

Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru

ABSTRACT¹

On December 31, 1992, 1,110 congressional officials were dismissed by the government of Albert Fujimori during the state of emergency he declared in 1992. This case involves issues surrounding access to legal procedures and civil and political rights. The Court found that the State violated the American Convention on Human Rights.

I. FACTS

A. Chronology of Events

July 28, 1990: As Peru faces great social upheaval and political violence due to terrorist acts and drug trafficking, Alberto Fujimori assumes the Presidency of Peru for a five-year term.² Many programs administered under Fujimori's presidency involve harsh austerity measures disfavored by the legislature.³ Partially because of this lack of legislative support, Fujimori decides to dissolve Congress.⁴

April 5, 1992: President Fujimori declares a state of emergency, dissolves the Congress of the Republic, and establishes a transitory government, known as the "Emergency and National Reconstruction Government" by Decree Law No. 25418.⁵ The decree orders

1. Lindsey Wrape, Author; Amy Choe, Editor; Elise Cossart-Daly, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.830, ¶¶ 32-33 (Feb. 4, 2005).

3. *Alberto Fujimori*, BRITANNICA, <http://www.britannica.com/EBchecked/topic/221549/Alberto-Fujimori> (last visited Sept. 13, 2013).

4. *Id.*

5. Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 158, ¶ 89(2) (Nov. 24, 2006); *Alberto Fujimori*, BRITANNICA, <http://www.britannica.com/EBchecked/topic/221549/Alberto-Fujimori> (last visited Sept. 13, 2013).

modification of the Constitution, dissolves the Court of Constitutional Guarantees (*Tribunal de Garantías Constitucionales*), and removes several justices of the Supreme Court.⁶ The justices Fujimori dismisses from the Constitutional Court include individuals who declared his presidential candidacy unconstitutional.⁷ The State forms a new congressional body, the Democratic Constituent Congress (*Congreso Constituyente Democrático*, “CCD”) to create a new Constitution.⁸

April 16, 1992: The Emergency and National Reconstruction Government issues Decree Law No. 25438 that establishes the Commission to Administer the Patrimony of the Congress of the Republic (*Comisión Administradora del Patrimonio del Congreso de la República*, “Administrative Commission”).⁹ Under this Law, the Administrative Commission is in charge of adopting administrative measures and personnel actions necessary during the state of emergency.¹⁰

July 21, 1992: Decree Law No. 25640 (“Law”) authorizes the Administrative Commission to reorganize personnel of the Congress of the Republic.¹¹ Congressional employees have several options, including a series of incentives for employees to voluntarily resign; potential relocation for those employees who have not voluntarily resigned, should a position be available; and possible termination.¹² The Law includes a provision that prohibits *amparo* actions to contest the application of the Law.¹³

6. Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 89(2); Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Petition to the Court, ¶ 34.

7. The dissolution of the Peruvian Constitutional Court was separately adjudicated at the Inter American Court of Human Rights in *Constitutional Court v. Peru*, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 55 (Nov. 24, 1999); *Alberto Fujimori*, BRITANNICA, <http://www.britannica.com/EBchecked/topic/221549/Alberto-Fujimori> (last visited Sept. 13, 2013).

8. Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 89(3).

9. *Id.* ¶ 89(7).

10. *Id.*

11. *Id.* ¶ 89(9).

12. *Id.*

13. *Id.* *Amparo* is a word unique to Latin American countries. *Mexico: “Amparo” Lawsuits and Their Implementation in the Legal System*, REFWORLD (Jan. 15, 2008), <http://www.refworld.org/docid/47d6548cc.html>. It’s meaning is close to protection or shelter in English. *Id.* Latin American Countries created *amparo* remedies as a human rights protection mechanism after the Declaration of Human Rights was announced in 1948. *Id.* The action for *amparo* can be invoked whenever an individual believes any of his or her

October 1, 1992: Decree Law No. 25759 set November 6, 1992 as the deadline to complete the streamlining process.¹⁴ The Administrative Commission is in charge of conducting a “Personnel Evaluation and Selection Procedure” through the administration of exams.¹⁵ The employees who do not pass the exam, or who do not take the exam, will be terminated as a result of the reorganization of Congress.¹⁶ This Decree Law also derogates from Article 4 of Decree Law No. 25640, which allowed for potential relocation of employees who did not voluntarily resign.¹⁷

October 13, 1992: Resolution No. 1239-A-92-CACL establishes requirements for taking the examination, and the regulations for the evaluation and selection of employees.¹⁸ It also stipulates that the Administrative Commission “[will] not accept complaints concerning the results of the examination.”¹⁹

October 18, 1992: The Administrative Commission conducts the evaluation process for employees who did not voluntarily resign.²⁰

December 31, 1992: Under Resolution No. 1303-A-92-CACL and Resolution No. 1303-B-92-CACL, the Administrative Commission dismisses 1,110 congressional officials, including the 257 alleged victims.²¹ The dismissed congressional officials include those who did not participate in the evaluation process, did not appear for the evaluation process, or did not pass.²²

January 1993: Some of the dismissed employees file a motion for

constitutional rights, or rights originating from international treaties, have been violated. *Id.*

14. *Dismissed Congressional Employees (Aguado Alfaro et. Al.) v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 89(10).

15. *Id.*

16. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru*, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 11.830, ¶ 46 (Feb. 4, 2005).

17. *Id.*

18. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment, ¶ 89(11).

19. *Id.*

20. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru*, Petition to the Court, ¶ 49.

21. *Id.* ¶ 1.

22. *Id.* ¶ 46.

reconsideration of their dismissals to the President of the CCD.²³ After receiving no response, the employees file an appeal, which is also ignored.²⁴ Eventually, the Administrative Commission issues Resolution No. 1534-93-CCD/OGA-OPER, which declares that the processes that the dismissed employees are using to file complaints are inadmissible, without ruling on the merits of their claims.²⁵

January 6, 1993: The CCD adopts a law that declares that the 1979 Constitution is in force, with the exception of the decree laws issued by the Government.²⁶ Several of these decree laws include a provision that prevents *amparo* actions as a means of contesting the effects of the decree laws.²⁷

September 18, 1994: Some of the alleged victims petition to nullify the resolution under which they were dismissed.²⁸

September 26, 1994: Resolution No. 840-94-CCD/G.RRHH declares that the motion for recourse is inadmissible.²⁹

December 15, 1994: The dismissed employees file an appeal for review before the CCD.³⁰ Thirty days pass, without a response.³¹

March 2, 1995: The dismissed employees file an *amparo* action before the Lima Twenty-Eighth Civil Court.³²

June 26, 1995: The Lima Twenty-Eighth Civil Court declares the *amparo* action admissible, and states that the resolutions of November 6, 1992 are inapplicable.³³ The court orders the government to reinstate the dismissed employees to the positions they held prior to their dismissal.³⁴

23. Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, ¶ 89(15).

24. *Id.*

25. *Id.*

26. *Id.* ¶ 89(3).

27. *Id.* ¶ 89(4).

28. *Id.* ¶ 89(18).

29. *Id.* ¶ 89(19).

30. *Id.* ¶ 89(20).

31. *Id.*

32. *Id.* ¶ 89(21).

33. *Id.* ¶ 89(22).

34. *Id.*

July 12, 1995: The Legislature's Public Attorney files an appeal before the Lima Twenty-Eighth Civil Court requesting that the court revoke the June 26th judgment.³⁵

February 21, 1996: The Fifth Civil Chamber of the Lima Superior Court of Justice revokes the judgment of the Lima Twenty-Eighth Civil Court, declaring the action of the dismissed employees inadmissible.³⁶ The court reasons that the employees did not timely file their *amparo* petition, and did not provide evidence indicating why they were unable to file the action within the legally required time frame.³⁷

April 11, 1996: A group of the dismissed employees file a motion for cancellation of the Fifth Civil Chamber's decision with the Constitutional Court of Peru.³⁸

June 15 and 16, 1996: The State establishes a new Constitutional Court.³⁹ Following this, the Constitutional Court is changed a number of times, leading to instability.⁴⁰

November 24, 1997: Amidst these changes and instability, the Constitutional Court affirms the decision of the Fifth Civil Chamber of the Lima Superior Court and thereby declares the congressional employees' action for *amparo* inadmissible.⁴¹

B. Other Relevant Facts

Fujimori's presidency consists of political corruption, a lack of democracy, and human rights abuses.⁴² After the discovery and

35. *Id.* ¶ 89(23).

36. *Id.* ¶ 89(25).

37. *Id.*

38. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru*, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.830, ¶ 59 (Feb. 4, 2005).

39. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment, ¶ 89(27).

40. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru*, Petition to the Court, ¶ 60.

41. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 89(28).

42. *Alberto Fujimori*, BRITANNICA, <http://www.britannica.com/EBchecked/topic/221549/Alberto-Fujimori> (last visited Sep. 13, 2013).

disclosure of his many illegal political acts and human rights abuses, the State puts Fujimori on trial.⁴³ Fujimori was found guilty of a variety of illegal conduct, including political bribery, embezzlement, and “ordering military death squads to carry out killings and kidnappings during his presidency.”⁴⁴ Although the 1993 Constitution, enacted during Fujimori’s term, is still in force today, there is an ongoing discussion in the State of returning to the 1979 Constitution.⁴⁵

II. PROCEDURAL HISTORY

A. *Before the Commission*

October 18, 1997: Five of the alleged victims submit a complaint and a request for precautionary measures to the Inter-American Commission on Human Rights.⁴⁶ That case is numbered No. 11.830.⁴⁷

February 13, 1998: The Commission informs the petitioners that the present situation does not constitute an urgent case requiring “precautionary measures to prevent irreparable harm to persons” under Article 29 of the Convention.⁴⁸

March 26, 1998: A second group of over one hundred alleged victims present a petition to the Commission, based on the same facts as those contained in petition No. 11.830.⁴⁹

July 10, 1998: A third group of twenty alleged victims present a petition to the Commission on behalf of themselves and other dismissed employees.⁵⁰

43. *Id.*

44. *Id.*

45. Rocio La Rosa, *The Difference Between Peru’s 1979 and 1993 Constitutions*, PERU THIS WEEK (Aug. 3, 2011), <http://www.peruthisweek.com/news-the-differences-between-perus-1979-and-1993-constitutions-10277>.

46. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru*, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 11.830, ¶ 11 (Feb. 4, 2005); *Dismissed Congressional Employees (Aguado-Alfaro et. al.) v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C.) No. 158, ¶ 5 (Nov. 24, 2006).

47. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru*, Petition to the Court, ¶ 11.

48. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 7.

49. *Id.* ¶ 8.

50. *Id.* ¶ 9.

August 4, 1998: The Commission opens case No. 12.038, which alleged similar facts and complaints as those in case No. 11.830.⁵¹

October 20, 1999: The Lima Lawyers' Professional Association asks to be considered a co-petitioner and requests to represent fifteen alleged victims.⁵²

June 9, 2000: Pursuant to Article 40(2) of its Rules and Procedure, the Commission joins cases Nos. 11.830 and 12.038, and processes them both under case No. 11.830.⁵³

June 15, 2000: The Commission adopts Admissibility Report No. 52/00, declaring the case admissible.⁵⁴

October 19, 2004: The Commission adopts Report on the Merits No. 78/04.⁵⁵ In this report, the Commission concludes that the State violated the employees' right to judicial protection embodied in Article 25(1) (Right to Recourse Before a Competent Court), their right to judicial guarantees embodied in Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal), and the obligation to adopt domestic legal provisions embodied in Article 2 (Obligation to Give Domestic Legal Effects to Rights), all in relation to Article 1(1) (Obligation to Respect Rights).⁵⁶

The Commission finds that the State violated Article 25(1) (Right to Recourse Before a Competent Court) because neither the Lima Superior Court nor the Constitutional Court examined the merits of the alleged victims' case in their action for *amparo*.⁵⁷ Rather, the Superior Court and the Constitutional Court relied on procedural grounds to justify a dismissal of the action, claiming that the action was time-barred.⁵⁸ This left the alleged victims without any other means for obtaining judicial review of their dismissals, which took place under the very resolution for which the admissibility of the *amparo* action is

51. *Id.* ¶ 10.

52. *Id.* ¶ 11.

53. *Id.* ¶ 12.

54. *Id.* ¶ 13.

55. *Id.* ¶ 18.

56. *Id.*

57. *Id.* ¶ 90(f).

58. *Id.* ¶ 90(i).

conditioned.⁵⁹ As a result of the lack of judicial review, the State violated the dismissed employees' right to judicial protection through a simple and prompt recourse before the courts.⁶⁰

The Commission finds that the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) because the State adopted resolutions that set forth conditions which had to be met before the courts could review violations of constitutional rights in an administrative proceeding.⁶¹ These resolutions, which denied the review of the examinations and dismissals, limited the dismissed employees' access to judicial guarantees.⁶² This access was further limited because dismissed employees were unable to obtain relief through the civil court system.⁶³ Thus, the dismissed employees were left with no judicial guarantees for review of their claims.⁶⁴

The Commission recommends that the State provide a method of recourse to the dismissed employees, which allows their claims to be heard and provides a ruling on the merits.⁶⁵ Additionally, the Commission recommends that the State modify Decree Law No. 25640 and Resolution No. 1239-A-92-CACL to make them consistent with the American Convention.⁶⁶

The Commission also recommends that the State provide several remedies to the dismissed employees.⁶⁷ These remedies include pecuniary damages suffered as a result of lost salary and the expenditures required to attempt to achieve judicial protection; non-pecuniary damages for those employees who suffered emotional repercussion resulting from their dismissal; and adoption of preventative measures to avoid future violations of this nature.⁶⁸

November 4, 2004: The Commission sends the Report on the Merits to the State, informing the State that it has two months to comply.⁶⁹

59. *Id.* ¶ 90(h).

60. *Id.* ¶ 90(d).

61. *Id.* ¶ 91(c).

62. *Id.* ¶ 90(a).

63. *Id.* ¶ 91(d).

64. *Id.* ¶ 91(a).

65. *Id.* ¶ 137(d)(1).

66. *Id.* ¶ 137(d)(iii).

67. *Id.* ¶ 137.

68. *Id.* ¶¶ 137(b) - (d).

69. *Id.* ¶ 19.

January 19, 2005: The State submits information on compliance to the Commission, after Commission grants an extension.⁷⁰

B. Before the Court

February 4, 2005: The Commission submits the case to the Court, after the State failed to adopt its recommendations.⁷¹

1. Violations Alleged by Commission⁷²

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

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

all in relation to:

Article 1(1) (Obligation to Respect Rights)

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

2. Violations Alleged by Representatives of the Victims⁷³

Same violations alleged by the Commission, plus:

Article 8(2) (Right to be Presumed Innocent)

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the American Convention.

February 23, 2006: The State raises the following three preliminary objections: that the time for filing the case had already passed, that there were two “legal defects” involved with the procedures before the Commission, and that there were issues regarding a lack of representation among the alleged victims.⁷⁴

The State first points to the Commission’s adding co-petitioners to

70. *Id.* ¶ 21.

71. *Id.* ¶ 23.

72. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru*, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 11.830, ¶ 2 (Feb. 4, 2005).

73. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 94-97. Mr. Jorge Pacheco Munayco, Mr. Manuel Abad Carranza and Mr. Henry Camargo Matencio, Mr. Máximo Jesús Atauje Montes, Mr. Adolfo Fernández Saré and Centro de Asesoría Laboral del Peru represented the victims. *Id.* ¶ 153.

74. *Id.* ¶ 55, 61, 72.

the case, noting that there is no procedure for joining petitioners under the Commission's Rules of Procedure.⁷⁵ Even if such a procedure was available, the State contends that adding petitioners in this case would be time barred, since the Commission added petitioners after the six-month filing period expired.⁷⁶ Thus, the State claims that after exhausting domestic remedies, petitioners have a period of six months to file their claims before the Commission, and the Commission improperly permitted petitioners to join the case as alleged victims even though this time period had passed.⁷⁷

The Court explains that when the Commission received the petitions for Case Nos. 11.830 and 12.038, the petitions specifically named some individuals and also included the words "and others."⁷⁸ Additionally, during the processing of the cases, the Commission received multiple and varying lists of alleged victims and requests from others to be added to the case as co-petitioners.⁷⁹ As a result, the Commission presumed all the alleged victims were included in the November 24, 1997 Judgment issued by the Constitutional Court of the State.⁸⁰ Moreover, the State had ample opportunity to object to the list of alleged victims when it was presented with this information by the Commission.⁸¹ As the State did not raise this objection during the proceedings before the Commission, it waived its right to object.⁸² As a result, the Court rejects the State's first preliminary objection.⁸³

The State next contends that there were two legal defects in the proceedings before the Commission.⁸⁴ First, the Commission's validated facts presented in the petition for precautionary measures when domestic remedies had not yet been exhausted.⁸⁵ Second, the Commission recognized the individuals employed in Congress or those who desire to be reinstated, but who have already collected their social benefits as victims.⁸⁶

With regards to the first legal defect, the Court notes that the information presented in the request for precautionary measures was

75. *Id.* ¶ 55.

76. *Id.*

77. *Id.*

78. *Id.* ¶ 59.

79. *Id.*

80. *Id.*

81. *Id.* ¶¶ 59-60.

82. *Id.*

83. *Id.*

84. *Id.* ¶ 61.

85. *Id.* ¶ 61(a).

86. *Id.*

also presented in a subsequent petition to the Commission.⁸⁷ Even if this was inappropriate, the Court notes that once a petitioner presents the Commission with evidence of human rights violations, the Commission has broad discretion to determine how to handle this information.⁸⁸ The only exception is where the state's right of defense has been prejudiced in some way.⁸⁹ However, the State failed to show how this action prejudiced it during the proceedings before the Commission.⁹⁰ In light of these points, the Court rejects this argument.⁹¹

The Court states that the second legal defect should be assessed at the merits stage in the proceedings, because the Court cannot make this type of determination at an early stage.⁹² Thus, this does not prevent the Court from considering all mentioned individuals as alleged victims.⁹³ Therefore, the Court dismisses this second legal defect as part of the State's second preliminary objection.⁹⁴

The State's last preliminary objection focuses on the forty-one alleged victims who did not grant a representative before the Court power of attorney.⁹⁵ Based on this, the State contends that those victims lacked legal representation before the Commission and the Court.⁹⁶ In response to this objection, the Court highlights Article 33(3) (Filing of the Application) of the Court's Rules of Procedure which states that the Commission has the power to act on behalf of alleged victims who do not have their own representatives.⁹⁷ Additionally, because a disagreement exists over the selection of a common representative for all 257 alleged victims, the Court indicates that the Commission will represent individuals who are not represented by either of the selected representatives.⁹⁸ Furthermore, the Court states that the "designation of a legal representative in the proceedings before the Court is a right rather than an obligation of the alleged victims."⁹⁹ As such, the Court rejects the State's third preliminary objection.¹⁰⁰

87. *Id.* ¶ 65.

88. *Id.* ¶ 67.

89. *Id.* ¶ 66.

90. *Id.*

91. *Id.* ¶ 68.

92. *Id.* ¶ 70.

93. *Id.* ¶¶ 70-71.

94. *Id.*

95. *Id.* ¶ 72.

96. *Id.*

97. *Id.* ¶ 75.

98. *Id.* ¶ 76.

99. *Id.* ¶ 77.

100. *Id.*

III. MERITS

A. *Composition of the Court*¹⁰¹

Sergio García Ramírez, President
Alirio Abreu Burelli, Vice President
Antônio Augusto Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

November 24, 2006: The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.¹⁰²

The Court found unanimously that Peru had violated:

Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation to Respect Rights) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of the dismissed congressional employees,¹⁰³ because:

The State did not provide a clear method to appeal adverse employment actions and restricted the victims' access to judicial recourse.¹⁰⁴ In order to promote access to justice, Articles 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) obligate states to provide judicial

101. Judge Oliver Jackman was not present because of circumstances beyond his control. *Id.* at n.*.

102. Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment.

103. *Id.* "Declares" ¶ 2.

104. *Id.* ¶ 94.

guarantees and protection.¹⁰⁵ Such protection and guarantees can be ensured through the provision of domestic recourses that allow victims the opportunity to obtain relief when their rights have been violated.¹⁰⁶ These recourses must actually be effective.¹⁰⁷ They must provide a real means through which victims' complaints can be reviewed.¹⁰⁸ In order for this to happen, potential victims must have knowledge of the processes through which they can obtain recourse.¹⁰⁹

In this case, after the alleged victims were dismissed, in theory, there were three channels through which they could formally contest their dismissals.¹¹⁰ However, none of these channels provided effective means for recourse.¹¹¹ This ineffectiveness was the result of much confusion and uncertainty about which channel of recourse was most appropriate and which was actually permitted by the State.¹¹²

The Court noted that the three channels for recourse included an administrative proceeding before Congress, an action under administrative law, and an action for amparo.¹¹³ Given the lack of information supplied by the parties, the Court lacked sufficient information to fully remark on the effectiveness of the administrative proceedings before Congress.¹¹⁴ The Court noted that it was not certain whether alleged victims were required to utilize the administrative proceeding before Congress before they could go to the courts for recourse.¹¹⁵ Although Resolution 1239-A-CACL stated that the Administrative Commission would not review complaints by dismissed congressional employees, other acts of the congress indicated to the contrary.¹¹⁶ As a result of such confusion, some employees did utilize this recourse.¹¹⁷

105. *Id.* ¶¶ 90(a), 91(a).

106. *Id.* ¶¶ 90-91.

107. *Id.* ¶¶ 130-31.

108. *Id.* ¶ 129.

109. *Id.*

110. *Id.* ¶ 111.

111. *Id.* ¶¶ 130-31.

112. *Id.* ¶ 129.

113. *Id.* ¶ 111.

114. *Id.* ¶¶ 87, 112.

115. *Id.* ¶ 112.

116. *Id.* ¶¶ 89(16), 113.

117. *Id.* ¶ 113.

The Court indicated that only six employees chose to pursue administrative law proceedings, four of which are not alleged victims in this case.¹¹⁸ Additionally, while the State argues that this was the most appropriate channel for recourse, only two out of the six actions were declared admissible, even though the facts of all six cases were very similar.¹¹⁹ Moreover, the employees who did utilize administrative law proceedings also filed a complaint with Congress, indicating confusion as to which channel of recourse was most appropriate.¹²⁰ Lastly, it is unclear whether the employees had to utilize the administrative law proceeding prior to filing an action before domestic courts.¹²¹

This confusion was further evidenced by the fact that it took two years before any of the alleged victims attempted to file an action for amparo.¹²² The Court stated that Article 9 of Decree Law No. 25640 prohibited an action for amparo to contest the dismissals that took place under this Decree.¹²³ This prevented individuals from contesting State actions in this case.¹²⁴ This is inconsistent with democratic norms or with Articles (1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection).¹²⁵

When the alleged victims did file an action for amparo, the Fifth Civil Chamber of the Superior Court of Justice dismissed it because the court asserted that the action was time-barred.¹²⁶ The Superior Court of Justice further asserted that the alleged victims had not exhausted the administrative proceeding before Congress or under administrative law.¹²⁷ The Constitutional Court affirmed this ruling.¹²⁸ This decision prevented the case from being heard on the merits.¹²⁹ The Court observed that this demonstrated how the Judiciary lacked independence from the Government during this time.¹³⁰ During this period, the State

118. *Id.* ¶¶ 114-15.

119. *Id.* ¶ 115.

120. *Id.*

121. *Id.* ¶ 116.

122. *Id.* ¶ 121.

123. *Id.* ¶ 117.

124. *Id.* ¶ 119.

125. *Id.*

126. *Id.* ¶ 121.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.* ¶¶ 121, 127.

pressured the Judiciary, and President Fujimori dismissed several justices who spoke out against him.¹³¹ This hampered the Judiciary's ability to make independent judgments based on the Constitution.¹³² Here, the State pressured the Judiciary to implement the norms of Decree Law No. 25640 rather than Constitutional principles, which prompted dismissals and prevented these amparo actions.¹³³

These State restrictions on the right to contest prejudicial actions and the confusion about the appropriate channel for recourse "promot[ed] a climate of absence of judicial protection and legal security."¹³⁴ Due to its failure to provide judicial protection and guarantees through effective domestic recourse, the State violated Articles 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) of the Convention.¹³⁵

The Court did not rule on:

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) to the detriment of the dismissed congressional workers,¹³⁶ because:

The victims' representatives argued that the State violated Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) because it did not reinstate the dismissed employees, which resulted in the loss of job-related benefits, such as social security and the ability to obtain a pension, and had negative impacts on the victims' health.¹³⁷ The Court responded that the purpose of the judgment was not to conclude whether the dismissal process was legal.¹³⁸ Rather, the Court's decision focused on whether the State provided judicial protections and guarantees through the provision of effective domestic recourse.¹³⁹ The

131. Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Petition to the Court, ¶ 60; Alberto Fujimori, BRITANNICA, <http://www.britannica.com/EBchecked/topic/221549/Alberto-Fujimori> (last visited Sep. 13, 2013).

132. Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 127.

133. *Id.*

134. *Id.* ¶ 120.

135. *Id.* "Declares" ¶ 2.

136. *Id.* ¶ 136.

137. *Id.*

138. *Id.*

139. *Id.*

*most appropriate time to address the above issues and discuss potential consequences of the State's violations of Articles 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) is in the Court's analysis of reparations.*¹⁴⁰

C. Dissenting and Concurring Opinions

1. Separate Opinion of Judge Antônio Augusto Cançado Trindade

In a separate opinion, Judge Cançado Trindade pointed to the Court's emphasis on the importance of domestic recourses as a means of effectuating justice and protecting international human rights.¹⁴¹ As part of these domestic recourses, the Court noted that it is imperative that domestic court judges understand international law under the American Convention in order to more effectively protect against human rights violations.¹⁴² Judge Cançado Trindade agreed with the Court that domestic courts must not only employ "constitutionality," promoting the norms and principles of their State's constitution, but also "conventionality," promoting the norms and principles surrounding the protection of international human rights as pronounced in the American Convention.¹⁴³

However, as much as the Court focused on what domestic judges and individual States need to do to better protect human rights, Judge Cançado Trindade was concerned by the Court's own ruling in the instant case on Article 26 (Progressive Development of Economic, Social and Cultural Rights).¹⁴⁴ He mused that the Convention was designed to protect all human rights, including those that are economic, social and cultural.¹⁴⁵ Although the Court has espoused its views on the importance of access to justice, which Judge Cançado Trindade found to be correct, the Court failed to fully implement and apply these concepts, as evidenced by the present case and the Court's failure to ensure access to justice with regards to violations of the particular human rights

140. *Id.*

141. Dismissed Congressional Employees (Aguado Alfaro 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. 158, ¶ 1 (Nov. 24, 2006).

142. *Id.* ¶¶ 2-3.

143. *Id.* ¶ 3.

144. *Id.* ¶¶ 6-7.

145. *Id.* ¶ 7.

outlined in Article 26 (Progressive Development of Economic, Social and Cultural Rights).¹⁴⁶

2. Separate Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez also remarked on the notion of “conventionality.”¹⁴⁷ While he found it important that national judiciaries employ conventionality, he also believed that consistency between international and national implementations of the Convention is necessary to better protect and ensure certain individual rights.¹⁴⁸

In order to obtain this consistency, Judge García Ramírez analogized the structure of State governments and judiciaries to those of the American Convention and the Inter-American Court.¹⁴⁹ Just as domestic courts uphold the principles of the state constitution and rule of law through the development of case law and norms, the Inter-American Court, too, has this power with regards to the Convention.¹⁵⁰ Judge García Ramírez attempted to further this analogy by noting that although the Inter-American Court’s decisions bind only the parties to the dispute, unlike the decisions of domestic courts, binding parties who were not parties to the litigation may promote consistency and practicality in human rights law.¹⁵¹ Thus, states should adopt the court’s interpretation of the Convention and implement these interpretations when resolving disputes on human rights violations at the domestic level.¹⁵² This will create a stronger relationship between the international and domestic systems, and create greater consistency in the application of international law, both of which are essential to effectively protect human rights.¹⁵³

IV. REPARATIONS

The Court ruled unanimously that Peru had the following obligations:

146. *Id.* ¶¶ 6-7.

147. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C.) No. 158, ¶ 1 (Nov. 24, 2006).

148. *Id.* ¶ 2.

149. *Id.* ¶¶ 4-5.

150. *Id.*

151. *Id.* ¶¶ 6-7.

152. *Id.*

153. *Id.*

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

1. Establish an Independent and Impartial Body to Adjudicate the Victims' Case

The State should create an independent and impartial body that is authorized to decide on the legality of the employees' dismissals.¹⁵⁴ Such decisions should be final and binding, and should include any legal consequences for improper dismissal and reparations based on individual circumstances.¹⁵⁵

2. Provide Legal Services

The State should provide the necessary legal services and representation, free of charge, to the victims for the proceedings discussed above.¹⁵⁶

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

The Court awarded \$15,000 to each of the 257 victims for the time and energy they invested to obtain judicial review of their dismissals and judicial protection from unconstitutional treatment.¹⁵⁷

3. Costs and Expenses

154. Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 148.

155. *Id.*

156. *Id.* ¶ 149.

157. *Id.* ¶¶ 150-51.

The Court awarded the victims reimbursement of the cost of their legal services during the international proceedings before the Commission and the Court.¹⁵⁸ The Court also awarded \$5,000 to the following representatives: Mr. Adolfo Fernández Saré, Mr. Manuel Carranza Rodríguez, Mr. Henry William Camargo Matencio, Mr. Máximo Jesús Atauje Montes, Mr. Jorge Luis Pacheco Munayco, Mr. Javier Mujica Petit, and Mr. Francisco Ercilio Moura.¹⁵⁹

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

\$3,890,000

C. Deadlines

The State must pay the non-pecuniary amounts to the 257 victims, as well as the costs and expenses to the seven representatives within one year from the date of the judgment.¹⁶⁰ Additionally, the State must establish the independent and impartial body to decide the legality of the dismissals as soon as possible, and its final decisions must be adopted within one year of this judgment.¹⁶¹

V. INTERPRETATION AND REVISION OF JUDGMENT

March 8, 2007: Mr. Fernández Saré, a victim and representative in this case, submitted a request for interpretation of the Judgment of November 24, 2006.¹⁶² The request for interpretation is based on a desire to know why the Court did not do the following: strictly apply Articles 66(1) (Reasons Shall be Given for the Judgment of the Court) and 63(1) (Court's Duty to Ensure Victims' Enjoyment of Right to Freedom, Remedies, and Fair Compensation) of the American Convention; follow precedential cases wherein the facts were similar and the victims were awarded reinstatement among other forms of compensation; order that the State repeal Decree Law No. 25640 and Resolution No. 1239-A-92-CACL; or provide how the dismissed

158. *Id.* ¶ 152.

159. *Id.* ¶ 154.

160. *Id.* ¶¶ 151, 154.

161. *Id.* ¶ 155.

162. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 158 ¶ 1 (Nov. 30, 2007).*

employees would be given a prompt and effective recourse when the domestic time for filing their claim has lapsed, and when an action for *amparo* is the only viable option.¹⁶³

Additionally, the request for interpretation is based on operative paragraph 4 of the judgment, wherein the Court stated that the State was under an obligation to provide an independent and impartial body that will decide the legality of the employees' dismissals.¹⁶⁴ With regards to this paragraph, Mr. Fernández Saré would like to know whether it is the State or the body to be created by the State that will ensure access to recourse.¹⁶⁵ Lastly, also in regards to this paragraph, Mr. Fernández Saré would like to know what form of compensation the dismissed employees will be entitled to, if the body determines that their dismissal was illegal.¹⁶⁶

*A. Composition of the Court*¹⁶⁷

Sergio García Ramírez, President
 Antônio Augusto Cançado Trindade, Judge
 Cecilia Medina Quiroga, Judge
 Manuel E. Ventura Robles, Judge
 Diego García-Sayán, Judge

Pablo Saavedra-Alessandri, Secretary
 Emilia Segares-Rodríguez, Deputy Secretary

B. Merits

November 30, 2007: The Court found, by four votes to one, that the request for interpretation was inadmissible.¹⁶⁸ The Court determined that the basis for the request for interpretation did not conform to Article 67 of the Convention and Articles 29(3) and 59 of the Rules of Procedure of the Court.¹⁶⁹ These Articles indicate that a request for interpretation must not contest the judgment and orders of the Court, and the Court

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.* Judge Oliver Jackman passed away on Jan. 25, 2007. Judge Alirio Abreu Burelli did not participate in the deliberation and signing of the Interpretation.

168. *Id.* "Decides" ¶ 1.

169. *Id.*

noted that such a request should not be used to appeal the ruling or bring forth issues of fact or law that have already been discussed and decided.¹⁷⁰ Rather, the purpose of a request for interpretation was to clarify the judgment and the meaning of the Court.¹⁷¹ In light of this, the Court found that Mr. Fernández Saré's questions of why the Court did not strictly apply Articles 66(1) and 63(1) of the American Convention, follow precedential cases, or provide an action for *amparo*, were attacks on the Court's reasoning, rather than a request for clarification.¹⁷²

In response to Mr. Fernández Saré's question of why the Court did not ask the State to repeal the Decree Law or Resolution, the Court stated that these were questions of law that were already analyzed, and were thus not appropriate for a request for interpretation.¹⁷³

Lastly, regarding the issues of obtaining prompt and effective recourse, the Court found that these may be more appropriate issues at the monitoring compliance stage, since they did not address meaning and scope of the judgment, but rather how the State will comply with the judgment in terms of providing this prompt recourse.¹⁷⁴

In a separate opinion, Judge Cançado Trindade expressed concern about the lack of attention the Court gave to the question of who was to ensure the dismissed employees' access to recourse.¹⁷⁵ His discussion revolved around four issues: performance of conventionality control, conventional obligations of protection as obligations of result, the engagement of State responsibility at the domestic-law and international-law levels, and access to justice and the extension of the material scope of *jus cogens*.¹⁷⁶

First, Judge Cançado Trindade noted that the notion of "conventionality" has begun to develop among states at the domestic level, whereby states are more attuned to international human rights law and are beginning to implement principles established by international treaties domestically.¹⁷⁷ However, with this notion of conventionality, comes "control of conventionality," in which the principles of the

170. *Id.* ¶¶ 9, 11, 12.

171. *Id.* ¶ 11.

172. *Id.* ¶ 14.

173. *Id.* ¶ 15.

174. *Id.* ¶ 19.

175. *Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs, Dissenting Opinion of Judge Antônio Augusto Cancado Trindade, Inter-Am. Ct. H.R. (ser. C.) No. 158, ¶ 1, n.1 (Nov. 24, 2007).*

176. *Id.* ¶ 5.

177. *Id.* ¶ 6.

American Convention are implemented at the domestic level.¹⁷⁸ Both domestic and international courts can exercise the norms of the American Convention through Article 2 (Obligation to Give Domestic Legal Effect to Rights).¹⁷⁹ International protection of human rights begins with effective recourses at the domestic level, and this was the very issue brought up in this request for interpretation of the judgment.¹⁸⁰ International courts can also employ control of conventionality, and Judge Cançado Trindade believed that the Court had an obligation to do so in its Interpretation on the Judgment, by further clarifying how access to recourse was to be ensured and who was to ensure that access.¹⁸¹

Second, Judge Cançado Trindade argued that the obligations of states that are parties to human rights treaties are not obligations of conduct, but are obligations of result.¹⁸² Thus, it is not enough that states bring their conduct in line with treaty or convention principles; their conduct must result in protecting human rights or providing reparations for human rights violations.¹⁸³ If this were not the case, then it would be too easy for states to shirk from their responsibilities as parties to human rights treaties.¹⁸⁴

Third, Judge Cançado Trindade contended that states have obligations and responsibilities at both domestic and international levels.¹⁸⁵ When they fail to perform their duty to repair human rights violations, they have not fulfilled their responsibility at the international law level.¹⁸⁶ The Court should have clarified this in its Interpretation of the Judgment, rather than reserving the issue for later monitoring compliance.¹⁸⁷ Judge Cançado Trindade noted that cases such as this one only reach the Court when there has been a failure to provide justice at the domestic level.¹⁸⁸ Thus, it was important and necessary for the Court to make this clarification at this point rather than wait until issues with compliance arose.¹⁸⁹

Fourth, Judge Cançado Trindade has argued for an expansion in

178. *Id.* ¶ 9.2.

179. *Id.* ¶ 2.

180. *Id.* ¶ 11. 2.

181. *Id.* ¶ 12.

182. *Id.* ¶ 26.

183. *Id.*

184. *Id.* ¶ 29.

185. *Id.* ¶ 31.

186. *Id.*

187. *Id.* ¶ 32.

188. *Id.* ¶ 34.

189. *Id.*

the scope of those fundamental principles of international law that cannot be set aside, known as *jus cogens*.¹⁹⁰ He has further argued that the right to justice, in a general and broad sense, be included in the *jus cogens*.¹⁹¹ While he noted that the Court has made progress in this expansion, it diminished the significance of that progress when it issued its decision on this Request for Interpretation of the Judgment.¹⁹² This Request for Interpretation of the Judgment directly involved the right to justice, as it questioned the guarantee of access to recourse for human rights violations, and as a result, the Court should have taken the time to clarify how this access was to be guaranteed.¹⁹³

Ultimately, Judge Cançado Trindade believed that the Court should have admitted the request for Interpretation of the Judgment and it should have expended more time to clarify the issue of guaranteeing recourse to the dismissed employees.¹⁹⁴ Instead, the Court failed to employ its control of conventionality, it failed to enforce the State's obligation of result versus conduct at an international level, and, as a result, it stifled expansion of *jus cogens*.¹⁹⁵

V. COMPLIANCE AND FOLLOW-UP

June 8, 2009: The Court determined that more information was needed regarding the State's efforts to comply with the Court's Judgment on the Merits, and as a result, it called for a hearing to be held on July 8, 2009.¹⁹⁶

November 20, 2009: The Court found that the State had complied with the obligation to pay the costs to the victims' representatives.¹⁹⁷

However, the Court found that the State failed to comply with the obligation to create a "simple, prompt and effective recourse" through the creation of an "independent and impartial body," that would issue a decision on the legality of the dismissals and would establish the

190. *Id.* ¶ 35.

191. *Id.*

192. *Id.* ¶¶ 42-43.

193. *Id.* ¶¶ 47-48.

194. *Id.* ¶¶ 48-49.

195. *Id.* ¶¶ 49, 57, 58.

196. *Dismissed Congressional Employees (Aguado Alfaro v. Peru)*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Therefore" ¶ 1 (June 8, 2009).

197. *Dismissed Congressional Employees (Aguado Alfaro v. Peru)*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares" ¶ 1 (Nov. 20, 2009).

resulting legal consequences and reparations.¹⁹⁸ The State also failed to comply with the obligation to provide free legal services to the victims for the purposes of the proceedings before the independent and impartial body.¹⁹⁹ Further, the State failed to meet the deadline in the judgment that indicated that the decision of this body had to be adopted within one year of the notice of the judgment.²⁰⁰ Lastly, the State did not make the payment of non-pecuniary damages to the 257 victims.²⁰¹

The Court determined that the judicial body that was established was neither independent nor impartial.²⁰² The body was composed of individuals who were chosen by the State and for which the State provided no information as to how or why they were appointed.²⁰³ Additionally, the State failed to provide some mechanism through which the victims could question the impartiality of the appointed members, and it also failed to provide any information on the appointed members, other than their *curricula vitae*, which would establish their impartiality.²⁰⁴ Since this body was neither independent nor impartial, it failed to establish guarantees for due process, an essential aspect of Article 8(1) (Right to Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) of the American Convention.²⁰⁵

The Court found that the State failed to provide free legal services to the victims, as there was no mechanism established to offer such services.²⁰⁶

As the resolution adopted by the body that the State created was adopted more than two years after the deadline, the Court determined that the State failed to meet the obligation set out in the judgment.²⁰⁷

Lastly, the State contended that it was unable to make the payments for non-pecuniary damages as a result of issues regarding domestic legislation.²⁰⁸ However, since it had been more than two and a half years since the issuance and notice of the judgment, and the payments for non-pecuniary damages had yet to be made, the Court found that the State had failed to comply with this obligation.²⁰⁹

198. *See id.* "Declares" ¶ 2(a).

199. *See id.*

200. *See id.* ¶ 46.

201. *Id.* "Considering" ¶ 45, "Declares" ¶¶ 2(a)-(b).

202. *Id.* "Considering" ¶¶ 26-28.

203. *Id.* ¶ 27.

204. *Id.* ¶¶ 27-28.

205. *Id.* ¶¶ 24, 26.

206. *Id.* ¶¶ 43, 45.

207. *Id.* ¶ 48.

208. *Id.* ¶¶ 49-51.

209. *Id.* ¶ 55.

In light of the above, the Court declared that it would continue to monitor the State's compliance with the obligation to set up an independent and impartial body; provide legal services and obligation to meet specified deadlines; and pay the 257 victims non-pecuniary damages.²¹⁰ The Court requested that the State submit a report on its compliance efforts to the Court no later than March 1, 2010.²¹¹

July 14, 2010: Mr. Fernández Saré and eight other individuals submitted a Request for Provisional Measures, requesting to return to work during the time in which the State attempts to comply with the Court's judgment.²¹² The reason for such request was based on the need for medical care, which was to be provided through their employment by the State and through Social Security.²¹³

November 24, 2010: The Court issued its decision on the Request for Provisional Measures and its' Monitoring Compliance Judgment.²¹⁴ The Court determined that it would continue to monitor the State's compliance with the obligation to create a "simple, prompt and effective recourse" through the creation of an "independent and impartial body," which will issue a decision on the legality of the dismissals; and the obligation to pay the non-pecuniary damages.²¹⁵

The Court found that the State had made progress in forming an independent and impartial body, as it had begun working with the representatives of the victims to create a "Special Commission."²¹⁶ The "Special Commission" did not issue a final decision, so the Court considered it necessary to continue to monitor the State's compliance with this obligation.²¹⁷

The Court determined that the State still has not paid non-pecuniary damages and decided it would continue monitoring compliance.²¹⁸

In its decision on the request for provisional measures, the Court

210. *Id.* "Declares" ¶¶ 2(a)-(b).

211. *Id.* "And Decides" ¶ 2.

212. *Dismissed Congressional Employees (Aguado Alfaro v. Peru)*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 9 (Nov. 24, 2010).

213. *Id.*

214. *Id.* "Considering" ¶¶ 1-8.

215. *Id.* "Declares" ¶¶ 1(a)-(b).

216. *Id.* "Considering" ¶¶ 9, 10.

217. *Id.* ¶ 8.

218. *Id.* ¶ 16.

recognized that the victims may have been impacted by the State's violations and the delay in the State's compliance with the judgment.²¹⁹ However, the Court could not grant the victims' request for reinstatement.²²⁰ In this case, the Court ordered the State to appoint an adjudicating body to determine whether the victims' were entitled to job restitution under domestic law, so the Court was not in a position to grant this request.²²¹

On the other hand, since the body that the State created prior to the Special Commission had already declared the dismissals illegal, the Court argued that economic damages could be inferred as these employees were excluded from certain social benefits, such as Social Security.²²² Consequently, the Court determined that a request for provisional measures was unnecessary, and ordered, instead, that the State provide health services to the victims until the situation is resolved.²²³

The Court further requested that the State provide it with a report on its compliance efforts by no later than March 30, 2011, and to continue to inform the Court every three months about its compliance efforts.²²⁴

VI. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[Dismissed Congressional Employees \(Aguado Alfaro et. al.\) v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C.\) No. 158 \(Nov. 24, 2006\).](#)

2. Decisions on Merits, Reparations and Costs

[Dismissed Congressional Employees \(Aguado Alfaro et. al.\) v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C.\) No. 158 \(Nov. 24, 2006\).](#)

219. *Id.* ¶ 22.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.* "And Resolves" ¶¶ 3-4.

3. Provisional Measures

[None]

4. Compliance and Monitoring

[Dismissed Congressional Employees \(Aguado Alfaro v. Peru\), Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 24, 2010\).](#)

[Dismissed Congressional Employees \(Aguado Alfaro v. Peru\), Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 20, 2009\).](#)

[Dismissed Congressional Employees \(Aguado Alfaro v. Peru\), Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(June 8, 2009\) \(Available only in Spanish\).](#)

5. Review and Interpretation of Judgment

[Dismissed Congressional Employees \(Aguado Alfaro et. al.\) v. Peru, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. \(ser. C\) No. 158 \(Nov. 30, 2007\).](#)

B. Inter-American Commission

1. Petition to Commission

Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Petition No. 11.830 , Inter-Am. Comm'n H.R. (Oct. 18, 1997).

Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Petition No. 12.038, Inter-Am. Comm'n H.R. (Mar. 26, 1998).

2. Report on Admissibility

[Dismissed Congressional Employees \(Aguado Alfaro et. al.\) v. Peru, Admissibility Report, Report No. 52/00, Inter-Am. Comm'n H.R., Case No. 11.830 \(June 15, 2000\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Report on the Merits, Report No. 78/04, Inter-Am. Comm'n H.R., Case No. 11.830 (Oct. 19, 2004).

5. Application to the Court

Dismissed Congressional Employees (Aguado Alfaro et. al.) v. Peru, Petition to the Court, No. 11.830, Inter-Am. Comm'n H.R., (Feb. 4, 2005).

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