I. SUMMARY

1. On August 28, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the IACHR" or "the Inter-American Commission") received a petition lodged by Mr. Miguel Alberto Villanueva Sánchez (hereinafter "the petitioner') against the State of Peru (hereinafter "the State" or "the Peruvian State"). The petitioner alleged that a January 28, 2002 decision delivered by Peru's Constitutional Tribunal, as the court of last resort, had found that the petitioner's remedy of amparo was unfounded, and with that the State had denied the petitioner access to a judicial remedy of amparo for a determination of his rights.

2. The petitioner alleges that the State is responsible for violation of articles 8 (right to a fair trial), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in relation to Article 1.1 thereof. The State, for its part, argues that the petitioner did not pursue and exhaust the remedies under domestic law, as required under Article 46.1.a of the American Convention, since the remedy of amparo was denied on reasonable procedural grounds that were not arbitrary. The State observes that the Constitutional Tribunal acted within its authority and enforced the procedural requirements that the law stipulates as conditions for admitting petitions of amparo. Hence, the State contends, the petitioner's complaint must be declared inadmissible on the basis that the IACHR cannot act as a forum for review of judicial decisions delivered by domestic courts.

3. As set forth in this report, having analyzed the information available, in accordance with the provisions of the American Convention, the Commission concludes that the petition does not state facts that tend to establish a possible violation of the rights guaranteed by the American

Convention. Therefore, based on Article 47.b of the American Convention, the Commission decides to declare the petition inadmissible, to send a copy of the report to the parties, to make it public and publish it in its Annual Report.

II. PROCESSING WITH THE COMMISSION

4. The Commission registered the petition as number P4680/2002 and, pursuant to Article 30.2 of the Commission's Rules of Procedure, proceeded to forward a copy of the relevant parts of the petition to the State on February 3, 2005, giving it two months to present information on the allegations made therein.

5. Via a communication received April 6, 2005, the State requested an extension on the time period for filing its response to the petition. The Commission granted that request on June 15, 2005. On July 14, 2005, the State sent the Commission its observations on the petition, which were forwarded to the petitioner on August 17, 2005. He was given one month to submit the observations he deemed relevant with regard to the State's response.

6. In a communication dated September 22, 2005, the petitioner provided his observations on the State's response, which the Commission forwarded to the State on December 15, 2005, giving it one month to file any observations it deemed pertinent.

7. On March 20, 2006, the State presented its observations on the petitioner's observations. On March 24, that communication was forwarded to the petitioner, who was given one month to present his observations. In a communication dated May 4, 2006, the petitioner submitted his observations on the State's response, which were forwarded to the State on June 2, 2006.

III. THE PARTIES' POSITIONS

A. The petitioner

8. According to the facts narrated in the petition, Mr. Miguel Alberto Villanueva Sánchez was the subject of an administrative sanction which permanently severed him from his teaching position at the Instituto Superior Tecnológico de San Marcos-Huari on charges that he had stolen and unlawfully endorsed a check. According to the allegations in the petition, on January 8, 1999 the petitioner filed an action of amparo with the Second Mixed Court of Huaraz against the Director of Education of the Department of Ancash and the Chairman of the Ancash Transitional Regional Government Council. The petitioner was seeking nullification of Directorial Resolution No. 1471, issued on September 26, 1997, which imposed the sanction of definitive separation from post. The petitioner was also challenging Presidential Decision No. 0277–98, of November 30, 1998, which declared that the administrative appeal that the petitioner had filed to challenge the directorial resolution mentioned above was without foundation.

9. The appendices attached to the petition show that in a ruling dated June 30, 1999, the court of first instance ruled that the remedy of amparo was out of order. When the petitioner appealed that decision, the Second Mixed Chamber of the Ancash Superior Court delivered a ruling dated August 26, 1999, in which it nullified the decision of the court of first instance that

had declared the action seeking amparo relief to be out of order; the Ancash Superior Court ordered that the case be sent back to the lower court for a new ruling. In a decision dated November 8, 1999, the Second Mixed Court of Huaraz declared the petition of amparo filed by Mr. Villanueva Sánchez to be well-founded and nullified the administrative resolutions that had permanently severed the petitioner from his teaching position at the above-named Instituto Tecnológico. The appendices also show that the Director of Education for the Department of Ancash and the Chairman of the Ancash Transitional Regional Government Council challenged this decision. The ruling on their appeal, delivered by the Second Chamber of the Ancash Superior Court, declared Mr. Villanueva Sánchez' case to be unfounded and upheld the administrative resolutions the petitioner was challenging in court.

10. In view of this ruling, the petitioner reports, he filed an extraordinary remedy with the Constitutional Tribunal which, in a ruling dated January 28, 2002, declared the action of amparo to be procedurally inadmissible, but did not go into the merits of the case. The petitioner asserts that he was notified of this decision on June 11, 2002.[FN1]

[FN1] Attached to the original is a copy of the notification, dated June 7, 2002, and a copy of the Constitutional Tribunal's ruling, dated January 28, 2002.

---

11. The petitioner alleges that the Constitutional Tribunal ruled that the remedy of amparo was out of order on the grounds that by the time the amparo remedy was filed, the statutory filing deadline, as stipulated in Article 37 of Law 23.506, had lapsed. That article states that "the deadline for filing a petition seeking amparo is sixty working days from the date on which the grievance to the party claiming violation of his rights is said to have occurred."[FN2] It also held that the petitioner had not availed himself of the rule on the negative consequence of administrative inaction (administrative silence).

[FN2] In its decision, the Constitutional Tribunal writes the following: "3) As this Tribunal has ruled time and time again, the present action was filed subsequent to the legal filing period specified in Article 37 of Law No. 23506; when the government failed to issue a decision on plaintiff's challenge against Directorial Resolution No. 1471 within the prescribed time period, plaintiff did not invoke the effects of negative administrative inaction; instead, he waited more than a year for the government to deliver its decision, and only then did he file his appeal."

---

12. The petitioner further notes that the Constitutional Tribunal's ruling did not take account of Article 99 of Supreme Decree No. 02-94 on the general rules of administrative procedure. The petitioner contends that the article in question gives the employee two options for filing a petition of amparo.[FN3] The petitioner contends that the text of the Supreme Decree makes it clear that an employee has two alternatives: 1) to assert negative administrative inaction, in which case he is to lodge his petition 60 days from the date by which the public administration must deliver its decision, or 2) to await the public administration's definitive pronouncement.

[FN3] The petitioner cites the text of the provision:
The appeal shall be filed when the challenge is based on a differing interpretation of the evidence produced or when questions of law are involved. The appeal should be directed to the same authority that issued the decision so that said authority may refer it to a higher forum.
The time period for filing this appeal shall be fifteen (15) days and it must be decided within thirty (30) days; after that 30-day period, if no decision has been delivered, the interested party may assume that the appeal has been denied so that said party may filed a petition seeking review or a judicial action, where appropriate; if not, the party may await the public administration's express pronouncement."

---

13. The petitioner contends that in his case, the time period for filing the petition of amparo ought not to have been interpreted as commencing on the date on which the rule of negative administrative inaction was triggered, since he opted for another legal avenue, which was to await the public administration's decision before challenging it in court, which is what he did.[FN4]

[FN4] The petitioner notes that two of the magistrates on the Constitutional Tribunal filed dissenting votes, pointing out that in fact, under Article 99 of Supreme Decree No. 02-94-JUS, negative administrative silence was one option, but that the interested party also had the option of waiting for the authority's decision on the matter, in which case the 60-day period could not be said to have lapsed or even to have started. The implication in this specific case was that a ruling on the merits was in order.

---

14. The petitioner is alleging that the Constitutional Tribunal's interpretation of law 23.506, as it pertains to Supreme Decree No. 02-92, implied a violation of his right to the judicial guarantees of due process as he was denied the opportunity to obtain a court ruling on the merits of the case presented to the Tribunal for consideration. The petitioner is also alleging violation of the right to judicial protection since, he contends, no judicial remedy was available to him because his petition for amparo relief was denied.

15. The petitioner is also alleging violation of the right to equal protection, based on the fact that in a case similar to his own, the Constitutional Tribunal had ruled on the procedure and the merits, whereas in his case, it opted to dismiss his case on the grounds that the statutory period for exercising the remedy had lapsed.

16. Based on these arguments, the petitioner alleges that the Peruvian State's international responsibility has been engaged by its violation of the rights protected under articles 8 (right to a fair trial), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention, in relation to Article 1.1 thereof. As for the petition's admissibility, the petitioner alleges that the remedies under domestic law were exhausted on January 28, 2002, with the Constitutional Court's amparo ruling.

B. The State

17. In its arguments, the State does not dispute the facts reported by the petitioner and recounted above, as to the existence and scope of the administrative decisions, of the court rulings of first and second instances, and the Constitutional Tribunal's definitive ruling.

18. However, in its legal arguments the State observes that the Constitutional Tribunal declared the remedy of amparo that the petitioner filed to be out of order, and wrote in its ruling that "the plaintiff did not invoke the effects of negative administrative inaction; instead, he waited more than a year for the government to deliver its decision, and only then did he file his appeal." The State asserts that the petitioner's interpretation of Article 99 of the D.S. 02-94-JUS is not entirely clear and that in all events, the law gives the Peruvian courts exclusive jurisdiction to determine the scope of domestic laws.

19. The State asserts that in the Constitutional Court's earlier case law, its interpretation of the scope of the statute of administrative proceedings was precisely the one applied to the alleged victim's case. In other words, when an employee had not received a decision on his appeal, then negative administrative silence was automatic, which meant that the appeal avenue had been exhausted and the clock began to run on the time period within which a petition of amparo would have to be filed.[FN5] The State alleges that although there were dissenting votes in these decisions, as there was in the decision on the alleged victim's case, those dissenting votes are not binding.

[FN5] The State cited six rulings as examples of this trend in jurisprudence. All were delivered between January 23, 2001 and June 27, 2002.

---

20. In a later communication, the State wrote that the Constitutional Tribunal had deviated from established precedent for calculating the deadline after which a petition of amparo is no longer permissible. It stated that under the new case law, the employee could opt to invoke administrative inaction –and thereby turn to the courts- or wait for the government's pronouncement, without this triggering the statutory time period for filing an action of amparo.[FN6] Here, the State underscores the point that at the time the ruling was delivered in Mr. Villanueva's case, this shift in case law had not yet occurred. Hence, the State argues that the petitioner is mistaken in his contention that the Constitutional Tribunal had deviated from its case law in his specific case.

[FN6] As an example of the shift in the Constitutional Tribunal's case law, the State mentions a ruling the Tribunal delivered on August 10, 2002.

---

21. Therefore, on the matter of the alleged violation of the right to judicial protection, the State argues that the Inter-American Commission's jurisprudence on the 'fourth instance formula' applies to this case. The petitioner's "only claim is that the ruling was wrong and

intrinsically unjust." In the State's view, the judicial process cannot be deemed to be arbitrary or to have violated the petitioner's rights simply because the ruling was not in his favor.

22. After citing the case law of the Inter-American Court on this subject, the State contends that it is obvious from the facts that the petitioner was fully able to exercise his guarantees under Article 8 of the Convention, and that the petitioner had ample access to file remedies under domestic law to exercise his defense. The State underscores the fact that the rulings in the judicial proceedings on the petitioner's case were delivered by independent and impartial judges acting in accordance with the law, the Constitution, and labor law, all within their functional and jurisdictional competences.

23. As for the alleged violation of the right to equal protection, the State argues that in its ruling, the Constitutional Tribunal simply stated what its Organic Law provides, i.e., that the Tribunal is authorized to deliver rulings on the merits and on the procedure of the issue being litigated. The Peruvian State notes that the prerequisite under the procedural system is an assessment to check for compliance with procedural requirements and conditions, which sets the stage for the Court to arrive at a valid decision on the merits of the dispute.

24. As for the petition's admissibility, the State alleges that the remedies under domestic law were not pursued and exhausted, as required under Article 46 of the American Convention and in keeping with the jurisprudence of the IACHR, which expressly states that "The Commission cannot regard the petitioner as having duly complied with the requirement of prior exhaustion of domestic remedies if said recourse has been rejected on reasonable, not arbitrary, procedural grounds, such as filing an appeal for amparo without previously exhausting the pertinent channels and lodging an administrative dispute with the local courts after the corresponding time limits have lapsed."[FN7]

[FN7] Communication from the State, Report No 25-2006-JUS/CNDH-SE-CESAPI, March 20, 2006 (citing IACHR Report No. 90/03, Petition 581-99, October 22, 2003, para. 32).

IV. ANALYSIS OF ADMISSIBILITY

A. The Commission's jurisdiction ratione personae, ratione materiae, ratione temporis and ratione loci

25. The petitioner has standing under Article 44 of the American Convention to lodge petitions with the Commission. The alleged victim named in the petition is a natural person whose Convention-protected rights and guarantees the Peruvian State undertook to respect and ensure. Peru has been a State party to the American Convention since July 28, 1978, the date on which it deposited its instrument of ratification. Hence, the Commission has jurisdiction ratione personae to examine the petition.

26. The Commission also has jurisdiction ratione loci to take up the petition inasmuch as it alleges violations of rights protected under the American Convention, said to have occurred in

the territory of a State party. The Commission has jurisdiction ratione temporis inasmuch as the obligation to respect and ensure the rights protected under the American Convention was already binding upon the State at the time the facts alleged in the petition were said to have occurred. Finally, the Commission has jurisdiction ratione materiae because the petition denounces possible violations of human rights protected by the American Convention.

B. Other admissibility requirements

1. Exhaustion of local remedies

27. Article 46.1.a of the American Convention provides that for a petition lodged with the Inter-American Commission in accordance with Article 44 of the Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this provision is to give the domestic authorities an opportunity to examine the alleged violation of a protected right and, if appropriate, rectify it before the matter is referred to an international forum.

28. The rule of prior exhaustion applies when the domestic system actually affords remedies that are adequate and effective in remedying the alleged violation. Article 46.2 provides that this requirement shall not apply when the domestic system of laws does not afford due process for the protection of the right in question; or if the alleged victim did not have access to the remedies under domestic law; or if there has been an unwarranted delay in rendering a final judgment on those remedies. As Article 31 of the Commission's Rules of Procedure stipulates, when the petitioner alleges any of these exceptions, it is up to the State to demonstrate to the Commission that domestic remedies have not been exhausted, unless that is clearly evident from the record.

29. The principles of international law, as reflected in the precedents established by the Commission and the Inter-American Court's case law, are that the respondent State can waive, either expressly or tacitly, its right to allege failure to exhaust the remedies under domestic law.[FN8] Secondly, to be timely, the objection alleging failure to exhaust domestic remedies must be entered at an early stage of the proceedings, lest a tacit waiver of the requirement on the part of the interested State be presumed.[FN9] Thirdly, on the matter of burden of proof, the State alleging failure to exhaust domestic remedies must prove that domestic remedies remain to be exhausted and that they are effective.[FN10] Therefore, if the State in question does not make its arguments regarding this requirement in a timely fashion, the presumption is that it has waived its right to allege failure to exhaust local remedies and therefore to fulfill its burden of proof.

[FN8] Cf. IACHR, Report No. 69/05, petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, par. 42; I/A Court H.R., Ximenes Lopes. Preliminary Objections. Judgment of November 30, 2005. Series C No. 139, para. 5; I/A Court H. R., Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 49; and I/A Court H. R., Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 135.

[FN9] Cf. I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, para. 53; I/A Court H.R., Castillo Petruzzi et al. Case. Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, par. 56; and I/A Court H.R., Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996, Series C No. 25, par. 40. The Commission and the Court have established that "[a]n early stage of the proceedings" should be understood as "the admissibility stage of the proceedings before the Commission, in other words, before the merits are ever considered […]" See, for example, IACHR Report No. 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, which cites from the I/A Court H.R., Herrera Ulloa Case. Judgment of July 2, 2004, Series C No. 107, para. 81.
[FN10] Cf. IACHR, Report No. 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral et al. (Persons living with HIV/AIDS), Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections, supra note 3, para. 53; Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, par. 33; and Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.
---

30. In the present case, the State entered an objection claiming failure to exhaust the remedies under domestic law. It argued that "the State's international responsibility ought not to be compromised by the fact that the petitioner did not properly exercise the domestic remedies available to him."

31. Here, the Commission believes a number of observations are in order. First, having examined the objection entered by State, the Commission finds that its arguments allege that Mr. Villanueva Sánchez had improperly exhausted the remedies under domestic law by his belated filing of the remedy of amparo.

32. Second, the Commission notes that the complaint filed with the Commission concerns an alleged violation of the American Convention that could involve the Constitutional Tribunal's interpretation of the domestic norms regarding the time period within which Mr. Villanueva should have filed his petition of amparo. Consequently, were the Commission to examine and decide the State's objection asserting a failure to exhaust the remedies under domestic law, it would be delivering a pronouncement on the merits of the case, which would imply a prejudgment of the case during the admissibility phase of the proceedings. In effect, the allegations that the Peruvian State has made regarding the petition's admissibility require a ruling on the Constitution Tribunal's interpretation of the time period for filing a petition of amparo.

33. Given these considerations, and to examine whether the present petition satisfies the rule requiring prior exhaustion of local remedies, the Commission will now consider whether the petitioner had available to him the local remedies that would allow him to challenge the Constitutional Tribunal's interpretation of the time period within which a petition of amparo was to have been filed. The Commission observes that the provision contained in Article 45 of Law 26.435, which was in effect at the time the facts denounced occurred, provided that "the Constitutional Tribunal is the court of last and definitive instance for the remedies referred to in

paragraphs 1, 2 3 and 6 of Article 200 of the Constitution." One of these constitutional remedies is the petition of amparo. This provision shows that the Constitutional Tribunal's ruling, which the petitioner contends was in violation of the Convention, is not subject to any remedy in the domestic courts and is a decision of last instance. The Commission's conclusion, therefore, is that the requirement of prior exhaustion of domestic remedies has been met.

2. Timeliness of the petition

34. Article 46.1.b of the Convention provides that for a petition to be admissible, it must be presented within six months of the date on which the party alleging violation of his or her rights was notified of the final judgment by the domestic courts.

35. Given what the Commission has concluded in the preceding section, it determines that the decision that exhausted the remedies under domestic law is the Constitutional Tribunal's ruling of January 28, 2002. The petitioner alleged that he received notice of this decision on June 7, 2002. The Commission therefore concludes that the six-month requirement is satisfied in the instant case.

3. Duplication of international proceedings and res judicata

36. Nothing in the file suggests that the subject matter of the petition is pending decision in another international proceeding for settlement or that it replicates a petition or communication it previously examined. The Commission therefore concludes that the requirements established in Articles 46.1.c and 47.d of the Convention have been met.

V. Characterization of the facts alleged

37. Article 47.b of the American Convention provides that the Commission will declare inadmissible any petition or communication that does not state facts that tend to establish a violation of the rights guaranteed by the Convention. The Commission, therefore, will now proceed to examine the petition to determine whether the facts denounced therein tend to establish violations of the Convention articles that the petitioner invokes.

38. In the present case, the petitioner has made a number of arguments alleging violation of his rights to a fair trial, to equal protection and to judicial protection, recognized in articles 8, 24 and 25 of the American Convention. Specifically, the petitioner is alleging that the Constitutional Tribunal's interpretation of the domestic laws violated his rights to a fair trial and to effective judicial protection, since it meant that he was arbitrarily denied the right to a hearing on the merits of his petition of amparo. For its part, the State contends that the Constitutional Tribunal's decision was taken in accordance with domestic law and the guarantees of due process. It argues that if the petitioner's complaint is taken up, the Commission will be serving as a kind of fourth instance forum of review.

39. In keeping with the jurisprudence of the inter-American system, "the Commission cannot review decisions handed down by national courts acting within their authority and applying the

appropriate legal guarantees, unless it is found that there has been a violation of some right protected by the Convention."[FN11] Time and time again the Commission has held that:

Under the preamble of the American Convention on Human Rights, the protection that the organs of the inter-American system for the protection of human rights offers is intended to complement the protection afforded by the local courts. The Commission cannot take upon itself the functions of an appeals court in order to examine alleged errors of fact or law that local courts may have committed while acting within the scope of their jurisdiction, unless there is unequivocal evidence that the guarantees of due process recognized in the American Convention have been violated.[FN12]

[FN11] IACHR, Report Nº 8/98, Case 11,671, Carlos García Saccone (Argentina), March 2, 1998, para. 53.
[FN12] IACHR, Report Nº 122/01, Petition 0015/00, Wilma Rosa Posadas (Argentina), October 20, 2001, para. 10.

---

40. Given these considerations, it is not the function of the Commission to review the Constitutional Tribunal's interpretation of the domestic law regarding the procedural admissibility of a petition of amparo. In effect, the Commission observes that the issues the petitioner raises would require that the Commission review the interpretation of procedural law used in the petitioner's case to determine the suitability or adequacy of the avenues that the petitioner chose to assert his claims.

41. The mere fact that the petitioner does not concur with the Constitutional Tribunal's interpretation of the relevant legal norms is not sufficient to establish violations of the American Convention. "The interpretation of the law, the relevant procedure, and the weighing of the evidence is, among others, a function to be exercised by the domestic jurisdiction, which cannot be replaced by the IACHR."[FN13]

[FN13] IACHR, Report N°39/05 (Peru), Petition 792/01, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre.

---

42. Summarizing, from the documents provided, no judicial abuse can be inferred, nor do they show that the alleged victim was denied access to the remedies under domestic law, with all the guarantees of due process of law. As for the alleged violation of Article 24 of the Convention, the facts reported do not tend to establish a possible case of unequal treatment in the sense of this provision.

VI. CONCLUSIONS

43. In the present report, the IACHR has established that the facts the petitioner described do not tend to establish violations of the American Convention. It therefore declares the petition

inadmissible for failure to comply with one of the prerequisites set forth in that Convention. It need not, therefore, proceed to an examination of the merits. Based on the arguments of fact and of law set forth herein,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present case inadmissible.
2. To notify the parties of this decision.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 21st day of the month of October, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Freddy Gutiérrez Trejo, Paolo Carozza and Víctor E. Abramovich, Commissioners.