

# Trabajadores Cesados de Petroperú and Others v. Peru

## ABSTRACT<sup>1</sup>

*This case is about the termination from employment of hundreds of workers of State-owned companies and ministries in Peru during the 1990s. The case is notable because it discusses Article 26 of the American Convention, which mandates States Party to ensure the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States. Eventually, the Court found Peru in violation of the American Convention's provisions on due process and Article 26, but only by majority vote and not unanimously, as it often does.*

## I. FACTS

### A. Chronology of Events

**September 27, 1991:** The Legislature of Peru adopts Decree Law No. 674, which declares that government-owned companies may partake in private-sector investment plans.<sup>2</sup>

**December 27, 1992:** The Legislature of Peru adopts Decree Law No. 26120, which enables government-owned companies to execute measures necessary for their economic, financial, legal and administrative restructuring.<sup>3</sup> This includes implementing the downsizing process laid out in Decree Law No. 674, which allows for termination of surplus personnel.<sup>4</sup> Government-owned companies may

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2. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, Report No. 14/15, Inter-Am. Comm'n H.R., Case No. 12.385, ¶ 35 (Mar. 23, 2015).

3. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 358, ¶ 83 (Nov. 23, 2017).

4. *Id.*

adopt and implement voluntary retirement programs for surplus staff.<sup>5</sup> The programs are not required to offer retirement incentives and employees who refuse to participate may still face dismissal.<sup>6</sup>

The company is required to file a downsizing request with the Administrative Labor Authority, listing the names of the employees who refused voluntary retirement.<sup>7</sup> If the Administrative Labor Authority does not respond to the downsizing program request within five days, the program is deemed automatically approved.<sup>8</sup> The employees dismissed as a result of the downsizing program are only entitled to specific benefit packages, which cannot be altered.<sup>9</sup>

**December 28, 1992:** The Legislature of Peru adopts Decree Law No. 26093, which allows government-owned companies to implement semi-annual evaluations of employees.<sup>10</sup> Any employee who does not pass the evaluation can be fired without cause.<sup>11</sup>

1. Events pertaining to the Empresa Nacional de Puertos S.A.  
("ENAPU") Victims<sup>12</sup>

**November 1992:** The Legislature of Peru adopts Decree Law No. 25582, which enables Empresa Nacional de Puertos S.A. (ENAPU), a national company that manages Peru's seaports, to implement the policies set forth in Decree Law 674.<sup>13</sup>

**January 12, 1996:** Supreme Decree No. 003-96-PCM enters into force,

5. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 36.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 84.

11. *Id.*

12. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 133 n.212. ENAPU Victims: 1) Víctor Acuña Dávila, 2) Alberto Esteban Antonio Chala, 3) Justo Esteban Azcárate Noguera, 4) Abraham Cano Rebaza, 5) Marco Antonio Castro Martínez, 6) Gladis María Delgado Arriola, 7) Rogelio Delgado Quijano, 8) David Desiglioli Sánchez, 9) Juan Leslie Espinoza Eyzaguirre, 10) Jorge Federico García Farías, 11) Carlos Alberto Lizarbe Nieto, 12) Nancy Giomar Mac'Gregor Alvis, 13) Juan Carlos Marraguerra Ayllon, 14) Honorato Mayorga Blanco, 15) Ernesto Meza Vargas, 16) José Ricardo Nolasco Milla, 17) Fernando Antonio Padilla Cancino, 18) Cecilio Alberto Ríos Rodríguez, 19) Eduardo Rivadeneyra Alva, 20) Antonio Tomás Rodríguez Valdivia, 21) Isi Antonia Rosas Meléndez, 22) Renzo Torero Lizarbe, 23) José Fermín Urcia Cruzado, 24) Alfredo Vásquez Colacci, and 25) Mr. Rufino Ysique Reque.

13. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 37.

authorizing ENAPU to implement private-sector investment and the State downsizing program in accordance with Decree No. 26120.<sup>14</sup>

**January 23, 1996:** ENAPU notifies employees that they must participate in voluntary retirement or their employment will be terminated.<sup>15</sup>

**January 27, 1996:** A posting in the newspaper *LA República* reiterates the process set forth in Decree No. 26120 and states that the employees have five days to accept voluntary retirement, otherwise Administrative Labor Authority will terminate their employment.<sup>16</sup>

**January 31, 1996:** The National ENAPU Employees Federation (la Federación Nacional de Trabajadores de Enapu; “Fentenapu”) files a lawsuit against ENAPU with the Civil Court of Callao.<sup>17</sup> The lawsuit states Supreme Decree Law No 003-96-PCM and Decree Law No. 26120 are unconstitutional and requests injunctive relief to prevent ENAPU from implementing employee termination.<sup>18</sup> Additionally, the claim requests employees terminated under the above laws be reinstated if the policies are deemed unconstitutional.<sup>19</sup>

**February 1996:** ENAPU ignores the pending lawsuit and terminates the petitioners that refused to accept the voluntary retirement program.<sup>20</sup>

**December 6, 1996:** The First Civil Court of Callao issues a judgment ruling that the suit for constitutional relief was meritless because ENAPU was implementing the downsizing program in line with domestic law.<sup>21</sup>

**December 19, 1996:** Fentenapu files an appeal with the Civil Chamber of the Superior Court of Callao.<sup>22</sup>

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14. *Id.* ¶¶ 38-39.

15. *Id.* ¶ 40.

16. *Id.*

17. *Id.* ¶ 42.

18. *Id.*

19. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 42.

20. *Id.* ¶ 41.

21. *Id.* ¶ 43.

22. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 106.

**March 18, 1997:** The Civil Chamber of the Superior Court of Callao denies the appeal and the judgment of the First Civil Court of Callao is upheld.<sup>23</sup> Fentenapu appeals the decision at the Constitutional Court level.<sup>24</sup>

**March 3, 1998:** The Constitutional Court upholds the Civil Chamber of the Superior Court of Callao's decision and states the suit for constitutional relief is without merit.<sup>25</sup>

2. Events pertaining to the Ministry of Economy and Finance (Ministerio de Economía y Finanzas; "MEF") Victims<sup>26</sup>

**December 28, 1992:** The Legislature of Peru adopts Decree Law No. 26093, requiring the Ministries and Decentralized Public Institutions to conduct biannual staff performance evaluations in accordance with established regulations.<sup>27</sup> Staff members who do not pass the evaluations may be dismissed as "overstaffing".<sup>28</sup>

**July 3, 1997:** The Ministry of Economy and Finance (MEF) adopts Ministerial Resolution No. 123-97-EF: the Staff Performance Evaluation System.<sup>29</sup> MEF requires employees undergo the Staff Performance Evaluation and a training program by the Peruvian Business Administration Institute (Instituto Peruano de Administración de Empresa; "IPAE").<sup>30</sup> Once the employees pass an academic evaluation carried out by the IPAE, the MEF implements a policy which requires the employees undergo a "psycho-technical evaluation."<sup>31</sup>

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23. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 44.

24. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 107.

25. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 44.

26. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 134 n.217. MEF Victims: 1) Gloria Nila Amabelia Moreno Cueva, 2) Eliana Zavala Urbiola, 3) Nidia Luisa Blanco Castro, 4) Fortunato Crispín Crispín, 5) Hernán Suárez Aparcana, 6) Fanny Rosa Pinto Loaces, 7) Rafael Fritz Poma Guerra, 8) Eduardo Colán Vargas, 9) Marissa Paulina Huamán Valle, 10) Walter Neyra Huamanchumo, 11) Jaime Díaz Idrogo, 12) Segundo León Barturén, 13) Luís A. Del Castillo Florián, 14) Julia Flores Hilario, and 15) Lucio Chávez Quiñones.

27. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 45.

28. *Id.* ¶ 45.

29. *Id.* ¶ 46.

30. *Id.*

31. *Id.* ¶ 47.

**December 31, 1997:** The alleged victims, employees at MEF, receive notice that they have not obtained the minimum score to pass the evaluation.<sup>32</sup> They are notified that Article 2 of Decree Law No. 26093 is in effect, which states that a failure to pass the evaluation allows dismissal due to overstaffing.<sup>33</sup>

**January 8, 1998:** Since the alleged victims did not obtain the minimum passing score in the biannual evaluation process, Article 2's overstaffing provisions is implemented, which requires MEF dismiss the alleged victims.<sup>34</sup>

**March 23, 1998:** MEF workers file suit for constitutional relief against the MEF with the First Transitory Corporate Court Specializing in Public Law of Lima.<sup>35</sup> Petitioners claim Ministerial Resolution NO. 234-97-EF/10 violates their right to due process of law and request reinstatement in the workplace as a remedy.<sup>36</sup>

**July 21, 1999:** The First Transitory Corporate Court rules the petition is inadmissible because the dismissals comply with Decree Law No. 26093.<sup>37</sup>

**December 13, 1999:** On appeal, the Transitory Corporate Court Specializing in Public Law upholds the judgment and rules that the suit for constitutional relief is inadmissible.<sup>38</sup>

**September 06, 2001:** On special appeal, the Constitutional Court grants constitutional relief to Ms. Mirtha Ruiz because, at the time of the performance evaluations, she was disabled.<sup>39</sup> As to the other alleged victims, the Court finds the constitutional claims meritless, and indicates that the dismissals were in accordance with the provisions of Decree Law No. 26093.<sup>40</sup>

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32. *Id.* ¶ 48.

33. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 48.

34. *Id.* ¶ 49.

35. *Id.* ¶ 50.

36. *Id.*

37. *Id.* ¶ 51.

38. *Id.*

39. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 52.

40. *Id.*

**October 02, 2001:** Sixteen MEF employees file a claim for administrative dispute proceedings in labor affairs against the MEF with the Labor Chamber of the Superior Court of Justice.<sup>41</sup> They request that Ministerial Resolution No. 234-97-EF/10 be declared null and void because it violates the right to due process of law and request reinstatement to their workplace.<sup>42</sup>

**October 05, 2001:** The Labor Chamber rules the claim inadmissible because it was filed past the three month deadline stipulated in Article 81 of the Law on Labor Proceedings.<sup>43</sup>

### 3. Events pertaining to Petróleos Del Peru ( “Petroperú”) Victims<sup>44</sup>

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41. *Id.* ¶ 53.

42. *Id.*

43. *Id.*

44. *Trabajadores Cesados de Petroperú and Others v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 135 n.219.* Petroperú Victims: 1) Delia Arévalo Guerra, 2) Maria Elba Marchán Avila, 3) Cesar Antón Olaya, 4) Víctor Manuel Garay Espinoza, 5) Luciano Sandoval Villaseca, 6) Julio Serraque Azáldegui, 7) Javier A. Espinoza Vargas, 8) Juvenal Paz Arévalo, 9) Cruz Alberto More Bayona, 10) Leonarda Montero Silupú, 11) Helber R. Romero Rivera, 12) María Sancarranco Barrientos, 13) María Esther Medina Crisanto, 14) Neptalí Aguirre Maldonado, 15) Manuel Antonio Calle Atoche, 16) Carlos Alberto Zapata Olaya, 17) Carlos Alberto Galán Castillo, 18) Guadalupe Risco Martínez, 19) Gerber Acedo Martínez, 20) Lilia Flores Herrera, 21) Norberto Vilela Jiménez, 22) Agustín Acedo Martínez, 23) Nyrlíam García Viera de Castillo, 24) Oholger Wiston Benites Zárate, 25) Wilson Seminario Agurto, 26) Ricardo Vílchez Valverde, 27) Carlos E. Oliva Borja, 28) Maria Anita Zavala Sosa, 29) Luis Mogollón Granda, 30) Jorge Martinez Amaya, 31) Juan Benítez Gómez, 32) Antonio Esparza Huamán, 33) Maritza Amaya Coveñas, 34) Manuel Jesús Paiva Pacherras, 35) Irma Morales López, 36) Wilmer Gil Rosales, 37) Julio Chiroque Silva, 38) Rosa Castillo Marcelo, 39) Agustina Mendoza Morales, 40) José Juan Obando Reto, 41) Luis Arturo Vallejo Agurto, 42) Ana María Rojas Flores, 43) Fredesvinda Sócola Clavijo, 44) Elmer Arrazabal Gallo, 45) Raúl Clavijo Domínguez, 46) Leither Quevedo, 47) Eduardo Emiliano Chavarri Vélez, 48) Pedro Chumpitaz Sócola, 49) Luis Oswaldo Duque Morán, 50) Segundo Barrientos Olivos, 51) Pedro Talledo Carrasco, 52) Juan Echandía Ochoa, 53) Manuel Mechado Sernaque, 54) Eduardo Panta Valladares, 55) Federico Antón Antón, 56) José Torres Namuche, 57) Luis Abad Saldarriaga, 58) Gregorio Albuquerque Carrillo, 59) William Jacinto Aleman Benitez, 60) Sebastián Amaya Fiestas, 61) Jorge Cabanillas Dedios, 62) Santos Calderón Ávila, 63) Luis Carrasco Lozada, 64) Alberto Chira Guerrero, 65) Mario Duque Mogollón, 66) Jaime Garcés Sandoval, 67) Pedro Carlos Garcés Solís, 68) Gonzalo Ginocchio Guerrero, 69) Pedro Infante Antón, 70) José William Jacinto Zavala, 71) Pedro López Antón, 72) Abraham Montero Ramírez, 73) Emilio Augusto Morales Silva, 74) Miguel Hugo Morán García, 75) Gregorio Jaime Noriega González, 76) Ricardo Quevedo Herrera, 77) Edwin Quevedo Saavedra, 78) José Félix Saavedra Medina, 79) Catalino Sandoval Ancajima, 80) Dionisio Sandoval Flores, 81) Joaquín Santillán Zavala, 82) Luis Tavera Ramírez, 83) Jorge Carlos Tinedo Puell, 84) Oscar Valiente Paico, and 85) Felito Vitonera Saldarriaga.

**December 29, 1995:** Supreme Decree No. 072-95-PCM authorizes Petroperú to implement a downsizing program approved by Decree Law No. 26120 and No. 674.<sup>45</sup>

**January 11, 1996:** Petroperú employees learn of the voluntary retirement program that will be implemented to achieve company downsizing.<sup>46</sup>

**January 29, 1996:** In compliance with Decree Law No. 26120, Petroperú submits a downsizing request with the Administrative Labor Authority and lists the names of the employees who refused voluntary retirement.<sup>47</sup>

**January 30, 1996:** The Consolidated Oil Employees Union of Peru (Sindicato Único de Trabajadores de Petróleos del Perú; “Sutpedarg”), of which eighty-four of the alleged victims are members, files a complaint with the head of the Regional Labor Office of Talara, arguing the downsizing process is unreasonable.<sup>48</sup> The petitioners allege they began receiving notarized letters throughout the month of January that stated they could either participate in the retirement program or face dismissal.<sup>49</sup>

**February 6, 1996:** The Administrative Labor Authority fails to answer the downsizing request within the five-day time limit.<sup>50</sup> As a result, the alleged victims employment is terminated.<sup>51</sup> Sutpedarg files an appeal with the Labor Authority arguing the dismissal violates due process of law and fails to give employees an opportunity to be heard.<sup>52</sup> The petitioners claim they did not receive a response.<sup>53</sup>

**February 9, 1996:** Sutpedarg seeks constitutional relief arguing the State violated the alleged victims right to work.<sup>54</sup>

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45. Trabajadores Cesados de Petroperú and Others v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 94.

46. *Id.*

47. *Id.* ¶ 97.

48. Trabajadores Cesados de Petroperú and Others v. Peru, Report on Merits, ¶ 55.

49. *Id.* ¶ 56.

50. Trabajadores Cesados de Petroperú and Others v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 97.

51. *Id.*

52. *Id.* ¶ 98.

53. Trabajadores Cesados de Petroperú and Others v. Peru, Report on Merits, ¶ 57.

54. *Id.* ¶ 58.

**March 18, 1996:** The Specialized Civil Court of Talara holds the petition is inadmissible.<sup>55</sup>

**July 3, 1996:** On appeal, the Second Civil Chamber of the Superior Court of Piura upholds the judgment.<sup>56</sup>

4. Events pertaining to the Ministry of Education (Ministerio de Educación; "MINEDU") Victims<sup>57</sup>

**September 13, 1996:** In accordance with Decree Law No. 26093 MINEDU implements Ministerial Resolution No. 218-96-ED.<sup>58</sup> It requires MINEDU employees undergo semi-annual performance evaluations, which can result in dismissal, if failed.<sup>59</sup>

**October 10, 1996:** MINEDU posts evaluation scores on the walls of the workplace indicating who did or did not pass.<sup>60</sup> Thirty-nine of the alleged victims did not pass the evaluation.<sup>61</sup>

**October 15, 1996:** The alleged victims send a formal letter to the Education Minister, requesting a detailed and official breakdown of the evaluation scores.<sup>62</sup>

55. *Id.*

56. *Id.*

57. *Trabajadores Cesados de Petroperú and Others v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment*, ¶ 136 n.225-229. 001 MINEDU Victims:1) Nila Acuña Díaz, 2) Ernesto Arauco Pérez, 3) Luis Armando Arditto Paganini, 4) Margarita Teodolinda Ávalos Navarro, 5) Blanca Flor Ayala Cuya de Pérez, 6) Aída Rosana Centeno Manrique, 7) Julio César Chávez López, 8) Nilson Severo Chirinos Chirinos, 9) Alejandro Rogelio Collantes Wash, 10) Alcides Corcino Tacuri Vega, 11) Manuel Eugenio Paiba Cossios, 12) Manuel Eduardo Coz Orellana, 13) Gloria Lily Castillo Fernández Baca, 14) Juana Adriana Del Carpio Lagoons, 15) Leoncio Gamarra Cholán, 16) Herminio García Gómez, 17) Rosa Belinda Gayoso Tapia, 18) Eloy Abel Huapaya Quispe, 19) Aída Nelly Loroña Córdova, 20) Elva Rosario Mauricio Alvarado, 21) Luz Caridad Mena Sánchez, 22) Cristina Felicitas Molina Córdova, 23) Víctor Montalván Domínguez, 24) Jorge Emiliano Palomino Huamaní, 25) Nativity Guadía Palomino Vargas, 26) Gregorio Paredes Chipana, 27) Sonia Noemí Peralta Roca, 28) Flora María Porrás Aquino, 29) Judith Reyes Campana, 30) Nelson Enrique Rosas Martel, 31) Villy Cancino Quezada, 32) Frida Ramírez Caja, 33) Norma Yolanda Soto Caballero, 34) Carlos Alberto Sotomayor Blas, 35) Marina Tarazona Tinoco, 36) Ermith Trigozo Lozano, 37) Fernando Eulogio Valdivia Altamirano, 38) Frida Hydrangea Villanueva Cauti, and 39) Eduardo Guillermo Zavala Villar.

58. *Trabajadores Cesados de Petroperú and Others v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment*, ¶ 99.

59. *Id.* ¶ 100.

60. *Trabajadores Cesados de Petroperú and Others v. Peru, Report on Merits*, ¶ 61.

61. *Id.*

62. *Id.*



**October 19, 1996:** The Resolution and list of MINEDU employees, including the thirty-nine alleged victims, who failed the performance evaluation is published in the Official Gazette “El Peruano”.<sup>63</sup> The publication states that all employees who did not pass the evaluation will be dismissed on November 1, 1996.<sup>64</sup>

**February 14, 1997:** The alleged victims file an administrative appeal against the resolution.<sup>65</sup> MINEDU upholds the dismissals and state the evaluation process was implemented in accordance with domestic law.<sup>66</sup>

**May 13, 1997:** The alleged victims file a petition with the Specialized Public Law Judge in Lima seeking constitutional relief.<sup>67</sup> The petition requests the State repeal the laws which led to their dismissal, reinstate their jobs, and pay all benefits that have ceased.<sup>68</sup>

**September 30, 1997:** The First Transitory Corporate Court Specializing in Public Law of Lima rules that the suit is meritless.<sup>69</sup> The court argues: 1) the evaluation follows the rule set forth in Decree Law No. 26093; 2) the alleged victims subjected themselves to the evaluation without protest; and 3) this is not the stage in the proceedings to consider the specific characteristics of the performance evaluation tests.<sup>70</sup>

**October 30, 1997:** The alleged victims appeal the September 30, 1997 ruling.<sup>71</sup>

**March 19, 1998:** The Transitory Corporate Court Specializing in Public Law upholds the judgment.<sup>72</sup>

**April 22, 1998:** The alleged victims file a special appeal with the Constitutional Court.<sup>73</sup>

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63. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 103.

64. *Id.*

65. *Id.* ¶ 104.

66. *Id.*

67. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 63.

68. *Id.*

69. *Id.* ¶ 64.

70. *Id.*

71. *Id.* ¶ 65.

72. *Id.*

**November 19, 1999:** The Constitutional Court upholds the ruling of the Transitory Corporate Court. Specializing in Public Law.<sup>74</sup> The Constitutional Court bases its decision on the fact that the alleged victims complied with the law and only had an issue with the law when they did not pass their evaluation.<sup>75</sup>

*B. Other Relevant Facts*

**January 12, 2001:** Law No. 27396 repeals Executive Decree Law No. 003-96-PCM.<sup>76</sup>

**2001:** Ministerial Resolution No. 419-2001-ED adopts a special committee to review the collective dismissals from the Ministry of Education, pursuant to Law No. 27487.<sup>77</sup> The Committee determines that the instructions issued and procedures conducted in 1993 and 1996 are flawed and resulted in irregular dismissals of the claimants.<sup>78</sup>

**October 15, 2002:** Vice Minister of Transport and Communications admits that the twenty-five individuals working for ENAPU were irregularly dismissed.<sup>79</sup>

**December 02, 2002:** The current director of ENAPU requests reinstatement of the twenty-eight former workers within thirty days.<sup>80</sup>

**March 27, 2003:** The Official Gazette, "El Peruano", publishes a resolution for victims, stating they have five business days from March 21, 2003 to choose one of the benefits provided in Article 3 of Law No. 27803.<sup>81</sup> Twelve of the victims are re-hired by ENAPU under new employment contracts, three of the alleged victims retire on pension, one alleged victim resides abroad, and three of the alleged victims died without benefits.<sup>82</sup>

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73. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 66.

74. *Id.*

75. *Id.*

76. *Id.* ¶ 75.

77. *Id.* ¶ 88.

78. *Id.*

79. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 76.

80. *Id.* ¶ 77.

81. *Id.* ¶ 78.

82. *Id.* ¶ 79.

**October 2, 2004:** Three of Petroperú's victims select early retirement, one selects reinstatement; twenty-nine do not accept any benefits.<sup>83</sup> Petroperú neglects to list and include fifty-nine other alleged victims.<sup>84</sup>

**July 2011:** Ministry of Education signs new employment contracts with twenty-five of the alleged victims and gives six other alleged victims compensation, but eight victims do not receive any benefits.<sup>85</sup>

**2013:** Two employees receive new employment contracts with MEF, but other alleged victims have either passed away or did not meet the formal requirements.<sup>86</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

#### 1. Events pertaining to ENAPU Victims

**November 2, 1998:** The National Workers Federation of ENAPU submit petition 12.666 before the Inter-American Commission on behalf of twenty-eight dismissed workers alleging unconstitutional dismissal from employment.<sup>87</sup> The petitioners claim the victims pursued all domestic judicial remedies and were left unprotected by the State.<sup>88</sup> Furthermore, the petitioners argue that although the State's application of Law No. 27803 acknowledged responsibility of the alleged acts, the remedies ordered within the law do not meet the Conventions reparation criteria.<sup>89</sup>

**June 16, 2005:** The State argues they have taken administrative and legislative steps to provide reparation to the ENAPU former employees.<sup>90</sup> Specifically, the State claims the petitioners failed to

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83. *Id.* ¶ 86.

84. *Id.* ¶ 87.

85. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 91.

86. *Id.* ¶¶ 81-84.

87. *Trabajadores Cesados de ENAPU v. Peru*, Report on Admissibility, Report No. 55/08, Inter-Am. Comm'n H.R., Case No. 532-98, ¶ 1 (July 24, 2008).

88. *Id.* ¶ 2.

89. *Id.*

90. *Id.* ¶ 23.

pursue legal recourse established in Law No. 27803 within the domestic legislation.<sup>91</sup> As a result, those that have not pursued such remedies have failed to exhaust domestic remedies, thus the petition is inadmissible.<sup>92</sup>

**July 24, 2008:** The Commission issues Admissibility Report No. 55/08, which declares the petition admissible.<sup>93</sup> The Commission finds the petitioners clearly alleged a violation of due process rights within the domestic judicial system thereby exhausting the effective and adequate remedies available.<sup>94</sup>

The Commission finds it is competent to examine the complaint which alleges the State violated rights provided in Articles 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), all in relation to Articles 1(1) (Obligation of Non-Discrimination), and (2) (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of the twenty-eight victims.<sup>95</sup>

## 2. Events pertaining to MEF Victims

**March 8, 2002:** Ms. Gloria Nila Amabelia Moreno Cueva and fourteen other former employees of the MEF submit petition 12.665 to the Commission alleging unlawful dismissal from employment by the State.<sup>96</sup> The petitioners claim the victims pursued all domestic judicial remedies and were left unprotected by the State.<sup>97</sup> Furthermore, the petitioners argue that although the State's enactment of Law No. 27803 acknowledged responsibility of the alleged acts, the remedies ordered within the law do not meet the Conventions reparation criteria.<sup>98</sup>

**October 4, 2005:** The State argues that in compliance with Law No. 27803 agencies continue to review the cases of former dismissed employees and thus, domestic remedies have not been exhausted.<sup>99</sup>

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91. *Id.* ¶ 30.

92. *Id.* ¶ 25.

93. *Trabajadores Cesados de ENAPU v. Peru*, Admissibility Report, ¶ 4.

94. *Id.* ¶¶ 32-33.

95. *Id.* ¶ 49.

96. *Trabajadores Cesados de MEF v. Peru*, Admissibility Report, Report No. 54/08, Inter-Am. Comm'n H.R., Case No. 160-02, ¶ 1 (July 24, 2008).

97. *Id.* ¶ 2.

98. *Id.*

99. *Id.* ¶ 35.

**July 24, 2008:** The Commission issues Admissibility Report No. 54/08, which declares the petition admissible following the same line of reasoning as the ENAPU report above.<sup>100</sup>

The Commission finds it is competent to examine the complaint which alleges the State violated rights provided in Articles 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), all in relation to Articles 1(1) (Obligation of Non-Discrimination), and (2) (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of the alleged victims.<sup>101</sup>

### 3. Events pertaining to Petroperú Victims

**February 19, 1996:** The Consolidated Petroleum Workers Union of Peru for the Northwest-Talara Area (Sindicato Único de Trabajadores de Petróleos del Perú Zona Noroeste-Talara) submit petition 11.602 to the Commission on behalf of eighty-five dismissed workers alleging unconstitutional dismissal from employment.<sup>102</sup> Furthermore, the petitioners argue that although the State's enactment of Law No. 27803 acknowledged responsibility of the alleged acts, the remedies ordered within the law do not meet the Conventions reparation criteria.<sup>103</sup>

**October 31, 1996:** The State alleges the petition is inadmissible because all due process guarantees were provided within the domestic judicial system.<sup>104</sup> Additionally, the State claims Law No. 27803 provides a domestic mechanism which directly resolves the petitions complaint.<sup>105</sup>

**July 24, 2008:** The Commission issues Admissibility Report No. 56/08, which declares the petition admissible following the same line of reasoning as both the ENAPU and MEF reports above.<sup>106</sup>

The Commission finds it is competent to examine the complaint which alleges the State violated rights provided in Articles 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), all in relation to Articles 1(1) (Obligation of Non-Discrimination), and (2) (Obligation to

100. *Id.* ¶ 4.

101. *Id.* ¶ 61 .

102. *Trabajadores Cesados de Petroperú v. Peru*, Admissibility Report, Report No. 56/08, Inter-Am. Comm'n H.R., CaseNo. 11.602, ¶ 1 (July 24, 2008).

103. *Id.* ¶ 2.

104. *Id.* ¶ 3.

105. *Id.*

106. *Id.* ¶ 4.

Give Domestic Legal Effect to Rights) of the Convention, to the detriment of the alleged victims.<sup>107</sup>

#### 4. Events pertaining to MINEDU Victims

**March 23, 2015:** The Commission analyzes the admissibility of petition 12.385 with respect to the alleged thirty-nine MINEDU victims.<sup>108</sup> The petitioners argue that the alleged victims attempted domestic remedies but at every judicial stage were told the suit was without merit.<sup>109</sup> The State claims the dismissals were meritless because they were in line with the available laws in force during that period.<sup>110</sup> Furthermore, the State argues Law No. 27803 established various reparative mechanisms available to the alleged victims, thus domestic remedies have not been exhausted.<sup>111</sup>

The Commission finds case admissible because the petitioners exhausted all domestic remedies made available by the State.<sup>112</sup>

The Commission joins the four cases because they all relate to the issues of collective dismissals in Peru during the 1990s.<sup>113</sup> The Commission issues the Admissibility and Merits Report No. 14/15 which finds the State failed to provide the petitioners with adequate judicial protection due to an ineffectiveness of the courts.<sup>114</sup> Furthermore, victims of collective dismissals during the 1990s were forced to bring suit before a partial and ineffective judicial system due to the fact that the Constitutional Court consisted of only four justices at that time.<sup>115</sup>

As a result, the Commission finds the State is responsible for violating the rights provided in Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and 25(1) (Right to Recourse Before a Competent Court) all in relation to Articles 1(1) (Obligation of Non-Discrimination), and (2) (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of the alleged 163 victims.<sup>116</sup>

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107. *Id.* ¶ 75.

108. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 23.

109. *Id.* ¶ 13.

110. *Id.*

111. *Id.* ¶ 22.

112. *Id.* ¶ 27.

113. *Id.* ¶ 33.

114. *Trabajadores Cesados de Petroperú and Others v. Peru*, Report on Merits, ¶ 102.

115. *Id.*

116. *Id.* ¶ 4.

In light of the foregoing violations, the Commission recommends the State develop a fast track mechanism which: (1) identifies individuals who are not currently listed as victims but were dismissed during this period of time to determine if their dismissals were arbitrary and what reparations are appropriate as redress for any harm suffered.<sup>117</sup> (2) ensures individuals who are named as victims and opted for a benefit provided by Law No. 27803, receive additional reparations based on a case-by-case assessment of damages;<sup>118</sup> and (3) guarantees individuals who are named as victims and did not opt for a benefit provided by Law No. 27803 receive suitable reparations which include the minimum elements of redress for arbitrary dismissal.<sup>119</sup>

### *B. Before the Court*

**August 13, 2015:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>120</sup>

#### 1. Violations Alleged by Commission<sup>121</sup>

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

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

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination)

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

#### 2. Violations Alleged by Representatives of the Victims<sup>122</sup>

Same Violations Alleged by Commission, plus:

Article 24 (Right to Equal Protection)

*all in relation to:*

Article 8(1) (Trade Union Rights) of the Protocol of San Salvador

117. *Id.* “Recommends” ¶ 1.

118. *Id.* “Recommends” ¶ 2.

119. *Id.* “Recommends” ¶ 3.

120. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 3.

121. *Id.* ¶ 2.

122. *Id.* ¶ 7. Ms. Carolina Loayza Tamayo, Ms. Roxana Palomino Mayta, Mr. Gregorio Paredes and Mr. Manuel Paiba served as representatives of victims.

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

*all in relation to:*

Article 9 (Freedom from Ex Post Facto Laws)

Article 24 (Right to Equal Protection)

Article 1(1) (Obligation of Non-Discrimination) of the American Convention

Article 26 (Right to Progressive Development)

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 11 (Right to Privacy)

Article 21 (Right to Property)

***Between August 2015 and October 2016:*** The Court receives five separate amicus curiae briefs presented by: (1) Ms. Nilda Garay Montañez; (2) Mr. Oscar Luján Fappiano; (3) the Amazon Human Right Clinic (la Clínica de Derechos Humanos de la Amazonía); (4) Baicus Consultoría; and (5) two students from the National University of San Marcos (Universidad de Nacional Mayor de San Marcos).<sup>123</sup>

***November 14, 2016:*** The State raised two preliminary objections which argue: (1) domestic remedies have not been exhausted; (2) lack of subject matter jurisdiction.<sup>124</sup>

### III. MERITS

#### *A. Composition of the Court*

Roberto F. Caldas, President

Eduardo Ferrer Mac-Gregor Poisot, Vice-President

Eduardo Vio Grossi, Judge

Humberto Antonio Sierra Porto, Judge

Elizabeth Odio Benito, Judge

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123. *Id.* ¶ 14.

124. *Id.* ¶ 22.



Eugenio Raúl Zaffaroni, Judge

L. Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary

Emilia Segares Rodríguez, Deputy Secretary

*B. Decision on the Merits*

**November 23, 2017:** The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.<sup>125</sup>

The Court decided unanimously:

To dismiss the State’s preliminary objection regarding the lack of the Court’s jurisdiction over the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, “Protocol of San Salvador” inadmissible,<sup>126</sup> because:

*The Court held it was unnecessary to determine whether it could exercise jurisdiction over the said treaty because the petitioners claims pertain to the right to work enshrined in Article 26 (Right to Progressive Development). Consequently, the Court dismissed the preliminary objection of lack of jurisdiction of the Court.*<sup>127</sup>

The Court decided by six votes in favor and one against:

To dismiss the State’s preliminary objection regarding the lack of exhaustion of internal resources by Peroperú workers inadmissible, because:<sup>128</sup>

*Although the Court has held that a state may present evidence to show domestic remedies were suitable and effective, this evidence must be presented during the admissibility stage.*<sup>129</sup> Furthermore, the State’s

125. *Id.* ¶ 252.

126. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, “Resolution Points”, ¶ 1.

127. *Id.*

128. *Id.* “Resolution Points” ¶ 3.

129. *Id.* ¶ 29.

*preliminary objection arguments presented to the Commission during the admissibility stage must coincide with the State's preliminary objection arguments before the Court.*<sup>130</sup> *Here, the Court noted direct evidence that showed the State's preliminary objection arguments before the Commission and the Court were contradictory.*<sup>131</sup> *Additionally, the existence of domestic remedies is alone not enough to require exhaustion.*<sup>132</sup> *Rather, the state must also prove the remedies available were effective and adequate.*<sup>133</sup> *Here, the Court held that the State's argument failed to meet the burden of proof to show the domestic remedies were effective.*<sup>134</sup> *Particularly, at the time of the alleged victims domestic appeals the Constitutional Court was under scrutiny and multiple magistrates were dismissed.*<sup>135</sup> *Thus, the Court declared the preliminary objection regarding the alleged victims failure to exhaust domestic remedies inadmissible.*<sup>136</sup>

The Court found unanimously that the State had violated:

Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of the twenty-five ENAPU employees, the thirty-nine MINEDU employees, and the fifteen MEF employees,<sup>137</sup> because:

*The Court found the Constitutional Court lacked independence and impartiality because only four judges were appointed when the ENAPU and MINEDU workers filed the Amparo actions.*<sup>138</sup> *Between May 1997 and November 2000, the Peruvian Congress interfered with regular judicial operations by removing three of the seven judges.*<sup>139</sup> *The Court held that all persons have the right to be heard within reasonable time by a competent and independent tribunal in order to guarantee proper*

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130. *Id.* ¶ 31.

131. *Id.* ¶ 29.

132. *Trabajadores Cesados de Petroperú and Others v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment*, ¶ 32.

133. *Id.*

134. *Id.* ¶ 41.

135. *Id.* ¶ 42.

136. *Id.* ¶ 44.

137. *Id.* "Resolution Points" ¶ 4. ENAPU Victims: *supra* note 12; MINEDU Victims: *supra* note 57; MEF Victims: *supra* note 26

138. *Trabajadores Cesados de Petroperú and Others v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment*, ¶ 159.

139. *Id.*

*procedural protections, such as presenting arguments and providing evidence.*<sup>140</sup> *The Court emphasized a neutral, objective judge, who must not be subject to influence.*<sup>141</sup> *The Constitutional Court's neutrality was compromised when the Peruvian Congress dismantled the Court, thereby making it unable to properly exercise jurisdiction on issues of constitutionality or examining the adequacy of the State's conduct.*<sup>142</sup>

*The Court held that the Constitutional Court did not uphold their duty to adequately review the claimed violations by the alleged victims.*<sup>143</sup> *The Constitutional Court did not conduct an independent examination of the alleged violations regarding the claim of the right to work, nor assessed the inapplicability of Ministerial Resolution No. 234-97- EF/10.*<sup>144</sup> *The Court held that the Constitutional Court should have conducted an adequate judicial review of the allegations and arguments about the decision of the MEF regarding the terminations, rather than decline to hear from them and refuse to determine facts.*<sup>145</sup> *The Court held the Constitutional Court's failure to analyze whether constitutional and conventional rights were violated revealed a disassociation between the substantial and procedural law, thus preventing a resolution to the controversy.*<sup>146</sup>

The Court found unanimously that the State had not violated:

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention,<sup>147</sup> because:

*The Court has established that state's have a duty to adopt and modify legislation to ensure citizen's rights are protected.*<sup>148</sup> *These modifications may include abolishing domestic laws at odds with the Convention.*<sup>149</sup> *Here, the Court held that the representatives failed to demonstrate the existence of a domestic law which clearly contradicted*

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140. *Id.* ¶ 153.

141. *Id.* ¶ 160.

142. *Id.* ¶ 159.

143. *Id.* ¶ 178.

144. *Trabajadores Cesados de Petroperú and Others v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 177.*

145. *Id.* ¶ 178.

146. *Id.*

147. *Id.* ¶ 252.

148. *Id.* ¶ 186.

149. *Id.*

the Convention.<sup>150</sup> Moreover, the Court does not have the authority to review domestic laws in the abstract, but rather is required to resolve cases where the facts allege the State acted, or failed to act, against specific persons.<sup>151</sup>

The Court found by six votes in favor and one against that the State had violated:

Articles 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of the eighty-five Petroperú employees,<sup>152</sup> because:

*A court is required to provide a basis for its decision in order to dispel any claims of arbitrariness; however, the Second Civil Chamber of the Superior Court of Piura failed to do so as it did not evaluate the facts, motives, or norms.<sup>153</sup> The Court held that motivation is one of the due process guarantees and found that the decision of the Second Civil Chamber of the Superior Court of Piura lacked the required due diligence.<sup>154</sup> The ruling must reveal facts, motives and other information which provides the basis of the decision.<sup>155</sup> This requirement strengthens the credibility of judicial decisions because it guarantees citizens the right to be judged for the reasons that the law grants.<sup>156</sup> In order to prove the decision was not arbitrary, the domestic court is required to show that allegations were taken into account and evidence was thoroughly analyzed.<sup>157</sup> The Second Civil Chamber of the Superior Court of Piura's decision only referred to the grounds of the judgment under appeal and the opinion of the Prosecutor; it notably lacked any further analysis of the appellants' arguments regarding constitutional rights, and the potential impact such violations could have on the workers.<sup>158</sup> Thus, the Court held that the State violated the*

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150. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 187.

151. *Id.*

152. *Id.* "Resolution Points" ¶ 6. *Petroperú Victims: supra* note 44.

153. *Id.* ¶ 171.

154. *Id.* ¶ 168-170.

155. *Id.*

156. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 168.

157. *Id.*

158. *Id.* ¶ 170.

*Convention's judicial guarantees to the detriment of the alleged Petroperú employees.*

The Court found by five votes in favor and two against that the State had violated:

Article 26 (Right to Progressive Development), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of eighty-five Petroperú employees, the twenty-five ENAPU employees, the thirty-nine MINEDU employees, and the fifteen MEF employees,<sup>159</sup> because:

*The State's obligations to job security in the private sphere is determined by the following duties: a) to take appropriate measures for proper supervision and regulation of the right to job security; b) to protect workers against unjustified terminations; and c) in case of unjustified terminations, to remedy the situation (either through reinstatement, compensation, and/or other benefits).<sup>160</sup> Therefore, d) the State must have an effective complaint for unlawful terminations to guarantee access to justice.<sup>161</sup>*

*Precedent has established that work is a right and social duty, and the State must protect such a right.<sup>162</sup> Convention 158 of the International Labor Organization, on the termination of the employment relationship, provides that the right to work includes the need to provide grounds for valid dismissal and legal remedies for improper dismissals.<sup>163</sup> Here, the victims were unable to access effective judicial protection in the private sphere of labor relations.<sup>164</sup> Thus, their right to work was violated.<sup>165</sup>*

### *C. Dissenting and Concurring Opinions*

#### *1. Dissenting Opinion of Judge Eduardo Vio Grossi*

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159. *Id.* "Resolution Points" ¶ 7. Petroperú Victims: *supra* note 44; ENAPU Victims: *supra* note 12; MINEDU Victims: *supra* note 57; MEF Victims: *supra* note 26.

160. *Id.* ¶ 192.

161. *Id.*

162. *Trabajadores Cesados de Petroperú and Others v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment*, ¶ 192.

163. *Id.*

164. *Id.* ¶ 193.

165. *Id.*

In a separate opinion, Judge Vio Grossi disagreed with the Court's decision regarding the use of Article 26 (Right to Progressive Development).<sup>166</sup> The Court held that the only rights subject to the protection of the system provided for in the Convention are those recognized therein, and Article 26 does not specifically include the right to work.<sup>167</sup> Judge Vio Grossi held that although Article 26 protects economic, social, educational, scientific, and cultural rights, its scope should be limited to the right to organize and join unions and the right to education.<sup>168</sup>

## 2. Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto

In a separate opinion, Judge Sierra Porto indicated a lack of belief that the Executive Branch interfered and compromised the Constitutional Court the time Petroperú filed their petition.<sup>169</sup> Additionally, Judge Sierra Porto disagreed with the interpretation that the specific labor rights protected by Article 26 (Right to Progressive Development) are those derived from economic, social and education, and cultural norms.<sup>170</sup> He believed that interpretation of Article 26 is too theoretical and can be used to justify any decision, regardless of its logical or normative validity.<sup>171</sup>

## 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

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166. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 358, ¶ 4 (Nov. 23, 2017).

167. *Id.*

168. *Id.*

169. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 358, ¶ 4-5 (Nov. 23, 2017).

170. *Id.* ¶ 11.

171. *Id.* ¶ 12.

The Court indicated that the Judgment itself should be understood as a form of reparation.<sup>172</sup>

## 2. Publication

The Court ordered the State publish a summary of this Judgment within six months: (1) in an official journal; (2) in a widely circulated national newspaper; and (3) on the Ministry of Justice website for one year.<sup>173</sup> Moreover, the summary must remain on an official State Website for at least one year.<sup>174</sup>

### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded \$5,000 for each of the 164 victims for pension contributions that were not paid out following their employment dismissals.<sup>175</sup> The Court noted that some victims have already received some relief from the State through domestic law, and thus the amount those victims previously received should be subtracted from the \$5,000 awarded here.<sup>176</sup> Moreover, the Court awarded each victim \$43,792 for loss of profits due to early termination.<sup>177</sup> Additionally, the Court noted some victims were previously awarded monetary benefits in accordance with Decree Law 27803.<sup>178</sup> As a result the amount previously received should be subtracted from the \$43,792 awarded in this judgment.<sup>179</sup>

#### 2. Non-Pecuniary Damages

The Court awarded each of the 164 victims \$5,000 as compensation for non-pecuniary damages.<sup>180</sup>

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172. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 227.

173. *Id.* ¶ 211.

174. *Id.*

175. *Id.* ¶ 218.

176. *Id.*

177. *Id.* ¶ 222.

178. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 222.

179. *Id.*

180. *Id.* ¶ 228.

### 3. Costs and Expenses

The Court ordered the State to reimburse the Legal Assistance Fund of Victims \$3,762.54 for expenses incurred during trial and in preparation for trial.<sup>181</sup> Furthermore, the Court ordered a total amount of \$35,000 to representative Ms. Carolina Loayza Tamayo for the costs and expenses of the present litigation.<sup>182</sup> Additionally, the Court ordered the State to pay representatives Mr. Gregorio Paredes and Mr. Manuel Paiba \$30,000, which they must evenly split for their costs and expenses in this case.<sup>183</sup> The Court ordered the State to pay Mr. Roxana Palomino \$5,000 for costs and expenses in the litigation of the present case.<sup>184</sup>

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

\$8,895,650.54

### *C. Deadlines*

Within six months from the notification of this Judgment, the State must publish the summary of the Judgment according to the terms expressed in the Judgment.<sup>185</sup> The State must pay non-pecuniary pecuniary damages, cost and expenses, and reimbursements outlined in this judgment within 90 days.<sup>186</sup> Within one year from the notification of this Judgment, the State must render a report with the Court stating what measures it took to comply with the decision.<sup>187</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

**March 12, 2018:** Representative Loayza submitted an interpretation request of the Judgment regarding the accuracy of representation of the victims, the scope, and measure of the State's payment of the reparations, the legitimacy of the mechanisms of Law 27803 to actually compensate the victims, and financial compensation for lost profits.<sup>188</sup>

181. *Id.* ¶ 238.

182. *Id.* ¶ 245.

183. *Id.*

184. *Trabajadores Cesados de Petroperú and Others v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, ¶ 245.

185. *Id.* "Resolution Points", ¶ 8.

186. *Id.* "Resolution Points", ¶ 9.

187. *Id.* "Resolution Points", ¶ 10.

188. *Trabajadores Cesados de Petroperu and Others v. Peru*, Interpretation of the Judgement on Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 358, ¶ 2 (Aug. 22, 2018).



**March 13, 2018:** A victim in this case, Mr. Abraham Montero Ramírez, submitted a request for interpretation to reconsider his status as a representative and order \$10,000 compensation for his expenses and paperwork.<sup>189</sup>

**March 20, 2018:** The State submitted a request for interpretation regarding compensation for non-pecuniary damage.<sup>190</sup> The State claimed the payment of monetary reparations should encompass both pecuniary damage and non-pecuniary damage.<sup>191</sup>

*A. Composition of the Court*<sup>192</sup>

Eduardo Ferrer Mac-Gregor Poisot, President

Humberto Antonio Sierra Porto, Judge

Elizabeth Odio Benito, Judge

Eugenio Raúl Zaffaroni, Judge

L. Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary

Emilia Segares Rodríguez, Deputy Secretary

*B. Merits*

**August 22, 2018:** The Court declared the request for interpretation of judgment by Representative Loayza, Mr. Montero Ramírez, and the State admissible because they were filed within the ninety-day deadline, as required by Article 67 of the American Convention.<sup>193</sup>

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189. *Id.* ¶ 3.

190. *Id.* ¶ 4.

191. *Id.*

192. For reasons of *force majeure*, the Vice President of the Court, Judge Eduardo Vio Grossi, did not participate in the Judgment. Additionally, Mr. Roberto F. Caldas was not present in the Judgment because he submitted his resignation to the Inter-American Court on May 14, 2018, which was accepted with immediate effects.

193. *Id.* ¶ 9.

The representatives requested the Court order the State to specify when it will apply the reparations set forth in domestic Law No. 27803 to the victims.<sup>194</sup> The Court explained that the State's implementation of the reparation mechanisms required by domestic Law No. 27803 was not within the scope of interpretation required by the Court.<sup>195</sup> The Court held that the Convention is a means of protection and not intended to replace domestic jurisdiction.<sup>196</sup> Thus, the request to interpret the State's internal reparation mechanism was beyond the framework established in Article 67 of the Convention.<sup>197</sup>

The State requested the Court clarify if they payments provided by domestic Law No. 27808 were suitable to comply with the judgment's reparation requests.<sup>198</sup> The representatives argued the Court had taken the payments previously provided to dismissed employees under domestic Law No. 27808 in calculating damages.<sup>199</sup> The Court agreed with the representatives and held that no amount previously awarded can be deducted from the damages granted in the judgment.<sup>200</sup>

The Court held unanimously to dismiss representative Loayza's requests for rectification of an inaccuracy of the Judgment because they were not within the scope of an interpretation.<sup>201</sup> According to Article 76 of the Rules of the Court, the deadline to submit rectifications is thirty days after the notification of the sentence.<sup>202</sup> Here, the representative's request surpassed the required deadline.<sup>203</sup> Additionally Article 31.3 of the Rules of the Court states a request for a modification of the sentence cannot be done through a request for interpretation.<sup>204</sup> Thus, the Court dismissed the requests.<sup>205</sup>

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194. *Trabajadores Cesados de Petroperu and Others v. Peru, Interpretation on the Judgement, Merits, Reparations, and Costs*, ¶ 14.

195. *Id.* ¶ 18.

196. *Id.* ¶ 19.

197. *Id.* ¶ 22.

198. *Id.* ¶ 30.

199. *Id.* ¶ 31.

200. *Trabajadores Cesados de Petroperu and Others v. Peru, Interpretation on the Judgement, Merits, Reparations, and Costs*, ¶ 36.

201. *Id.* ¶ 42.

202. *Id.*

203. *Id.* ¶ 42.

204. *Id.*

205. *Id.*

Furthermore, the Court held unanimously to dismiss Mr. Montero's requests to set additional deadlines on reparations and provide further expenses because they clearly are requesting a modification of the judgment.<sup>206</sup> Article 31.3 of the Rules of the Court clearly establishes that an interpretation of the judgment is limited to detailed explanations, and does not allow for adjustments in damages.<sup>207</sup>

## VI. COMPLIANCE AND FOLLOW-UP

**January 19, 2018:** The State published a summary of the Judgment in the Official Gazette.<sup>208</sup>

**February 28, 2018:** The State published a summary of the Judgment in the national newspaper "La República."<sup>209</sup>

**March 23, 2018:** The State published a summary of the Judgment on the official website of the Ministry of Justice.<sup>210</sup>

**September 26, 2018:** The Court held that the State fully complied with the reparation measure to publish the judgment.<sup>211</sup>

The Court kept open the proceeding for monitoring compliance with regard to the payment of non-pecuniary and pecuniary damages, as well as the reimbursement of costs and expenses.<sup>212</sup>

The Court reminded the State that it must submit the first report on compliance with the measures by December 20, 2018.<sup>213</sup>

## VII. LIST OF DOCUMENTS

### A. Inter-American Court

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206. *Trabajadores Cesados de Petroperu and Others v. Peru*, Interpretation on the Judgement, Merits, Reparations, and Costs, ¶ 43.

207. *Id.* ¶ 43.

208. *Trabajadores Cesados de Petroperú and Others v. Peru*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering That," ¶ 5 (Sept. 26, 2018).

209. *Id.*

210. *Id.* "Considering That," ¶ 7.

211. *Id.* "Resolves" ¶ 1.

212. *Id.* "Resolves" ¶ 2.

213. *Id.* "Resolves" ¶ 3.

## 1. Preliminary Objections

[None]

## 2. Decisions on Merits, Reparations and Costs

[Trabajadores Cesados de Petroperú and Others v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 358 \(Nov. 23, 2017\)](#). (Available only in Spanish).

[Trabajadores Cesados de Petroperú and Others v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Vio Grossi, Inter-Am. Ct. H.R. \(ser. C\) No. 358 \(Nov. 23, 2017\)](#). (Available only in Spanish).

[Trabajadores Cesados de Petroperú and Others v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Sierra Porto, Inter-Am. Ct. H.R. \(ser. C\) No. 358 \(Nov. 23, 2017\)](#). (Available only in Spanish).

## 3. Provisional Measures

[Trabajadores Cesados de Petroperú and Others, Reimbursement of the Victims Legal Assistance Fund, Order of the Court, Inter-Am. Ct. H.R. \(June 22, 2016\)](#). (Available only in Spanish).

## 4. Compliance Monitoring

[Trabajadores Cesados de Petroperú and Others v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sept. 26, 2018\)](#). (Available only in Spanish).

## 5. Review and Interpretation of Judgment

[Trabajadores Cesados de Petroperú and Others v. Peru, Interpretation of the Judgement on Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 358 \(Aug. 22, 2018\)](#). (Available only in Spanish).

*B. Inter-American Commission*

## 1. Petition to the Commission

[None]

2. Report on Admissibility

[Trabajadores Cesados de Petroperú and Others v. Peru, Admissibility Report, Report No. 14/15, Inter-Am. Comm'n H.R., Pet. No. 160/02 \(Mar. 23, 2015\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Trabajadores Cesados de Petroperú and Others v. Peru, Report on Merits, Report No. 14/15, Inter-Am. Comm'n H.R., Case No. 12.385 \(Mar. 23, 2015\).](#)

5. Application to the Court

[None]