In the case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller"), [FN1]

the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court", "the Court" or "the Tribunal"), 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(6), 56, and 58 of the Court's Rules of Procedure [FN3] (hereinafter, "the Rules of Procedure") delivers this Judgment.

[FN1] During the processing of this case before the Court and, previously, during the processing of the application before the Inter-American commission on Human Rights, the name of "Members of the Association of the Discharged and Retired Employees of the Comptroller General of the Republic V. Perú" has been used to refer to this case. Nevertheless, the Court shall use the name of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") V. Perú" hereinafter.

[FN3] According to the provision of Article 72(2) of the Rules of the Procedure of the Inter-American Court of Human Rights, which entered into forced on March 24, 2009, “cases pending Order shall be processed according to the provisions of these Rules of Procedure, except for those cases in which a hearing has already been convened upon the entry into force of these Rules of Procedure; such cases shall be governed by the provisions of the previous Rules of Procedure". In this regard, the Rules of Procedure mentioned in this Judgment corresponds to the document approved by the Tribunal on its XLIX Ordinary Period of Sessions held from November 16 to 25, 2000 and partially amended by the Court in its LXI Ordinary Period of Sessions held from November 20 to December 4, 2003.

I. INTRODUCTION TO THE CASE AND PURPOSE OF THE APPLICATION

1. On April 1, 2008, in accordance with Articles 51 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter, the “Commission” or the “Inter-American Commission”) submitted an application to the Court against the Republic of Perú (hereinafter, the "State" or "Perú"). Said application originated in petition N° 12.357, forwarded to the Secretariat of the Commission on November 12, 1998 by members of the Association of Discharged and Retired Employees of the Office of the Comptroller General of the Republic of Perú [Asociación Nacional de Cesantes y Jubilados de la Contraloría General de la República del Perú] (hereinafter, the "Association" or the “Association of Discharged and Retired Employees”) and the application was expanded on January 24, 2000, date on which they appointed, inter alia, the Labor Advisory Center (hereinafter, “CEDAL”) as legal representative. On October 9, 2002 the Commission adopted the Report on Admissibility N° 47/02, by which it admitted such petition. Afterwards, on October 27, 2006, the Commission adopted the Report on Merits N° 125/06 under the terms of Article 50 of the Convention, by which it made certain recommendations to the State. [FN4] On April 1, 2008 the Commission decided, under the terms of Articles 51(1) of the Convention and 44 of its Rules of Procedure, to submit the instant case to the Court's jurisdiction considering that "the State has failed to comply with the recommendations" mentioned in the Report on Merits N° 125/06. The Commission appointed Mr. Paolo Carozza, Commissioner and Mr. Santiago A. Canton, Executive Secretary as Delegates and Mrs. Elizabeth Abi-Mershed, Deputy Executive Secretary, Norma Colledani and Manuela Cruz Rodriguez, specialists of the Executive Secretariat of the Commission as legal advisors.

[FN4] In the Report on Merits, the Commission concluded that, "the Peruvian State is responsible for the violation to the right to judicial protection and to property as enshrined in Articles 25 and 21 of the American Convention, to the detriment of the discharged and retired employees of the Comptroller General of the Republic. Moreover, the foregoing constituted the violation by the Peruvian State of the general obligation to respect and guarantee imposed upon the State by Article 1(1) of said international treaty" Finally, the Commission recommended the State "to take the necessary measures to efficiently comply with the judgments of the Constitutional Tribunal of Perú rendered on October 21, 1997 and January 26, 2001”.

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2. In the application, the Commission referred to the alleged failure to comply with the judgments of the Constitutional Court of Perú delivered on October 21, 1997 and January 26, 2001 ordering "the Office of the Comptroller General of the Republic (CGR) to comply with the payment to the alleged victims of the salaries and wages, benefits, and bonuses received by the active employees of that office performing functions identical, similar, or equivalent to those that the discharged or retired employees performed", regarding the two hundred and seventy-three [273] members of the Association of Discharged or Retired Employees of the Comptroller General of the Republic (hereinafter, the "alleged victims" or the "273 members of the CGR"). [FN5] The Commission pointed out that "[e]ven if the State has partially complied with an aspect of the judgment [of the Constitutional Court] by equalizing the pensions of the [alleged] victims by November 2002, it has not complied with the duty to reimburse the amounts of pensions owed from April 1993 to October, 2002".

[FN5] The 273 alleged victims in this case are: Acevedo Buendía, Alejandro; Acevedo Castro, Apolonio; Acevedo León de Dávila, Isabel Zoila; Acosta Arandia, Asunción Graciela; Acosta Trujillo, Marcial; Agüero Ayala, Zóismo; Aguilar Arévalo, Augusto Marcos; Aguilar Serrano, Miguel Tulio; Aguirre Calderon, Emilio Fernando; Alarcón Coronado De Pérez, Nilda René; Alayo Fajardo, Félix Agustín; Alcalá Contreras, Carmen Alejandra; Alcóser Gutiérrez, Moisés Ernesto; Almenara Valdez De Hemmerde, Luisa; Almeyda Flores, Gerardo; Álvarez Postigo, Víctor Augusto; Alza Ahumada, Carlos Eugenio; Amico Ramos Vda. de Errea, Leticia; Ampuero Pasten, Alejandro Augusto; Anaya Vda. De Faura, María Cristina; Aparicio Sifuentes, José Melchor; Aquije Alvarez, Luis Alberto; Arana Pozo, Iraida Eumelia; Arancivia De Valdez, Jaqueline Tania Silvana; Aranda De Los Ríos, María Rosa; Arce Meza, Fernando Aníbal; Arce Vda. De Hipólito, Carmen Julia; Arevalo Dávila Vda. de Pujazón, Martha Leticia; Arroyo Montes, Carmen Liliana; Arroyo Villa Vda. de Arriola, Hilda Teresa; Asencios Ramírez De Cuneo, María Emma; Bacigalupo Hurtado De Salgado, María Cristina; Balabarca Morales, Rosa Elvira; Banda De Palacios, Josefa Eusebia; Barandiarán Ibáñez, Germán Julio César; Barreda Espinoza, Gerardo Adán; Beaumont Callirgos, Fortunata Raquel; Becerra Quiroz, Delia; Becerra Quiroz, Julia Auristela; Begazo Mansisidor, Roberto Isidoro; Beltrán Paz De Vega, Ana María Vicente; Berríos Berríos, Martha María Antonieta; Berrocal Soto, Vladimiro Jesús; Blas Moreno, Carmen; Blotte Adams, Manuel Edmundo; Bojorquez Gonzáles, Dalton Jesús; Borrero Briceño, Julio Cesar; Bravo Torres, Enrique; Cabrera Jurado, Leoncio Ruperto; Cadenillas Gálvez, Luis Francisco; Cahua Bernales, Juan Antonio; Calderón Escala, Francisco Armando; Campos Sotelo, Héctor Ciro; Candela Vasallo, Héctor Oswaldo; Cárdenas Abarca, Saúl Edmundo; Carmelino Del Carpio Deli, Liliana; Carpio Valdivia, Carmen Jacinto; Carranza Espinoza, Pedro Víctor; Carranza Guerra, Jaime Leoncio; Carrasco Valencia, Reneé Javier; Carrillo Salinas, Enrique; Carrión Martínez, Pedro Antonio; Castagneto Vélez, Juan Antonio; Castañeda Acevedo, Manuel Segundo; Castilla Meza, Jorge Clímaco; Castro Contreras, Jaime Raúl; Castro Zapata, Norberto; Cavassa Urquiaga, Juana María; Celis Cairo, César Manuel; Centurión Marchena De Ramírez, Carmen Isabel; Céspedes Romero, Manuel; Chamorro Díaz De Bezir, María Del Carmen; Chapoñán Prada, Ricardo; Chávez Del Carpio, Genaro Remigio; Chicoma Mendoza, Juan Vicente; Choza Nosiglia, Fernando; Chumpitaz Huapaya, José Hugo Félix; Chura Quisocala, Germán Amadeo; Collantes Sora, César Daniel; Cortes De Durand, Sofía; Cuadros Valdivia, Gregorio Hipólito; Cubas Castillo, Martha; Cuiro Jaimes, Mariano; Dávila Ramos, Pablo; Dawson Vásquez, Harry; De La Cruz Arteta, José Enrique; Defilippi Vda. de Queirolo, Adela;

Delgado Gorvenia, Frida Eriberta; Delgado Vega, Roberto Alfredo; Dextre Dextre, Víctor Manuel; Dueñas Aristizábal, Antonio Pelagio; Egúsquiza Flores, José Wilfredo; Escobar Salas, José Santiago; Escudero De Beraun, Nelly; Espejo Vivanco, María Luz; Espinoza Zazzali, Moisés Ernesto; Falcón Carbajal, Guillermo; Falconi Delboy, Mercedes Gabriela; Faustino Tataje, Fermín; Ferreccio Alejos, Elsa Mirtha; Ferrel Ayma, Claudio; Figueroa Guerrero, Elmer Enrique; Figueroa Pozo, Doris María Flora; Flores Konja, Julio Vicente; Flores Ojeda De Pérez, Blanca Nélida; Gala Conislla, Roque; Galvez Martínez De Talledo, Mirella Teresa; García Flores, César Augusto; García Mendoza, Rafael Francisco; García Salvatecci, Carmen Rosa; García y García De Gómez, Nélida; Gómez Córdova, Juan Aníbal; Gonzáles Miranda, Luis; Gotuzzo Romero, Mario Bartolomé; Gutiérrez García, Darío Alejandro; Guzmán Rodríguez, Jorge Segundo; Hernández Cotrina, Amado; Hernández Fernandini, Constanza; Hernando Galvez, José Antonio; Herrera Meza, José Santos; Huamán Effio De Revilla, Mirtha Luz; Huamán Huillca, Valerio Francisco; Ibarra Márquez, Juan Amador; Icochea Arroyo, José Félix; Ishiyama Cervantes Miguel; Iturregui Santoyo, Pedro Gonzalo; Iturrizaga Arredondo, Rafael; Jiménez Lumbreras, Mauro Esteban; Lam Sánchez De Torres, Consuelo; Lamas Vargas, Julia Elvira; Lazarte Terry, Máximo Ernesto; Lazo Loayza, Dante Eusebio; Lazo Zegarra, Nora Ruth; Leau Caballero De Herrera, Betty Eudocia; Libaque Villanueva, Manuel Isaac; Linares Ruiz, María Ilmer; López Rubiños De Rivero, Nelly Esperanza; López Solórzano Vda. de Sunico, Rosa Judith; López Rubiños, Jorge Percy; Lora Cortinez, Juan; Lucero Álvarez, Manuel Gerónimo; Lucero Palomares, Abraham; Luna Heredia De Rodríguez, María Maruja Elvira; Macchiavello Leon Widower of León, Teresa Yolanda; Manyari Palacios, Guido Alberto; Marin Gil, Juan; Martínez Marin, Alicia; Martínez Estremadoyro, Juan Bautista; Martínez Hubner, Fernando Marcos; Martínez Torres, Raúl Domingo; Matos Huanes, Carlos Alberto; Medina Morán, Juan José; Mejía Montes, Félix Espimaco; Meléndez Meléndez, Rita; Meléndez Hidalgo De Bojorquez, Nora Angelina; Meléndez Romani, Jesús; Melgar Medina, Jesús M.; Menéndez Butrón, Judith Damiana; Mercado, Luis Fernando; Merino Sánchez, Eduardo; Mesías Sandoval, Vidal Hernán; Meza Gamarra, Arturo Higinio; Meza Ingar, Patricia Edelmira; Miranda Roldán, Rosa Luz; Miyasato Higa Vda. de Kamisato, Victoria Alejandrina; Mondragón Roncal, Fernando Eleuterio; Monsante Ramírez, César; Montero Garavito, Guillermina; Montero Vargas, Edgardo Demetrio; Montoya Villalobos, Carlos Alejandro; Morales Chavarría, Samuel Enrique; Morales Martínez, Ángel; Moreno Dorado, Blanca Frida; Mostajo Colzani, Manuel Fernando; Mueras Orcon, Lucio; Muñoz Pardo, Edgardo; Navarro Quispe De Morales, Julia Ricardina; Negri Cabrera, Otto Alberto; Neyra Castro, Luis Mauro; Neyra Ríos, Marina; Niño García, Víctor Raúl; Ochoa Ochoa, Pedro; Odría Bastas, Víctor Manuel; Odría Torres Víctor; Ojeda Sánchez, Luis Octavio; Olaechea Granda, Luis Adolfo; Ormeño Wilson, Julio Eduardo; Oropeza Guía, Leonardo; Padilla Gonzáles De Gordillo, Irene; Paredes Tapia, Eugenia Martha; Peña Ugarte, Juan Manuel; Peñaranda Portugal, Percy; Pérez Gallegos, Gabriel; Pérez Rosales, José Manuel; Pérez Ugarte, Urbana Eugenia; Portugal Vizcarra, José Antonio; Pozo Calva, Gabino Ulises; Pozo Vega, Luis Daniel; Quinde Villacrez, Edgardo; Quiroz Arata, Juan; Ramírez Gandini, César Manuel; Reátegui Noriega, Nancy; Ríos Nash De Reátegui, María Teresa; Rivera Dávalos, Julio César; Robles Freyre Vda. de Kajatt, María Victoria; Rodríguez Balbuena, Edilberto; Rodríguez Vildosola Vda. de Cussianovich, María Zulema; Rodríguez Yépez, Laura Angélica; Rodríguez Zarzosa, Pablo Víctor; Romero Maceda, Ricardo Héctor; Romero Pacora, Jesús; Romero Vivanco, Judith María Del Rosario; Rosario Chirinos, Marcos; Ruiz Botto, José Guillermo; Saenz Arana, Luz Aurea; Salas Luna, Ulderico; Salazar Souza Ferreyra, César Enrique; Salinas De Córdova, Elsa Luisa; San Román Vda. De Riquelme, Luz; Sánchez Canelo,

José Edmundo; Sánchez Huarcaya, Luisa Flora; Sánchez Quiñónez, Juan Zenobio; Sanez Gárate, Betty Soledad; Santamaría Vidaurre, César Augusto; Santayana Valdivia, Atilio; Seperack G. De Caro, Rosa; Serrano Mendieta, Valerio Humberto; Sevilla Aspillaga, Guillermo Eduardo; Sifuentes Del Águila, Leoncio Oswaldo; Sigarrostegui Bindels De Gonzáles, Norma; Solis Romero, Jaime Juan; Sosa Castillo, Julio Edmundo; Soto Bautista, Emilio Felipe; Taboada Morales, César Hugo; Tapia Campos, Antero Santiago; Taquia Vila, Víctor; Tavara Ocaña De Ruiz, Herminia Beatriz; Terán Suárez, Félix Enrique; Tolentino Zagal, Rossana; Tompson Ortega, Andrés Avelino; Torres Rodríguez, Mario Simón; Trujillo Rodríguez, Raquel; Ubillus Martino, Mario Pastor; Ugarte Alarcón, Alberto Walter; Urrelo Moreno De Cardich, Rosa; Valencia Amador, Elizabeth Milagro; Valencia Pacheco De Cárdenas, Blanca Concepción; Valverde Bernal, Adolfo; Vargas Calvo, Alberto; Vargas Giles, Juan Augusto; Vargas Prieto Vda. de Barcelli, María Esther; Vargas Salas, Cosme Marino; Vargas Salazar, Enrique Eduardo; Vargas Salinas, Eileen G.; Vásquez Del Castillo, Elena; Vega Alarcón, César Augusto; Vela Lazo De Peralta, Consuelo Emperatriz; Velarde Falcón, Amelia Juana; Velásquez Del Carpio, César; Vicuña Arias De Valdez, Edelmira; Villalobos Rodríguez, Marcos; Villanueva Ipanaque, Carmen Isabel; Vitkovic Trujiilo, José Baltasar; Vizcaya Jáuregui, Nicolás Ramiro; Yap Cruz, José Leoncio; Yarasca Montano, Pedro Lucio; Yong Flores, Raúl; Zapata Barrientos, Pedro Sigifredo; Zapata Benites, Alberto; Zavala Rivera, Víctor Manuel; Zavala Torres, Dora Jasmine; Zevallos Alzamora, Olga Cecilia, and Zuloeta Camacho, Ángel.

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3. Based on the foregoing, the Commission requested the Court to declare that the State is responsible for the violation of the rights enshrined in Articles 21 (Right to Property) and 25 (Right to Judicial Protection) of the American Convention, in conjunction with Article 1(1) (Obligation to Respect Rights) therein, to the detriment of 273 alleged victims. Consequently, the Commission requested the Court, in accordance with Article 63(1) (Obligation to Repair) of the Convention, to order the State to adopt "the measures necessary to effectively comply with the judgments of the Constitutional Court of Perú rendered on October 21, 1997 and January 26, 2001" as well as with the payment of "the costs and expenses incurred by the [alleged] victims in the processing of the case at the domestic level [and] before the [I]nter-American [S]ystem".

4. On July 7, 2008 Mr. Javier Mujica Petit, lawyer in charge of the Human Rights Program of CEDAL (hereinafter, the "representative"), and Mrs. Isabel Acevedo León, president of the Association of Discharged and Retired Employees filed the brief containing pleadings, motions and evidence (hereinafter, "brief of pleadings and motions") under the terms of Article 23 of the Rules of Procedure. In said brief, the representatives requested the Court to declare that the State has committed the same violations of the rights as alleged by the Commission and they further alleged that the State is responsible for the violation of Article 26 (Progressive Development of the Economic, Social and Cultural Rights) of the Convention, in conjunction with Article 1(1) (Obligation to Respect Rights) therein. Moreover, they requested the Court to order the State the adoption of certain measures of reparation and the reimbursement of costs and expenses. In the same brief, it was mentioned that CEDAL "represents 248 discharged and retired employees out of the 273 members of the Association determined in the application" and that the "25 [alleged] victims or their next-of-kin, who are not represented by [CEDAL], shall be represented by the Commission, according to Article 33(3) of the Court's Rules of Procedure". However, the powers of attorney and records presented as appendixes to the application and the brief of

pleadings and motions allow this Tribunal to conclude that Mr. Mujica Petit represents 251 alleged victims and that, therefore, 22 people are represented by the Commission. [FN6]

[FN6] The 22 alleged victims who did not grant a power of attorney to Mr. Javier Mujica Petit are: Agüero Ayala, Zósimo; Aguilar Arévalo, Augusto Marcos; Banda De Palacios, Josefa Eusebia; Berríos Berríos, Martha María Antonieta; Blas Moreno, Carmen; Cárdenas Abarca, Saúl Edmundo; Chapoñan Prada, Ricardo; Defilippi Vda. de Queirolo, Adela; Falconi Delboy, Mercedes Gabriela; García Mendoza, Rafael Francisco; Iturrizaga Arredondo, Rafael; Jiménez Lumbreras, Mauro Esteban; Lora Cortínez, Juan; Marín Gil, Juan; Montero Garabito, Guillermina; Morales Martínez, Ángel; Moreno Dorado, Blanca Frida; Odría Torres, Víctor Manuel; Ormeño Wilson, Julio Eduardo; Pérez Ugarte, Urbana Eugenia; Sigarrostegui Bindels de González, Norma, and Vargas Prieto Vda. de Barcelli, María Esther.

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5. On September 5, 2008 the State, represented by Mrs. Agent, Delia Muñoz Muñoz, filed the brief containing the response to the petition and the observations to the brief of pleadings and motions (hereinafter, "response to the petition") in which the State objected to the Court's competence ratione materiae pointing out that the Court "lacks competence to hear and deliberate on rights of an economic, social and cultural nature". In the brief of final arguments, the State explained that the preliminary objection is based on "the Court's lack of competence ratione materiae in matters concerning the alleged violation to the right of social security and that it should only analyze and eventually declare the international responsibility of the State in relation to the right to judicial protection and property enshrined in the Convention". Furthermore, the State pointed out that it is not responsible for the alleged violations "given the fact that since the year 2002 [...] it had been paying pegged remunerations to the alleged victims [,] all of them [,] as ordered by the judgments mentioned", and rejected the "obligation to pay the amounts owed since it is not contained […] in the judgments of the Constitutional Court". Finally, the State required the Court to declare the request of reparations and reimbursement of costs and expenses to be contrary to law and unfounded. In accordance with Article 37(4) of the Rules of Procedure, on October 10 and 21, 2008 the representative and the Commission, respectively, presented their arguments on the preliminary objection raised by the State, and requested the Court to reject it.

II. PROCEEDING BEFORE THE COURT

6. On May 5, 2008 the Secretariat of the Court (hereinafter, the "Secretariat"), prior to a preliminary examination conducted by the President of the Court and in accordance with Articles 34 and 35(1) of the Rules of Procedure, notified, via facsimile, said application to the State [FN7] and the representative. On June 6, 2008 the State appointed Mr. Victor Oscar Shiyin Garcia Toma as ad hoc Judge.

[FN7] When the application was served on the State, it was informed on the right to appoint a judge ad hoc in order to participate in the consideration of the case.

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7. On December 5, 2008 the President of the Court ordered, by means of an Order, the submission of affidavits, a testimony, a statement for informative purposes and an expert assessment proposed by the representatives and the Commission. Furthermore, the Court admitted four affidavits submitted by the representatives on November 13, 2008, notwithstanding its early presentation in the proceeding. The parties had the opportunity to present observations to all the statements that were required and admitted. At the same time, the President convened the Commission, the representatives and the State to a public hearing to listen to the statements of two witnesses offered by the representatives, as well as the final oral arguments on the preliminary objection and merits, reparations and costs. [FN8]

[FN8] Order of the President of the Inter-American Court of December 5, 2008.

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8. On January 5, 2009 the representatives filed the affidavit rendered by Mrs. Dicha Laura Arias Laureano de Pozo and on January 6, 2009, the Commission filed the statement for informative purposes and the expert report rendered before a notary public by Mr. Javier Cabanillas Reyes and Flavia Marco Navarro, respectively. On January 16, 2009 the State presented observations to the testimony of Dicha Laura Arias Laureano de Pozo, as well as to the statement for informative purposes and the expert report rendered by Mr. Javier Cabanillas Reyes and Flavia Marco Navarro, respectively. On that same day, the representative presented observations to the last two statements.

9. On January 21, 2009 the public hearing was held, within the framework of the LXXXII Ordinary Period of Sessions of the Court. [FN9]

[FN9] The following persons appeared before the public hearing: a) on behalf of the Inter-American Commission: Elizabeth Abi-Mershed, Deputy Secretary, Juan Pablo Albán, advisor, Lilly Ching Soto and Silvia Serrano, both specialists of the Executive Secretary; b) on behalf of the alleged victims and the representative: Javier Mujica Petit, representative of the alleged victims; Isabel Zoila Acevedo León, alleged victim and president of the National Association of Discharged and Retired Employees of the Comptroller General of the Republic ; Luis Adolfo Olaechea Granda, alleged victim and vice-president of the National Association of the Discharged and Retired Employees of the Comptroller General of the Republic and María Cristina Bacigalupo de Salgado, allegad victim and Advisor to the Board of the National Association of Discharged and Retired Employees of the Comptroller General of the Republic and c) on behalf of the State: Delia Muñoz Muñoz, Supranational Special Attorney General of the Legal Defense System of the State; Rosa María Silva Hurtado, Technical Secretary of the Legal Defense Council of the State; Edgar Alarcón Tejada, General Manager of the Legal Defense Council of the State and Héctor Maldonado Montalvo, Deputy Attorney General of the Comptroller General of the Republic .

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10. On February 23, 2009 the Commission, the State and the representatives submitted, respectively, their final written arguments on the preliminary objection and the merits, reparations and costs. Given that the State and the representatives forwarded documentary evidence with the final arguments, the Court requested the parties to present observations to said Appendixes by means of note of March 11, 2009. On March 20, 2009 the Commission pointed out that "it ha[d] no observation to make" in relation to the evidence tendered by the State and by the representatives with their corresponding briefs of final arguments. The State and the representative presented no observations in such regard.

11. On March 30, 2009 the representative was requested to forward to the Tribunal the receipts and evidence related to the costs and expenses mentioned in appendix 5 of the brief of pleadings and motions in the instant case. On April 20, 2009 the representative requested an extension of 30 days to present said evidence, which was granted by the President of the Court. On May 28, 2009, the representative requested "an extension of 30 additional days" to present said evidence. In that regard, the President of the Tribunal established a new time limit, until June 12, 2009, for the representative to present said documentation. On June 17, 2009 the representative indicated that it had sent a “list of expenses” by post and on June 22 and 23, 2009 it presented the appendixes mentioned in said communication by electronic mail. The Court established a time limit until June 29, 2009 for the State and the Commission to present the observations thereto. On June 30, 2009 the State forwarded the respective observations. By the time of the delivery of this Judgment, the Tribunal has still not received the observations of the Commission.

III. PRELIMINARY OBJECTION RATIONE MATERIAE

12. In the brief of response to the petition, the State asserted that the lacks competence ratione materiae to hear the case at hand. In the brief of final arguments, the State explained that the preliminary objection is based on “the Court’s lack of competence in matters concerning the alleged violation to the right to social security and that it should only analyze and declare the international responsibility of the State in relation to the right to judicial protection and property enshrined in the Convention”. During the public hearing held in this case, the State was even more specific and pointed out that the objection of competence, raised by the State, refers to the claim made by the representative in order for the Court to declare the violation of Article 26 of the Convention inasmuch as it allegedly protects, according to the representative, the right to social security. In this regard, the State alleged that the right to social security falls out of the Court's competence ratione materiae since such right is not enshrined by the American Convention and it is not even one of the two rights (right to organize trade union and right to education) that would be actionable before the Inter-American system, in accordance with the provisions of Article 19(6) of the Protocol of San Salvador.

13. In such regard, the Commission considered that the “preliminary objection raised by the State must be rejected based on lack of legal grounds”. It pointed out, in the first place, that the State “did not raise any objection to the compliance with the requirements of admissibility” during the processing before the Commission, and therefore, its objection “is inadmissible by virtue of the principle of estoppel”. Furthermore, it mentioned that the “purpose of the application filed by the Commission does not intend to establish whether the members of the

Association [...] are entitled to a right to social security and whether such right has or has not been respected, guaranteed or complied with by the Peruvian State. Such right has been acknowledged as such by the judgments of the Constitutional Court of Perú rendered on October 21, 1997 and January 26, 2001. Its content is not at issue before the Court [...]. What it is really at issue […] is the non-compliance with said judgments and the consequences that said non-compliance have for the right [to] property of the victims over their pensions". Moreover, the Commission indicated that, even though the alleged violation of Article 26 of the Convention "is not part of the case submitted to [it], according to the case-law of the system, the Court has subject-matter jurisdiction to hear and deliberate on an alleged violation of said rule". In any event, it pointed out that "the discussion whether the State violated or not Article 26 of the Convention forms part of the merits of the case at hand". Finally, it emphasized that "nor the Commission or the representative of the [alleged] victims have alleged the violation of the provisions of the [Protocol of San Salvador]", and therefore "it is unnecessary for the Court to decide on its subject-matter jurisdiction in relation to said treaty".

14. Moreover, the representatives also requested the Court to reject the preliminary objection raised by the State. It alleged that the Court is competent "to interpret and establish the scope of the general obligations to respect and guarantee, and to adapt the domestic legislation, regarding those rights that derived from economic, social, educational, scientific and cultural rules, contained in the OAS Charter, amended by the Protocol of Buenos Aires, to which Article 26 of the Convention refers". In addition, it pointed out that the American Convention "does not exclude [from the Court's competence] the interpretation and application [of] any right or provision of [said treaty]. Therefore, it must be understood that all the Articles […] are subject to interpretation by the Court's adversarial jurisdiction". Moreover, they indicated that even though "the subject-matter of the controversy in the instant case consists of establishing whether the Peruvian State has incurred in international responsibility by failing to comply with two judgments, […] the right to judicial protection necessarily implies the indirect protection of the rights enshrined by [such] judgments, […] even when those [rights] are not protected by the Convention". In this respect, the representative pointed out that the Court "has [decided] on cases involving the same or similar factual pattern [to] the one now being heard", and that the Court did not find any limitation to its jurisdiction to adjudge and declare over Article 26 of the Convention. They further asserted that "what it [had] requested the Court is to [declare] the violation of Article 26 of the Convention" and not to "establish the violation of rights contained in the Protocol of San Salvador".

15. The controversy in the case at hand, as it springs from the briefs submitted by the parties, aims at determining the international responsibility of the State for the alleged non-compliance with what was ordered in favor of 273 alleged victims in the two judgments rendered by the Peruvian Constitutional Court in relation to their right to social security in Perú. According to the Commission, said alleged non-compliance constitutes a violation of the rights enshrined in Articles 25 and 21 of the Convention, in conjunction with the general obligation contained in Article 1(1) therein. Moreover, the representative requested an additional decision from the Court regarding Article 26 of the Convention. The preliminary objection rose by the State focuses on the alleged lack of competence ratione materiae to hear over Article 26 of the Convention. Therefore, it is the Tribunal's decision to analyze if it is competent to hear over an alleged violation of said Article.

16. As a judiciary organ, this Tribunal, in exercise of the authority vested in it, may determine the scope of its own jurisdiction (competence de la competence). To determine the scope of its own competence, the Court has to take into account that the instruments recognizing the optional clause on compulsory competence (Article 62(1) of the Convention) presuppose the acceptance of the Court's right to decide any dispute relating to its competence by the States that submit it. [FN10] Moreover, the Tribunal has asserted on other occasions, that the broad wording of the Convention indicates that the Court has full jurisdiction over all matters pertaining to its Articles and provisions. [FN11]

[FN10] Cf. Case of Ivcher Bronstein V. Perú. Competence. Judgment of September 24, 1999. Series C No. 54, para. 32 and 34; Case of Heliodoro Portugal V. Panamá. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, para. 23; and Case of García Prieto et al. V. El Salvador. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, para. 38.
[FN11] Cf. Case of Velásquez Rodríguez V. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 29; and Case of the 19 Tradesmen V. Colombia. Preliminary Objection. Judgment of June 12, 2002. Series C No. 93, para. 27.

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17. In addition, since Perú is a State Party to the American Convention and has acknowledged the adversarial jurisdiction of the Court, the Court is competent to decide whether the State has failed to comply with or violated any of the rights enshrined in the Convention, even the aspect concerning Article 26 thereof. Therefore, the analysis of the controversy, that is, the determination of whether the State is responsible for the violation of Article 26 of the Convention, shall be made in the chapter on the merits of this Judgment (infra paras. 92 to 107).

18. Moreover, the Tribunal notes that the violation of the Protocol of San Salvador has not been alleged in the case at hand, and therefore the Court considers it is unnecessary to decide whether it has jurisdiction over said Treaty.

19. Consequently, the Tribunal rejects the preliminary objection on the lack of the Court's competence ratione materiae raised by the State and considers it is competent to analyze the arguments related to the merits of the case at hand.

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20. The Court notes that the State pointed out in its final arguments that there is still pending, at the domestic level, the "process of execution" of the judgments in question. This Tribunal notes that said position was not expressly put forward by the State as a preliminary objection of incompetence in terms of an alleged lack of exhaustion of domestic remedies. Therefore, it is not up to the Tribunal to issue a ruling in that regard but to repeat its case-law, [FN12] according to which, the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings. As a consequence, the State should have raised said preliminary objection, if that was the case, at the appropriate procedural moment, but it did not.

Nevertheless, when analyzing the merits of the controversy, the Tribunal shall assess the position put forward by the State in relation to the alleged "process of execution" that is pending at the domestic level.

[FN12] Cf. Case of Velásquez Rodríguez, supra note 11, para. 88; Case of Bayarri V. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C Nº. 187, para. 16; and Case of Heliodoro Portugal, supra note 10, para. 14.

IV. COMPETENCE

21. The Court has jurisdiction over this case in accordance with Article 62(3) of the American Convention, given the fact that Perú has been a State Party to the American Convention since July 28, 1978 and has accepted the binding jurisdiction of the Court on January 21, 1981.

V. EVIDENCE

22. Based on the provisions of Article 44 and 45 of the Rules of Procedure, as well as the case-law of the Court as to evidence and assessment thereof, [FN13] the Court shall examine and assess the evidence contained in the case file.

[FN13] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala, Merits. Judgment of March 8, 1998. Series C, Nº 37, para. 76; Case of Kawas Fernández V. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 36; and Case of Perozo et al. V. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 91.

A) Documentary, Testimonial and Experts' Opinion Evidence

23. At the request of the Presidency, [FN14] the Tribunal received the testimonies and the statements for informative purposes, rendered before notary public (affidavits), of the following people:

a) Cosme Marino Vargas Salas;
b) Juan José Medina Morán;
c) César Daniel Collantes Sora;
d) Julio César Borrero Briceño, and
e) Dicha Laura Arias Laureano.

All the above mentioned witnesses were proposed by the representative, in their capacity as alleged victims, as members of the Association of Discharged and Retired Employees. They rendered statements about the alleged economic, personal and family consequences they have

suffered due to the alleged non-compliance with the decisions of the Constitutional Court of Perú, which are the subject-matter of the case at hand, and they also declared about the alleged actions taken through the Association of Discharged and Retired Employees at both, the domestic and international level in order to comply with said decisions and with the results thereof as well.

f) Javier Cabanillas Reyes, deponent for informative purposes proposed by the Commission; Peruvian legal expert witness. His statement dealt with the proceedings to enforce judgments followed by the 66º Specialized Civil Court of Lima, and with the expert report that allegedly determines the total and updated amount of pensions accrued from April 1993 to October 2002, and

g) Flavia Marco Navarro, expert witness proposed by the Commission; she is a lawyer and expert in social security systems. Her statement referred to the aspects of reparations and methods of compliance related to the judgments issued by the Constitutional Court of Perú in the case at hand.

[FN14] Order issued by the President of the Court, supra note 8.

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24. During the public hearing of this case, the Court received the statements of the following witnesses:

a) José Guillermo Ruiz Boto, alleged victim and witness proposed by the representative. He rendered a statement, inter alia, about the alleged consequences suffered by the alleged victims as a result of the alleged non-compliance with the decisions of the Constitutional Court of Perú, subject-matter of this case, and the alleged actions taken through the Association of Discharged and Retired Employees both, at the domestic and the international level, in order to comply with said judgments and,

b) José Baltasar Vitkovic Trujillo, alleged victim and witness proposed by the representative. He declared, inter alia, about the peculiarities of the pension system of Decree-Law 20530, the alleged consequences suffered by the alleged victims due to the non-compliance with the decisions of the Constitutional Court of Perú, subject-matter of this case, and the alleged actions taken, both, at the domestic and international level in order to comply with such decisions.

25. Apart from the statements and expert reports previously mentioned, the Commission, the representative and the State forwarded evidence at several procedural opportunities, as well as at the public hearing (supra paras. 9, 10 and 11).

B) Evidence Assessment

26. In the instant case, as ordered in other cases, [FN15] the Court accepts the validity of those documents and statements presented by the parties at the appropriate procedural opportunity, under the terms of Article 44 of the Rules of Procedure, which have not been disputed or objected nor their authenticity or veracity questioned.

[FN15] Cf. Case of Velásquez Rodríguez V Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 140; Case of Kawas Fernández, supra note 13, para. 39; and Case of Perozo et al., supra note 13, para. 94.

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27. As to the testimonies, statements for informative purposes and expert opinions rendered by witnesses and expert witnesses by means of affidavits and at public hearings, which the parties did not challenge, the Court deems they are appropriate inasmuch as they adjust to the purpose defined by the Tribunal in the Order by means of which such evidence was requested (supra para. 7) and it shall assess them on the basis of the body of evidence and sound judgment rules. The Court points out that the statements rendered by the alleged victims cannot be assessed separately for they have a direct interest in the outcome of the case, and therefore, must be assessed as a whole with the rest of the body of evidence of the proceedings and according to the sound judgment rules.

28. In the application, the Commission requested the Court to order the State "the presentation of complete and certified copies of case-file 2027-98 that is being processed before the 66° Specialized Civil Court of Lima". Moreover, the State required the Court to declare the Commission's request to be inadmissible "since it does not relate to the case at hand". In such regards, the Court notes that the body of evidence, which is a constituent part of case-file before it, is enough to solve the disputes put forward in the case at hand (supra paras. 1 to 5), and therefore the Court considered it was unnecessary to require such documentation.

29. Moreover, the representative and the State tendered evidence together with their observations to the sworn statements (affidavits) rendered in the instant case. [FN16] The Tribunal notes that, even though said items of evidence tendered by the representative were forwarded after the presentation of the brief of pleadings and motions (supra para. 8), it is related to a supervening fact that did not exist at the moment of the submission of said brief. Besides, the Court notes that the evidence tendered by the State consists of several Orders and briefs that were issued, notified or presented between the months of December, 2008 and January, 2009, that is to say, after the presentation's date of the response to the application or that they are related to such supervening facts. Besides, the Court notes that said evidence was not challenged by the parties (supra paras. 8, 9 and 10), and that it is useful and appropriate for the determination of the facts of the case at hand. Therefore, in accordance with Article 44(3) of the Court's Rules of Procedure, the Tribunal admits it into the body of evidence to assess it according to the rules of sound judgment.

[FN16] The representative tendered the following evidence: a) Order issued by the Sixth Civil Chamber of the Superior Court of Lima, of November 27, 2008 and notified to the Association of Discharged and Retired Employees on January 8, 2009; b) copy of Acts N°. 28046 and 28047, mentioned in said Order of November 27, 2008; c) copy of the Rules of Procedure of Act N° 28046, also related to Order of November 27, 2008 and d) copy of the judgment rendered by the Constitutional Court of Perú, dated September 20, 2004, mentioned by the Sixth Civil Chamber

of the Superior Court of Lima in its Order of November 27, 2008. In addition, the State tendered the following evidence: Order N° 266, of July 1, 2008 (notified on December 24, 2008); 3.2) Order N° 291, of December 12, 2008; Order N° 296, of December 30, 2008; Order N° 298, of January 9, 2009; Brief of January 13, 2009, presented by the Public Attorney General of the Comptroller General of the Republic; Order N° 299, of January 14, 2009 and Order N° 300, of January 15, 2009.

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30. The State challenged the statement rendered by Flavia Marco Navarro due to the fact that "she does not meet the requisites of competence, suitability or specialty to act in the capacity as expert witness in relation to the aspects defined as subject-matter of the expert assessment […]], since far from referring to [said] subject-matter […] she refers to totally different issues". The Court has verified, after seen the resume of the expert witness Flavia Marco Navarro, that she presents herself as an expert in social security affairs and that she rendered an expert opinion about the way by which the State should make the payments that she considers are still pending compliance in light of the judgments rendered by the Constitutional Court of Perú in the case at hand. The foregoing adjusts, at least partially, to the purpose of the expert report required by the Tribunal. Therefore, the Court takes into account the observations presented by the State and considers that said statement may contribute to the determination, by the Tribunal, of the facts in the instant case, inasmuch as it relates to the purpose defined by the Court, for which it admits it into the body of evidence and shall assess it according to the rules of sound judgment.

31. The State also challenged the statement for informative purposes of Mr. Javier Cabanillas Reyes, pointing out that in said statement "he fails to refer to relevant information related to the enforcement procedure, as well as to the relevant procedural actions adopted during such procedure". To such end, the Court notes that the challenge made by the State is not related to the relevance and admissibility of the evidence tendered, but to the assessment the Tribunal may make regarding such item of evidence. Therefore, the Court admits this evidence as long as it relates to the purpose defined in the Order of the President (supra para. 7), to assess it together with the body of evidence and according to the rules of sound judgment, considering the observations made by the State to such end.

32. Furthermore, the State challenged the statement of Mrs. Laura Arias Laureano, indicating that such statement "did not fulfill its end, taking into account the purpose of the statement defined by the Court". The State alleged that "contrary to what the deponent suggests, [...] the State did not fail to comply with the judgments of the Constitutional Tribunal [...]". It further stated that "there is no proper causal relationship between [the] facts [the deponent and his relatives suffered] and the alleged non-compliance by the State" and lastly, that the answer of the deponent regarding the remedies filed by her husband to obtain the reimbursement of the pensions, which were not granted, are insufficient since the deponent did not mention in detail the measures adopted. To such end, the Court notes that the challenge made by the State is not related to the relevance and admissibility of the evidence tendered, but to the assessment the Tribunal may make regarding such item of evidence. Therefore, the Court takes into account the observations presented by the State and considers that the statement of Mrs. Dicha Laura Arias Laureano may contribute to the determination, by the Tribunal, of the facts in the instant case,

for which it admits it into the body of evidence and shall assess it according to the rules of sound judgment.

33. The State objected to “the presentation, acceptance and scope of the documentary evidence offered in Appendix 3, [of the application of the Inter-American Commission] regarding the legislation and judgments of the pension system, inasmuch as they are irrelevant and unrelated to the suit of this proceeding”. In such regard, the Tribunal notes that the controversy in the case at hand relates to the alleged non-compliance with certain domestic decisions in which aspects of the pension system applicable in Perú were analyzed. Therefore, the Court takes into account the observations presented by the State and deems that said documents are relevant and may contribute to the determination, by the Tribunal, of the facts in the instant case, for which it admits it into the body of evidence and shall assess it according to the rules of sound judgment, as long as they are related to the subject-matter of the case.

34. The State objected "to the entire [documentary] evidence [tendered by the representatives in the brief of pleadings and motions] inasmuch as it is not related to the claims of the present proceeding". Said offer of evidence include: a) two judgments of the Constitutional Court of Perú that would demonstrate the alleged “ problems about the non-compliance with the judgments, in general [in Perú] and in particular, the problems with social rights", which the Court considers it is relevant and pertinent to determine the alleged context in which the non-compliance with the judgments, subject-matter of this case, is framed; b) answers of 95 members of the Association of Discharged and Retired Employees of the Comptroller General of the Republic to questions as to the way “the reduction in their pensions as of March, 1993 would have affected them", which the Court considers it is relevant to analyze, if applicable, the alleged pecuniary and non-pecuniary damage suffered by the alleged victims; c) contracts entered into by the Law Firm Carlos Blancas Bustamante and a list of costs and expenses allegedly incurred by the representatives, which is pertinent and relevant for the determination, if applicable, of the costs and expenses derived from this case; d) a list of active and dead members of the Association of Discharged and Retired Employees and twenty-two (22) transcripts of probate proceedings of dead pensioners that belonged to said Association, which is pertinent and relevant for the determination, if relevant, of the distribution of reparations that the Tribunal may order regarding the alleged dead victims. Therefore, having determined that the evidence so challenged is pertinent and relevant for the analysis of the case at hand, this Tribunal admits it into the body of evidence and shall assess it according to the sound judgment rules, taking into account the observations presented by the State.

35. Likewise, the State objected to several items of evidence tendered by the representative on June 22 and 23, 2009 related to the costs and expenses incurred in the processing of the case from the year 2004 to 2008, which consist of, inter alia, invoices and receipts for telephone services and for shipments, materials, airplanes tickets, accommodation, reimbursement of mobility and snack, and fees. The State pointed out that said evidence should have been tendered "in the brief of pleadings and motions of the petitioners". In this regard, the Court notes that these documents and vouchers were required by the Court upon considering them relevant and necessary to determine, if applicable, the reparations requested by the Commission and the representative in the instant case. Therefore, the Tribunal admits such items of evidence,

pursuant to Article 45(1) of the Rules of Procedure in order assess them together with the rest of the body of evidence and according to the rules of sound judgment.

36. The representatives as well as the State submitted additional evidence together with the final written arguments (supra para. 10). The Tribunal notes that the documents contained in Appendixes 1 and 3 of the final written briefs of the representatives, namely, Report Nº 08-2008-JUS/CNDH-SE-CESAPI of January 14, 2008 and the Administrative Order Nº 022-2001-CG/B190, already form part of the body of evidence, corresponding to Appendixes 1.61 and 4.8 of the application, respectively and that these were already admitted by the Tribunal (supra para. 26). The following documents presented as Appendixes to the final written arguments of the State also form part of the body of evidence: a) Appendix 2, entitled "Judgments of the Constitucional Court of October 21, 1997 and January 26, 2001", corresponds to Appendixes 4.3 and 4.7 of the application and b) Appendixes 4, 5 and 6, that contain Orders Nº 291, 298 and 299 of the 4º Specialized Civil Court of the Superior Court of Justice of Lima, correspond to Appendixes 3.2, 3.4 and 3.6 of the State's observations to the affidavits, the admissibility and assessment of which was already decided by the Tribunal (supra para. 29).

37. Notwithstanding the foregoing, the State and the representatives submitted several documents together with the final written arguments, which had not been submitted at the appropriate procedural opportunity, under the terms of Article 44 of the Rules of Procedure. Moreover, the State forwarded the application filed by the members of the Association of Discharged and Retired Employees, dated May 27, 1993, as well as Order Nº 63 of the 4º Specialized Civil Court of the Superior Court of Justice of Lima, dated January 24, 2005 and a case-file of the case-law of the Constitutional Court of Perú regarding its criteria of interpretation and enforcement of judgments. The Court notes that said evidence was untimely presented within the procedure before the Tribunal and that it is not related to supervening facts. Nevertheless, considering that those are documents that are related to the domestic procedure of this case and relevant case-law for the determination of the procedural rules applicable to the enforcement of the judgments, subject-matter of this controversy, the Tribunal considers that such evidence is relevant and necessary to decide the facts of the case at hand. Therefore, considering that such item of evidence was not challenged by the other parties (supra para. 10), the Tribunal admits it, pursuant to Article 45(1) of the Rules of Procedure in order assess it together with the rest of the body of evidence and according to the rules of sound judgment.

38. Likewise, the representatives submitted, together with the brief of final arguments, the following documentary evidence, which has not been forwarded at the appropriate procedural opportunity, in accordance with Article 44 of the Rules of Procedure: a) in Appendix 2, the "Judgment of the Commission on Budget and General Account of the Republic regarding Bill N° 2029/2007-PE" of December 16, 2008; b) in Appendix 4, "Judicial Order N° 152 of July 19, 2006"; c) in Appendix 5, "Official Letter N° 692-2007-JUZ/CNDH-SE" of April 26, 2007; d) in Appendix 6, "Official Letter N° 247-2006-CG/RH" of June 17, 2006, and e) in Appendix 7, a copy of the "statements of the Head of the SUNAT ([published in two Peruvian] newspapers, PERÚ 21 and GESTION of January 17, 2009)". In this regard, the Court notes that said evidence was untimely submitted within this proceeding and that, except for the "Judgment of the Commission on Budget" of December 16, 2008, it does not relate to supervening facts. The Tribunal admits as supervening evidence the already mentioned "Judgment of the Commission

on Budget" of December 16, 2008, in accordance with Article 44(3) of the Court's Rules of Procedure, since such item of evidence was not challenged by the parties (supra para. 10) and is relevant for the determination of the facts of the case. Furthermore, the Court deems that the other documents [FN17] refer to the alleged lack of enforcement of the judgments that are subject-matter of this case, for they are relevant and necessary to determine the facts of the case at hand and therefore, the Court admits them, under Article 45(1) of its Rules of Procedure, in order to assess them together with the rest body of evidence on the basis of sound judgment.

[FN17] In Appendix 4, the "Judicial Order Nº 152 of July 19, 2006"; in Appendix 5, the "Official Letter Nº 692-2007-JUZ/CNDH-SE", of April 26, 2007"; in Appendix 6, the "Official Letter Nº 247-2006-CG/RH" of June 17, 2006 and in Appendix 7, a copy of the "statements of the Head of SUNAT ([published in two] [Peruvian] newspapers, PERÚ 21 and GESTION, on January 17, 2009").

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39. In relation to the press clippings furnished by the representatives in Appendix 7 of the final written arguments, this Tribunal shall assess them insofar as they contain public and well-known facts or statements of State officers, or when they corroborate aspects related to the case. [FN18]

[FN18] Cf. Case of Velásquez Rodríguez, supra note 15, para. 146; Case of Kawas Fernández, supra note 13, para. 43; and Case of Perozo et al., supra note 13, para. 101.

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40. Upon examining the evidence contained in the records of the instant case, the Court shall now proceed to analyze the violations alleged in consideration of the facts that the Court considers proven, as well as the legal arguments put forward by the parties.

VI. VIOLATION OF ARTICLES 25(1) AND 25(2)(C) (RIGHT TO JUDICIAL PROTECTION) [FN19], AND 21(1) AND 21(2) (RIGHT TO PROPERTY) [FN20] OF THE AMERICAN CONVENTION, IN CONJUNCTION WITH ARTICLE 1(1) (OBLIGATION TO RESPECT RIGHTS) [FN21] THEREIN

[FN19] Article 25(1) of the Convention provides that: " 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". Moreover, Article 25(2)(c) provides that: "The State Parties undertake: [...] c) to ensure that the competent authorities shall enforce such remedies when granted".

[FN20] Article 21(1) and 21(2) (Right to Property) of the Convention establishes that:

Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
[…] No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
[…].
[FN21] According to Article 1(1) (Obligation to Respect the Rights) of the Convention,
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. […]
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41. The Court shall examine in this chapter the following three aspects: first, it shall describe the domestic judicial procedure and analyze the scope of the provisions contained in the judicial judgments delivered by the Constitutional Court of Perú on October 21, 1997 and January 26, 2001; second, it shall determine whether the State has provided the alleged victims with an effective judicial recourse against acts that violate their rights, in light of Article 25(1) and 25(2)(c) of the Convention; finally, if applicable, it shall examine whether the compliance or non-compliance with the provisions contained in said judgments has resulted in an abridgment of the right to property of the alleged victims, according to Article 21 of the Convention.

42. Before analyzing whether the State has failed to comply with a treaty obligation, it is pertinent to describe the judicial procedure that originated the judgments, subject-matter of this case.

A) Pension system upon which the Judments of 1997 and 2001 and the right protected by such decisions are based

43. It is a non-disputed fact that the alleged victims opted for the pension system regulated by Decree Law No. 20.530 (System of Pensions and Compensations for Civil Services provided to the State not covered by Decree Law No. 19990 [FN22]), which stipulates a retirement pension that is progressively pegged to the salary of the active Comptroller General of the Republic (hereinafter, “CGR”) employee performing the same or a similar function to the one he or she performed at the time of his or her retirement. The Eighth General and Transitory Provision of 1979 Political Constitution of Perú incorporated the system of adjusting the pensions of the State’s civil servants. This provision was subsequently developed by means of Act No. 23.495 of November 19, 1982. Nevertheless, Decree Law No. 25.597 was published on July 7, 1992. Such decree commissioned the Ministry of Economy and Finance (hereinafter, the "MEF”) to assume responsibility for the payment of the salaries, pensions, and similar expenses for which CGR was responsible, and eliminated the right of the members of the Association to continue receiving the adjusted and renewed pension they enjoyed under Decree Law No. 20.530.Furthermore, Supreme Decree No. 036-93-EF, of March 17, 1993, granted those receiving State pensioners a bonus for level of education, substituting the Annual Bonus for Occupational Training that the members of the Association received. The amount of such bonus was higher. In this way, as of

April 1993, the alleged victims stopped receiving the payment of the pension amounts corresponding to that adjustment

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[FN22] Decree Law 19990 contains one Article, which stipulates that the amount of the Minimum Pension for the Scheme of this Decree Law is formed by contributions made over a minimum period of 20 years to the National Pension System.

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44. To such end, on May 27, 1993, the Association filed an action for amparo against CGR and MEF with the Sixth Civil Court of Lima, requesting the Court to declare the non-applicability of said legal provisions, in favor of the members of the Association. On July 9, 1993, the Sixth Court of First Instance delivered a judgment [FN23] declaring the application for amparo inadmissible considering, among other reasons, that the petitioners had not contested the application of Decree Law No. 25.597 at the appropriate time. [FN24] The petitioners filed a motion to appeal with the First Specialized Civil Chamber of the Superior Court of Lima, which, by means of Order dated December 14, 1993, revoked the appealed decision and declared the complaint admissible, stating that Articles 9(c) and 13 of Decree Law Nº 25.597 and Article 5 of Supreme Decree Nº 036-93 EF did not apply to the members of the Association, and ordering:

[…] that [CGR] comply with the payment to the members of the plaintiff Association of the salaries, benefits, and bonuses received by the active employees of said Comptroller's Office performing functions identical, similar, or equivalent to those that the discharged or retired employees performed. [FN25]

Therefore, the First Chamber concluded that in the case "the Comptroller [...] omitted an act of compulsory compliance." [FN26]

[FN23] Judgment of July 9, 1993 of the Sixth Court of First Instance of Lime (Records of Appendixes to the application, Appendix 4.1, volumen 6, pages 1651-1656).
[FN24] Article 37 of the Act of Habeas Corpus and Amparo of December 8, 1982 provides that "The interested party has 60 days, following the damage caused, to exercise the writ of Amparo as long as the interested party, on that date, is able to exercise that right. If the interested party is not able to exercise such right within that period of time, the term shall run as from the moment the impediment is eliminated".
[FN25] Judgment of December 14, 1993 of the First Special Civil Chamber of the Superior Court of Lima (Records of Appendixes to the application, Appendix 4.2, volumen 6, page 1660).
[FN26] Judgment of December 14, 1993 of the First Special Civil Chamber of the Superior Court of Justice of Lima, supra note 25 (page 1659).

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45. Afterwards, the CGR filed an appeal for annulment with the Constitutional and Social Law Chamber of the Supreme Court of Justice of the Republic. On October 3, 1994, the Constitutional and Social Law Chamber of the Supreme Court of Justice of the Republic declared the decision of December 14, 1993, null and void and the application for amparo

inadmissible, considering that the latter had been filed outside the legal time frame and that, regarding Supreme Decree No. 036-93-EF, the time limit had not expired, but that this norm was not incompatible with the State's Constitution. The Association filed an 'extraordinary appeal' (appeal after execution of the judgment) against this decision before the Constitutional Court. In a judgment of October 21, 1997, the Constitutional Court reversed the judgment delivered by the Constitutional and Social Law Chamber of the Supreme Court of Justice of the Republic and confirmed the decision issued by the First Specialized Civil Chamber of the Superior Court of Justice of Lima of December 14, 1993. Consequently, it established that "the right to an adjustable pension of Social Security is guaranteed for all the beneficiaries of the Public Administration, whose exercise is enshrined in the Constitution, is unalienable and any provision contrary to it is null and void." [FN27] Furthermore, it emphasized that the "payment of the pensions constitutes an ongoing, periodic and continuing act and that said act has been repeatedly violated, in each new opportunity, by the defendant entity." [FN28]

[FN27] Judgment of October 21, 1997 of the Constitutional Court of Perú (Records of Appendixes to the application, Appendix 4.3, volumen 6, pages 1663, reason N°4).
[FN28] Judgment of October 21, 1997 of the Constitutional Tribunal of Perú, supra note 27 (page 1663, ground Nº 5).

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46. On December 10, 1997 the Final Judgment of the Constitutional Tribunal of Perú was notified. As from that, the First Transitional Corporative Public Law Court ordered, on more than one occasion, MEF and the Comptroller's Office to comply with the rulings in the judgment of the Constitutional Court. [FN29] On October 6, 1998, the MEF Public Prosecutor requested said Court to annul the order considering that it did not correspond to MEF, but rather to CGR, to comply with the decisions of the Constitutional Court. On October 16, 1998, the Public Law Court declared the MEF Public Prosecutor's request inadmissible and the prosecutor filed an appeal. Moreover, on January 5, 1999, CGR indicated that it was negotiating with MEF the resources with which to make the payment. Finally, by means of Order of February 12, 1999 and in consideration of the lack of suitability of the action for Amparo to solve the case, the Transitional Corporative Public Law Chamber of the Superior Court of Justice of Lima issued a ruling annulling the decision of October 16, 1998, and declaring any measures taken to execute it to be null and void, "[safeguarding the right of the Association [...] in order for it to enforce the right through the appropriate means." [FN30]

[FN29] Orders of June 17, July 15 and December 14, 1998 of the First Transitional Corporative Public Law Court of the Supreme Court of Justice of Lima (Records of Appendixes to the application, Appendix 4.4, volume 6, pages 1678-1679, and 1720).
[FN30] Order of February 12, 1999 of the First Transitional Corporative Public Law Chamber of the Superior Court of Lima (Records of Appendixes to the application, Appendix 4.5, volumen 6, pages 1681-1682).

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47. Considering this new ruling, on May 27, 1999 the Association filed a second action for amparo with the Constitutional and Social Law Chamber of the Supreme Court of Justice of the Republic asking: 1) “the inapplicability to the case of Order dated February 12, 1999 "; 2) “that the case be returned to the stage of execution of judgment” and 3) “the payment of expenses and costs of the proceeding.” [FN31] On May 5, 2000, said Chamber confirmed the decision of February 12, 1999 and, consequently, on May 27, 2000, the Association filed an appeal (after execution of judgment) before the Constitutional Court contesting this decision.

[FN31] Application for amparo filed by the alleged victims before the President of the Transitional Corporative Public Law Chamber (Records of Appendixes to the application, Appendix N° 4.6, volume 6, pages 1685-1715).

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48. In a ruling of January 26, 2001, the Constitutional Court reversed the ruling of the Constitutional and Social Law Chamber of the Supreme Court of Justice of May 5, 2000, and declared the action for amparo admissible and consequently, that the ruling of the Transitional Corporative Public Law Chamber of the Superior Court of Justice of Lima of February 12, 1999, was non-enforceable. The Constitutional Court also ordered “that the case be returned to the stage of execution of judgment for the respective judicial organ to comply immediately and unconditionally with the mandate resulting from the Constitutional Court’s judgment of [October 21, 1997].” [FN32]

[FN32] Judgment of the Constitutional Court of Perú of January 26, 2001 (Records of Appendixes to the application, Appendix 4.7, volumen 6, pages 1719-1722).

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49. By means of administrative Order N° 022-2001-CG/B190 of March 29, 2001, the CGR decided to “approve the ratification of the [alleged victims’ pensions] in relation to their active personnel at their different levels” [FN33] and the MEF National Budget Directorate authorized the payment of the respective adjusted pensions as of November 2002 [FN34], which were maintained until December 2004 [FN35].

[FN33] Administrative Order N° 022-2001-CG/190 of March 29, 2001 (Records of Appendixes to the application, Appendix N° 4.8, volume 6, pages 1724-1729).

[FN34] Cf. Report Nº 237-2004-EF/76.14, Ministry of Economy and Finance, National Budget Directorate, October 21, 2004 (record of Appendixes to the application, Appendix 1.24, Volume 2, page 412).

[FN35] Cf. Act 28.389, published in the Official Gazette “El Perúano” on November 17, 2004 and Act 28.449, published on December 30, 2004 (record of appendixes to the application, Appendix 2.8, Volume 2, pages 598 to 601).

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50. Regarding the reimbursement of the pensions owed and unpaid from April 1993 to October 2002, the alleged victims initiated a proceeding to enforce the judgment after the ruling rendered on January 26, 2001 by the Constitutional Court. In said proceeding, by means of Order N° 63 of January 24, 2005, the 4° Specialized Civil Trial Court ordered "the respondent entities to make the payment of the pensions owed to the plaintiff Association in accordance with [Acts N° 27.584 and 27.684]." [FN36]

[FN36] Article 42 "Enforcement of Obligations to provide money payments" of Law 27584 (Law governing the administrative-contentious proceeding) was modified by Article 1º of Law 27684 (Law modifying Articles of Law 27584 and creating a special commission in charge of evaluating the servicing of debts of budget specifications), which provides:
Article 42º of Law 27584, promulgated on November 22, 2001 is replaced as follows:
"Article 42º. - Enforcement of obligations to provide money payments
Judgments having the force of res judicata, according to which payment of sums of money were ordered ,shall be only and exclusively settled by a Budget Bidding Document in which the debt was originated, under the responsibility of the Person presenting the Budget Bidding Document and compliance therewith shall be according to the following procedures:
1. The Public Administration Office or the office serving as Budget Bidding Document so required shall proceed according to its judicial mandate and within the framework of annual budget laws.
2. In the case that, for compliance with the judgment, the financing ordered in the above mentioned numeral is insufficient, the Person presenting the Budget Bidding Document, prior evaluation and prioritization of the budget goals, may carry out the budget modifications within the term of fifteen days as of notice thereof, and shall communicate it to the corresponding court.
3. Should there be requirements exceeding the financing possibilities expressed in the above mentioned numerals, the budget bidding documents, under the responsibility of the Person submitting them, by means of a written communication of the Public Administration Office, shall inform the court of its commitment to service the debit of such judgment within the following budget year, for which it undertakes to allocate up to three per cent (3%) of the budget al.location corresponding to the bidding document for the source of ordinary resources. The Ministry of Economy and Finance and the Social Security Administration, where applicable, shall calculate the three per cent (3%) referred to above by deducing the value corresponding to the allocation for the payment of the service of the public debt, the contingency reserves and the social security obligations.
4. If after six months of the judicial notification, the payment was not made or ordered, in accordance with the procedures established in numerals 42.1, 42.2 and 42.3 above mentioned, the interested party shall proceed to commence the procedure for the enforcement of judicial Orders, as provided in Article 713º and subsequent of the Civil Procedural Code. Public Assets shall not be subjected to enforcement according to Article 73º of the Political Constitution of Perú.
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51. By Decision No. 244 of July 23, 2007, [FN37] the 66° Specialized Civil Court of Lima approved "the amount of 240.204.220.66 (two hundred and forty millions, two hundred and four thousand, two hundred and twenty with 66 cents] new soles, which corresponded to the

adjustable pensions owed and unpaid by the [CGR], plus interest from April 1993 to October, 2002 according to the terms of the corresponding Expert Report[s]" [FN38] "and ordered […] to comply with […] the payment within the third day […] as of notice" of said decision. Nevertheless, by means of the Decision N° 298, the Fourth Specialized Civil Court of the Superior Court of Justice of Liman Ordered a new calculation by the expert witness, taking into account that the Sixth Civil Chamber of that court had declared Decision No. 244 null and void by Order of July 1, 2008. [FN39]

[FN37] Decision N° 244 of July 23, 2007 issued by the 66° Specialized Civil Court of Lima (Records of appendixes to the application, Appendix N° 4.9, volume 6, pages 1732- 1740).
[FN38] Expert Report N° 090-2006-PJ-JC, clarified by the Expert Report N° 113-2007-PJ-JC, clarified, in turn, by Expert Report Nº 12-2007-PJ-JC (Records of Appendixes to the application, Appendix 4.9, Volume 6, ages 1732-1740).
[FN39] The 4° Specialized Civil Court of the Supreme Court of Justice of Lima decided: "considering the date of the previously official letter from the Sixth Civil Chamber of the Superior Court of Justice of Lima, with Order dated July 1, 2008, it was DECIDED: TO DECLARE the decision Number Two Hundred and Forty-Four NULL AND VOID, which declared the observations made by the defendant to be well-grounded and consequently, it is ordered that the final judgment be complied with as well as decisions Two Hundred and Eighty-Seven, Two Hundred and Eighty-Eight, Two Hundred and Ninety and Two Hundred and Ninety-One" (Record of Appendixes to the brief of final arguments presented by the State, Appendix 5, page 2721). Order Nº 291 of the Fourth Court ordered "TO REFER the proceedings to the Expert Technical Team of the Superior Court of Justice of Lima, so that the Expert Witness, Javier Cabanillas Reyes, complies with the new calculation of the pensions owed and unpaid in the instant proceeding in accordance with the terms of the judgment and the terms of Order two-hundred and eighty-eight, two-hundred and ninety and this Order" (Record of Appendixes to the brief of final arguments presented by the State, Appendix 5, page 2720).

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52. It is an undisputed fact that, by means of judgments of October 21, 1997 and January 26, 2001, the Constitutional Court of Perú declared that the application of a rule contrary to the Constitution, in force at that moment, unduly restricted the right to an adjustable pension as required by the alleged victims (supra paras. 45 and 48). Therefore, in accordance with the purpose of the instant case, it is not up to the Tribunal to analyze whether the alleged victims had the right to receive an adjustable pension or whether the State violated such right. These issues were already decided in favor of the alleged victims by means of said domestic judgments.

53. It is also an undisputed fact that, between the months of April 1993 and October 2002, the alleged victims received a non-adjustable pension amount, which was much lower than the pension amount that corresponded to them according to the regime of adjustable pension they opted for. The disputed fact and which forms part of the purpose of this case is the payment of the amounts corresponding to the adjustable pension that the alleged victims stopped receiving from April 1993 to October 2002.

54. According to the Commission and the representative, there is no dispute as to the existence of the obligation to pay to the alleged victims the pensions owed and unpaid from 1993 to 2002. In this regard, the Commission emphasized in the application that, in the entire proceeding before it, "the State only referred to the budgetary constraints that prevented it from complying with the payment of the amounts owed to the victims". Moreover, as the Court mentioned that "after adopting the report on merits of the Commission [in the year 2006, that is, after the adjustment of the pensions from 2002 to 2005, the State] requested a total of six extensions to refer the case to the Court, on the ground that the State was adopting important measures, at the domestic level, to pay the amounts owed to the victims of the case at hand." [FN40]

[FN40] The requests for extensions made by the Peruvian State have been as follows: by means of Notes Nº 7-5-M/081 and 7-5-M/082, received by the Commission on of February 22, 2007, the State requested an extension " to continue with the detailed analysis of a complex issue considering the financial and legal consequences within the legal framework in force and to present an adequate proposal for the payment to the discharged and retired employees of CGR, in accordance with the recommendations [made by the Commission in its] report on merits" of Article 50. The Commission granted a two-month extension. By means of Note N° 7-5M/196, presented on April 27, 2007 the State "requested a 60-day additional extension [to present an] adequate proposal to comply with the recommendations made" by the Commission in its report of Article 50". The IACHR granted a two-month additional extension. By means of Note N° 7-5-M/274, presented on June 25, 2007, the State requested an extension of 90 days, which was granted by the Commission. By means of Note N° 7-5-M/379 of September 4, 2007 the State requested another extension and the IACHR established a time limit until September 11, 2007. By means of Note N° 7-5-M/425 of September 26, 2007 the State requested a new extension to comply with the Commission's recommendations and the IACHR granted a three-month additional extension. Finally, by means of Note N° 7-5-M/608 of December 26, 2007 the State requested and the Commission granted, another three-month additional extension.

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55. Nevertheless, during the processing of the case before this Court, the State changed its defense and alleged that said judgments did not order the payment of the pensions owed and unpaid from 1993 to 2002, but that said obligation resulted as of January 2005, when such payment was judicially ordered in the enforcement procedure that is still pending. According to the State, "a simple reading of the judgment of the Superior Court [of December 14, 1993- upheld by the judgment of the Constitutional Tribunal of 1997] is sufficient to note that such ruling does not order the State to pay any amount owed. The ruling just orders the State to pay to the petitioners the so-called "pegged" remunerations, which the State complied with as of November 2002. Moreover, the State indicated that "the second judgment of the Constitutional Tribunal [dated January 26, 2001] does not refer either to the payment of any owed amount, [since] it does not add any provision to the first one [...] but it only insists on its enforcement". The State emphasized that the alleged victims initiated the procedure to enforce the judicial decisions "after the delivery of the second judgment of the Constitutional Tribunal" and that the issuance of Order Nº 63 of January 24, 2005, which orders the payment of the pensions owed

and unpaid (supra para. 50) “was necessary [...] since the judgments of the Constitutional Tribunal [...] did not [...] order such payment".

56. The State defended this change of position by pointing out that:

[w]hen the Peruvian State put forwards its proposals to reach a friendly settlement [before the Inter-American Commission], it did it without making an in-depth analysis of the facts and the right invoked by the petitioners; nevertheless, when it was subpoenaed by the […] Court, as an entity that must protect the entire population and guarantee the rights of all its citizens and considering that the impact [of the payment in question of this case] is, at least, of 75 million dollars, the State made a multi-disciplinary analysis of the legal issue and of the proceedings before the supranational courts and it came to the conclusion that [the judgments in question do not contain an order to pay the amounts owed and unpaid from April 1993 to October 2002]”.

57. In line with prior decisions and international law, [FN41] this Court takes the view that, once a State has adopted a position producing certain legal effects, may not, under the principle of estoppel and the rule of non concedit venire contra factum proprium, later assume a position in contradiction to the former one and changing the state of affairs upon which the other party relied. [FN42] Besides, this Tribunal [FN43] has applied the principle of estoppel to grant full effects to the acknowledgment of responsibility made by the State, which purported to disavow in subsequent stages of the proceeding. [FN44]

[FN41] Cf. Territorial Dispute (Libyan Arab Jamahiriya/Chad), I.C.J. Reports 1994, Judgment of February 3, 1994, paras. 56, 68, 75; Nuclear Tests (Australia v. France), I.C.J. Reports 1974, Judgment of December 20, 1974, paras. 42-46, and Temple of Preah Vihear (Cambodia v. Thailand), I.C.J. Reports 1962, Judgment of June 15, 1962, para. 32.

[FN42] Cf. Case of Neira Alegría et al. V. Perú. Preliminary Objections. Judgment of December 11, 1991. Series C No. 13, para. 29; Case of the Rochela Massacre V. Colombia. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 46; and Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Perú. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C Nº 158, para. 60.

[FN43] The European Court of Human Rights has also applied the principle of estoppel regarding objections over the jurisdiction and admissibility put forward by the State in an untimely way. Cf. ECHR, Case of Mizzi v. Malta, Judgment of 12 January 2006, no. 26111/02, para 43-48; Case of Tuquabo-tekle and others v. The Netherlands, Judgment of 1 December 2005, no. 60665/00, para. 26-32; Case of Artico v. Italy, Judgment of 13 May 1980, Serie A no. 37, para. 25-28,and Case of De Wilde, Ooms and Versyp v. Belgium, Judgment of 18 June 1971, Serie A no. 12, para. 58-59.

[FN44] Cf. Case of The Caracazo V. Venezuela. Reparations and Costs. Judgment of August 29, 2002. Series C No. 95, para. 52; Case of the Rochela Massacre, supra nota 42, para. 46 and 48; Case of Montero Aranguren et al. (Retén de Catia) V. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 49.

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58. Particularly, as to the effect that such positions of acknowledgment may produce during the processing of the case before the Commission, the Tribunal determined in another case against Perú that:

Each act of acknowledgment made by Perú 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, Perú [was] 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. [FN45]

[FN45] Cf. Case of Acevedo Jaramillo et al. V. Perú. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 7, 2006. Series C No. 144, para. 177.

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59. Furthermore, the positions of acknowledgment made during the processing of an application before the Commission are necessarily relevant to determine the application of the principle of estoppel regarding contradictory positions alleged during the processing of the case before the Court. All this because, in accordance with Article 61.2 of the American Convention, a proceeding cannot be brought before the Inter-American Court without having initiated a previous procedure before the Inter-American Commission and having exhausted the remedies stipulated in Articles 48 to 50 of said treaty. Consequently, the controversy that the Commission submitted to the Court's jurisdiction must stick to the report considered in Article 50 of the Convention. Therefore, if the controversy brought before the Tribunal is necessarily based on the said report, and rests on certain positions of acknowledgment made by the State during the procedure before the Commission, then the State cannot denied the legal effect that said statements have on the determination of the controversy that the Commission submits to the Court.

60. However, not every position adopted within the framework of the procedure before the Commission automatically generates an acknowledgment of the facts or of responsibility, or the assumption of the corresponding obligation. Given the nature of the procedure before the Commission, a State may reach an understanding and undertake to carry out certain acts without implying by this that the State accepts as true the facts attributable to it or that it acknowledges being responsible for the legal consequences of such acts. Specifically, only one unilateral act of acknowledgment of facts or a clear declaration of responsibility within the framework of said procedure, upon which the Commission or the representatives have acted and that, as a consequence, has produced legal effects, binds the State in that sense and, therefore, is opposable to a procedure before the Court.

61. In the instant case, it spring from the case-file before the Commission that after the State complied with the adjustment of the alleged victims' pension in November 2002, the State also pointed out on several occasions that "it must be clearly established that compliance with the judgments of the Constitutional Courts have never been considered to be exhausted" and that it was adopting appropriate measures "to finance the payment of the pensions owed and unpaid the

Association […] refers to." [FN46] Hence, the State indicated that "the payment of the owed and unpaid pensions constitutes an economic problem and not a legal one, since the Comptroller […] does not have the economic resources [to make the corresponding payment]" [FN47].

[FN46] Cf. in addition, the Report Nº 34-JUS/CNDH-SE, presented before the Commission on May 2, 2001 by the Permanent Representative of Perú before the Organization of American States (hereinafter, the "OAS") by means of Note 7-5/39 of April 27, 2001 concluded that "even though the Comptroller General took some actions[,] it has still not complied with the judgment of the Constitutional Court" (record of appendixes to the application, Appendix 1.7, volume 1. pages 181-185); Official Letter Nº 247-2006-CG/RH of June 17, 2006, pointed out that the State was adopting measures necessary to "comply with the order contained in the Judgment of the Constitutional Court of 1997" (record of Appendixes to the brief of final arguments presented by the representative, Appendix 6, page 2685); the Report Nº 08-2008-JUS/CNDH-SE-CESAPI, presented before the Commission on January 16, 2008 by the Permanent Representative of Perú before the OAS by means of note 7-5-M/21 of January 15, 2007 (sic) concluded that ""in order to comply with the recommendations made [by the Commission], a bill was proposed to allow making the first payment in favor of the petitioners and through which the Comptroller General of the Republic was authorized to exceed the limits established by the General Budget Law" (record of Appendixes to the application, Appendix 1.61, volume pages 1403-1406) and the Ruling of the Commission on Budget and General Account of the Republic of December 16, 2008, prepared in relation to Bill Nº 2029/2007-PE, "proposes the enactment of a norm with the rank of an Act to constitute a deposit of up S/. 4 millions in order to back up the obligations to pay as a result of the judgments rendered by the Judiciary [in favor of] 270 discharged and retired employees of the Comptroller General of the Republic" (Record of appendixes to the brief of final arguments presented by the representative, Appendix 2, pages 2657-2669).
[FN47] Official Letter Nº 0957-2003-CG/DC of May 30, 2003 issued by the Comptroller General of the Republic to the National Human Rights Council (Record of Appendixes to the application, Appendix 1.20, pages 303-304).

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62. Said obligation to pay reimbursements or amounts owed derived, inter alia, from the following documents issued by different institutions and state entities during the whole domestic procedure and the procedure before the Commission:

a) Bill N° 2029-2007-PE that the Constitutional President of the Republic and the President of the Council of Ministers submitted to the attention of the President of Congress of the Republic by means of Official Letter N° 303-2007-PR, of December 27, 2007. Said bill "authorizes the constitution of a deposit for the payment of the amounts [owed] of the Comptroller General of the Republic". It should be mentioned that according to the "Statement of Reason of said Bill, "the position of the Peruvian State before Case N° 12.357 is basically focused on that [...] 'the non-compliance with the judgment of the Constitutional Court is due to a budget reality'; such reality is, at the present, impossible to deal with" and explicitly refers to the "payment of amount owed from April 1993 to October 2002" (emphasis added). Furthermore, it mentioned the Official Letters N° 019-2007-CG/GG and 079-2007-CG/GG of February 9, 2007 and July 17, 2007, respectively, by means of which the General Manager of the

Comptroller, considering the “Expert Report prepared by the Expert Witness appointed by the 66° [Specialized Civil Trial Court of Lima]”, requested the MEF National Budget Directorate to "approve an additional petition for [in the budget of the Comptroller for] the amount [of S/. 244.314.787,00 new soles,] in order to cover the payment of the amount owed to the pensioners” of the Association of Discharged and Retired Employee;

b) Judicial Decision N° 152 of July 19, 2006 of the 66° Specialized Civil Trial Court of Lima in charge of enforcing the judgment of the First Civil Chamber of the Supreme Court of Justice of Lima, dated December 14, 1993 (upheld by the judgment of the Constitutional Court of October 21, 1997), that ordered “to remand [the case-file] to the Office of Judicial Expert Assessments in order to appoint an Expert Witness to calculate the pensions owed to the pensioners of the Association from the month of April, 1993 to October, 2002;

c) Note N° 7-5-M/608 of December 20, 2007 submitted by the Perú’s representative to the OAS on December 26, 2007 in the proceeding before the Commission, by means of which it informed “in order to prove the will of the Peruvian State to comply with the recommendations of the [Commission's] Report N° 125/06, [that it was] approved the first payment in favor of the discharged and retired employees of the Comptroller General of the Republic". Moreover, it requested an extension “to arrange the timetable to comply [with the payment of the remaining] amount owed to the pensioners”;

d) The bill for an Emergency Decree, presented on January 11, 2008 by the Executive Secretariat of the Human Rights National Council, by means of Official Letter Nº 094-2008-JUS/CNDH-SE before the Adviser to the President of the Council of Ministers, which proposed "to authorize, exceptionally, the Department of National Treasury to set up a fund of up to a [hundred and twenty millions] and 00/100 new soles [S/ 120.000.000,00], to be exclusively assigned for the payment of the debt derived from the judicial rulings to which the Final Report of the Commission refers ”, and

e) The Administrative Order N° 022-2001-CG/B190 of March 29, 2001, presented by the Administration Office of the Comptroller General of the Republic of Perú, by means of which it was established that “the Human Resources Department of the Comptroller General of the Republic shall make the corresponding calculation of the amounts owed”.

63. Therefore, the Court considers that, by means of such acts in the proceeding before the Commission, the Peruvian State acknowledged as true some facts or claims put forward by the representative and that these, as a result, produced a legal effect upon which the representative as well as the Commission acted. Hence, the contradictory position that the State intends to take up in the proceeding of the case before this Court is barred in light of the principle of estoppel. In this regard, the State is barred from disavowing those acts by means of which it acknowledged it has the obligation to pay the amounts corresponding to the adjustable pensions owed and unpaid to the alleged victims from April 1993 to October 2002.

64. Moreover, the Court notes that the State acknowledged before this Tribunal that the alleged victims instituted a proceeding to enforce the judgment after the delivery of the second judgment of the Constitutional Tribunal and that, by means of Order Nº 63 of January 24, 2005, the 4º Specialized Civil Court ordered the State "to pay the pensions owed and unpaid of the Association.” [FN48] In said enforcement proceeding, it was once again proven that the State has the obligation to pay to the alleged victims the amounts corresponding to the adjustable pensions

owed and unpaid from April 1993 to October 2002. The determination of such amounts, at the date of this Judgment, is still pending Order.

[FN48] Order Nº 63 of January 24, 2005 issued by the 4º Specialized Civil Court of the Superior Court of Justice of Lima (record of Appendixes to the brief of final arguments presented by the State, pages 2716 and 2717).

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65. Once it has been established that the State's obligation, as derived from the judgments in question, includes the payment of the pension amounts withheld from April 1993 to October 2002, the Tribunal shall now examine whether the State has committed the violation of or non-compliance with Articles 21, 25 and 26 of the Convention.

C) The right to judicial protection

66. The Commission argued that "the remedies of amparo filed by the [alleged] victims, […] were not simple, or prompt or effective", and consequently, the State violated Article 25 of the Convention It pointed out that "[in] the first place, the mere fact that the [alleged] victims were forced to filed a second action for amparo in order to enforce the decision handed down in the first action, shows that they were not simple remedies. […] In the second place, given the protective nature of the remedies filed, the answer of the judicial authorities should have been given with all possible promptness […]; nevertheless, between the filing of the first remedy of amparo, […] and the delivery of the final judgment over such remedy, four years and five months have elapsed and between the filing of the second remedy, […] almost two years; that is, none of the two remedies were prompt. […] In the third place, [pursuant to Article 25 of the American Convention] the procedure must tend to the implementation of the protection of the right recognized in the judicial decision by means of the appropriate application of [such] [which] has not occurred in the case at hand with the two amparos filed [, therefore], the recourses were not effective". Besides, the Commission "noted that the State did not adopt measures to reduce or overcome the budgetary constraints alleged as to the lack of economic resources, such as the programming and implementation of a repayment schedule or financing plan in favor of the pensioners of the Comptroller, in order to effectively comply with said judgments", "resulting in an unwarranted delay of more than 10 years for the effective implementation of [those judgments]".

67. Moreover, the representative alleged that "the non-compliance with the judgments of the Constitutional Court […] constitutes a [specific] violation of Article 25(1) and 25(2)(c) [of the Convention]". According to the representative, said Articles have been violated as follows: "1) because, to date, more than 11 years after the first judgment was handed down, its rulings remain unfulfilled […]; 2) owing to the existence in Perú of a widespread practice of failing to comply with judicial rulings; 3) because no measures have been adopted to deal with, overcome, or reduce the budgetary constraints cited by the State as the reason for its failure to comply with such judgments, and 4) because the non-compliance with the judicial rulings […] implies an ongoing violation of the right to social security of the [alleged] victims". In accordance with the representative, "the non-compliance with the judicial mandates […] perpetuates the violation that

was supposed to be repaired, not just by means of the judicial determination of the right, but by means of the subsequent enforcement or compliance with the judgment. If judicial decisions are not complied with, the violated right remains violated and that violation is, in turn, a violation of the right to judicial protection".

68. The State alleged that, "the non-compliance with the obligations contained in Articles 21 and 25 of the Convention has not been proven". This, because "since October 2002 [...] it had been paying pegged remunerations to the 273 members of the Association [...], as ordered by the first judgment [of the Constitutional Court] and as reiterated in the second judgment [of such court]." As to the payment of the pension amounts withheld from 1993 to 2002, the State indicated that "it was only in the year 2006 that the petitioners complied with the presentation of[...] the party's calculation, [and] that the determination of the amounts owed is […] complex [inasmuch as it is essential to determine] the amount that corresponds to each one of the more [200] petitioners, many of them have different circumstances (positions, hours worked, different reference salaries, among other things)"; therefore the State has not failed to comply with a payment, the amount of which is still uncertain.

69. 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. [FN49] The formal existence of remedies is not enough, if they are not effective; they must provide a solution or an answer to the violation of the rights embodied in the Convention, in the Constitution [FN50] or in the laws. [FN51] In this sense, 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 means to execute its decisions are lacking or owing to any other situation that establishes a situation of denial of justice. [FN52] Hence, 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. [FN53]

[FN49] Cf. Case of Velásquez Rodríguez, supra note 11, para. 91; Case of Kawas Fernández, supra note 13, para. 110; and Case of Castañeda Gutman V. México. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C N. 184, para. 34.

[FN50] In accordance with Article 139(2) of the Constitution of Perú "no authority may […] annul Orders with authority of final judgment, or terminate proceedings while the Order is still pending or modify judgments or delay its enforcement".

[FN51] Cf. Case of the Constitutional Court V. Perú. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, para. 90; Case of Bayarri, supra note 12, para. 102; and Case of Castañeda Gutman, supra note 49, para. 78. Cf. also, Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 23.

[FN52] Cf. Case of Ivcher Bronstein V. Perú. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74, para. 137; Case of Acevedo Jaramillo et al., supra note 45 para. 213; Case of the 19 Tradesmen V. Colombia. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 192.

[FN53] Cf. Case of Acevedo Jaramillo et al., supra note 45 para. 217; and Case of Baena Ricardo et al. V. Panama. Competence. Judgment of November 28, 2003. Series C No. 104, para. 73.

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70. Furthermore, Article 25(2) (c) of the Convention establishes the State's obligation "to ensure that the competent authorities shall enforce such remedies when granted." [FN54]

[FN54] Cf. Case of the "Juvenile Reeducation Institute" V. Paraguay. Preliminary Objections, Merits, Reparations and costs. Judgment of September 2, 2004. Series C No. 112, para. 248; and Case of Sawhoyamaxa Indigenous Community V. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C Nº. 146, para. 92.

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71. Moreover, even though the European Convention for the Protection of Human Rights and Fundamental Freedoms does not include an Article equivalent to Article 25(2)(c)) of the American Convention, the case-law of the European Court of Human Rights has referred to the requirements of such Article in the ruling about Article 6 of the above Convention, on the right to a fair trial. [FN55] In this regard, the European Court has declared that,

40. […] that right [right to a fair trial] would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party [to the case]. It would be inconceivable that Article 6 para. 1 (art. 6-1) should describe in detail procedural guarantees afforded to litigants - proceedings that are fair, public and expeditious - without protecting the implementation of judicial decisions; to construe Article 6 (art. 6) as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. See, mutatis mutandis, the Golder v. the United Kingdom, judgment of 21 February 1975, Series A no. 18, pp. 16-18, para. 34-36). Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6." [FN56]

[FN55] Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Right to a Fair Trial) provides that:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

[…]

[FN56] Cf. ECHR, Case of Hornsby v.Greece, Judgment of 19 March 1997, para. 40; Case of Popov v. Moldova, Judgment of 18 January 2005, no. 74153/01, para. 40; Case of Assanidze v. Georgia, Judgment of 8 April 2004, no. 71503/01, para. 182; Case of Jasiúniene v. Lithuania,

Judgment of 6 March 2003, no. 41510/98, para. 27, and Case of Burdov v. Russia, Judgment of 7 May 2002, no. 59498/00, para. 34.

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72. In this sense, under the terms of Article 25 of the Convention, it is possible to identify two specific responsibilities of the State. The first one is that the States have the responsibility to embody in their legislation and ensure due application of effective remedies 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. [FN57] The second one is that States must guarantee effective mechanisms to execute the decisions or judgments delivered by such competent authorities so that the declared rights are protected effectively. [FN58] This, since a judgment which has enforceable authority gives rise to certainty as to the right or dispute under discussion in the particular case, and therefore its binding force is one of the effects thereof. [FN59] The contrary would imply the denial of this right. [FN60]

[FN57] Cf. Case of Suárez Rosero V. Ecuador. Merits, Judgment of November 12, 1997, Series Nº. 35, para. 65; Case of Claude Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 130; and Case of Acevedo Jaramillo et al., supra note 45, para. 216.
[FN58] Cf. Case of Baena Ricardo et al., supra note 53, para. 82; and Case of Acevedo Jaramillo et al., supra note 45, paras. 216 and 220.
[FN59] Cf. Case of Acevedo Jaramillo et al., supra note 45 para. 167.
[FN60] Cf. Case of Baena Ricardo et al., supra note 53, para. 82; and Case of Acevedo Jaramillo et al., supra note 45, para. 220.

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73. Hence, this Court has declared 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 [FN61] and, in another case, it failed to ensure that an order of habeas corpus "be executed appropriately." [FN62] This, because 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. [FN63]

[FN61] Cf. Case of the "Five Pensioners" V. Perú. Judgment of February 28, 2003. Series C Nº 98, para. 138 and 141.
[FN62] Cf. Case of Cesti Hurtado V. Perú. Merits. Judgment of September 29, 1999. Series C. Nº 56, para. 133.
[FN63] Cf. Case of Acevedo Jaramillo et al., supra note 45, para. 219. Cf. also, ECHR, Case of Antoneeto V. Italy. Judgment of July 20, 2000, Nº 15918/89, para. 27; Case of Immobiliare Saffi v. Italy [GC], Judgment of July 28, 1999, Nº. 22774/93, para. 63, and Case of Hornsby v. Greece, supra note 56, para. 40.

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74. In the instant case, the alleged victims filed actions for amparo that, due to its own nature and according to the terms of Article 25(1) of the Convention, should be simple and prompt recourses. Therefore, the State had the obligation to establish prompt procedures and avoid any delay in their Orders in order to impede an abridgment of the right in question. [FN64] However, the Court notes that almost four years and a half elapsed since the alleged victims filed their first remedy of amparo and the remedy was solved. Moreover, two years have elapsed since the second remedy of amparo, which has not been resolved yet, was filed in order to comply with the terms of the first remedy. This proves that the processing of the amparo remedies was not prompt.

[FN64] Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C Nº 182, paras. 156 and 170.

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75. Besides, the recourses have not been fully effective in guaranteeing the right in question. Notwithstanding the fact that they filed two remedies of amparo, which were decided in their favor, the protection of the right that was acknowledged to them by such means has not been fully materialized (infra para. 89), given that the pension amounts owed and unpaid from April 1993 to October 2002 have still not been paid to them (supra paras. 61 to 65). In this regard, the State mentioned budgetary constraints as justification for failure to comply with the judgments (supra paras. 61 and 62). In this sense, it is worth repeating that in order for the remedies of amparo filed in this case to be truly effective, the State should have adopted the necessary measures to comply with them, which include measures of a budgetary nature. Even though the State has stated that it had adopted a series of administrative, legislative and judicial measures aimed at overcoming said economic constraint in order to comply with its treaty obligations (supra paras. 61 and 62) these measures have still not been implemented. Hence, the Tribunal has held that budget regulations may not be used as an excuse for many years of delay in complying with the judgments. [FN65]

[FN65] Cf. Case of Acevedo Jaramillo et al., supra note 45 para. 219. Cf. also ECHR, Case of "Amat-G" LTD and Mebaghishvili v. Georgia, Judgment of 27 September 2005, no. 2507/03, para. 48; Case of Popov v. Moldova, Judgment of 18 January 2005, no. 74153/01, para. 54, and Case of Shmalko v. Ukraine, Judgment of 20 July 2004, no. 60750/00, para. 44.

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76. Moreover, the Tribunal acknowledges that Peruvian laws contemplates a procedure to execute judgments, which was formally implemented after the judgment of January 26, 2001 (supra paras. 50, 51 and 64) and that certain decisions must be made in said procedure in order to comply with the rulings of the Constitutional Court and issue different orders. Besides, the Court notes, as emphasized by the State, that the judicial determination of the amount owed has still not been determined (supra paras. 51 and 64). Nevertheless, this does not exonerate the State from its responsibility; instead, it proves that the judicial remedies instituted to seek compliance with the judgments of the Constitutional Court were completely ineffective and this is not a reasonable

justification in the face of the delay in the enforcement of the final judgments of said court. [FN66] The State's obligation to guarantee the efficacy of its judicial recourses derives from the American Convention and such obligation cannot be limited by rules of domestic procedure or exclusively depend on the procedural effort of the plaintiff to the proceedings. [FN67]

[FN66] Cf. Case of Acevedo Jaramillo et al., supra note 45 para. 269.
[FN67] Cf. Case of Salvador Chiriboga V. Ecuador. Preliminary Objection and Merits. Judgment of May 6, 2008. Series C No. 179, para. 83.

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77. Apart from the obligation to provide a prompt, simple and effective recourse to the alleged victims in order to guarantee their rights, which did not happen, the Convention also contemplates the right to judicial protection according to which the State must guarantee compliance with the decisions rendered by the Constitutional Court in such respect. In this sense, the Tribunal notes that, in total, more than eleven and eight years have elapsed since the first and last judgment of the Constitutional Court were rendered, respectively,- and almost 15 years since the judgment of the First Specialized Civil Chamber of the Supreme Court of Justice of Lima- and such rulings have not been effectively complied with. The inefficacy of said remedies has made the right to judicial protection of the alleged victims to be, at least partially, illusory, considering the denial itself of the right in question.

78. It is worth mentioning that the Constitutional Court, by means of judgment of January 26, 2001, mentioned that, in the domestic proceeding "subparagraphs (1) and (2)(c) of Article 25 of the American Convention [on] Human Rights […] have been […] violated […]." [FN68]

[FN68] Judgment of October 26, 2001 of the Constitutional Court of Perú, supra note 32 (page 1721).

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79. Based on the foregoing, the Court considers that the State violated the right to judicial protection enshrined in Article 25(1) and 25(2) (c) of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of the two-hundred and seventy-three people mentioned in paragraph 113 of this Judgment.

C) The right to property in relation to the violation of the right to judicial protection

80. The Tribunal still needs to determine whether the partial compliance with the judgments of the Constitutional Court led to the violation of the right to property that the alleged victims allegedly have over the patrimonial effects of the right to an adjustable pension that they acquired, according to the Peruvian legislation.

81. In such regard, the Commission alleged "that once the [alleged] victims terminated their employment in [CGR] and opted for the pension system established in Decree Law No. 20.530, they acquired, n accordance with the case-law of the Inter-American Court, […] 'a right to

property over the patrimonial effects of the right to a pension under [such] Decree Law […] and the terms of Article 21 of the American Convention". "Consequently, the Commission consider[ed] that the payment of the pensions owed from April 1993 to October 2002 is an asset that has been incorporated into the patrimony of the victims". Hence, for the Commission, "the failure to comply [with] the judgments handed down, [has] deprived the members of the Association [...] from legally recognized rights, violating their right to property".

82. Likewise, the representatives alleged that, "the failure to pay, from April 1993 to October 2002, the adjustable pension […], constitutes a violation of the content of the right to private property embodied in Article 21 of the Convention". It also stated that, "any type of pension, provided that it had entered the patrimony of an individual in full satisfaction of the domestic legal requirements, is protected by Article 21". In this regard, when the members of the Association fulfilled the requirements established in Decree Law No 20.530, the right to a pension entered the patrimony of the pensioners, "and they acquired a right to property over their pensions", in the way that "the violation of the right to property continues insofar as, to date, these amounts have not been reimbursed to their patrimony". In the same line of thought and in relation to the domestic law of Perú, the representatives mentioned that "Article 886 of the Peruvian Civil Code indicates that personal property consist of income or 'pensions of any kind'; in other words, whether or not they are regulated by special schemes ".

83. Moreover, the State put forward the same arguments mentioned above in relation to the violation of Article 25 of the Convention.

84. Pursuant to the case law developed by this Tribunal, the concept of property is a broad one and it comprises, among other aspects, the use and enjoyment of property defined as those material objects which are susceptible of being possessed, as well as any rights which may be part of a person's assets. [FN69] Furthermore, the Court has protected, through Article 21 of the Convention, the vested rights, understood as rights that have been incorporated into the patrimony of the persons. [FN70] It seems necessary to recall that the right to property is not an absolute right, and in this sense, may be subjected to restrictions and limitations, [FN71] insofar as such restrictions or limitations are established by the appropriate legal channel [FN72] and, in any event, according to the parameters established by said Article 21. [FN73]

[FN69] Cf. Case of Ivcher Bronstein, supra note 52, para. 120- 122; and Case of Salvador Chiriboga, supra note 67, para. 55; and Case of Chaparro Alvarez and Lapo Iñiguez V. Ecuador. Preliminary Objections, Merits, Reparations and costs. Judgment of November 21, 2007. Series C No. 170, para. 174.

[FN70] Cf. Case of Salvador Chiriboga, supra note 67, para. 55; and Case of the "Five Pensioners", supra note 61, para. 102.

[FN71] Cf. Case of Ivcher Bronstein, supra note 52, para. 128; Case of Perozo et al., supra note 13, para. 399; and Case of Salvador Chiriboga, supra note 67, paras. 60 and 61.

[FN72] Likewise and as way of example, the Court notes that Article 5 of the Additional Protocol to the American Convention in the area of Economic, Social and Cultural Rights allows States to establish restrictions and limitations on the enjoyment and exercise of economic, social and cultural rights "by means of laws promulgated in order to preserve the general welfare in a

democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights."
[FN73] Cf. Case of Salvador Chiriboga, supra note 67, para. 54.
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85. In a case similar to the case at hand, [FN74] this Court declared the violation of the right to property considering the patrimonial damage caused by the State's non-compliance with the judgments that were intended to protect the right to a pension – right that the victims, of that case, have acquired, according to the domestic legislation. In such ruling, the Tribunal found that, from the time that a pensioner pays his contributions to the pension fund, ceases to work for the institution in question, and opts for the retirement regime set forth in the law, such pensioner acquires the right to have his pension governed by the terms and conditions established in such law. Furthermore, the Court declared that the right to pension that the pensioner acquires produces "patrimonial effects", [FN75] which are protected under Article 21 of the Convention. Consequently, in such case, the Court found that, by arbitrarily changing the amount of the pensions that the alleged victims had been receiving and by failing to comply with the judicial rulings arising from their applications for protective measures, the State violated the right to property embodied in Article 21 of the Convention. [FN76]

[FN74] Cf. Case of the "Five Pensioners", supra note 61.
[FN75] Cf. Case of the "Five Pensioners", supra note 61, para. 103.
[FN76] Cf. Case of the "Five Pensioners", supra note 61, paras. 115 and 121.
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86. In this regard, Decree Law No. 20530, subject-matter of the instant case, established a pension scheme under which workers of the public sector "acquired the right to [a] pension" in certain situations. [FN77] Consequently, the Constitutional Court established that "the right to an adjustable pension of Social Security [whose exercise is enshrined in the Constitution], [was] guaranteed for all the beneficiaries of the Public Administration, [and was] unalienable." [FN78]

[FN77] Articles 1 and 4 of Decree Law No.20530, System of Pensions and Compensations for Civil Services provided to the State not covered by Decree Law No. 19990, (record of Appendixes to the application, Appendix 3.1, Volume 6, page 1523).
[FN78] Judgment of October 21, 1997 of the Constitutional Court of Perú, supra note 27 (page 1663, ground Nº 4).
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87. Furthermore, it has been established that the victims satisfied all the situations or elements necessary to acquire the right to an adjustable pension, governed according to the terms and conditions of Decree Law No. 20530 and that after they ceased to work for the CGR, they opted for the regime of adjustable pension set forth in such law. Afterwards, as of April 1993 to October 2002, the State restricted that right, by reducing the amount of their pensions, on application of Decree Law No. 25597 and Supreme Decree Nº 036-93-EF that, according to the

subsequent findings of the Constitutional Court of Perú, were unconstitutional and inapplicable to the victims (supra paras. 45 and 48).

88. In other words, the right to an adjustable pension that the alleged victims acquired, according to the applicable Peruvian legislation, produced an effect on the patrimony of such people, who received the corresponding amounts every month. Such patrimony was directly affected by the illegal reduction, according to the rulings of the Constitutional Court, in the amount received from April 1993 to October 2002. Therefore, the alleged victims could not effectively exercised their right to property over the patrimonial effects of their legally recognized adjustable pension; those effects would refer to the amounts the victims stopped receiving.

89. Given that the State, up to the present, has still not complied with the reimbursement to the victims of the pension amounts withheld from April 1993 to October 2002, this continues adversely affecting their patrimony. The foregoing is a direct consequence of the lack of full compliance with the rulings of the judgments delivered by the Constitutional Court, which has led to the continuous denial of the right that such judgments sought to protect (supra para. 77 and 79).

90. In conclusion, the Court considers that from the extended and unjustified nonobservance of the domestic judicial Orders derives the deterioration of the right to property, enshrined in Article 21 of the Convention, the violation of which should not have occurred if said rulings had been fully and promptly complied with.

91. Based on the foregoing, the Court repeats that the State violated the right to judicial protection enshrined in Article 25(1) and 25(2) (c) of the American Convention (supra para. 79) and it also violated the right to property enshrined in Article 21(1) and 21(2) of said treaty, all of them in conjunction with Article 1(1) therein, to the detriment of the two-hundred and seventy-three people mentioned in paragraph 113 of this Judgment.

VII. ARTICLE 26 (PROGRESSIVE DEVELOPMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS) [FN79] OF THE AMERICAN CONVENTION

[FN79] Article 26 of the Convention (Progressive Development) establishes that: The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

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92. The representative further asserted that "the failure to pay the pensions accrued from April 1993 to October 2002 […] also constitutes a violation of the right to social security as enshrined in Article 26 of the Convention, which contains a provision that refers to economic, social, educational, scientific and cultural rules contained in the OAS Charter". Hence, according

to the representative, " the general obligation to respect and guarantee, as well as the adaptation of domestic law, that apply with regard to all civil and political rights […], also apply with regard to the economic, social, and cultural rights."

93. In that same line of thought, the representative indicated that "[t]he right to an [adjustable] pension, which the [victims] acquired, as well as its conditions, form part of the right to social security" which was specifically protected by the ruling of the Constitutional Court of October 21, 1997. Therefore, "the failure to comply with the judicial rulings [in] this case does not only entail a violation of the right to effective judicial protection but it also implies a direct violation of the right to social security […] fully actionable at this judicial venue".

94. In this way, the representatives emphasized that "by adopting and applying Decrees No.] 25597 and 036-93-EF the State violated the duty of progressive development imposed upon it within the framework of the implementation of the human right to social security" pursuant to Article 10 of the Peruvian Constitution, according to which "the State acknowledges all people their universal and progressive right to social security, to protect them against all legal contingencies and to improve their quality of life". The representatives further asserted that "as of April 1993 to October 2002, [the State] made a step backwards in the level of protection of that right as afforded to each one of the victims, to whom the State withheld nine-tenths of the amount that they should have received, violating their right to social security ". "[Said] step backwards was unjustified, insofar as the State did not allege or prove, at any moment, that it had implemented the seizure of pensions in order to preserve the general welfare within the democratic society".

95. The Commission did not allege the violation of Article 26 of the American Convention.

96. Moreover, the State presented its position in this regard by means of a preliminary objection (supra para. 12) pointing out that, "if the rights allegedly violated by the Peruvian State are pension rights, […] "we would be in a situation that exceeds the competence of the […] [Inter-American] Court".

97. The Court considers it is appropriate to recall the terms indicated in chapter III of this Judgment, in the sense that the Tribunal is fully competent to analyze the violations of all the rights enshrined in the American Convention (supra para. 16). Moreover, even though the Commission did not allege the violation of Article 26 of the Convention, the Court has determined that the alleged victims, his next-of-kin or his representatives may invoke rights other than those asserted in the petition filed before the Commission, on the basis of the facts described thereof. [FN80]

[FN80] Cf. Case of the "Five Pensioners", supra note 61, para. 155; Case of Kawas Fernández, supra note 13, para. 127; and Case of Perozo et al., supra note 13, para. 32.

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98. The Tribunal notes that the arguments of the representative are based, mainly, on the following two aspects: a) the lack of payment of the total amounts owed from April 1993 to

October 2002 and the non-compliance with the judicial rulings that ordered such reimbursement in this case and b) the adoption and application of Decrees No. 25597 and 036-93-EF.

99. Before entering into the analysis of these two aspects, the Court deems appropriate to make some general considerations in this respect. In this sense, the Tribunal notes that the content of Article 26 of the Convention was the subject-matter of an intense debate in the preparatory works of the Convention, as a result of the States Parties' interest to assign a "direct reference" to economic, social and cultural "rights"; "a provision establishing certain legal mandatory nature […] in its compliance and application"; [FN81] as well as "the [respective] mechanisms [for its] promotion and protection", [FN82] since the Preliminary Draft of the treaty prepared by the Inter-American Commission made reference to such mechanisms in two Articles that, according to some of the States, only "contemplated, in a merely declarative text, the conclusions reached in the Buenos Aires Conference." [FN83] The review of said preparatory works of the Convention also proves that the main observations, upon which the approval of the Convention was based, placed a special emphasis on "granting the economic, social and cultural rights the maximum protection compatible with the peculiar conditions to most of the American States." [FN84] In this way, as part of the debate in the preparatory works, it was also proposed "to materialize the exercise of [said rights] by means of the activity of the courts." [FN85]

[FN81] Special Inter-American Conference on Human Rights (San José, Costa Rica, November 7-22, 1969). Minutes and Documents. Observations of the Government of Chile to the Draft of the Inter-American Convention on Human Rights, p. 42-43.
[FN82] Special Inter-American Conference on Human Rights, supra note 81, Intervention of the Delegate of the Government of Chile in the debate about the Draft of the Inter-American Convention on Human Rights, during the Fourteenth Session of the "I" Commission, p. 268.
[FN83] Special Inter-American Conference on Human Rights, supra note 81, Observations of the Government of Chile to the Draft of the Inter-American Convention on Human Rights, p. 37.
[FN84] Special Inter-American Conference on Human Rights, supra note 81, Observations and Amendments of the Government of Brazil to the Draft of the Inter-American Convention on Human Rights, p. 125.
[FN85] Special Inter-American Conference on Human Rights, supra note 81, Intervention of the Delegate of the Government of Guatemala in the debate about the Draft of the Inter-American Convention on Human Rights, during the Fourteenth Session of the "I" Commission, p. 268. 268-269.

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100. Furthermore, it is pertinent to note that even though Article 26 is embodied in chapter III of the Convention, entitled "Economic, Social and Cultural Rights", it is also positioned in Part I of said instrument, entitled "State Obligations and Rights Protected" and, therefore, is subject to the general obligations contained in Articles 1(1) and 2 mentioned in chapter I (entitled "General Obligations"), as well as Articles 3 to 25 mentioned in chapter II (entitled "Civil and Political Rights").

101. In this regard, the Court deems it is appropriate to recall the interpendence that exists between civil and political rights and economic, social and cultural rights, since they should be

fully understood as human rights, without any rank and enforceable in all the cases before competent authorities. In such respect, it is appropriate to mention the case-law of the European Court on Human Rights that, in the case of Airey, pointed out that:

The Court is aware that the further realization of social and economic rights is largely dependent on the situation - notably financial - reigning in the State in question. On the other hand, the [European] Convention must be interpreted in the light of present-day conditions and it is designed to safeguard the individual in a real and practical way as regards those areas with which it deals […]. Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers, like the Commission, that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention. [FN86]

[FN86] ECHR, Case of Airey v. Ireland, Judgment of 9 October 1979, Serie A, no. 32, para. 26.

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102. The Tribunal notes that the progressive realization of the economic, social and cultural rights has been the topic of rulings of the UN Committee on Economic, Social and Cultural Rights, insofar as the full realization of these economic, social and cultural rights "will generally not be able to be achieved in a short period of time" and that, in this way, "it is a necessary flexibility device, reflecting the realities of the real world […] and the difficulties involved for any country in ensuring full realization of economic, social and cultural right." [FN87] Within the framework of said flexibility as to the term and method, the State shall have, mainly though not exclusively, an obligation to do, that is, to adopt provisions and provide the means and elements necessary to respond to the requirement for effectiveness of the rights in question, within the scope of the economic and finance resources the State has at its disposal to comply with the corresponding international commitment made. [FN88] Hence, the progressive implementation of said measures may be subjected to accountability and, if applicable, compliance with the respective commitment assumed by the State may be demanded before instances called to decide on possible human rights violations.

[FN87] United Nations, Committee on Economic, Social and Cultural Rights, General Comment Nº 3: The nature of States parties' obligations (paragraph 1 of Article 2 of the Covenant), U.N. Doc.E/1991/23, Fifth Period of Sessions (1990). 9.

[FN88] The UN Committee on Economic, Social and Cultural Rights has indicated that: "in considering a communication concerning an alleged failure of a State party to take steps to the maximum of available resources, […] will examine the measures that the State party has effectively taken, legislative or otherwise. In assessing whether they are "adequate" or "reasonable", the Committee may take into account, inter alia, the following considerations: a) [t]he extent to which the measures taken were deliberate, concrete and targeted towards the fulfillment of economic, social and cultural rights; b) [w]hether the State party exercised its discretion in a non-discriminatory and non-arbitrary manner; c) [w]hether the State party's

decision (not) to allocate available resources was in accordance with international human rights standards; d) [w]here several policy options are available, whether the State party adopted the option that least restricted Covenant rights; e) [t]the time frame in which the steps were taken[; and] f) [w]hether the steps had taken into account the precarious situation of disadvantaged and marginalized individuals or groups and, whether they were non-discriminatory, and whether they prioritized grave situations or situations or risk". United Nations, Committee on Economic, Social and Cultural Rights, Declaration on the "Evaluation of the obligation to take steps to the "Maximum of available resources" under an Optional Protocol to the Covenant", E/C.12/2007/1, 38º Period of Sessions, September 21, 2007, para. 8.

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103. In correlation with the foregoing, there is a duty- though conditioned- of not adopting retrogressive steps, which shall not be always understood as a prohibition to adopt measures that restrict the exercise of a right. In this way, the UN Committee on Economic, Social and Cultural Rights concluded that "any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights of the [International] Covenant [on Economic, Social and Cultural Right] and in the context of the full use of the maximum available resources [of the State]." [FN89] In the same line of thought, the Inter-American Commission has considered that in order to evaluate whether a regressive measure is compatible with the American Convention, it is necessary to "determine if it was justified by strong reasons." [FN90] Based on the foregoing, it is worth mentioning that the regression is actionable when economic, social and cultural rights are involved.

[FN89] United Nations, Committee on Economic, Social and Cultural Rights, General Comment Nº 3, supra note 87. In accordance with the Committee on Economic, Social and Cultural Rights, "[s]hould a State party use "resource constraints" as an explanation for any retrogressive steps taken, [.…] would consider such information on a country-by-country basis in the light of objective criteria such as: a) [t]he country's level of development; b) [t]he severity of the alleged breach, in particular whether the situation concerned the enjoyment of the minimum core content of the Covenant; c) [t]he country's current economic situation, in particular whether the country was undergoing a period of economic recession; d) [t]he existence of other serious claims on the State party's limited resources; for example, resulting from a recent natural disaster or from recent internal or international armed conflict; e) [w]hether the State party had sought to identify low-costs options; and f) [w]hether the State party had sought cooperation and assistance or rejected offers of resources from the international community for the purposes of implementing the provisions of the Covenant without sufficient reason". United Nations, Committee on Economic, Social and Cultural Rights, Declaration on the "Evaluation of the obligation to take steps to the "Maximum of available resources" under an Optional Protocol to the Covenant", E/C.12/2007/1, 38º Period of Sessions, September 21, 2007, para. 10.

[FN90] Report on Admissibility and Merits No. 38/09, Case 12.670; National Association of Ex-Employees of the Peruvian Social Security Institute et al. V. Perú, adopted by the Inter-American Commission on Human Rights, March 27, 2009, para. 140 to 147.

A) Article 26 of the Convention in relation to the non-payment of the total amounts owed and the non-compliance with the judicial rulings that ordered said payment in the instant case

104. This Tribunal has already considered in this Judgment (supra paras. 69 to 79) that the State violated the right to judicial protection of the members of the Association as a result of the lack of effectiveness of the remedies filed and the non-compliance with the judgments that ordered the payment of the pension amounts owed from April 1993 to October 2002. Moreover, the Court considered that the lack of payment of said amounts continues adversely affecting the right to property of the victims given that they cannot fully exercise their right over the corresponding patrimonial effects, in accordance with the adjustable pension system they opted for (supra paras. 84 to 91).

105. The lack of compliance with said judicial rulings and the resulting patrimonial effects such failure produced on the victims are situations that affect the rights to judicial protection and property, enshrined in Articles 25 and 21 of the American Convention, respectively. Instead, the commitment requested from the State by Article 26 of the Convention consist in the adoption of measures, specially those of an economic and technical nature- insofar as there are available resources- by legislation or other appropriate means- with a view to achieving progressively the full realization of certain economic, social and cultural rights. In this regard, the State's obligation that derives from Article 26 of the Convention is of a different, but complementary, nature to that related to Articles 21 and 25 of that treaty.

106. Therefore, considering that the analysis is not centered on some measure adopted by the State that hindered the progressive realization of the right to pension, but on the State's non-compliance with the payment ordered by the domestic courts, the Tribunal deems that the violated rights are those protected in Articles 25 and 21 of the Convention and it does not find ground to additionally declare the non-compliance with Article 26 of said treaty. Hence, the Tribunal refers to what was previously decided regarding the legal consequences that such non-compliance has had and the lack of payment in relation to the violation of the right to judicial protection (supra paras. 69 to 79 and right to property (supra paras. 84 to 91).

B) Adoption and application of Decrees No. 25597 and 036-93-EF

107. Moreover, the representative alleged the violation of Article 26 of the Convention as a result of the creation of Decree Law No. 25597 and Supreme Decree No. 036-93-EF as legislative measures that constituted a step backwards, that is, contrary to the progressive realization of the right to social security. In this regard, the Court recalls that in the case at hand, there is no controversy between the parties over whether or not the alleged victims had a right to an adjustable pension or whether such right was adversely affected by the unjustified application of said decrees (supra para. 52). In fact, according to what has been established, the parties to this case agree on the fact that when the 273 pensioners of the CGR ceased to work for such institution, they acquired the right to a severance pension under the system regulated by Decree Law No. 20530 (supra para. 43), right that was afterwards recognized by the courts due to the inapplicability to the case of the unconstitutional Decree Law No. 25597 and Supreme Decree No. 036-93-EF (supra para. 45, 48 and 52). In this sense, insofar as there is no controversy at

issue in this regard, this Tribunal shall not rule on the alleged non-compliance with the terms under Article 26 of the Convention as a consequence of the enactment of those norms.

VIII. REPARATION (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION) [FN91]

[FN91] Article 63(1) of the Convention provides:
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.

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108. It is a principle of International Law that any violation of an international obligation that has caused damage entails the duty to provide adequate reparation. [FN92] All aspects of this obligation to make reparations are regulated by international law. [FN93] The Court has based its decisions in this regard on Article 63(1) of the American Convention.

[FN92] Cf. Case of Velásquez Rodríguez V. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 25; Case of Kawas Fernández, supra note 13, para. 156; and Case of Perozo et al., supra note 13, para. 404.
[FN93] Cf. Case of Aloeboetoe et al. V. Surinam. Merits. Judgment of December 4, 1991. Series C No. 11, para. 44; Case of Perozo et al., supra note 13, para. 404; and Case of Ríos et al. V. Venezuela. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 395.

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109. In accordance with the above considerations on the merits and the violations of the Convention so declared in the preceding chapters, as well as in light of the criteria embodied in the Court's case law in connection with the nature and scope of the obligation to make reparations, [FN94] the Court shall now address the requests for reparations made by the Commission and the representative, as well as the State's arguments thereof, in order to adopt the measures required to redress the damage.

[FN94] Cf. Case of Velásquez Rodríguez, supra note 92, para. 25 to 27; Case of Perozo et al., supra note 13, para. 406; and Case of Ríos et al., supra note 93, para. 397.

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110. Before analyzing the measures of reparations so required, the Court notes that the State did not present specific arguments on the measures of reparations requested by the Commission or the representative, but that it only considered that such requests were "inadmissible and unfounded" and required the Court to reject them. Nevertheless, it requested that, in the event the

Court declares the responsibility of State, “to determine what form compensation should take with reference to Perú’s national jurisdiction”.
A) Injured Party

111. The Commission and the representative agree on determining that the “injured parties” are the “273 members of the Association”. In this regard, the Commission further asserted that "[i]t should be borne in mind that many of the victims in this case are deceased, so that the amount owed to them should be paid to their heirs”.

112. This Tribunal recalls that an injured party is considered to be the victim of a violation of some of the rights enshrined in the Convention. [FN95] Moreover, as the Court has held in previous cases, the alleged victims must be mentioned in the application and in the Commission's report according to Article 50 of the Convention. [FN96]

[FN95] Cf. Case of the "White Van" (Paniagua Morales et al.) V. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C No. 76, para. 82; Case of Kawas Fernández, supra note 13, para. 160; Case of Tristán Donoso V. Panamá. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 180.
[FN96] Cf. Case of the Ituango Massacres V. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, para. 98; Case of Kawas Fernández, supra note 13, para. 27; and Case of Perozo et al., supra note 13, para. 50.
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113. Therefore, this Tribunal considers as “injured party”, pursuant to Article 63(1) of the American Convention, the 273 members of the Association, mentioned in the application of the Commission, as well as in the following table, who in their capacity as victims of the violations declared herein (supra paras. 79 to 91) shall be the beneficiaries of the reparations ordered by the Tribunal:

1. Acevedo Buendía, Alejandro	138. López Solórzano, widower of Sunico, Rosa Judith
2. Acevedo Castro, Apolonio	139. López Rubiños, Jorge Percy
3. Acevedo León de Dávila, Isabel Zoila	140. Lora Cortinez, Juan
4. Acosta Arandia, Asunción Graciela	141. Lucero Álvarez, Manuel Gerónimo
5. Acosta Trujillo, Marcial	142. Lucero Palomares, Abraham
6. Agüero Ayala, Zósimo	143. Luna Heredia De Rodríguez, María Maruja Elvira
7. Aguilar Arévalo, Augusto Marcos	144. Macchiavello León Vda. de León, Teresa Yolanda
8. Aguilar Serrano, Miguel Tulio	145. Manyari Palacios, Guido Alberto
9. Aguirre Calderón, Emilio Fernando	146. Marin Gil, Juan
10. Alarcón Coronado De Pérez, Nilda René	147. Martínez Marin, Alicia
11. Alayo Fajardo, Félix Agustín	148. Martínez Estremadoyro, Juan Bautista

12. Alcalá Contreras, Carmen Alejandra	149. Martínez Hubner, Fernando Marcos
13. Alcóser Gutiérrez, Moisés Ernesto	150. Martínez Torres, Raúl Domingo
14. Almenara Valdez De Hemmerde, Luisa	151. Matos Huanes, Carlos Alberto
15. Almeyda Flores, Gerardo	152. Medina Morán, Juan José
16. Álvarez Postigo, Víctor Augusto	153. Mejía Montes, Félix Espimaco
17. Alza Ahumada, Carlos Eugenio	154. Meléndez Meléndez, Rita
18. Amico Ramos Vda. De Errea, Leticia	155. Meléndez Hidalgo De Bojorquez, Nora Angelina
19. Ampuero Pasten, Alejandro Augusto	156. Meléndez Romani, Jesús
20. Anaya Vda. De Faura, María Cristina	157. Melgar Medina, Jesús M.
21. Aparicio Sifuentes, José Melchor	158. Menéndez Butrón, Judith Damiana
22. Aquije Alvarez, Luis Alberto	159. Mercado, Luis Fernando
23. Arana Pozo, Iraida Eumelia	160. Merino Sánchez, Eduardo
24. Arancivia De Valdez, Jaqueline Tania Silvana	161. Mesías Sandoval, Vidal Hernán
25. Aranda De Los Ríos, María Rosa	162. Meza Gamarra, Arturo Higinio
26. Arce Meza, Fernando Aníbal	163. Meza Ingar, Patricia Edelmira
27. Arce Vda. De Hipólito, Carmen Julia	164. Miranda Roldán, Rosa Luz
28. Arevalo Dávila Vda. de Pujazón, Martha Leticia	165. Miyasato Higa Vda. de Kamisato, Victoria Alejandrina
29. Arroyo Montes, Carmen Liliana	166. Mondragón Roncal, Fernando Eleuterio
30. Arroyo Villa Vda. De Arriola, Hilda Teresa	167. Monsante Ramírez, César
31. Asencios Ramírez De Cuneo, María Emma	168. Montero Garavito, Guillermina
32. Bacigalupo Hurtado De Salgado, María Cristina	169. Montero Vargas, Edgardo Demetrio
33. Balabarca Morales, Rosa Elvira	170. Montoya Villalobos, Carlos Alejandro
34. Banda De Palacios, Josefa Eusebia	171. Morales Chavarría, Samuel Enrique
35. Barandiarán Ibáñez, Germán Julio César	172. Morales Martínez, Ángel
36. Barreda Espinoza, Gerardo Adán	173. Moreno Dorado, Blanca Frida
37. Beaumont Callirgos, Fortunata Raquel	174. Mostajo Colzani, Manuel Fernando
38. Becerra Quiroz, Delia	175. Mueras Orcon, Lucio
39. Becerra Quiroz, Julia Auristela	176. Muñoz Pardo, Edgardo
40. Begazo Mansisidor, Roberto Isidoro	177. Navarro Quispe De Morales, Julia Ricardina
41. Beltrán Paz De Vega, Ana María Vicente	178. Negri Cabrera, Otto Alberto

42. Berríos Berríos, Martha María Antonieta	179. Neyra Castro, Luis Mauro
43. Berrocal Soto, Vladimiro Jesús	180. Neyra Ríos, Marina
44. Blas Moreno, Carmen	181. Niño Garcia, Víctor Raúl
45. Blotte Adams, Manuel Edmundo	182. Ochoa Ochoa, Pedro
46. Bojorquez Gonzáles, Dalton Jesús	183. Odría Bastas, Víctor Manuel
47. Borrero Briceño, Julio César	184. Odría Torres, Víctor
48. Bravo Torres, Enrique	185. Ojeda Sánchez, Luis Octavio
49. Cabrera Jurado, Leoncio Ruperto	186. Olaechea Granda, Luis Adolfo
50. Cadenillas Gálvez, Luis Francisco	187. Ormeño Wilson, Julio Eduardo
51. Cahua Bernales, Juan Antonio	188. Oropeza Guia, Leonardo
52. Calderon Escala, Francisco Armando	189. Padilla Gonzáles De Gordillo, Irene
53. Campos Sotelo, Héctor Ciro	190. Paredes Tapia, Eugenia Martha
54. Candela Vasallo, Héctor Oswaldo	191. Peña Ugarte, Juan Manuel
55. Cárdenas Abarca, Saúl Edmundo	192. Peñaranda Portugal, Percy
56. Carmelino Del Carpio Deli, Liliana	193. Pérez Gallegos, Gabriel
57. Carpio Valdivia, Carmen Jacinto	194. Pérez Rosales, José Manuel
58. Carranza Espinoza, Pedro Víctor	195. Pérez Ugarte, Urbana Eugenia
59. Carranza Guerra, Jaime Leoncio	196. Portugal Vizcarra, José Antonio
60. Carrasco Valencia, Reneé Javier	197. Pozo Calva, Gabino Ulises
61. Carrillo Salinas, Enrique	198. Pozo Vega, Luis Daniel
62. Carrión Martínez, Pedro Antonio	199. Quinde Villacrez, Edgardo
63. Castagneto Vélez, Juan Antonio	200. Quiroz Arata, Juan
64. Castañeda Acevedo, Manuel Segundo	201. Ramírez Gandini, César Manuel
65. Castilla Meza, Jorge Clímaco	202. Reátegui Noriega, Nancy
66. Castro Contreras, Jaime Raúl	203. Ríos Nash De Reátegui, María Teresa
67. Castro Zapata, Norberto	204. Rivera Dávalos, Julio César
68. Cavassa Urquiaga, Juana María	205. Robles Freyre Vda. de Kajatt, María Victoria
69. Celis Cairo, César Manuel	206. Rodríguez Balbuena, Edilberto
70. Centurión Marchena De Ramírez, Carmen Isabel	207. Rodríguez Vildosola Vda. de Cussianovich, María Zulema
71. Céspedes Romero, Manuel	208. Rodríguez Yépez, Laura Angélica
72. Chamorro Díaz De Bezir, María Del Carmen	209. Rodríguez Zarzosa, Pablo Víctor
73. Chapoñán Prada, Ricardo	210. Romero Maceda, Ricardo Héctor
74. Chávez Del Carpio, Genaro Remigio	211. Romero Pacora, Jesús
75. Chicoma Mendoza, Juan Vicente	212. Romero Vivanco, Judith María Del Rosario
76. Choza Nosiglia, Fernando	213. Rosario Chirinos, Marcos
77. Chumpitaz Huapaya, José Hugo Félix	214. Ruiz Botto, José Guillermo

78. Chura Quisocala, Germán Amadeo	215. Saenz Arana, Luz Aurea
79. Collantes Sora, César Daniel	216. Salas Luna, Ulderico
80. Cortes De Durand, Sofía	217. Salazar Souza Ferreyra, César Enrique
81. Cuadros Valdivia, Gregorio Hipólito	218. Salinas De Córdova, Elsa Luisa
82. Cubas Castillo, Martha	219. San Román Vda. De Riquelme, Luz
83. Cuiro Jaimes, Mariano	220. Sánchez Canelo, José Edmundo
84. Dávila Ramos, Pablo	221. Sánchez Huarcaya, Luisa Flora
85. Dawson Vásquez, Harry	222. Sánchez Quiñónez, Juan Zenobio
86. De La Cruz Arteta, José Enrique	223. Sanez Gárate, Betty Soledad
87. Defilippi Vda. de Queirolo, Adela	224. Santamaría Vidaurre, César Augusto
88. Delgado Gorvenia, Frida Eriberta	225. Santayana Valdivia, Atilio
89. Delgado Vega, Roberto Alfredo	226. Seperack G. De Caro, Rosa
90. Dextre Dextre, Víctor Manuel	227. Serrano Mendieta, Valerio Humberto
91. Dueñas Aristizábal, Antonio Pelagio	228. Sevilla Aspillaga, Guillermo Eduardo
92. Egúsquiza Flores, José Wilfredo	229. Sifuentes Del Águila, Leoncio Oswaldo
93. Escobar Salas, José Santiago	230. Sigarrostegui Bindels De Gonzáles, Norma
94. Escudero De Beraun, Nelly	231. Solis Romero, Jaime Juan
95. Espejo Vivanco, María Luz	232. Sosa Castillo, Julio Edmundo
96. Espinoza Zazzali, Moisés Ernesto	233. Soto Bautista, Emilio Felipe
97. Falcón Carbajal, Guillermo	234. Taboada Morales, César Hugo
98. Falconi Delboy, Mercedes Gabriela	235. Tapia Campos, Antero Santiago
99. Faustino Tataje, Fermín	236. Taquia Vila, Víctor
100. Ferreccio Alejos, Elsa Mirtha	237. Tavara Ocaña De Ruiz, Herminia Beatriz
101. Ferrel Ayma, Claudio	238. Terán Suárez, Félix Enrique
102. Figueroa Guerrero, Elmer Enrique	239. Tolentino Zagal, Rossana
103. Figueroa Pozo, Doris María Flora	240. Tompson Ortega, Andrés Avelino
104. Flores Konja, Julio Vicente	241. Torres Rodríguez, Mario Simón
105. Flores Ojeda De Pérez, Blanca Nélida	242. Trujillo Rodríguez, Raquel
106. Gala Conislla, Roque	243. Ubillus Martino, Mario Pastor
107. Galvez Martínez De Talledo, Mirella Teresa	244. Ugarte Alarcón, Alberto Walter
108. García Flores, Cesar Augusto	245. Urrelo Moreno De Cardich, Rosa
109. García Mendoza, Rafael Francisco	246. Valencia Amador, Elizabeth Milagro
110. García Salvatecci, Carmen Rosa	247. Valencia Pacheco De Cárdenas, Blanca Concepción
111. García y García De Gómez, Nélida	248. Valverde Bernal, Adolfo
112. Gómez Córdova, Juan Aníbal	249. Vargas Calvo, Alberto
113. Gonzáles Miranda, Luis	250. Vargas Giles, Juan Augusto
114. Gotuzzo Romero, Mario Bartolomé	251. Vargas Prieto Vda. de Barcelli, María Esther
115. Gutiérrez García, Darío Alejandro	252. Vargas Salas, Cosme Marino

116. Guzmán Rodríguez, Jorge Segundo	253. Vargas Salazar, Enrique Eduardo
117. Hernández Cotrina, Amado	254. Vargas Salinas, Eileen G.
118. Hernández Fernandini, Constanza	255. Vásquez Del Castillo, Elena
119. Hernando Galvez, José Antonio	256. Vega Alarcón, César Augusto
120. Herrera Meza, José Santos	257. Vela Lazo De Peralta, Consuelo Emperatriz
121. Huamán Effio De Revilla, Mirtha Luz	258. Velarde Falcón, Amelia Juana
122. Huamán Huillca, Valerio Francisco	259. Velásquez Del Carpio, César
123. Ibarra Márquez, Juan Amador	260. Vicuña Arias De Valdez, Edelmira
124. Icochea Arroyo, José Félix	261. Villalobos Rodríguez, Marcos
125. Ishiyama Cervantes Miguel	262. Villanueva Ipanaque, Carmen Isabel
126. Iturregui Santoyo, Pedro Gonzalo	263. Vitkovic Trujiilo, José Baltasar
127. Iturrizaga Arredondo, Rafael	264. Vizcaya Jáuregui, Nicolás Ramiro
128. Jiménez Lumbreras, Mauro Esteban	265. Yap Cruz, José Leoncio
129. Lam Sánchez De Torres, Consuelo	266. Yarasca Montano, Pedro Lucio
130. Lamas Vargas, Julia Elvira	267. Yong Flores, Raúl
131. Lazarte Terry, Máximo Ernesto	268. Zapata Barrientos, Pedro Sigifredo
132. Lazo Loayza, Dante Eusebio	269. Zapata Benites, Alberto
133. Lazo Zegarra, Nora Ruth	270. Zavala Rivera, Víctor Manuel
134. Leau Caballero De Herrera, Betty Eudocia	271. Zavala Torres, Dora Jasmine
135. Libaque Villanueva, Manuel Isaac	272. Zevallos Alzamora, Olga Cecilia
136. Linares Ruiz, María Ilmer	273. Zuloeta Camacho, Ángel
137. López Rubiños De Rivero, Nelly Esperanza	

114. Furthermore, although evidence was tendered in the instant case regarding the alleged damage suffered by some of the relatives of the 273 victims as a consequence of the violations so declared, the Court deems that nor the Commission or the representative have alleged that said persons were victims of any violation of a right enshrined in the American Convention. Based on the foregoing and considering the case-law of the Tribunal, the Court does not consider that the next-of-kin of the victims in the case at hand are "injured parties" and it also determines that they will be beneficiaries of the reparations only in the capacity as heirs, that is, if the victim died and pursuant to the provisions of the domestic legislation.

B) Compensation

i. Pecuniary Damage

115. The Court’s case law has developed the concept of pecuniary damage and the cases in which compensation therefore is due. [FN97]

[FN97] This Tribunal has established that pecuniary damages involve “the loss of or detriment to the victims’ income, the expenses incurred as a result of the facts, and the monetary

consequences that have a causal nexus with the facts of the sub judice case". Case of Bámaca Velásquez V. Guatemala. Reparations and Costs. Judgment of February 22, 2002. Series C No. 91, para. 43; Case of Kawas Fernández, supra note 13, para. 162; and Case of Perozo et al., supra note 13, para. 405.

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116. The Commission indicated that "it falls upon the victims to define their claims" regarding the pecuniary damage caused, while the representative requested the Court, when establishing the value of the compensation for pecuniary damage, to bear in mind, in particular, "the loans and the sale of property that the victims were obliged to resort to, [...] in order to cope with the abrupt reduction in their pensions". According to the representative, the victims were forced to incur expenses to "deal with the severe reduction of their financial means that, until the month of April 1993, allowed them to afford their basic human needs of food and shelter, as well as the education of their children". In the affidavits and testimonies, some of the victims made reference to expenses incurred as a result of the payment of medicine and treatment of diseases allegedly related to or worsened by the facts of the case. [FN98]

[FN98] Cf., inter alia, affidavit rendered by Cosme Marino Vargas Salas (record of affidavits and observations, page 2557); affidavit rendered by Juan José Medina Morán (record of affidavits and observations, pages 2559-2560); affidavit rendered by César Daniel Collantes Sora (record of affidavits and observations, pages 2561-2562); affidavit rendered by Julio César Borrero Briceño (record of affidavit and observations, pages 2563-2564), and affidavit rendered by Dicha Laura Arias Laureano (record of affidavits and observations, page 2570).

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117. The Tribunal notes that even though the Commission, the representative and, where applicable, the victims made reference to a patrimonial loss as a consequence of the violation of the rights declared herein, [FN99] they failed to present any specific allegation in that regard or tendered sufficient evidence to allow the Tribunal determine the amount of said loss, whether it effectively occurred or whether it was directly caused by the facts of the case. [FN100] As to the expenses for health problems of the victims allegedly caused by the facts of the instant case, for example, the Court does not have any evidence, apart from the allegations made, that allows it to prove said situation or the causal link with the facts of the case at hand. [FN101] Consequently, this Tribunal shall not determine any compensation for pecuniary damage in favor of the victims.

[FN99] Cf., affidavit rendered by Cosme Marino Vargas Salas, supra note 98 (page 2557); affidavit rendered by Julio César Borrero, supra note 98 (page 2563); statement of José Luis Guillermo Ruiz Boto rendered before the Inter-American Court at the public hearing held on January 21, 2009 and statement of José Baltasar Vitkovic Trujillo rendered before the Inter-American Court at the public hearing held on January 21, 2009.
[FN100] Cf. Case of Tristán Donoso, supra note 95, para. 184.
[FN101] Cf. Case of Tristán Donoso, supra note 95, para. 184.

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ii. Non-pecuniary Damage

118. The Court's case law has developed the concept of non-pecuniary damage and the cases in which compensation therefore is due. [FN102]

[FN102] This Tribunal has established that the non-pecuniary damage "may include both the suffering and distress caused to the direct victims and their next of kin, and the impairment of values that are highly significant to them, as well as other sufferings that cannot be assessed in financial terms." Case of the "Street Children" (Villagrán Morales et al.) V. Guatemala. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77, para. 84; Case of Kawas Fernández, supra note 13, para. 179; and Case of Perozo et al., supra note 13, para. 405.

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119. The Commission requested the Court to take into account "the nature of the impact the situation described has had on the victims […] and their characteristics". In this regard, it emphasized that a "significant number [...] of the victims involved in the case at hand are elderly people, therefore are expected to live less and the impact of the non-compliance with the reimbursement of unpaid amounts already ordered at the domestic level, is different [from the impact] on other younger victims".

120. The representative pointed out that "the non-recognition of the right to adjustable pension and the non-compliance with the judicial rulings [of the Constitutional Court] have caused for [the victims] and their next-of-kin a feeling of permanent anguish, uncertainty and helplessness, by corroborating every day that, despite the existence of two judicial rulings and the countless steps taken, the State has still not paid the amounts owed". Moreover, the representative indicated that the facts that violated the rights of the victims "radically changed their life plans". In this sense, it requested the Court to "equitably determine the amount of compensation for non-pecuniary damage".

121. Hence, it falls upon the Court to determine whether, in the case at hand, the non-compliance with the judgments of the Constitutional Court and the resulting impairment to the right to property, caused a non-pecuniary damage to the detriment of the victims.

122. In such regard, Mr. Cosme Marino Vargas Salas stated, by means of the affidavit, that "the reduction in [his] pension seriously affected [his] possibility of [...] affording all the necessary living expenses [of his family,]" and that, among other consequences, "[his] son […] could no graduate from Law school […] and had to work in a pharmacy in order to help with [such] expenses." [FN103]

[FN103] Affidavit rendered by Cosme Marino Vargas Salas, supra note 98 (page 2557).

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123. In this sense, Mr. Juan José Medina Morán stated, by means of affidavit, that in the proceeding instituted to seek compliance with the judgments of the Constitutional Court, the

victims were “subjected to acts of rudeness and humiliation because of [their] condition of discharged employees and for not being considered […] productive personnel of the public administration”. By not being able to satisfy his basic human needs and having to "appear before different institutions to generate income, [his] state of mind was seriously affected.” [FN104]

[FN104] Affidavit rendered by Juan José Medina Morán, supra note 98 (page 2559-2560).

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124. Moreover, also by means of affidavit, Mr. César Daniel Collantes Sora stated that “[he] was forced to suspend his recess [as discharged person] and start working to afford the basic needs" also causing "psychological problems, [...] feeling of discouragement and frustration to see that [his] country disregarded the laws that protect those who have given the best years [of] their lives to the service of the country. […] This took away from him the possibility of having a better quality of live.” [FN105]

[FN105] Affidavit rendered by César Daniel Collantes, supra note 98 (page 2561-2562).

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125. Furthermore, Mr. Julio Cesar Borrero Briceño pointed out, in his statement, that the non-compliance with the judgments of the Constitutional Court generated "many frustrations in [his] life plan [since] his two daughters had to delay their studies at university, [his] minor sons […] had to change from private school to public school and [his younger daughter] had to live without many things”. Mr. Borrero Briceño further stated that he felt deep "frustration [...] about not being able to afford the basic needs of [his] home" and, as a result, "he lost considerable weight the self-esteem of him and his family were seriously damaged and taken to an extreme.” [FN106]

[FN106] Affidavit rendered by Julio César Borrero, supra note 98 (page 2563-2564).

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126. Mrs. Dicha Laura Arias Laureano, spouse of Mr. Gabino Ulises Pozo Calva, victim in the instant case, pointed out in her affidavit (supra para. 23) that “her husband was [quite] emotionally affected” since “her family did not have enough money to pay for food [...] and education”. In this way, “they survived with the support of [their] children who drop school and started working and contributed to the household expenses” . Mrs. Arias Laureano stated that apart from the physical disease of her husband, he “suffered from depression […] and that took away from him the desire to live.” [FN107]

[FN107] Affidavit rendered by Dicha Laura Arias Laureano de Pozo, supra note 98 (page 2570).

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127. In the statement rendered at the public hearing before the Court, Mr. José Luis Guillermo Ruiz Boto stated that "almost all of his colleagues of the Association or of the Comptroller had [to] look for a way to cope with, particularly, the family expenses that are the most difficult". He asserted that "he knew many cases of [victims] that, due to their age, could not work at any other place, [and for that reason] they had suffered a lot, [...] some of them [...] even died". Mr. Ruiz Boto emphasized the fact of having to withdraw his children from private schools "and take them to public ones". Moreover, he "had to work in tourism", rendering services of transport in night shifts. Finally, he further asserted that "he feels frustrated since during his employment at the Comptroller, he was considered a senior officer [and later on] due to the circumstances, he had to work [...] for illiterate people." [FN108]

[FN108] Cf., statement of José Luis Guillermo Ruiz Boto, supra note 99.

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128. Furthermore, also by means of statement rendered at the public hearing held before the Court, Mr. José Baltasar Vitkovic Trujillo emphasized that the effects of the reduction in the pension were "huge" since "his idea was to provide [his] children with the education they […] deserve" and that he was prevented from doing so due to the circumstances. [FN109]

[FN109] Cf., statement of José Baltasar Vitkovic Trujillo, supra note 99.

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129. Finally, the Tribunal notes that the representative submitted the affidavits of 95 members of the Association or their next-of-kin, the admissibility of which was objected by the State and not their content (supra para. 34). That is, the State alleged that the statements should not be admitted upon considering that "they [were not] related to the subject-matter of the claims of the present procedure" but it did not question the truthfulness of their content regarding the non-pecuniary damage suffered by such people. In that regard, the Court has already declared such evidence to be admissible upon considering it was relevant and pertinent to analyze to non-pecuniary damage suffered by the victims (supra para. 34).

130. It spring from said statements that the victims of the case at hand suffered from frustrations and emotional anguish due to the sudden and dramatically deterioration of their economic situation.

131. Hence, the Court considers that a natural expectation of a discharged or retired employee is to enjoy the freedom and rest implied in labor benefits, counting on the economic guarantee and security that the payment of the full pension represents for the beneficiary who is entitled to it after making the corresponding contributions. By means of their statements, the victims have referred to their particular case and to the case of the 273 members of the Association in general, to inform on the elimination or curtailment of the enjoyment of their dismissal or retirement, insofar as they were forced to obtain new jobs, to bind their patrimony and person by taking out loans or selling their assets, or adapting to a new socio-economic reality, precisely in the stage of their lives in which they could do without a job and in which the acquired right to a pension

would guarantee economy tranquility. In the case under study, while the outcome was neither certain nor inevitable, it was a plausible situation --not merely possible-- within the likelihood given the subject's natural and foreseeable development, a development that was disrupted and upset by the non-compliance with the rulings of the Constitutional Court.

132. Therefore, the Court notes that the reading and analysis of said statements allow concluding that the 102 victims concerned (100 that presented affidavits and two that rendered a statement at the public hearing) and the remaining 171, suffered from a clear uncertainty and defenselessness due to the non-compliance with the rulings of the Constitutional Court, which at the same time caused them psychological anguish and suffering for the impossibility or limitation to enjoy their expectations and responsibilities with a pension suddenly reduced. Such alterations in the conditions of existence of the victims constitute non-pecuniary damage derived, however, from the lack of compliance with the rulings of the Constitutional Court.

133. Though there are numerous cases in which this Tribunal has decided that a condemnatory judgment constitutes per se adequate reparation, [FN110] as mentioned on this occasion, in the case at hand the Court further considers that the uncertainty, anguish and suffering inflicted on the 273 victims by the failure to comply with the judicial rulings issued in their favor determines the existence of an impairment capable of being repaired, alternately, by means of compensation, in accordance with equity.

[FN110] Cf. Case of Neira Alegría et al. V. Perú. Reparations and Costs. Judgment of September 19, 1996. Series C No. 29, para. 56; Case of Kawas Fernández, supra note 13, para. 184; and Case of Perozo et al., supra note 13, para. 413.

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134. Therefore, the Court determines, in fairness, the amount of US$2.000 (two thousand United States dollars) as compensation for non-pecuniary damage, for each one of the two-hundred and seventy-three victims named in the table of paragraph 113 of this Judgment. The State should pay such compensations directly to the beneficiaries within the term of one year as of notice of this Judgment.

C) Measures of satisfaction and guarantees of non-repetition

135. In this chapter, the Tribunal shall determine the satisfaction measures aimed at redressing the non-pecuniary damage and shall order the non-repetition measures of public import or impact. [FN111]

[FN111] Cf. Case of the "Street Children" (Villagrán Morales et al.); supra note 102, para. 84; Case of Kawas Fernández, supra note 13, note 221; and Case of Perozo et al., supra note 13, note 362.

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i. Enforcement of the Rulings of the Constitutional Court

136. The Commission asked the Court "to order the State to take the necessary measures to comply promptly with the judgments of the Constitutional Court of Perú of October 21, 1997, and January 26, 2001, that is, the payment of the differences accrued for adjustment between April 1993 and November 2002".

137. The representative also requested the Court to order the State the payment of the salaries, benefits, and bonuses that the alleged victims failed to receive from April 1993 to October 2002. In this regard, and as part of the final arguments, the representative informed that on January 8, 2009, the Sixth Civil Chamber of the Supreme Court of Justice of Lima ruled "on a remedy presented during the [P]rocedure of [E]xecution of the [Judicial Rulings] and declared that a tax be imposed on the accrued pensions that should be paid to the victims as pensions that were not paid at such opportunity, as of April 1993, by means of the payment of the contribution" stipulated by Law Nº 28046 of July 31, 2003 . "Said law imposed a tax on the pensions of the discharged and retired employees of the pension system under Decree Law No. 20.530 that established two fiscal tax units [UIT] as a maximum amount for pensions, in force […] at the date of the corresponding payment". Hence, in accordance with the representative, said 2009 decision would determine that the "victims in this case may end financing- probably 30%- the pensions that the State was obliged to paid them since 1993".

138. In this respect, the Court refers to the decision made in the chapter related to Article 25(1) and 25(2) (c) of the Convention, as well as Article 21(1) and 21(2) therein in which it was established that the extended and unjustified nonobservance of the rulings of the Constitutional Court have generated a violation of the rights to judicial protection and property of the 273 victims in the case at hand (supra paras. 79 to 91), a situation that would not have happened if said rulings had been promptly and fully complied with. As a consequence, this Tribunal orders full compliance with said rulings, in the understanding that they embody the state obligation to reimburse the amounts owed and unpaid to the victims from April 1993 to October 2002, on application of the domestic legislation referred to the execution of judicial rulings and fully respecting and guaranteeing the victims' right to the corresponding payment within a reasonable time, considering that more than 11 and 8 years have elapsed since the delivery of the first and last ruling of the Constitutional Court, respectively.

139. As to the application of Law No. 28046 of July 31, 2003, this Tribunal considers that the amounts to be assigned as a consequence of the enforcement of this Judgment, including the interest, may not be affected by current or future tax purposes

ii. Publication of the Judgment of the Court, public acknowledgement of the State's international responsibility and adoption and implementation of a public policy or mechanism to ensure compliance with judicial decisions

140. As part of the "integral reparation", the representative further requested: 1) the publication of the facts established in the case and the operative paragraphs of the judgment delivered by the Court in the official gazette, El Perúano, and in another national newspaper with widespread circulation; 2) public acknowledgement of the State's international responsibility and a public apology for failing to comply with the judgments of the Constitutional Court, by means

of a public letter, document, or announcement disseminated using, at leas, two newspapers with widespread circulation in Perú, the text of which must be previously coordinated with the Association; and 3) adoption and implementation of a public policy or mechanism to ensure compliance with judicial decisions in Perú.

141. The Court deems appropriate, as ordered in other cases, [FN112] as a measure of satisfaction, that the State must publish, at least once, in the Official Gazette and in another newspaper of wide national circulation, paragraphs 2 to 5, 17, 19, 52, 53, 61, 65, 69 to 79, 84 to 91, 104 to 107 and 113 of this Judgment, without the corresponding footnotes and with the titles of the respective chapter, as well as the operative paragraphs therein. Said publications shall be made within six months following notice of this Judgment.

[FN112] Cf. Case of Barrios Altos V. Perú. Reparations and Costs. Judgment of November 30, 2001. Series C No. 87, Operative Paragraph 5(d); Case of Kawas Fernández, supra note 13, para. 199; and Case of Perozo et al., supra note 13, para. 415.

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142. As to the other two measures requested (supra para. 140) the Tribunal deems it is not relevant to order them to repair the violations verified in the case at hand. In this sense, the Court considers that rendering this Judgment and ordering the publication of a section thereof in the Official Gazette and in another newspaper of widespread circulation, are in and of themselves sufficient to publicly disseminate the international responsibility of the State in the case at hand. [FN113]

[FN113] Cf. Case of Apitz Barbera et al. ("First Court of Administrative Disputes") supra note 64, para. 250.

D) Costs and Expenses

143. The Commission requested the Court to order the State "the payment of the costs and expenses duly proven by [the representative], in consideration of the special characteristic of the case".

144. The representative asked the Court to order the reimbursement of the costs and expenses which the alleged victims had incurred in the processing of the case before the domestic courts and Inter-American system, which includes: (1) "expenditure for transportation, communications and stationery, in addition to time and effort", (2) the legal services of the Carlos Blancas Bustamante law firm, the payment of legal fees equivalent to 10% of the sum restituted to the members of the Association; of this, 300,000 (three hundred thousand) new soles have been paid to date"; and (3) "the advisory services and legal support activities" of CEDAL (Labor Advisory Center of Perú). In this regard, the representative provided an itemization of the expenses incurred by CEDAL as the result of the proceeding before the Inter-American system, which

amount to US$ 16.956, 60 (sixteen thousand, nine hundred and fifty-six, with 60/00 cents of United States dollars).

145. The State pointed out, in addition, that “the amounts paid by the petitioners on occasion of the proceeding instituted at the domestic level have not been proven”. As to the international proceeding, the State alleged that CEDAL, by being a non-for-profit organization, financed by the international cooperation, “did not represent any expense for the alleged victims”. Furthermore, it questioned “in its entirety, the items [,] and, consequently, the amounts” mentioned in the documentary evidence tendered by the representative, given that it did not present a report proving how such evidence is “link[ed] to the conduct of the proceeding in this particular case”. Hence, the State alleged that the evidence tendered is not “closely and directly relate[d] to the steps taken in the instant case”. Finally, the State alleged that, “in Perú, the proceedings involving a constitutional action or constitutional rights are free”.

146. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparations embodied in Article 63(1) of the American Convention, since the actions taken by the victims, their next of kin, or their representatives to obtain justice at both the national and the international level involve expenditure that must be compensated when a State’s international responsibility has been declared in a judgment convicting it. Regarding reimbursement of costs and expenses, it is for the Court to assess their scope prudently. This reimbursement includes the costs arising before the domestic authorities, as well as those arising during the proceedings before the Inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment must be made on an equitable basis and taking into account the expenses incurred by the parties, provided their quantum is reasonable. [FN114]

[FN114] Cf. Case of Garrido and Baigorria V. Argentina. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39, para. 82; Case of Valle Jaramillo et al. V. Colombia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 243; and Case of Ticona Estrada V. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 179.

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147. In this way, the Tribunal notes that the contract entered into on April 29, 1993 by and between Carlos Blancas Bustamante Law Firm and the Association of Discharged and Retired Employees binds the latter to the payment of a "Fix Fee" of US$ 2.400 (two thousand four hundred dollars of the United States of America) and a "Success Fee" of 10% of the sums to be restituted to each employee as a result of a favorable decision rendered in each case ". Furthermore, the Association undertook to “pay the expenses necessary for the processing of the case". Likewise, the Tribunal notes that the contract entered into by and between the Law Firm and the Association on May 21, 1999 binds the Association to the payment of a "Fix Fee" of US$ 4.000 (four thousand dollars of the United States of America) plus US$ 1.000 (one thousand dollars of the United States of America) in the case it would be necessary to file an ""Extraordinary Appeal” (appeal after judgment) before the Constitutional Court of Perú. At the

same time, it ratifies the undertakings of the contract entered into in the year 1993 regarding the payment of a "Success Fee" and the expenses incurred in the processing of the case.

148. Furthermore, the Court notes that the representative provide an itemization of the expenses incurred by CEDAL as the result of its advisory and legal activities in the proceeding instituted before the Inter-American system; but no evidence to support such expenses has been tendered together with the brief of pleadings and motions. In this sense, by means of letters to the Secretariat of the Tribunal of March 11 and 30, 2009 and May 29, 2009, the representative was requested to forward the receipts and evidence related to the costs and expenses mentioned in Appendix 5 of the brief of pleadings and requests (supra paras. 10 and 11). On June 17, 2009 the representative indicated that it had sent a "list of expenses" by post and on June 22 and 23, 2009 it presented the appendixes mentioned in said communication by electronic mail. The Court established a time limit until June 29, 2009 for the State and the Commission to present the observations thereto. On June 30, 2009 the State presented the respective observations, in which it objected to the amount requested by the representative as reimbursement of costs and expenses. By the time of the delivery of this Judgment, the Tribunal has still not received the observations of the Commission.

149. Hence, the Tribunal considers that the itemization and other evidence forwarded by the representative bear no connection to the instant case as to the accommodation, transportation, and communication expenditure mentioned. [FN115] Nevertheless, the Tribunal can verify that the representative incurred in expenses related to the processing of this case before this Court, including the relocation of lawyers and witnesses from Perú to the seat of the Court in San José of Costa Rica.

[FN115] Cf. Case of Garrido and Baigorria, supra note 114, para. 80; Case of Kawas Fernández, supra note 13, note 219; and Case of Perozo et al., supra note 13, para. 419.

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150. As a consequence, the Tribunal orders, in equity, the payment of US$ 20.000 (twenty thousand dollars of the United States of America) to the Association of Discharged and Retired Employees, as costs and expenses incurred during the processing of the instant case before the domestic level and the organs of the Inter-American system. The amount shall be delivered directly to the Association within the term of one year as of notice of this Judgment. The victims shall deliver, in turn, the amount they deem appropriate to the persons who acted as their representatives at the domestic level and in the processing of the case before the Inter-American system. The amount ordered in this paragraph includes future expenses that the victims may incur at the domestic level or during the procedure of monitoring compliance with this Judgment.

E) Method of Compliance with the Payments Ordered

151. The payment of compensation and reimbursement of costs and expenses shall be made directly to the victims. Should any of these persons die before the pertinent above compensatory amounts are paid thereto, such amounts shall inure to the benefit of their heirs, pursuant to the provisions of the applicable domestic legislation. [FN116]

[FN116] Cf. Case of Garrido and Baigorria, supra note 114, para. 86; Case of Kawas Fernández, supra note 13, para. 221; Case of Valle Jaramillo et al., supra note 114, para. 245.

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152. The State shall comply with its obligations by payment in United States dollars or the equivalent amount in Peruvian currency, at the exchange rate quoted on the day prior to the date when payment is made

153. If, due to reasons attributable to the beneficiaries of the above compensatory amounts, they were not able to collect them within the period set for that purpose, the State shall deposit said amounts in an account held in the beneficiaries' name or draw a certificate of deposit from a reputable Peruvian financial institution, in US dollars and under the most favorable financial terms allowed by the legislation in force and the customary banking practice in Perú. If after ten years compensation set herein were still unclaimed, said amounts plus accrued interests shall be returned to the State.

154. The amounts allocated in this Judgment as compensation and reimbursement of costs and expenses shall be delivered to the beneficiaries in their entirety in accordance with the provisions hereof, and may not be affected, reduced, or conditioned on account of current or future tax purposes.

155. Should the State fall into arrears with its payments, Peruvian banking default interest rates shall be paid on the amounts due.

156. In accordance with its consistent practice, the Court retains the authority deriving from its jurisdiction and the provisions of Article 65 of the American Convention, to monitor full compliance with this Judgment. The instant case will be closed once the State has complied in full with all the provisions herein.

157. Within a term of one year as from the date notice the Judgment is served, the State shall submit to the Court a report on the measures adopted in order to comply with the Judgment.

IX. OPERATIVE PARAGRAPHS

158. Therefore:

THE COURT,

DECIDES:

Unanimously,

1. To dismiss the preliminary objection raised by the State, in accordance with paragraphs 16, 17, 18 and 19 of this Judgment.

DECLARES:

Unanimously that:

2. The State violated the right to judicial protection enshrined in Article 25(1) and 25(2)(c) of the American Convention on Human Rights and the right to property enshrined in Article 21(1) and 21(2) of said treaty, all of them in conjunction with Article 1(1) therein, under the terms of paragraphs 79 and 91 of this Judgment, to the detriment of the two hundred and seventy three members of the Association of Discharged and Retired Employees of the Comptroller General of the Republic of Perú mentioned in paragraph 113 of this Judgment.
3. It has not been proven in the instant case the non-compliance with the obligation recognized in Article 26 of the American Convention on Human Rights, under the terms of paragraph 106 of this Judgment.

AND ORDERS:

Unanimously that:

4. This Judgment is, per se, a form of reparation.
5. The State must pay the amounts set in this Judgment as compensation for pecuniary damages, non-pecuniary damages, and reimbursement of costs and expenses within one year as of notice of this Judgment, under the terms of paragraphs 134, 150, 151, 152, 153, 154 and 155 thereof.
6. The State must fully comply with the judgments of the Constitutional Court of Perú of October 21, 1997 and January 26, 2001, in relation to the reimbursement of the amounts owed and unpaid to the victims from April 1993 to October 2002, within a reasonable term, pursuant to paragraph 138 of this Judgment. The payment of said amounts owed and interest thereto may not be affected by any tax, under the terms of paragraph 139 of this Judgment
7. The State shall publish, at least once, in the Official Gazette and in another newspaper of wide national circulation, paragraphs 2 to 5, 17, 19, 52, 53, 61, 65, 69 to 79, 84 to 91, 104 to 107, and 113 of this Judgment, without the corresponding footnotes and with the titles of the respective chapters, as well as the operative paragraphs therein, in the term of six months, as of notice of this Judgment, under the provisions of paragraphs 141 of this Judgment.
8. It will monitor full compliance with this judgment and will consider the case closed when the State has executed the operative paragraphs. Within a term of one year as of notice the Judgment, the State shall submit to the Court a report on the measures adopted in order to comply with the Judgment.

Judge García Ramírez and Judge ad hoc García Toma informed to the Court of their Concurring Opinions, which accompany this Judgment.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on July 1, 2009.

Cecilia Medina Quiroga

President

Sergio García Ramírez
Manuel E. Ventura Robles
Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu Blondet

Víctor Oscar Shiyín García Toma
Ad hoc

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ IN RELATION TO THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS IN THE CASE OF ACEVEDO BUENDÍA ET AL. ("DISCHARGED AND RETIRED EMPLOYEES OF THE COMPTROLLER") OF JULY 1, 2009

I. Loss of opportunity to take steps in the proceeding

1. According to the rules of the Inter-American procedure for the protection of human rights- norms of a compulsory nature- the State has procedural opportunities, clearly established, to put forward its defense. In some cases, the State has failed to raise these defenses before the Commission and has only raised them, by means of preliminary objections, when the suit is brought before the Court.

2. In general, this Tribunal considered such failures under the concept of "tacit" waiver of the right to raise a defense, which entails the inability of filing them during the conduct of the proceeding. The consideration made by the Court has given rise to certain questionings: some of the States point out that no such "waiver" does not exist. The waiver itself entails- as has been said- a State's decision in that regard.

3. In this respect, it seems adequate to recall that procedural acts are subject to certain rules, on whose observance their admissibility and efficacy depend, with all that it entails for the institution, modification, detention or the conclusion of a trial. Among such rules, it could be mentioned those corresponding to the timing (opportunity) to take steps. Actually, the Court does not need to unnecessarily consider that there was a "tacit waiver" of the right to defense- a

consideration that only means a nominal determination of the failure, but that it does not alter its nature and consequences-, attributing, in this way, to the State's failure a meaning and purpose leading to doubts or obligations. What it is important is that the State failed to take a certain step at the opportunity provided for that purpose and once this opportunity passed, the State lost the possibility to do it. This is what happens in the well established conduct of any ordinary proceeding.

4. I have previously asserted that the Court may modify the expressions it normally uses in this regard, modification that has effectively occurred in many recent judgments, as the one of the instant case. In such judgments, reference is no longer made to the "tacit waiver" but to the loss or exhaustion of the procedural opportunity to present a defense. Of course, the Court could go beyond in the consideration of this issue and explore the true nature of the topic, which would be recognized as a situation of preclusion or insatisfaction of the procedural burden, with the consequences inherent to these well-known phenomena for the discipline of the proceeding. There is no point in turning the attention towards the technique and the doctrine of the proceeding, embodied in the respective general theory, when we are precisely dealing with a procedural issue, regardless of whether such issue is put forward in an international proceeding.

5. The determination of these effects for the failure of defense- loss of opportunity to file it, once the opportunity to do it has passed- does not mean that the Inter-American Court is able to reconsider decisions adopted in the proceeding before the Commission in certain cases, in a truly exceptional way and under the terms analyzed by the case-law of the Court itself. I do not intend to reproduce or analyze this issue, about which the Tribunal has ruled in some orders, now.

II. Expressions of the State in an attempt for friendly solutions

6. It has been pointed out that the State may put forward, in the proceeding before the Inter-American Commission, considerations and suggestions leading to reach a friendly solution in the dispute, and that those consideration and suggestions should not be a detriment to the case in case the intended solution does not succeed and the case is brought to the Court. If any expression of the State, leading to favor the settlement between the parties, is understood as something that necessarily produces unfavorable effects on the State in the proceeding before the Court, we would be discouraging the extra-judicial solution or the contentious case.

7. Of course, it is desirable that those cases involving human rights, such as others, find a solution by means of an understanding between the parties, when this is possible and adequate on the basis of the effective protection of the human rights, taking into account the nature of the violations, the remedies provided and the interest and willingness of the litigants. It does not spring from this, however, that the statements made by the State during the conduct of the proceeding before the Commission are ineffective in the proceeding before the Court. It is essential to reconciliate the need to encourage consensual solutions and the relevance of acknowledging the value of, according to their own characteristics, the acts of confession or recognition of responsibility made by the State.

8. Based on the foregoing, it is necessary to differentiate the several hypotheses put forward in this regard, avoiding general considerations that may result impertinent. This is how the Inter-

American has done it in the judgment to which this opinion refer, in order to be clear about the value of the steps taken by the State at the procedural stage that we now analyze, to favor the protection of human rights and the reasonable settlement of disputes.

9. The Court makes a distinction between actions that lead, due to its nature and form, to the admission of facts - which would constitute a true confession-, and the recognition of responsibilities, and those other actions that only intend to favor the compromise and moderate or eliminate the dispute. In the last case, the expressions of the State shall not be detrimental to it if the conflict is brought to the Court.

10. Instead, whenever there is an action that materially entails, in a clear and sufficient way, the admission of an illegal act or the recognition of the responsibility that derives therefrom, the action shall produce the corresponding natural effects, to the detriment of the State. As a consequence, the State shall not be able to argue that the confession or recognition it made lacks truthfulness or efficacy, in the understanding that such confession or recognition only formed part of a “strategy” destined to expedite the solution agreed on.

III. Reasonable time

11. The reasonable time for the conduct of a proceeding, the carrying out of an action or the issuance of an order is a frequently issue dealt with in the case-law of the Court. The Tribunal has made progress in regards to the reasonable term, admitting the information provided for by the European case-law- complexity of the matter, procedural behavior of the interested party (without placing the burden on it, of course, for the responsibility of the delays or the hindrance in the use of legal means of defense) and the behavior of the authorities (legal or of other nature). The Court added a new reference to all that, to which I referred on previous occasions: the consideration of the way in which the lapse of time affects the right in question.

12. The Court has not encoded the issue of reasonable time only based on the time elapsed – days, months or years-, considered in isolation. It is relevant to consider the fact on the basis of the characteristics of the matter subjected to the proceeding or decision. From here that, in several cases, including the instant case, the Tribunal expressly associates the reference to such temporal measurement with the material characteristics. Only in this way could we appreciate whether the elapsed time is reasonable or not. Evidently, in some cases, it is easy to note that a certain period of time for the processing of a case is, clearly, excessive; especially, if we try to ponder a proceeding that should be, by definition, simple and prompt, as required, for example, by Article 25 of the American Convention. When this is verified with simplicity, it is noted by the Court. In many cases, it is easy to note the need for States to reexamine the procedural regulation and material application of those means of defense in order for them to truly correspond to the provisions and purpose of Article 25.

IV. Acquisition of rights

13. It is relevant to specify, so as to decide about certain violations, when one person has "acquired" certain right, which must be recognized, respected and guaranteed by the national government. Of course, I do not intend to reconsider the old doctrine of acquired rights and

legitimate expectations, but to define, without loosing sight of the matter that I now examine, which are the legal situations from which the entitlement to a right derives that, as from such situations, such right may be claimed by an individual who “acquires” it and must be recognized and protected by the State.

14. To this end, it is necessary to consider- as has been done in the Judgment to which this opinion refers- the legal or procedural system that constitutes the legal ground, by means of general rules that determine broad situations, such as the particular action of the application of such system that recognizes or attributes the right to an individual who satisfies the conditions provided for in the rule. As from this double verification- that is, necessarily, among the facts of a contentious case of this kind- it will be possible to establish that the individual has turned into the person entitled to such right- for example, the right to property- whose violation entails the State's responsibility.

V. Progressive development of economic, social and cultural rights

15. The victims’ representative gave rise to the consideration of the Court regarding the progressive development of economic, social and cultural rights, as from the change of the contributions covered to them and derived from the services rendered to the State. Even when the Court did not find, in the case in point, the non-compliance with Article 26 of the American Convention- a conclusion that I agree on with- such plea determined new reflections of the Tribunal about the progressive development of such rights and its own competence to examine the matter.

16. I recognize that the competence of the Court has been very limited, up to the present, in reference to the rights of this nature. This treatment does not only derive from an "explicit" restricted actionability according to the Inter-American corpus juris, which is widely known, but from the characteristics of the cases brought to the Court's attention and that constitute, obviously, the framework within which the Tribunal acts to examine the Convention and the Protocol of San Salvador.

17. The Court cannot hear cases whose flow before a court is made by means of an application. Even then, the Tribunal has examined issues that relate to social rights or are forthwith identified with such rights, by means of the analysis of violations of rights embodied in the American Convention, particularly the ones related to property, the protection of integrity (designed in health issues) or the special measures for the protection of children.

18. In the case under study, the Tribunal has made progress, as far as it deemed practicable, in the considerations related to the Economic, Social and Cultural Rights. Of course, it reasserted its competence-which must be well-established- to rule over possible non-compliance with Article 26. This issue is within the realm of matters concerning the interpretation and application of the American Convention, whose knowledge and solution is of the Tribunal’s concern.

19. By entering into this realm, the Court recalled several steps in the Inter-American regulation of the matter, taking into account the regulatory procedure that led to the framing of Article 26 and its location in the Convention, under the category of "protected rights". It does not

deal only with, then, descriptive expression that induce public policies, but with legal methods that determine the meaning and content of such policies, with provisions in which such policies are expressed and with the acts in which they are implemented.

20. The Court quotes, moreover, the opinion of the Inter-American Commission on Human Rights, the European Court of Human Rights and the Committee for the International Covenant of Economic, Social and Cultural Rights, which have explored the assessment of the progressive development of this kind of rights and the indicators that would allow establishing and appraising, reasonably, the progress as well as the regression.

21. The Court understands that the observance of Article 26 -imperative rule, not just a political suggestion- is subject to a claim or demand before the instances called to rule upon this aspect, within the framework of the domestic law or in the foreign realm, according to the constitutional decisions and the international commitments assumed by the State. The assessment has two dimensions: the observation of the progressive development, which makes the best effort to achieve it, and the denial of the regression, which is contrary to the principles and the corpus juris of the human rights and that it also must be assessed by the corresponding venues.

Sergio García Ramírez
Judge

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE AD HOC VICTOR OSCAR SHIYIN GARCÍA TOMA

In the case of Acevedo Buendía et al. (“Discharged and Retired Employees of the Comptroller”) V. Perú,

I ratified my position that I orally put forward in the session dated July 1, 2009, where the drafting of this Judgment was discussed, as to the conceptual considerations regarding the progressive development and the non-regression of the Economic, Social and Cultural Rights.

I deem that the arguments introduced in paragraphs 99 to 103 of the Judgment are not directly related nor have an indissoluble or connective relation to the case subject-matter of this dispute.

In this regard, said arguments do not provide relevance in the assertion of them, sufficient reason or obiter dicta to justify their inclusion.

I consider that any doctrinal concept put forward in a case, must be made, necessarily, in consideration of the specific and concrete circumstances of the case itself.

Said doctrinal concept, presented as an unconnected annotation may lead to interpretations of an important impact on the Inter-American system of human rights; which calls for a more detailed and thorough treatment.

In this context, the introduction of an argument of such an importance in a non-obvious case, drives me to offer a point of view that is not related to the case in question, in order to go on record- considering the necessary coherence required to the organs of the Inter-American system of human rights as a whole- that the progressive development is not at variance with the existence of legal restrictions. The latter is not a synonym of regression within the realm of human rights. Therefore, its application is not necessary contrary to the provision of Article 26 of the American Convention on Human Rights.

Hence, any legal restriction is compatible with the provisions of the American Convention on Human Rights when it is teleologically established to safeguard the principle of equality and general welfare. In any case, this is subject to the fulfillment of the proportionality test.

According to said concession already adopted by an organ of the Inter-American system- the Inter-American Commission on Human Rights- the progressive development of the access to Economic, Social and Cultural Rights is not applicable to the exception rules, where the rights are granted without a valid justification considering the theory of the nature of things and, therefore, in violation of the principle of equality of treatment.

There is no doubt that every rule created to prioritize a group of people to the detriment of the rights of the rest of the population may and must be subjected to a restrictive modification.

Víctor Oscar Shiyin García Toma
Judge ad hoc

Pablo Saavedra Alessandri
Secretary