

REPORT N° 52/00
CASES 11.830 and 12.038
DISMISSED CONGRESSIONAL EMPLOYEES
PERU
June 15, 2000

I. SUMMARY

1. The instant report on admissibility covers Cases 11.830 and 12.038, which have been combined because they concern the same events, namely the dismissal of a group of 257 employees of the National Congress of the Republic of Peru (hereinafter "Peru", "the State" or "the Peruvian State"), who attempted, by means of domestic legal remedies, to impugn two executive decisions issued in 1992, whereby a total of 1,117 employees of that Congress were dismissed. The petitioners claim that Peru violated, to the detriment of the aforementioned 257 dismissed employees, who pursued the remedies under domestic law, the rights to a fair trial and judicial protection enshrined in Articles 8 and 25 of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"). The State contended that the case was inadmissible for failure to exhaust domestic remedies. The Inter-American Commission on Human Rights (hereinafter "the Commission", "the Inter-American Commission" or "the IACHR") considers that the situation that must be taken into account, in order to determine if domestic remedies have been exhausted, is that which exists at the moment of adopting a decision on admissibility, and decides to admit the petitions as regards the alleged violations of the rights to a fair trial and to judicial protection enshrined in Articles 8 and 25, respectively, of the American Convention on Human Rights, without prejudging the merits of the matter.

II. PROCESSING BY THE COMMISSION

2. The petition relating to Case 11.830, originally lodged as an application for precautionary measures by Messrs. Adolfo Fernández Sare, Angela Valdéz Rivera, Roberto Ribotte Rodríguez, María Huaranga Soto, and Manuel Carranza Rodríguez, both in their own name, and on behalf of other dismissed congressional employees, was received by the IACHR on October 18, 1997. The Commission opened the case on November 10, 1997, transmitted the pertinent portions of the petition to the State, and requested it for information to be submitted within a period of 90 days. Peru replied on January 26, 1998. On March 26, 1998, the petitioners lodged a petition with the Commission that reproduced the alleged facts contained in the original application for precautionary measures, as well as submitting a copy of a judgment delivered by the Constitutional Court on November 24, 1997, published in the official gazette, "El Peruano," on January 12, 1998.

3. On February 4, 1999, Pedro Antonio Quiñones Seminario and Augusto Salomón Bellindo Orihuela, both former congressional employees asked to named as co-petitioners in the case. Both parties submitted additional information and observations on different occasions. In a communication of October 20, 1999, the Bar Association of Lima asked to be named as co-petitioner in the case and presented letters from various former congressional employees requesting that they be represented by the said Bar Association in Case 11.830 before the IACHR.

4. In addition, the petition relating to Case 12.038 was received by the IACHR on July 10, 1998. That petition was lodged by Messrs. Zoila Luz Begazo Salazar, Jorge Luis Pacheco Munayco, and 19 other persons, acting both in their own name and on behalf of other employees dismissed from the Congress. The Commission opened the case on August 4, 1998, transmitted the pertinent portions of the petition to the Peruvian State, and requested it for information to be submitted within a period of 90 days. Peru applied for an extension in which to respond and, this granted, did so on November 11, 1998. On June 28, 1999, the Commission received an *amicus curiae* brief from the National Ombudsman [of Peru].

5. On June 9, 2000, the Commission, in accordance with the provisions set forth in Article 40(2) of its Regulations, combined the petitions relating to Cases 11.830 and 12.038, and

decided to continue to hear them in the proceedings in Case 11.830. At the same time, the IACHR advised both Peru and all of the petitioners of that fact.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

6. The petitioners claim that on April 5, 1992, the head of the Executive Branch of the Peruvian Government, Alberto Fujimori, ordered the dissolution of Congress and the complete reorganization of the Judicial Branch, the Constitutional Court, the National Judiciary Council, the Office of the Attorney General, and the Office of the Inspector General. The petitioners assert that such a situation led to the arbitrary removal of officials and employees who had been appointed to their posts in accordance with regulations that predated April 5, 1992.

7. The petitioners say that the congressional personnel were laid off from their jobs by Executive Decisions Nos. 1303-A-92-CACL and 1303-B-92-CACL, which provided for the dismissal of a total of 1,117 congressional employees and were published on December 31, 1992, in the official gazette, "El Peruano". They claim that the dismissal was carried out without the least respect for the guarantees of due process, and that it was totally arbitrary inasmuch as it was not supported by any of the grounds provided for in the regulations in force at the time.

8. The petitioners say that a group of 234 former congressional employees filed an *amparo* suit appealing the aforesaid executive decisions, which was heard by the 28th Civil Court of Lima. By judgment of June 26, 1995, that court upheld the petition and ordered that the employees who instituted the aforesaid proceeding be reinstated in their jobs.

9. The petitioners say that the Fifth Chamber for Civil Matters of the Superior Court of Lima, on hearing the appeal filed against the lower court decision, delivered a new judgment on February 21, 1996, and reversed the decision of the lower court. The petitioners filed a special appeal [*recurso extraordinario*] with the Constitutional Court against that judgment. At the time the petition was lodged with the Commission, a decision was pending on the appeal.

10. The petitioners say that the Constitutional Court issued a decision on November 24, 1997, that was published in the official gazette, "El Peruano," on January 12, 1998, and upheld the judgment of the appellate court. In the course of the trial other employees had joined the *amparo* suit, with the upshot that the above decision of the Constitutional Court finally applied to the 257 employees whose names are mentioned in the annex to the instant report. The petitioners add that the evidence they presented to the Constitutional Court was not accorded its due value. They mention their disagreement with the legal reasoning used in the above-mentioned judgment of the appellate court and in the aforesaid decision of the Constitutional Court, and declared that it amounted overall to a violation of the rights to a fair trial and judicial protection recognized in Articles 8 and 25 of the American Convention. They say that the Constitutional Court was not an impartial tribunal, due to the removal of three of its members by the Congress, and to the fact that the remaining judges of that court lacked the requisite independence and impartiality to hear the case.

B. Position of the State

11. With respect to Case 11.830, the State claimed that the proceedings in connection with the *amparo* suit brought by the petitioners were continuing before the Constitutional Court, and that the delay in reaching a decision was due to the need to safeguard the procedural guarantees of the parties involved. The State added that the claimants acted improperly in appealing to international jurisdiction, when there were available to them suitable procedural mechanisms under domestic law for challenging any acts or decisions that threaten or injure fundamental rights.

12. With regard to the formal requirements for its admission, the State said that petition lodged by the petitioners had to be examined independently of their initial application for precautionary measures. The State claimed that the allegations made in the petition are

unfounded. As to violation of the guarantee of due process, the State maintained that the petitioners did not during the proceedings before the courts file any action designed to stop the alleged violation of due process. Accordingly, the Peruvian State considered that the failure to pursue the remedies provided by domestic law resulted in the loss of the right to petition the IACHR.

13. The State argued that in the domestic sphere the Peruvian state has undergone a process of modernization and that, more specifically, the Congress has been redesigned, which has led to a 50% reduction in the overall number of members of Congress and the axing of a large number of jobs.

14. The State held that the petition is inadmissible inasmuch as domestic remedies had not been exhausted at the time it was lodged.

15. As to Case 12.038, the State requested its joinder to Case 11.830, since both concerned the same events and the same allegedly injured persons.

IV. ANALYSIS

A. The Commission's Competence *ratione personae*, *ratione materiae* and *ratione temporis*

16. Under Article 44 of the American Convention the petitioners are entitled to lodge petitions with the IACHR.¹ Those petitions name as alleged victims individuals, in respect of whom Peru undertook to respect and ensure the rights enshrined in the Convention.² Insofar as the State is concerned, the Commission observes that Peru became a state party to the American Convention upon ratifying it on July 28, 1978. Accordingly, the Commission is competent *ratione personae* to examine the petitions.

17. The Commission is also competent *ratione materiae* and *ratione temporis*, inasmuch as the facts alleged in the respective petitions tend to establish violations of rights protected by the American Convention, and by reason of that fact that the events in question have purportedly occurred during or after 1992, when the duty to respect and ensure the rights recognized in the Convention was in force for the Peruvian State.

B. Admissibility requirements for the petition

a. Exhaustion of domestic remedies

18. The Peruvian State claims that the petition in Case 11.830, received by the IACHR on October 18, 1997, was lodged prior to exhaustion of the remedies under domestic law. The decision of the Constitutional Court, which -both parties agree- exhausted the remedies under domestic law, was issued on November 24, 1997, and published on January 12, 1998.

19. In respect of the above, the Commission observes that the aforementioned petition was indeed lodged prior to exhaustion of the remedies under domestic law. Such a circumstance, however, is not stand in the way of its admissibility at the current stage of the case. The admissibility requirements to be met by a petition must be examined, generally speaking, at the moment at which the Commission pronounces on its admissibility. Article 46 of the Convention states that "[A]dmission by the Commission of a petition or communication lodged in

1 Without prejudice to its authority to pronounce on this point in its decision on the merits, the IACHR finds that in the case under review the legal standing of the petitioners has not been questioned.

2 In light of the fact that both the petition in Case 11.830 and that in Case 12.038 specifically name a number of -persons, while adding the phrase "and others", and that while processing the case the IACHR has received from the petitioners various lists of names of alleged victims, as well as having also received joinder applications from other persons asking to be named as alleged victims, the IACHR regards as alleged victims all the persons covered by the decision of the Constitutional Court of November 24, 1997, who are specifically named in the annex to the instant report. The foregoing without prejudice to holding as alleged victims the respective relatives of the deceased persons who are on that list, or diminishing such decisions as the IACHR might adopt in respect of other incidents that might arise.

accordance with Articles 44 or 45 shall be subject to the following requirements: a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” With respect to the foregoing, the moment of lodging a petition is distinct from that of pronouncement on its admissibility. Article 33 of the Regulations of the IACHR, for instance, authorizes the Commission to ask the petitioner to complete the requirements omitted in the petition, should the Commission consider that the “petition is inadmissible or incomplete.”

20. To accept the argument of Peru to the effect that the aforementioned petition is allegedly inadmissible, inasmuch as at the moment it was lodged the remedies under domestic law had not been exhausted, in spite of the fact that at the present instance, as the Commission is pronouncing on admissibility, those remedies have been exhausted, would imply a formalistic decision totally at odds with the protection of the human rights enshrined in the Convention. Such a decision would also leave the alleged victims in a state of defenselessness, since the Commission would probably be unable to examine their case, even were a new petition concerning the same events to be lodged in the future. The Inter-American Court of Human Rights has held that “[I]t is generally accepted that the procedural system is a means of attaining justice and that the latter cannot be sacrificed for the sake of mere formalities.”

21. The Commission concludes that the situation that must be taken into consideration in order to determine if the remedies under domestic law have been exhausted is that which exists at the moment of adopting a decision on admissibility. Consequently, the Commission finds that the requirement of exhaustion of the remedies under domestic law provided in Article 46 (1) (a) of the American Convention was met with the decision of the Constitutional Court issued on November 24, 1997, and published on January 12, 1998.

22. With respect to the petition in Case 12.038, the Commission observes that said petition was lodged on July 10, 1998, by which date the remedies under domestic law had been duly exhausted.

b. Filing Period

23. The Commission finds that in Case 11.830 the petition was lodged prior to the date of the decision that exhausted domestic remedies, whereas in Case 12.038 the petition was received by the IACHR on July 10, 1998, in other words, before six months had elapsed following publication, on January 12, 1998, of the decision of the Constitutional Court that exhausted the remedies under domestic law. Therefore, the requirement established in Article 46 (1) (b) of the American Convention has been met.

c. Duplication of proceedings and *res judicata*

24. The Commission finds that the subject of the petition is not pending in another international proceeding for settlement, nor is the petition substantially the same as one previously studied by the Commission or by another international organization. Accordingly, the requirements set forth in Articles 46 (1) (c) and 47 (d) have also been met.

d. Nature of the violations

25. The Commission believes that the facts alleged by the petitioners, if proven true, could constitute violations of rights protected by the American Convention.

IV. CONCLUSIONS

26. The Commission concludes that it is competent to take up the petitions under review, and that, pursuant to Articles 46 and 47 of the American Convention, said petitions are admissible in the terms set out above.

27. Based on the factual and legal arguments given above, and without prejudging the merits of the case,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
DECIDES:**

1. To declare the above-mentioned petitions admissible as regards the alleged violations of the rights to a fair trial and to judicial protection protected in Articles 8 and 25, respectively, of the American Convention on Human Rights, without prejudging the merits of the matter.
2. To notify the petitioners and the State of this decision;
3. To continue with its analysis of the merits of the case;
4. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed at Brasília, Brazil, on this the 15th day of June 2000. Signed: Hélio Bicudo, Chair; Claudio Grossman, First Vice Chair; Juan Méndez, Second Vice Chair; Commission Members: Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.

ANNEX TO REPORT N° 52/00
CASES 11.830 AND 12.038
DISMISSED CONGRESSIONAL EMPLOYEES
PERU

LIST OF PERSONS COVERED BY THE DECISION OF THE CONSTITUTIONAL COURT OF NOVEMBER 24, 1997, WHO ARE REGARDED AS ALLEGED VICTIMS IN THE RECORD CONTAINING CASES 11.830 AND 12.038 BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS.

1. Aguado Alfaro, José	45. Chala, Sergio Antonio
2. Aguilar Rojas, Felix	46. Changanaqui Chávez, José
3. Aguilar Rojas, Gisela	47. Chara Pacheco, Luisa
4. Albornoz Alva, Luis Rodolfo	48. Chávez García, Bladimir
5. Alcántara Ramos, Juana	49. Cherrez Córdova, Rosa
6. Aliaga Lama, Luis	50. Chino Villegas, Wilfredo
7. Alvarado Achicahuala, Juan	51. Chipana Quispe, Tiburcio
8. Alvarado Galván, Eriberto Rodolfo	52. Chipana Rodríguez, Luis
9. Alvarado Suárez, Mónica Lourdes	53. Cisneros Urbina, Esther
10. Alvarez Gutiérrez, Marleni	54. Clerque Gonzáles, José
11. Ampuero Ampuero, Víctor	55. Cobeñas Pariamache, Felix
12. Angeles Ponte, Nancy Violeta	56. Colán Villegas, Laura
13. Araca Sosa, José Raúl	57. Condezo Espinoza, Antonio
14. Arcos Díaz, Cecilia	58. Córdova Melgarejo, Antonia Elizabeth
15. Arévalo Torres, Rosa	59. Cornelio Dávila, Hipólito
16. Arias Infantes, Guillermo	60. Cornelio Figueroa, Daysi
17. Arnez Macedo, Daniel	61. Coronado Peña, José Raúl
18. Atauje Montes, Máximo	62. Cuadros Livelli, Manuel
19. Ayala Palomino, Herlinda	63. Cubas Vásquez, Lupo
20. Ballarta Rueda, Alfredo	64. De la Cruz Paredes, Marcial
21. Barba Ureña, Telmo Jaime	65. De la Cruz Paredes, Walter
22. Barbarán Quispe, Jaime	66. Del Aguila Chamaya, Dully
23. Bautista Apolaya, Max	67. Del Castillo Meza, Victor
24. Begazo Salazar, Zoila Luz	68. Delgado Gómez, Juan Francisco
25. Belleza Cabanillas, Inés	69. Delgado Suárez, Raquel
26. Bellido Orihuela, Augusto	70. Dergán Alcántara, Gloria
27. Beltrán Aguilar, Leoncio	71. Dextre Cano, Edgar
28. Bereche Riojas, Lidia	72. Dextre Ordóñez, Edison
29. Bracamonte Chiringano, Juana	73. Díaz Campos, Flavio
30. Bravo Sarco, César Augusto	74. Díaz Céspedes, Nina
31. Burga Cardozo, Vilma	75. Díaz López, Orlando
32. Cabanillas Toro, Guadalupe	76. Echevarría Flores, Gumercinda
33. Cabrera Enríquez, Alfredo	77. Echevarría Suárez, Ruth Cecilia
34. Cajusol Bances, Juan	78. Elera Molero, Luis
35. Callirgos Tarazona, Ricardo	79. Erquiñigo Ramón, Santiago
36. Camargo Matensio, Henry	80. Espinoza Fernández, Félix
37. Campos Alarcón, Dana	81. Eugenio Centeno, Virginia
38. Cánepa Campos, Rosa	82. Fernández Sare, Adolfo
39. Cárdenas Pinto, Herver Victor	83. Ferradas Nuñez, Pablo Jorge
40. Carranza Rodríguez, Manuel	84. Flores Guillén, Lilia Carolina
41. Carrillo Quiñones, Elizabeth	85. Flores Salinas, Javier
42. Castro Salvatierra, Teodoro	86. Gallegos Ramírez, Luz
43. Ccapali Atoccsa, Irene	87. Galvez Saldaña, Nélida
44. Ccapali Atoccsa, Zenón	88. Ganoza Rivera, Jorge

89. García Huallpa, Ana María	146. Núñez Morales, Carmen
90. García Vergara, Segundo	147. Ordoñez Quispe, Marco Antonio
91. Gimeno Aleman, Cecilia Victoria	148. Ore León, Jorge
92. Gonzáles Castillo, Ricardo	149. Orrillo-Vásques Torres, Flavia
93. Gonzáles Figueroa, Máximo	150. Ortega Martell, Carlos
94. Gonzáles Guillén, Gustavo	151. Owada Amado, Oscar
95. Gonzáles Panuera, Luis	152. Pacheco Munayco, Jorge
96. Gonzáles Sánchez, Anabel Iris	153. Paitán Mauricio, Catalina
97. Grández Alvarado César	154. Pajares Godoy, Moises
98. Guevara Gallo, Rodolfo	155. Paredes Cubas, Rosa
99. Guzmán Rebatta, Juan	156. Paredes Cubas, Walter Roberto
100. Hayasshi Bejarano, Folgges Luis	157. Páucar Dávila, Rebeca
101. Hernández Fernández, Ricardo	158. Pedreschi de Berróspi, Graciela
102. Herrera Madueño, Caro	159. Peredo Cavassa, Alicia
103. Herrera Rojas, Lucas	160. Peredo Cavassa, Mario
104. Herrera Valdez, Reynaldo	161. Pérez Guevara, César
105. Hijar Cerpa, Andrés	162. Pérez Polo, Rosalía
106. Hinojosa Silva, Jesús	163. Pereyra Salazar, Walter
107. Hinostroza Toro, Tito	164. Pichilingue Romero, Teresa
108. Huamán Cárdenas, Juan	165. Pilco Guerra, Luisa
109. Huamán Trinidad, Wilfredo Emilio	166. Pizarro Sanchez, Consuelo
110. Huamantumba Vásquez, Mery	167. Pohl Luna, Amelia Rosario
111. Huaraca Vargas, Olimpio	168. Polo Castañeda, Agustín Miguel Arturo
112. Huaranga Soto, María	169. Purizaca Arámbulo, José
113. Hurtado Gutiérrez, Miguel	170. Quineche Díaz, María Elena
114. Ibáñez Ortiz, Sara	171. Quiñónes Atalaya, Lira
115. Ibarra Nato, Susana	172. Quiñónes Díaz, Manuel
116. Inga Coronado, María	173. Quiñónes Seminario, Pedro
117. Infantes Vásquez, María	174. Ramírez Cadenas, Jacinta
118. Jaimes Cano, Marco Antonio	175. Ramírez Granados, Margarita
119. Kitano la Torre, Elsi Judith	176. Ramírez Rodríguez, Mónica Emperatriz
120. La Cruz Crespo, Carlos	177. Ramos de la Cruz, Elmi
121. Loayza Arcos, Lucy	178. Ravello Velásquez, John
122. Lozano Muñoz, Julio	179. Retuerto Aranda, Rómulo
123. Luna Aragón, Elizabeth	180. Revelo Infante, Ronald Luciano
124. Magallan Galoc, Jakeline	181. Reyes Caballero, Rubén
125. Malpartida Gutierrez, Héctor	182. Ribotte Rodríguez, Roberto
126. Marchena Alva, Jorge	183. Rigaid Arevalo, Julio Antonio
127. Margarito Silva, Manuel	184. Rivas Cappelletti, Carlos
128. Marrugarra Neyra, Luis	185. Rivas Chara, Jorge Martín
129. Medina Ramírez, Sergio Alejandro	186. Rivera Delgado, Bertha
130. Meléndez Saavedra, Inés	187. Rivera Loayza, Carmen
131. Menacho Salas, Aquilino	188. Rivera Martinez, Nelly
132. Mendoza Michuy, Manuel	189. Rodas Romero, Julio
133. Molina Ugarte, Noemi	190. Rodríguez Briones, Johel
134. Montalván Alvarado, César	191. Rodríguez Campos, Rommy Cecilia
135. Montes Pacora, Hugo	192. Rodríguez Espada, Eugenio
136. Montes Yacsahuache, Hugo	193. Rodríguez Garcia, Elisa
137. Montoya Luna, Jaime Jhonny	194. Rodríguez Reaño, Vicente Waldo
138. Moreno Gonzáles, Margarita	195. Rojas Cortez, Víctor
139. Mujica Esquivel, Liz	196. Rojas Figueroa, Luis
140. Muñoz Jesús, Berilda	197. Rojas Vega, Irma
141. Murillo de Díaz, Rosa Isabel	198. Roman Toro, Isaías
142. Navarro Sánchez, Jorge	199. Romero Chang, María
143. Navarro, Delano Marcelo	200. Saavedra Ambrosio, José
144. Nizama Zelaya, Víctor	201. Saavedra Mego, Violeta
145. Núñez Centeno, Victor	202. Saavedra Vega, Armando

203. Salas Sobrino, Frida	
204. Salazar Caycho, Eduardo	
205. Salazar Venegas, María	
206. Salcedo Olivares, Liduvina	
207. Sánchez Alarcón, Reyna	
208. Sánchez Campos, Luz	
209. Sánchez Candia, Raúl	
210. Sánchez Lozano, Juan Carlos	
211. Santibañez Velásquez, Oscar	
212. Santisteban, Urmeneta, Ronald	
213. Sarnaqué Vargas, César	
214. Silva Baca, Elieberto	
215. Silva Baca, Victor	
216. Silva Delgado, Iván	
217. Sipán Guerra, Javier	
218. Solís Martell, Clemencia	
219. Solís Retuerto, Wilder	
220. Solís Roca, Eleuterio	
221. Soria Cañas, Edith	
222. Sosa Alvarez, Carmen	
223. Soto Santana, Giovanna Elset	
224. Soto Santana, Walter	
225. Sotomayor Vargas, Rubén Javier	
226. Talledo Añazco, Luz Angélica	
227. Torres Hoyo, Lety	
228. Torres Martínez, Juan	
229. Torres Prieto, Rolando Alfonso	
230. Uchuya Chacaltana, Leoncio	
231. Ugarte Pierrend, Juana	
232. Unzueta Medina, Carlos	
233. Urquiza Alcántara, Ronald	
234. Urrunaga Linares, Victor Manuel	
235. Valdez Rivera, Angela	
236. Valdez Tellez, Hilda	
237. Valeriano Sebastián, Bonifacio Ramón	
238. Varias Trabanco, Freddy	
239. Vásquez Leguía, Oscar	
240. Vásquez Quesada, Juan	
241. Vásquez Quiñones, Soledad	
242. Vásquez Sánchez, Fidel	
243. Vega Díaz, Ivan Alex	
244. Velásquez Machuca, Edgard	
245. Vereau Palma, Cita	
246. Vera Vitoriño, Elizabeth	
247. Vidal Vidal, Eva	
248. Villar Contreras, José	
249. Villareal Rodríguez, Hermelinda	
250. Villegas Guerra, Wilburt	
251. Vizcarra Zorrilla, Neyda	
252. Zapata Zapata, Rosario	