

OEA/Ser.L/V/II.172  
Doc. 73  
4 May 2019  
Original: S/E

## **REPORT No. 64/19**

### **CASE 13.267**

REPORT ON ADMISSIBILITY AND MERITS

CARLOS BENITES CABRERA ET AL.  
PERU

Approved by the Commission at its session No. 2150 held on May 4, 2019  
172 Extraordinary Period of Sessions

**Cite as:** IACHR. Report No.64/19. Case 13.267. Admissibility and Merits. Carlos Benites  
Cabrera et al. Peru. May 4, 2019.



**INDEX**

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>2</b>
<b>II.</b>	<b>SUBMISSIONS OF THE PARTIES .....</b>	<b>2</b>
A.	The Petitioners .....	2
B.	The State .....	3
<b>III.</b>	<b>ANALYSIS OF ADMISSIBILITY .....</b>	<b>4</b>
A.	Competence of the Commission <i>ratione materiae</i> , <i>ratione personae</i> , <i>ratione temporis</i> , and <i>ratione loci</i> .....	4
B.	Admissibility requirements.....	4
1.	Exhaustion of domestic remedies.....	4
2.	Duplication of proceedings and international <i>res judicata</i> .....	6
3.	Colorable Claim .....	6
<b>IV.</b>	<b>FINDINGS OF FACT .....</b>	<b>7</b>
A.	Context.....	7
B.	Facts in the case.....	7
<b>V.</b>	<b>LEGAL ANALYSIS AND CONCLUSIONS .....</b>	<b>10</b>
A.	Considerations regarding the similarity of the facts with those in cases already settled by the organs of the inter-American system.....	10
<b>VI.</b>	<b>RECOMMENDATIONS .....</b>	<b>11</b>

## I. INTRODUCTION<sup>1</sup>

1. On December 19, 2000, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "Commission," or "IACHR") received a petition filed by Javier Mujica Petit (hereinafter "the petitioner"), alleging the international responsibility of the Republic of Peru (hereinafter "the Peruvian State," "the State," or "Peru") for alleged violation of the rights of a group of dismissed employees of the Congress of the Republic to judicial protection and a fair trial. On September 9, 2003, the Commission received another petition concerning the same events that claimed the same violations in relation to another group of alleged victims. That petition was assigned number 725-03.<sup>2</sup>

2. On August 7, 2017, the IACHR notified the parties of its decision to join the two petitions in accordance with Article 29 (5) of its Rules of Procedure, with the two identified by the case number in this report.<sup>3</sup> At that time, the Commission also notified the parties of its decision to apply Article 36 (3) of its Rules of Procedure under the terms of IACHR Resolution 1/16, concerning measures to reduce procedural backlog. Accordingly, the IACHR decided to defer its treatment of admissibility in order to combine it with its examination of the merits of the matter. The parties were afforded the regulation time limits to present additional observations on the case. All information received was duly relayed between the parties.

## II. SUBMISSIONS OF THE PARTIES

### A. The Petitioners

3. According to the petitioners, the alleged victims were employees of the Congress of the Republic (hereinafter "the Congress") who were irregularly dismissed as part of the "personnel streamlining" program implemented during the regime of former president Alberto Fujimori. The petitioners say that the program's implementation revolved around scandal and involved the review and annulment of examinations to determine employees' fitness for their posts and was supervised by officials who lack competency, and therefore all their decisions were null and void. The program culminated in the dismissal of 1,117 employees on December 31, 1992. In addition, they said that by Article 9 of Decree Law No. 25640 and Article 27 of Resolution 1239-A-92-CACL, the State introduced a prohibition to file applications for constitutional relief (*amparo*) or administrative actions to challenge the terminations of employment. Despite the prohibition, some of the alleged victims invoked administrative and judicial remedies, which were declared out of order.

4. With regard to the identity of the victims, the petitioners submitted various lists during the processing of the petition. On June 23, 2016, the petitioners submitted a consolidated list of 166 alleged victims, who should be added to the list of 20 persons connected with the case following the joinder with petition 725-03. Finally, on September 10, 2016, the petitioners added six more alleged victims to the case.

5. With respect to the alleged victims identified in petition 725-03, the petitioners said with respect to exhaustion of domestic remedies that they filed an application for constitutional relief, requesting that the executive resolution that terminated their employment at the Congress be voided. At final instance, the case was taken up by the Constitutional Court, which ruled it invalid on December 6, 2002, as the subject matter had already been decided in Case No. 0338-1996-AA/TC of November 24, 1997, and it reiterated its case law to the effect that the harm had become irreparable and, therefore, the application for constitutional relief was not a suitable remedy.

6. In relation to the alleged victims identified in petition 728-00, the petitioners said that some had been granted the reparation measures for irregularly dismissed employees offered by the State through Laws 27452, 27586, and 27803. The petitioners also mentioned that another group managed to obtain access to

<sup>1</sup>In accordance with Article 17(2) of the Rules of Procedure of the IACHR, Commissioner Francisco Eguiguren Praelli, a Peruvian national, did not participate in the discussion or decision in this case.

<sup>2</sup>The petitioner in that petition identified himself as Marcelino Meses Huayra. Subsequently, on April 17, 2014, he communicated that the representation was being handled by Ms. Yaneth Josefina Salcedo Saavedra.

<sup>3</sup>On September 5, 2016, the alleged victims in Case 725-03 advised that the lawyer Mujica was also representing them.

those reparation measures through judicial proceedings. Finally, they said that another group failed to obtain any benefits at all.

7. In relation to both groups of victims, the petitioners said that the requirements to exhaust domestic remedies was not applicable in this case in accordance with the provisions contained in Article 46 (2) (b) of the American Convention. In their opinion, the alleged victims were barred from accessing the remedies under domestic law and, therefore, from exhausting them, making them eligible for the aforementioned exception to the rule on exhaustion of domestic remedies. In line with the above, the petitioners argued that the alleged victims should have been included in the above-mentioned cases as alleged victims in the framework of the proceedings before both the IACHR and the Inter-American Court in the *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*<sup>4</sup> (hereinafter "*Dismissed Congressional Employees Case*") and in the *Case of Canales Huapaya et al. v. Peru* (hereinafter "*Canales Huapaya Case*").<sup>5</sup> They also contended that this case should be declared admissible, based on the position regarding exhaustion of domestic remedies adopted by the IACHR in the admissibility of those cases (12.038 and 12.214), which concerned precisely the same subject matter.

8. The petitioners alleged violation of the rights to a fair trial and judicial protection inasmuch as the alleged victims did not have access to a prompt, simple, and effective recourse to determine if the assessments made in the framework of the personnel streamlining process and ensuing dismissals were compatible with the "constitutional norms in force."

9. The petitioners stated that the arbitrary dismissal also violated the right to work under proper conditions and to receive a remuneration that would ensure the alleged victims a standard of living suitable for themselves and for their families. The petitioners also said that the alleged victims enjoyed job stability under the legal regulations applicable to them in accordance with Articles 24 of Legislative Decree 276 and 6 of Executive Decree 005-90-PCM.

## **B. The State**

10. In its brief responding to the petition, the State lodged objections relating to the fourth-instance formula as well as arguing that the petition was time-barred. With regard to the former, the State said that the petitioners "could not seek the review and enforcement of decisions adopted in the domestic jurisdiction and issued under the rules of due process." As to the latter, it said that the petition was filed later than six months "after notification of the decision of the Constitutional Court." Specifically, in relation to the cases of Mauro Rojas Guzmán, José Elías Flores, and Edwin Espinoza, the State requested that absence of cause of action be declared.

11. In addition, in relation to exhaustion of domestic remedies, the alleged victims in petition 725-03 filed an application for constitutional relief (*amparo*) against the Democratic Constituent Congress (Case No. 4943-19930) on March 22, 1993. That application made its way through the relevant courts and was finally ruled out of order on December 6, 2002 by the Constitutional Court (Case 2300-2002-AA/TC) under the rules of due process. In connection with the alleged victims in petition 728-00, the State said that, neither the original petition, nor later documents identified "which of the one hundred seventy-two (172) former employees of the Congress of the Republic took their case to the domestic courts to press their claim." The State said that "although they say, on one hand, that they were prevented from challenging their termination, on the other, they recognize that some of them lodged appeals or motions to review without stating precisely which proceeding they invoked, the case number, or whom they sued; in other words, any data that would allow this party to request information by which to analyze exhaustion."

<sup>4</sup> I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2006, Series C. No. 158.

<sup>5</sup> I/A Court H.R., *Case of Canales Huapaya et al. v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of June 24, 2015, Series C. No. 296.

12. The State indicated that of the 172 alleged victims included through petition 728-00, 121 were beneficiaries of the Special Benefits Program (*Programa Extraordinario de Acceso a Beneficios*) (hereinafter "Special Program") and that they had opted for economic compensation, job reinstatement, early retirement, or retraining. It also mentioned that 51 of that same group of victims were not part of said program. As to exhaustion of domestic remedies, the State said that while there was a legally established prohibition against filing applications for constitutional relief (*amparo*), it argued that the appropriate remedy "was a litigious administrative action, since the application for relief was not the suitable means to challenge a law," or that they could have brought a "class action," a process provided in the Constitution for challenging regulations, administrative norms, resolutions and decrees. The State added that owing to the deficiency of the information presented by the petitioners, there was no certainty that domestic remedies had been attempted and exhausted.

13. The State said that the brief containing the petitioners' observations on merits "completely fails to expound" any additional observations on merits requested by the IACHR. In addition, it said that "any contradiction of arguments put forward by the petitioners in relation to the merits of the dispute [was] limited" because a joint decision on admissibility and merits created a states of defenselessness contrary to the spirit of the inter-American system.

14. The State referred to the existence of "insufficient identification of the alleged victims and its procedural consequences. In relation to the victims in petition 728-00, the State said the number of alleged victims had changed erratically in the interval between the petition's initial filing and their current briefs.

### III. ANALYSIS OF ADMISSIBILITY

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

15. The petitioners have standing under Article 44 of the American Convention to lodge petitions. In addition, the alleged victims are individuals who were under the jurisdiction of the Peruvian State at the time of the facts alleged. Therefore, the Commission has *ratione personae* competence to examine the petition. The Commission is competent *ratione loci* to take cognizance of the petition, insofar as it alleges violations of the American Convention that are said to have taken place in the territory of a state party to that treaty. Similarly, the IACHR has *ratione materiae* competence because the petition refers to alleged violations of the American Convention. The Commission is also competent *ratione temporis* to examine the claim as Peru ratified the American Convention on July 28, 1978. Therefore, the obligation of the State to respect and ensure the rights recognized in the American Convention was in force at the time that the alleged facts are said to have occurred.

16. In relation to the alleged "insufficient identification of the alleged victims" the IACHR considers that situation to have been rectified and that the final number of alleged victims comes to 192 persons individually identified in the Annexes on Victims appended to this report on merits.

#### B. Admissibility requirements

##### 1. Exhaustion of domestic remedies

17. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission pursuant to Article 44 of the same instrument to be admissible, one must have pursued and exhausted domestic remedies in keeping with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve them before they are taken up in an international proceeding. However, paragraph 2 (b) provides an exception to the rule of exhaustion when the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.

18. The Commission and the Court have previously addressed the context of the collective dismissals of Peru's congressional employees. In its admissibility report No. 150/10 of November 1, 2010, the IACHR said:

7. On April 5, 1992, then-President of the Republic Alberto Fujimori Fujimori announced a series of measures aimed at “accelerating the process of ... national reconstruction,” “modernizing the public administration,” and “totally reorganizing the Judicial Branch.” By Decree-Law No. 25418 of April 6, 1992, Alberto Fujimori instituted the “National Emergency and Reconstruction Government,” temporarily dissolved the Congress of the Republic, intervened in the Judicial branch, Public Ministry, and Office of the Comptroller-General of the Republic, and derogated several provisions of the 1979 Constitution, then in force. The intervention of the organs of the administration of justice and other offices of the State was carried out by occupation of their facilities by members of the Armed Forces and the house arrest of opposition congresspersons, and high-level officials who were opposed to the break with the constitutional order.

8. From April to October 1992, the National Emergency and Reconstruction Government issued Decree-Laws Nos. 25438, 25477, 25640, and 25759, which established a “Commission to Administer the Property of the Congress of the Republic” (hereinafter “the Administrative Commission”), which was in charge of carrying out a “process of streamlining personnel.” Those decrees established a reduction in staffing that included: (i) economic incentives for resignation or voluntary retirement, (ii) relocation of workers to other government institutions, and (iii) holding a “Process for Personnel Evaluation and Selection,” consisting of a merits examination for ratifying the workers who did not opt for one of the two foregoing modalities.

9. Decree-Law No. 25640, adopted on July 21, 1992, authorized implementation of said process of streamlining of legislative staff and established: “The amparo action aimed at challenging [its] application [was] out of order....” On October 13, 1992, the chairperson of the Administrative Commission adopted Resolution No. 1239-A-92-CACL, which established the new staffing structure for the Congress of the Republic, the rules for the merits exam, and the procedures for filling job openings. That resolution determined that the Administrative Commission would not accept any claims brought against the results of the merits exam. On December 31, 1992, the chairperson of the Administrative Commission made public resolutions 1303-A-92-CACL and 1303-B-92-CACL, which ordered the dismissal of 1,117 employees of the Congress.

19. In addition, the Commission notes that in its analyses of admissibility in two prior cases it determined that domestic remedies had been exhausted through judicial proceedings activated by the victims, therefore applying no exceptions.<sup>6</sup> However, the Commission and the Court have already broadly determined that following the termination of the congressional employees included in the lists published in resolutions 1303-A-92-CACL and 1303-B-92-CACL, the State enacted legislation expressly aimed at preventing those employees from challenging their dismissals through an *amparo* application, given the provisions contained in Article 9 of Law No. 25640.<sup>7</sup>

20. Thus, in the *Dismissed Congressional Employees Case*,<sup>8</sup> the Court found that:

119. The prohibition to contest the effects of Decree Law No. 25640, contained in the said article 9, constituted a norm of immediate application, since the people it affected were prevented *ab initio* from contesting any effect they deemed prejudicial to their interests.

120. In the context described above, article 9 of Decree Law No. 26540 and article 27 of Resolution 1239-A-CACL of the Administrative Commission helped promote a climate of absence of judicial protection and legal security that, to a great extent, prevented or hindered the persons affected from determining with reasonable clarity the appropriate proceeding to which they could or should resort to reclaim the rights they considered violated.

<sup>6</sup>See: IACHR, Report No. 52/00, Cases 11.830 and 12.038, *Dismissed Congressional Employees (Peru)*, June 15, 2001, pars. 21 and 22; and IACHR, Report No. 150/10, *Petitions 157-99 – José Castro Ballena, María Gracia Barriga Oré et al.*, 12.214, Carlos Alberto Canales Huapaya, *Admissibility*, Peru, November 1, 2010, pars. 36-39.

<sup>7</sup> Decree-Law No. 25640. Authorize the Commission to Administer the Property of the Congress of the Republic to carry out a process of streamlining personnel of the Congress of the Republic. Article 9. The action for amparo to contest the application of this Decree Law directly or indirectly shall be inadmissible.

<sup>8</sup> I/A Court H.R., *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.

21. The same conclusion was reached on the same facts by the IACHR in Report on Merits 126/12.<sup>9</sup> That report was submitted to the Inter-American Court, which, in the *Canales Huapaya Case* reaffirmed the above-cited conclusions.<sup>10</sup> Thus, the Commission considers today that it has been shown that the congressional employees who were dismissed under the above-cited resolutions were unable to access appropriate, suitable, and effective remedies within the terms established in inter-American standards in order to exhaust their claims for redress,<sup>11</sup> either through an amparo application, or through litigious administrative proceedings.

22. The Commission notes that the State claims a failure specifically to identify the remedies exhausted by the alleged victims, particularly in relation to the group identified in petition 728-00. The IACHR notes that the petitioners indeed did not provide that information. However, since originally lodging petition 728-00 the petitioners have argued for an exception to the rule on exhaustion of domestic remedies. Accordingly, the IACHR finds that the landscape has shifted and that in this case, in terms of admissibility, the similarity of the situation of all the alleged victims is not determined by the judicial proceedings that they may or may not have invoked in the domestic jurisdiction, but by the decision to dismiss them through the previously cited regulatory arrangement created with the aim of terminating them with a lack of access to effective recourse, a fact already widely established in the inter-American system. Thus, the petitioners have indicated that all the alleged victims were separated from service by resolutions Nos. 1303-A-92-CACL and 1303-B-92-CACL, which information has not been called into question by the State.

23. Based on the foregoing and on the clear absence of an available, suitable and effective recourse for exhausting domestic remedies, the IACHR finds that in this case the argument for Article 46 (2) (b) of the Convention is the same and, therefore, that the exception to the rule of prior exhaustion of domestic remedy applies. In light of the foregoing, the IACHR omits its analysis of the six-month time limit and finds that the petition was lodged within a reasonable time in accordance with Article 32 of the IACHR Rules of Procedure.

## **2. Duplication of proceedings and international *res judicata***

24. Article 46(1)(c) provides that the admissibility of petitions is subject to the requirement that the subject “is not pending in another international proceeding for settlement,” while Article 47(d) of the Convention stipulates that the Commission shall not admit a petition that “is substantially the same as one previously studied” by the Commission or by another international organization. In this case, the parties have not suggested that either of those two circumstances exist, nor can they be deduced from the record.

## **3. Colorable Claim**

25. In keeping with the case law on admissibility from the two previous cases on the same subject matter, the IACHR finds that the submissions regarding possible violations of the rights to a fair trial and judicial protection in the dismissal could amount to violations of the rights enshrined in Articles 8 and 25 of the American Convention, in connection with Articles 1 (1) and 2 of the same instrument. Furthermore, in the light of the summary analysis methodology in relation to past decisions of the organs of the inter-American system on the same subject matter included in the Legal Analysis section, a possible violation of Article 26 of the Convention is also examined under this point.

26. With regard to the objections invoked alleging fourth instance and absence of cause of action, the IACHR considers them out of order since they question a matter that has to do with the merits of the dispute insofar as they allude to the rights to judicial protection and a fair trial, as is analyzed in the relevant section

<sup>9</sup> IACHR, Report No. 126/12, Case 12.214, Merits, Carlos Alberto Canales Huapaya, Peru, November 13, 2012, par. 56.

<sup>10</sup> I/A Court H.R., Case of Canales Huapaya et al. v. Peru, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 21, 2016, Series C. No. 321, pars. 104-109.

<sup>11</sup> I/A Court H.R., Case of Usón Ramírez v. Venezuela, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 20, 2009, Series C. No. 207, par. 19, citing Velásquez Rodríguez Case, par. 91; *Case of Garibaldi v. Brazil, Preliminary Objections, Merits, Reparations, and Costs*, Judgment of September 23, 2009, Series C. No. 203, par. 46; and *Case of Escher et al. v. Brazil, Preliminary Objections, Merits, Reparations, and Costs*, Judgment of July 6, 2009, Series C. No. 199, par. 28.

herein. Likewise, the IACHR reiterates that the effects of the access that some of the alleged victims had to proceedings for job reinstatement, retraining, indemnification, or some other form of reparation for the irregular dismissal, as noted by the State, are also a matter that relates to the merits of the case and, as appropriate, may be considered in the recommendations put forward by the Commission.<sup>12</sup>

#### IV. FINDINGS OF FACT

##### A. Context

27. As to context, the IACHR refers to what the Inter-American Court established in paragraphs 89 (1) to (6) of the section entitled “Historical context of Peru at the time of the facts” in the judgment in the *Dismissed Congressional Employees Case*. The Commission considers that in addition to the above-referenced historical context, there was a “general situation of absence of guarantees and [...] ineffectiveness of the courts to deal with facts such as those of the instant case, as well as the consequent lack of confidence in these institutions.”<sup>13</sup> The Commission considers both elements in its analysis of merits.

##### B. Facts in the case

28. Apart from the facts already mentioned in the analysis of admissibility in this case relating to the existence of laws enacted to create a structure by which to enable the termination of congressional employees in the 1990s, the IACHR also considers applicable the factual basis associated with the measures adopted by the State in relation to the issue of the collective dismissals, which has also been analyzed by the organs of the Inter-American system.

29. Thus, the Inter-American Court stated the following in relation to the victims in the *Dismissed Congressional Employees Case*:

89(31) (...) following the installation of the transition Government in 2000 (...) laws and administrative provisions were issued ordering a review of the collective dismissals in order to provide the employees dismissed from the public sector the possibility of claiming their rights (...).

89(32) In this context, Act No. 27487 was issued on June 21, 2001, which established the following:

*Article 1. Decree Law No. 26093 [...] Act No. 25536[, ...] and any other specific norms that authorize collective dismissals under reorganization processes are annulled. [...].*

*Article 3. Within 15 calendar days of the date on which this law comes into force, public institutions and agencies [...] shall establish Special Committees composed of representatives of the institution or agency and of the employees, responsible for reviewing the collective dismissals of employees under the personnel evaluation procedure conducted under Decree Law No. 26093 or in reorganization processes authorized by a specific law.*

*Within 45 calendar days of their installation, the Special Committees shall prepare a report containing the list of the employees who were dismissed irregularly, if there are any, and also the recommendations and suggestions to be implemented by the Head of the sector or local government.*

89(33) Supreme Decrees 021 and 022-2001-TR established the “terms of reference for the composition and operation of the Special Committees responsible for reviewing the collective dismissals in the public sector.” Among them, the Special Committee responsible for reviewing the collective dismissals of congressional personnel under Act No. 27487 was established (...) and, in its report of December 20, 2001, it concluded *inter alia*, that: *The 1992 and 1993 processes of administrative streamlining and of reorganization and streamlining were implemented in compliance with specific norms. Irregularities have been determined in the evaluation and selection of personnel in 1992 [... during which] the minimum number of points indicated in the Rules for the Competitive Examination was not respected [... and,] in many cases, the classification obtained by the candidates in the qualifying examination was not respected. [...]* The former

<sup>12</sup> Cf. I/A Court H.R., 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. par. 69-70.

<sup>13</sup> Cf. I/A Court H.R., 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. par. 109.



employees who collected their social benefits and those who also availed themselves of incentives for voluntary termination accepted their dismissal, according to repeated acts of a labor-related nature. [...] Pursuant to the [Peruvian] laws in force, the Special Committee has abstained from examining any claim that is before a judicial instance, in either the domestic or the supranational sphere.

Specifically with respect to the dismissed employees who were pursuing their case before the Inter-American Commission, the special committee said: *Since this matter was being decided by a supranational instance, under the laws in force, it was unable to rule on it; particularly since a group of the said former employees have formally requested the international organ to rule on the merits; hence, it abstained from issuing an opinion in this regard. [Moreover, it should not be overlooked that the 257 former employees were the only ones who exhausted the judicial proceedings.*

89(34) Act No. 27586 of November 22, 2001, published on December 12, 2001, established that the latest date for the Special Committees to conclude their final reports was December 20, 2001. The Law also created a Multisectoral Commission composed of the Ministers of Economy and Finance, Labor and Social Promotion, the Presidency, Health, and Education, as well as by four representatives of the provincial municipalities and by the Ombudsman, or their respective representatives. The Multisectoral Commission would be [...] *responsible for evaluating the viability of the suggestions and recommendations of the Special Committees of the entities included within the sphere of Law No. 27487, and also for establishing measures to be implemented by the heads of the entities and for the adoption of supreme decrees or the elaboration of draft laws, taking into consideration criteria relating to administrative efficiency, job promotion, and reincorporation in the affected sectors; if necessary, it would be able to propose reinstatement, and also the possibility of a special early pension regime. [...] The said Multisectoral Commission may, also, review the reasons for the dismissals and determine the cases in which the payment of earned or pending remuneration or social benefits is owing, provided these aspects have not been the object of legal action.*

89(35) On March 26, 2002, the Multisectoral Commission issued its final report, concluding, *inter alia*, that “the norms that regulated the collective dismissals should not be questioned [...], merely the procedures by which they were implemented.” It also agreed “that any recommendation on reincorporation or reinstatement should be understood as a new labor relationship, which could be a new contract or a new appointment, provided that there are vacant budgeted posts in the entities or that such posts are opened up; that the employees comply with the requirements for these posts; that there is legal competence to hire, and that there is a legal norm authorizing appointments.” Based on the Special Committee’s recommendations, it considered that there had been [760] cases of irregular dismissals under the 1992 evaluation and selection procedure (...) with regard to the employees dismissed from the Congress of the Republic.

30. On July 29, 2002, the State adopted Act No. 27803 to implement the recommendations of the Special Committees. The Court made the following observations about that law in the *Canales Huapaya Case*:

77. On July 29, 2002, Law 27803 was promulgated, granting workers who had been arbitrarily dismissed the right to opt for one of the following benefits: reinstatement or relocation in another job, early retirement, economic compensation, or job training. The force transitory provision of that law stated: “This law covers the irregular dismissals of former employees who had judicial proceedings in progress, provided that will they desist from their claims before the courts.” For the purposes of executing the benefits envisaged, the same law created a National Registry of Irregularly Dismissed Workers. As at July 2012, the Ministry of Labor and Employment Promotion had published four lists of irregularly dismissed former employees.

78. Law 27803 established that the State would assume payment of pension contributions “for the time that the employee had been dismissed” and that “in no case does that imply the collection of any remunerations not received during that same interval.” In 2004 a paragraph was added to that Article 13, establishing that “in no case shall said payment of contributions by the State last more than 12 years.”

31. Likewise, with respect to the implementation of the aforesaid law, the Court stated the following in the *Case of Dismissed Employees of Petroperú et al. v. Peru*:<sup>14</sup>

131. That law created the Special Benefits Program, as part of which, the National Registry of Irregularly Dismissed Workers (hereinafter also RNTCI) was set up. In addition, the Law set up an executive committee in charge of analyzing probative documents submitted by former employees who had been coerced to resign, as well as

<sup>14</sup> I/A Court H.R., Case of Dismissed Employees of Petroperú et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 23, 2017, Series C. No. 344, pars. 130-132.

establishing a special benefits program for former employees whose collective dismissal the various committees had considered irregular. The Executive Committee and the Ministry of Labor and Employment Promotion have published lists containing the names of the workers included in the alleged irregular dismissals and coerced resignations. Five such lists were issued:

First list	R.M. No. 347-2002-TR	22/12/2002
Second list	R.M. No. 059-2003-TR	27/12/2003
Third list	R.S. No. 034-2004-TR	02/10/2004
Fourth list	R.S. No. 028-2009-TR	05/08/2009
Fifth list	R.M. No. 142-2017-TR	17/08/2017

131. On July 6, 2016, Law No. 30484 was enacted, reactivating the executive committee established under Law No. 27803. Law No. 30484 provides that those beneficiaries who had opted for reinstatement or relocation in another job but had yet to enjoy that benefit would be incorporated. The law also envisages the possibility for beneficiaries to change their option to economic compensation or early retirement.

32. With regard to the termination of the 192 alleged victims in this case, the parties do not dispute that those employees were part of the group of congressional employees dismissed by resolutions 1303-A-92-CACL and 1303-B-92-CACL.<sup>15</sup>

33. The petitioners said that all 20 alleged victims in petition 725-03 filed an amparo application. The IACHR notes that the judgment at first instance has not been included in the record. In spite of that, the record suggests that the judgment at first instance ruled the claim out of order on the grounds that the remedy invoked was not suitable. That judgment was appealed before the Fifth Chamber of the Superior Court of Justice of Lima, which upheld the appealed decision on June 18, 2002, finding that "the real aim of the plaintiffs is to undermine the results of the personnel evaluation and grading process, for which this is not the suitable remedy, given that in accordance with the provisions of Article 13 of Law 25398, there is no evidentiary stage in actions for relief, a procedural stage that was necessary for the present case.<sup>16</sup> Finally, the latter decision was appealed before the Constitutional Court, which, on December 6, 2002 confirmed the appealed judgment and declared the amparo application out of order due to the fact that the harm had become irreparable.

34. In connection with the 172 alleged victims linked to the case through petition 728-00, the petitioners provided no information regarding any judicial or administrative proceedings that those congressional employees might have instituted to dispute their terminations in the domestic jurisdiction.

35. Finally, with regard to the situation of the alleged victims and their access to the Special Program, the record shows that 121 alleged victims in petition 728-00 accessed that program. It is further surmised that 51 alleged victims did not access said program.<sup>17</sup> At the same time, with respect to the alleged victims in petition 725-03, the record shows that one of them was reinstated under Law 27803,<sup>18</sup> another returned to work at the Congress under another employment arrangement and was later terminated on disciplinary grounds,<sup>19</sup> and another went back to work at the Congress under other systems of employment and later retired of their own volition.<sup>20</sup> There is no information on the 17 remaining victims that make up the 192 victims in all.

<sup>15</sup> Annex 1, Resolutions 1303-A-92-CACL and 1303-B-92-CACL, Appended to initial petition 275-03 of September 9, 2003.

<sup>16</sup> Annex 2, Case No. 156-2002, Resolution 11, Fifth Civil Chamber, Superior Court of Justice of Lima, June 18, 2002, Appended to initial petition 275-03 of September 9, 2003.

<sup>17</sup> State's brief of March 29, 2017.

<sup>18</sup> Annex 3, Administrative Technical Report No. 0920-2011-GFRCP-AAP-DRH-CR of August 11, 2011. Appended to the State's brief of June 25, 2011. Following his dismissal, Mr. Rojas Guzmán worked from May 17, 2006 to July 4, 2007, and from May 27, 2008 to December 31 under the Decree Law 276 employment arrangement. Finally, he reentered on November 1, 2010 under the Decree Law 276 employment arrangement.

<sup>19</sup> Annex 4 Administrative Technical Report No. 0912-2011-GFRCP-AAP-DRH-CR of August 11, 2011. Appended to the State's brief of June 25, 2011. Following his dismissal, Mr. Flores Oyola worked from March 1, 1994 to December 31 of that year and from February 12, 1996 to February 29 of that same year as a nonpersonnel services hire. He then worked from March 1, 1996 to April 30, 1999 under the Decree Law 276 employment arrangement.

<sup>20</sup> Annex 5, Administrative Technical Report No. 0910-2011-GFRCP-AAP-DRH-CR of August 11, 2011. Appended to the State's brief of June 25, 2011. Following his dismissal, Mr. Espinoza Chávez worked from January 1, 1994 to March 31, 1994, and later from July 1, 1994

[continues ...]

## V. LEGAL ANALYSIS AND CONCLUSIONS

### A. Considerations regarding the similarity of the facts with those in cases already settled by the organs of the inter-American system

36. The Commission notes that the petitioners have consistently held that the legal situation of the alleged victims in this case is the same as that examined by the organs of the inter-American system in the *Dismissed Congressional Employees Case* and the *Canales Huapaya Case*, which both concerned the same subject matter. Therefore, the Commission will determine if there are sufficient similarities between the factual basis already examined by the inter-American system in relation to the situation in Peru that would allow the relevant legal analysis to be applied by extension in this case.

37. In the *Dismissed Congressional Employees Case* the Commission notes, with respect to facts, that it was found that the 257 workers were separated by Resolutions Nos. 1303-A-92-CACL and 1303-B-92-CACL in the framework of the so-called personnel streamlining process carried out by the Congressional Reorganizing Committee. Also, that group of employees invoked a series of unsuccessful administrative remedies between January 1993 and December 1999 to dispute their respective dismissals. Next, the IACHR notes that this group of workers filed an application for constitutional relief (*amparo*) on March 2, 1995 on which a decision was handed down at last instance on April 24, 1997 by the Constitutional Court, which concluded that the remedy was out of order due to being time-barred and because the harm had become irreparable. Those 257 dismissed employees then initiated the process before the inter-American system; with the result that they were deliberately excluded from the collective dismissal review processes of the dismissal occurred in the 1990s that sort to remedy the arbitrary terminations.

38. In the *Canales Huapaya Case* all three victims were dismissed in the same manner as described above. All three victims instituted judicial proceedings (*amparo* applications and litigious administrative proceedings) which were all ruled out of order, in the majority of cases because they were time-barred, owing to the fact that the actions were brought at some time in 1993 when the dismissals occurred in 1992. The cases of these three individuals, too, could not be examined by the Special Committee and they were therefore barred from the Special Program because their case was under litigation in an international proceeding.

39. Thus, based on its comparison of the factual basis presented in this case with that already established in the cases previously settled by the Commission and the Court, the IACHR will analyze, first, the dismissal and the law applicable to the dismissal of the alleged victims this case; and, second, the judicial proceedings instituted to challenge the termination of their employment.

40. To begin with, the IACHR reiterates that all 192 alleged victims were dismissed on the basis of the above-cited general standards adopted near the end of 1992 and were included in dismissals ordered by resolutions Nos. 1303-A-92-CACL and 1303-B-92-CACL. Therefore, as in the *Dismissed Congressional Employees Case* and the *Canales Huapaya Case*, the alleged victims were subject to the rule contained in Article 9 of Decree Law No. 26540 and Resolution No. 1239-A-92-CACL which banned, respectively, the filing of *amparo* applications against the dismissal and claims against the results of the merits exam adopted by the Administrative Commission. In those terms, the IACHR concludes that the cases share the same factual basis in that regard.

41. Second, the IACHR finds that in the previous cases the victims instituted administrative and judicial proceedings to dispute their dismissals on dates close to the decisions that ordered their termination. Indeed, in the judgment in the *Dismissed Congressional Employees Case* all the workers were co-litigants in an *amparo* suit that reached the Constitutional Court. In this case, there is only information about the judicial activities of the 20 alleged victims in case 725-03; therefore, the commission is unable to make factual comparisons between the victims and alleged victims in the aforesaid cases. Without prejudice to the foregoing, given that

---

[... continuation]

to October 31, 1994 as a nonpersonnel services hire. He then worked from November 1, 1994 to August 3, 2003 under the Decree Law 276 employment arrangement.

the Court stated that the "denial of justice occurred in a generalized context of inefficacy on the part of judicial institutions, lack of guarantees of independence and impartiality, and absence of clarity as to what remedy to seek against the collective dismissals,"<sup>21</sup> prompting a different procedural course of action on the part of the groups of victims who opted for recourse to the inter-American system, the IACHR does not find that the differences or lack of information with respect to the use of judicial remedies following the dismissals are sufficient reasons to distance itself from the conclusions reached in cases that were structurally analogous in terms of the generalized situation of uncertainty as regards access to effective remedies and denial of justice.

42. As regards the substantive issues, the Commission finds that the 192 alleged victims in this case were in materially the same situation as the 257 victims in the *Dismissed Congressional Employees Case* and the 3 victims in the *Canales Huapaya Case*. Thus, the IACHR considers that the legal analysis is applicable to this subject matter, in line with what the Commission and the Court have already established in the above-referenced case law.

#### A. Conclusion and attribution of international responsibility

43. Under the principle of procedural economy and as this case concerns an issue of a general scope already settled by both organs of the inter-American system, the Inter-American Commission finds that the State of Peru bears international responsibility based on the legal analysis and Convention articles applied in the judgment of the Inter-American Court in the *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*,<sup>22</sup> in its Report on Merits 162/12 in Case 12.214 (Carlos Alberto Canales Huapaya et al.),<sup>23</sup> in the Judgment on Preliminary Objections, Merits, Reparations and Costs adopted by the Inter-American Court in that case,<sup>24</sup> in its Report on Merits 14/15 in Cases 11.602, 12.385, 12.665, and 12.666—Dismissed Employees (Petroperú, MEF and Enapu), Dismissed Employees (Minedu),<sup>25</sup> and in the judgment in the same case referred to by the Court as *Dismissed Employees of Petroperú et al.*<sup>26</sup>

44. Based on the foregoing considerations, the IACHR concludes that the case is admissible and the State of Peru violated the rights recognized in Articles 8(1) (right to a fair trial), 25(1) (right to judicial protection), and 26 (right to work) of the American Convention, taken in conjunction with the obligations set forth in Articles 1(1) (obligation to respect rights) and 2 (duty to adopt provisions under domestic law) thereof, to the detriment of the 192 victims identified in this report.

## VI. RECOMMENDATIONS

45. On the subject of reparations, the Commission considers applicable what the Inter-American Court stated in the *Canales Huapaya Case* in the following terms (original quotation marks omitted)<sup>27</sup>:

In the Dismissed Employees Case, the Court determined that "in view of the violations of the American Convention declared by the Court," the resulting reparation was:

*that the State should guarantee the injured parties the enjoyment of their violated rights and freedoms through effective access to a simple, prompt and effective recourse. To this end, it should establish, as soon as possible, an*

<sup>21</sup> I/A Court H.R., Case of Canales Huapaya et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment of June 24, 2015, Series C. No. 296, par. 103

<sup>22</sup> I/A Court H.R., Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.) v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 24, 2006, Series C. No. 158.

<sup>23</sup> IACHR, Report No. 126/12, Case 12.214, Merits, Carlos Alberto Canales Huapaya, Peru, November 13, 2012,

<sup>24</sup> I/A Court H.R., Case of Canales Huapaya et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment of June 24, 2015, Series C. No. 296.

<sup>25</sup> IACHR, Report No. 14/15, Cases 11.602, 12.385, 12.665 and 12.666, Merits, Dismissed Employees (Petroperú, MEF and Enapu), Admissibility and Merits, Dismissed Employees (Minedu), Peru, March 23, 2015. par. 120.

<sup>26</sup> I/A Court H.R., Case of Dismissed Employees of Petroperú et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 23, 2017, Series C. No. 344.

<sup>27</sup> I/A Court H.R., Case of Canales Huapaya et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment of June 24, 2015, Series C. No. 296, pars. 138-142.

*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 respective legal consequences, including, if applicable, the relevant compensation based on the specific circumstances of each individual.*

The information received in the course of monitoring compliance with that judgment, indicates that a Special Committee for Enforcement of the Judgment in the Case of the Dismissed Congressional Employees was set up and that said committee issued its final report on December 14, 2010. The pertinent portions of that report determined that the dismissal of the 257 victims was irregular and unwarranted, and it ordered: (i) the reinstatement in their job or relocation to another position; (ii) payment of accrued or unpaid wages; (iii) recognition, for the purposes of obtaining a retirement pension, of the years of contribution to the pension system to which they belonged at the time of their dismissal; (iv) payment of the contributions necessary to enable the employee and their family to restore their entitlement to care and benefits under the Social Health Insurance System; and (v) recognition as time in service for the period that they did not work due to their irregular dismissal and constitution of a Compensation for Time in Service reserve for the same period.

In keeping with the Report of the Special Committee, the Department of Human Resources of the Congress of the Republic adopted separate administrative resolutions determining the following: (i) the period to be recognized to each of the 257 beneficiaries; (ii) the monetary amount of the compensatory capital for loss of earnings (accrued wages not paid); (iii) deduction of the sums corresponding to the contributions to the retirement pension system to which the employee belonged; and (iv) settlement of interest.

In spite of the fact that the Special Committee issued its considerations in 2010, their implementation remains ongoing. The Special Committee is no longer active. The final report of the Committee has been the subject of judicial proceedings due to an express provision in Article 6 of that document, which states that its enforcement would be carried out following the procedure referred to in Law No. 27775 (Law on Enforcement Procedure for Judgments of International Tribunals). Article 2 of that law provides that the judgment of the international tribunal shall be forwarded by the Ministry of Foreign Affairs to the President of the Supreme Court, who shall relay it to the court where the domestic jurisdiction was exhausted and order its enforcement by the Specialized or Mixed Court Judge who presided over the prior proceedings. In the event that there was no prior proceeding at the domestic level, the President of the Supreme Court shall instruct a competent Specialized or Mixed Court Judge to preside over the enforcement of the decision. The foregoing explains why those specialized court judges should still be hearing arguments over the scope of the decisions of the Special Committee.

However, bearing in mind that 23 years have passed since the events occurred, and 9 since the judgment was rendered in the Case of the Dismissed Congressional Employees, which continues to run into disputes over its implementation, the Court considers that it would be timely to adopt a final decision on the appropriate reparations in this case, without resorting to the creation of a committee, working group, or some similar mechanism at the domestic level. To that end, the Court will take the information available in the record into consideration.

46. Based on the foregoing, the IACHR takes the same position as the Court with regard to the propriety of directly establishing appropriate reparations in the context of its recommendations, without resorting to mechanisms at the domestic level that might delay obtaining that reparation even more. In line with what was decided in the *Canales Huapaya Case*, the Commission considers that, more than 20 years on “from the employee dismissals in this case, the reinstatement of the victims in their old positions or relocation in other similar ones face varying levels of complexity in their operationalization, in particular because of staffing changes in the Congress.”<sup>28</sup> Consequently, the reinstatement of the victims in their positions will not be included in the recommendations, an aspect that will have to be taken into account in calculating the compensatory reparations.<sup>29</sup>

47. Despite the foregoing, the Commission notes that a significant portion of the alleged victims in this case accessed the Special Program in different ways. Of all 192 alleged victims, the IACHR finds that the least 121 accessed different forms of reparation, 3 returned to work at the Congress under a variety of mechanisms and employment arrangements, and 51 did not access the above Program; the IACHR has no

<sup>28</sup> I/A Court H.R., Case of Canales Huapaya et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment of June 24, 2015, Series C. No. 296, par. 149.

<sup>29</sup> I/A Court H.R., Case of Canales Huapaya et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment of June 24, 2015, Series C. No. 296, par. 149.

information with respect to the specific situation of 17 alleged victims. Just as the Court established in the *Case of Dismissed Employees of Petroperú et al.*, the IACHR "recognizes and values the efforts of the State to provide reparation to the employees who were considered irregularly dismissed in the 1990s." In that sense, the IACHR "considers that the internal reparation mechanism and the benefits that have already been provided under Law No. 27803 can be taken into account where the obligation to provide comprehensive reparation is concerned.<sup>30</sup>

48. In that regard, with respect to the victims who obtained some form of reparation under the Special Program, the Commission reiterates its position with regard to the partial nature of that reparation and considers that, where pertinent, the State could deduct the amounts already provided from the amount finally set in the context of its implementation of the recommendations.

49. Based on the foregoing,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF PERU:**

1. Provide full reparation for the violations of rights declared in this report. Based on the determinations made by the Inter-American Court in *Canales Huapaya et al.* and *Dismissed Employees of Petroperú et al.*, this comprehensive reparation should include measures of satisfaction and, perforce, material and nonpecuniary damages that take into account the fact that reinstatement is not being arranged for the reasons already mentioned. That compensatory amount should also include a sum for the pension contributions that were not added to their equity as a consequence of the dismissal of which they were victims.

---

<sup>30</sup> I/A Court H.R., *Case of Dismissed Employees of Petroperú et al. v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 23, 2017, Series C. No. 344, par. 209.