disposal of solid waste for the whole area under the jurisdiction of the Province of Lima; a service that is not only of high priority but also permanent in time; therefore, the WINDING-UP of said corporation may not be grounded on the completion of its purpose […].
As a result, the collective redundancy of the employees is null and void […] insofar as the single and only cause giving rise to the abovementioned redundancy was the dissolution and winding up of the Empresa de Servicios Municipales de Limpieza de Lima (ESMLL) (Lima Municipal Cleaning Services Corporation).
This nullity may not be validated by the fact that the liquidators of said corporation informed the Sub-Dirección de Negociaciones Colectivas (Office of the Assistant Director for Collective Bargaining) of the Ministerio de Trabajo y Promoción Social (Ministry of Labor and Social Promotion), of the collective redundancy of the workers […].
That, since the violation of the constitutional right to work of the Empresa de Servicios Municipales de Limpieza de Lima (Lima Municipal Cleaning Services Corporation) staff[…] has been proved by means of the evidence on the record, it is necessary that the conditions which existed prior to the violation be restored […].

[FN138] Cf. Appeal for legal protection filed with the Décimo Cuarto Juzgado Especializado en lo Civil de Lima (Fourteenth Court Specializing in Civil Matters of Lima) on August 8, 1996 (file of appendixes to the submission of comments by the common intervener submitted on January 4, 2006, Appendix 2(18), folios 6636-6637).
[FN139] Cf. Judgment rendered by the Tribunal Constitucional (Constitutional Court) on July 8, 1998 (file of appendixes to the application, appendix 35, folio 1795).

204(87) On July 9, 1999, the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Provisional Corporate Court Specializing in Public Law) of the Corte Superior de Justicia de Lima (Supreme Court of Justice of Lima) ordered the Municipality of

Lima to comply with the judgment rendered by the Tribunal Constitucional (Constitutional Court) on July 8, 1998. [FN140]

[FN140] Cf. Brief No. 24 presented by the State on October 24, 2005 (file of preliminary comments, merits, reparations and costs, Volume VIII, folios 2315 and 2316).

204(88) On July 23, 1999, the Municipality of Lima filed a brief with the Primer Juzgado Corporativo Transitorio Especializado en Derecho Público (First Provisional Corporate Court Specializing in Public Law) of the Corte Superior de Justicia de Lima (Supreme Court of Justice of Lima), arguing that the Tribunal Constitucional (Constitutional Court) had excluded in its decision former employees who collected their redundancy pay. Likewise, the Municipality stated that only one employee did not collect such redundancy pay. [FN141]

[FN141] Cf. Brief No. 24 presented by the State on October 24, 2005 (file of preliminary comments, merits, reparations and costs, Volume VIII, folios 2315 and 2316).

204(89) On August 8, 2003, the 64º Juzgado Civil de Lima (64th Civil Court of Lima) issued Order No. 222, [FN142] determining, inter alia, two groups of employees: those who "have collected their social benefits, whether directly or through deposit in court [and, therefore,] following the rule set by the Tribunal Constitucional (Constitutional Court) in its Order, in its strict sense, such plaintiffs have terminated their employment relationship with the defendant;" and those who, despite the deposit in court made by the Winding up Committee of the ESMLL, were not deemed to have collected the social benefits, for several reasons, such as lack of notice of the deposit in court, the request made to labor courts for the return of the deposit, and the objection to the deposit in court. The Order was to reinstate 56 employees, alleged victims in the instant case, and denied reinstatement concerning of 217 employees. The Primera Sala Civil (First Civil Chamber) of the Corte Superior de Justicia de Lima (Supreme Court of Justice of Lima), in its decision of December 9, 2004, affirmed Order No. 222 inasmuch as it deems the objection partly groundless and orders to reinstate the 56 workers. [FN143] An appeal, which was granted without a stay on September 18, 2003, against Order No. 222, inasmuch as it denied reinstatement of 217 employees of the ESMLL, is still pending.

[FN142] Cf. Order No. 222 rendered by the 64th Civil Court of Lima on August 8, 2003 (file of appendixes to the answer to the application, appendix 69, folio 4477).
[FN143] Cf. Judgment rendered by the First Civil Chamber of the Supreme Court of Justice of Lima on December 9, 2004 (file of preliminary comments, merits, reparations and costs, Volume IV, folio 1110).

204(90) On June 10, 2004, the Concejo Provincial de Lima (Provincial Council of Lima) issued Agreement-in-Council No. 166, approving "the legislative initiative known as 'Bill

declaring the dissolution and winding up of Empresa de Servicios Municipales de Limpieza de Lima (ESMLL) (Lima Municipal Cleaning Services Corporation) ESMLL' for approval by the Congreso de la República (National Congress of Peru)." [FN144]

[FN144] Cf. Council Agreement No. 166 of June 10, 2004 (file of appendixes to the submission of final arguments by the common intervener, appendix 108, folio 6123).

204(91) On June 20, 2005, Julio César Morales, legal expert, as ordered by the 64º Juzgado Civil de Lima (64th Civil Court of Lima) on June 13, 2005, appeared together with the interested parties in the Staff Office of the Labor Relations Department of the Municipality of Lima, for the purpose of demanding compliance with the order to reinstate 28 workers, laid down in Order No. 222 of August 8, 2003 and affirmed by the Order of December 9, 2004 (supra para. 204(89). [FN145] The legal expert drew up a record of the proceeding. On August 3, 2005, said legal expert returned to the Office mentioned above to demand the reinstatement of another 7 workers. In both instances, the Head of the Labor Relations Department of the Municipality, at the time the records were being drawn up, stated that he was faced with a "legal impossibility" to proceed to the aforementioned reinstatement of the workers. [FN146]

[FN145] Cf. Reinstatement record of 28 workers of June 20, 2005 (file of preliminary objections, and merits, reparations, and costs, Volume VII, folio 2081).

[FN146] Cf. Reinstatement record of 7 workers of August 3, 2005 (file of preliminary objections, and merits, reparations, and costs, Volume VII, folio 2087).

H) MOTION TO ANNUL THREE JUDGMENTS RENDERED BY THE TRIBUNAL CONSTITUCIONAL (CONSTITUTIONAL COURT)

204(92) On May 29, 1997 the Peruvian Congress issued legislative resolutions, removing three of the seven Tribunal Constitucional (Constitutional Court) justices from office, and on November 17, 2000, Congress set aside said resolutions and they were reinstated to their office as justices of the Tribunal Constitucional (Constitutional Court). [FN147]

[FN147] Cf. Judgment rendered by the Tribunal Constitucional (Constitutional Court) on December 9, 2002 (file of preliminary objections, and merits, reparations, and costs, Volume V, folios 1430 to 1435).

204(93) The twelve judgments of the Tribunal Constitucional (Constitutional Court), that are alleged not to have been complied with in the instant case, were rendered during the time the Tribunal Constitucional (Constitutional Court) was composed of four justices. [FN148]

[FN148] Cf. Judgments rendered by the Tribunal Constitucional (Constitutional Court) on December 10, 1997, April 3, 1998, May 13, 1998, July 8, 1998, October 16, 1998, November 11, 1998, November 18, 1998, December 21, 1998, April 9, 1999 (2 judgments) and August 20, 1999 (2 judgments) (file of appendixes to the application, appendixes 33, 25, 27, 35, 28, 30, 40, 41, 39 and 29, folios 1721, 1482, 1523, 1795, 1546, 1665, 1944, 1956, 1912 and 1594).

204(94) On December 9, 2002, the Tribunal Constitucional (Constitutional Court) issued a judgment on several motions for "review or reversal of the judgments rendered by the Tribunal Constitucional (Constitutional Court) when it was composed of four justices, i.e., those entered between May 29, 1997 and November 17, 2000." In its motions, the Municipality of Lima requested review of the judgments rendered by the Tribunal Constitucional (Constitutional Court) on December 10, 1997, Case No. 459-97-AA/TC (supra para. 204(55), July 8, 1998, Case No. 1246-97-AA/TC (supra para. 204(86) and April 9, 1999 Case No. 063-98-AA/TC (supra para. 204(37). On December 9, 2002, the Tribunal Constitucional (Constitutional Court) rejected said motions on the grounds that "reversing [the judgments] after such a long time would impair numerous rights that have become vested in third parties and would ignore facts that occurred between June 1997 and November 2000, or even facts that have occurred up to the present. Such decision would seriously undermine the certainty of the legal system, creating a chaos the Court should prevent rather than promote." The Tribunal Constitucional (Constitutional Court) further stated that "the decision to uphold said judgments is based on this need for national legal certainty and in no way on the ethical endorsement of the fraudulent scheme that "allowed" the Tribunal Constitucional (Constitutional Court) to "function" during such a long time with only four justices." [FN149]

[FN149] Cf. Judgment rendered by the Tribunal Constitucional (Constitutional Court) on December 9, 2002 (file of preliminary objections, and merits, reparations, and costs, Volume V, folios 1430 to 1435).

I) REPORT OF THE OFFICE OF THE OMBUDSMAN OF PERU

204(95) On October 26, 1998, the Office of the Ombudsman of Peru issued a report called "Non-compliance with Judgments by the State Administration", in which it included recommendations to State agencies urging compliance with court orders. [FN150]

[FN150] Cf. Report by the Ombudsman on "Non-compliance of judgments by the State Administration" of October 26, 1998 (file of appendixes to the submission of comments by the common intervener submitted on January 4, 2006, Appendix 5(22), folio 7067).

204(96) On July 16, 2003, Ministerial Resolution No. 238-2003-PCM was issued, creating a commission to study and prepare technical and regulatory proposals with a view to contributing to the compliance with judgments by the State administration. Said commission was composed

by representatives of the Presidency of the Council of Ministers, the Ministry of Justice, the Ministry of Economy, the Superintendence of National Assets and the Office of the Ombudsman. It was set up on July 31, 2003 and completed its report on October 24, 2003. Said commission informed that there were over five hundred judgments pending compliance by various agencies of the Executive Branch, without including local governments. [FN151]

[FN151] Cf. Amicus curiae Brief submitted by the Ombudsman of Peru on April 28, 2005 (file of preliminary comments, and merits, reparations, and costs, Volume V, folios 1140, 1142 y 1146).

COURT COSTS AND EXPENSES

204(97) The alleged victims and their representatives conducted various processes and proceedings in their endeavors to obtain the enforcement of the appeal for legal protection orders issued in their favor and disbursed expenses generated by having resorted to the Inter-American System for the Protection of Human Rights.

IX. VIOLATION OF ARTICLES 25 AND 8 OF THE CONVENTION REGARDING ARTICLE 1(1) (RIGHT TO JUDICIAL PROTECTION AND RIGHT TO A FAIR TRIAL)

Argument by the Commission

205. The Commission did not allege violation Article 8 of the Convention. As regards the alleged violation of Article 25(2)(c) of the Convention, in relation to Article 1(1), the Commission stated that:

a) the State did not comply with the final judgments rendered by the Peruvian courts ordering: a) the reinstatement of the workers dismissed by the Municipality of Lima following a call for certain periodic assessments and evaluations that were not duly published and which were designed as a means of dismissing staff members, with disregard for public service career conditions; b) the Municipality of Lima to reinstate those workers who were dismissed by for participating in the strike organized by the union, which was declared illegal, or those dismissed as a result of the winding-up of Lima Municipal Services Corporation (ESMLL); c) the Municipality of Lima to pay back to said workers the salaries, allowances, bonuses, and other employee benefits, owed them under the collective bargaining agreements entered into with the union between 1989 and 1995; d) to set aside administrative resolutions whereby the reduction of wages, salaries and pensions of municipal workers had been ordered; e) the Municipality of Lima to transfer to the union certain premises for it to use as its headquarters, as the Municipality of Lima was bound to do according to the agreement signed on December 13, 1988, to annul the termination of the award of the land located in La Molina, which was transferred to the union for no consideration and which were to be used for a housing program and the cancelllation of the respective “registration record”; and f) the inapplicability to the workers of the dissolution and winding up of Empresa de Servicios Municipales de Limpieza de Lima (ESMLL) (Lima

Municipal Cleaning Services Corporation), their reinstatement to their jobs and payment to them of their respective damages;

b) the State's obligation to enforce compliance with court rulings becomes of paramount importance when the obligation to comply with such ruling falls on a State agency, which "may have a tendency to use its power and its privileges to try to ignore court decisions rendered against it;"

c) Peru has avoided compliance with Peruvian court judgments repeatedly, which revealed "a pattern of systematic disregard of court decisions;"

d) when compelled to comply with the court decisions, the Municipality of Lima "created additional conditions, transferring some of its own functions to the workers for the purpose of rendering their situation more burdensome and delaying compliance, clearly abusing public power, and pursuing regulatory arguments to evade responsibility;"

e) the right to effective judicial protection enshrined in Article 25 of the American Convention and, specifically, the obligation to which subparagraph 2(c) of said article refers, "implies that States must enforce such decisions in good faith and without delay so that the victims do not need to seek additional remedies;"

f) the State "has formally, clearly and specifically admitted to refusing to comply with the court decisions and has accordingly accepted international responsibility;"

g) before the Court, the State challenges the validity of the actions taken by its own organs, a procedural position not compatible with the exercise of rights established under the American Convention;

h) the State has also argued before the Court that the judgments result from a defective construction of the law and has submitted a large amount of evidence in an attempt to have the Court "assess the fairness of the judgments," and excuse compliance therewith. The construction exercise proposed to the Court is foreign to the jurisdiction of the organs of the Inter-American System;

i) the State has failed to prove the alleged corrupt collusion in issuing the judgments rendered in this case despite several domestic investigations. When the Municipality of Lima disagreed with the court decisions it availed itself of the remedies at its disposal. If the Municipality continued to disagree with the final judgment denying the appeal, it could have availed itself of special remedies, such as the action against a fraudulent res judicata. The State has provided evidence to this Court of having done so;

j) the State's argument regarding the "cases closed for non-suit by the plaintiff" was first presented for consideration by the parties and by the Court after over two years of the expiration of the time to answer the complaint, and it was not based on supervening facts, but, rather, it was grounded on facts that occurred in 1999 and 2000. Once the parties have formalized their conclusions in the closing arguments, it is not suitable for a party to introduce new arguments that were available during earlier stages. Anything to the contrary defeats the right to defense and cannot be cured by a submission of comments. The Commission places on record that it finds no element in the arguments advanced by the State, or in the succinct documents accompanying said arguments, to conclude that the fact that the cases were closed entails the termination of rights recognized in the challenged judgments, or affects their final nature, or the defendant's obligation to comply with them. The Commission requests these arguments be dismissed as time-barred and untenable; and

k) requests the Court to conclude that the Peruvian State has violated, to the detriment of the alleged victims in the instant case, the right to judicial protection enshrined in Article 25(2)(c) of

the American Convention, in relation to Article 1(1) thereof, by having failed to comply with the final and enforceable judgments forming the subject-matter of the instant case; to declare the arguments made by the State seeking the resolution of a dispute between two government entities inadmissible; and to refuse to examine the State's arguments in relation to the defects of the judgments at issue here.

Argument by the common intervener for the representatives

206. As regards the alleged violation of Article 25(2)(c) of the Convention, with respect to Article 1(1) thereof, the common intervener pointed out that:

a) court systems must have the decisions they adopt enforced. "If the State does not comply with the orders directing reparation of violations, it is affecting peaceful life in common and violating citizens' rights to effective judicial protection." Compliance with a court decision may not depend on the willingness or discretion of the party obliged, i.e. the State in this case;
b) the orders directing the reinstatement of workers who were members of the SITRAMUN-LIMA to their jobs in the Municipality of Lima, the payment of their wages and other agreed benefits that they were not paid during the time of their dismissal, as well as the restoration of all other rights directly recognized to the SITRAMUN-LIMA, have not been complied with and the judicial remedies instituted to seek compliance with said judgments were completely ineffective. "As a result, the State incurs in international responsibility for the violation of the right to effective judicial protection, enshrined in Articles 8(1) and 25 of the Convention;"
c) the refusal to comply with "the judgments pronounced in favor of the SITRAMUN-LIMA workers and the lack of an effective investigation and punishment of those responsible for such non-compliance constitute an alarming and continuing pattern of denial of justice;"
d) "the Municipality of Lima has failed to abide by all the judgments rendered by the Sala de Derecho Público (Public Law Chamber) of the Corte Superior de Lima (Supreme Court of Lima) and the Tribunal Constitucional (Constitutional Court) that admitted the appeals for legal protection requested by the [alleged] victims from 1996." Even though all judgments passed on to acquire the authority of a final judgment, none of them have been complied with by the Municipality of Lima;
e) when the State has purported to comply with some court decisions ordering the reinstatement of workers to their jobs, "it has done so by providing that in the event there is no vacancy or budget availability, the worker will have to request an authorization for job creation along with the respective budget availability, remaining on call in the meantime without pay and subject to new assessment." The State has thus shifted onto the alleged victims the burden of complying with an obligation which is not theirs;
f) the State has failed to prove in court in absolutely none of the cases that the judgments it disregarded have resulted from an act of illegal collusion between the legal representatives of the SITRAMUN-LIMA or its legal counsel and the judicial authorities responsible for said court decisions;
g) as regards the closing down of ESMLL, the Consejo Provincial de Lima (Provincial Council of Lima) issued Agreement-in-Council No. 166, dated June 10, 2004, whereby it adopted a legislative initiative, the 'Bill declaring the dissolution and winding up of the Empresa de Servicios Municipales de Limpieza de Lima (ESMLL) (Lima Municipal Cleaning Services Corporation) ESMLL' for approval by the Congress of Peru. This bill clearly indicates the

intention of the Municipality of Lima to "legitimize" the illegal closing down of the corporation, and is a reaction to the judgment rendered by the Tribunal Constitucional (Constitutional Court) on July 8, 1998, declaring Agreement-in-Council No. 036 null and void;

h) as regards the reinstatement of ESMLL employees ordered by the Tribunal Constitucional (Constitutional Court), the Municipality of Lima assumed that said court order allowed the interpretation that the payment made to said workers by the Liquidation Board, constituted per se the collection of social benefits on the part of some of the alleged victims, something which would exclude them from the reinstatement order. The alleged victims of ESMLL that were part of the amparo proceeding and who collected an amount of money as so-called social benefits may not be excluded from the scope of the judgment given that such exclusion would render the remedy sought by the aggrieved parties illusory and ineffectual, which is contrary to the requirements of the recourse provided for in Article 8 of the Convention. After filing the complaint, a large No. of plaintiffs collected an amount of money as settlement of social benefits. It should not be considered that such act constitutes an implied waiver, in the sense of abandoning the cause of action stated in the complaint, for, according to the Peruvian legal system, an action may only be waived by means of an express document bearing a signature authenticated before the relevant court, since Article 341 of the Code of Civil Procedure of Peru sets forth that waiver is not presumed. The collection of such amounts may not be considered as a form of consent to the termination of the employment relationship either, because during the amparo [protection of constitutional guarantees and rights] proceedings the matters at issue were not related to employment rights but to fundamental constitutional rights, which must be remedied by restoring the original situation;

i) the payments and deposits in court in favor of ESMLL workers were made while the amparo proceeding was still pending and in some cases the alleged beneficiaries of said deposits were living in circumstances of extreme insecurity and need, most of them being women breadwinners over 40 years of age and with few job opportunities. In fact, the increases in salaries and allowances stipulated in several collective bargaining agreements and arbitration awards were not considered in any settlement. The payment made did not cover the debts for unpaid salaries and interest accrued before dismissal; the severance pay was insignificant and illegal. The payments made constitute only part payments that, under Article 1220 of the Peruvian Civil Code, may not be regarded as actual payment insofar as the obligation was not entirely satisfied;

j) they request the Court reinstatement to their former jobs or similar positions as relief for the violation of their right to employment and subsequent non-compliance with the judgments to date —even with respect to those workers who did not collect their social benefits; and

k) as regards the cases that according to the State were "closed for non-suit by the plaintiff", the alleged "closed" status in which they supposedly are was the result of the recommendations made by the "Órgano del Control Institucional de la Magistratura" (Institutional Oversight Body of the Judicial Council) (sic), which ordered this technical and administrative measure to reduce the No. of cases burdening the courts. This measure and court order do not imply the conclusion of the judgment enforcement proceedings on the grounds of non-suit by the alleged victims because this is not permitted under statute. Pursuant to Article 350(1) of the Peruvian Code of Civil Procedure non-suit does not apply "in proceedings that have reached the enforcement of the judgment stage."

207. The common intervener for the representatives argued that the State violated Article 25(1) of the Convention; an issue that was not included in the application filed by the Commission. As regards the alleged violation the common intervener stated that:

a) the criminal complaints lodged by the alleged victims requesting investigation and punishment of the State agents responsible for the non-compliance with the judgments pronounced in favor of the alleged victims by the Corte Superior de Lima (Supreme Court of Lima) and the Tribunal Constitucional (Constitutional Court) were dismissed by the criminal courts and the cases were closed. The remedies provided for in Peruvian legislation "proved ineffective" to investigate and duly punish those responsible for the non-compliance with judgments;
b) "the 'approval' of such non-compliance with judgments by the criminal courts, were not only a violation of the right to effective judicial protection of the [alleged] victims, reflects the lack of autonomy and independence of the Peruvian judiciary and its inability to guarantee the enforcement of court decisions which have acquired the authority of final judgments;" and
c) the common intervener requests the Court to declare the criminal actions ineffective to redress the violation of the alleged victims' right to have the judgments pronounced in their favor enforced.

208. The Common intervener for the representatives argued that the State violated Article 8 of the Convention; an issue that was not included in the application. The intervener pointed out that:

a) the dismissals of workers as a result of the assessment programs and administrative proceedings following the declaration of illegality of the strike, the reduction of 30% in wages, salaries and pensions of the workers as well as the dissolution and winding up of the Empresa de Servicios Municipales de Limpieza de Lima (ESMLL) (Lima Municipal Cleaning Services Corporation) ESMLL were procedures undertaken in flagrant violation of the guarantees of the due process of the law enshrined in Article 8 of the Convention;
b) administrative proceedings were unlawfully and arbitrarily instituted against SITRAMUN LIMA workers for exercising their right to strike and on other related grounds, for the purpose of proceeding to their unlawful dismissal. The statutory requirements for the Comisión de Procesos Administrativos (Administrative Proceedings Committee) to issue a report before commencing an administrative proceeding, to serve notice on the parties affected of the resolution to commence an administrative proceeding and to make the records of the administrative proceedings available to the affected workers were not observed, thus preventing them from exercising their right to defense. Moreover, the five-day extension requested in order to file the appropriate defenses against the resolutions ordering their dismissal, which were not based on findings of fact and conclusions of law, was not granted. Nor were the strikers requested to return to work prior to the commencement of the administrative proceeding; and
c) Decree-Law No. 26093 indicates that the dismissal by reason of redundancy was a discretionary power conferred upon the head of each budgetary unit and not an obligation imposed by a rule ranking as a statute. The assessment organized by the Municipality of Lima was to be carried out on the basis of the terms "contained in Appendix No. 01", which were not published. A new ground for dismissal was unilaterally and unlawfully included in those terms, which was directly related to the fundamental right to employment and the guarantee of job stability.

Argument by the State [FN152]

[FN152] The State did not submit independent arguments to refer specifically to the alleged violation of Articles 8 and 25 of the Convention.

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209. As regards the alleged violation of Articles 25 and 8 of the Convention, concerning Article 1(1) thereof, the State pointed out that:

a) in the Peruvian legal system there is no procedural mechanism that allows a civil servant to seek relief for wrongful or unfair dismissal. "That is why individuals resort to the amparo for legal protection;
b) "in most cases, the judgments of which non-compliance is asserted result from fraudulent proceedings, conducted by judges that, under the dictates of the SIN (Servicio de Inteligencia Nacional (National Intelligence Service)), sustained complaints that lacked merit." "Consequently, the State […] does not recognize legal validity, binding effect, or enforceability to judgments rendered under such circumstances;"
c) the State "reaffirms its manifest willingness to solve those cases in which, under domestic law, it has been proven through honest proceedings and autonomous and impartial commissions." Autonomous commissions have been created, formed by independent representatives "with virtually decisive participation of the three main trade unions of Peru" and of the Office of the Ombudsman, which have reviewed all reported cases. "There is on record a large No. of former employees of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima), whose dismissals, in the commissions' opinion, were irregular." The State acknowledges and defers to these conclusions, and will proceed to provide the appropriate relief, according to the terms prescribed by applicable law;
d) "the omission to challenge the resolutions constituted grounds for rejection, something which was nevertheless overlooked by the judges who granted the appeals for legal protection [protection of constitutional guarantees and rights] and whose decisions are at issue in this proceeding;"
e) the staff assessment process conducted by the Municipality was transparent and the assessments were duly published and were backed by express statutory authority; therefore, there was a statutory obligation to carry them out. In order to preserve the transparency of these processes, the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) engaged the services of an independent institution to administer them: the Universidad Particular "San Martín de Porres" ("San Martín de Porres" Private University)." Belonging to the civil service career does not guarantee perpetual tenure;
f) the state outlined the reasons why, in its opinion, the collective agreements the orders of amparo directed to enforce were ipso jure null and void and disregarded or violated the ratified single compensation and pension system for civil servants. In addition, it asserted that the Municipality of Lima has observed and executed the decision rendered by the Tribunal Constitucional (Constitutional Court) on December 10, 1997 and has "proceeded to pay back, in successive stages the amounts that had been reduced, something which, according to the judgment itself, must be done only with respect to the "days actually worked;"

g) as regards the collective agreements on compensation benefits, the judgment is at the enforcement stage. The Primer Juzgado Especializado de Lima (First Specialized Court of Lima) has issued orders related to enforcement. Pursuant to applicable law, the monetary obligations which are to be discharged from the budget of a public agency must be scheduled in advance in order to provide sufficient funds in the forthcoming budget periods. The Municipalidad de Lima Metropolitana (Municipality of Metropolitan Lima) has already made the necessary provisions;

h) among the different decisions indiscriminately included in the application, there are some that are but declaratory in nature, which do not contain any specific order, do not refer to any dismissal, do not identify any person whatsoever and therefore are not subject to compliance or non-compliance. The analysis of the decisions of July 27 and November 16, 1998 and other decisions handed down by the Sala Corporativa Transitoria de Derecho Público (Corporate Provisional Public Law Chamber) "fall within this category;" consequently, the State requests the court that the decisions of July 27 and November 16, 1998 be excluded because they do not contain any order;

i) as regards the ESMLL case, the court proceeding is still pending and is now at the enforcement stage. The identification by name of the persons included in the scope of the decision of the Tribunal Constitucional (Constitutional Court) has delayed its completion. The decisions that put an end to the dispute concluded that: (i) the deposit in court has the same effect as payment; (ii) duly notified deposits in court that have not been challenged are valid and have the same effect; and (iii) those workers that have not been notified or that have shown that they were unable to file an objection by reason of a force majeure event are deemed not to have collected their benefits. The No. of persons in this situation amounts to 56;

j) reinstatement is factually and legally impossible insofar as ESMLL has ceased to exist. ESMLL workers were not part of the Municipalidad de Lima Metropolitana (Municipality of Metropolitan Lima) for ESMLL was a separate and independent legal entity; and naturally, its workers were subject to labor terms and conditions different from those of the municipal workers. Consequently, it is factually impossible to reinstate employees to an inexistent corporation and it is legally impossible to reinstate them to the Municipality, which was not their employer;

k) Peruvian tax law strictly prohibits engaging a worker unless there is a previously established and budgeted vacancy, imposing administrative and criminal liability on the competent officer for violation thereof. Such prohibition is applicable even to the enforcement of a court order, in which case the reinstatement of the worker is suspended until the vacancy and budgetary item become available. Furthermore, there are statutes forbidding to create new positions. "Consequently, the reinstatement of a worker is subject to the possibility that a vacancy is self-generated by an active worker leaving his or her job, for whatever reason." Austerity regulations are not designed to promote non-compliance with court orders; "rather, they result from the country's economic situation and the chaotic condition of the public administration in most government agencies;"

l) as regards the land in La Molina, "the reversion of said land was due […] mainly to the fact that it had been subject of illicit dealings: instead of being conveyed to their intended beneficiaries, they were transferred or sold to third persons, who where and are not employees of the Municipality of Lima." The Municipality tried to ddress this situation, declaring the award of said land terminated and reserving the land for the implementation of the municipal housing program;

m) as regards union headquarters, "SITRAMUN —the authentic organization— has the possession of a piece of real estate that was provided by the Municipality to be used in furtherance its institutional actions and purposes." The plaintiffs seek to have the premises located at Jirón Lampa No. 170 "transferred to the fake SITRAMUN, the non-profit organization which has usurped the name of the union." The State objects to such claim;

n) in at least eight court cases mentioned in the application and part of the subject-matter of the instant case, the enforcement of the court orders has not been carried out exclusively as a result of non-suit by the plaintiff, that is why said cases were closed long time ago. The Inter-American system for the protection of human rights may not be used to enforce cases that have been dismissed for non-suit. It is inadmissible to pursue in an international forum what has not been timely and efficiently sought in a domestic forum. The State requests that the persons involved in each one of the closed cases be excluded from the list of alleged victims. In addition, case number 3010-1997, in which the judgment of July 27, 1998 was rendered, was closed and no order was pronounced, by way of enforcement proceedings, directing the reinstatement of any person whatsoever. The Municipality requested that the case be reopened in order to review the files and provide the necessary factual elements to answer the application; and

o) the collective bargaining agreements entered into between the Municipality of Lima and the Sindicato de Trabajadores de la Municipalidad de Lima - SITRAMUN-LIMA (Lima Municipality Workers Union), "do not contain a waiver, let alone a relinquishment of the power and corresponding duty of the Municipality of Lima to apply the relevant legal rules." Job stability does not imply absolute and perpetual tenure for any worker; "at the very best, it implies a guarantee against dismissal, except on justified grounds. The municipality has honored said commitment at all times: the dismissal of the workers has been the result of procedures provided for and authorized by specific legislation, or the result of participation in illegal stoppages and acts of extreme violence against persons or property."

Considerations of the Court

210. Article 25 of the Convention sets forth that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties

2. The States Parties undertake:

a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

b) to develop the possibilities of judicial remedy; and

c) to ensure that the competent authorities shall enforce such remedies when granted.

211. In relation to the obligation to respect and ensure rights, Article 1(1) of the Convention provides that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language,

religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

212. Irrespective of the recognition of responsibility by the State (supra paras. 169 to 180), this Court deems it necessary to analyze several issues which have been alleged or arisen only in the proceeding before this Court in order to establish certain aspects in relation to the compliance with the judgments, and considers it necessary as well to define some general criteria regarding the right to judicial protection.

213. The Court has established that the formal existence of remedies is not enough, if they are not effective; i.e. they must provide a solution or an answer to the violation of the rights embodied in the Convention [FN153]. In this regard, the Court has pointed out that:

"[…] those remedies that, owing to the general conditions of the country or even the particular circumstances of a case, are illusory cannot be considered effective. This may occur, for example, when there uselessness has been shown in practice, because the jurisdictional body lacks the necessary independence to decide impartially or because the means to execute its decisions are lacking; owing to any other situation that establishes a situation of denial of justice, as happens when there is unjustified delay in the decision." [FN154]
and that
"The safeguard of the individual in the face of the arbitrary exercise of the power of the State is the primary purpose of the international protection of human rights." [FN155]

[FN153] Cf. Case of Ximenes-Lopes. Preliminary Objection, supra note 3, para. 4; Case of Palamara-Iribarne, supra note 25, para. 184; and Case of Acosta-Calderón. Judgment of June 24, 2005. Series C No. 129, para. 93.
[FN154] Cf. Case of 19 Merchants, supra note 6, para. 192; Case of Baena-Ricardo et al. Jurisdiction, supra note 7, para. 77; and Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, para. 116.
[FN155] Cf. Case of García-Asto and Ramírez-Rojas, supra note 16, para. 113; Case of Palamara-Iribarne, supra note 25, para. 183; and Case of Acosta-Calderón, supra note 153, para. 92.
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214. The Court has stated that Article 25(1) of the Convention contemplates the duty of the States Parties to ensure to all persons subject to their jurisdiction an effective recourse against acts that violate their fundamental rights enshrined in the Convention as well as in the constitution or laws of the state concerned. The remedy or amparo for legal protection provided for in Peruvian legislation constitutes a prompt and simple recourse designed to protect fundamental rights.

215. The statutory provision of said remedy is not at issue in this case; rather the debate concerns the non-compliance with 24 final judgments rendered by courts that granted several protective remedies (supra paras. 204(13), 204(15), 204(16), 204(17), 204(22), 204(37), 204(42), 204(43), 204(55), 204(61), 204(69), 204(80) y 204(86).

216. In that regard, it is necessary to indicate that the States have the responsibility to embody in their legislation and ensure due application of effective remedies and guarantees of due process of law before the competent authorities, which protect all persons subject to their jurisdiction from acts that violate their fundamental rights or which lead to the determination of the latter's rights and obligations. [FN156] However, State responsibility does not end when the competent authorities issue the decision or judgment. The State must also guarantee the means to execute the said final decisions. [FN157]

[FN156] Cf. Case of Cantos. Judgment of November 28, 2002. Series C No. 97, paras. 59 and 60; Case of the Mayagna Community (Sumo) Awas Tingni. Judgment of August 31, 2001. Series C No. 79, para. 135; and Case of Durand and Ugarte. Judgment of August 16, 2000. Series C No. 68, para. 121.
[FN157] Cf. Case of Baena-Ricardo et al. Jurisdiction, supra note 7, para. 79.

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217. Furthermore, the Court has asserted that:

"[T]he effectiveness of judgments depends on their execution. The process should lead to the materialization of the protection of the right recognized in the judicial ruling, by the proper application of this ruling." [FN158]

[FN158] Cf. Case of Baena-Ricardo et al. Jurisdiction, supra note 7, para. 73.

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218. In this regard, this Court finds that the State violated Article 25 of the Convention insofar as, in one case, the respondent State, for a long time, failed to comply with the judgments rendered by domestic courts [FN159] and, in another case, it failed to ensure that an order of habeas corpus "be executed appropriately." [FN160]

[FN159] Cf. Case of the "Five Pensioners." Judgment of February 28, 2003. Series C No. 98, paras. 138 and 141.
[FN160] Cf. Case of Cesti-Hurtado. Judgment of September 29, 1999. Series C No. 56, para. 133.

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219. The right to judicial protection would be illusory if a Contracting State's domestic legal system were to allow a final binding decision to remain inoperative to the detriment of one party. [FN161]

[FN161] Cf. Antoneeto v. Italy, No. 15918/89, para. 27, CEDH, July 20, 2000; Immobiliare Saffi v. Italy [GC], No. 22774/93, para. 63, EHCR, 1999-V; and Hornsby v. Greece, Judgment of 19 March 1997, ECHR, Reports of Judgments and Decisions 1997-II, para. 40.

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220. In regards to this case, the Court considers that in order to satisfy the right to access to an effective remedy it is not sufficient that final judgments be delivered in the appeal for legal protection proceedings, ordering protection of plaintiffs' rights. [FN162] It is also necessary that there are effective mechanisms to execute the decisions or judgments, so that the declared rights are protected effectively. As it is established (supra. Para. 167) one of the effects of the judgment is its binding character. The enforcement of judgments should be considered an integral part of the right to access to the remedy, encompassing also full compliance with the respective decision. The contrary would imply the denial of this right.

[FN162] Cf. Case of Baena-Ricardo et al. Jurisdiction, supra note 7, para. 82.

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221. Pursuant to Article 139(2) of the Political Constitution of Peru "[…N]o authority may […] void resolutions that have become res judicata, nor terminate ongoing procedures, nor modify judgments nor delay their enforcement."

222. Pursuant to Act. No. 23506 on Habeas Corpus and amparo of 1982, Article 8 "[a] final decision constitutes res judicata only when it is favorable to the party filing the remedy." In addition, Article 6 of the Code of Constitutional Procedure of 2004 sets forth that "[i]n constitutional proceedings only a final judgment on the merits is res judicata." In light of the foregoing, the 24 judgments the non-compliance with which is alleged in the instant case, are res judicata, with its ensuing effects.

223. As regards the enforcement of said judgments, Article 27 of Act. No. 23506 on Habeas Corpus and amparo of 1982 sets forth that "accepted or enforceable final decisions in guarantee proceedings shall be executed by the judge, division or court which heard them at first instance, in accordance with the manner and form established by the Code of Civil Procedure, Titles XXVIII and XXX, Chapter 2, to the extent they are compatible with their nature."

224. Furthermore, Article 59 of the Code of Constitutional Procedure of 2004, when referring to the "Enforcement of the Judgment", sets forth that:

[…] final judgment on a complaint shall be complied with within two days after service thereof […]. When a final judgment orders the performance of a monetary obligation and the obligor is materially prevented from performing his obligation, the obligor shall inform this situation to the Court [,] which may grant an extension not exceeding four months, upon expiration of which coercive measures shall be applicable […]

225. As regards Peru's argument that compliance with the judgments was subject to vacancy and budget availability, the Court considers that insofar as these judgments decide on guarantee

remedies, on account of the special nature of the protected rights, the State must comply with them as soon as practicable, adopting all necessary measures to that end. Delay in executing a judgment may not be such as to allow that the very essence of the right to an effective recourse be impaired and, consequently, that the right protected by the judgment be adversely affected. Budget regulations may not be used as an excuse for many years of delay in complying with the judgments. [FN163]

[FN163] Cf. Case of "Amat-G" LTD and Mebaghishvili v. Georgia, EHCR; judgment of September 2005, para. 48; Popov v. Maldova, No. 74153/01, para. 54; judgment of January 18, 2005; and Shmalko v. Ukraine, No. 60750/00, para. 44, judgment of July 20, 2004.

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226. The Court will apply the criteria described in the foregoing paragraphs when analyzing the 24 judgments, the non-compliance with which is alleged in this case, and will subsequently conduct such analysis following the organization or grouping of these judgments adopted in the chapter of Proven Facts (supra para. 204).

227. On the other hand, as regards the determination of the alleged victims, the Court indicates that, during the course of the proceedings, both the Commission and the common intervener have accepted that there are persons that are actually included as beneficiaries in the orders of appeal for legal protection, yet they were excluded from the list of alleged victims by mistake. In this regard, the Court establishes that the alleged victims in the instant case comprise all persons in favor of whom orders for legal protection were issued, as specified by name in said orders. Furthermore, where the names of these persons are not indicated in the orders, and instead are referred to as "the plaintiffs" or "the claimants", the Court deems the persons who filed the complaints or the petitions for an appeal for legal protection to be alleged victims and will obtain their names from the petitions for appeals for legal protection filed by the plaintiffs. In addition, the Court considers as alleged victims those persons who, not being plaintiffs themselves, have their rights protected by some judgments.

228. When referring to each group of orders for appeal for legal protection, the Court will indicate the persons who are alleged victims, for which purpose an appendix listing these persons is attached hereto and made a part hereof. In addition, the Court has noticed that there are persons who are alleged victims in several orders of appeal for legal protection concerning redundancies or dismissals, the names of whom the Court has put on record in the aforementioned Appendix, without excluding any of them.

A) Judgments with respect to dismissals as a result of staff assessment or by reason of redundancy

229. This group of judgments comprise three judgments rendered by the Salas Especializadas en Derecho Público (Chambers Specialized in Public Law) [FN164] and two decisions handed down by the Tribunal Constitucional (Constitutional Court), [FN165] declaring the Mayoral Resolutions that ordered dismissals as a result of staff assessment or by reason of redundancy inapplicable (supra paras. 204(15), 204(16), 204(17) and 204(22). The judgments rendered by

the aforementioned Chamber ordered the reinstatement of the plaintiffs to their customary jobs or positions (supra paras. 204(15) and 204(22), and the judgments rendered by the Tribunal Constitucional (Constitutional Court) ordered the reinstatement of the plaintiffs "to their jobs or similar positions, without pay for the period not worked." (supra para. 204(16) and 204(17).

[FN164] Judgments rendered on June 6, 1997, September 23, 1998 and June 23, 1999.
[FN165] Judgments rendered on April 9 and August 20, 1999.

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230. This Court notes that, with respect to the compliance with the aforementioned orders of appeal for legal protection issued by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on September 23, 1998 and June 23, 1999, and by the Tribunal Constitucional (Constitutional Court) on August 20, 1999, the court in charge of their enforcement directed the municipality to comply with the back pay order (supra paras. 204(19) and 204(23)). As regards the enforcement order of the aforementioned judgment of September 23, 1998, the Municipality filed three objections, which were dismissed for lack of merit, on the grounds that, inter alia, the Municipality may not argue that the prohibitions laid down in the Budget Act excuse compliance with a final and enforceable court decision (supra para. 204(24)).

231. Based on the foregoing considerations and on the body of evidence in the case, the Court has determined that the State has not effectively complied with the five orders of amparo mentioned above, therefore incurring in an unjustified delay of six to eight years in the compliance of these orders.

232. In accordance with the explanations in paragraph 227 hereinbefore, the victims of the non-compliance with these five orders of amparo are the persons identified as plaintiffs and co-plaintiffs in four of them. As regards the judgment rendered by the Sala de Derecho Público (Public Law Chamber) on June 6, 1997, where there is a reference to the "plaintiffs" without indication of names, the Court will hold their names to be those of the persons that filed the appeal for legal protection. All such people are included in the list of victims attached hereto.

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233. This group of judgments regarding dismissals as a result of staff assessments includes also the judgment rendered by the Sala Especializada de Derecho Público (Chamber Specializing in Public Law) on February 6, 1997 (supra para. 204(13)). The action in which this judgment was rendered was instituted by the SITRAMUN (supra para. 204(11)). In this judgment, Mayoral Resolution No. 033-A-96, which ordered the staff assessment program for the employees of the Municipality of Lima (supra para. 204(4) is declared "INAPPLICABLE to the plaintiffs" on the grounds that Appendix 1 of said Resolution, which contained the terms of said assessment program, was not published and the Municipality did not prove that the workers had otherwise acquired knowledge of said terms (supra para. 204(13)).

234. Even though the judgment of February 6, 1997 does not order the reinstatement of the plaintiffs, at the enforcement stage the competent courts ordered the Municipality of Lima to reinstate the workers (supra para. 204(14)).

235. In this regard, the Court believes that the aforementioned judgment establishes a general order that had to be observed with respect to all SITRAMUN workers who were dismissed pursuant to Resolution No. 033-A-96 insofar as Appendix 1 thereof was not published. It is possible to determine who the beneficiaries of this judgment are.

236. As regards the determination of such beneficiaries, in its application, the Commission indicated 355 persons as alleged victims, and provided the Court with a copy of the dismissal orders with respect to 354 of them, which show that they were dismissed pursuant to Resolution No. 033-A-96. [FN166] The Court considers these 354 persons as victims, and their names are included in the list of victims attached hereto.

[FN166] The dismissal Resolution that was not provided to the Court was the one issued in respect of Mr. Dante Córdova-Blanco. His name is included in footnote No. 22 of the application, but is not included in appendix 16 thereof, which contains a list detailing the names of the 354 persons, along with with the number. of their respective dismissal orders. Mr. Dante Córdova-Blanco is not included in the lists of alleged victims provided by the common intervener as appendixes to the submission of requests and arguments and to the submission of clarifications regarding the alleged victims filed on November 25, 2005.

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237. Finally, this group of judgments concerning dismissals as a result of staff assessments includes the judgment rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on July 27, 1998 (supra para. 204(26)).

238. Regarding to this judgment, in its submission of closing arguments, the State asserted that there is no way of relating the judgment with any dismissal or person and that it does not contain any order whatsoever.

239. In relation to this, the Court considers that the aforementioned judgment of July 27, 1998 affirmed the decision of the Primer Juzgado Transitorio Especializado en Derecho Público (First Provisional Court Specializing in Public Law) (supra para. 204(26), which declared "Municipal Ordinance No. 117 and Mayoral Resolution No. 3746 and all actions by the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) ensuing therefrom INAPPLICABLE to the plaintiff union and its members." In said judgment, it was stated that the ordinance and the resolution "constituted a specific threat that to the constitutional rights claimed could be affected." In other words, this judgment could inure to the benefit to those SITRAMUN workers who were dismissed pursuant to the aforementioned ordinance and resolution, which were declared inapplicable.

240. However, there is nothing in the body of evidence in the case to prove that any worker was dismissed pursuant to said ordinance and Mayoral resolution, in addition to the fact that the Commission and the common intervener failed to indicate names of alleged victims of non-compliance with said order of appeal for legal protection.

241. Therefore, non-compliance with the order of appeal for legal protection issued by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on July 27, 1998 has not been sufficiently proven since no person has been identified as an alleged victim and beneficiary of such decision. However, due to the fact that it is a final decision, if Peru dismissed any worker under the regulations found inapplicable, it must comply with said order of appeal for legal protection .

B) Judgments with respect to dismissals resulting from administrative misconduct and from participation in demonstrations

242. This group of judgments comprise three judgments rendered by the Tribunal Constitucional (Constitutional Court) on November 18, 1998, December 21, 1998 and April 9, 1999 (supra para. 204(37)), declaring inapplicable the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) Mayoral Resolutions which directed the dismissal of the 14 plaintiffs. In said judgments, the Tribunal Constitucional (Constitutional Court) ordered to reinstate 14 out of the 15 plaintiffs to their jobs or similar positions "without back pay for lost wages."

243. The Court notices that, with respect to the compliance with the aforementioned orders of amparo of November 18, 1998 and April 9, 1999 issued by the Tribunal Constitucional (Constitutional Court), the court in charge of their enforcement ordered the Municipality to comply with the reinstatement (supra para. 204(38)).

244. Based on the foregoing considerations and on the body of evidence in the case, the Court has determined that the State has not complied with the orders issued by the Tribunal Constitucional (Constitutional Court) on November 18, 1998, December 21, 1998 and April 9, 1999, therefore incurring in an unjustified delay of six to seven years in the compliance with these final orders of amparo.

245. In accordance with the explanations in paragraph 227 hereinbefore, the victims of the non-compliance with these three orders of amparo are the fourteen persons identified as plaintiffs in favor of whom said orders were issued and who are included in the list of victims attached hereto.

C) Judgments on dismissals for striking declared illegal.

246. This group of judgments encompasses, on one hand, the decision rendered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) on November 16, 1998, whereby it affirmed the judgment rendered by the court of original jurisdiction, which had decided to "void of all legal effects" Mayoral

Resolution No. 575 of April 1, 1996 "that declare[d] the illegality of [a] strike called by the […] SITRAMUN" "with all the other provisions therein", "ordering the back payment of compensations to those civil servants that have been affected" (supra para. 204(42)). The amparo for legal protection was filed by the Union for the benefit of all its members.

247. In its closing arguments brief, the State stated that there is no way said judgment can be associated with any dismissal or with any individual person and that it does not include any order and, consequently, it requested that the judgment be excluded from the instant case.

248. In this respect, the Court points out that the abovementioned judgment includes a general order that should be fulfilled with respect to all those SITRAMUN members who were dismissed under Mayoral Resolution No. 575, and that the beneficiaries thereof are individuals that can be determined. Although the judgment of November 16, 1998 does not order the reinstatement of plaintiffs, it does order that the affected workers be paid their compensations. Furthermore, in the second whereas clause it stated "[…] the purpose of these proceedings is limited to restore things to the position they had before the breach […]." The logic consequence of the abovementioned is the reinstatement of said workers to their jobs.

249. As regards the determination of the beneficiaries of said judgment of November 16, 1998, in the application the Commission pointed out that the alleged victims were 288 persons. The Court has verified that 45 persons out of such group must benefit by the compliance with said judgment of November 16, 1998, since they have submitted to the Court copies of the resolution whereby they were dismissed, which proved they were dismissed under Resolution No. 575. The Court considers said 45 persons to be victims, and their names are included in the list of victims attached hereto.

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250. Also connected with the dismissals for participating in illegal strikes, there are three judgments delivered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) [FN167] and five judgments pronounced by the Tribunal Constitucional (Constitutional Court) [FN168], which declared the Mayoral Resolutions whereby the plaintiffs had been dismissed (supra para. 204(43) to 204(46)) not applicable. The judgments delivered by said Chamber ordered the reinstatement of seven plaintiffs to their jobs with the same rights and benefits they had had up to the date they were discharged. Only the judgment of March 31, 1999, pronounced by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) ordered the back payment of lost wages and other benefits as of the date of the dismissal resolution (supra para. 204(44)). The judgments of the Tribunal Constitucional (Constitutional Court) pronounced on April 13, 1998, May 13, 1998, October 16, 1998 and August 20, 1999 ordered the reinstatement of the 33 plaintiffs "to the jobs they had, or to other similar positions, without back pay for lost wages" (supra para. 204(45)). Likewise, the judgment by the Tribunal Constitucional (Constitutional Court) of November 11, 1998, ordered the reinstatement of eleven plaintiffs "to the positions they held or to other similar ones, without the back pay for lost wages" and affirmed the decision of the Sala Corporativa Transitoria

Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law) whereby the reinstatement of the other three plaintiffs was also ordered (supra para. 204(46)).

[FN167] Judgments of July 14, 1998 and December 22 and March 31, 1999.
[FN168] Judgments of April 3, May 13, October 16 and November 11, 1998 and August 20, 1999.

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251. This Court notes that, as regards compliance with seven of the appeals for legal protection [protection of constitutional guarantees and rights]" referred to in the preceding paragraph, the court seized with the judgment enforcement proceedings requested the Municipality to comply with said judgments (supra para. 204(47)). The Municipality filed objections against compliance with two of said judgments, based on prohibitions established in the Budget Law; said objections were declared groundless (supra para. 204(48) to 204(51)). Consequently, the argument of the State regarding the closing of the proceedings related to two of said judgments on the grounds of an alleged non-suit must be dismissed. Said judgments declared a right finally and conclusively, and compliance therewith should have been immediate, within the statutory Peruvian time limits, and without the beneficiary having to move indefinitely for enforcement, since the court seized with the judgment enforcement proceedings itself has ordered the Municipality to comply with said judgments.

252. On the basis of the foregoing considerations and of the evidence submitted, the Court finds that the State has not complied with the judgments pronounced by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law)) on July 14, 1998, November 16, 1998, March 31, 1999, and December 22, 1999, and by the Tribunal Constitucional (Constitutional Court) on April 3, 1998, May 13, 1998, October 16, 1998, November 11, 1998 and August 20, 1999, thereby incurring in an unwarranted delay of over six years in the enforcement of said final orders of amparo.

253. As explained in paragraph 227 of this Judgment, the victims of the non-compliance with eight of the orders of amparo (supra para. 250) are the persons listed as plaintiffs in said judgments, while the victims of the non-compliance with the judgment of November 16, 1998, are the 45 persons listed as the beneficiaries of such judgment (supra para. 249) who are included in the list of victims attached hereto.

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Arguments on the exclusion of alleged victims from the scope of the judgments on dismissals due to job assessments or redundancy, administrative misconduct and participation in demonstrations and in strikes declared illegal.

254. The Court deems it important to mention certain arguments advanced by the parties regarding the persons that must be deemed the alleged victims in reference to the judgments on dismissals ordering their reinstatement that have been analyzed in the preceding paragraphs (supra paras. 229 to 253).

255. In the complaint, the Commission stated that not all the persons who filed appeals for legal protection [enforcement of the constitutional guarantee for protection of civil rights] and were successful are alleged victims in the instant case. As regards the judgment of June 6, 1997 (supra para. 204(15)) the Court said that 27 out of the 30 plaintiffs "executed an agreement on judgment compliance with the Municipality of Lima" and, consequently, it did not include them in the complaint.

256. Likewise, the State has represented that, upon obtaining the order of amparo in their favor, some plaintiffs had made out-of-court settlements with the Municipality of Lima, and it submitted a listing certified under oath by the Asesor de la Sub Gerencia de Personal de la Municipalidad Metropolitana de Lima (Counsellor of the Office of the Assistant Manager for Staff Affairs of the Metropolitan Municipality of Lima) mentioning the alleged victims that, in his opinion, should be excluded.

257. On the other hand, the common intervener has pointed out that there are "out-of-court settlements […] that were executed after the pronouncement of the judgments by the court of last resort and, pursuant to Article 334 of the Code of Civil Procedure [,] such agreements can only be made before a judgment is issued[. … However,] Article 339 of the Code of Civil Procedure [provides that] in those cases where a judgment rendered becomes final and enforceable, any matter regarding discharge of the obligation contained in the judgment agreement may be agreed upon." The common intervener stated he leaves: "the decision regarding this group of [alleged] victims to the high discretion of the Honorable Court."

258. As regards the determination of the alleged victims, in its brief filed on January 9, 2006 (supra para. 102) the Commission stated that "owing to the position the State adopted only after filing the answer to the application", the "evidentiary elements" the Court has before it in order to determ the alleged victims have varied, and therefore it concludes that "the need for a court determination of such issue has arisen."

259. The Court points out that documents have been submitted in order to prove that, after the judgments were issued, various measures have been adopted to comply with said judgments in connection with some persons. As regards this issue, the opinion of the Court is that the domestic courts having jurisdiction to enforce the judgments on dismissals must adopt a final decision on the matter of who are the workers with respect to whom the partial or total compliance with the judgments is still pending.

D) Judgments on the enforcement of collective bargaining agreements.

D(1) Reduction of compensation

260. As regards the judgment rendered by the Tribunal Constitucional (Constitutional Court) on December 10, 1997 (supra para. 204(55)), the Court finds that, according to its terms, the beneficiaries of the amparo would be the SITRAMUN members. Pursuant to said judgment, the Municipality of Lima should "pay them the difference resulting from the reduction of their wages, corresponding to the period of actual and effective work, during the application of

[Mayoral Resolution No. 044-A-96 of January 17, 1996], whereby a provisional compensation schedule had been applied to them since January 1996.

261. Regarding compliance, both the common intervener and the Inter-American Commission admitted, both at the public hearing held before the Court and by means of their written closing statements, that partial compliance with said judgment had occurred and they argued that a partial lack of compliance still exists with respect to the dismissed workers who that have not been reinstated to their jobs with Municipality, as well as to those that are not pensioners. The common intervener filed a detailed roster of the amounts he deems are still owed the beneficiaries of the order of amparo, a matter touched upon by witness Wilfredo Castillo-Sabalaga in his affidavit (supra para. 187). However, the Court notes that, apparently, some workers who had not been reinstated to their jobs to whom the Municipality paid the amounts deducted from their wages in 1996, as admitted by witness Juan de Dios Berrospi (supra para.187) –an alleged victim.

262. On the other hand, the State has argued that the Municipality of Lima has paid back to "its workers the amount of the reduction, in several installments and commensurately with its budgetary restrictions." Furthermore, several resolutions taken by the Municipality between July 1999 and November 2002 were submitted, whereby the Staff and Treasury Offices were authorized to pay the abovementioned adjustments (supra para. 204(59)).

263. Based on the evidence produced and the statements by the parties, the Court finds that the reimbursement, by the State, of the amounts owed those members of the SITRAMUN who were working at the Municipality on the date of the reimbursement payments, as well as to those who were pensioners on even date therewith, has been proved. However, such reimbursement has not been made to all the other members of the SITRAMUN to whom the abovementioned provisional compensation schedule was applied and who, for various reasons, were not working at the Municipality on the date such reimbursement payments were made. Regarding this last matter, it is worth recalling that a group of workers was dismissed during 1996 and obtained orders of amparo, whereby the courts directed their reinstatement to working positions, but said court orders have not been complied with. Before dismissal, said persons had also been receiving their wages during several months pursuant to the provisional compensation schedule applied under Mayoral Resolution No. 044-A-96 of January 17, 1996, and therefore, under the provisions of the court order of December 10, 1997, they should be paid the amounts corresponding to the reductions made on their wages for the months effectively worked during year 1996, before their dismissal. Likewise, there could be some workers that, due to dismissal or other reasons, left their jobs at the Municipality but did not obtain a court order judgment directing their reinstatement, and who had also been subjected to the provisional compensation schedule pursuant to Mayoral Resolution No. 044-A-96 of January 17, 1996.

264. As stated in the foregoing considerations, the State has partially complied with the order of amparo issued by the Tribunal Constitucional (Constitutional Court) on December 10, 1997 and compliance therewith is pending in relation with some of the beneficiaries, thereby incurring with them in an unwarranted delay of over eight years regarding compliance with said final order of amparo.

265. The Court has not sufficient nor adequate evidence to determine who are the SITRAMUN members regarding to whom compliance with the abovementioned court order of December 10, 1997 is still pending. This should be determined by the domestic judicial court seized with the enforcement of the judgment.

D.2) Compensation Benefits

266. In the judgment rendered on November 18, 1998, the Sala Corporativa Transitoria Especializada de Derecho Público (Corporate Provisional Chamber Specializing in Public Law)) (supra paras. 204(60) and 204(61)) decided that the Municipality of Lima had to comply with the collective bargaining agreements entered into with the SITRAMUN between the years 1989 and 1995 and which have a direct impact on compensations, bonuses, allowances, and other benefits of workers; to pay the workers who were members of said union, the amounts owed them between 1992 and 1995 for said compensations and benefits; and to pay them the monthly wages not paid between September and December 1995. In its closing written arguments, Peru stated that said judgment "is in the process of being enforced" before the 1º Juzgado Especializado en lo Civil de Lima (First Court Specializing in Civil Matters of Lima), that "several orders [would have been] issued in connection with the enforcement of the judgment" and it also submitted some documentation related to one of the items directed in such judgment, consisting in the order to pay workers the lost monthly wages corresponding to the period extending from September to December 1995. In the same direction, two of the sworn statements submitted to this Court included a statement made by the alleged victims according to which, in 2003, the Municipality started paying them part of the outstanding debt corresponding to the months of October, November and December 1995, which was fully paid to one of them. (supra paras. 187 and 204(62)).

267. Likewise, the State expressed that said judgment is at the enforcement stage of proceedings and, therefore, "no non-compliance has occurred."

268. In this respect, the Court has verified that effectively, on November 17, 2004, the court seized with the judgment enforcement proceedings issued an order relative to the determination of the members of the SITRAMUN that are beneficiaries of said judgment (supra para.204(63)). Besides, the Court notes that the State itself has admitted that in the judgment enforcement proceedings an "excessive delay" has occurred due to the observance of "legal procedures".

269. The Court deems that the fact that a judgment be in the enforcement stage of proceedings does not exclude the possibility of a violation of the right to an effective remedy. The Court admits that certain determinations must be made during the judgment enforcement proceedings in order to comply with the order of the Chamber and to adopt several decisions, but this does not warrant a delay of more than seven years in the compliance with the final judgment, and therefore this Court concludes that an unwarranted delay in complying with the aforementioned order of amparo rendered on November 18, 1998 exists.

270. This Court has not sufficient or adequate evidence to indicate who would be the SITRAMUN members that are beneficiaries of the abovementioned judgment of November 18,

1998, something which shall be determined by the domestic judicial court seized with the judgment enforcement proceedings thereof.

E and F) Judgments related to the Union headquarters and to the plot of land in La Molina District

271. The Court has no jurisdiction over the alleged non-compliance with the judgments delivered by the Sala Corporativa Transitoria Especializada en Derecho Público (Corporate Provisional Chamber Specializing in Public Law)) on March 11 and August 19, 1999 whereby the Municipality of Lima was ordered to adopt the measures necessary to donate to SITRAMUN the premises for its headquarters (supra para. 204(80)), and whereby Resolution No. 267 that declared the conveyance to said Union of the plot of land located at La Molina District had lapsed (supra para. 204(69)), was held to be inapplicable, since the beneficiary of said conveyance is a legal entity and the identity of the victims of the alleged violations cannot be determined.

G) Judgment on the dissolution of the Empresa de Servicios Municipales de Limpieza de Lima (ESMLL) (Lima Municipal Cleaning Services Corporation)

272. The judgment rendered by the Tribunal Constitucional (Constitutional Court) on July 8, 1998, which declares de "inapplicability of the Agreement-in-Council that decided to dissolve and wind up the ESMLL and ordered the reinstatement "of the plaintiffs who have not received the social security benefits" (supra para. 204(86)), is in the enforcement stage, and the courts have adopted several decisions on the determination of the workers that must be reinstated. Based on the evidence submitted, and in connection with the last judicial actions taken during the months of June and August 2005 in an endeavor to reinstate 35 workers to their jobs, the Municipality of Lima has stated the "legal impossibility proceed with the reinstatement of the workers" (supra para. 204(91)). Moreover, the pronouncement on an appeal entered against the decision that dismissed the request for the reinstatement of 217 workers is still pending (supra para. 204(89)).

273. Before this Court, the State expressed that it acknowledges the validity of such judgment, but it also stated that as the case is at the enforcement stage, the Court should not hear this case. In this respect, the Court reaffirms that the fact that a judgment be in the enforcement stage of proceedings does not exclude the possibility of a violation of the right to an effective remedy (supra para. 269).

274. The Court recognizes that in order to comply with this judgment, some determinations have had to be made in order to comply with the orders of the Tribunal Constitucional (Constitutional Court), and several decisions have had to be adopted and oppositions and appeals filed by the parties have had to be decided. However, the Court considers this is not a reasonable justification in the face of the delay in the enforcement of the final judgment, and therefore it concludes that an unreasonable delay of seven years and six months has been incurred in relation to the compliance with the abovementioned amparo of July 8, 1998.

275. As explained in paragraph 227 hereof, the victims of the non-compliance with this judgment are the 56 persons that the court seized with the judgment enforcement proceedings has determined that must be reinstated, who are included in the list of victims attached to this Judgment. Since, according to the information provided to the Court, the domestic court having jurisdiction still has to decide on an appeal filed against the decision that dismissed the request for the reinstatement of 217 workers (supra para. 204(89)), this Court settles the issue by establishing that, if at the time of deciding such appeal, the court recognizes the right of said workers to be reinstated, the State must comply with such reinstatement.

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276. In addition to all the considerations included in this chapter, the Court decided to grant full effects and to admit the acknowledgment of international responsibility made by the State during the proceeding before the Commission (supra para.178), pursuant to which Peru is liable "for the violation of the human rights of the SITRAMUN workers, provided in Article 25(2)(c) of the American Convention on Human Rights, in the terms indicated in paragraphs 169 to 180.

277. From the abovementioned considerations, this Court concludes that the State violated the right to the judicial protection established in Articles 25(1) and 25(2)(c) of the American Convention and did not comply with the general obligation to respect and guarantee the rights and freedoms established in Article 1(1) of said Convention, to the detriment of the persons indicated in paragraphs 232, 235, 236, 245, 249, 253, 260, 265, 270 and 275, since it did not comply with the judgments rendered by the Sala Constitucional (Constitutional Chamber) and the Sala Corporativa Transitoria Especializada de Derecho Público (Corporate Provisional Chamber Specializing in Public Law), as pointed out in paragraphs 210 to 236, 242 to 270 and 272 to 275 of the instant Judgment.

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278. The Court considers that the violations due to the non-compliance with the judgments, previously mentioned in this chapter, are particularly serious as they implied that during many years the labor rights guaranteed by said judgments have been impaired. This fact shall be taken into account by the Court when deciding on the reparations.

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279. No decision must be taken on the argument submitted by the common intervener in the brief on requests and arguments as to the alleged violation of Article 25(1) by dismissing and closing criminal complaints (supra para.207) as the Court deems there is not sufficient evidence to sustain this issue.

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280. This Court has established that the alleged victims or their representatives can invoke rights different to those included in the complaint filed by the Commission, provided they are based on the facts alleged in the complaint. [FN169]

[FN169] Cf. Case of Gómez-Palomino, supra note 21, para. 59; Case of Palamara-Iribarne, supra note 25, para. 120; and Case of Acosta- Calderón, supra note 153, para. 142.

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281. The Court shall not analyze the alleged violation of Article 8(1) argued by the common intervener for the representatives, under the terms he set it forth, since the appeals for legal protection regarding the dismissals have already declared that due process violations had been committed when the workers were dismissed, and such judgments have ordered the reinstatement of the workers (supra paras. 229, 234, 242, 246 and 250); the Court not thereof.

X. ARTICLE 26 OF THE AMERICAN CONVENTION IN CONNECTION WITH ARTICLES 1(1) AND 2 OF SAME CONVENTION (PROGRESSIVE DEVELOPMENT OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS)

282. The Commission did not state that Article 26 of the Convention had been violated.

Arguments by the common intervener

283. The common intervener for the representatives alleged that the State violated Article 26 of the Convention, allegation that is not included in the complaint filed by the Commission. The intervener said as follows:

a) it is necessary to introduce the international legal rules and case law developed on this matter in order to establish the exact scope and extent of this right, taking into account the evolution of the interpretation of international documents and pursuant to the pro homine principle established in Article 29(b) of the Convention;
b) the following events constitute a clear violation of the fundamental rights established in the Universal Declaration of Human Rights, in the American Convention on Rights and Duties of Man, in the American Convention and in the Protocol of San Salvador: the massive dismissal of workers of the Municipality of Lima, members of the SITRAMUN, who refused to participate in the Staff Assessment Program or who failed the assessment; the subsequent "irregular" imposition of a new assessment program in disregard of the law, which resulted in a "new and massive dismissal of hundreds of workers" members of the SITRAMUN; the dismissal of 418 SITRAMUN workers due to the commencement of administrative proceedings against those who rejected the assessment procedures and went on strike because they deemed their rights had been violated; the 30% reduction "in salaries, wages and pensions of its workers and former workers" by the Municipality, including SITRAMUN members; the requirement by the Municipality of Lima of requisites for organizing unions which could only be determined by law; the breach of the ILO Convention No. 87 by "eliminating union leaves and not recognizing the SITRAMUN - Lima Governing Board" because "its members were former workers of the Municipality, and it by withholding the workers´ contributions" to that union and giving them back to each individual worker; the intent to evict SITRAMUN-Lima from its the union premises and to revert the property of the land located in La Molina that had been granted to SITRAMUN-Lima through a collective agreement"; the non-compliance with the judgments that ordered

remedies and reparations of the abovementioned violations; the dismissal of over 800 workers without following the procedure established in Legislative Decree No. 728, before the adoption of the Municipality of Lima Agreement-in-Council No. 036 of July 4, 1996, "whereby the Empresa de Servicios Municipales de Limpieza de Lima (ESMLL) (Lima Municipal Cleaning Services Corporation) was dissolved and wound up;"

c) the failure of the State to comply with the judgments pronounced by the domestic courts whereby the right of the victims to be reinstated to their jobs is recognized, is a serious violation of their labor and social security rights recognized in different international instruments on the protection of human rights;

d) The Peruvian court system, through the decision of its higher courts, reaffirmed the right of the alleged victims "to retain their job and continue collecting the income that allows them to earn a decent living for themselves and their families, after their unfair dismissal through irregular administrative proceedings." However, the State has neither reinstated the workers to their jobs nor restored them the conventional benefits they had been deprived of, thus violating their labor and social security rights to the detriment of the alleged victims. The alleged victims are low-income persons;

e) the actual violation of the right of the alleged victims to social security benefits occurred as their access ―and that of their dependents― to the protection coverage granted them by the then Instituto Peruano de Seguridad Social (Peruvian Social Security Institute), in their capacity of insureds in said institution, was abruptly interrupted. Such capacity as insureds "was irreversibly and abruptly ignored immediately after their unconstitutional dismissals, that have been occurring since 1996, were effected;"

f) the alleged victims are still denied the right to social security, "despite the pronouncement of individual decisions by the higher courts of the Peruvian Justice that ordered their reinstatement to their jobs with the restoration of all the rights inherent, to the positions they hold, including the right to enjoy the social security protection coverage offered by the social security institutions;"

g) the unfair dismissal of the alleged victims and the failure to reinstate them to their jobs as ordered by the domestic courts, caused the discontinuance of the accumulation of years of service for social security purposes, which prevented many workers from obtaining their pensions. Many workers were also denied their right to a disability pension. Such state of affairs has even led to the death of many alleged victims, "and up to the present time, their families have not been recognized the right to the surviving family pension on the death of the pensioner guaranteed by the international instruments for human rights protection;"

h) that he requests the Court to take into account that the violations to the Labor and Social Security human rights of "Julio Acevedo-Jaramillo and his other fellow workers, formerly employed by the Municipality of Lima and members of the SITRAMUN–Lima, not only encompass a significantly large group of persons (approximately 2,000), but are clearly representative of a pattern of similar violations that took place in Peru between years 1990 and 2000;"

i) as a consequence of the violation of said rule, the State also breached its obligation to respect the rights and freedoms recognized in the Convention, as well as its duty to ensure to all persons subject to its jurisdiction the free and full exercise of those rights and freedoms. Besides, the State has violated the right to work and to have a fair remuneration, recognized in Articles XIV and XVI of the American Declaration, which is related to the duty of progressive development guaranteed in Article 26 of the Convention; and

j) the application of Decree Law No. 26,093 and Law No. 26,553, which granted the incumbents of the Ministries, of the Decentralized Public Entities and of Local Governments, extraordinary powers to order the implementation of the Staff Assessment Programs, thus empowering them to decide the massive dismissal of their workers, which was contrary to the domestic labor laws then in force. The first one of said rules violated the right to work and the labor rights recognized in the Political Constitution of 1979 and the then applicable common legal rules; on the other hand, the second law violated the labor guarantees incorporated to the new constitution of 1993, therefore, the Stated violated Article 2 of the Convention, to the detriment of the SITRAMUN workers.

284. Arguments filed by the State

The State argued that it did not violate any obligation set forth in the Convention.

Considerations of the Court

285. The Court shall not analyze the alleged violation of Article 26 of the Convention since it has already referred to the serious consequences of the non-compliance with the judgments within the framework of the labor rights contemplated in said judgments (supra para. 278).

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286. The Court does not deliver an opinion on the alleged violation of Article 2 of the Convention argued by the common intervener as a consequence of the application of Decree Law No 26,093 and Law No. 26,553 (supra para.283(j)), since it would involve an analysis of some facts that are not part of the issues disputed in the instant case.

XI. ARTICLE 16 OF THE AMERICAN CONVENTION IN RELATION TO ARTICLES 1(1) AND 2 OF THE CONVENTION (FREEDOM OF ASSOCIATION)

287. The Commission did not argue any violation of Article 16 of the Convention.

Arguments by the common intervener

288. The common intervener for the representatives stated in his closing arguments that the State violated Article 16 of the Convention, an allegation that is not included in the application filed by the Commission. The intervener indicated that:

a) the members of the SITRAMUN-Lima negotiated collective agreements, whereby they obtained labor stability and the transfer to the Union, for no consideration, of a plot of land in Lima where a housing project would be developed and the union offices would be built;
b) 418 Union workers were dismissed for their participation in a strike that was declared illegal by the Municipality of Lima;
c) the Municipality of Lima did not recognize the autonomy of the union organization as it cancelled the effectiveness and validity of the union registration duly entered on the Registro del Instituto Nacional de la Administración Pública (Registry of the Public Administration National

Institute), as well as the validity of its governing board, thus disregarding the validity of the union leaves obtained and ordering the illegal retention of the contributions to the union made by the members of the SITRAMUN–Lima. The State did not comply with its obligation to guarantee the members and leaders of SITRAMUN the exercise of the freedom of association and union representation they had under the legal system in force at the time;

d) the judgments that ordered the reinstatement of the alleged victims dismissed through irregular administrative proceedings "report the various violations committed by the State, inter alia, to the right to freedom of association and to union privileges." In point of fact, the right of association or affiliation does not exhaust the trade union freedom, but rather, these are really an indispensable supplement to the other union rights. Trade union privileges and immunities are "the set of protection measures that apply to union leaders and union militants to protect them against any harm they may suffer on account of their activity and which make the normal and effective development of trade union activities possible." It encompasses the protection granted by law or by collective bargaining agreements to association or union members, in order to protect them in the course of their union activities, whether with respect to their employer, to the State or to their own fellow workers." Union freedom includes also the right to conduct union activities, which are protected by Article 28(1) of the Political Constitution of Peru, and by the ILO International Conventions No. 98 and No. 151, as well as by the Universal Declaration of Human Rights, Article 23(2); ande) despite of the existence of supranational rules that protect union privileges, and of the existence of a Collective Agreement signed by the parties which guaranteed the labor stability of the workers of the municipal corporation, the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) did not hesitate in implementing massive dismissals that affected more than 1,200 workers, including the 15 union leaders, who were sent 2 or 3 dismissal resolution notices, as in the case of the union leader Wilfredo Castillo-Sabalaga.

289. Arguments by the State

The state alleged that it had not breached any obligation imposed by the Convention.

Considerations of the Court

290. The common intervener did not allege violation of Article 16 of the Convention at the corresponding point in the procedure. However, the Court deems that the facts at issue in this case do not fall within the scope of Article 16 of the Convention, and therefore, the Court shall not deliver opinion on the alleged violation of said Article.

XII. REPARATIONS (APPLICATION OF ARTICLE 63(1))

Obligation to repair

291. Arguments by the Commission

a) as regards the beneficiaries of the reparations:

i. the persons entitled to reparations are "the 1734 workers of the Municipality of Lima that are members of the SITRAMUN" and the former workers of the ESMLL corporation.

The persons whose names are indicated in the footnotes of the application, when referring to each particular judgment, must be considered the beneficiaries of the reparations.

ii. the position adopted by the State after its answer to the application, has resulted in some new disputes regarding the lists of the victims, and therefore a judicial determination of such issue is needed;

b) as regards pecuniary damage, the Commission requested the Court to order Peru:

i. to reinstate the workers of the Municipality of Lima, members of the SITRAMUN, that were unfairly dismissed, or to pay them a compensation in case it is not possible to reinstate them to the same job they had or to a new position;

ii. to pay the workers of the Municipality of Lima, members of the SITRAMUN, that were dismissed, the amounts of their wages or salaries, bonuses, allowances and other benefits unduly lost;

iii. to pay the workers of the Municipality of Lima, members of the SITRAMUN that were dismissed, their future pensions;

iv. to compensate "said persons for any other damage they may duly prove and that be a direct consequence of the alleged violations to human rights;"

c) as regards non pecuniary damage, the Commission requested the Court to order Peru to compensate the workers of the Municipality of Lima, members of the SITRAMUN, that were dismissed "for other damage they may effectively prove and that be a direct consequence of the alleged violations to the human rights of the victims, including the non-pecuniary damage for the suffering caused by the reduction in the amount of their pensions and for the non-compliance by the State with the judgments of the Peruvian courts;"

d) the Commission requested the Court to order the State to proceed to "the physical and legal transfer of the premises to be used as SITRAMUN headquarters, for the benefit of its members"; and to "register the La Molina plots of land, the elapsing and recording cancellation of which was ordered by the Municipality of Lima;" and

e) as regards costs and expenses, the Commission requested the Court to order the State to pay the costs originated both at the domestic and the international levels during the processing of the case before the Commission, as well as those originating during the processing of the case before the Court.

292. Arguments by the common intervener for the representatives

a) the beneficiaries of the reparations are the 1,734 workers of the Municipality of Lima listed in the application. Besides, 39 workers of said Municipality, members of the SITRAMUN, and 274 workers of the Empresa de Servicios Municipales de Limpieza de Lima (ESMLL) (Lima Municipal Cleaning Services Corporation) (ESMILL) mentioned in the judgment by the Tribunal Constitucional (Constitutional Court) of June 8, 1998, together with 10 persons mistakenly excluded, should also be taken into account as victims and beneficiaries of the reparations that were not included in the complaint filed by the Commission;

b) as regards pecuniary damage, the common intervener requested the Court to order Peru:

i. to reinstate "the SITRAMUN–Lima workers that were unfairly dismissed by the Municipality of Lima, to the same jobs they had before the dismissal or to positions of similar level and pay;"

ii. to pay the wages and salaries, bonuses, allowances, and other labor benefits corresponding to workers under the Collective Agreements, as ordered in the judgment of November 18, 1998, rendered on the Record of Case No. 261-97;

iii. to grant those workers that cannot be reinstated to their jobs by reason of their physical or mental disability, the disability pension available to them according to law, in addition to the corresponding compensations for damages;

iv. to grant those workers that cannot be reinstated to their jobs for having reached the statutory retirement age, a retirement pension that shall take into account the service years they were out of employment due to the unfair dismissal;

v. to recognize "the service years extending between their dismissal and the effective reinstatement to their jobs, for the purpose of their access to retirement pensions. Contributions due for such purpose should be deducted from the amount of the lost wages that must be reimbursed to the victims for the time elapsed while they were out of employment. This amount they owe shall not carry interest, as the lack of payment was the consequence of an arbitrary act of the State administration itself;"

vi. to pay the victims the amount corresponding to the difference arising from the reduction of their wages and salaries adopted by Mayoral Resolution No. 044-A-96, and which resulted in the 30% reduction in the remunerations and pensions of all workers, plus the legal interest applicable, as ordered in the judgment of December 10, 1997, delivered in the Case No. 457-97/AA/TC;

vii. to grant the family of the victims that died, a surviving family pension, pursuant to the provisions in the Peruvian legal system;

viii. to pay "the victims and their families a compensation for pecuniary damages, including the compensation for the wages and salaries, bonuses, allowances and other labor benefits they did not receive as from the time of dismissal up to the date of the judgment by the Court." Such compensation must include "a reasonable amount, estimated at the discretion of the Court, for all those health, education and housing expenses the victims and their families had to face during the period they have been dismissed, which caused them a serious impoverishment, especially taking into account that in the great majority of the cases, the victims were the only economic support of their families and that, as in the case of those that suffered a physical or mental incapacity or died after their unfair dismissal, leaving their families totally unprotected." Besides, the time during which the victims were out of work should be taken into account;

c) as regards non-pecuniary damage, the common intervener requested the Court:

i. to grant "the victims and their families compensation for the moral damage sustained due to the suffering undergone during all these years resulting from the lack of the necessary means to satisfy their basic needs and those of their families, as well as from the anguish and suffering they had to undergo in their ceaseless struggle to reaffirm their labor rights;" and

ii. "to grant the victims and their families a compensation deriving from "the damage to their life project." The victims "sustained a drastic interruption of their personal and professional development due to the unfair dismissal.";

d) as to the measures of satisfaction and the non-repetition guarantees, the intervener requested the Court to order the State:

i. to set aside Municipal Order No. 117 dated July 4, 1997, whereby it was ordered to continue applying Law No. 26,093, and continue performing new assessments and dismissals by reason of redundancy;

ii. to set aside Municipal Order No. 100 as regards the matter ordered by judgment of May 8, 2000 on the Record of the Case No. 1922-99;

iii. to transfer "to the workers, members of the SITRAMUN – Lima, the premises located at Jr. Lampa No. 170, in the District "Cercado de Lima," for the purpose of locating the Union headquarters thereat, pursuant to judgment dated March 11, 1999, Record of Case No. 2216-98;"

iv. to set aside Mayoral Resolutions No. 267 and No. 2421 and Mayoral Decree No. 005-98, which declared the transfer of the land located at the La Molina District, which would be used to develop a housing project for the SITRAMUN workers, had elapsed, and which further declared the cancellation of the corresponding entry in the register, pursuant to judgment dated August 19, 1999, Case Record No. 498-99;

v. to grant any next of kin of the victims suffering from "any kind of physical or mental health problems, a pecuniary compensation under the form of health services, so that he/she may fully recover from illness;"

vi. to grant the children of the victims that had interrupted their studies due to the economic situation, "a pecuniary compensation under the form of education services, through the grant of student loans and the award of scholarships or grants, so that they may successfully finish their studies and attain their personal and professional development;"

vii. to publicly acknowledge international responsibility for lack of compliance with the judicial judgments that reaffirmed the fundamental labor rights of municipal workers;

viii. to apologize to the victims and their families;

ix. to publish, in two newspapers of wide circulation within the country, the express acknowledgment of its responsibility and its apologies;

x. to investigate "impartially and apply effective sanctions ―whether administrative, civil or criminal― to the officers of the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) who are responsible for the long-lasting failure to comply with the orders directing the restoration of the labor rights to the workers;"

xi. to ensure observance of the judicial guarantees and close the criminal suits referred to in Appendix No. 21 to the brief of requests and arguments, brought against members of the SITRAMUN–Lima due to their participation in "events related to the defense of their legal interests infringed by the Municipality of Lima; " and

xii. to adapt the laws on enforcement of labor and social security judgments to the international obligations of Peru; and

e) as regards the costs and expenses, the common intervener requested the Court to order the State the reimbursement of the expenses and costs arising from the suit, both in the domestic and in the Inter-American jurisdictions.

293. Arguments by the State

a) as regards the beneficiaries, there is no obligation with the great majority of persons involved in the different cases included in these proceeding. Regarding those isolated cases that, exceptionally, have been decided by impartial commissions, the Peruvian State is ready to compensate them by applying any of the measures legally established by the corresponding applicable rules, at the election of each person and in accordance with the requisites provided for in said rules. Neither the Commission nor the common intervener for the alleged victims has

complied with the request of the President, made at the public hearing, for the submission of a detailed list of the victims;

b) as regards pecuniary damage:

i. the State rejects the accounts filed by the common intervener in Appendixes 17 and 18 to the brief of requests and arguments as they "do not include the essential elements necessary to assess their content, as they only include general amounts without any indication of the items and partial amounts that add up to them;"

ii. "a significant group" of the workers dismissed from the Municipality receive a adjustable pension;

iii. the State admits its responsibility and is ready to compensate those workers whose cases have been reviewed by independent commissions. It does not deem itself obliged to compensate those who have not been positively declared eligible by said commissions. The State does not recognize the legal validity of rulings originated in acts of corruption and collusion;

iv. as regards pensions, a distinction is worth making: the Peruvian State accepts the decision of those workers that, after being duly qualified by the commissions ad hoc, opt for this kind of compensation. With regard to workers not qualified by the commissions, the Municipalidad Metropolitana de Lima (Metropolitan Municipality of Lima) has been duly and punctually paying the pensions of all those entitled to them, without no reduction or impairment: the persons entitled to pensions have collected the total amounts due. Such pensions are determined on the basis of the remuneration paid to an active worker of similar position and are automatically adjusted when such remuneration is increased. "Therefore, there is no damage or harm to be compensated;" and

v. as regards those persons who do not meet the requirements to be pensioned, in case they have been qualified by the commissions ad hoc, they are entitled to receive the alternative compensations established under the pertinent regulations. The other persons have no right to compensation as their dismissal has been qualified by default as "valid and correct by the abovementioned commissions."

c) the State did not file any statement regarding compensations for non-pecuniary damages;

d) as to the measures of satisfaction and the non-repetition guarantees, the State expressed that:

i. the pecuniary and non-pecuniary compensations the State deems applicable are those established by laws passed in order to settle this kind of situations, especially Law No. 27803, as regulated by Supreme Decree No. 014-2002-TR;

ii. the conveyance of the lands located at La Molina "has originated acts of corruption defying description by union leaders and legal counselors. To insist upon such a grant would only imply to extend the possibilities of undue enrichment and corruption of persons who are not invested as legitimate leaders of the SITRAMUN;"

iii. as regards the request for public acknowledgment of State responsibility and for apologies, Peru "has acknowledged its responsibility and acted accordingly by passing Laws No. 27452, No. 27586 and No. 27803. Likewise, it reaffirms its acceptance of the conclusions and recommendations of the impartial commissions in all those cases where the latter have determined the existence of unfair dismissals;"

iv. regarding the request that an investigation be conducted, "[th]e unbiased and effective investigation of the criminal actions committed under the leadership of the SIN during last decade is being conducted by Peruvian courts. Such investigations have incriminated, not the failure to comply with such judgments, but rather the way such judgments have been perpetrated,

for which reason their authors ―including some of the persons listed as alleged victims in the instant case― have criminal suits pending against them before anti-corruption courts;" and

v. with respect to the claim that the domestic law on judgment enforcement must be amended, "domestic law has been amended in order to face the extremely serious cases of corruption discovered. The number of suits pending before the four (4) anti-corruption courts and the Superior Chamber that it has been necessary to create, the number of persons prosecuted ―including some of those who are alleged victims in the instant case, and the number of them that are under police custody or under domiciliary detention are sufficient evidence of the aforementioned;" and

e) as regards costs and expenses, the State indicated that it has been forced to appear before the Court to defend the legal order and show that, in the "great majority" of the cases, the claims filed are invalid and groundless. "Therefore, it deems that it must be released from paying expenses and costs, as its reasons to intervene in the suit not only are sustainable, but justified to the fullest extent."

Considerations of the Court

294. As stated in the preceding chapters, the Court has decided that the State is responsible for the violation of Articles 25(1) y 25(2)(c) of the Convention, as related to Article 1(1) thereof, in the terms of paragraph 277. In its precedents, this Court has determined that it is a principle of international law that any breach of an international obligation which has caused damage entails the obligation to repair it adequately. [FN170] To this end, the Court has based on Article 63(1) of the American Convention, according to which:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

[FN170] Cf. Case of Blanco-Romero et al, supra note 24, para. 68; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 247; and Case of Gómez-Palomino, supra note 21, para. 112.

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295. Article 63(1) of the American Convention codifies a rule of customary law which is one of the fundamental principles of contemporary international law on State responsibility. Upon the occurrence of a wrongful act attributable to a State, the international responsibility of such State arises, with the consequent duty to make reparations and to have the consequences of the violation remedied. [FN171]

[FN171] Cf. Case of Blanco-Romero et al, supra note 24, para. 68; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 247; and Case of Palamara-Iribarne, supra note 25, para. 234.

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296. The reparation of the damage caused by the infringement of an international obligation requires, whenever possible, full restitution (restitutio in integrum), which consists of the return to the state of affairs prior to the infringement. If this were not feasible, the International Court is to determine a set of measures to be ordered for the purpose of guaranteeing the rights that were affected, of reparairing the consequences the infringements brought about and of establishing a compensation for the damage caused. [FN172] The obligation to repair is ruled by International Law and it cannot be modified or not discharged by the State alleging provisions in its domestic laws as grounds thereof. [FN173]

[FN172] Cf. Case of Blanco-Romero et al, supra note 24, para. 69; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 248; and Case of Gómez-Palomino, supra note 21, para. 113.
[FN173] Cf. Case of Blanco-Romero et al, supra note 24, para. 69; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 248; and Case of Gómez-Palomino, supra note 21, para. 113.

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297. Reparations are measures tending to eliminate the effects of the violations committed. Their nature and amount depend on the characteristics of the violation and on both the pecuniary and non pecuniary damage caused. Such reparations shall not result in the victims or their successors becoming richer or poorer and they shall be commensurate with the violations declared in the Judgment. [FN174]

[FN174] Cf. Case of Blanco-Romero et al, supra note 24, para. 70; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 249; and Case of Gómez-Palomino, supra note 21, para. 114.

A) BENEFICIARIES

298. The Court considers as "injured parties", qualifying as victims of the violations of the rights embodied in Articles 25(1) and 25(2)(c) of the Convention, in relation to Article 1(1) thereof, the persons determined as victims in Chapter IV herein (supra paras. 232, 235, 236, 245, 249, 253, 260, 265, 270 and 275), taking into account that the domestic courts seized with the enforcement of the judgments will have to make certain determinations (supra paras. 259, 265 and 270). The list attached to this Judgment, which forms part hereof, contains the names of the victims the Court has been able to individualize.

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299. As for Article 63(1) of the Convention, the Court orders first and foremost that the injured parties be ensured the enjoyment of their rights or freedoms that were violated, through

the effective enforcement of the orders of amparo, the non-compliance with which has been declared by this Court (supra para. 277). If the orders directing reinstatement of the workers to their jobs or to similar positions are not complied with, the State must order reinstatement of the victims to their positions and, should this not be possible, it must provide employment alternatives where the conditions, salaries and remunerations that they had at the time they were dismissed are respected.

300. In the event that reinstatement of the workers to their jobs or to similar positions, according to the preceding paragraph, were not possible the State, as a reparation measure, must proceed to pay the compensation prescribed for termination of employment without just cause. Compensation amounts must be fixed by the domestic authorities, taking into account the years served by each dismissed worker, the time the worker remained unjustly dismissed and the salary the worker earned, with any applicable readjustments. In case there be any disagreement or discrepancies as to the determination of the compensation amounts they must be settled finally in the domestic forum, following the local procedures, or establishing procedures for the purpose, something which includes the possibility of resorting to the authorities having jurisdiction, such as the national courts of justice.

B) PECUNIARY DAMAGE

301. In this section, the Court shall address the pecuniary damage, which implies the loss of, or detriment to, the income of the victim, the expenses incurred by reason of the events and the pecuniary consequences that may have a cause-effect link with the events in the instant case, for which, when applicable, the Court fixes a compensatory amount seeking to redress the financial consequences of the violations that were determined in this Judgment, [FN175] taking into account the acknowledgment made by the State before the Commission, the circumstances of the case, the evidence tendered, the precedents of the Court, and the arguments by the parties.

[FN175] Cf. Case of Blanco-Romero et al, supra note 24, para. 78; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 246; and Case of Gómez-Palomino, supra note 21, para. 124.

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302. Regarding the alleged loss of wages sustained by the dismissed workers with respect to whom the orders of amparo ordering reinstatement were not complied with, the Court observes that three of the orders of amparo also directed back payment of the wages lost during the time they were dismissed (supra paras. 204(15), 204(42), 204(44)) and that in other two judgments it was provided to acknowledge of "the right of plaintiffs and co-plaintiffs to demand, before the authorities having jurisdiction, payment of the remunerations and other benefits which they failed to receive from the date of their dismissal up to that of their effective reinstatement to their positions" (supra para. 204(22)). As stated above (supra para. 299), Peru must comply with said judgments.

303. The Court observes with great concern that the domestic judgments which are the object of the instant case have provided for different solutions to the issue of the wages lost by the

victims who should have been reinstated. Nonetheless, this Court is unable to modify judgments rendered by domestic courts regarding the period extending from the date of dismissal until the orders of amparo. Therefore, with respect to the orders of amparo that only direct reinstatement, this Court will determine the pecuniary damage as from the date they became final and unappealable.

304. Regarding the judgments that only order reinstatement, the Court deems that, as those judgments are orders of amparo, they should have been abided by forthwith so that the victims, once effectively reinstated, would have resumed collection of their salaries. However, owing to the fact that six to nine years have elapsed between the orders directing reinstatement and the instant judgment, without the former having been complied with, the Court finds it necessary and just that they be given compensation for lost wages, [FN176] as this damage resulted from non-compliance with the orders of amparo. Compensation amounts must be fixed by domestic authorities and in case there be any disagreement or discrepancies thereupon, they must be settled in the domestic forum, following the domestic procedures applicable, something which includes the possibility of resorting to the authorities having jurisdiction, among which the national courts of justice. The amounts will be fixed taking into account the time the victims remained unjustly dismissed, as from the date the judgments became final up to the effective compliance therewith or up to the worker's death and must include the amounts of any lost wages. In the case of deceased workers, payments will be made to their successors.

[FN176] Cf. Case of Baena-Ricardo et al. Judgment of February 2, 2001. Series C No. 72, para. 203; and Case of the Tribunal Constitucional (Constitutional Court). Judgment of January 31, 2001. Series C No. 71, para. 120.

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305. Likewise, the state authorities having jurisdiction must determine, under domestic laws and by the pertinent mechanisms, who the victims with right to retirement pension are, by reason of their age, health condition or any other circumstances contemplated in the domestic laws. In the case of deceased victims, the state authorities having jurisdiction must determine, under domestic laws and by the pertinent means, who the beneficiaries of the pertaining death pension are. In order to make such determinations, both the service years accrued and the time the victims remained dismissed shall be taken into account.

306. The State must adopt any necessary measures to ensure that the workers who have not been reinstated under the orders of amparo have access to the social security system

307. The State must, within fifteen months, pay the victims the compensations for loss of wages (supra para. 304), pay the pensions referred to above (supra para. 305) and ensure that the workers who have not been reinstated have access to the social security system (supra para. 306).

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C) NON PECUNIARY DAMAGE

308. Non pecuniary damage may include distress and suffering caused the direct victims and their relations, tampering with the victim's core values as well as and the alterations of a non pecuniary nature in the persons' or their families' living conditions. As it is impossible to assess the value of the non pecuniary damage sustained in a precise equivalent in money, full reparation to the victims in such cases must be effected only by paying the victim an amount of money or by delivering property or services the worth of which may be established in money, such as the Court may determine exercising reasonably its judicial discretion and applying equitable standards, or by actions or works reaching the general public, the effect of which be to recognize the victim's dignity and to avoid new violations of human rights. [FN177] The first aspect of reparation of non pecuniary damage will be analyzed in this section and the second one in section D) of this Chapter.

[FN177] Cf. Case of Blanco-Romero et al, supra note 24, para. 86; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 276; and Case of Gómez-Palomino, supra note 21, para. 130.

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309. The judgment, according to repeated international precedents, constitutes, in and of itself, a form of reparation. [FN178]

[FN178] Cf. Case of Blanco-Romero et al, supra note 24, para. 87; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 268, and Case of Gómez-Palomino, supra note 21, para. 131.

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310. The Court deems it necessary to establish a compensation for non pecuniary damage sustained by the victims who are the beneficiaries of orders of amparo directing reinstatement that have not been complied with (supra paras. 232, 235, 236, 245, 249 and 253). Non-compliance with the judgments acknowledging the rights of the victims resulted in serious consequences to their professional, personal and family life.

311. Owing to the fact that the workers have not been reinstated to their jobs or to similar positions, something which resulted in their not being able to exercise the right to work under decent and just conditions and to be paid a remuneration in consideration thereof that would enable the victims and their next of kin to enjoy a decent standard of living, the workers were deprived of access to economic welfare and to the means that would allow them to provide their next of kin with better health, housing and educational conditions, among other things. Besides, the Court takes into account that the failure to reinstate the workers to their positions has a direct impact on the mood of the unemployed individuals, affecting their personal and family relationships, and lowering their self-esteem.

312. Considering the various aspects of the non pecuniary damage caused, the Court, determines, on equitable grounds, the value of compensations in the amount of US$ 3,000 (three thousand United States Dollars) or the equivalent amount in Peruvian currency, that the State must pay, within fifteen months, to the victims having obtained orders of amparo directing

reinstatement that have not been complied with, or to their successors, as provided in paragraphs 210 to 236, 242 to 270 and 272 to 275 of this Judgment.

D) OTHER FORMS OF REPARATION (MEASURES OF SATISFACTION AND NON-REPETITION GUARANTEES)

Publication of the Judgment

313. As ordered in previous cases, and as a measure of satisfaction, [FN179] the State must publish once in the official gazette and in another daily newspaper with broad national coverage, the chapter on proven facts of this Judgment, without its footnotes, together with the operative paragraphs therein. The publications will be made within six months as from the date notice of this Judgment be served.

[FN179] Cf. Case of Gómez-Palomino, supra note 21, para. 142; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 282; and Case of Blanco-Romero, supra note 24, para. 101.

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314. With regard to the other claims, the Court considers that this Judgment constitutes, in and of itself, a form of reparation for the victims.

E) COSTS AND EXPENSES

315. As the Court has stated on previous occasions, the costs and expenses are contemplated within the concept of reparations as enshrined in Article 63(1) of the American Convention, since the victims' efforts to obtain justice at the domestic as well as at the international levels lead to expenses that must be compensated when the State's international responsibility has been determined in a conviction judgment. With regard to their reimbursement, the Court must prudently assess their extent, which involve the expenses incurred when acting before the authorities with domestic jurisdiction as well as those incurred in the course of the proceedings before the Inter-American System, taking into account the particular circumstances of the specific case and the nature of international jurisdiction for the protection of human rights. Such estimate must be made on grounds of equitable principles and in consideration of the expenses represented by the parties, as long as their amount be reasonable. [FN180]

[FN180] Cf. Case of Blanco-Romero, supra note 24, para. 114; Case of García-Asto and Ramírez-Rojas, supra note 16, para. 286; and Case of Gómez-Palomino, supra note 21, para. 150.

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316. The Court takes into consideration that the victims and their representatives incurred costs relating to the domestic processing of the appeals for legal protection, as well as before the Inter-American Commission and this Court. Likewise, it has been noted that during most of the proceedings before this Court the common intervener was given support by the Centro de

Asesoría Laboral del Perú (CEDAL) (Labor Counseling Center of Peru). As there is no documentary evidence of the costs incurred in the actions taken in representation of the victims in the international proceedings or of the costs incurred in the proceedings brought before the domestic courts, this Court determines, on equitable grounds, costs and expenses in the amount of US$ 16,000.00 (sixteen thousand United States Dollars) or an equivalent amount in Peruvian currency, to be distributed in equal shares between the Centro de Asesoría Laboral del Perú (CEDAL) (Labor Counseling Center of Peru) and the seven groups of victims´ representatives listed in the application filed with the Court. Each of the referred groups of representatives will appoint a person to collect the amounts on their behalf. The State must pay the referred amounts within the term of one year.

317. Likewise, this Court orders that, within six months, the State must establish a specific mechanism to give support to the victims in processing the matters referred to in this Judgment and provide them with proficient legal counseling. All of the foregoing must be made available at no cost whatsoever.

F) METHOD OF COMPLIANCE

318. The State must comply by guaranteeing the injured parties, within one year, the enjoyment of their rights, through the actual enforcement of the orders of amparo the partial or total non-compliance with which has been declared by this Court (supra para. 299), taking into account that domestic courts seized with the enforce the judgments must make certain determinations (supra paras. 259, 265 and 270). In the case of the enforcement of the orders directing reinstatement of the workers to their jobs or to similar positions the State must, within one year, reinstate the living victims to said positions; should this not be possible, it must provide employment alternatives where the conditions, salaries and remunerations that they had at the time they were dismissed are respected (supra para. 299). In the event that reinstatement of the workers to their jobs or to similar positions would not be possible, the State must proceed, within one year, to pay them compensation for termination of employment without just cause. (supra para. 300).

319. The State must pay the victims or their beneficiaries the compensations for loss of wages and the corresponding retirement pensions and ensure that the workers who have not been reinstated have access to the social security system, within fifteen months, as from the date notice of this Judgment be served, as provided in paragraphs 304, 305, 306 and 307 herein.

320. The State must pay the beneficiaries of the deceased victims the corresponding death pension, within fifteen months, as from the date notice of this Judgment is served, as provided in paragraphs 305 and 307 herein.

321. The State must pay the victims or their successors the compensation for non pecuniary damage, within fifteen months, as from the date notice of this Judgment be served, as provided in paragraphs 312 herein.

322. The State must reimburse costs and expenses within one year, as from the date notice of this Judgment be served, , as provided in paragraph 316 herein. The State must, within six

months as from the date notice of this Judgment be served, publish the pertinent parts of the Judgment,, as provided in paragraph 313 herein.

323. The State must discharge its pecuniary obligations by tendering United State Dollars or an equivalent amount in Peruvian currency, at the New York, USA exchange rate between both currencies on the day prior to the day payment is made.

324. Reimbursement of costs and expenses will be made to the Centro de Asesoría Laboral del Perú (CEDAL) (Labor Counseling Center of Peru) and to the seven groups of victims´ representatives listed in the application filed with the Court, as provided in paragraph 316 herein.

325. If any of the groups of representatives or CEDAL are not able to receive the reimbursement for costs and expenses within the above mentioned term of one year, due to causes attributable to them, the State shall deposit said amounts in an account in the name of any of them or draw a certificate of deposit from a reputable Peruvian bank in United States Dollars or an equivalent amount in Peruvian currency, under the most favorable financial terms that the law in force and customary banking practice in Peru allow. If after 10 years the compensation be still unclaimed, the amount plus accrued interest shall be returned to the State.

326. The State must, within six months, establish a specific mechanism to give support to the victims in processing the matters referred to in this Judgment and provide them with proficient legal counseling, all at no cost whatsoever,, as provided in paragraph 317 herein.

327. The amounts allocated in this Judgment as compensations and reimbursement of costs and expenses, shall not be affected, reduced or conditioned by taxing conditions now existing or hereafter created. Beneficiaries shall therefore receive the total amount as per the provisions herein.

328. Should the State fall into arrears with its payments, Peruvian banking default interest rate shall be paid on the amount owed.

329. In accordance with its constant practice, the Court retains the authority emanating from its jurisdiction and also deriving from Article 65 of the American Convention, to monitor full compliance with this Judgment. The instant case shall be closed once the State has implemented in full the provisions herein. Peru shall, within fifteen months as from the date notice of this Judgment be served, submit to the Court a report on the measures adopted in compliance therewith.

XIII. OPERATIVE PARAGRAPHS

330. Therefore,

THE COURT,

DECIDES,

Unanimously:

1. To dismiss both preliminary objections raised by the State in the terms of paragraphs 119 to 128 and 132 to 148 herein.
2. To admit the State's acknowledgment of international responsibility effected before the Inter-American Commission on Human Rights in the terms of paragraphs 169 to 180 herein.

DECLARES:

Unanimously that:

3. The State violated the right to judicial protection embodied in Articles 25(1) and 25(2)(c) of the American Convention on Human Rights, in relation to the general obligation to respect and ensure the rights and freedoms established in Article 1(1) thereof, to the detriment the persons mentioned in paragraphs 232, 235, 236, 245, 249, 253, 260, 265, 270 and 275, as well as in the list of victims attached to this Judgment in the terms of paragraphs 210 to 236, 242 to 270 and 272 to 275 herein.
4. This Judgment constitutes, in and of itself, a form of reparation in the terms of paragraphs 309 and 314 herein.

AND RULES:

Unanimously that:

5. The State must, within one year, ensure that the injured parties enjoy the rights or freedoms that were violated, by the actual enforcement of the orders of amparo the non-compliance with which was declared by this Court, in the terms of paragraphs 299 and 318 herein.
6. The State must, in case of non-compliance with the orders directing reinstatement of the workers to their jobs or to similar positions, reinstate, within one year, the victims to said positions and, should this not be possible, provide them employment alternatives where the conditions, salaries and remunerations they had at the time they were dismissed are respected, in the terms of paragraph 299 herein. In the event that reinstatement of the workers to their jobs or to similar positions would not be possible, the State must proceed to pay compensation for termination of employment without just cause, in the terms of paragraphs 300 and 318 herein.
7. The State must pay the dismissed workers with respect to whom the orders of amparo directing their reinstatement were not complied with or their successors, within fifteen months, a compensation for lost wages, in the terms of paragraphs 304, 307, 319, 323, 327 and 328 herein.
8. The State must determine, under domestic laws and by the pertinent means, who are the victims having the right to a retirement pension based on their age, health condition or any other circumstances prescribed in the domestic laws. In the case of deceased victims, state authorities having jurisdiction must determine, under domestic laws and by any pertinent means, who the beneficiaries of the corresponding death pensions are, in the terms of paragraphs 305 and 307 herein.

9. The State must pay the dismissed workers with respect to whom the orders of amparo directing their reinstatement were not complied with, within fifteen months, the pertinent retirement pensions, in the terms of paragraphs 305, 307, 319, 323 and 328 herein.
10. The State must pay the successors of the workers who may have died while they were dismissed and with respect to whom the orders of amparo directing their reinstatement had not been complied with, within fifteen months, the pertinent death pensions, in the terms of paragraphs 305, 307, 320, 323 and 328 herein.
11. The State must adopt, within fifteen months, all the measures that may be necessary to ensure that the workers who have not been reinstated under the orders of amparo have access to the social security system, in the terms of paragraphs 307 and 319 herein.
12. The State must pay, within fifteen months, the amount determined in paragraph 312 herein as non pecuniary damages to the victims having obtained orders of amparo directing reinstatement that have not been complied with, or to their successors, in the terms of paragraphs 310 to 312, 321, 323, 327 and 328 herein.
13. The State must pay, within one year, the full amount provided in paragraph 316 herein as costs and expenses that is to be distributed in equal shares between the Centro de Asesoría Laboral del Perú (CEDAL) (Labor Counseling Center of Peru) and the seven groups of victims´ representatives listed in the application filed with the Court, in the terms of paragraphs 316, 323, 324, 327 and 328 herein.
14. The State must, within six months, establish a specific mechanism to give support to the victims in processing the matters referred to in this Judgment and provide them with proficient legal counseling, all of it at no cost whatsoever, in the terms of paragraphs 317 and 326 herein.
15. The State must publish only once, within six months, in the official gazette and in another daily newspaper with broad national coverage, the chapter on proven facts of this Judgment, without its footnotes, together with the operative paragraphs hereof, in the terms of paragraphs 313 and 322 herein.
16. The Court shall monitor full compliance with this Judgment and shall consider the instant case closed upon thorough compliance by the State with the provisions therein. Within fifteen months as from the date notice of this Judgment be served, the State shall submit to the Court a report on the measures taken to comply with this Judgment, in the terms of paragraph 329 herein.

Judge Cançado Trindade and Judge Medina-Quiroga informed the Court of their separate opinions, attached hereto.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on February 7, 2006.

Sergio García-Ramírez
President

Alirio Abreu-Burelli
Oliver Jackman
Antônio A. Cançado Trindade
Cecilia Medina-Quiroga
Manuel E. Ventura-Robles

Javier de Belaúnde-López de Romaña
Judge ad hoc

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

List of victims

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I have concurred with the adoption of the instant Judgment by the Inter-American Court of Human Rights; nonetheless, I feel obliged to put on record, in this Separate Opinion, my line of thought on a cornerstone issue in this Judgment aiming at strengthening one of its operative paragraphs (n. 3) as well as the corresponding passages of the considerations (paras. 210 to 281), as grounds for my personal position on this matter. I consider that the violation declared by the Court of Articles 25(1) and (2)(c) of the American Convention in the instant case, based on the failure to comply with the orders of amparo for a long time period, is ineluctably and strongly related to the guarantee of reasonable time provided for in Article 8(1) of the Convention.

2. This is the understanding that captures the position that I have consistently maintained for many years as a member of this Court. In the instant case of Acevedo-Jaramillo et al v. Peru, the Court decided to refrain from analyzing the alleged violation of Article 8, in the terms it was presented before the Court, which were perhaps not accurate or adequate enough. However, the Court might have given the argument a new form in order to provide an answer entailing a more supportive position towards the protection of human rights. It does not seem to me beside the point to underscore that the statement by the Court when declaring Article 25(1) of the Convention to have been violated, whereby it asserted that the effectiveness of a judgment depends on its faithful enforcement, is closely related to the protection granted by the above mentioned guarantee of reasonable time provided for in Article 8(1) of the American Convention.

3. It is my belief that judgment enforcement is part of the legal process —the due process of the law— and, hence, the States must ensure that said enforcement is carried out within a reasonable time. It would neither be beside the point to recall that, contrary to what traditional legal scholars specializing in procedural matters tend to think or assume, the procedure is not an end in itself, but a means to do justice. There is a big gap between formal and actual justice, the latter being the one I keep in mind at all times when reasoning out my arguments. Moreover, I contend that compliance with the judgment is part and parcel of the right to a fair trial (lato

sensu), which is to be understood as the right to be furnished the full span of jurisdiction, wherein the faithful enforcement of the judgment is included.

4. The enforcement of judgments is, then, an essential element of the right to a fair trial itself, thus conceived in a broad sense, in which it expresses the relation between the right to a fair trial and the right to judicial protection under Articles 8 and 25, respectively, of the American Convention. This is the construction best fitting the precedents of the Court. No more than a week ago, in its Judgment in the Case of López Álvarez v. Honduras (of February 1st, 2006), the Inter-American Court clearly stated that:

"The right to a fair trial entails that the solution of the dispute must be reached in a reasonable time; a long delay might even amount in itself, to a violation of the right to a fair trial" (para. 128).

5. This eloquent obiter dictum perfectly harmonizes with the consideration of the Court in its now famous Advisory Opinion No. 16, on The Right to Information on Consular Assistance in the Framework of the guarantees of the Due Process of Law (of October 1st, 1999), in which it stated that:

"In the opinion of this Court, for "the due process of law" a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants." (para. 117).

The Court, once again, considered as a whole the right to an effective recourse and the right to the due process of the law (Articles 25 and 8 of the Convention). I believe that, to this respect, the Court, in the instant case of Acevedo-Jaramillo et al v. Peru, should have been more consistent with its more enlightened precedents, which also entail a more supportive position towards the protection of human rights.

6. In such intelligence, the violation declared by the Court, in the instant case, of Article 25 of the American Convention, has, from my point of view, a direct impact on the due process guarantees prescribed in Article 8(1) of the American Convention. This is a clear case of denial of justice, under Articles 25 and 8(1) of the American Convention. Denial of justice may appear in many different forms and still retain its character as such —as I pointed out in studies on the matter published in the late seventies (cf. A.A. Cançado Trindade, "Denial of Justice and Its Relationship to Exhaustion of Local Remedies in International Law, 53 Philippine Law Journal —University of the Philippines (1978), n. 4, pp. 404-420; A.A. Cançado Trindade, "A Denegação de Justiça no Direito Internacional: Doutrina, Jurisprudência, Prática dos Estados", 62 Revista de Informação Legislativa do Senado Federal - Brasília (1979) pp. 23-40). In my opinion, in all likelihood, any violation of Article 25 of the American Convention implies that the right to a fair trial embodied in Article 8 of the American Convention has not been thoroughly observed. This is the construction I think implies a higher level of protection.

7. Due process implies that, once the right has been determined by means of a final decision of the judicial authority or the (domestic) court having jurisdiction, said decision must become effective through its faithful enforcement. Anything to the contrary would vacate said right, as it

clearly happened in the case of Acevedo-Jaramillo et al v. Peru, in which, for many years, the respondent State failed to effectively comply with the orders of amparo obtained by the victims. This violation should bear on the determination of the reparations from the beginning of the events that infringed the rights of the victims.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra-Alessandri
Secretary

CONCURRENT OPINION OF JUDGE CECILIA MEDINA-QUIROGA IN THE CASE OF ACEVEDO-JARAMILLO ET AL. V. PERU

1. I have concurred with the adoption of operative paragraph 7 of this Judgment, for I am not against granting a compensation for pecuniary damage to the dismissed workers with respect to whom the orders of amparo directing their reinstatement to their jobs were not complied with. However, I have a difference of opinion in relation to the method whereby said compensation is to be to figured out, according to the Court, by the domestic courts.

2. Regarding said workers, the judgments of the Peruvian courts vary in scope. Some of them ordered reinstatement of the workers and back payment of the wages they had lost from the moment they had been dismissed. Others, on the contrary, ordered reinstatement and denied the prayer for back payment.

3. For the first group of workers, the Court stated that Peru should comply with the orders and therefore that the compensations should be figured out as from the date of their unlawful dismissals (paragraph 302).

4. For the second group of workers, the Court established that the basis for the compensation would also be the wages lost, but only as from the date the orders directing reinstatement became final (paragraphs 303 and 304). I do not concur with this.

5. Pecuniary damage "implies the loss of, or detriment to, the income of the victim." It looks evident that this loss had effect as from the moment these workers were unfairly dismissed, for which reason the pecuniary damage also started to appear as from that moment. I do not concur with the consideration made by the Court in paragraph 303 of the Judgment. As the Court sets a compensation, it is not restricted to say only that the order that has not been complied with must be enforced and it has the power, that I think it should have exercised, to assess the damage on an independent basis. This would have also remedied the injustice of ascribing different consequences to similar events and, thus, adversely affect some of the dismissed workers.

Cecila Medina-Quiroga
Judge

Pablo Saavedra-Alessandri

Secretary