

Order of the
Inter-American Court of Human Rights *
of November 20, 2009
Case of the Dismissed Congressional Employees
(Aguado Alfaro *et al.*) v. Peru
(Monitoring Compliance with Judgment)

Having Seen:

1. The Judgment on the preliminary objections, merits, reparations, and costs (hereinafter, "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter, "the Court", "the Inter-American Court", or "the Tribunal") on November 24, 2006 in the case of the Dismissed Congressional Employees v. Peru, whereby the Tribunal decided that the State of Peru (hereinafter, "the State", or "Peru") must:

[...]

4. [...] guarantee to the 257 victims listed in the Appendix to the [...] Judgment access to a simple, prompt and effective recourse and, to this end, it must establish, as soon as possible, an independent and impartial body with powers to decide in a binding and final manner, whether or not the said persons were dismissed in a justified and regular manner from the Congress of the Republic, and to establish the corresponding legal consequences, including, if applicable, the relevant compensation based on the specific circumstances of each individual, in the terms of paragraphs 148, 149 and 155 of [the] Judgment. The final decisions of the body established for these effects must be adopted within one year of notification of [...] Judgment [;]

5. [...] pay, within one year of notification of [the] judgment, the amount established in paragraph 151 of [the] judgment, in favor of the 257 victims whose names appear in the Appendix to [the] Judgment, for non-pecuniary damage, in the terms of paragraphs 156 and 158 to 161 of [the] Judgment [,and]

6. [...] pay, within one year of notification of [...] Judgment, the amounts established for costs in paragraph 154, in the terms of paragraphs 157 to 161 of [the] Judgment.

[...]

2. The request for interpretation of the Judgment, filed by one of the victims' representatives an declared inadmissible on November 30, 2007, on the grounds that it did not conform to Article 67 of the Convention and Articles 29(3) and 59 of the Tribunal's Rules of Procedure, in force at the time.¹

3. The first and the second report presented by the State on January 14 and November 7, 2008, on the compliance with the Judgment, as well as the observations to said state reports of the common interveners of January 24 and November 27, 2008 and of the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") of March 10, 2008 and February 5, 2009.

* Judge Diego García-Sayán disqualified himself from participating in the procedure of monitoring compliance with the Judgment delivered in the instant case. Judge Leonardo A. Franco informed the Court that, due to reasons of *force majeure*, he could not participate in the deliberation and signature of this Order.

¹ *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*. Request for Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2007. Series C No. 174.

4. The brief of May 28, 2008, by means of which a group of victims, namely, Mr. Wilfredo Chino Villegas, Ricardo Callirgos Tarazona, Ruben Reyes Caballero, Manuel Quiñónez Díaz, Luis González Panuera and Mrs. Jackeline Magallán Galoc, appointed Mrs. Carolina Loayza Tamayo as legal representative and stated that “they h [ad] not received information [from the common intervener or the Inter-American Commission on Human Rights]” and referred to the status of compliance with the Judgment.

5. The Secretariat’s note of June 4, 2008 by means of which it was informed that, as to the participation of the victims and the representatives during the stage of monitoring compliance with the judgment of this case, Article 23 of the Rules of Procedure, in force at the time, was applied in the same manner as in the stage of preliminary objections, merits and reparations of this procedure. Therefore, the different victims, relatives or duly accredited representatives, should have to address to the Tribunal by means of the common intervener of the victims’ representatives. In addition, as it has been informed since the beginning of the instant case, it was pointed out that the appointment of common interveners must not imply a limitation to the right of the victims to file with the Court its requests and arguments, inasmuch as the only purpose of such appointment is to ensure the most effective processing of the case before the Court, for the reception and official communication with the different representatives, taking into account the principle of procedural economy. Furthermore, it deemed appropriate to recall that the common interveners must convey, in their briefs, the several positions and arguments of the different representatives of the victims, though they must be forwarded to the Tribunal through a unique brief. Based on the foregoing, it was informed to the group of people that have appointed Mrs. Loayza Tamayo as their representatives that, from then on, they must address to the Tribunal by means of the common interveners of the victims’ representatives or, if applicable, by means of the Inter-American Commission. To such purpose, their brief was forwarded to the parties for only that time.

6. The brief of June 5, 2008 by means of which the common interveners stated that the information furnished by a group of victims (*supra* Having Seen clause 4) supplements what they have informed in the general meetings of the victims of the instant case.

7. The briefs of July 24, August 19 and October 25, 2008 by means of which the common interveners informed on the “serious difficulties” that arouse in relation to the compliance with the Judgment and criticized the lack of presentation of reports by the State; the briefs of December 11, 2008 and February 3, 2009, by means of which they forwarded additional information, as well as the brief of February 11, 2009, by which they forwarded the observations of a group of victims to the second state report (*supra* Having Seen clause 3)

8. The brief of April 22, 2009, by means of which the State forwarded information on “the compliance with operative paragraph 4 of the [J]udgment” and a copy of the order of the “Special Evaluation Commission”; the brief of May 7, 2009, by means of which the common interveners presented their observations to said state report and repeated their request for the Court to convene a hearing, as well as the respective observations of the Commission of May 9, 2009.

9. The brief of June 3, 2009 by means of which a group of victims referred to the compliance with the Judgment, as well as the Secretariat’s note of the following day, by means of which it recalled the previous communication regarding the participation of the victims and representatives during the stage of the monitoring compliance with the Judgment in this case.

10. The Order of the Court’s President of June 8, 2009, whereby it was decided to convene a private hearing at the seat of the Court for July 8, 2009, in order for the Tribunal to obtain information from the State regarding all the measures of reparation ordered in the

Judgment and listen to the respective observations of the Inter-American Commission and the common interveners.

11. The brief of June 9, 2009, by which the common interveners informed that the "Ministry of Economy and Finance [... stated, as to the] requirements of the payment ordered by this [...] Court [,] that the amounts due as reparations should not be deducted from the budget *allocations*".

12. The brief of June 9, 2009 of one of the victims, by means of which the victim referred to the compliance with the Judgment, as well as the Secretariat's note of June 18, 2009 whereby it was informed that said brief would not be forwarded to the other parties, given that the brief was not addressed to the Court through a common intervener.

13. The briefs of June 24, July 3, 6 and 7, 2009 by means of which groups of victims and one of the representatives made reference to the alleged non-compliance with operative paragraph four of the Judgment, as well as the Secretariat's notes of July 2 and 7, 2009, by which it was repeated that the different victims, relatives or duly accredited representatives must address to the Tribunal through the common intervener or, if applicable, the Commission, but that, for that one time only, the briefs would be forwarded to the other parties.

14. The hearing held on July 8, 2009 during the LXXXIII Period of Ordinary Sessions of the Tribunal at its seat,² as well as the documents presented by the Commission and the State during the hearing.

15. The Secretariat's note of July 15, 2009 by means of which, following the instructions of the President of the Court, the State was requested to forward, no later than July 31, 2009, the documentation that, during the hearing, it informed it would forward after such hearing.

16. The brief of July 21, 2009 by which the common interveners submitted observations once said hearing was held.

17. The communication of July 27, 2009 by means of which one of the victims forwarded a copy of the order of May 8, 2009 issued in file N° 204-2009-C.I.LIMA and three press clippings, in relation to the compliance with the Judgment, as well as the Secretariat's note of August 3, 2009, in which it was repeated that the different victims, relatives or duly accredited representatives must address to the Tribunal through the common intervener of the victims' representatives; therefore, said brief would not be forwarded to the other parties on that occasion.

18. The brief of July 31, 2009 by which the State forwarded a report in response to the request made in the Secretariat's note of July 15, 2009 (*supra* Having Seen clause 15).

19. The briefs of August 14 and 19, 2009 by which the common interveners and the Commission filed, respectively, their observations to the state report of July 31, 2009.

20. The brief of October 21, 2009, by which the common interveners forwarded additional information related to the compliance with the Judgment.

² To this hearing, there appeared Mr. Francisco Ercilio Moura and Javier Mujica Petit, of the Peruvian *Centro de Asesoría Laboral* (CEDAL), common interveners of the representatives; on behalf of the Inter-American Commission, Adviser Lilly Ching Soto; and on behalf of the State, Supranational Specialized Attorney General Mrs. Delia Muñoz Muñoz; Advisor to the President of the Congress of the Republic Mr. Rodolfo Reyna Salinas; Head of Legal Affairs of the Congress of the Republic Mr. Edgar Chauca López; Adviser to the Supranational Specialized Attorney General's Office Mrs. Erika Ramos Arteaga; Ambassador Mr. Moisés Tambini de Valle, Head of the Diplomatic Mission of Peru in Costa Rica; and Minister Gustavo Lembcke and Second Secretary of the Embassy of Peru in Costa Rica Mr. David Tejada.

21. The brief of November 18, 2009 by which the State forwarded a report related to the compliance with the Judgment.

Considering:

1. That it is an inherent power of the judicial functions of the Court to monitor compliance with its decisions.
2. That the State of Peru has been a State Party to the American Convention on Human rights (hereinafter, the "American Convention") since July 28, 1978, and that it accepted the binding jurisdiction of the Court on January 21, 1981.
3. That, pursuant to Article 67 of the American Convention, State parties must fully comply with the judgments entered by the Court in time fashion. Furthermore, Article 68(1) of the American Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties". Therefore, the States must ensure that the rulings set out in the decisions of the Court are implemented at the domestic level.³
4. That the obligation to comply with the rulings of the Court conforms to a basic principle of the law on the international responsibility of States, under which States are required to fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape from their pre-established international responsibility. . The treaty obligations of States Parties are binding on all State powers and organs.⁴
5. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with provisions on protected rights) but also in connection with procedural rules, such as the ones concerning compliance with the decisions of the Court. Such obligations are intended to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties⁵.

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Simple, prompt and effective recourse for the determination of rights

³ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para 60; *Case of the Caracazo V. Venezuela*. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of September 23, 2009, considering clause three and case of *Cantoral Huamani and Garcia Santa Cruz V. Peru*. Monitoring Compliance with the Judgment. Order of the Inter-American Court of Human Rights of September 21, 2009, Considering Clause three.

⁴ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Articles 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994, Series A N° 14, para. 35; *Case of the Caracazo V. Venezuela*, supra note 3, considering clause five and *Case of Cantoral Huamani and Garcia Santa Cruz V. Peru*, supra note 3, considering clause five.

⁵ Cf. *Case of Ivcher Bronstein V. Peru. Competence*. Judgment of the Inter-American Court of Human rights of September 24, 1999, para. 37; *Case of the Caracazo V. Venezuela*, supra note 3, considering clause six and *Case of Cantoral Huamani and Garcia Santa Cruz V. Peru*, supra note 3, considering clause six.

6. That, as to the obligation established in operative paragraph four of the Judgment (*supra* Having Seen clause 1), it springs from the information forwarded by the common interveners and the State that the original proposal that the State made to the common interveners was to set up a body of five members: the representatives of the State and two of the victims. The common interveners turned down the proposal upon considering that it did not conform to the criteria established in the Judgment as to the impartiality of the body and therefore, they proposed an evaluation commission of five members, made up differently: two members representing the victims, two members of the State and a fifth member, a President, elected by common agreement and based on a slate proposed by each party. The State and the common interveners agreed on that in a meeting held on September 26, 2007 and on October 29 of that same year, the Congress of the Republic expressed its consent in written. Two months later, the interveners appointed the victims' representatives and proposed a slate to elect the fifth member.

7. That, on November 23, 2007, the State received a letter from Mr. Adolfo Fernandez Saré, a representative of a victims' group, in which he expressed to be in disagreement with the appointments made by the common interveners and requested the Ministry of Justice to convene a General Meeting so that all the beneficiaries may elect the two representatives before the evaluation commission and therefore, he proposed another slate to elect the fifth member of the commission. He alleged that most of the victims agreed with such request, though he did not present any evidence for such argument. Other group of victims, represented by Mrs. Carolina Loayza Tamayo, also expressed its disagreement with the evaluation commission, pointing out that the commission was not an impartial and independent body and that, therefore, did not comply with the Judgment of the Court.

8. That upon receiving the letter from Mr. Fernandez Saré, the common interveners urged the Human Rights National Council (hereinafter, the "CNDH"), by means of a letter dated December 6, 2007, to decide whether the objection of Mr. Fernandez Saré would have an effect on the enforcement of the Judgment already agreed by the parties. On January 8, 2008, the Executive Secretary of CNDH requested the interveners to check that most of the victims had agreed with the appointment of the representatives before the evaluation commission, and considered that it was "essential, in the opinion of [such] Executive Secretariat, for the accredited representatives before the CDH to come to an agreement in relation to the people that would be part of the so-called 'evaluation commission'. In response to the foregoing, the common interveners sent the CNDH a copy of the 170 powers of attorney of the victims of the instant case by which it was appointed as their representative in the proceedings related to the case. On January 25, 2008, the CNDH stated that it would review the validity of those documents to demonstrate the appointment of the members to the evaluation commission on the part of the common interveners. The CNDH forwarded the issue to the Director of the General Office of Legal Affairs, who communicated the CNDH, on February 14, 2008, that the powers of attorney, to authorize the representatives "to represent in the conversations or negotiations and in order to solve the case", were not valid for the appointment before an evaluation commission, given that the case had been already solved with the Judgment. It also asserted that it considered that, in order for them to be valid, it would be necessary to obtain a special power of attorney that would expressly contemplate the appointment of the members of the evaluation commission.

9. That the process of selection of the members of the evaluation commission continued and, in April 2008, the five members of the commission had already been elected, including its President and fifth member. Furthermore, on May 23, 2008, four of the victims' representatives met at the branch of the CNDH, whose minutes expressed that there was no agreement between the representatives regarding the appointment of the members of the evaluation commission and that "they could not come to an understanding".

10. That, afterwards, the common interveners and the State informed about the establishment, by means of the Supreme Decree of July 19, 2008, of a *Special Evaluation Commission* (hereinafter, the "CEE"), formed by five members elected by the State. This decree set aside the proceeding that was being conducted up to that date and granted a renewable term of 90 days to determine whether the employees were dismissed in a regular and justified manner from the Congress of the Republic or, otherwise, to establish the respective legal consequences, pursuant to the terms of the Judgment. On July 24, 2008 the common interveners informed the Court that they considered that the decree constituted a non-compliance with the Judgment and requested the Court to intervene in the situation.

11. That the CEE was set up and met, for the first time, on August 4, 2008. It began working with the request from the Congress of the Republic regarding the forwarding of the personal files of the 257 victims, as well as the procedural excerpts of the administrative and judicial records processed. Upon the expiration of the period of 90 days, the CEE had not made any determination as to the dismissals of the victims; therefore, by means of the Ministerial Order N° 0646-2008-JUS of December 4, 2008, the State extended the period granted to the CEE for 90 business days. By expressing their disagreement, the common interveners requested the Court to convene a hearing on that respect.

12. That, by means of letter of April 2, 2009, the President of the CEE convened the common interveners to a meeting with the members of the CEE, to be held on April 8, 2009, to "give [them] the possibility to learn about the observations and considerations related to the collective dismissals". According to said letter, during the meeting, the common interveners would have fifteen minutes to present their observations. The common interveners expressed their disagreement with the establishment and procedure of the CEE upon considering that said body did not comply with the terms of the Judgment and stated that, given the lack of duly notification, they could not attend the meeting.

13. That on April 16, 2009, the CEE issued a resolution by which it decided to declare, in a final and binding manner, that the 257 victims named in the Judgment of the Court were dismissed in an irregular and unjustified manner from the Congress of the Republic. In that resolution, the CEE evaluated several methods of reparation: it considered that "it is not actually possible for all or some of the former employees, who were irregularly dismissed, to be reinstated into a position at the Congress of the Republic" due to several reasons, including the fact that the current Congress is a single-chamber parliament, in contrast to the bicameral Congress that existed at the time of the dismissals, as well as the uncertainty of the availability of the budget of the Congress and the vacant posts therein. It also considered and ruled out the options to an early retirement pension and the retraining of employees; the first one because "it would be necessary to make certain modifications in the legislature, which falls outside the competence of this Special Commission"; and the second one, because "the implementation of [...] training programs depend on the negotiations of agreements with Universities or Institutes, which due to the promptness, is not adequate for a prompt and effective compensation". Therefore, the CEE determined in its resolution that each victim was entitled to a financial compensation of two basic minimum wages in force at the time of said resolution for each complete year of services rendered, ordering that the wage would be, in no case, lower than the salary of three years of service. This amount "was agreed upon based on recent rules that compensate irregular dismissals conducted in the 90s [...] taking into account the characteristics of years of services of the employees dismissed from the Congress of the Republic". In the same resolution, the CEE established a term of 15 days for the Legal Defense Council of the State to appoint a body to enforce the payment and it also set a non-renewable term of 90 business days for that body to comply with the payment of the compensations.

14. That the common interveners expressed that the establishment of the CEE and the

appointment of their members were unilaterally decided, without consulting them. Moreover, they expressed their disagreement with the resolution of CEE after considering, *inter alia*, that such body was totally made up by persons of trust of the State; that the decision of the CEE was not adopted within the term established by the Court; that the CEE did not listen to any of the 257 victims; and that the State did not establish a specific mechanism to provide the victims with competent legal advisory services, free of charge. In addition, they pointed out that the compensations were not established based on the specific circumstances of each one of the persons; that the compensation ordered by the CEE was not adequate and that it was neither according to the applicable domestic law; and that the compensation is the same that the one proposed by the State during the public hearing held at the merits stage of this case, which the Court had rejected. Moreover, they argued that the resolution does not reinstate the victims into the positions they occupied before the irregular and unjustified dismissal nor into any other position in the Congress or public administration; it does not order the repayment of the unpaid salaries; and it does not order the payment of a compensation to repair the irregular and unjustified dismissal.

15. That the Commission indicated that the term for the first body established to issue a final decision, which was of one year had expired and that the State had not complied with the Judgment to such effect. It also noted that the State had not proposed a mechanism to provide the victims with competent legal advisory services, free of charge. Then, the Commission expressed its concern as to the CEE and the sudden abandonment of the commission initially established by agreement, and asserted that there was no evidence has been furnished in order to allow evaluating whether the CEE is an independent and impartial body. Furthermore, the Commission observed that the CEE has made no significant progress and that there was not a level of satisfactory compliance regarding the measures adopted the guarantees that must exist in the proceeding and their effectiveness.

16. That, as a result of the facts above mentioned, the Court convened the parties to a private hearing on monitoring compliance with the Judgment, which was held on July 8, 2009 at its seat (*supra* Having Seen clause 14).

17. That this Court notes that, after having agreed with the common interveners the creation of a body, the State did not continue with that mechanism and set up, by means of a Supreme Decree, the CEE, in order to comply with operative paragraph four of the Judgment. Even though there was a disagreement between the victims' representatives as to the composition of that first commission, the State failed to satisfactorily explain the reason why it did not continue with the procedure established by agreement. In addition, actually, operative paragraph four of the Judgment does not order that the composition of that body must be decided in common agreement with the victims or their representatives. According to such provision, to guarantee to the 257 victims access to a simple, prompt and effective recourse as a form of reparation, the State must set up a body with the characteristics that the Court shall analyze next:

A. Independent and impartial body with powers to decide in a binding and final manner, whether or not the said persons were dismissed in a justified and regular manner from the Congress of the Republic.

18. That according to the Supreme Decree of July 19, 2008 by which the CEE was set up (*supra* Considering clause 10), this body has the power to "decide, in a final and binding manner" whether the persons were dismissed in a regular and justified way, and establish the respective legal consequences.

19. That the State alleged that the CEE complies with the requirements of the Judgment as to the creation of an "independent and impartial body". According to the State, the Ministry of Justice interpreted the text of the Judgment to the effect that the State did not have "the obligation to set up an arbitration tribunal, but that it was a power of the State to establish a body in charge of interpreting and enforcing the Judgment". The State sustained that the CEE was independent in the sense that it only received logistical and secretarial support from the Ministry of Justice, apart from which it had total liberty in the procedure to make its own decisions about the dismissals and legal consequences. As to the impartiality of the body, the State emphasized that the members of the CEE were "five prestigious members of the forum of domestic law, which were persons and professional of recognized moral and ethical solvency", alleging that each one of them was impartial. It also noted that the five members performed their duties for free.

20. That the common interveners alleged that the CEE lacks the characteristic of independence required by the Judgment, since the State – by means of the formation of the CEE- abandoned the evaluation commission, which was the result of a negotiation process of more than one year and the common understanding of the victims and the State. They alleged that the CEE, "given that it was completely formed by representatives appointed exclusively by the State [,] which was overcome in the process that gave rise to the [Judgment], [...] questions the impartiality and independence that the Court required". Moreover, a group of victims alleged that the CEE does not comply with the Judgment for failing "to overcome the constitutional and conventional deficiencies of the judicial processes conducted before the Fifth Chamber and Constitutional Tribunal, deficiencies that [...] are verified with the lack of impartiality and independence of its members".

21. That, other group of victims, by means of their representatives, argued that according to the domestic regulation on enforcement of supranational judgments, specially Act 27.775, the competent body to enforce the Judgment is the Chamber before which the domestic remedies were exhausted - that is, the Fifth Civil Chamber of the Supreme Court of Lima in the instant case- which ordered the enforcement by the court that heard the prior proceeding, which would be the judge in charge of the 28° Civil Trial Court of Lima. Therefore, they deemed that the establishment of any commission by the Legislative branch is not valid.

22. That other victims' representatives alleged that, in order to be an independent and impartial body and to have the power to make final and binding decisions, the body that the State must set up to comply with operative paragraph four would have to be a body of the Judiciary, that is, a judicial or arbitration court. This would be according to Articles 139.1 and 139.2 of the Political Constitution of Peru, which provides that the judicial branch represents "the unity and exclusivity of the judiciary" and that "there is no judicial process before a commission or delegation". In addition, they sustained that the CEE, given that it is a body predetermined by law, violates Article 8 of the American Convention. They deemed that, otherwise, the formation of the body is solely an administrative act that may be questioned before a court, "having, as a result, no compulsory and final nature as required by the [Judgment]". They also noted that, during the processing of the case, the State proposed a commitment to set up a multi-sectorial commission that would review the corresponding dismissals and grant benefits, following the guidelines drawn up in the legal norms that established the review of collective dismissals, but that this Tribunal decided to order the formation of an independent and impartial body to review the dismissals; that is, it did not accept a very similar proposal to the one that the State had finally implemented.

23. That the Commission stated that the access to a simple, prompt and effective recourse leads to the need of ensuring some guarantees not only in judicial proceedings but also in administrative acts, according to the own case-law of the Court. Furthermore, the Commission noted that, when it was informed in December 2008 that the CEE had been set

up, it did not receive information on the manner in which such commission would conform to the requirements of independence and impartiality, despite having requested it. It further asserted that there was not a satisfactory compliance level regarding the measures adopted the guarantees that must exist in the process and their effectiveness.

24. That the Court notes that the body that the State had to set up to comply with the terms of operative paragraph four of said Judgment had to fulfill the requirements of impartiality and independence which must govern every body in charge of determining the people's rights and obligations. To that end, the Tribunal has previously stated that said requirements are not only compulsory for judicial bodies, but that the provisions of Article 8(1) of the Convention also apply to the decisions of administrative bodies, which should "comply with these guarantees designed to ensure that the decision is not arbitrary"⁶.

25. That, upon recognizing the relationship that exists between the guarantees of independence and impartiality, this Tribunal has pointed out that each guarantee has its own juridical content, for which it is adequate to analyze whether such guarantees were fulfilled in the formation of the CEE and the proceeding conducted to reach to a final and binding decision.

26. That this Court has established that the principle of judicial independence constitutes one of the basic pillars of the guarantees of the due process, reason for which it shall be respected in all areas of the proceeding and before all the procedural instances in which decisions are made with regard to the person's rights⁷. A way to guarantee that a body set up by the State complies with the guarantee of independence is the adequate appointment process of its members, so that decisions are made without any political interference or pressure⁸. Moreover, according to the Tribunal, the personal merits and professional qualifications of the appointed members do not ensure *per se* their independence, but it is necessary to take into account the peculiarity and specific nature of the duties to be fulfilled and the ones they fulfilled under the parameters of objectivity and reasonability⁹.

27. That even when the State was requested information regarding the appointment process of the members of the CEE, the State only forwarded their *curricula vitae* but it did not provide details about the process by which they were appointed. Furthermore, the Supreme Decree N° 118-2008-JUS does not specify the reasons of the appointment of these people. In light of the information provided by the parties, the Tribunal notes that no evidence has been furnished to demonstrate that the process by which five members of the CEE were appointed, have been conducted according to the parameters previously established. Based on the foregoing, the Court deems that the independence of the body so established has not been ensured.

28. That, in addition, the impartiality means that the judge or officer, who intervenes in a particular matter, must come up with the facts of the case without any type of bias, subjectively speaking, and furthermore, offering sufficient guarantees, of an objective nature, that would allow to cast any doubt that the defendant or the community may harbor

⁶ Cf. *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 119 and *Case of Escher et al. V. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 6, 2009; para. 208.

⁷ Cf. *Case of Reverón Trujillo V. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 67 and 68, and *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, para. 55.

⁸ Cf. *mutatus mutandi*, *Case of Reverón Trujillo V. Venezuela*, *supra* note 10, para 71 to 74; *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela*, *supra* note 10, para. 138.

⁹ Cf. *Case of Reverón Trujillo V. Bolivia*, *supra* note 10, paras. 72 and 74.

about impartiality¹⁰. The State should have provided the 257 victims with a mechanism or recourse that would allow them, if necessary, to question the impartiality of the members of the deciding body¹¹. However, there is no evidence proving that the victims or their representatives had exhausted any recourse or request to that end. The Tribunal finds that no elements of conviction have been furnished in order to prove the lack of impartiality of the members of the CEE.

29. As has been mentioned, on April 16, 2009, the CEE issued a resolution by which it decided to declare, in a final and binding manner, that the 257 victims named in the Judgment of the Court were dismissed in an irregular and unjustified manner from the Congress of the Republic of Peru. Afterwards, the State informed that, through its courts, it had validated said decision of the CEE. Even though said resolution has been ratified at the domestic level, the Tribunal notes that the determination of the respective legal consequences and, if applicable, the compensations applicable to each one of the victims are still pending.

B. Body with the power to establish the respective legal consequences and, if applicable, determine the applicable compensations based on the specific circumstances of each individual.

30. That the State alleged that, as experts in labor law, the members of the CEE reviewed the personal files of all the victims and analyzed factors like the age of the people, the years of service and the income earned to devise the formula that would apply to the determination of the exact compensation owed to each person. It also noted that the compensation is not the same for all the victims, since it is calculated based on the years of service of each individual. Finally, it emphasized that the victims had the opportunity to file their arguments before the CEE by means of the time limit granted to the common interveners to submit their observations, but that the common interveners did not take that opportunity.

31. That the common interveners pointed out that, during the process of the CEE, the only opportunity given to the victims to file the arguments or information or observations was a period of time of fifteen minutes granted to the common interveners, which was not notified with sufficient notice and that it was planned for a few days before the issuance of the final resolution of said body. They also highlighted that the compensation of two basic minimum wages for each year of service is unique and that, given that it only varies depending on the years of service of each victim, it does not relate to the specific circumstances of each one of the victims.

32. That a group of victims, by means of its representatives, argued that the Court in its Judgment requested the State to guarantee the victims "with a true access to justice according to the standards established in the American Convention", which implies due process of law and which "would be necessary so that a person demanding justice can enforce its rights and defend its interests in an effective manner, respecting equality between the parties". In a similar way, another group of victims sustained that the work method of the CEE does not offer the guarantees of due process.

¹⁰ Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela*, supra note 10, para. 56. See also, European Court of Human Rights, *Pullar v. the United Kingdom*, judgment of 10 June 1996, Reports of Judgments and Decisions 1996-III, § 30, y *Fey v. Austria*, judgment of 24 February 1993, Series A no. 255-A p. 8, § 28.

¹¹ Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") V. Venezuela*, supra note 10, para. 63 to 66.

33. That another group of victims, by means of its representative, alleged that by only allowing the common interveners to present their observations- and not the other victims' representatives-, the CEE violated the Rules of Procedure of this Tribunal, which establishes that the common intervener is an intermediary between the victims and the Court during the proceeding before the Court. It asserted that, therefore, the CEE did not afford the opportunity to present any argument or observation during the proceeding.

34. That the Commission noted that the proceeding of the CEE must be analyzed within the context of the Judgment, in a case that "was submitted before the Court precisely due to an issue of judicial guarantees and judicial protection [in which] it was requested that the 257 victims have access to a simple, prompt and effective recourse [to...] review the claims concerning their dismissal, respecting the judicial guarantees". According to the Commission, the Judgment implies a due process and the participation of the victims in the body so established; therefore, it deemed that the CEE would have to comply with the guarantees of due process in order to fulfill the Judgment of this Tribunal.

35. That in the Judgment, the Tribunal established that the compensations must be determined taking into account the specific circumstances of each one of the 257 victims. Nevertheless, the Court notes that the CEE devised a unique formula to calculate the compensation which only varies based on the years of services rendered, without taking into account another specific circumstance of each one of the 257 victims. Moreover, the resolution of the CEE, which would be "final", assigns the duty to set the compensatory amounts owed to each one of the victims to a new body still to be set up. That is, in that sense it is not clear that the resolution is "final".

36. That this Tribunal considers, in addition, that in order to be able to establish the legal consequences and, if applicable, determine the respective compensations under the above mentioned terms, it was necessary for the body to develop a proceeding according to the guarantees of due process. To that end, the Court has already established that the application of Article 8(1) of the Convention is not strictly limited to judicial remedies, "but rather [to] the procedural requirements that should be observed in the procedural instances" so that a person may defend himself adequately in the face of any kind of act of the State that affects his rights¹².

37. That one of the main elements of the due process is the possibility for the person demanding justice to be heard, which includes filing the complaints he considered appropriate before the respective body. In that respect, the Court notes that the proceeding conducted before the CEE did not respect this right, given that it only afforded one instance and opportunity for the victims to submit "their observations and considerations in relation to the collective dismissals to which the employees of the Congress of the Republic were subjected" (*supra* Considering clause 12) for 15 minutes, which is not the manner to ensure the full representation of all the interested parties a few days before the final decision. The Tribunal deems that, evidently, this proceeding was insufficient to ensure the access to an effective recourse that would restore the injured parties to the enjoyment of the rights and liberties violated; in fact, to provide a reparation according to the violations so declared.

38. That the State, moreover, indicated that the reparation ordered by the CEE is consistent with the domestic precedents of other compromised dismissals and the laws applied to repair them. It asserted that the criteria applied by the CEE are very similar to the ones applied to more of the 60.000 dismissals in the State and that, in turn, an

¹² Cf. *Case of the Constitutional Court V. Perú*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, para. 69; *Case of Baena Ricardo et al. V. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, para. 124; and *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. 27.

additional compensation for non-pecuniary damage was granted to the victims in the Judgment of the instant case. Therefore, it held that the reparation ordered by the CEE is adequate and appropriate.

39. That the common interveners expressed their disagreement with the reparations ordered by the CEE and requested this Tribunal to order the body so established to follow the parameters of reparation for violations of rights provided in the Inter-American system. They noted, in the first place, that the wage ordered is less than what would correspond to them under the labor system of the private sector, to which the employees of the current Congress of the Republic are subjected and according to which the employees who were arbitrarily dismissed have the right to collect, as a minimum reparation, a compensation equivalent to one and a half ordinary and monthly wage for each complete year of services rendered, up to a maximum of twelve wages. According to that current law, if the dismissal of an employee were to be declared null and void, the employee would be reinstated into his post and have the right to the wages he stopped receiving since the date of his dismissal up to the effective reinstatement into his position. They also noted that the reparation ordered by the CEE is lower than the amount required by the Law setting the main guidelines on Administrative Career and Public Sector [*Ley de Bases de Carrera Administrativa y del Sector Público*], to which the victims were subjected at the moment of their dismissal and according to which they would be entitled to be reinstated into their posts and also, to a financial compensation higher than the one ordered by the CEE. In the second place, the common interveners emphasized that the compensation of two minimum wages as unique reparation, and according to Act N° 27.803, is the same reparation that the State proposed at the public hearing held during the consideration of the merits of the case, which was not adopted by this Tribunal. In the third place, the common interveners sustained that the reparation ordered by the CEE does not constitute a full restitution, and it neither "eliminates the effects of the violations committed", as required under the case-law of this Tribunal.

40. That some victims alleged that it existed and still exists the possibility of progressively reinstating the victims into their positions. They note that with each public administration, new employees are incorporated into the Congress and that many former employees, victims of other collective dismissals, have been reinstated into their posts. Other victims also expressed that, according to an Article of *Peru 21* newspaper of July 7, 2009, approximately 500 staff positions have been created in the Congress and that, therefore, it is not correct the Resolution of the CEE when it pointed out that "it is not, in fact, possible to reinstate all or some of the former employees who were irregularly dismissed". The State contested such information.

41. That this Court considers that, given the fact that it had already established that the body that made the decision did not comply with the requirement of independence so required, the other arguments presented as to the decision on the merits shall not be discussed in this order. However, it is appropriate to recall that, under the terms of the Judgment, the determination of the legal consequences of the irregular and unjustified dismissals of the former employees of the Congress is independent from the decision made in the Judgment as to the non-pecuniary damages. In turn, such consequences must be determined by the pertaining domestic body, and the solution in each case must result in a fair restoration of the rights violated and the reparation so ordered must seek the greater restitution possible in relation to the situation of the victims, as if the facts of the instant case had never occurred and based on the specific circumstances of each one of these persons.

C. Competent legal advisory services, free of charge, for the victims in the

proceedings related to the procedure before the body.

42. That the State acknowledged that it did not provide legal advisory services, free of charges, to the victims in the procedure before the CEE. It alleges that it was not necessary, since the victims have always participated in the legal proceedings by means of their attorneys, and they always had their respective legal advisors. Therefore, according to the State, the victims have never requested legal advisory services, free of charge, to the State and it was not necessary to provide them anyway. Finally, the State noted that in Peru, there are several ways to obtain free legal advisory services, for example, by means of the Ombudsman's office of the Ministry of Justice.

43. That the representatives pointed out that the State did not establish any mechanism to provide the victims with competent legal advisory services, free of charge, during the procedure before the CEE.

44. That the Commission made a similar observation and indicated that the provision of legal advisory services implies that the Judgment refers to a body in which the individual victims could participate and have the opportunity to present individual complaints and, therefore, it questioned the compliance with this aspect of the Judgment.

45. That, in accordance with the foregoing, this Tribunal concludes that the State did not comply with the terms of the Judgment, as to the provision of legal advisory services, free of charges, for the victims. This confirms, in turn, that it did not adequately guarantee the right to a hearing, according to what has been mentioned (*supra* Considering clause 37).

D. The final decisions of the body must be adopted within the term of one year, as of notice of the Judgment.

46. That the State acknowledged that the final decision of the CEE, issued on April 16, 2009, was not adopted within the deadline established by this Tribunal in the Judgment, though it asserted that the cause of a great part of the delay was the disagreement between the victims' representatives and it noted that the CEE adopted its final resolution within the time limit granted by the domestic law that governed it, which was a renewable term of 90 days by means of the Ministerial Order.

47. That the representatives and the Commission noted that the CEE adopted its final resolution after the deadline established in the Judgment.

48. That the Tribunal established in the Judgment that the recourse must be prompt and simple, and that the final decisions of the body to be set up to that end, must be adopted within the term of one year, as of notice of the Judgment. In this way, the Tribunal notes that the resolution of the CEE was adopted more than two years after the time limit stipulated, and that it was not made according to the manner ordered by this Tribunal to such effect.

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Payment of non-pecuniary damage

49. That in relation to the payment of the sums established in favor of the 257 victims as compensation for non-pecuniary damage (*operative paragraph five of the Judgment*), the State informed that, in the subsequent years, it has been requested to the Ministry of

Economy and Finance and the Special Fund for the Administration of Money Illicitly Acquired to the Detriment of the State (hereinafter, the "FEDADOI") to incorporate the funds that would allow to make the payments into the general budget. Hence, in April 2007, the State requested the Ministry of Economy and Finance and the President of FEDADOI, the necessary funds to make the payment so ordered. On April 19, 2007, the FEDADOI informed the CNDH that its current availability of financial resources was not enough to make the payment. Afterwards, on July 3, 2007, the Ministry of Economy and Finance informed that it is the responsibility of the body that requests the funds "to make the allowances of expenses that are required for certain fiscal year", which is made within the framework of the Annual Budget Act, approved by the Congress of the Republic. The CNDH informed on August 27, 2007 that the Ministry of Justice had conducted the necessary proceedings to include the amount for the payment of the non-pecuniary damage in the budget for the year 2008. On October 17, 2007, the Ministry of Justice requested the allocation of the necessary funds to the Minister of Economy and Finance, in the form of a budgetary modification or the appropriation of the amount in the Budget assigned to the Ministry of Justice for the year 2008.

50. That on June 12, 2008, after receiving a request on the part of the victims, the 28° Specialized Civil Trial Court of Lima ordered the Ministry of Justice to comply with the payments ordered in the Judgment within the term of ten days, according to Act 27.775, which governs the enforcement of supranational judgments. On November 7, 2008, the State informed this Tribunal that the funds necessary to make the payments should be included "in an additional request for the Budget of the year 2009", according to Act N° 28.411 "General Act governing the National Budget System". By means of Act N° 29.289 "Public Sector Budget Act for the Fiscal Year 2009" of December 11, 2008, it was established in its 45° final provision: "to authorize, by means of supreme decree, the Ministry of Economy and Finance to allocate the necessary resources to the Budget, Ministry of Justice for the compliance with the [Judgment]". On March 13, 2009, the Ministry of Justice forwarded to the Ministry of Economy and Finance a request to make the payments and on April 15, of that year, it requested to the latter the issuance of a Supreme Decree to allocate the funds necessary to make the payment to the 257 victims, including the accrued legal interests.

51. That by means of a communication of May 20, 2009, however, the General Secretary of the Ministry of Economy and Finance informed the common interveners that the National Directorate of the Public Budget concluded that "said Final Provision does not have in the Public Sector Budget Law of the current fiscal year a correlation with the income that would finance its expenditure (budgetary appropriation)" and that the Ministry of Economy and Finance is not the entity responsible for making the payment of the Judgment, but that according to Article 22 of the Legislative Decree N° 1068, a norm related to the payment of supranational judgments, it considered that the Congress of the Republic was the body responsible for the payment since "it is the entity where the debt was contracted". On June 17, 2009, the President of the Congress formally requested the Ministry of Economy and Finance the allocation of the necessary resources to make the payment for non-pecuniary damage, a request that was repeated on July 6, 2009, and there is no evidence proving the results of such measures.

52. That the common interveners stated that the measures adopted have not complied with the reparations and that the State seems to justify its non-compliance by protecting itself under domestic legislation. They alleged that "the lack of correlation of the budgetary appropriation, due to an omission of the State, is not a valid reason so as not to comply with the payment of the sums". Finally, they questioned the arguments of the State on its good faith to make the payments, since the Ministry of Economy and Finance refuses to make them.

53. That the Commission expressed its concern about the lack of effective actions to comply with what was ordered, as well as the lack of information on the liaisons and domestic coordination necessary to fulfill such measure of reparation.

54. That the State alleged that it has taken the necessary measures to guarantee the payment for non-pecuniary damage ordered in the Judgment and that the rigor of the domestic laws of the State and the budgetary constraints had caused the delay in the payment. It informed that the payment of non-pecuniary damage must be included in a claim for the domestic budget, a step that has been already taken. It observed that the budget act is of a compulsory nature and though it cannot indicate a specific date for the compliance with the payment, the budget act expires on December 31, 2009 and therefore, the payments must be made before said date.

55. That this Court notes that, after more than two years and a half of the delivery of the Judgment, the payments ordered as compensation for non-pecuniary damage have not been fulfilled by the State. Certainly, it is essential for the State to adopt the necessary measures to make said payments as soon as possible. Moreover, given that the State has fallen in arrears, it must inform on the measures adopted for the effective compliance with this operative paragraph, as well as the allocations applicable to cover the respective overdue interest, according to paragraph 161 of the Judgment.

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Payment of costs

56. That regarding the payment of the amounts established as costs (*operative paragraph six of the Judgment*), the State informed that it has complied with said aspect since it has delivered to the 28° Specialized Civil Trial Court of Lima seven judicial deposit certificates of Banco de la Nación in favor of the victims' representatives for an amount, each of them, equivalent in new soles to five thousand dollars of the United States of America. On August 14, 2008, the 28° Specialized Civil Trial Court of Lima, by means of Resolution N° 120, verified that the State had assigned the sum of 14.050 new soles to each victims' representative and ordered the delivery of such amount to Mr. Adolfo Fernández Saré, Manuel Carranza Rodríguez, Henry William Camargo Matencio, Máximo Jesus Atauje Montes, Jorge Luis Pacheco Munayco, Javier Mujica Petit and Francisco Ercilio Moura. The funds to make such payments came from the FEDADOI. Based on the foregoing, the State asserts that operative paragraph six of the Judgment is fulfilled. The common interveners also indicated that the State complied with this operative paragraph.

57. That, based on the evidence furnished and the similar statements made by the parties as to the effective compliance with this operative paragraph, this Tribunal considers that the State has fully complied with it.

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58. That, when monitoring compliance with the pending aspects of this case, the Court values the effectiveness of the hearing held to that end, which is expressed in the good will shown by the parties. The Tribunal shall consider the general status of compliance with the

pending aspects of the Judgment delivered in the instant case, upon receiving the pertinent information.

Therefore:

The Inter-American Court of Human Rights,

by virtue of the authority granted by Article 62(3), 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 25(2) of the Statute of the Court and Articles 15(1), 30(2) and 63 of the Rules of Procedure of the Court,

Declares:

1. That the State has complied with the obligations established in operative paragraph six of the Judgment on preliminary objections, merits, reparations and costs delivered by the Tribunal on November 24, 2006, as to the payment of the amounts set in paragraph 154 as costs (*operative paragraph six of the Judgment and paragraphs 157 to 161 therein*).
2. That it will keep open the procedure to monitor compliance with the following aspects pending compliance, to wit:
 - a) guarantee to the 257 victims access to a simple, prompt and effective recourse and, to this end, the State must establish, as soon as possible, an independent and impartial body with powers to decide in a binding and final manner, whether or not the said persons were dismissed in a justified and regular manner from the Congress of the Republic, and to establish the corresponding legal consequences, including, if applicable, the relevant compensation based on the specific circumstances of each individual, as soon as possible (*operative paragraph four of the Judgment and paragraphs 148, 149 and 155 therein*) and,
 - b) pay the amount established in favor of the 257 victims for non-pecuniary damage (*operative paragraph five of the Judgment and paragraphs 151, 156 and 158 to 161 therein*).

And Decides:

1. To require the State of Peru to adopt all the measures necessary to, effectively and promptly, comply with the aspects pending compliance of the Judgment on the preliminary objections, merits, reparations and costs delivered in the case of the Dismissed Congressional Employees, as mentioned in declarative paragraph two.

2. To order the State of Peru to submit to the Inter-American Court of Human Rights, not later than October March 1, 2010, a report describing all the measures adopted to comply with the reparations so ordered by this Court, which are still pending compliance, in accordance with the terms of considering clauses 29, 41 and 55.

3. To call upon the common interveners of the victims' representatives and the Inter-American Commission on Human Rights to submit their observations to the State's report referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date of receipt of the report.

4. To continue monitoring the aspects of the Judgment on preliminary objections, merits, reparations and costs delivered by the Tribunal on November 24, 2006, that are still pending compliance.

5. To require the Secretariat to notify this Order to the State, the Inter-American Commission and the common interveners.

Cecilia Medina Quiroga
President

Sergio García Ramírez

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary