

Acevedo Jaramillo et al. v. Peru

ABSTRACT¹

Former employees of the Municipality of Lima sued for reinstatement after they were dismissed for one or more of the following reasons: 1) the failure to take examinations ordered by the Municipality; 2) their participation in a union strike; or 3) the liquidation of the Lima Municipal Cleaning Services Organization. Between 1996 and 2000, the judges of the domestic courts of Lima, the Supreme Court of Justice of Lima, and the Constitutional Court of Peru ordered the reinstatement of these workers and directed that another group of workers be paid compensation, bonuses, allowances, incentives, and other benefits acknowledged in agreements signed with the union between 1989 and 1995. The State failed to comply with these orders. The Court found that the State violated the American Convention on Human Rights.

I. FACTS

A. Chronology of Events

March 4, 1980: The Metropolitan Municipality of Lima (*Municipalidad Metropolitana de Lima*) establishes the Lima Municipal Cleaning Services Corporation (*Empresa de Servicios Municipales de Limpieza de Lima*, “ESMLL”), a public entity responsible for solid waste disposal in the District of Lima.²

Between 1989 and 1995: The Municipality enters into collective bargaining agreements with the Lima Municipality Workers Union (*Sindicato de Trabajadores de la Municipalidad de Lima*, “SITRAMUN”) in which the Municipality agrees to provide for certain wages, allowances, bonuses, and other employment benefits.³

1. Hayley Garscia, Author; Heather Hassan, Editor; Elise Cossart-Daly, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Acevedo Jaramillo et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 144, ¶ 204(83) (Feb. 07, 2006).

3. *Id.* ¶ 204(60).

December 28, 1992: The Government of Peru issues Decree-Law No. 26093, which requires public officials in charge of State agencies to implement half-yearly staff assessment programs.⁴ Staff members who do not meet assessment program standards will be dismissed from their jobs.⁵

December 29, 1992: The Municipality and SITRAMUN enter into a labor agreement where the Municipality agrees to guarantee the job stability of permanent employees.⁶

December 12, 1995: The Government enacts the 1996 Public Sector Budget Act, Law No. 26553, which includes local governments within the scope of Law No. 26093 and authorizes local governments to assess and dismiss their employees.⁷

January and February 1996: Several employees are accused of using colleagues' attendance control cards.⁸ The Municipality institutes disciplinary proceedings against the suspected employees,⁹ and dismisses the employees for administrative misconduct on April 25, 1996.¹⁰ Four of these workers appeal the disciplinary proceedings, and allege that the Municipality dismissed them in violation of their due process rights.¹¹

January 17, 1996: The Municipality issues Mayoral Resolution No. 044-A-96.¹² Article 1 orders an immediate review of employees' salaries, benefits, pensions, and other labor agreements.¹³ Article 2 establishes provisional wage brackets for employees, while the review is being performed.¹⁴ The provisional wage brackets reduce employee compensation by thirty percent through October 1997.¹⁵

January 28, 1996: The Municipality publishes Mayoral Resolution No.

4. *Id.* ¶ 204(1).

5. *Id.*

6. *Id.* ¶ 204(2).

7. *Id.* ¶ 204(3).

8. *Id.* ¶ 204(36).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* ¶ 204(52).

13. *Id.*

14. *Id.*

15. *Id.* ¶¶ 204(53)-(54).

033-A-96, which establishes a Staff Assessment Program.¹⁶ The Staff Assessment Program requires the Municipality to carry out job assessments on March 22 and April 12, 1996 for all employees.¹⁷ Employees who do not pass or take the assessment will be deemed “redundant” and fired.¹⁸ The Municipality, however, fails to publish Attachment 01 to the resolution, which contains the Staff Assessment Program itself.¹⁹

March 11 and 22, 1996: A number of municipal employees organize a strike against the Staff Assessment Program.²⁰ The Municipality institutes administrative disciplinary proceedings against some of the protesting employees,²¹ and later dismisses them.²² Eleven of the workers appeal arguing that the dismissals violated their due process rights under the Regulations Implementing the Civil Service Career and Public Sector Compensation Law (*Reglamento de la Ley de Carrera Administrativa y de Remuneraciones del Sector Público*).²³

The Constitutional Court (*Tribunal Constitucional*) renders three judgments²⁴ that find that the Municipality violated the employees’ rights to due process and to work.²⁵ The Constitutional Court, therefore, reverses the dismissal of fourteen of the fifteen plaintiffs,²⁶ and orders the Municipality to reinstate the dismissed employees without back payment of lost wages.²⁷

March 13, 1996: SITRAMUN calls a general strike, but it is postponed until April 1, 1996.²⁸ The Municipality declares that the strike is illegal and institutes administrative sanctions for employees participating in the strike.²⁹

16. *Id.* ¶ 204(4).

17. *Id.* ¶ 204(5).

18. *Id.*

19. *Id.* ¶ 204(13).

20. *Id.* ¶ 204(34).

21. *Id.*

22. *Id.*

23. *Id.* ¶ 204(35).

24. The Constitutional Court renders the three judgments on November 18, 1998, December 21, 1998, and April 9, 1999. *Id.* ¶ 204(37).

25. *Id.*

26. *See id.* The Merits suggest that the fifteen plaintiffs mentioned here refer to the eleven plaintiffs dismissed for participating in the protest demonstration along with the four plaintiffs dismissed on April 25, 1996 for administrative misconduct. *Id.* ¶¶ 204(34)-(37).

27. *Id.* ¶ 204(37).

28. *Id.* ¶ 204(39).

29. *Id.*

March 22, 1996: The Municipality does not carry out the scheduled municipal employee assessment.³⁰

March 25, 1996: A number of employees state in writing that they voluntarily failed to appear on the scheduled assessment date and explain that they will not participate in the assessment.³¹ On March 27, 1996, the Municipality fires these employees because they refused to participate in the scheduled assessment.³²

On April 9, 1999 and August 20, 1999 the Constitutional Court reverses the dismissal of forty employees because the assessment was not carried out.³³ The Constitutional Court also orders the Municipality to reinstate these employees without back payment.³⁴

April 1, 1996: The SITRAMUN strike begins.³⁵ The Municipality institutes administrative disciplinary proceedings against workers who strike and, eventually, dismisses employees who participated in the strike.³⁶ The dismissed employees file an *amparo* requesting that the court reverse their dismissals.³⁷ Domestic courts sustain the employees' appeals via eight final judgments: three rendered by the Corporate Provisional Chamber Specializing in Public Law (*Sala Corporativa Transitoria Especializada en Derecho Público*)³⁸ and five rendered by the Constitutional Court.³⁹

The Corporate Provisional Chamber Specializing in Public Law issues three judgments that reverse the employees' dismissals, and orders the Municipality to reinstate the employees with back payment of lost wages.⁴⁰ The Constitutional Court issues four judgments that reverse the dismissal of thirty-three employees and order the Municipality to reinstate the employees to their jobs with back payment of lost wages.⁴¹ Both courts reach these decisions because the

30. *Id.* ¶ 204(7).

31. *Id.* ¶ 204(8).

32. *Id.* ¶ 204(9).

33. *Id.* ¶¶ 204(16)-(18).

34. *Id.* ¶¶ 204(16)-(17).

35. *Id.* ¶ 204(40).

36. *Id.* ¶ 204(41).

37. *Id.* ¶ 204(43).

38. The Corporate Provisional Chamber Specializing in Public Law rendered these final judgments on July 14, 1998, March 21, 1999, and December 22, 1999. *Id.*

39. The Constitutional Court rendered these final judgments on April 3, 1998, May 13, 1998, October 16, 1998, November 11, 1998 and August 20, 1999. *Id.*

40. *Id.* ¶ 204(44).

41. *Id.* ¶ 204(45).

Committee on Administrative Disciplinary Procedures (*Comisión Permanente de Procesos Administrativos Disciplinarios*) failed to issue a pronouncement of the disciplinary proceedings instituted by the Municipality against the workers, as required by Article 166 of the Regulations Implementing the Civil Service Career and Public Sector Compensation Law.⁴² The Constitutional Court also issues a fifth judgment on November 11, 1998 that orders the Municipality to reinstate three plaintiffs with back payment of lost wages,⁴³ and reinstate eleven plaintiffs without back payment for lost wages.⁴⁴

The First Provisional Corporate Court Specializing in Public Law (*Primer Juzgado Corporativo Transitorio Especializado de Derecho Público*) issues orders⁴⁵ directing the Municipality to comply with the final judgments rendered by the Corporate Provisional Chamber Specializing in Public Law and by the Constitutional Court.⁴⁶

The Municipality files objections with the Corporate Provisional Chamber Specializing in Public Law and the First Provisional Corporate Court Specializing in Public Law to two judgments on the grounds that the Municipality cannot comply with the orders due to budget austerity regulations.⁴⁷ The Corporate Provisional Chamber Specializing in Public Law declares the Municipality's objections without merit and orders, for the last time, that the Mayor of the Provincial Council reinstate the workers to their jobs within three days.⁴⁸ The First Provisional Corporate Court Specializing in Public Law also denies the Municipality's objection.⁴⁹

April 15, 1996: SITRAMUN files an *amparo* on behalf of union members regarding Mayoral Resolution No. 044-A-96, which reduced employees' salaries through provisional wage brackets.⁵⁰ SITRAMUN argues Resolution No. 044-A-96 should not apply to union members because Resolution No. 044-A-96 impermissibly reduced compensation by thirty percent in violation of collective bargaining agreements that provide for increases in union members' salaries.⁵¹ SITRAMUN also

42. *Id.* ¶¶ 204(44)-(45).

43. *Id.* ¶ 204(46).

44. *Id.*

45. These orders are dated August 26, 1998, November 30, 1998, February 4, 1999, June 18, 1999, August 13, 1999, September 15, 1999, and May 10, 2000. *Id.* ¶ 204(47).

46. *Id.*

47. *Id.* ¶ 204(48).

48. These decisions are rendered on June 11, 16, and 22, 1999. *Id.* ¶¶ 204(49)-(51).

49. This decision is rendered on May 10, 2000. *Id.* ¶ 204(50).

50. *Id.* ¶¶ 204(52), (54).

51. *Id.* ¶ 204(54).

argues that Resolution No. 044-A-96 violates employees' due process rights, because the Municipality did not properly inform employees that their salaries would be reduced.⁵²

On December 10, 1997, the Constitutional Court sustains in part SITRAMUN's *amparo* and finds that Article 2 of Mayoral Resolution No. 044-A-96 inappropriately established wage brackets because it did not fall within any of the approved avenues for payroll adjustment set forth in the 1996 Public Sector Budget.⁵³ The court also orders the Mayor to pay the difference between employees' reduced and expected wages.⁵⁴

June 13, 1996: Thirty employees who were dismissed for failing to appear on the scheduled assessment date file an *amparo* petition before the Chamber Specializing in Public Law (*Sala Especializada de Derecho Público*) to seek reinstatement.⁵⁵

On June 6, 1997, the Chamber Specializing in Public Law annuls the Municipality's dismissal of these employees because the assessment procedure was not published and the employees were not informed of their possible dismissal.⁵⁶ The judgment also orders the Municipality to reinstate these employees with back payment of lost wages and other benefits.⁵⁷

June 28, 1996: The Metropolitan Council (*Consejo Metropolitano*) of the Municipality agrees to dissolve and close ESMLL, allegedly because ESMLL has completed its purpose.⁵⁸ The Municipality enters into an agreement with another corporation to take over the functions of the ESMLL as of July 1, 1996.⁵⁹

July 1, 1996: ESMLL closes.⁶⁰

August 8, 1996: Two hundred and seventy-three ESMLL employees file an appeal to stay the closure of ESMLL.⁶¹

52. *Id.*

53. *Id.* ¶ 204(55).

54. *Id.*

55. *Id.* ¶ 204(13).

56. *Id.* ¶ 204(15).

57. *Id.*

58. *Id.* ¶ 204(85).

59. *Id.* ¶ 204(84).

60. *Id.* ¶ 204(85).

61. *Id.* ¶ 204(86).

October 6, 1996: After attempts to reschedule Staff Assessments, the Municipality ends the assessment process and dismisses additional employees.⁶² Many dismissed employees appeal their dismissals, and request that the court set aside the Staff Assessment Program.⁶³

November 4, 1996: The Municipality establishes a new staff assessment program via Mayoral Resolution No. 3364.⁶⁴

December 5, 1996: The Municipality dismisses 318 workers who have been deemed redundant via Mayoral Resolution No. 3776.⁶⁵ Sixty-eight of the 318 dismissed workers appeal their dismissals.⁶⁶

The Corporate Provisional Chamber Specializing in Public Law issues two judgments⁶⁷ that reverse the dismissals because the Municipality did not wait six months between assessments.⁶⁸ The judgment orders the Municipality to reinstate the employees and also reserves their right to require back payment of lost wages and other benefits.⁶⁹

December 13 1996: The Sixth Civil Court of Lima (*Sexto Juzgado Civil de Lima*) sustains SITRAMUN's *amparo* to reinstate SITRAMUN members who joined the strike, nullifies the resolution that declared the strike illegal, and orders the Municipality to make back payments to the affected workers.⁷⁰ The Corporate Provisional Chamber Specializing in Public Law affirms this judgment on November 16, 1998.⁷¹

The Sixth Civil Court of Lima also sustains SITRAMUN's appeal, and orders the Municipality to comply with the collective bargaining agreements.⁷² The court orders the Municipality to pay union members 24,176.20 *nuevo soles* (approximately \$94,370.80 USD) each and reimburse union members for unpaid monthly wages from September through December 1995.⁷³ The Corporate Provisional Chamber

62. *Id.* ¶ 204(10).

63. *Id.* ¶ 204(11).

64. *Id.* ¶ 204(20).

65. *Id.* ¶ 204(21).

66. *Id.* ¶ 204(22).

67. The Corporate Provisional Chamber Specializing in Public Law renders these judgments on September 23, 1998 and June 23, 1999. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* ¶ 204(42).

71. *Id.*

72. *Id.* ¶ 204(60). USD amounts are based on the exchange rate of Nuevo Soles to USD on December 13, 1996.

73. *Id.*

Specializing in Public Law affirms this judgment on November 18, 1998.⁷⁴ On November 17, 2004, the First Court Specializing in Civil Matters (*Primer Juzgado Especializado en lo Civil*) of the Supreme Court of Justice of Lima (*Corte Superior de Justicia de Lima*) affirms the Corporate Provisional Chamber Specializing in Public Law's judgment.⁷⁵

The Municipality pays part of the outstanding amounts owed to some former employees and pays off the total judgment owed to one employee.⁷⁶

February 6, 1997: The Chamber Specializing in Public Law sustains appeals filed by some of the employees dismissed for stating that they would not participate in the Staff Assessment.⁷⁷ The court reasons that Mayoral Resolution No. 033-A-96 failed to publish Attachment 01 to the resolution, which contained the Staff Assessment Program.⁷⁸ The court also finds that the Municipality's failure to publish the attachment deprived the victims of the right to be informed of acts that affect their right to retain their jobs.⁷⁹

May 29, 1997: The Peruvian Congress removes three of the seven Constitutional Court justices from office.⁸⁰ The twelve judgments issued by the Constitutional Court in this case are rendered while the Constitutional Court is composed of only four justices.⁸¹

June 13, 1997: The Court Specializing in Civil Matters (*Juzgado Especializado en lo Civil*) of the High Court of Justice of Lima (*Corte Superior de Justicia de Lima*) requests that the Municipality set aside the effects of the Staff Assessment Program and reinstate the employees within three days.⁸² The Municipality objects.⁸³

On March 31, 1998, the Corporate Provisional Chamber Specializing in Public Law orders the Municipality to reinstate the workers to their jobs in compliance with the judgment of June 13,

74. *Id.* ¶ 204(61).

75. *Id.* ¶ 204(63).

76. *Id.* ¶ 204(62).

77. *Id.* ¶ 204(13).

78. *Id.*

79. *Id.*

80. *Id.* ¶ 204(92). *See generally* Constitutional Court v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 71 (Jan. 31, 2001).

81. Acevedo Jaramillo et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 204(93).

82. *Id.* ¶ 204(14).

83. *Id.*

1997.⁸⁴

July 4, 1997: In Ordinance No. 117, the Municipality establishes a new Staff Assessment Program for reinstated staff.⁸⁵

January 19, 1998: The First Corporate Provisional Court Specializing in Public Law finds that Ordinance No. 117 and Mayoral Resolution 3746 does not apply to SITRAMUN and its members.⁸⁶ The Corporate Provisional Chamber Specializing in Public Law upholds this judgment on July 27, 1998.⁸⁷

July 8, 1998: The Constitutional Court declares that the Municipality cannot close ESMLL for “completion of its purpose,” as ESMLL provides permanent services.⁸⁸ The Constitutional Court orders the reinstatement of the ESMLL workers who have not collected their social security benefits.⁸⁹

October 19, 1998: The court responsible for enforcing the judgment rendered by the Constitutional Court on December 10, 1997 directs the Municipality to comply with the Constitutional Court’s orders and compensate employees for inappropriately reduced wages.⁹⁰ The Municipality objects,⁹¹ and, on July 17, 2000, the First Provisional Corporate Court Specializing in Public Law dismisses the Municipality’s objection.⁹² The Public Law Chamber (*Sala de Derecho Público*) affirms the First Provisional Corporate Court Specializing in Public Law’s decision on June 18, 2001, and states that the Municipality must comply with court judgments.⁹³

October 26, 1998: The Office of the Ombudsman of Peru (*Defensoría del Pueblo de Perú*) urges state agencies to comply with court orders in a report titled, “Non-Compliance with Judgments by the State Administration.”⁹⁴

84. *Id.*

85. *Id.* ¶ 204(25).

86. *Id.* ¶ 204(26).

87. *Id.*

88. *Id.* ¶ 204(86).

89. *Id.*

90. *Id.* ¶ 204(57). The Merits Judgment does not identify which court issued this decision.

91. *Id.* ¶ 204(58).

92. *Id.*

93. *Id.*

94. *Id.* ¶ 204(95).

July 1999 - November 2002: The Municipality authorizes the Staff and Treasury Offices to make payments for wage and salary readjustments.⁹⁵ The State complies with the court order of December 10, 1997 and compensates active employees at the Municipality, those who receive a pension, and some workers who were not reinstated for impermissibly reduced wages.⁹⁶

August 24, 1999: The Municipality sets aside Article 2 of Resolution No. 044-A-96, which established a temporary reduction in employees' compensation, and identifies the number of employees whose wages were reduced and the total amount that the Municipality owes these employees.⁹⁷

November 9 and 15, 1999: The First Corporate Provisional Court Specializing in Public Law issues two orders requesting that the Municipality comply with the Constitutional Court's November 18, 1998, December 21, 1998, and April 9, 1999 judgments.⁹⁸

January 28, 2000: The First Corporate Provisional Court Specializing in Public Law orders the Municipality to comply with the Constitutional Court's August 20, 1999 judgment.⁹⁹

November 17, 2000: The Peruvian Congress reinstates the three justices to the Constitutional Court.¹⁰⁰

June 23, 2001: The State publishes Law No. 27487.¹⁰¹ Law No. 27487 revokes Decree Law No. 26093, which originally established staff assessment programs and creates Special Committees to investigate the collective dismissals of public sector employees.¹⁰²

December 12, 2001: The State creates a Multi-Sector Committee to review the dismissal grounds and determine which employees should receive back payment of lost wages and other benefits.¹⁰³

95. *Id.* ¶ 204(59).

96. *Id.*

97. *Id.* ¶ 204(56).

98. *Id.* ¶ 204(38).

99. *Id.* ¶ 204(19).

100. *Id.* ¶ 204(92).

101. *Id.* ¶ 204(28).

102. *Id.*

103. *Id.* ¶ 204(30).

July 28, 2002: The Municipality creates a National Registry of Irregularly Dismissed Workers.¹⁰⁴

December 9, 2002: The Constitutional Court issues a judgment on the Municipality's motions for review of reversal of judgments rendered by the Constitutional Court while the court was composed of four justices.¹⁰⁵ The Constitutional Court rejects these motions on the grounds that reversing the judgments would impair other parties' rights and undermine the certainty of the legal system.¹⁰⁶

August 8, 2003: The 64th Civil Court of Lima (*64° Juzgado Civil de Lima*) issues Order No. 222 regarding dismissed employees.¹⁰⁷ The order designates two groups of employees: those who have collected social security benefits and thus no longer have an employment relationship with the Municipality and those who have not collected social security benefits.¹⁰⁸ The order also directs the Municipality to reinstate fifty-six employees.¹⁰⁹ On December 9, 2004, the First Civil Chamber (*Primera Sala Civil*) of the Supreme Court of Justice in Lima affirms Order No. 222.¹¹⁰ Two hundred and seventeen employees of the ESMLL appeal the First Civil Chamber of the Supreme Court of Justice in Lima's decision because it did not order the Municipality to reinstate them.¹¹¹ The court grants the appeal on September 18, 2003.¹¹²

June 20, 2005: Mr. Julio César Morales, a legal expert, appears in the Staff Office of the Labor Relations Department of the Municipality, to demand that the Municipality comply with the order to reinstate twenty-eight workers as required by Order No. 222 of August 8, 2003.¹¹³ The Head of the Labor Relations Department states that it is legally impossible to reinstate the workers.¹¹⁴ Mr. César Morales appears once

104. *Id.* ¶ 204(32). The National Registry of Irregularly Dismissed Workers publishes the first, second, and last lists of Irregularly Dismissed Former Workers on December 22, 2002, March 27, 2003, and December 24, 2003 respectively. *Id.* ¶ 204(33)

105. *Id.* ¶ 204(94).

106. *Id.*

107. *Id.* ¶ 204(89).

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* This appeal is still pending at the time of the Inter-American Court's Merits, Reparations, and Costs Judgment.

113. *Id.* ¶ 204(91).

114. *Id.*

again on August 3, 2005 to demand the reinstatement of another seven workers, but the Municipality again denies his request.¹¹⁵

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

January 13, 1999: The Inter-American Commission on Human Rights receives the workers' petition.¹¹⁶

October 10, 2001: The Commission adopts Report No. 85/01 and declares the case admissible.¹¹⁷

July 22, 2002: The State submits Report No. 54-2002/JUS/CNDH-SE issued by the Office of the Executive Secretary of the National Council for Human Rights (*Secretaría Ejecutiva del Consejo Nacional de Derechos Humanos*) on July 19, 2002 stating that the State acknowledges its international responsibility for the violation of human rights of the SITRAMUN workers, but is unable to pay the compensations owed to the petitioners due to the State's economic crisis.¹¹⁸

October 11, 2002: The Commission adopts Merits Report No. 66/02, concluding that the State violated the petitioners' rights under Article 1(1) (Obligation to Respect Rights) and 25(2)(c) (Remedies Must be Enforced) of the American Convention.¹¹⁹ The Commission recommends the State to comply with the judgments referred to in the report.¹²⁰

B. Before the Court

June 25, 2003: The Commission submits the case to the Court after the

115. *Id.*

116. *Id.* ¶ 5.

117. *Id.* ¶ 10.

118. *Id.* ¶ 11.

119. *Id.* ¶ 12.

120. *Id.*

State failed to adopt its recommendations.¹²¹

December 5, 2003: The State appoints Javier de Belaunde López de Romaña as *ad hoc* judge.¹²²

March 26, 2004: The State raises the preliminary objections of the workers' failure to exhaust domestic remedies and the representative's lack of legal standing.¹²³

October 14, 2004: The petitioners' common intervener requests the adoption of protective provisional measures to safeguard the freedom and physical integrity of alleged victims, Mr. Alejandro Hinostroza Rimari, Mr. Manuel Antonio Condori Araujo, Ms. Ana María Zegarra Laos, and Mr. Guillermo Nicolás Castro Bárcena.¹²⁴

November 23, 2004: The Court dismisses the request for provisional measures and indicates that the Court will consider how to act if at the moment of calling the parties to a public hearing, the Court is informed of the possibility that the State will prevent these representatives from leaving the country.¹²⁵

February 7, 2006: The Court unanimously dismisses the State's preliminary objections.¹²⁶ The State argued that the victims failed to exhaust domestic remedies because a number of domestic judgments were still in the enforcement phase.¹²⁷ The Court finds that the State waived its right to invoke this objection, as it did not file this objection at the admissibility stage before the Commission.¹²⁸

The State also argued that complainants do not have legal standing

121. *Id.* ¶ 20. In addition to the State's noncompliance with the various domestic judgments listed above, the Commission argues that that the State has not complied with two additional judgments. The Commission asserts that the State did not comply with a judgment rendered by the Corporate Provisional Chamber Specializing in Public Law on March 11, 1999 that ordered the State to surrender the union headquarters to SITRAMUN, or with a judgment rendered by the same court on August 19, 1999 regarding a plot of land in La Molina that the State donated to the union for a housing program. *Id.* ¶ 2. In the Court's decision, however, it determines that it does not have jurisdiction over those judgments. *Id.* ¶ 271. The Editors and Author, therefore, did not include a discussion of these issues in this summary.

122. *Id.* ¶ 28.

123. *Id.* ¶ 115.

124. *Id.* ¶ 38.

125. *Id.* ¶ 39.

126. *Id.* ¶¶ 115-149.

127. *Id.* ¶ 116(a).

128. *Id.* ¶ 126.

because they are not Municipality employees nor current representatives of SITRAMUN.¹²⁹ The Court finds that the complaint complies with Article 44 of the Convention because a person or group of persons, other than the alleged victim may file a complaint with the Commission.¹³⁰

The State also asserted that the Lima Municipal Workers Union cannot represent the victims because it is not a trade union organization and has not been granted power of attorney by the victims.¹³¹ The Court dismisses this objection because the victims granted power of attorney to the common interveners and not to the Lima Municipal Workers Union.¹³²

The Court also addresses the State's argument that it is not internationally responsible in this case because a "new matter" has arisen that the State was unaware of when it admitted responsibility before the Commission two years earlier.¹³³ The State argues that during the time of the facts, the National Intelligence Service (*Servicio de Inteligencia Nacional*, "SIN") gained control over the Judiciary and also bribed trade union leaders of the SITRAMUN to engage in activities meant to discredit the Mayor of Lima, Alberto Andrade, because he was a prospective political opponent of Alberto Fujimori.¹³⁴ The State argued that, as a result of this scheme, the twelve judgments that the State has not complied with are "illegal."¹³⁵ The State requested that the Court reconsider whether the State must comply with the judgments in light of this new matter.¹³⁶ The Court decides not to admit this argument because the State provided insufficient evidence.¹³⁷

The Court finds that the victims and the Commission relied and acted on the State's acknowledgement of responsibility on July 22, 2002 and January 17, 2003.¹³⁸ Thus, the State is estopped from later asserting a contrary position.¹³⁹

129. *Id.* ¶ 129(a).

130. *Id.* ¶ 137.

131. *Id.* ¶ 129(e).

132. *Id.* ¶ 146.

133. *Id.* ¶¶ 158-159.

134. *Id.*

135. *Id.* ¶ 161.

136. *Id.* ¶ 165.

137. *Id.* ¶ 168.

138. *Id.* ¶¶ 175-177.

139. *Id.* ¶ 177.

1. Violations Alleged by Commission¹⁴⁰

Article 25(2)(c) (Remedies Must Be Enforced)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims¹⁴¹

Same Violations Alleged by Commission, plus:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 16 (Freedom of Association)

Article 25(1) (Right of Recourse Before a Competent Court)

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

April 29, 2005: The Office of the Ombudsman of Peru submits an *amicus curiae* brief to the Court.¹⁴²

III. MERITS

A. *Composition of the Court*¹⁴³

Sergio García Ramírez, President

Alirio Abreu Burelli, Vice-President

Oliver H. Jackman, Judge

Antônio Augusto Cançado Trindade, Judge

Cecilia Medina Quiroga, Judge

140. *Id.* ¶ 12.

141. *Id.* ¶ 29. Due to the large number of victims, the Court appoints Ms. Zegarra Laos, Mr. Condori Araujo, Mr. Castillo Sabalaga, Mr. Castro Bárcena, and Ms. Aquino Laurencio as the common intervener to represent the largest amount of victims, but individual representatives other than the common intervener file petitions and participate throughout the process.

142. *Id.* ¶ 42.

143. Judge Diego García Sayán, a Peruvian national, is unable to participate because the State had already appointed a judge *ad hoc* at the time he was sworn in. *Id.* at n.*.

Manuel E. Ventura Robles, Judge
Javier de Belaunde López de Romaña, Judge *ad hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

February 7, 2006: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.¹⁴⁴

The Court found unanimously that Peru had violated:

Article 25(1) (Right of Recourse Before a Competent Court) and Article 25(c)(2) (Remedies Must Be Enforced), in relation to Article 1(1) of the Convention, to the detriment of the workers of the Municipality of Lima,¹⁴⁵ because:

The Court found that the State failed to comply with the judgments by the domestic courts for a long period of time and the State also failed to ensure that it appropriately executed an order of habeas corpus.¹⁴⁶ The Court determined that the final judgments ordering protection of the petitioners' rights were not sufficient; the State must also provide effective mechanisms for executing the judgments so that the petitioners' rights are adequately protected.¹⁴⁷ The Court found that each of the twenty-four judgments are final judgments on the merits and must be complied with as soon as practicable.¹⁴⁸ The Court also declared that budget restrictions are not an excuse for years of noncompliance.¹⁴⁹ In addition, the Court gave full effect to the State's acknowledgement of international responsibility.¹⁵⁰

I. Regarding the Seven Judgments relating to Dismissals due to Staff Assessments:

144. Acevedo Jaramillo et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs.

145. *Id.* Because there was confusion as to who the victims are for each domestic judgment, the Court attached an appendix to its judgment listing the groups of victims and the names of individual victims. *Id.* ¶ 228.

146. *Id.* ¶ 218.

147. *Id.* ¶ 220.

148. *Id.* ¶¶ 222-225.

149. *Id.*

150. *Id.* ¶ 276.

The Court first analyzed the three judgments rendered by the Chamber Specializing in Public Law on June 6, 1997, September 23, 1998, and June 23, 1999 and the two judgments rendered by the Constitutional Court on April 9, 1999 and August 20, 1999.¹⁵¹ The Court determined that because none of the objections that the State filed had merit and because other domestic courts affirmed those judgments and still the State has not complied, there is an “unjustified delay” of six to eight years in compliance with these orders.¹⁵²

The Court determined that although the judgment by the Chamber Specializing in Public Law rendered on February 6, 1997 did not order reinstatement of the workers, the competent courts ordered the Municipality to reinstate the workers at the enforcement stage and the State must follow that order.¹⁵³

Regarding the judgment rendered by the Corporate Provisional Chamber Specializing in Public Law on July 27, 1998, the State asserted that there is no way of relating the judgment with any dismissed person and that the judgment does not contain an order.¹⁵⁴ The Court determined that although the judgment applied to the SITRAMUN workers who were dismissed pursuant to the applicable ordinance and resolution, neither the Commission nor the common intervener indicated any victims of noncompliance with the order for legal protection.¹⁵⁵ For this reason, the Court found that the victims did not sufficiently prove that the State did not comply with that order.¹⁵⁶ The Court noted, however, that if the State dismissed any worker under those regulations, the State must comply with the Corporate Provisional Chamber Specializing in Public Law’s judgment.¹⁵⁷

II. Regarding the Three Judgments Relating to Dismissals for Administrative Misconduct and Participation in Demonstrations:

With respect to the three judgments rendered by the Constitutional Court on November 18, 1998, December 21, 1998, and April 9, 1999,

151. *See id.* ¶¶ 229-231.

152. *Id.* ¶¶ 229-231.

153. *Id.* ¶¶ 233-235.

154. *Id.* ¶¶ 237-238.

155. *Id.* ¶¶ 239-240.

156. *Id.* ¶ 241.

157. *Id.*

*the Court determined that because the State has not complied with the reinstatement ordered by the court, there is an “unjustified delay” of six to seven years in compliance with these orders.*¹⁵⁸

III. Regarding the Nine Judgments Relating to Dismissal for Declaring a Strike:

*The State requested that the Court exclude the decision rendered by the Corporate Provisional Chamber Specializing in Public Law on November 16, 1998 from the instant case because it cannot be associated with any dismissal or individual person and does not include an order.*¹⁵⁹ *The Court determined that the judgment is a general order for reinstatement that must be fulfilled with respect to members of the SITRAMUN that were dismissed for striking, and provided a list of the victims.*¹⁶⁰

*The Court also found that the State has not complied with three judgments rendered by the Corporate Provisional Chamber Specializing in Public Law on July 14, 1998, December 22, 1999, and March 31, 1999 and the five judgments rendered by the Constitutional Court on April 3, 1998, May 13, 1998, October 16, 1998, November 11, 1998, and August 20, 1999.*¹⁶¹ *The Court explained that the State’s failure to comply with these nine judgments constitutes an “unwarranted delay” of over six years.*¹⁶²

*The Court also pointed out that the State submitted documents to prove that the State adopted various measures to comply with said judgments.*¹⁶³ *Regarding this matter, the Court determined that the domestic courts with jurisdiction to enforce the judgments must adopt a final decision indicating for which workers partial or total compliance is still pending.*¹⁶⁴

IV. Regarding the Two Judgments Relating to Enforcement of the Collective Bargaining Agreements:

158. *Id.* ¶¶ 242-244.

159. *Id.* ¶¶ 246-247.

160. *Id.* ¶¶ 248-249.

161. *Id.* ¶¶ 250-252.

162. *Id.*

163. *Id.* ¶¶ 256-259.

164. *Id.* ¶ 259.

With respect to the judgment rendered by the Constitutional Court on December 10, 1997, the Court found that the State proved that it reimbursed the members of the SITRAMUN who were working for the Municipality, as required by the provisional compensation schedule.¹⁶⁵ However, the Court also found that the State did not reimburse members entitled to payment who were not working for the Municipality on the date of the reimbursement payments.¹⁶⁶ Thus, the Court found that the State has partially complied with this order of amparo.¹⁶⁷ The Court stated that the domestic court charged with enforcement of the judgment should determine for whom the State's compliance is still pending.¹⁶⁸

In relation to the judgment rendered by the Corporate Provisional Chamber Specializing in Public Law on November 18, 1998, the State argued that it was in the process of complying with the order.¹⁶⁹ The Court determined that a judgment at the enforcement stage does not exclude the possibility of the violation of the right to an effective remedy and does not warrant a delay of over seven years in compliance.¹⁷⁰ The Court noted that the domestic judicial court charged with enforcement shall determine which SITRAMUN members are beneficiaries of this judgment.¹⁷¹

V. Regarding the Judgment Relating to the Dissolution of ESMLL:

The Court determined that complying with the judgment rendered by the Constitutional Court on July 8, 1998 requires the State to adopt several decisions, and noted that appeals filed by the parties are pending.¹⁷² However, the Court found that this does not excuse the delay of seven years and six months in complying with the order.¹⁷³ The Court noted that the domestic judicial court still must decide the appeal filed against the decision that dismissed the request for reinstatement of 217 workers.¹⁷⁴ The Court found, however, that if the domestic court recognizes the right of the workers to be reinstated, the State must

165. *Id.* ¶¶ 260-263.

166. *Id.* ¶ 263.

167. *Id.* ¶¶ 264-265.

168. *Id.*

169. *Id.* ¶¶ 266-267.

170. *Id.* ¶ 269.

171. *Id.* ¶ 270.

172. *Id.* ¶¶ 272-274.

173. *Id.* ¶ 274.

174. *Id.* ¶ 275.

*comply with this order.*¹⁷⁵

VI. Regarding the Two Judgments Relating to the Union Headquarters and to the Plot of Land in the La Molina District:

*The Court declared that it does not have jurisdiction over the alleged noncompliance of the judgments rendered by the Corporate Provisional Chamber Specializing in Public Law on March 11, 1999 and August 19, 1999 because the beneficiary of the conveyance from the Municipality is a legal entity and the Court cannot determine the identity of the victims of the alleged violation.*¹⁷⁶

The Court did not rule on:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) of the Convention, to the detriment of the workers of the Municipality of Lima,¹⁷⁷ because:

*The Court found that the appeals for legal protection regarding the dismissals have already declared that the State committed due process violations when it dismissed the workers and the judgments have ordered the reinstatement of those workers.*¹⁷⁸

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights), in relation to Articles 1(1) (Obligation to Respect Rights) and (2) (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of the workers of the Municipality of Lima,¹⁷⁹ because:

*The Court determined that it had already discussed the serious consequences of noncompliance with the judgments with regard to the labor rights contemplated in said judgments.*¹⁸⁰

The Court did not deliver an opinion regarding the alleged violation of Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the

175. *Id.*

176. *Id.* ¶ 271.

177. *Id.* ¶ 281.

178. *Id.*

179. *Id.* ¶ 285.

180. *Id.*

*Convention because it would involve analysis of facts that are not part of the issues disputed in this case.*¹⁸¹

Article 16 (Freedom of Association) in relation to Articles 1(1) and 2 of the Convention, to the detriment of the workers of the Municipality of Lima,¹⁸² because:

*Because the common intervener alleged the Article 16 (Freedom of Association) violation in his closing argument, the Court found that the common intervener did not allege the violation at the appropriate point in the procedure; regardless, the Court determined that the facts at issue do not fall within the scope of Article 16 (Freedom of Association) of the Convention.*¹⁸³

C. Dissenting and Concurring Opinions

1. Separate Opinion of Judge Antônio Augusto Cançado Trindade

In a separate opinion, Judge Cançado Trindade stated that Article 25 (Right to Judicial Protection) of the Convention was strongly related to the due process guarantees of reasonable time established in Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention.¹⁸⁴ Judge Cançado Trindade stated that the Court should have been more consistent with precedent by finding that the State violated Article 8(1) in addition to Article 25 of the Convention.¹⁸⁵

2. Concurring Opinion of Judge Cecilia Medina Quiroga

In a concurring opinion, Judge Medina Quiroga expressed that the Court should have assessed the damage independently and granted pecuniary damages from the moment the workers were unfairly dismissed, rather than from the date the orders directing reinstatement became final.¹⁸⁶ Judge Medina Quiroga believed that doing so would

181. *Id.* ¶ 286.

182. *Id.* ¶¶ 288-290.

183. *Id.*

184. Acevedo Jaramillo et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 144, ¶¶ 1-6 (Feb. 07, 2006).

185. *Id.* ¶¶ 4-5.

186. Acevedo Jaramillo et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion of Judge Cecilia Medina Quiroga, Inter-Am. Ct. H.R. (ser. C) No.

have remedied the injustice of adversely affecting some of the dismissed workers who were in a similar situation as those receiving compensation from the date of their dismissal.¹⁸⁷

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Judgment as a Form of Reparation

The Court considered that this judgment is *per se* a form of reparation for the victims.¹⁸⁸

2. Publish the Judgment

The Court ordered the State to publish the pertinent parts of this judgment once in the official gazette and once in another daily newspaper with broad national coverage.¹⁸⁹

3. Enforce the *Amparo* Orders

The Court orders the State to effectively enforce the orders of *amparo* in order to ensure the parties the enjoyment of their rights.¹⁹⁰ If reinstatement of the victims is not possible, the State must provide employment alternatives that respect the conditions and salaries of the victims' prior positions.¹⁹¹

B. *Compensation*

The Court awarded the following amounts:

144, ¶¶ 1-5 (Feb. 07, 2006).

187. *Id.* ¶ 5.

188. Acevedo Jaramillo et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 144, ¶ 314 (Feb. 07, 2006).

189. *Id.* ¶ 313.

190. *Id.* ¶ 299.

191. *Id.*

1. Pecuniary Damages

The Court ordered the State to pay lost wages to the dismissed workers who were not reinstated in compliance with the *amparo* orders.¹⁹²

The Court also ordered the State to pay wages lost during the time specified workers were dismissed as directed by three of the orders of *amparo*.¹⁹³

The State must also compensate workers who were not reinstated per the orders of *amparo*, even where the orders of *amparo* do not mandate compensation, for lost wages because six to nine years have passed between the orders directing reinstatement and the instant judgment.¹⁹⁴ Because this Court is unable to modify judgments rendered by domestic courts in order to extend the compensation from the date of dismissal, these workers shall be compensated from the date that the orders for reinstatement become final and un-appealable.¹⁹⁵

Amounts of compensation are to be determined by domestic authorities.¹⁹⁶ In the case of any disagreement, they must be settled in a domestic forum, following domestic procedure, with the possibility of resorting to authorities having jurisdiction.¹⁹⁷ In addition, state authorities having jurisdiction must also determine, under domestic laws, which victims have the right to retirement pension or who are the beneficiaries in the case of deceased victims.¹⁹⁸

The State must also ensure access to the social security system to workers who have not been reinstated under the orders of *amparo*.¹⁹⁹

2. Non-Pecuniary Damages

The Court ordered the State to pay \$3,000 to each of the victims who obtained orders of *amparo* that the State has not complied with for the serious consequences to their professional, personal, and family life caused by the noncompliance.²⁰⁰

192. *Id.* ¶ 302.

193. *Id.*

194. *Id.* ¶ 304.

195. *Id.* ¶ 303.

196. *Id.* ¶ 304.

197. *Id.*

198. *Id.* ¶ 305.

199. *Id.* ¶ 306.

200. *Id.* ¶¶ 310-312.

3. Costs and Expenses

The Court ordered the State to pay \$16,000 to be distributed in equal shares between the Labor Counseling Center of Peru (*Centro de Asesoría Laboral del Perú*, "CEDAL"), who gave support to the common intervener during most of the proceedings before this Court, and the seven groups of victims' representatives listed in the application filed with the Court.²⁰¹ The Court also orders the State to establish a specific mechanism to provide free support and legal counseling to the victims in processing the matters of this judgment.²⁰²

4. Total Compensation (including Costs and Expenses ordered):

Approximately \$1,543,000 in addition to \$3,000 to each victim that the domestic courts determine compliance is still pending, and compensation for lost wages and pensions.²⁰³

C. Deadlines

The State must guarantee the injured parties the enjoyment of their rights through actual enforcement of the orders of *amparo* within one year.²⁰⁴ As such, the State must reinstate the workers to their jobs or similar positions within one year, or if this is not possible, the State must provide, within one year, alternatives with conditions, salaries, and remuneration similar to the employee's prior jobs.²⁰⁵ If reinstatement to a similar position is not possible, the State must pay the victim compensation for termination of employment without cause within one year.²⁰⁶

The State must pay compensation for loss of wages and retirement pensions to the victims or their beneficiaries who have not been reinstated and ensure their access to the social security system;²⁰⁷ pay the corresponding death pension to the beneficiaries of the deceased

201. *Id.* ¶ 316.

202. *Id.* ¶ 317.

203. The Court ordered the domestic courts to determine which victims the State still owes compliance to for the judgments of June 6, 1997, December 10, 1997, and November 18, 1998. *Id.* ¶¶ 255-270. The Court also determined that if the appeal of September 18, 2003 against Order No. 22 is granted, the State will also owe \$3,000 to each of the 217 ESMLL workers who were dismissed. *Id.* ¶¶ 272-273.

204. *Id.* ¶ 318.

205. *Id.*

206. *Id.*

207. *Id.* ¶ 319.

victims;²⁰⁸ and pay the compensation for non-pecuniary damage to the victims or their successors;²⁰⁹ within fifteen months from notification of the Judgment.²¹⁰

The State must reimburse costs and expenses within one year from notification of the Judgment.²¹¹

The State must publish the pertinent parts of this judgment and establish a specific mechanism to give support to the victims and provide them with free legal counseling within six months from the notification of the Judgment.²¹²

The State shall submit a report to the Court on the measures adopted in compliance with the Judgment within fifteen months.²¹³

V. INTERPRETATION AND REVISION OF JUDGMENT

May 29, 2006: Mr. Manuel Saavedra Rivera and Mr. Héctor Paredes Márquez, representatives other than the common intervener, submitted two requests to the Court for an interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs.²¹⁴

Mr. Saavedra Rivera and Mr. Paredes Márquez submitted six questions and requests to the Court for interpretation regarding the beneficiaries of the Judgment.²¹⁵ First, the representatives requested that the Court include Ms. Calixta Sánchez Cabello as a beneficiary of the judgment rendered by the Chamber Specialized in Public Law on February 6, 1997 because she was dismissed under Resolution No. 33-A-96.²¹⁶ Second, the representatives requested that the Court include Mr. Thomas Ccahuancama Ccerhuayo as a beneficiary of the judgment rendered by the Chamber Specialized in Public Law on September 23, 1998 because Mr. Ccahuancama Ccerhuayo was wrongfully omitted as a beneficiary and the same court corrected its mistake, including him as a beneficiary, in the order of October 13, 1998.²¹⁷ Third, the representatives requested that the Court include eleven workers who were awarded a final judgment by the Constitutional Court on March

208. *Id.* ¶ 320.

209. *Id.* ¶ 321.

210. *Id.* ¶¶ 319-321.

211. *Id.* ¶ 322.

212. *Id.* ¶¶ 322, 326.

213. *Id.* ¶ 329.

214. Acevedo Jaramillo et al. v. Peru, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 157, ¶ 3 (Nov. 24, 2006).

215. *Id.* ¶¶ 30(a)-(f).

216. *Id.* ¶ 30(a).

217. *Id.* ¶ 30(b).

30, 2004 as beneficiaries of the judgment of the Court.²¹⁸ Fourth, the representatives requested the Court to include fifty-six workers as beneficiaries of the judgment rendered by the Chamber Specialized in Public Law on November 16, 1998 who were also included as alleged victims in the application by the Commission.²¹⁹ Fifth, the representatives requested the Court to extend the effects of the State's acknowledgment of responsibility to persons who request to be recognized as victims under the doctrine of estoppel.²²⁰ Finally, the representatives requested the Court to clarify the scope of the Judgment's provisions regarding the total number of the Judgment's beneficiaries.²²¹

The representatives also submitted two questions to the Court to clarify the scope of the provisions of the Judgment regarding payment of non-pecuniary damages and compensation of costs and expenses.²²² First, the representatives asked whether payment of non-pecuniary damages amounting to \$3,000 to each beneficiary will be made after fifteen months and reimbursement of costs and expenses totaling \$16,000 will be made after twelve months from service of the Judgment.²²³ Second, the representatives asked the Court to consider a domestic law, Law No. 27,225, which governs enforcement of judgments rendered by supranational courts and orders payment of monies due within ten days from service of the judgment and the representatives noted that the State intends to pay the amounts due after the expiration of the terms established by the Court.²²⁴

May 30, 2006: Mr. Pablo Gonza Tito and Mr. Marcelino Isidro Huere, representatives other than the common intervener, submitted a request to the Court for Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs.²²⁵

Mr. Gonza Tito and Mr. Isidro Huere submitted three inquiries to the Court for interpretation regarding the judgment rendered by the Corporate Provisional Chamber Specialized in Public Law on November 16, 1998.²²⁶ First, the representatives ask whether the Court excludes the remaining 243 victims from the Judgment when it includes

218. *Id.* ¶ 30(c).

219. *Id.* ¶ 30(d).

220. *Id.* ¶ 30(e).

221. *Id.* ¶ 30(f).

222. *Id.* ¶¶ 70(a)-(b).

223. *Id.* ¶ 70(a).

224. *Id.* ¶ 70(b).

225. *Id.* ¶ 4.

226. *Id.* ¶¶ 31(a)-(c).

only forty-five victims out of the 288 persons considered by the Commission.²²⁷ To this point, the representatives also included attached copies of their orders of dismissal by the resolution relevant to the court's order.²²⁸ Second, the representatives asked whether the Court's request for execution of the above judgment is limited to the forty-five persons determined by the Court or to all victims affected by Resolution No. 575.²²⁹ Finally, the representatives asked whether the victims who were not included in the Judgment should be included and their rights protected by the State.²³⁰

June 1, 2006: The ninety-day term to file requests for interpretation with the Court expired.²³¹

June 24, 2006: Ms. Robin Elguera Chanco filed a brief asking for clarification of operative paragraphs six and seven of the Judgment.²³²

A. *Composition of the Court*²³³

Sergio García Ramírez, President
Alirio Abreu Burelli, Vice-President
Antônio Augusto Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Manuel E. Ventura Robles, Judge
Javier de Belaunde López de Romaña, Judge *ad hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Merits*

The Court first noted that any requests filed after the expiration of the ninety-day term established in Article 67 of the Convention were

227. *Id.* ¶ 31(a).

228. *Id.*

229. *Id.* ¶ 31(b).

230. *Id.* ¶ 31(c).

231. *Id.* ¶ 8.

232. *Id.* ¶ 9.

233. Judge Diego García Sayán, a Peruvian national, is unable to participate because the State had already appointed a judge *ad hoc* at the time he was sworn in. *Id.* at n.**. Judge Oliver H. Jackman did not participate in the deliberations or signing of the present judgment because he was unable to attend the 73rd Regular Session of the Court. *Id.*

inadmissible.²³⁴

The Court divided its order with respect to the victims of the Judgment into two parts: considerations regarding the victims of the instant case according to the Judgment and the requests for inclusion of additional victims.²³⁵

Regarding the victims of the case according to the Judgment, the Court determined that only the individuals that were proved to be victims and are named in the schedule of victims attached to the Judgment are victims of the Judgment and that determination is final.²³⁶ Additionally, the Court determined that dismissal orders submitted after the Court rendered the Judgment are not admissible because they were not part of the body of evidence weighed at the time the Judgment was delivered.²³⁷ For victims whose names were listed in the domestic judgments,²³⁸ victims whose names were listed in the *writ of amparo* that gave rise to the domestic judgment,²³⁹ and victims whose names were listed in the evidence submitted to the Court,²⁴⁰ the Court determined that it was possible that the State had partially or totally executed the judgments regarding some of the victims, and the Court designated the domestic courts to determine for which victims compliance by the State was still pending.²⁴¹ Thus, the domestic court might find that there are fewer victims than determined by the Court for whom compliance is pending.²⁴² For victims who must be determined by the domestic courts with jurisdiction to enforce the domestic judgments,²⁴³ the Court explained that the list of victims included in the Judgment is not a closed list because the domestic decision which must adopt a final decision as to who those victims are is still pending.²⁴⁴

The Court dismissed the request for inclusion of additional victims because it implicitly includes a claim for amendment of the facts already proven in the Judgment and thus fails to conform to the

234. *Id.* ¶ 24.

235. *Id.* ¶ 35.

236. *Id.* ¶ 42.

237. *Id.* ¶ 43.

238. This category includes fifteen domestic judgments rendered on April 3, May 13, July 14, September 23, October 16, November 11, November 18, and December 21, 1998 and March 31, two of April 9, June 23, two of August 20, and December 22, 1999. *Id.* ¶ 46 n.7.

239. This category includes the judgment rendered on June 6, 1997. *Id.* ¶ 51 n.8.

240. This category includes the judgments rendered on February 6, 1997 and November 16, 1998. *Id.* ¶ 55.

241. *Id.* ¶ 48.

242. *Id.* ¶ 53.

243. This category includes the judgment of December 10, 1997 and November 18, 1998. *Id.* ¶ 59.

244. *Id.* ¶¶ 59-60.

provisions of Article 67 of the Convention and Articles 29(3) and 59 of the Rules of Procedure.²⁴⁵ Additionally, the Court will not consider the request for inclusion of beneficiaries of the March 4, 2004 judgment because the Commission filed the application to the Court on July 25, 2003, prior to the date of that domestic judgment.²⁴⁶

However, the Court clarified that because the State is the principal guarantor of human rights, the State must resolve a violation of human rights and redress the victim in the domestic system before resorting to international forums.²⁴⁷ Accordingly, the State must comply with the obligation established in Article 1(1) (Obligation to Respect Rights) of the American Convention to respect and secure the rights protected under that treaty.²⁴⁸

Regarding the terms to make payment of non-pecuniary damages and reimburse costs and expenses, the Court states that the State must comply within the time periods set forth in the Judgment.²⁴⁹ Additionally, the Court clarified that the terms of the Judgment are exclusively fixed and shall not be modified by any provision of the domestic laws.²⁵⁰

VI. COMPLIANCE AND FOLLOW-UP

May 29, 2007: Mr. Manuel Saavedra Rivera and Mr. Héctor Paredes Márquez, representatives other than the common intervener, requested provisional measures in favor of the victims of the instant case as they claimed that the State seeks to ignore the Court's order.²⁵¹

December 18, 2009: The President of the Court found that the State has not provided clear and sufficient information regarding its compliance with the deadline of one year to guarantee the victims the enjoyment of their rights through actual enforcement of the orders of *amparo*.²⁵² Thus, the State must submit a report to the Court detailing six aspects of compliance: (1) the number of executions of the Judgment pending and

245. *Id.* ¶¶ 63-65.

246. *Id.* ¶ 69.

247. *Id.* ¶ 66.

248. *Id.* ¶ 68.

249. The Court specified that the State must pay non-pecuniary damages by June 2, 2007 and reimburse costs and expenses by March 2, 2007. *Id.* ¶¶ 76-77.

250. *Id.* ¶ 80.

251. Acevedo Jaramillo et al. v. Peru, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 3 (Dec. 18, 2009).

252. Acevedo Jaramillo et al. v. Peru, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. "Considering That" ¶ 11 (Dec. 18, 2009).

their relation to the orders of *amparo*; (2) the current status of the pending executions; (3) the status of the implementation of Resolution 909²⁵³ and how compensation amounts are determined therein; (4) the obstacles that the judiciary encountered when complying with the Judgment; (5) non-jurisdictional routes that the State has explored to comply with the Judgment; and (6) the projected performance of these aspects with a specific timetable.²⁵⁴

The President found that the State has not complied with the Judgment after more than two years of its issuance regarding the reinstatement of workers to their positions or giving the workers alternative employment or compensation for the termination of their labor relations.²⁵⁵ The Court has consistently held that states cannot invoke obstacles of law as a reason for failure to comply with their obligations.²⁵⁶ The President of the Court ordered the State to provide concrete information on the measures it has taken to restore victims to the same or similar jobs, the reasons that the Municipality of Lima has refused to comply with the Court's orders, the specific alternatives the State has following the Municipality's refusal, and a specific timetable for compliance.²⁵⁷

Regarding the State's obligation to pay compensation for lost income, retirement, and death benefits, the President of the Court noted that the deadlines for compliance have passed and that the State has not determined the amounts of compensation, identified all beneficiaries of those amounts, nor constituted appropriate mechanisms for effecting compliance with the Judgment.²⁵⁸ The President of the Court requested the State to provide information regarding each of those areas of compliance as well as the results of the Roundtable alluded to by the common intervener²⁵⁹ and the participation of victims not represented by the common intervener in that Roundtable.²⁶⁰

Regarding the State's obligation to ensure that the workers who were not reinstated had access to the social security system, the

253. The State stated that it issued Resolution 909, which determined who was and who was not a beneficiary of the Judgment, but that the resolution had not yet been enforced as it was subject to appeal. *Id.* ¶ 7.

254. *Id.* ¶ 11.

255. *Id.* ¶ 15.

256. *Id.*

257. *Id.*

258. *Id.* ¶ 20.

259. The common intervener stated that it formed a Roundtable on April 25, 2009 with the Officials of the Presidency of the Council of Ministers to gather information regarding the Judgment and to propose effective mechanisms for compliance with the Judgment. *Id.* ¶ 18.

260. *Id.* ¶ 20.

President found that the Integrated Health System (*El Servicio del Sistema Integral de Salud*) could alleviate some of the urgent health concerns, but considered it necessary to give all beneficiaries access to appropriate health services.²⁶¹ The President required the State to submit further information regarding alternative health services available for victims represented and not represented by the common intervener.²⁶²

Regarding payments of non-pecuniary damages and reimbursement of costs and expenses, the State reported that it had paid a total of \$2,085,000 in non-pecuniary damages to the beneficiaries, a total of \$51,000 in non-pecuniary damages to the heirs, and a total of \$6,000 for reimbursement of costs and expenses.²⁶³ The President considered that because the deadline for payment has expired, the State must pay the remainder of the amounts ordered as well as the respective default interest and must submit to the Court a report showing the beneficiaries and the terms for the outstanding payments.²⁶⁴

Regarding the State's obligation to establish a specific mechanism to provide the victims with competent legal counsel, the President required the parties to provide more information regarding the mechanism implemented to make sure it was created to meet the specific needs of the victims.²⁶⁵

Regarding the State's obligation to publish the pertinent parts of the Judgment in the official gazette and in another newspaper with national circulation, the President found that the State had fully complied.²⁶⁶

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[Acevedo Jaramillo et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 144 \(Feb. 07, 2006\).](#)

261. *Id.* ¶¶ 21-24.

262. *Id.* ¶ 24.

263. *Id.* ¶ 25.

264. *Id.* ¶ 28.

265. *Id.* ¶ 32.

266. *Id.* ¶ 36.

2. Decisions on Merits, Reparations and Costs

[Acevedo Jaramillo et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 144 \(Feb. 07, 2006\).](#)

[Acevedo Jaramillo et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. \(ser. C\) No. 144 \(Feb. 7, 2006\).](#)

[Acevedo Jaramillo et al. v. Peru, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion of Judge Cecilia Medina Quiroga, Inter-Am. Ct. H.R. \(ser. C\) No. 144 \(Feb. 7, 2006\).](#)

3. Provisional Measures

[Acevedo Jaramillo et al. v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 23, 2004\) \(Available only in Spanish\).](#)

4. Compliance Monitoring

[Acevedo Jaramillo et al. v. Peru, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R. \(Dec. 18, 2009\).](#)

5. Review and Interpretation of Judgment

[Acevedo Jaramillo et al. v. Peru, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 157 \(Nov. 24, 2006\).](#)

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

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3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[Not Available]

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