INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE NATIONAL ASSOCIATION OF DISCHARGED AND RETIRED EMPLOYEES OF THE NATIONAL TAX ADMINISTRATION SUPERINTENDENCE (ANCEJUB-SUNAT) *v.* PERU

JUDGMENT OF NOVEMBER 21, 2019

(Preliminary objections, merits, reparations and costs)

In the case of *ANCEJUB-SUNAT v. Peru*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:

Eduardo Ferrer Mac-Gregor Poisot, President
Eduardo Vio Grossi, Vice President
Humberto Antonio Sierra Porto, Judge
Elizabeth Odio Benito, Judge
Eugenio Raúl Zaffaroni, Judge
L. Patricio Pazmiño Freire, Judge, and
Ricardo Pérez Manrique, Judge

also present,

Pablo Saavedra Alessandri, Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or "the Court's Rules of Procedure"), delivers this judgment, structured as follows:

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On September 15, 2017, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court the case of the *National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT)* against the Republic of Peru (hereinafter "the Peruvian State," "the State" or "Peru"). According to the Commission, the case relates to the violation of the right to judicial protection owing to the failure to comply with a judgment of the Supreme Court of Justice of Peru of October 25, 1993, that recognized pension rights to the members of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (hereinafter "ANCEJUB-SUNAT"). The Commission considered that the Peruvian Judiciary had not taken the necessary measures to implement a judicial ruling in favor of a group of pensioners, and added that the fact that more than 23 years had passed without the Supreme Court's judgment of October 1993 being executed exceeded a reasonable time. Lastly, the Commission concluded that the State had violated the right to property of the presumed victims because they were unable to enjoy fully the patrimonial effects of their pension as established in the judgment of October 25, 1993.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

a) *Petition.* On November 11, 1998, August 27, 2003, and October 8, 2004, three petitions were lodged with the Commission in favor or 703 persons.

b) *Admissibility Report.* On March 19, 2009, the Commission adopted Admissibility Report No. 21/09.[1]

c) *Merits Report.* On May 23, 2017. the Commission adopted Merits Report No. 41/17 pursuant to Article 50 of the Convention (hereinafter also "the Merits Report" or "Report No. 41/17"), in which it reached a series of conclusions and made several recommendations to the State.

d) *Notification to the State.* On June 15, 2017, Report No. 41/17 was notified to the State, granting it two months to report on compliance with the recommendations.

e) *Report on the Commission's recommendations.* The State presented a report in which it indicated that it had not committed the violations established in Report No. 41/17.

f) *Submission to the Court.* On September 15, 2017, the Commission submitted all the facts and human rights violations described in the Merits Report to the jurisdiction of the Inter-American Court.[2]

3. *Requests of the Inter-American Commission.* The Commission asked the Court to conclude and declare that the State was internationally responsible for the violations described in the Merits Report and to order Peru, as measures of reparation, to comply with the recommendations made therein (*supra* para. 2.c).

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[1] The report was notified to the parties on April 1, 2009.

[2] The Commission appointed Commissioner Paulo Vannuchi and Executive Secretary Paulo Abrâo as its delegates before the Court. It also indicated that Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán and Erick Acuña Pereda, lawyers of the IACHR Executive Secretariat, would act as legal advisers.

II
PROCEEDINGS BEFORE THE COURT

4. *Notification to the representatives and the State.* The Court notified the Commission's submission of the case to the representatives of the presumed victims (hereinafter "the representatives") on February 26, 2018.

5. *Brief with pleadings, motions and evidence.* On April 26 and June 12, 2018,[3] the representatives submitted their brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief") to the Court. The representatives referred to and endorsed the Commission's description of the facts. They also endorsed the Commission's arguments concerning the preliminary objections and the merits of the case. In addition, they alleged the violation of the rights of the presumed victims to a decent life, property and social security, and to take measures to ensure their effectiveness pursuant to Articles 4(1), 21, 26 and 2 of the American Convention. Lastly, they asked the Court to order the State to adopt diverse measures of reparation and to reimburse costs and expenses.

6. *Answering brief.* On August 29, 2018, the State[4] submitted to the Court its brief answering the submission of the case and the Commission's Merits Report and also the pleading and motions brief (hereinafter "answering brief"). The State filed preliminary objections. The brief was notified to the representatives and the Commission on October 25, 2018.

7. *Observations on the preliminary objections.* On November 23 and 26, 2018, the representatives of the presumed victims and the Commission, respectively, presented their observations on the preliminary objections filed by the State.

8. *Public hearing.* In an order of the President of the Court of March 21, 2019,[5] the parties and the Inter-American Commission were called to a public hearing to receive their final oral observations on the preliminary objections, the merits and eventual reparations and costs, as well as to receive the statement of one victim, and three expert witnesses. The public hearing took place on May 7, 2019, during the 60th special session of the Court held in Montevideo, Uruguay.[6]

9. *Amicus curiae.* The Court received two *amicus curiae* briefs submitted by: (i) the Asociación Latinoamericana de Abogados Laboralistas (ALAL),[7] and (ii) Carlos Rodríguez Mejía and Alberto León Gómez Zuluaga.[8]

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[3] The representatives presented the annexes to their pleadings and motions brief a second time at the Court's request.

[4] In a communication of November 9, 2018, the State appointed Carlos Miguel Reaño Balarezo as its Agent and Silvana Lucía Gómez Salazar and Nilda Peralta Zecenarro as deputy agents (merits file, folio 638).

[5] *Cf. Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Call to a hearing.* Order of the President of the Inter-American Court of Human Rights of March 21, 2019. Available at: http://www.corteidh.or.cr/docs/asuntos/ancejub-sunat_21_03_19.pdf

[6] At this hearing, there appeared: (a) for the Inter-American Commission: Erick Acuña Pereda, legal adviser; (b) for the representatives: Javier Mujica Petit, Carlos Blancas Bustamante and Eddie Rafael Cajaleón Castilla, and (c) for the State: Carlos Miguel Reaño Balarezo, Special Supranational Public Attorney; Silvana Lucía Gómez Salazar and Nilda Peralta Zecenarro, lawyers of the Office of the Special Supranational Public Attorney; Antenor José Escalante Gonzáles, Public Attorney of the National Customs and Tax Administration Superintendence (SUNAT); Edgar Roney Cuadros Ochoa, Manager for Labor Matters of the National Human Resources Directorate of the National Customs and Tax Administration Superintendence (SUNAT), and Julio César López Ramírez, Labor Matters Supervisor of the Tax Attorney's Office of the National Customs and Tax Administration Superintendence (SUNAT).

[7] The brief, signed by Luisa Fernanda Gómez Duque, Matías Cremonte and Rolando Gialdino, relates to the structural problem of non-compliance with domestic judgments by the Republic of Peru.

[8] The brief, signed by Carlos Rodríguez Mejía and Alberto León Gómez, relates to Peru's failure to comply with the judgments of its high courts.

10. *Final written arguments and observations.* On June 8 and 10, 2019, the representatives and the State, respectively, forwarded their final written arguments together with annexes. On June 10, 2019, the Commission presented its final written observations.

11. *Observations on the annexes to the final arguments.* On June 21 and 25, 2019, the representatives and the State, respectively, presented their observations on the annexes forwarded with the final written arguments. On June 24, 2019, the Commission advised that it had no observations to make on the annexes to the final written arguments presented by the State and the representatives.

12. *Deliberation of the case.* The Court began deliberation of this judgment on November 18, 2019.

III
JURISDICTION

13. The Inter-American Court has jurisdiction to hear this case pursuant to Article 62(3) of the American Convention, because Peru ratified the American Convention on July 28, 1978, and accepted the contentious jurisdiction of the Court on January 21, 1981.

IV
PRELIMINARY OBJECTIONS

14. The State raised four "procedural questions" concerning the jurisdiction of this Court and made two "preliminary observations" regarding certain clarifications and precisions on the purpose of the dispute and the delimitation of the presumed victims in this case. In this section, the Court will analyze the arguments that questioned its jurisdiction owing to: (a) the presumed victims' failure to exhaust domestic remedies; (b) the impossibility of the Court acting as a "fourth instance," and (c) the representatives undue inclusion of arguments on the violation of Articles 26 and 4 of the American Convention. The State's preliminary observations will be taken into consideration, as pertinent, in the following section and in the analysis of the merits of the case.

A. Objection of failure to exhaust domestic remedies

A.1. Arguments of the State and observations of the Commission and the representatives

15. The ***State*** argued that the presumed victims had failed to exhaust domestic remedies because, at the time they lodged the petitions on November 11, 1998, August 27, 2003, and October 8, 2004, the process of execution of judgment was still open and pending a decision. It indicated that it had filed the preliminary objection of failure to exhaust domestic remedies opportunely as established in Article 46(1)(a). In addition, it argued that compliance with the obligation to exhaust domestic remedies should be verified when the petition is submitted and not when the Commission rules on its admissibility.

16. The ***representatives*** argued that, since the State had not indicated the supposed remedies that should have been exhausted, the Commission's indications in its Merits Report should be followed. They also argued that the State should prove that those remedies were appropriate and effective. They asserted that the Court should abide by its decisions in the judgment in the case of *Wong Ho Wing v. Peru*, to the effect that domestic remedies should be exhausted at the time the Commission rules on admissibility. However, they indicated that the provisions of Article 46(1)(a) had been complied with because domestic remedies had been exhausted with the judgment of October 25, 1993, against which there was no appeal.

17. The ***Commission*** argued that "in situations in which the evolution in the domestic sphere of the facts initially submitted has an impact on whether or not the admissibility requirements are met, the Commission has indicated that its analysis should be made based on the situation in effect when it rules on admissibility." Thus, it indicated that domestic remedies should be exhausted when it rules on admissibility and not necessarily when the petition is lodged, a standard accepted in the case of *Wong Ho Wing v. Peru*. Consequently, it asked the Court to declare this component of the objection inadmissible. It also reiterated the opinion it had expressed in the Admissibility Report that the exception under Article 46(2)(c) was applicable owing to: the remedies filed by the defendant authorities, the delay of the judicial authorities in deciding the remedies, and the lack of clarity as to the appropriate means to achieve execution of the judgment.

A.2. Considerations of the Court

18. Article 46(1)(a) of the American Convention stipulates that, admission by the Inter-American Commission of a petition or communication lodged in accordance with Articles 44 or 45 of the Convention requires that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.[9]

19. In the case of a preliminary objection of this nature, the first matter that the Court must determine is whether it was filed at the proper procedural moment.[10] The Court has reiterated that, at the admissibility stage before the Commission, the State must explain clearly the remedies that, in its opinion, have not been exhausted.[11] In addition, the arguments that substantiate the preliminary objection filed by the State before the Commission at the admissibility stage must correspond to those submitted to the Court.[12] The Court notes that the State responded to the Commission's communication of March 19, 2005, asking the Commission to declare the petition inadmissible owing to the failure to exhaust domestic remedies. Specifically, the State indicated that "it should be noted that the supposed violations and the petitions filed refer to judicial proceedings that are underway," and that "the case is currently at the stage of execution of judgment as a result of the judgment handed down by the Constitutional Court on May 10, 2001."

20. Thus, the State indicated clearly that domestic remedies had not been exhausted. The Court also notes that the arguments presented by the State at the admissibility stage correspond to those submitted to the Court, because it has argued that, when the representatives lodged the petition with the Commission, the domestic process of execution of judgment was ongoing and that none of the causes established as exceptions to the requirement to exhaust domestic remedies existed. In this regard, the State has indicated that there had not been an unjustified delay as the Commission affirmed in its Admissibility Report.

21. The Court recalls that one of the main disputes in this case is whether the State is responsible for violating the guarantee of a reasonable time owing to the duration of the execution of the judgment of the Constitutional Court of June 25, 1996, that indicated that "the decisions in

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[9] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 85, and *Case of Perrone and Preckel v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of October 8, 2019. Series C No. 385, para. 33.

[10] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 88, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 27.

[11] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 88, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 26.

[12] *Cf. Case of Furlan and family v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012. Series C No. 246, para. 29, and *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of February 16, 2017, Series C No. 333, para. 78.

favor of the [defendant] in the amparo proceedings to which the State is a party, and that were pending cassation by the Court of Constitutional Guarantees are found to be final and enforceable." In this regard, the Court considers that determining whether the time that passed between the judgment of the Constitutional Court of June 25, 1996, and the adoption of the Admissibility Report of March 19, 2009, constituted an unjustified delay, in the terms of Article 46(2)(c) of the American Convention, is a discussion that is directly related to the fundamental dispute relating to Articles 8 and 25 of the Convention.

22. The State also argued in its answering brief that the Commission should verify whether domestic remedies have been exhausted when the representatives' initial petition is submitted, and not when the latter rules on admissibility. However, the Court has already indicated that the fact that compliance with the requirement of exhaustion of domestic remedies is analyzed based on the situation at the time the Commission decides on a petition's admissibility does not affect the subsidiary nature of the inter-American system and, indeed, allows the State to resolve the alleged situation at the admissibility stage.[13] The Court finds that it has no reason to depart from this criterion.

23. Consequently, since there is a close relationship between the preliminary objection filed by the State and the analysis of the merits of the dispute, the Court rejects the State's preliminary objection.

B. Objection based on the "fourth instance"

B.1. Arguments of the State and observations of the Commission and the representatives

24. The ***State*** indicated that, in two reports, it had filed the preliminary objection of "fourth instance" at the admissibility stage before the Inter-American Commission. The State clarified that, in the domestic jurisdiction, the case had clearly been settled by a judicial decision of the Sixth Civil Chamber of the Superior Court of Justice of Lima of May 8, 2006, which ruled that "it was not possible to equalize the pensions with the remuneration of the active employees who belong to the private sector regime." On this basis, the State considered that the representatives lacked grounds to justify processing the case in the international jurisdiction. Consequently, the State argued that neither the Commission nor the Court could substitute their evaluation of the facts for the assessment made by the domestic courts.

25. The ***representatives*** argued that they were not asking the Court to review the rulings or decisions of the domestic courts, but rather to determine whether or not the State's failure to comply with the judgments handed down by the Supreme Court on October 25, 1993, and the Constitutional Court on May 10, 2001, violated several rights protected by the American Convention, bearing in mind that the State is internationally responsible for the acts or omissions of any of its powers or organs, including the courts. Accordingly, they argued that the fourth instance objection should be rejected.

26. The ***Commission*** affirmed that it was appropriate to invoke the international responsibility of the State as a result of non-compliance with judicial rulings and the ineffectiveness of the judiciary to ensure prompt and effective compliance. Consequently, it asked the Court to declare the State's request inadmissible.

B.2. Considerations of the Court

[13] *Cf. Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2015. Series C No. 297, para. 28.

27. The Court has indicated that, for the fourth instance objection to be admissible, the petitioner would have to require the Court to review the ruling of a domestic court because that court had incorrectly assessed the evidence, the facts or domestic law without, at the same time, arguing that this ruling violated international treaties regarding which the Court has jurisdiction.[14] This is in keeping with the Court's consistent case law which has noted that the determination of whether or not the actions of judicial organs constitute a violation of the State's international obligations may lead the Court to examine the respective domestic proceedings to establish their compatibility with the American Convention.[15]

28. In this case, the Court notes that, at the admissibility stage, the State advised the Commission that "the petitioners' claim is, at this time, being submitted to the jurisdiction and decision of the State's domestic jurisdictional organs, so that an analysis of the merits of this petition, as the petitioners seek, would convert the Commission into a fourth instance."[16] The State also indicated that "it would appear that, by lodging this petition, what [the petitioners] seek is to ignore the due process to which the execution of the judgment delivered by the Supreme Court of the Republic on October 25, 1993, is subject, and to contest the rulings of the domestic jurisdiction, unduly seeking that the Court act as a fourth instance."[17] Similarly, in its answering brief, it indicated that due process had not been affected during the proceedings.

29. The Court observes that the grounds on which this preliminary objection filed by the State was based considered that there had been no human rights violations in this case, when that is precisely what will be discussed when analyzing its merits. When assessing the merits, the Court will determine whether, as the State has alleged, the domestic proceedings responded to all the facts claimed by the Commission and the representatives before this Court and whether, when doing so, those proceedings respected the State's international obligations. Consequently, the Court rejects the State's preliminary objection.

C. Objection based on the inclusion of Articles 26 and 4 by the representatives

C.1. Arguments of the State and observations of the Commission and the representatives

30. The ***State*** argued that, under Article 19(6) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (hereinafter "the Protocol of San Salvador"), it is only the protection of trade union rights and the right to education that may be the examined by the system of individual petitions before the inter-American system (either directly or indirectly); thus, this possibility is not permitted with regard to the right to social security. It also asked the Court to "exercise prudently the competences and attributions that the Convention grants it as a guarantor of this instrument, performing its task […] strictly respecting the basic standards that the Convention establishes." Lastly, the State argued that the Commission had not invoked violations of Article 26 of the Convention; rather, these had been alleged exclusively by the representatives based on unfounded arguments. Consequently, it considered that it was not pertinent to analyze the right to social security and this claim should be rejected by the Court. It also argued that there were no factual grounds that adequately

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[14] *Cf. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 221, para. 18, and *Case of Villamizar Durán et al. v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of November 20, 2018. Series C No. 364, para. 30.

[15] *Cf. Case of the "Street Children"" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222, and *Case of Villamizar Durán et al. v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of November 20, 2018. Series C No. 364, para. 30.

[16] Report 127-2006-JUS/CNDH-SE/CESAPI of November 3, 2006 (merits file, folio 495).

[17] Report 070-2006-JUS/CNDH-SE/CESAPI of November 2, 2006 (merits file, folio 495).

substantiated the alleged violation of the right to life, because it had never ceased to pay the presumed victims the pensions that were legally mandated.

31. The ***representatives*** argued that the Court had indicated that the economic, social and cultural rights "should be understood integrally and inclusively as human rights, without any specific ranking among them that are enforceable in all cases before the competent authorities." Regarding the rights protected in this case, they alleged that the rights to fair wages, decent working conditions, freedom of association and to strike, adequate food, decent housing, and to the benefits of culture can be inferred from the Charter of the Organization of American States (hereinafter "the OAS Charter"). They also indicated that the right to social security is derived from the OAS Charter, and includes not only the right to receive a pension on discharge or retirement, but also an adjusted pension. They also argued that Legislative Decree 673 constituted a retrogression in the law that violated Article 26. Regarding the right to life, the representatives argued that, since the State was responsible for depriving the presumed victims of their pensions, it was also responsible for the risk this created to their life.

32. The ***Commission*** observed that the Court has affirmed its competence to hear and decide disputes concerning its jurisdiction to examine violations of Article 26 of the Convention. The Commission underlined the arguments included in the judgments in the cases of *Acevedo Buendía et al. v. Peru* and *PetroPeru et al. v. Peru,* to the effect that the Court "is competent to decide whether the State has violated or failed to comply with the rights recognized in the Convention, including with regard to its Article 26." The Commission indicated that, in the case of *Cuscul Pivaral et al. v. Guatemala,* the Court had indicated that Article 19(2) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador") could not be understood to restrict the Court's competence in relation to Article 26 of the Convention. The Commission did not provide arguments on the alleged lack of competence to examine violations of the right to life.

C.2. Considerations of the Court

33. The Court recalls that, as any jurisdictional organ, it has the authority inherent in its attributes to determine the scope of its own competence (*compétence de la compétence*). When making this determination the Court must take into account that, when a State deposits its instrument recognizing the optional clause on compulsory jurisdiction (Article 62(1) of the Convention), this supposes that it accept the right of the Court to decide any dispute concerning its jurisdiction.[18] In addition, the Court has affirmed its competence to hear and decide disputes in relation to Article 26 of the American Convention, as an integral part of the rights mentioned therein, regarding which Article 1(1) establishes the State obligation to respect and to ensure them.[19]

34. This Court has indicated that a literal, systematic, teleological and evolutive interpretation of the scope of its competence leads to the conclusion that "Article 26 of the American Convention protects those rights derived from the economic, social, educational, scientific and cultural standards contained in the OAS Charter. The scope of these rights must be understood in relation to the other articles of the American Convention; accordingly, they are subject to the general obligations contained in Articles 1(1) and 2 of the Convention and may be subject to supervision by this Court pursuant to Articles 62 and 63 of this instrument. This conclusion is based not only on formal matters, but is a result of the interdependence and indivisibility of the civil and political

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[18] *Cf. Case of Ivcher Bronstein v. Peru. Jurisdiction.* Judgment of September 24, 1999. Series C No. 54, paras. 32 and 34, and *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs.* Judgment of February 8, 2018. Series C No. 348, para. 220.

[19] *Cf. Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2017. Series C No. 340, paras. 142 and 154, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 35.

rights and the economic, social, cultural and environmental rights (ESCER), as well as of their compatibility with the object and purpose of the Convention, which is the protection of the fundamental human rights. In each specific case in which an analysis of the ESCER is required, the Court must determine whether a human right protected by Article 26 of the American Convention is derived from the OAS Charter, as well as the scope of this protection."[20]

35. In the case of *Muelle Flores v. Peru*, the Court noted that the right to social security is derived from examining Articles 3(j), 45(b), 45(h) and 46 of the OAS Charter concurrently.[21] In addition, the Court indicated that the reference to the right to social security is indicated with a sufficient degree of specificity to derive its existence and implicit recognition in the OAS Charter. In particular, it noted that, from the different mentions, it can be assumed that the purpose of the right to social security is to ensure that the individual has life, health and a decent standard of living in his old age, or when any circumstance deprives him of the possibility of working; that is, with regard to future events that could affect the level and quality of his life. Consequently, the Court considered that the right to social security was a right protected by Article 26 of the Convention.[22]

36. Regarding the State's argument concerning the lack of competence to examine violations of the right to life, the Court notes that one of the arguments of the representatives in this case raises the issue of whether the alleged failure to comply with the judgment of October 25, 1993, resulted in a violation of the right to a decent life in the terms of Article 4(1) of the American Convention. In this regard, the Court recalls that the presumed victims or their representatives may invoke the violation of rights other than those included in the Merits Report, provided that they originate from the facts presented by the Commission.[23] Therefore, for the reasons given above, the Court considers that the State's arguments are not of a preliminary nature, and their analysis corresponds to the examination of the merits of the case.

37. Based on the above, the Court rejects the preliminary objection presented by the State, and will rule on the merits of the issue in the corresponding section.

V
PRELIMINARY CONSIDERATION

A. Determination of the victims

A.1 Arguments of the State and observations of the Commission and the representatives

38. The ***State*** argued that the presumed victims in the case should be those persons who were the beneficiaries of the judgment of the Supreme Court of October 25, 1993, which established the individuals to whom that decision applied. The State clarified that, in 2005, the definitive list of the beneficiaries of the decisions issued by the domestic courts was determined, because a ruling of June 3, 2005, established that "only those who were members of the association on the

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[20] *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359, paras. 75 to 97, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 36.

[21] *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 36.

[22] *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 37.

[23] *Cf. Case of the Five Pensioners v. Peru, Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Girón et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 390, para. 94.

date the proceedings were filed, that is December 30, 1991, should be considered plaintiffs." This determination differs substantially from the one included by the Commission in its Merits Report. The State considered it inappropriate that both the Commission and ANCEJUB had argued that persons other than those included in the ruling of June 3, 2005, should be considered presumed victims. Lastly, the State affirmed that paragraph 98 of the Merits Report should not be interpreted as constituting a way to expand the number of victims in this case.

39. The ***representatives*** argued that "there can be no doubt that the beneficiaries of the judgment of the Supreme Court cannot be other than, or less than, all the members of the association to whom the Third Transitory Provision of Legislative Decree 673 was arbitrarily applied and who have been duly and reasonably accredited by the Commission as 703 victims." They also indicated that the number and the list established in decision 80 of March 3, 2006, and in the ruling of June 3, 2005, "unduly and without any objective justification eliminated a significant number of victims by seeking to reduce their number to 566, even though the number of members of the association was higher when the claim was filed." Lastly, they stated that, although there are 704 victims in this case, the Commission did not include 138 others who should be taken into account by the independent and impartial body created as a result of this case.

40. The ***Commission*** reiterated that, since the initial petition, 703 persons had been indicated as presumed victims, notwithstanding the discussions held during the domestic procedure of execution of judgments in relation to the number of beneficiaries. The Commission declared in its Merits Report that the violations corresponded to 703 persons, thus complying with the provisions of the Court's rules of procedure. Consequently, and since the State's argument was not of a preliminary nature, it alleged that it should be declared inadmissible. Lastly, the Commission stated that owing to an error when noting the number of presumed victims in the Merits Report, one victim was omitted; therefore, the Court should consider that there are 704 victims.

A.2 Considerations of the Court

41. Regarding the Commission's request to amend the number of presumed victims as the result of an error, the Court recalls that, as a general rule, legal certainty requires that all the presumed victims are duly identified in the petition and in the Merits Report and it is not possible to add new presumed victims at later stages, as this would prejudice the defendant State's right of defense.[24] This rule is not absolute and does admit exceptions, such as the situation established in Article 35(2) of the Court's Rules of Procedure, or in those cases in which it is alleged that the Commission has made a factual error.[25] In this case, the Court notes that the number of presumed victims included in the "single annex" to the Commission's Merits Report is 704 and not 703 as indicated by the numbering in this annex. The Court notes that two presumed victims were included under number 591 on the list, which changed the total number of presumed victims. This is an error that does not alter the Commission's identification of the presumed victims in its Merits Report.

42. In the instant case, the Court notes that, in its Merits Report, the Commission identified 704 persons as presumed victims in the case and listed them in the "single annex." The State has argued that the number of presumed victims indicated by the Commission does not correspond to the number of persons indicated as beneficiaries of the judgment of the Supreme Court of October 25, 1993, who should be the only ones considered as presumed victims for the effects of the instant case. In this regard, the Court notes that, under Article 35(2) of its Rules of Procedure, it

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[24] *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 110, and *Case of the Dismissed Employees of PetroPeru et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344, para. 55.

[25] *Cf. Case of the Dismissed Employees of PetroPeru et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344, para. 55.

is the Commission who must identify the presumed victims in a case precisely, and it has done so with regard to the 704 individuals included in the "single annex" to the Merits Report. The question of whether the human rights of these individuals have been violated is a matter that must be analyzed when examining the merits of the dispute. Accordingly, the Court considers that the State's arguments in this regard must be analyzed when examining the merits of the dispute.

43. Consequently, the Court admits the Commission's request to amend the number of victims as a result of an error and rejects the State's request to revise the number of presumed victims identified by the Commission in its Merits Report.

VI
EVIDENCE

A. Admissibility of the documentary evidence

44. The Court received diverse documents presented as evidence by the Commission, the representatives and the State, attached to their main briefs. In this case, as in others,[26] the Court admits the probative value of those documents presented by the parties and by the Commission at the proper procedural opportunity that were not contested or challenged and the authenticity of which was not questioned.

45. On August 16, 2019, the representatives of the presumed victims submitted documentation as "new evidence." The State argued that this evidence was time-barred and did not refer to the facts that were in dispute in this case. It therefore asked the Court to reject this evidence. The Court recalls that the parties may present evidence relating to supervening facts at any stage of the proceedings before the judgment is delivered; however, this does not mean that any situation or event constitutes a supervening fact for the effects of the proceedings, because such facts must bear a direct relationship to the matter in dispute.[27]

46. In this case, the Court observes that the evidence offered by the representatives consists of: (a) an address given by the President of Peru on July 28, 2018, on the "System for the administration of justice in Peru,"[28] and (b) a folder with a selection of newspaper articles on this issue.[29] Although they are related to the general situation of the system for the administration of justice in Peru, these documents are not directly related to the dispute in this case. Consequently,

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[26] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 13.

[27] *Cf. Case of the Five Pensioners v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 154, and *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2017. Series C No. 340, para. 24.

[28] The address was given on July 28, 2018, and dealt with the following issues: opening up, judicial reform, reconstruction, the economy, productive sectors, transportation and communications, housing, construction and sanitation, education, health and social inclusion, women and vulnerable populations, environment, culture, security, defense, foreign policy and decentralization (evidence file, folio 15751).

[29] The headings of these articles are: "*Caen los Presidentes del Poder Judicial y el CNM por audios de corrupción*" [Presidents of the Judiciary and the National Council of the Judiciary (CNM) ousted owing to audios revealing corruption], "*Investigan a más de 8 mil magistrados*" [more than 8,000 judges investigated], "*CNM ratificó a Chávarry a días de difundirse los audios"* [CNM ratifies Chávarry only days after audios published], *"Lucha contra la corrupción: el reto más importante del Gobierno de Vizcarra"* [Fight against corruption: most important challenge to Vizcarra's government], *"Sí es posible realizar el referéndum en octubre"* [The referendum can be held in October], *"Colaborador señala que Hinostroza resuelve casos de narcotraficantes"* [Collaborator indicates that Hinostroza decides drug-trafficking cases], *"Congreso inicia camino para acusar a Chávarry, Hinostroza y Rodríguez"* [Congress paves way to indicting Chávarry, Hinostroza and Rodríguez], *"Apellido Fujimori se escucha en nuevo audio de Hinostroza" [*Fujimori's name can be heard in new Hinostroza audio] "*Congreso responde a presión del Ejecutivo por reforma judicial*" [Congress responds to Executive's pressure for judicial reform] and "*Gobierno busca mayor dureza contra fondos políticos ilícitos*" [Government seeks greater severity against illegal political funds] (evidence file, folios 15771 to 15789).

the Court considers that the facts that the representatives refer to as "new evidence" are not related to the facts of this case or to supervening facts; accordingly, pursuant to Article 57(2) of the Rules of Procedure, these documents are not admitted.

B. Admissibility of the testimonial and expert evidence

47. The Court finds it pertinent to admit the statements of a presumed victim and three expert witnesses, the statements and expert reports submitted by affidavits in this case, and the expert report of Christian Courtis[30] in the case of *Muelle Flores v. Peru*, insofar as they are in keeping with the purposed defined by the President in the order requiring them.[31]

VII
FACTS

48. The facts of this case refer to the applications for amparo filed by the members of ANCEJUB-SUNAT, contesting the application of the Third Transitory Provision of Legislative Decree 673 of September 23, 1991, and requesting execution of the judgment of the Social and Constitutional Law Chamber of the Supreme Court of Justice of the Republic of October 25, 1993. In this chapter, the Court will examine the facts that it considers proved in this case, based on the body of evidence that has been admitted and the factual framework established in the Merit Report. It will also include the facts submitted by the parties that explain, clarify or reject that factual framework.[32] To this end, it will examine the facts of this case in the following order: (a) background information; (b) first application for amparo; (c) second application for amparo; (d) third application for amparo, and (e) remedies filed by Mr. Ipanaqué.

A. Background information

49. The National Tax Administration Superintendence (hereinafter "SUNAT") was created by Law 24829 on May 31, 1988, as a decentralized public institution of the Economy and Finance Sector, in order "to administer, apply, monitor and collect domestic taxes, with the exception of municipal taxes, and to propose and participate in the regulation of tax laws."[33] The presumed victims in this case were SUNAT public servants until 1991[34] and, as employees of this institution, were subject to the pension regime established in Decree Law 20530[35] (compensation and pension regime for civil services provided to the State that are not included in Decree Law 19990) and to the Eighth Transitory Provision of the 1979 Constitution (hereinafter "Eighth Transitory Provision"). Decree Law 20530 (hereinafter "Decree 20530") and the Eighth Transitory Provision indicate that "[t]he pensions of employees discharged following more than twenty years' service and of those who have retired from the public administration, who are not subject to the Peruvian

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30 The Commission requested the transfer of this expert report in its final list of deponents.

31 During the public hearing, the Court received the statement of presumed victim Ana María Ráez Guevara and expert witness Frida Vals Gen Rivera offered by the representatives, and also of expert witnesses Cesar Efraín Abanto Revilla and Dante Ludwing Apolín Meza proposed by the State. In addition, the Court received the affidavits of presumed victims Norma Estrella Grande Bolívar de Cortez and Hugo Albert Plasencia Carranza proposed by the representatives, expert witnesses César González Hunt and Reynaldo Bustamante Alacón proposed by the State, and witness Héctor Enrique Lama More proposed by the State. The purpose of the said statements was established in the order of the President of the Inter-American Court of March 21, 2019.

32 *Cf. Case of the Five Pensioners v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 153, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 16.

33 Law No. 24829 of June 7, 1988, and Legislative Decree No. 501 of November 29, 1991.

34 ANCEJUB-SUNAT was constituted on March 15, 1991. *Cf.* Ruling of the Sixty-third Special Civil Court of Lima of June 24, 2002 (evidence file, folios 88 to 91).

35 *Cf.* Decree Law No. 20530 of February 26, 1974 (evidence file, folios 1590 to 1608).

social security regime or other special regimes, shall be progressively equalized with the remuneration of active public servants in each respective category."[36]

50. Decree Law 23495 of November 19, 1982 (hereinafter "Law 23495") regulated the scope of the Eighth Transitory Provision, establishing the rules for the progressive equalization of the pensions of the employees who had been discharged with more than 20 years' service and of those who had retired from the public administration. Article 1 of this decree stipulated that the progressive equalization "shall be made based on the remuneration of the active public servants in the respective categories." Article 5 of the decree indicated that "[s]ubsequent to the adjustment, any increase granted to the active public servants exercising the same or a similar function to the last function exercised by the discharged or retired employee shall result in an increase in the pension by the same amount as that corresponding to the active official."[37] In addition, the regulations to Law 23495 indicated that "for the effects of the equalization of the pensions of the discharged employees referred to in the Law, functions exercised under the regime of Decree Law 20530, which harmonizes and incorporates the norms and provisions of the pension regime of public administration employees, will be taken into consideration."[38]

51. Legislative Decree 639 of June 20, 1991 (hereinafter "Decree 639") declared that SUNAT was to be reorganized and that it should take "measures to ensure organizational restructuring and the rationalization of its resources."[39] On the basis of this decree it was established that, once SUNAT's new organizational structure had been defined, its employees would apply to be submitted to an appraisal and selection process. The employees who passed this process would be taken into consideration on a personnel assignment chart. Those who were not selected would be declared "redundant" and, in that case, "there would be no obligation to reinstate them in the same department or in another in the sector." The same decree established that employees who did not submit an application could take advantage of the "Voluntary Resignation Program," which offered a series of financial incentives to the public servants who resigned from the public administration in SUNAT,[40] such as adding three to five years to their length of service for the calculation of their compensation.[41] If they decided not to benefit from this program and had not

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36 Constitution of the Republic of Peru of July 12, 1979. Eighth Transitory Provision.

37 Decree Law No. 23495 of November 19, 1982, articles 1 and 5.

38 Regulations to Law No. 23495, published on March 18, 1983 (merits file, folio 995).

39 Legislative Decree No. 673 of September 23, 1991 (evidence file, folios 15094 to 15096).

40 *Cf.* SUNAT Resolution No. 948 of July 1991 (evidence file, folios 6834 and 6835).

41 *Cf.* SUNAT Resolution R.S. No. 638-91-EF/SUNAT-A00000 of April 10, 1991, in favor of Álvarez González Darma María (evidence file, folio 6857); SUNAT Resolution R.S. No. 334-91-EF/SUNAT-A00000 of February 15, 1991, in favor of Álvarez Ramírez Glicerio (evidence file, folio 6861); SUNAT Resolution R.S. No. 517-91-EF/SUNAT-A00000 of March 21, 1991, in favor of Antúnez Solís Eduardo Manuel (evidence file, folio 6871); SUNAT Resolution R.S. No. 532-91-EF/SUNAT-A00000 of March 21, 1991, in favor of Benavides Espinoza Fortunato Raúl (evidence file, folio 6965); SUNAT Resolution R.S. No. 263-91-EF/SUNAT-A00000 of February 13, 1991, in favor of Berrocal Barraza Nelly (evidence file, folio 6974); SUNAT Resolution R.S. No. 527-91-EF/SUNAT-A00000 of March 21, 1991, in favor of Candela Lévano Víctor Alfredo (evidence file, folio 7025); SUNAT Resolution R.S. No 291-91-EF/SUNAT-A00000 of February 14, 1991, in favor of Carranza Alfaro Constantino Percy (evidence file, folio 7033); SUNAT Resolution R.S. No. 2053-91-EF/SUNAT-A00000 of August 19, 1991, in favor of Carranza Martínez Victoria Estela (evidence file, folio 7043); SUNAT Resolution R.S. No. 219-91-EF/SUNAT-A00000 of February 12, 1991, in favor of Carrasco Ferrel Eloy (evidence file, folio 7047); SUNAT Resolution R.S. No. 181-91-EF/SUNAT-A00000 of February 11, 1991, in favor of Carreño Llanos Judith Yolanda (evidence file, folio 7053); SUNAT Resolution R.S. No. 214-91-EF/SUNAT-A00000 of February 12, 1991, in favor of Carreño Llanos Luisa Elizabeth (evidence file, folio 7057); SUNAT Resolution R.S. No. 284-91-EF/SUNAT-A00000 of February 13, 1991, in favor of Cassana Bazán Mercedes Irma (evidence file, folio 7069); SUNAT Resolution R.S. No. 622-91-EF/SUNAT-A00000 of April 10, 1991, in favor of Castillo Sánchez Julia Manuela (evidence file, folio 7076); SUNAT Resolution R.S. No. 488-91-EF/SUNAT-A00000 of March 21, 1991, in favor of Chávez Centti Miguel Ángel (evidence file, folio P7118), and SUNAT Resolution R.S. No. 211-91-EF/SUNAT-A00000 of February 12, 1991, in favor of Chiriboga Pardo Jesús Eduardo (evidence file, folio 7129).

passed the appraisal and selection process, the employee would be terminated "due to reorganization."[42]

52. In their capacity as SUNAT employees subject to the pension regime of Decree 20530, the presumed victims in this case decided to take advantage of the Voluntary Resignation Program established by Decree 639. Consequently, on ceasing to exercise their functions, they were eligible for both the financial benefits of the said program and the equalization of their pensions with the remuneration of the active officials of that institution who occupied the same or a similar position. When Decree 639 was issued, the SUNAT employees, including the presumed victims in this case, belonged to the public administration regime established by Legislative Decree No. 276 (hereinafter "Decree 276"); therefore, their pensions were supposed to be equalized based on the remuneration received under that regime.

53. As part of the "organizational restructuring" ordered by Decree 639, Legislative Decree 673 of September 23, 1991 (hereinafter "Decree 673") amended the employment regime for SUNAT employees, establishing that, following its entry into force, the private employment regime of Decree 4916 would be applicable.[43] Since the pension regime corresponding to the employees included in Decree 4916 was Decree Law 19990[44] and, contrary to Decree Law 20530, the latter did not establish the benefit of equalization, SUNAT employees who had passed the appraisal and selection process imposed by Decree 639 were given the option of remaining subject to the public employment regime of Decree 276.[45]

54. Article 3 of Decree 639 established that SUNAT employees who continued to adhere to Decree 276 would have the right to receive the monthly remuneration established for the public sector plus "any possible difference with that corresponding to a function of a similar category or level of remuneration on the salary scale established by SUNAT for personnel covered by the [private] regime of Law 4916." However, it also established that "the higher remuneration" corresponding to this difference "shall be of a non-pensionable nature for those employees covered by the pension regime of Decree Law No. 20530," so that "[t]he amount of the compensation for length of service and, if applicable, of the pension for retirement or severance that might correspond to the employee under Decree Law No. 20530, shall be determined based on the remuneration that corresponded to him at the date of his termination under the public sector employment regime."[46]

55. Meanwhile, the Third Transitory Provision of Decree 673 transferred to the Ministry of Economy and Finance (hereinafter "the MEF") the responsibility for "collecting the contributions and handling the pensions, remunerations and/or similar that SUNAT had to pay its pensioners, both the retirees and discharged employees covered by the regime of Decree Law 20530, and those employees referred to in article 3(c) of Legislative Decree 639."[47] In the understanding that Decree 673 amended both the entity responsible for paying the pensions of the retired and discharged employees covered by Decree 20530 and also the employment regime of SUNAT's active employees based on whose remunerations the corresponding equalizations would be made, ANCEJUB-SUNAT filed an application for amparo against the State.

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[42] *Cf. Mutatis mutandis*. Legislative Decree No. 680 of October 9, 1981, article 2(c) and (d) (evidence file, folios 15096 to 15100).

[43] *Cf.* Legislative Decree No. 673 of September 23, 1991, article 1 (evidence file, folios 15094 to 15096).

[44] *Cf.* Decree Law No. 19990 of April 24, 1973, article 3.

[45] *Cf.* Legislative Decree No. 673 of September 23, 1991, article 2 (evidence file, folios 15094 to 15096).

[46] Legislative Decree No. 673 of September 23, 1991, article 3(a), (c) and (d) (evidence file, folios 15094 to 15096).

[47] Legislative Decree No. 673 of September 23, 1991, Third Transitory Provision (evidence file, folios 15094 to 15096).

B. First application for amparo

56. On December 19, 1991, ANCEJUB-SUNAT filed an application for amparo in order to contest the Third Transitory Provision of Decree 673. The application was filed to guarantee the rights of the members of ANCEJUB-SUNAT to an adjustable and renewable retirement and severance pension based on the remuneration of active public servants by re-establishing "their right that had been violated to the equalization of these pensions with the remunerations of active public servants and ordering the payment of the amounts unduly retained."[48] The Fifth Special Civil Court of Lima, in a ruling of February 7, 1992, declared the application inadmissible because "it was time-barred, since legal the time frame had expired."[49] ANCEJUB-SUNAT appealed this decision but, on September 11, 1992, the Second Civil Chamber of the Superior Court of Lima confirmed the contested judgment.[50]

57. ANCEJUB-SUNAT filed an appeal for nullification and, on October 25, 1993, the Social and Constitutional Law Chamber of the Supreme Court of Justice of the Republic (hereinafter "the Supreme Court") declared the application for amparo admissible. In its judgment, it recognized that "the members of the plaintiff association enjoy the statutory right to a retirement or severance pension under Decree Law [20530]" and "they not only acquired the right that this pension be adjustable and renewable, but also that this adjustment be made in relation to the active public servants in the entity in which they had worked."[51] The operative paragraphs of the judgment established the following:

> The aforementioned application for amparo [is declared] admissible; consequently, [the Third Transitory Provision of Legislative Decree 673] is inapplicable to the former employees of the National Tax Administration Superintendence members of the plaintiff association with a right to receive a retirement or severance pension under Decree Law [20530], a statutory right. It is ordered that their right be reinstated to receive the pension that corresponds to them, equalized with the remunerations of active employees of the National Tax Administration Superintendence and that they be paid the increases that they failed to receive as a result of the application of the said Third Transitory Provision of Legislative Decree [673].

58. The Ministry of Economy and Finance (MEF) contested the decision of the Supreme Court in a cassation appeal. On June 25, 1996, the Constitutional Court issued a ruling with regard to the judgment of October 25, 1993, ordering that the case be referred back to the Supreme Court so that it could order "[…] its execution in accordance with the law." In that ruling, it ordered the execution of the judgment in keeping with the Sixth Transitory Provision of Law 26435, which stipulates the following: "Decisions in favor of the plaintiff in amparo proceedings in which the State is a party, and that are pending cassation by the Court of Constitutional Guarantees, are considered final and enforceable."[52]

59. On January 21, 1997, the Social Security Court of Lima (hereinafter "the Social Security Court") issued a ruling in which it ordered that the judgments delivered by the Supreme Court and the Constitutional Court be notified to the Public Attorney for legal matters relating to the MEF, to the Social Security Standardization Bureau, and to the Ministry of the Economy, so that

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[48] Application for amparo filed by ANCEJUB-SUNAT on December 19, 1991, with the Fifth Special Civil Court of Lima (evidence file, folios 3 to 15).

[49] Ruling of the Fifth Special Civil Court of Lima of February 7, 1992 (evidence file, folios 17 to 19).

[50] *Cf.* Ruling No. 2287 of the Second Civil Chamber of the Superior Court of Lima of September 1, 1992 (evidence file, folio 21).

[51] Judgment of the Supreme Court of Justice of the Republic of October 25, 1993 (evidence file, folios 23 to 25).

[52] Ruling of the Constitutional Court of June 25, 1996 (evidence file, folio 29).

"[…] within the legal time frame, they comply with the terms of these judgments."[53] On February 18, 1997, the Public Attorney for legal matters relating to the MEF requested the Social Security Court to declare the nullity of its decision because, since the judgment of October 25, 1993, established the inapplicability of the Third Transitory Provision of Decree 673, "[…] it is legally impossible for the Ministry of the Economy to make any payment to the plaintiff pensioners, because this judgment annuls the obligation of the MEF to pay the said pensions, reverting the payment obligation to [SUNAT]."[54]

60. On April 8, 1997, the Social Security Court upheld the MEF Public Attorney's request for nullification and, instead, required SUNAT to comply with the provisions of the judgments of the Supreme Court and the Constitutional Court.[55] This ruling was annulled on August 18, 1997, on the grounds that SUNAT had been unable to exercise its right of defense because it had not received notification of the request for nullification. Consequently, the court *a quo* was ordered to communicate the request filed by the Public Attorney to both the said institution and to ANCEJUB-SUNAT.[56]

61. On February 16, 1998, the First Transitory Corporate Public Law Court (hereinafter "the First Corporate Court") revoked the ruling of April 18, 1997, and declared that "the annulment requested by the Ministry of Economy and Finance was unfounded," ordering that "the proceedings continue as of the previous situation." In its decision, the First Corporate Court considered that, given that the Third Transitory Provision of Decree 673 established both the transfer of the payment of the pensions to the MEF and their adjustment based on the remunerations paid by that entity, the judgment of October 25, 1993, should be executed "without evaluating its content or its grounds, limiting its effects, or interpreting its scope, as established in article 4 of the Organic Law of the Judiciary."[57]

62. On August 27, 1998, the Transitory Corporate Public Law Chamber (hereinafter "the Corporate Chamber"): (a) revoked the ruling of February 16, 1998; (b) declared the request for nullification filed by the MEF Public Attorney admissible; (c) declared "null and void" the ruling of January 21, 1997, and (d) ordered the Court *a quo* to issue a new ruling based on the reasonings of its judgment. The Corporate Chamber indicated that the request made of the MEF in relation to compliance with the judgment of October 25, 1993, "violates the principle of the legality of the proceedings," because that judgment "was *res judicata*," and ordered the re-establishment of "[…] the proceedings to the situation prior to the request." It also indicated that the application for amparo had been filed by ANCEJUB-SUNAT "without having identified and individualized its members" and was "[…] addressed generically against the State."[58] It also considered the following:

> Consequently, for execution to be viable in this case, each member of the plaintiff, duly individualized, must undertake the necessary procedure, as appropriate, before the administrative entity that holds the documentary proof of his or her pension that permits, the adjustment of the payments and full compliance with the rights recognized by this court.

63. On October 2, 1998, the First Corporate Court issued a new ruling in which it declared inadmissible the request for the execution of the payment and, "preserving the right of the

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53 Ruling of the Social Security Court of Lima of January 21, 1997 (evidence file, folio 33).

54 Request for nullification filed by the Public Attorney for legal matters relating to the MEF on February 18, 1997 (evidence file, folios 35 to 37).

55 *Cf.* Ruling of the Social Security Court of Lima of April 8, 1997 (evidence file, folio 39).

56 *Cf.* Ruling of August 18, 1997 (evidence file, folio 41).

57 Ruling of the First Transitory Corporate Public Law Court of February 16, 1998 (evidence file, folios 43 and 44).

58 Ruling of the Transitory Corporate Public Law Chamber of August 27, 1998 (evidence file, folios 46 and 47).

members of the plaintiff association to assert this as appropriate," considered that it was "necessary" for each one, individually, to undertake "the pertinent administrative and/or jurisdictional procedure as appropriate, to establish fully the financial aspect in question."[59] ANCEJUB-SUNAT appealed this ruling.[60] On January 21, 1999, the Corporate Chamber confirmed the appealed ruling and declared that the request to execute the judgment as proposed by ANCEJUB-SUNAT was inadmissible, considering that "although it is true that final judgments delivered in amparo proceedings will be executed pursuant to the rules of the corresponding civil legislation," in this case "there is no documentary or other evidence that would allow the court [to order] the execution sought."[61]

C. Second application for amparo

64. On April 23, 1999, ANCEJUB-SUNAT filed an application for amparo against the judges of the Corporate Chamber,[62] seeking that the decisions issued by that court on August 27, 1998, and January 21, 1999, be declared inapplicable. On November 25, 1999, the Corporate Chamber declared the application inadmissible, considering that the execution proposed by ANCEJUB-SUNAT "was not admissible because the application was filed without having identified or individualized its members"; accordingly, it was necessary for each one to undertake the "pertinent procedures" before "the administrative entity that holds the documentary evidence on their pensions" so that "[…] based on all the evidence, it may facilitate and realize their protected rights" and that the application for amparo was not "the appropriate remedy for this purpose" or to request the payment of the procedural costs and expenses, because it was "exceptional in nature, with no stage for receiving evidence."[63]

65. ANCEJUB-SUNAT appealed this ruling and, in this regard, the Supreme Contentious Administrative Prosecutor issued report 588-2000-MP-FN-FSCA, which he addressed to the President of the Supreme Court on April 6, 2000, and in which he considered that "the appeal was substantiated."[64] On August 25, 2000, the Supreme Court confirmed the judgment that had been appealed and declared the application for amparo inadmissible, considering that: (a) "the ruling issued in the amparo proceeding is limited to the claim examined […] consisting in the right to equalization, but not to the payment of the obligation," and (b) "the liquidation should be executed individually in favor of each of the retired or discharged employees […] by the corresponding administrative organ."[65]

66. ANCEJUB-SUNAT filed a special remedy before the Constitutional Court, which delivered judgment on May 10, 2001. The Constitutional Court revoked the contested decision, declared that the application for amparo was admissible and established the "full validity and force" of the ruling issued by the Social Security Court on January 21, 1997. In its reasoning, the Constitutional Court indicated that "the final judgment delivered in an application for amparo is a final ruling

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[59] Ruling of the First Transitory Corporate Public Law Court of October 2, 1998 (evidence file, folios 49 and 50).

[60] *Cf.* Appeal filed by ANCEJUB-SUNAT on October 15, 1998, against the ruling of October 2, 1998 (evidence file, folios 52 to 58).

[61] Ruling of the Transitory Corporate Public Law Chamber of January 21, 1999 (evidence file, folio 60).

[62] *Cf.* Ruling of the Constitutional Court of May 10, 2001, in case file No. 2001-AA/TC (evidence file, folios 70 to 73).

[63] Ruling of the Transitory Corporate Public Law Chamber of November 25, 1999 (evidence file, folios 62 to 64).

[64] Report No. 588-2000-MP-FN-FSCA, issued on April 6, 2000, by the Supreme Contentious Administrative Prosecutor (evidence file, folio 66).

[65] Ruling of the Social and Constitutional Law Chamber of the Supreme Court of Justice of the Republic of August 25, 2000 (evidence file, folio 68).

with the authority of *res judicata* and, consequently, must be executed pursuant to the said ruling."[66]

67. On March 25, 2002, the Sixth Civil Chamber of the Superior Court of Justice of Lima required the judge of the Sixty-third Civil Court of Lima (hereinafter "the Sixty-third Court") to comply "with what has expressly been ordered by the Constitutional Court in its ruling of May [10, 2001]."[67] On April 11, 2002, the Sixty-third Court issued a ruling in which it ordered both SUNAT and the MEF to ensure "strict compliance with the judgment of the Constitutional Court, of May [10, 2001]."[68] On May 15, 2002, ANCEJUB-SUNAT presented a list of deductions to be made in the case of former employees of SUNAT and, on May 24, 2002, it deposited the list of its members[69] and an expert report on "the equalization of the pensions and the payments that were not received, and the calculation of the reimbursement to all [its] members."[70]

68. On June 24, 2002, the Sixty-third Court issued a ruling in which it recognized that "[…] from the information and documentation contained in this case file," it was "evident" that "the plaintiff in these proceedings is constituted by all the members of [ANCEJUB-SUNAT]."[71] In this ruling, that court made the following request to SUNAT and the MEF:

> [T]hat, within three days, it make the payment of the pension that corresponds to them, equalized with the remunerations of [SUNAT] active employees, and reimburse them the increases that they failed to receive as a result of the application of the aforementioned Third Transitory Provision of Legislative Decree [673] to all the members of the plaintiff [ANCEJUB-SUNAT], accredited pursuant to the notarized copy of the register of members and the list of deductions to be made in the case of former employees of [SUNAT].

69. On July 8, 2002, SUNAT issued resolution 042-2002/SUNAT, in which it indicated that, to comply with the ruling of June 24, 2002, it was "necessary to determine the amount of the pension of each of the pensioners included on the lists prepared and forwarded by the MEF" and that this "amount had been established based on the remuneration of SUNAT employees covered by the employment regime regulated by Legislative Decree No. 276, without considering the 'difference' established by article 3 of Legislative Decree No. 673 because this was a non-pensionable concept."[72] In this resolution, SUNAT indicated the following:

> Article 1. It is established that, as of August 2002 in compliance with the final judgment of the Supreme Court of October 25, 1993, the decision of the Constitutional Court of May 10, 2001, the ruling of the Sixty-third Civil Court of Lima, and pursuant to the provisions of Law No. 27719, SUNAT will assume the payment of the retirement or severance pensions of the former employees who are indicated in the documents attached to this resolution, in accordance with the amounts indicated in those documents.
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> Article 2. It is determined that, since there is no difference in the amounts of the pensions referred to in the preceding article, and the pensions that the said former employees have been receiving from the MEF, there is no reimbursement to be made to them.

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66 Ruling of the Constitutional Court of May 10, 2001, in case No. 2001-AA/TC (evidence file, folios 70 to 73).

67 Order of the Sixth Civil Chamber of the Superior Court of Justice of Lima of March 25, 2002 (evidence file, folio 75).

68 Ruling of the Sixty-third Civil Court of Lima of April 11, 2002 (evidence file, folios 77 to 79).

69 *Cf.* Ruling of the Sixty-third Civil Court of Lima of June 24, 2002 (evidence file, folios 88 to 91).

70 Ruling of the Sixty-third Civil Court of Lima of September 23, 2002 (evidence file, folios 113 and 114).

71 Ruling of the Sixty-third Civil Court of Lima of June 24, 2002 (evidence file, folios 88 to 91).

72 SUNAT Resolution No. 042-2002/SUNAT of July 8, 2002 (evidence file, folios 15811 to 15822).

70. On September 23, 2002, the Sixty-third Court required the Judiciary's Register of Judicial Experts to appoint an expert accountant to "establish the payment owed to each of the members of the plaintiff association, determining the amount of the pensions equalized with the remuneration of [SUNAT] active employees and of the reimbursements of the increases that they failed to receive as a result of the Third Transitory Provision of Legislative Decree No. 673."[73]

71. On April 3, 2003, the expert submitted his report, in which he concluded that the total of "the reimbursements of the increases they failed to receive as a result of the application of the Third Transitory Provision of Legislative Decree No. 673 […] amounts to S/442,401,571." The expert explained that, to make this calculation from 1992 to July 1994, he had taken as a reference "the increases that appear on the payrolls under the heading of Legislative Decree No. 673 for SUNAT's active employees who are covered by the employment regime regulated by Legislative Decree No. 276"; while "for the subsequent years," from August 1994 to December 31, 2002, he "had taken into account the salary scales contained in Resolutions" 109-94-EF of September 12, 1994, 118-95-EF of October 18, 1995, and 225-98-EF of November 5, 1998.[74] Both ANCEJUB-SUNAT and SUNAT presented their observations on this report.[75]

72. On April 21, 2004, the Sixty-sixth Civil Court of Lima (hereinafter "the Sixty-sixth Court") required the parties to "forward appropriate documentation that fully identifies all the individuals who, when the claim was filed, in other words December [19, 1991], were members of the plaintiff association, as well as information on their rank or position, the category or level, and the amount received as a retirement pension under the regime of Law 20530."[76] On May 17, 2004, ANCEJUB-SUNAT requested the annulment of this ruling,[77] arguing that it had already forwarded this information on May 24, 2002, and this had been acknowledged by the ruling of June 24, 2002.

73. On May 5, 2005, the Sixty-sixth Court issued ruling 46, which rejected the expert report of April 3, 2003, admitted the observation made by SUNAT that the calculations contained in the expert report had been based on payrolls corresponding to employees covered by the private employment regime "without taking into account that the former employees […] had always worked under the public employment regime."[78]

74. On June 3, 2005, the Sixth Civil Chamber of the Superior Court of Justice of Lima (hereinafter "the Sixth Civil Chamber") issued a ruling in which it established that the only beneficiaries of the judgment of October 25, 1993, were the persons who had been members of ANCEJUB-SUNAT when the application for amparo was filed in December 1991, and identified 603 persons.[79] On November 9, 2005, another expert report was submitted. SUNAT presented its observations on this expert report and ANCEJUB-SUNAT indicated its agreement with it and asked that it be adopted. On March 3, 2006, the Sixty-sixth Court issued ruling 80, in which it declared that the observations submitted by SUNAT were unfounded, adopted the new expert report, ordered SUNAT to proceed to equalize the pensions for the 603 members of ANCEJUB-SUNAT with the higher remuneration paid to the active employees under the employment regime of Decree

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[73] Ruling of the Sixty-third Civil Court of Lima of September 23, 2002 (evidence file, folios 113 and 114).

[74] *Cf.* Expert report of April 3, 2003, submitted by José de la Rosa Pinillos Reyes, certified public accountant (evidence file, folios 1221 to 1230).

[75] *Cf.* Brief of April 22, 2003, with the observations of ANCEJUB-SUNAT on the expert report of April 3, 2003 (evidence file, folios 132 to 139).

[76] Ruling No. 9 of the Sixty-sixth Civil Court of Lima of April 21, 2004 (evidence file, folio 148).

[77] *Cf.* Appeal for annulment filed by ANCEJUB-SUNAT on May 17, 2004, against ruling No. 9 of April 21, 2004 (evidence file, folios 150 to 154).

[78] Ruling No. 46 of the Sixty-sixth Civil Court of Lima of May 5, 2005 (evidence file, folios 161 to 164).

[79] *Cf.* Ruling of the Sixth Civil Chamber of the Superior Court of Justice of Lima of June 3, 2005 (evidence file, folios 15927 to 15935).

276, and established that SUNAT "shall accredit [compliance with this] by means of an appropriate document." This ruling also ordered SUNAT to comply with the payment of the "reimbursement of the amounts the employees had failed to receive" from January 1992 to December 2004 and from January 2005 to "the date of the equalization," and that compliance with this "shall be accredited with an appropriate document," Furthermore, it declared "inapplicable the payment of interest, reserving the right of the plaintiff to pursue this by the pertinent channels."[80]

75. On March 20, 2006, the Sixty-sixth Court issued ruling 81, in which it granted the appeal filed by SUNAT "without suspensive effect" and ordered the referral of the case file to the Sixth Civil Chamber.[81] On July 24, 2006, the Sixth Civil Chamber annulled the ruling of March 3, 2006, and ordered a new expert report to be prepared "respecting article 3(c) of Legislative Decree 673."[82] ANCEJUB-SUNAT filed a third application for amparo against this ruling, and this was processed in parallel to the procedural measures described in this section and will be examined in detail in the following section (*infra* para. 87).

76. On October 25, 2006, the Sixty-sixth Court ordered the preparation of "a new expert accountant's report respecting article 3(c) of Legislative Decree 673, because the equalization should be calculated on the basis of the remuneration of the active public administration official or employee of the same level and category as that occupied by the pensioner at the time he stopped working." As ordered in this ruling, the report would be prepared by a different expert appointed by the Register of Judicial Experts (hereinafter "the REPEJ").[83] In a brief of May 17, 2007, ANCEJUB-SUNAT contested the fee scale proposed by the expert appointed by the REPEJ, considering it represented "a disproportionate sum" and because "it had already paid the fees" of the expert who prepared the first report.[84]

77. On May 30, 2007, the Sixty-sixth Court ordered the case file to be forwarded to the Office of Judicial Experts for the preparation of a new expert report.[85] On November 13 and December 14, 2009, SUNAT submitted two of its own expert reports. On January 14, 2010, the Twenty-third Civil Court of Lima (hereinafter "the Twenty-third Court") ordered ANCEJUB-SUNAT to examine both expert reports and to forward its observations.[86]

78. On March 22, 2010, ANCEJUB-SUNAT requested the annulment of ruling No. 174 of January 14, 2010, considering that it was contrary to "the content of ruling No 156 of May 30, 2007." ANCEJUB-SUNAT specified that, by ordering the handing over of the expert reports prepared by SUNAT, ruling No. 174 had "unnecessarily delayed execution of the judgment"; it therefore asked the court to "order that execution of the judgment continue."[87]

79. On April 26, 2010, ANCEJUB-SUNAT presented its observations on the expert reports prepared by SUNAT. On July 2, 2010, SUNAT contested the request for annulment filed by

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[80] Ruling No. 80 of the Sixty-sixth Civil Court of Lima of March 3, 2006 (evidence file, folios 166 to 171).

[81] *Cf.* Ruling No. 81 of the Sixty-sixth Civil Court of Lima of March 20, 2006 (evidence file, folios 173 and 174).

[82] Ruling of the Sixth Civil Chamber of the Superior Court of Justice of Lima of July 24, 2006 (evidence file, folios 176 to 184).

[83] *Cf.* Ruling No. 138 of the Sixty-sixth Civil Court of Lima of October 25, 2006 (evidence file, folio 186).

[84] *Cf.* Brief of May 21, 2009, signed by ANCEJUB-SUNAT, addressed to the Twenty-third Civil Court of Lima (evidence file, folios 188 and 189).

[85] *Cf.* Brief of May 21, 2009, signed by ANCEJUB-SUNAT, addressed to the Twenty-third Civil Court of Lima (evidence file, folios 188 and 189).

[86] *Cf.* Ruling No. 174 of the Twenty-third Civil Court of Lima of January 14, 2010 (evidence file, folios 196 and 197).

[87] Request for annulment of Ruling No. 174 of January 14, 2010, filed by ANCEJUB-SUNAT on March 22, 2010 (evidence file, folios 212 to 216).

ANCEJUB-SUNAT.[88] On August 3, 2010, the Twenty-third Court declared the request for annulment without merit, considering that "there had been no procedural error." The court also ordered that the case file be forwarded to the Office of Judicial Experts - Expert Technical Team of the Superior Court of Justice of Lima (hereinafter "Expert Technical Team") so that it could "issue the expert report in keeping with the guidelines established by the Superior Court in a ruling of July [24, 2006]," specifying that, since this was "a special case" four judicial experts should be appointed, who had 60 days to prepare their expert report.[89]

80. On October 18, 2011, the Technical Team presented its expert report in which it noted that the MEF had been late in providing the information corresponding to 10 of the 13 years covered by their report.[90] The conclusions of the expert report were as follows:

> "1. There were entitlements to be paid to the former employees of ANCEJUB-SUNAT, owing to the equalization of their pensions with the active employee exercising a similar function to the one they exercised at the time they stopped working.
>
> 2. The reimbursements have been determined comparing the income subject to equalization of the active employee to the total income of the former employee.
>
> 3. The monthly and annual totals for each employee and the final total are described in the Equalization and Reimbursement Tables and in the Annual Consolidated Reimbursement Table.
>
> 4. The entitlements corresponding to the highest amounts found, are mainly due to the equalization subsequent to the entry into force of the increases in the remunerations granted by the Central Government, and to the provisional pensions that were given to the employees whose identification of their corresponding salary level was not on the payrolls.
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> 5. The total entitlements for the period January 1992 to December 2004 amount to S/.193,751.69 new soles."

81. On March 21, 2012, the Twenty-second Civil Court of Lima (hereinafter "the Twenty-second Court") required SUNAT to make available the original payrolls of the active employees covered by Decree 276, and those corresponding to the former employees from January 1992 to December 2004 to an expert appointed by ANCEJUB-SUNAT.[91] On September 5, 2012, SUNAT filed a brief with the Twenty-second Court, listing the errors it had found in the expert report presented by the Technical Team.[92] On September 21, 2012, the Twenty-second Court issued ruling 22 in which it noted that ANCEJUB-SUNAT had appointed two experts.[93] On August 22, 2013, the ANCEJUB-SUNAT experts concluded their report. On September 12, 2013, ANCEJUB-SUNAT presented this report to the Twenty-second Court.[94]

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88 *Cf.* Brief of July 2, 2010, signed by SUNAT, addressed to the Twenty-third Civil Court of Lima (evidence file, folios 208 to 210).

89 *Cf.* Ruling No. 190 of the Twenty-third Civil Court of Lima of August 3, 2010 (evidence file, folios 219 to 222).

90 *Cf.* Expert report of October 18, 2011, prepared by the Technical Team of the Superior Court of Justice of Lima (evidence file, folios 225 to 238).

91 *Cf.* Ruling No. 212 of the Twenty-second Civil Court of Lima of March 21, 2012 (evidence file, folio 240) and Official communication No. 092-2012-SUNAT-4F0000 of April 17, 2012, addressed by SUNAT to ANCEJUB-SUNAT (evidence file, folio 242).

92 *Cf.* Brief dated September 5, 2012, signed by SUNAT, addressed to the Twenty-second Civil Court of Lima (evidence files, folios 244 to 246).

93 *Cf.* Ruling No. 221 of the Twenty-second Civil Court of Lima of September 21, 2012 (evidence file, folio 248).

94 *Cf.* Brief dated September 12, 2013, signed by ANCEJUB-SUNAT, addressed to the Twenty-second Civil Court of Lima (evidence file, folios 252 to 256).

82. On May 18, 2014, the Technical Team presented expert report 092-2014-JAVM-PJ, reviewing and responding to the observations made by the parties. Regarding the observations made by ANCEJUB-SUNAT, the report indicated that "the equalization presented by the plaintiff is contrary to the one determined and developed by the [Constitutional Court …] because it does not take into consideration the contents of article 3(c) of Legislative Decree 673." The Technical Team reached the following conclusions: "the expert report has applied the decisions of the Supreme Court of the Republic and the Sixth Civil Chamber of the Court of Lima, and the contents of the judgment of the Constitutional Court, which establish the correct interpretation of the judgment of the Supreme Court and settle the interpretation dispute."[95] On August 5, 2014, the Twenty-second Court ordered that the said expert report be notified to the parties.[96] ANCEJUB-SUNAT presented observations.[97]

83. On January 5, 2015, the Technical Team issued expert report 003-2015-ETP-JAVM-PJ, in which it clarified that the observations of ANCEJUB-SUNAT exceeded its competence because they referred to "a purely legal dispute."[98] On May 28, 2015, the case file on execution of judgment was received by the Second Civil Court of Lima (hereinafter "the Second Civil Court"), which decided to admit it for analysis.[99] That same day, SUNAT asked the Second Civil Court to continue hearing the case and to approve expert report 092-2014-JAVM-PJ of May 18, 2014.[100]

84. On July 27, 2016, the Second Civil Court decided to hold a special hearing for the experts to provide a detailed explanation of the conclusions to their opinion.[101] The hearing was held on September 26, 2016. The following day, ANCEJUB-SUNAT presented written observations on the expert report of October 18, 2011.[102] On September 28, 2016, SUNAT filed its written observations. On June 13, 2017, the Second Civil Court issued ruling No. 247 declaring the observations presented by ANCEJUB-SUNAT were without merit, and adopted the expert report of October 18, 2011, the results of which had been corroborated by the expert report of May 18, 2014.[103] On July 13, 2017, ANCEJUB-SUNAT filed an appeal against ruling No. 247.[104]

85. On August 14, 2017, SUNAT deposited the sum of S/186,001.62 in the Banco de la Nación in favor of ANCEJUB-SUNAT for "pension entitlements," and this was recorded in a judicial deposit certificate.[105] The same day, SUNAT deposited this certificate with the Second Civil Court together

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95 Expert report No. 092-2014-JAVM-PJ of March 18, 2014, prepared by the Technical Team of the Superior Court of Justice of Lima (evidence file, folios 258 to 262).

96 *Cf.* Ruling No. 235 of the Twenty-second Civil Court of Lima of August 5, 2014 (evidence file, folio 264).

97 *Cf.* Communication of May 31, 2016, signed by the representatives of the presumed victims, addressed to the Inter-American Commission on Human Rights (evidence file, folios 270 to 274).

98 Expert report No. 003-2015-ETP-JAVM-PJ of January 5, 2015, prepared by the Technical Team of the Superior Court of Justice of Lima (evidence file, folio 266).

99 *Cf.* Ruling No. 240 of the Second Civil Court of Lima of May 28, 2015 (evidence file, folio 268).

100 *Cf.* Complaint of May 26, 2016, signed by SUNAT, addressed to the Chief Magistrate of the Decentralized Office for Supervision of the Judiciary of the Superior Court of Justice of Lima (evidence file, folios 276 to 287).

101 *Cf.* Ruling No. 247 of the Second Civil Court of Lima of June 13, 2017 (evidence file, folios 15871 to 15878).

102 *Cf.* Brief dated September 27, 2016, signed by ANCEJUB-SUNAT, addressed to the Second Civil Court of Lima (evidence file, folios 15879 to 15883).

103 *Cf.* Ruling No. 247 of the Second Civil Court of Lima of June 13, 2017 (evidence file, folios 15871 to 15878).

104 *Cf.* Ruling No. 12 of the Third Civil Chamber of the Superior Court of Justice of Lima of November 15, 2017 (evidence file, folios 15886 to 15898).

105 Judicial deposit certificate No. 2017000203156, issued on August 14, 2017, by the Banco La Nación for the sum of S/186,001.62 (evidence file, folio 15904).

with the payroll ordered by the court.[106] SUNAT asked the Second Civil Court to find that it had complied with the judgment of October 25, 1993. In ruling 250 of August 15, 2017, the Second Civil Court found that the sum of S/186,001.62 had been deposited in favor of ANCEJUB-SUNAT and ordered that the association be notified of this.[107] On November 15, 2017, in ruling 12, the Third Civil Chamber of the Superior Court of Justice of Lima confirmed ruling 247.[108]

86. On December 19, 2017, ANCEJUB-SUNAT filed an appeal before the Constitutional Court against ruling 12.[109] The Constitutional Court decided this appeal in a decision of April 23, 2019, in which it: (a) confirmed the ruling of November 15, 2017, which had, in turn, confirmed the ruling of June 13, 2017, declaring that ANCEJUB-SUNAT's observations on the expert report of October 18, 2011, were without merit; (b) adopted the expert report of October 18, 2011, that had been ratified by the expert report of May 18, 2014, concerning the calculation of the equalized pensions from January 1992 to December 2004, and (c) ordered the judge of execution of judgment to prevent any "new delaying situations" and to take the "necessary steps to give effect to the equalization of the pensions of the plaintiff's members and the payment of the corresponding reimbursements," as established in the expert report of October 18, 2011.[110] To support its judgment, the Constitutional Court indicated the following, *inter alia*:

> "[…] Regarding the questions raised in the observations […] made by the plaintiff association […] it is necessary, as the courts have rightly done, to reiterate the ruling made by this Court in the judgment issued in Case 00649-2011-PA/TC, which is *res judicata*. Indeed, in that judgment, the Constitutional Court […] clarified these questions definitively, concluding that the exclusion from the equalization, which is the subject of this case, of the increases based on differentiated family support, basic food items, Legislative Decree 673, and differentiated annual bonus payments 276 […] bore no relationship to an arbitrary or restrictive interpretation of the final judgment of the Supreme Court that was subject to execution and, in particular, would not annul it, so that the rights to a pension of the members of the plaintiff association are not violated.
>
> As can be seen […] the Constitutional Court, in a ruling of August 2011, recognized the constitutionality of article 3(c) of Legislative Decree 673 and the legitimacy of the exclusion of the increases claimed by the plaintiff association […].
>
> […] An examination of the proceedings reveals that the execution of the judgment has not concluded yet owing to the existence of numerous expert reports, prepared by accountants, lawyers and by the parties, and by the reiterated observations made by the parties against these expert reports.
>
> Of particular relevance, is the claim of the plaintiff association that, equalization of the pensions of its members and the corresponding reimbursements should include the increases that have been excluded from the judicial experts' accounting report against which the plaintiff has made the observation that is the subject of this appeal; insisting on this, despite the fact that, as mentioned above, the Constitutional Court had already settled the matter in 2011, concluding that these increases were not of a pensionable nature for the employees covered by the pension regime of Decree Law 20530, and that this claim could not be accepted because

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106 *Cf.* Brief dated August 14, 2017, signed by SUNAT, addressed to the Second Civil Court of Lima (evidence file, folio 15902), and Payroll issued by the Compensations Division of the SUNAT Employment Management Directorate in response to court order No. 065-2017-SUNAT/8A1200 (evidence file, folio 15906).

107 *Cf.* Ruling No. 250 of the Second Civil Court of Lima of August 15, 2017 (evidence file, folio 15909).

108 *Cf.* Ruling No. 12 of the Third Civil Chamber of the Superior Court of Justice of Lima of November 15, 2017 (evidence file, folios 15886 to 15898).

109 Appeal before the Constitutional Court filed by ANCEJUB-SUNAT on December 19, 2017 against ruling No. 12 of November 15, 2017 (evidence file, folios 15911 to 15925).

110 *Cf.* Decision of the Constitutional Court of April 23, 2019, regarding Case No. 00289-2018-PA/TC (supervening evidence, submitted by the State during the public hearing on May 7, 2019).

to do so would mean equalizing their pensions to the remunerations of SUNAT employees subject to the private employment regime."

D. Third application for amparo

87. On December 15, 2006, ANCEJUB-SUNAT filed an application for amparo against the two judges of the Sixth Civil Chamber owing to whose majority vote the ruling of July 24, 2006, had been adopted,[111] ordering a new expert report (*supra* para. 75). In the application, ANCEJUB-SUNAT argued that, when issuing the ruling of July 24, 2006, its rights to effective judicial protection, due process and the effectiveness of judicial decisions had been violated.[112] On September 28, 2009, the Seventh Civil Chamber of the Superior Court of Justice of Lima declared the application for amparo filed by ANCEJUB-SUNAT without merit.[113]

88. On December 2, 2009, ANCEJUB-SUNAT appealed this decision.[114] On July 22, 2010, the Supreme Court confirmed the ruling of September 28, 2009.[115] ANCEJUB-SUNAT presented an appeal before the Constitutional Court against the judgments of July 22, 2010, and August 9, 2011; the Constitutional Court declared this without merit. The Constitutional Court considered that, article 3(c) of Decree 673 stipulated that the higher remuneration established in paragraphs (a) and (b) of that article were non-pensionable, and "by not paying this to the members of the appellant who enjoy an equalized pension, their rights to a pension are not violated." The Constitutional Court also considered that the "judgment [of October 25, 1993,] only considered that the Third Transitory Provision did not apply to the members of [ANCEJUB-SUNAT] […] but not paragraph (c) of article 3," and this "had not been submitted to the Constitutional Court."[116] It also indicated the following:

> "[…] Since this is so, the claim in this case would involve equalizing the pensions of the members of the appellant to the remunerations of SUNAT personnel covered by the private employment regime, and this would be contrary to the consistent case law of this Court, according to which "the equalization to which all the pensioners covered by the regime of Decree Law No. 20530 have a right should be calculated based on the salary of the active official or employee of the same level, category and employment regime as the pensioner at the time he stopped working, and equalization with different social security regimes is inapplicable, as well as in relation to employees who are currently covered by a private employment regime."

89. On September 1, 2011, ANCEJUB-SUNAT filed a request for clarification of this judgment. On September 22, 2011, the Constitutional Court declared this request inadmissible.[117]

E. Remedies filed by Mr. Ipanaqué

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111 The only judge not included was Pomareda Chávez-Bedoya, who contributed a dissenting opinion.

112 *Cf.* Application for amparo filed by ANCEJUB-SUNAT on December 15, 2006, against the judges of the Sixth Civil Chamber of the Superior Court of Justice of Lima (evidence file, folios 1081 to 1106).

113 *Cf.* Ruling No. 38 of the Seventh Civil Chamber of the Superior Court of Justice of Lima of September 28, 2009 (evidence file, folios 301 to 313).

114 *Cf.* Appeal filed by ANCEJUB-SUNAT on December 2, 2009, against the ruling of September 28, 2009 (evidence file, folios 289 to 299).

115 *Cf.* Judgment of the Social and Constitutional Law Chamber of the Supreme Court of Justice of the Republic of July 22, 2010 (evidence file, folios 315 to 321).

116 Judgment of the Constitutional Court of August 9, 2011, in Case No. 00649-2011-PA/TC (evidence file, folios 15858 to 15868).

117 *Cf.* Ruling of the Constitutional Court of September 22, 2011 (evidence file, folios 331 and 332).

90. On March 10, 1999, Rafael Ipanaqué Centeno (hereinafter "Mr. Ipanaqué"), a member of ANCEJUB-SUNAT, filed an appeal with the First Corporate Court, in his personal capacity, requesting it to order SUNAT to comply with the provisions of the judgment of the Supreme Court of October 25, 1993.[118] In parallel and on the same date, Mr. Ipanaqué asked SUNAT directly to comply with the judgment.[119] On March 16, 1999, Mr. Ipanaqué sent a communication to the National Tax Administration Superintendent in which he repeated the previous request, also asking that the latter expedite the matter.[120] On the same date, he asked the First Corporate Court to send an official communication to SUNAT requiring it to comply with the payment of the equalized pensions and reimbursements.[121] On March 29, 1999, Mr. Ipanaqué reiterated his request to SUNAT that it comply with the judgment in a notarized letter, which this institution received on April 5, 1999[122].

91. On March 30, 1999, the First Corporate Court ordered SUNAT to comply fully with the judgment within 10 days.[123] On April 5, 1999, SUNAT answered the demands of Mr. Ipanaqué alleging that he should have filed his request before "[…] the administrative authority that holds his documentation, which is in the hands of the Ministry of Economy and Finance or in the Social Security Standardization Office."[124] On April 12, 1999, Mr. Ipanaqué replied to SUNAT that its letter of April 5 was "illegal and inapplicable" and asked SUNAT to annul it and, rather, comply with the orders of the First Corporate Court of March 30.[125]

92. On April 26, 1999, Mr. Ipanaqué addressed another communication to SUNAT demanding "for the fifth time" that it execute the judgment of October 25, 1993, and the subsequent rulings confirming this.[126] The same day, Mr. Ipanaqué again requested the First Corporate Court to order SUNAT to comply with the ruling of March 30, 1999 "[…] failing which he would file the pertinent criminal action."[127] On April 29, 1999, the First Corporate Court annulled the ruling of March 30, 1999, declared "void, all the proceedings in relation to the intervention of Rafael Ipanaqué Centeno"[128] and considered the following:

> "Although it is true that Rafael Ipanaqué Centeno is a member of the National Association of discharged and retired employees of SUNAT, he has not demonstrated the existence of interests in order to litigate separately, especially if it is considered that, if all the numerous members of this association came forward personally, it would make the procedure extremely

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118 *Cf.* Communication of March 16, 1999, signed by Rafael Ipanaqué Centeno, addressed to the National Tax Administration Superintendent (evidence file, folios 6218 to 6220). Brief of March 10, 1999, signed by Rafael Ipanaqué, addressed to the First Transitory Corporate Public Law Court (evidence file, folios 6258 to 6260).

119 *Cf.* Communication of March 10, 1999, signed by Rafael Ipanaqué Centeno, addressed to SUNAT (evidence file, folios 6212 to 6217).

120 *Cf.* Communication of March 16, 1999, signed by Rafael Ipanaqué Centeno, addressed to the National Tax Administration Superintendent (evidence file, folios 6218 to 6220).

121 *Cf.* Brief of March 16, 1999, signed by Rafael Ipanaqué Centeno, addressed to the First Transitory Corporate Public Law Court (evidence file, folio 6261).

122 *Cf.* Notarized letter signed by Rafael Ipanaqué Centeno on March 30, 1999, before the notary Manuel Forero (evidence file, folios 6221 to 6223).

123 *Cf.* Ruling of the First Transitory Corporate Public Law Court of March 30, 1999 (evidence file, folio 6262).

124 Letter No. 2054-99-SUNAT-11-4200, addressed to Rafael Ipanaqué Centeno by SUNAT on April 5, 1999 (evidence file, folio 6224).

125 *Cf.* Communication of April 12, 1999, signed by Rafael Ipanaqué Centeno, addressed to SUNAT (evidence file, folios 6225 to 6230).

126 *Cf.* Communication of April 26, 1999, signed by Rafael Ipanaqué Centeno, addressed to SUNAT (evidence file, folios 6231 to 6233).

127 Brief of April 26, 1999, signed by Rafael Ipanaqué Centeno, addressed to the First Transitory Corporate Public Law Court (evidence file, folios 6264 to 6266).

128 Ruling of the First Transitory Corporate Public Law Court of April 29, 1999 (evidence file, folios 6273 and 6274).

> cumbersome […]. In a ruling of October [2] last year it was clearly specified that the plaintiffs with the jurisdictional precedent that constitute *res judicata*, should individually initiate the pertinent administrative and/or jurisdictional procedure, as applicable, addressed to the entity that holds the documentation concerning their pensions and not in these proceedings that do not have this documentation."

93. Mr. Ipanaqué appealed the ruling of April 29, 1999, arguing that "judges do not have the authority to annul their own rulings."[129] On May 17 and June 1, 1999, Mr. Ipanaqué again requested SUNAT to equalize his pension and pay "the reimbursements that he had failed to receive," failing which he would file "the pertinent legal actions."[130] On June 14, 1999, Mr. Ipanaqué filed a brief with the Corporate Chamber in which he confirmed the reasons for his appeal against the ruling of April 29, 1999.[131]

94. On June 23, 1999, SUNAT informed Mr. Ipanaqué that it was unable to respond to his request and that the MEF had his documentation.[132] On July 5 and 26, 1999, Mr. Ipanaqué repeated his initial request to SUNAT.[133] SUNAT answered him in a communication of August 20, 1999, that the ruling of March 30, 1999, "could not be complied with" because it had been annulled by a ruling of April 29, 1999.[134]

95. On September 30, 1999, the Corporate Chamber confirmed the ruling of April 29, 1999.[135] On October 21, 1999, Mr. Ipanaqué asked the President of Peru to grant him an audience in order to explain his case[136] and, the following day, he advised SUNAT that he had filed an appeal against the ruling of April 29, 1999.[137] On October 30, 1999, Mr. Ipanaqué repeated his request to the President of Peru to be granted an audience[138] and filed a remedy for reconsideration with SUNAT owing to administrative silence, considering that his petitions had been denied "without, to date, the issue of a decision that concludes the proceedings."[139]

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[129] Appeal filed by Rafael Ipanaqué Centeno on April 13, 1999, against the ruling of April 29, 1999 (evidence file, folios 6276 to 6282).

[130] Communication of May 17, 1999, signed by Rafael Ipanaqué Centeno, addressed to SUNAT (evidence file, folios 6236 and 6237). Communication of June 1, 1999, signed by Rafael Ipanaqué Centeno, addressed to SUNAT (evidence file, folios 6238 to 6240).

[131] *Cf.* Brief dated June 14, 1999, signed by Rafael Ipanaqué Centeno, addressed to the Transitory Corporate Public Law Chamber (evidence file, folios 6283 to 6286).

[132] *Cf.* Letter No. 4157-99-M00000 of June 23, 1993, addressed by SUNAT to Rafael Ipanaqué Centeno (evidence file, folios 6241 and 6242).

[133] *Cf.* Communication of July 5, 1999, signed by Rafael Ipanaqué Centeno, addressed to SUNAT (evidence file, folios 6243 to 6246). Communication of June 1, 1999, signed by Rafael Ipanaqué Centeno, addressed to SUNAT (evidence file, folio 6247).

[134] *Cf.* Letter No. 5670-99-MD0100 of August 20, 1999, addressed to Rafael Ipanaqué Centeno by SUNAT (evidence file, folio 6248).

[135] *Cf.* Ruling of the Transitory Corporate Public Law Chamber of September 30, 1999 (evidence file, folio 6287).

[136] *Cf.* Letter of October 21, 1999, signed by Rafael Ipanaqué Centeno, addressed to the President of Peru and received by the President's Office on October 22, 1999 (evidence file, folios 6297 to 6299).

[137] *Cf.* Communication of October 22, 1999, signed by Rafael Ipanaqué Centeno, addressed to SUNAT (evidence file, folio 6252 and 6253).

[138] *Cf.* Letter of October 30, 1999, signed by Rafael Ipanaqué Centeno, addressed to the President of Peru and received by the President's Office on November 3, 1999 (evidence file, folios 6300 to 6302).

[139] Appeal for reconsideration filed by Rafael Ipanaqué Centeno on October 30, 1999, with SUNAT (evidence file, folios 6254 to 6256).

96. On December 1, 1999, SUNAT advised Mr. Ipanaqué that, "contrary to his indications," the ruling "whose execution he is requesting with such insistence" had been appealed and annulled.[140]

VIII
MERITS

97. The Court will now proceed to examine the merits of the case. The Court will determine whether the State is responsible for the violation of the judicial guarantees and judicial protection of the presumed victims in this case based on the alleged failure to execute the judgment of the Supreme Court of October 25, 1993, as well as owing to the effects that this failure to execute the judgment had on other rights recognized by the Convention. The fact that the State has paid the presumed victims' pensions is not in dispute; rather, the main dispute consists in determining whether it has complied with full execution of the judgment of October 25, 1993, and the possible impact that this had on other rights. The Court also recalls that the facts of the case took place in the context of the organizational restructuring and resource rationalization initiated by SUNAT owing to the entry into force of Decree 639 of June 20, 1991, as well as of the modification of the employment regime of SUNAT employees with the entry into force of Decree 673. This situation allegedly had an impact on the remunerations receive by the employees subject to the employment regime of Decree 276 and, thus, the pensions corresponding to those who were discharged or retired under the regime of Decree 20530, to which the presumed victims in the case belonged. This resulted in the application for amparo the judgment in which must be analyzed.

98. Consequently, the Court will examine the arguments that have been presented in a single chapter, in the following order: (a) the alleged violation of the lack of access to an effective judicial remedy (Article 25(1) and 25(2)(c) and the guarantee of a reasonable time (Article 8(1)) owing to the failure to execute the judgment and the duration of the proceedings; (b) the alleged violation of the right to social security (Article 26), owing to the failure to guarantee the essential elements of the protection of that right; (c) the right to a decent life (Article 4(1)), owing to the consequences that the State's actions may have had on the living conditions of the presumed victims; (d) the right to property (Article 21), owing to the possible effects on their patrimony, and (e) the failure to adapt domestic laws (Article 2), owing to the alleged existence of a general context of non-compliance with judgments ordering the restitution of rights of a social nature.

VIII
RIGHTS TO JUDICIAL GUARANTEES,[141] JUDICIAL PROTECTION,[142] SOCIAL SECURITY,[143] A DECENT LIFE,[144] PROPERTY,[145] AND THE OBLIGATION TO ADOPT DOMESTIC LEGAL PROVISIONS[146]

A. Right to judicial protection

A.1. Arguments of the Commission and of the parties

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140 *Cf.* Letter No. 8377-99-M00100, of December 1, 1992, addressed by SUNAT to Rafael Ipanaqué Centeno (evidence file, folio 6257).

141 Article 8(1) of the American Convention.

142 Article 25 of the American Convention.

143 Article 26 of the American Convention.

144 Article 4(1) of the American Convention.

145 Article 21 of the American Convention.

146 Article 2 of the American Convention.

99. The ***Commission*** observed that more than 23 years had passed since the Supreme Court's judgment of October 25, 1993, and at the date of its Merits Report, the execution process was still underway. It also indicated that numerous judicial disputes had arisen during the process of execution of judgment that have not been settled definitively and that, since 2002, 16 years had elapsed during which numerous expert reports had been submitted and none of them had received final approval. The Commission considered that it had been proved that the judiciary had not taken the necessary steps to resolve fundamental aspects of the implementation of a judgment in favor of a group of pensioners, who were also older persons. Consequently, it concluded that the State was responsible for the violation of the rights established in Articles 25(1) and 25(2) of the Convention to the detriment of those persons indicated in the single annex to the Merits Report.

100. The ***representatives*** argued that the judgment of October 25, 1993, ended the judicial dispute on the right of the discharged and retired employees of ANCEJUB-SUNAT to enjoy the equalized pension that corresponded to them pursuant to Decree 20530; however, despite this, almost 27 years after their claim was filed before the courts, the Peruvian State has failed to provide a final response to ANCEJUB-SUNAT. They also argued that the State had violated the right of the presumed victims to judicial protection because none of the three applications for amparo had produced any effect. Moreover, they were insufficient to redress the legal situation that had been violated, or to provide reparation for the alleged violations, and this constituted a violation of Article 25 of the Convention.

101. The ***State*** argued that it had not violated the right to judicial protection established in Articles 25(1) and 25(2)(c) of the Convention because ANCEJUB-SUNAT had prompt access to an effective remedy before competent judges and courts, and the corresponding authorities guaranteed compliance with the decision contained in the judgment of October 25, 1993. It indicated that, based on ruling 46 of the Sixty-sixth Court of May 5, 2005, the rulings of the Sixth Civil Chamber of Lima of July 24, 2006, and May 8, 2016, and also the judgment of the Constitutional Court of August 9, 2011, the State had resolved the fundamental aspects of the execution of the judgment of October 25, 1993.

A.2. Considerations of the Court

102. Article 25 of the American Convention recognizes the right to judicial protection. This Court has indicated that, in order to protect this right, the State has two specific obligations. The first, to establish by law and ensure the due application of effective remedies before the competent authorities that protect all persons subject to their jurisdiction against acts that violate their fundamental rights or that involve the determination of their rights and obligations.[147] The second, to guarantee the means to execute the respective decisions and final judgments issued by those competent authorities, in order to provide effective protection to the rights that are declared or recognized.[148] In this regard, Article 25(2)(c) of the Convention establishes the right "that the competent authorities shall enforce" any decision in which the remedy has been declared admissible.[149]

103. Regarding compliance with judgment, the Court has indicated that the State's responsibility does not end when the competent authorities issue a decision or judgment, but also requires that

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147 *Cf. Case of the "Street Children"" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 237, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 134.

148 *Cf. Case of Baena Ricardo et al. v. Panamá. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 79, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 134.

149 *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 124.

the State guarantee effective ways and means to execute the final decisions in order to provide effective protection to the declared rights.[150] Moreover, the Court has established that the effectiveness of judgments depends on their execution, and it is this process that should ensure the protection of the right recognized in the judicial ruling by the appropriate implementation of this ruling.[151] The Court has also indicated that to ensure the full effectiveness of the judgment, its execution must be complete, perfect, comprehensive and prompt.[152]

104. The Court recalls that the members of ANCEJUB-SUNAT were employed by SUNAT under the Basic Law of the Public Administration Career[153] and the pension regime of Decree 20530 when Decree 639 ordered the reorganization of this institution.[154] As part of the "organizational restructuring and resource rationalization" ordered by Decree 639, SUNAT established the possibility of joining a Voluntary Resignation Program that offered financial incentives such as the recognition of three to five additional years of service in the calculation of the severance pension.[155] In this regard, the Court notes that the members of ANCEJUB-SUNAT were SUNAT employees with more than 20 years of public service, most of whom joined the Voluntary Resignation Programs established by Decree 639.

105. Consequently, SUNAT was obliged to pay those who had resigned their equalized pensions based on Decree 20530, which involved the equalization of the pensions in accordance with the salaries earned by the active employees in this institution. However, in September 1991, the payment was transferred to the MEF by the Third Transitory Provision of Decree 673,[156] issued in the context of the SUNAT reorganization, and which modified the employment regime of the employees who had passed the recruiting process, substituting the public regime of Decree 276 by

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150 *Cf. Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights).* Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 125.

151 *Cf. Case of Las Palmeras v. Colombia. Reparations and costs*. Judgment of November 26, 2002. Series C No. 96, para. 58, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 135.

152 *Cf. Case of Mejía Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of July 5, 2011. Series C No. 228, para. 105, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 125.

153 Legislative Decree No. 276 of March 6, 1984 (evidence file, folios 1615 to 1628).

154 Legislative Decree No. 673 of September 23, 1991 (evidence file, folios 15094 to 15096).

155 *Cf.* SUNAT Resolution R.S. No. 638-91-EF/SUNAT-A00000 of April 10, 1991, in favor of Álvarez González Darma María (evidence file, folio 6857); SUNAT Resolution R.S. No. 334-91-EF/SUNAT-A00000 of February 15, 1991, in favor of Álvarez Ramírez Glicerio (evidence file, folio 6861); SUNAT Resolution R.S. No. 517-91-EF/SUNAT-A00000 of March 21, 1991, in favor of Antúnez Solís Eduardo Manuel (evidence file, folio 6871); SUNAT Resolution R.S. No. 532-91-EF/SUNAT-A00000 of March 21, 1991, in favor of Benavides Espinoza Fortunato Raúl (evidence file, folio 6965); SUNAT Resolution R.S. No. 263-91-EF/SUNAT-A00000 of February 13, 1991, in favor of Berrocal Barraza Nelly (evidence file, folio 6974); SUNAT Resolution R.S. No. 527-91-EF/SUNAT-A00000 of March 21, 1991, in favor of Candela Lévano Víctor Alfredo (evidence file, folio 7025); SUNAT Resolution R.S. No. 291-91-EF/SUNAT-A00000 of February 14, 1991, in favor of Carranza Alfaro Constantino Percy (evidence file, folio 7033); SUNAT Resolution R.S. No. 2053-91-EF/SUNAT-A00000 of August 19, 1991, in favor of Carranza Martínez Victoria Estela (evidence file, folio 7043); SUNAT Resolution R.S. No. 219-91-EF/SUNAT-A00000 of February 12, 1991, in favor of Carrasco Ferrel Eloy (evidence file, folio 7047); SUNAT Resolution R.S. No. 181-91-EF/SUNAT-A00000 of February 11, 1991, in favor of Carreño Llanos Judith Yolanda (evidence file, folio 7053); SUNAT Resolution R.S. No. 214-91-EF/SUNAT-A00000 of February 12, 1991, in favor of Carreño Llanos Luisa Elizabeth (evidence file, folio 7057); SUNAT Resolution R.S. No. 284-91-EF/SUNAT-A00000 of February 13, 1991, in favor of Cassana Bazán Mercedes Irma (evidence file, folio 7069); SUNAT Resolution R.S. No. 622-91-EF/SUNAT-A00000 of April 10, 1991, in favor of Castillo Sánchez Julia Manuela (evidence file, folio 7076); SUNAT Resolution R.S. No. 488-91-EF/SUNAT-A00000 of March 21, 1991, in favor of Chávez Centti Miguel Ángel (evidence file, folio P7118), and SUNAT Resolution R.S. No. 211-91-EF/SUNAT-A00000 of February 12, 1991, in favor of Chiriboga Pardo Jesús Eduardo (evidence file, folio 7129).

156 *Cf.* Legislative Decree No. 673 of September 23, 1991. Third Transitory Provision (evidence file, folios 15094 to 15096).

the private regime of Decree 4916 for those who chose this.[157] It was in this context that the presumed victims filed an application for amparo, the execution of which is the main focus of analysis in this judgment. As a result of the application for amparo, the Supreme Court delivered the judgment of October 25, 1993, which established: (a) that the Third Transitory Provision of Decree 673 was not applicable to the members of the Association; (b) the restitution of their right to receive the pensions equalized "with the remunerations of active employees of [SUNAT]," and (c) the reimbursement of "the increases that they had failed to receive" owing to the said provision.[158] This judgment was subsequently confirmed by judgments issued by the Constitutional Court on June 25, 1996,[159] and May 10, 2001.[160]

106. On the basis of the arguments submitted by the Commission and by the parties, as well as of the facts described above, the Court must examine, first, whether the State has complied with the judgment of October 25, 1993, and whether this compliance has been in accordance with the terms and scope defined in the rulings of the domestic courts that decided the practical aspects of its execution, such as the regime on which the calculation of the equalized pensions should be based and the persons who should be the beneficiaries of this. Second, if the judgment has not been executed, the Court must determine the obligations that remain pending and whether this was due to irregularities or unjustified delays by the State that have made the process of execution of judgment ineffective and, consequently, have made this incompatible with the guarantees established in Article 25 of the American Convention.

A.2.1. Alleged compliance with the judgment of October 25, 1993

107. The Court notes that the main dispute regarding the execution of the judgment of October 25, 1993, consists in the payment of the equalized pensions to the presumed victims; in other words, whether the pensions correspond to the determinations made by the Supreme Court and, consequently, whether the State has fully executed this decision. To verify the compliance alleged by the State, the Court must rule on the scope of the judgment of October 25, 1993, as regards whether or not it indicated the inapplicability of article 3(c) of Decree 673, which established the non-pensionable nature, for the discharged and retired employees subject to Decree 20530, of the higher remuneration received by SUNAT employees in light of the private employment regime of Decree 4916.[161] Therefore, the Court must analyze the terms of this judgment and whether the conduct of the authorities responsible for its execution respected them. In this regard, the Court notes that the two key elements of the dispute in the domestic sphere, which are relevant for the analysis of this case in the international jurisdiction, are: (a) the regime for calculating the equalization of the pensions, and (b) the determination of the beneficiaries of the judgment.

i) The regime for calculating the equalization of the pensions

108. The Court recalls that the judgment of October 25, 1993, ordered the restitution of the right of the presumed victims to the equalization of their pensions pursuant to the regime of Decree 20530. However, this judgment did not stipulate the employment regime based on which the pensions of the presumed victims should be equalized. The ambiguity of the judgment of October 25, 1993, on this point was a result of Decree 673 based on which two employment regimes co-existed within SUNAT: one public and the other private. This meant that the persons who performed the same or similar tasks to those performed by the presumed victims - and whose remuneration would be the parameter for the equalization of the pensions – could be subject to two different

157 *Cf.* Legislative Decree No. 673 of September 23, 1991, article 2 (evidence file, folios 15094 to 15096).

158 *Cf.* Judgment of the Supreme Court of Justice of the Republic of October 25, 1993 (evidence file, folios 23 to 25).

159 *Cf.* Ruling of the Constitutional Court of June 25, 1996 (evidence file, folio 29).

160 *Cf.* Ruling of the Constitutional Court of May 10, 2001, in case No. 2001-AA/TC (evidence file, folios 70 to 73).

161 Legislative Decree No. 673 of September 23, 1991, article 3 (evidence file, folios 15094 to 15096).

regimes – public and private – and their remuneration would vary in function of the regime to which they were subject, with the particularity that the remunerations corresponding to the latter were manifestly higher than those corresponding to the former.

109. This resulted in a judicial debate on whether, when ordering the equalization of the pensions of the presumed victims based on "the remunerations of the active employees of the National Tax Administration Superintendence," the judgment of October 25, 1993, referred to the remunerations of all the active employees of SUNAT, including those subject to the private employment regime of Decree 4916, or only those who belonged to the public employment regime of Decree 276. In light of the patrimonial repercussions of the judgment of October 25, 1993, this matter was the main issue in litigation following the presentation of the first expert report on April 3, 2003, the successive contestations of which resulted in the ruling of July 24, 2006, that was confirmed by the judgment of August 9, 2011, which was ratified by the Constitutional Court's judgment of April 23, 2019.

110. In the judgment of August 9, 2011, the Constitutional Court established the scope of the judgment of October 25, 1993, as regards the regime that should serve as the basis for calculating the equalized pensions and the pending reimbursements, interpreting the said judgment in the sense that it did not establish the inapplicability of article 3(c) of Decree 673 to the members of ANCEJUB-SUNAT and, consequently, their pensions could only be equalized in keeping with the public employment regime of Decree 276 and not based on the private employment regime of Decree 4916. When ratifying the judgment of July 24, 2006, and, consequently, the applicability of article 3(c) of Decree 673, the judgment of August 9, 2011, limited the equalization of the pensions to the remunerations of SUNAT employees subject to the public employment regime, without taking into account the increases received by the employees subject to the private regime, which, following the entry into force of Decree 673, became the overall regime for this institution. Thus, the Constitutional Court established, definitively, the employment regime based on which the judgment of October 25, 1993, should be executed, for the following reasons:

> As can be appreciated, article 3 of Legislative Decree No. 673 establishes that, for the employees who choose to remain under the regime of Legislative Decree No. 276, in addition to their monthly remuneration corresponding to the public sector, they shall receive the difference that exists with a similar position or level of remuneration for personnel under the private employment regime (paragraph (a)). Furthermore, they will receive the additional remunerations that SUNAT establishes for the personnel subject to the private employment regime (paragraph (b)). Lastly, paragraph (c) of this article 3 indicates that the said "higher remuneration" shall be of "a non-pensionable nature for those employees included in the pension regime of Decree Law No. 20530.
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> The "non-pensionable" nature stipulated in article 3(c) of Legislative Decree No. 673 of the said "higher remuneration" established by paragraph (a) and (b) of this article, was not regulated in its constitution and consequent inapplicability owing to the judgment of the Supreme Court that is in execution. In other words – as can be appreciated from the transcript of its operative paragraphs […] this judgment only decided that the Third Transitory Provision of Legislative Decree [673] was inapplicable to the members of the appellant, but not paragraph (c) of its article 3.
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> […] Consequently, in the opinion of this collegiate Court, the ruling of the Sixth Civil Chamber of the Superior Court of Lima, of July 24, 2006, […] contrary to the appellant's allegation, does not make an arbitrary and restrictive interpretation or, above all, overrule the judgment of the Supreme Court of October 25, 1993."[162]

111. The Court considers that the Constitutional Court's reasoning meets the obligation to justify its rulings, which constitutes a guarantee for the proper administration of justice because it

[162] Judgment of the Constitutional Court of August 9, 2011, in case No. 00649-2011-PA/TC (evidence file, folios 15858 to 15868).

safeguards the right of citizens to be prosecuted for the reasons established by law, while providing credibility to judicial decisions in a democratic society.[163] It is the reasoning that underlies a judgment that allows the facts, motives and laws based on which the authority took its decision to be known.[164] From the reasoning cited above, the Court observes that the Constitutional Court concluded that the judgment of October 25, 1993, did not establish the inapplicability of article 3(c) of Decree 673, taking into consideration: (a) the procedural record (pages 1 to 4); (b) the purpose of the complaint (considering paragraphs 8 to 11); (c) the provisions applicable to amparo proceedings (considering paragraphs 1 and 2); (d) the principles for effective judicial protection (considering paragraphs 5 to 7), and (e) domestic jurisprudence (considering paragraphs 16 and 18).

112. To reach this conclusion, the Court observes that the Constitutional Court not only analyzed the content of Decree 673, as can be seen in considering paragraphs 15 and 16 of the said judgment, but, as revealed by considering paragraph 17, evaluated the effects derived from article 3(c) of this norm, and compared the operative paragraphs of the judgment of October 25, 1993, with the claims originally made in the application for amparo of December 1991. Regarding this comparative exercise, the Court notes that ANCEJUB-SUNAT requested the following in the application for amparo of December 19, 1991:

> "[…] Precisely and specifically, in this application for amparo, we require that the Third Transitory Provision of Legislative Decree 673 not be applicable to the discharged and retired employees of SUNAT with a right to a renewable pension under the regime of Legislative Decree 20530, reinstating their violated right to the equalization of their pensions with the remunerations of active employees and ordering the reimbursement of the amounts that were unduly left unpaid."[165]

113. The Court recalls that the Supreme Court's judgment of October 25, 199, admitted the application for amparo and established that:

> The aforementioned application for amparo [is declared] admissible; consequently, [the Third Transitory Provision of Legislative Decree 673] is inapplicable to the former employees of the National Tax Administration Superintendence members of the plaintiff association with a right to receive a retirement or severance pension under Decree Law [20530], a statutory right. It is ordered that their right be reinstated to receive the pension that corresponds to them, equalized with the remunerations of active employees of the National Tax Administration Superintendence and that they be paid the increases that they failed to receive as a result of the application of the said Third Transitory Provision of Legislative Decree [673]."[166]

114. Having compared the two texts, the Constitutional Court concluded that the Supreme Court had adapted its decision to the explicit request of ANCEJUB-SUNAT. The latter's application had only requested the inapplicability of the Third Transitory Provision of Decree 673, without referring explicitly to its article 3(c) or to which regime the pensions should be equalized. This reveals that the Constitutional Court provided a clear explanation of its decision, which is an essential element

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163 *Cf. Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 5, 2008. Series C No. 182, para. 77, and *Case of Perrone and Preckel v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of October 8, 2019. Series C No. 385, para. 120.

164 *Cf. Case of Claude Reyes et al. v. Chile. Merits, reparations and costs*. Judgment of September 19, 2006. Series C No. 151, para. 122, and *Case of Perrone and Preckel v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of October 8, 2019. Series C No. 385, para. 120.

165 Application for amparo filed by ANCEJUB-SUNAT on December 19, 1991, with the Fifth Special Civil Court of Lima (evidence file, folios 3 to 15).

166 Judgment of the Supreme Court of Justice of the Republic of October 25, 1993 (evidence file, folios 23 to 25).

of the proper justification of a judicial ruling.[167] The Court also notes that, when taking a decision on the application of article 3(c) of Decree 673, the Constitutional Court ruled on the arguments presented by the parties and responded individually to the arguments set out by ANCEJUB-SUNAT, which is also one of the elements of the obligation to provide adequate reasoning for judicial decisions[168] pursuant to the right to judicial guarantees and judicial protection.

115. The Court recalls that the effectiveness of a remedy does not require it to produce a result that is favorable to the plaintiff,[169] because the State obligation to conduct proceedings that abide by the guarantee of judicial protection is an obligation of means or conduct.[170] In this case, the Court notes that, even though the judgment of August 9, 2011, decided the dispute concerning the regime under which the equalization of the pensions should be carried out, ANCEJUB-SUNAT continued to contest the expert reports that were prepared as ordered in that judgment and, therefore, the Constitutional Court had to rule again on the interpretation of the judgment of October 25, 1993, indicating in a ruling of April 23, 2019, that "it had already settled the matter in 2011, and concluding that the said increases were not pensionable for the employees covered by the pension regime of Decree 20530."[171]

116. Consequently, even though the Constitutional Court made an interpretation that differed from the one intended by the presumed victims when they filed their third application for amparo, the Court concludes that the judgment of August 9, 2011, did not contravene any of the guarantees of due process of law or of an effective judicial remedy, notwithstanding the fact that the unjustified delay in the execution of the judgment of October 25, 1993, could, in itself, represent a violation of Articles 25 and 8 of the Convention or result in the violation of other rights, such as to social security, a decent life, and property, which will be examined later in this chapter.

ii) The beneficiaries of the judgment of October 25, 1993

117. On this point, the Court finds it pertinent to rule on the persons who may be considered beneficiaries of the judgment of October 25, 1993. The Court recalls that the Commission reiterated that the initial petition indicated that 703 individuals were presumed victims, without prejudice to the discussions underway in the domestic proceedings on execution of judgment regarding the number of beneficiaries. The representatives indicated that "there can be no doubt that the beneficiaries of the judgment of the Supreme Court cannot be other than, or less than, all the members of the association to whom the Third Transitory Provision of Legislative Decree No. 673 was arbitrarily applied, and who have been duly and reasonably accredited by the Commission as 703 victims." To the contrary, the State has argued that the presumed victims in this case should be those who benefited from the judgment of the Supreme Court of October 25, 1993, who were determined in the ruling of June 3, 2005.

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167 *Cf. Case of García Ibarra et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 17, 2015. Series C No. 306, para. 151.

168 *Cf. Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 96, and *Case of Perrone and Preckel v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of October 8, 2019. Series C No. 385, para. 121.

169 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 67, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 135.

170 *Cf. Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs.* Judgment of October 13, 2011. Series C No. 234, para. 122, and *Case of Duque v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of February 26, 2016. Series C No. 310, para. 155.

171 Judgment of the Constitutional Court of April 23, 2019, in case No. 00289-2018-PA/TC (supervening evidence, submitted by the State during the public hearing on May 7, 2019).

118. In this regard, the Court recalls that the judgment of the Supreme Court of October 25, 1993, declared the inapplicability of the Third Transitory Provision of Decree 673 to "[…] the former employees of the National Tax Administration Superintendence members of the plaintiff association who are eligible."[172] Since this ruling did not identify the persons who, at that time, were members of ANCEJUB-SUNAT, and on behalf of whom the said association had filed the application for amparo,[173] the determination of the beneficiaries of the judgment was one of the first problems that arose during the process of execution of judgment, constituting a disputed aspect that had to be decided by the domestic courts.

119. This Court recalls that, when the execution process resumed following the judgment of May 10, 2001,[174] in rulings of April 11 and May 30, 2002, the Sixty-third Court ordered SUNAT to comply with the judgment of October 25, 1993,[175] and in response, SUNAT advised that it would only comply "with regard to the persons covered by the effects of the Supreme Court judgment […], who are only the 11 persons accredited as members of ANCEJUB when it filed the complaint."[176] As a result of this objection by SUNAT, from 2002 onwards the judgment execution courts had to determine who were the members of ANCEJUB-SUNAT when the application for amparo was filed on December 19, 1991, and, consequently, who was covered by the effects of the judgment of October 25, 1993.[177]

120. This matter was addressed by the ruling of the Sixth Civil Chamber of June 3, 2005, in which it recognized the persons who had been members of ANCEJUB-SUNAT when the application for amparo was filed as beneficiaries of the judgment of October 25, 1993, and identified 603 persons whose names were provided on a list prepared on the basis of the register of ANCEJUB-SUNAT members and a list of deductions relating to former SUNAT employees.[178] In its considerations, the Chamber indicated that "[i]n response to the petition filed by [ANCEJUB-SUNAT], on behalf of its members, only those who were members when the proceedings were filed – that is December [30, 1991,] when the petition was admitted for processing – should be considered plaintiffs […] because those who joined the association after that date were not represented by the association in the proceedings and, therefore, are not plaintiffs."

121. The Court agrees with this ruling in the sense that if ANCEJUB-SUNAT was acting on behalf of its members, it is logical that only those who were members when the application for amparo was filed in 1991 can be considered beneficiaries of the decision that declared it admissible. The Court observes that, in addition to the 603 individuals identified in the ruling of June 3, 2005, when approving the expert report of October 18, 2011, and ordering the payment of the reimbursements established therein, the Constitutional Court, in the decision of April 23, 2019,[179] considered as beneficiaries of the judgment of October 25, 1993, the persons listed in the annexes to the said expert report. Since the Court has no record of the revocation of the said rulings, it

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172 Judgment of the Supreme Court of Justice of the Republic of October 25, 1993 (evidence file, folios 23 to 25).

173 *Cf.* Application for amparo filed by ANCEJUB-SUNAT on December 19, 1991, with the Fifth Special Civil Court of Lima (evidence file, folios 3 to 15).

174 *Cf.* Ruling of the Constitutional Court of May 10, 2001, in case No. 2001-AA/TC (evidence file, folios 70 to 73).

175 *Cf.* Ruling of the Sixty-third Civil Court of Lima of April 11, 2002 (evidence file, folios 77 to 79), and Ruling of the Sixty-third Civil Court of Lima of May 30, 2002 (evidence file, folio 81).

176 Brief dated May 31, 2002, signed by SUNAT and addressed to the Sixty-third Civil Court of Lima (evidence file, folios 83 to 86).

177 *Cf.* Ruling of the Sixty-third Civil Court of Lima of June 24, 2002 (evidence file, folios 88 to 91), and Ruling of the Sixty-third Civil Court of Lima of September 23, 2002 (evidence file, folios 113 and 114).

178 *Cf.* Ruling of the Sixth Civil Chamber of the Superior Court of Lima of June 3, 2005 (evidence file, folios 15927 to 15935).

179 *Cf.* Judgment of the Constitutional Court of April 23, 2019, in case No. 00289-2018-PA/TC (supervening evidence, submitted by the State during the public hearing on May 7, 2019).

considers that the determination of the persons to whom the provisions of the judgment of October 25, 1993, applied was decided by the rulings of June 3, 2005, and April 23, 2019.

122. In this regard, the Court recalls that, in this case, the main purpose of the litigation is to determine whether the State is internationally responsible for failing to execute the judgment of the Supreme Court of October 25, 1993, and the effects that this judgment could have on other rights of the presumed victims. Consequently, given that only the 597 individuals identified either in the ruling of June 3, 2005, or in the expert report adopted by the decision of April 23, 2019, have been recognized as beneficiaries of the judgment of October 25, 1993, the Court finds that these are the only persons who may be considered presumed victims of the violations alleged in this case, provided they are included in the "single annex" to the Commission's Merits Report.[180] For this reason, Mr. Ipanaqué cannot be considered a presumed victim in this case, even though the Commission considered him as such in its Merits Report.

123. Based on the above, the Court must determine whether the State has executed the judgment of October 25, 1993, as defined by the Constitutional Court in its judgment of August 9, 2011, and in favor of the 597 persons who, having been individualized in the ruling of June 3, 2005, or in the expert report of October 18, 2011, adopted by the decision of April 23, 2019, appear as presumed victims in the Merits Report of the Commission.

A.2.2. Failure to pay the reimbursements due owing to the equalization of the pensions

124. The Court recalls that the substantive aspect that had to be determined by the process for execution of the judgment of October 25, 1993, was the calculation of the sums that should be paid to the presumed victims to reimburse the equalized pensions that they did not receives while the Third Transitory Provision of Decree 673 was applicable. Based on the content of the said judgment, the judgment of August 9, 2011, and Law 23495 on the progressive equalization of the pensions of discharged and retired public administration employees,[181] the Court notes that these reimbursements consist of the difference between the amounts of the pensions received by the victims while the Third Transitory Provision of Decree 673 was in force and until the entry into force of the constitutional reform established by Law 28389, and those corresponding to the remunerations received over that period by SUNAT's active employees subject to the employment regime of Decree 276, who occupied the same or a similar position to the one occupied by the victims at the time they stopped working, without including the concepts considered to be non-pensionable by article 3(c) of Decree 673. In other words, the reimbursements are the increase that should have been established in the pensions of the presumed victims if, during the application of the Third Transitory Provision of Decree 673, the pensions had been equalized with the progressive increases in the remuneration received by SUNAT employees covered by the employment regime of Decree 276.

125. The Court reiterates that, because the judgment of October 25, 1993, ordered the reimbursement of this difference in general, without establishing the amount for each discharged or retired employee, an expert opinion was required in order to determine the amount of the increases corresponding to the pensions of the presumed victims if these had been equalized over the period that the Third Transitory Provision of Decree 673 was applicable – from January 1992 to December 2004 – when the constitutional reform that eliminated the right to equalization

[180] The Court notes that, of the 704 individuals established by the Commission as presumed victims in its Merits Report, 598 were also considered beneficiaries of the judgment of October 25, 1993, pursuant to the ruling of June 3, 2005, and the expert report of October 18, 2011. The individuals who were not included in the Commission's Merits Report, but were included in the ruling of June 3, 2005, or in the expert report of October 18, 2011, are not presumed victims in this case.

[181] Article 1(b) of Law 23495 establishes that "the amount of the equalization shall be determined by the difference between the amount of the remuneration that corresponds to a specific position or to a similar one and the total amount of the pension of the discharged or retired employee." Law 23495 of November 19, 1982.

entered into force. Two expert reports were prepared to determine these amounts and they were successively revoked by the courts responsible for execution of judgment owing to observations by one or the other party: (a) the expert report of April 3, 2003, was revoked by a ruling issued on May 5, 2005, by the Sixty-sixth Court,[182] and (b) the expert report of November 9, 2005, was revoked by a ruling issued on July 24, 2006, by the Sixth Civil Chamber.[183]

126. As ordered in the ruling of July 24, 2006, the preparation of a third expert report was ordered on October 25, 2006.[184] The Technical Team submitted this on October 18, 2011,[185] and it was ratified by a fourth report dated May 18, 2014.[186] The expert report of October 11, 2011, included the calculation of the equalization and determined the difference between this and the pensions that the presumed victims were receiving, concluding that the amount pending payment for this concept amounted to S/193,751.69 new soles.[187]

127. The Court recalls that this expert report was adopted by the Second Civil Court in ruling No. 247 of June 13, 2017,[188] which was confirmed as *res judicata* by the decision delivered by the Constitutional Court on April 23, 2019. In light of the ruling of June 2017, on August 14, 2017, SUNAT deposited the amount corresponding to the reimbursements for the concept of "pension entitlements" in the Banco de La Nación, in the name of ANCEJUB-SUNAT,[189] and deposited the certification of this operation with the Second Civil Court.[190] However, the amounts corresponding to the reimbursements have not yet been paid to the presumed victims, and this was recognized by the Constitutional Court itself when it indicated, in the judgment of April 23, 2019, that "even though more than 20 years have passed, the case still continues at the stage of execution of judgment" and then ordered the executing judge to "take the necessary steps to give effect to the equalization of the pensions of the members of the plaintiff and the payment of the corresponding reimbursements, as established in the expert accounting report of October 18, 2011."[191]

128. Although this Court notes that an appeal was filed against the ruling of June 13, 2017,[192] which eventually resulted in the decision of April 23, 2019, the Court considers that, owing to the nature of the benefit involved, the State should have acted with special diligence, taking steps to guarantee, as soon as possible, the execution of the judgment of October 25, 1993, in relation to the payment of the reimbursements. This is due to the nature of the benefit involved, as a salary substitute, as well as the need for promptness, procedural simplification and effectiveness in cases

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182 *Cf.* Ruling No. 46 of the Sixty-sixth Civil Court of Lima of May 5, 2005 (evidence file, folios 161 to 164).

183 *Cf.* Ruling of the Sixth Civil Chamber of the Superior Court of Justice of Lima of July 24, 2006 (evidence file, folios 176 to 184).

184 *Cf.* Ruling No. 138 of the Sixty-sixth Civil Court of Lima of October 25, 2006 (evidence file, folios 173 and 174).

185 *Cf.* Ruling No. 247 of the Second Civil Court of Lima of June 13, 2017 (evidence file, folios 15871 to 15878).

186 *Cf.* Expert report No. 092-2014-JAVM-PJ of March 18, 2014, prepared by the Technical Team of the Superior Court of Justice of Lima (evidence file, folios 258 to 262).

187 *Cf.* Expert report of October 18, 2011, prepared by the Technical Team of the Superior Court of Justice of Lima (evidence file, folios 225 to 238).

188 *Cf.* Ruling No. 247 of the Second Civil Court of Lima of June 13, 2017 (evidence file, folios 15871 to 15878).

189 Judicial deposit certificate No. 2017000203156, issued on August 14, 2017, by the Banco La Nación for the sum of S/186,001.62 (evidence file, folio 15904).

190 *Cf.* Brief dated August 15, 2017, signed by SUNAT, addressed to the Second Civil Court of Lima (evidence file, folio 15902), and Payroll issued by the Compensations Division of the SUNAT Employment Management Directorate in response to court order No. 065-2017-SUNAT/8A1200 (evidence file, folio 15906).

191 Judgment of the Constitutional Court of April 23, 2019, in case No. 00289-2018-PA/TC (supervening evidence, submitted by the State during the public hearing on May 7, 2019).

192 *Cf.* Ruling No. 12 of the Third Civil Chamber of the Superior Court of Justice of Lima of November 15, 2017 (evidence file, folios 15886 to 15898).

in which the claim before the jurisdictional organs refers to social security, especially of older persons.[193] The Court considers that, even though the appeals had suspensive effects in relation to the decision appealed, in this case, the court of execution should have declared the enforceability of the ruling of June 13, 2017, granting the appeal without suspensive effects, so that the presumed victims could have receive the amounts of the reimbursements ordered by the judgment of October 25, 1993, while it was being processed and admissibility was being decided.

129. The Court notes that this measure had been adopted before SUNAT filed the appeals,[194] so that it was circumscribed to the courts of execution that intervened in the case. Indeed, this authority was established in article 368 of the Peruvian Code of Civil Procedure, which regulates the effects of appeals and establishes that they may be admitted "without suspensive effects, so that the effectiveness of the contested ruling is maintained, and even compliance with it."[195] On this basis, and since SUNAT had deposited the amount corresponding to the reimbursements, the Court considers that the State could have ensured the delivery of this sum to the presumed victims since 2017. However, it did not do so despite the special nature of this benefit and the vulnerable situation of the presumed victims as older persons. This reveals a lack of diligence by the State in the adoption of the necessary measures to ensure the execution of the judgment of October 25, 1993, fully, rapidly and without unjustified delays, pursuant to the obligations established in Article 25(2)(c) of the Convention.

A.2.3. Delays created by the State that influenced the failure to execute the judgment of October 25, 1993

130. The State argued that "at the stage of execution of judgment a series of disputes arose that could not be discussed during the judicial proceedings [on the amparo] and that, of necessity, had to be discussed and resolved at the execution stage […] and, as these related to financial obligations, […] the judge had to obtain expert evidence with regard to the calculations and the payments." The Court notes that, since it was issued in the context of an amparo proceeding, the judgment of October 25, 1993, established, in general terms, the ratification and protection of the right of the presumed victims to receive their equalized pensions and the reimbursement of the amounts that they had not received during the application of the Third Transitory Provision of Decree 673. Thus, although it established an obligation of the State to make the payment, this was not complied with because the specific amounts that should be reimbursed had not been determined. In this regard, expert witness Dante Ludwig Apolín indicated that:

> What happened in this specific case? […] the judgment of the Supreme Court of October 25, 1993, established three legal consequences in its operative paragraphs: first, the inapplicability of the Third Transitory Provision of Legislative Decree 673; second, that the State should reinstate the right to receive the pension that corresponded to them and, third, that they should be paid the increases that they had failed to receive.
>
> The first of these consequences, the first of these directives is clearly a constitutive statement that does not require a conduct from the defendant in order to take effect […]. However, the other two consequences, the two other directives, impose a conduct on the defendant: that the State grant a specific benefit, […] the benefit of a sum of money.

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193 *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 148.

194 For example, on March 20, 2006, the Sixty-sixth Civil Court of Lima issued ruling No. 81 admitting "without suspensive effects" the appeal filed by SUNAT. *Cf.* Ruling No. 81 of the Sixty-sixth Civil Court of Lima of March 20, 2006 (evidence file, folios 173 and 174).

195 Code of Civil Procedure of the Republic of Peru of January 8, 1993, published on April 24, 1993. Article 368.

> However, the last two directives […] do not establish the amount that the State must deliver to the plaintiff. In other words, they sentence the State to pay sums of money without specifying the amounts.[196]

131. In this regard, the Court recalls that judicial remedies are not effective if, due to the particular circumstances of a case, they are illusory because the State does not provide the necessary means to execute the judgments that found them admissible or when there are unjustified delays in the decisions.[197] The Court reiterates that, under the obligations contained in Article 25 of the Convention, the pubic authorities cannot thwart the meaning and scope of judicial decisions or unduly delay their execution.[198] In this case, despite the existence of a judicial dispute regarding determination of the specific amounts that should be paid to the presumed victims, which meant that the judgment could not be executed immediately, the Court notes the existence of a series of actions by the State authorities that delayed the execution of this judgment and that, necessarily, meant that the victims have still not been paid the reimbursements owed due to the equalization of their pensions. Given that they have had a direct impact on the process of execution of the judgment of October 25, 1993, these actions will be addressed when analyzing the alleged violation of the guarantee of a reasonable time established in Article 8 of the Convention.

B. Reasonable time

B.1. Arguments of the Commission and the parties

132. The ***Commission*** argued that the State was responsible for the violation of Article 8(1) of the Convention because the 25 years that have passed during which the judgment issued in 1993 has not been executed is not a reasonable time, and the point of departure to calculate the reasonable time began with the first final judgment. To affirm that this time is unreasonable, the Commission examined the following criteria: (a) complexity of the matter; (b) procedural activity; (c) conduct of the authorities, and (d) general effects. Regarding the first element, the Commission indicated that, in principle, the matter is not complex, because there is a final judgment that must be executed. Regarding the participation of the interested party, the Commission noted that the fact that affected parties use the available remedies to request compliance with a decision is compatible with their rights and does not justify the delay in the proceedings. As for the conduct of the authorities, it reiterated that their actions during the stage of execution of justice had been ineffective to decide substantive aspects of its execution. Lastly, regarding the general effects, it indicated that in matters relating to pensions, the passage of time may have a very significant effect and noted that to date more than 100 members of ANCEJUB-SUNAT are deceased.

133. The ***representatives*** argued that "almost [27] years after it was filed before the courts, the Peruvian State has still not provided a final response to the claim of ANCEJUB-SUNAT." They indicated that "this was a prolonged delay that, in principle and in itself, constitutes a violation of judicial guarantees" and, therefore, the State was responsible for the violation of Article 8 of the Convention. The representatives also argued that the delay in the proceedings was not the result of "unreasonable actions by the victims," but rather of the "perverse actions systematically taken by the State authorities throughout the proceedings."

134. The ***State*** argued that it was not responsible for the violation of Article 8(1) of the Convention. Regarding the complexity of the matter, the State argued that the generic manner in

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196 Expert report of Dante Ludwig Apolín Meza provided during the public hearing on May 7, 2019 (p. 108).

197 *Cf. Case of Ivcher Bronstein v. Peru. Merits, reparations and costs.* Judgment of February 6, 2001. Series C No. 74, para. 137, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 135.

198 *Cf. Case of Mejía Idovro v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of July 5, 2011. Series C No. 228, para. 106, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 127.

which the judgment of October 25, 1993, ordered the equalization of the pensions was due to the fact that the amparo proceedings filed by the members of ANCEJUB-SUNAT lacked an evidentiary stage and, therefore, "it was not possible to discuss the nature, concepts and amounts of the pensions." It also indicated that the number of victims and the fact that each one involved a different category, level of remuneration, length of service and position, contributed to the complexity of the case "from the start of the execution procedure." Regarding the actions of the interested parties, the State noted that the claims filed by ANCEJUB-SUNAT were not addressed at compliance with the judgment of October 25, 1993, but at overturning the rulings issued by the authorities to guarantee its execution and, in this regard, it added that for 12 years, as of May 8, 2006, "[…] the members of ANCEJUB-SUNAT have been delaying the proceedings in evident non-compliance with the orders of the courts." Regarding the conduct of the authorities, the State indicated that they had "settled the fundamental and essential aspects for the execution of the judgment of October 25, 1993, in a timely manner" and that "the duration of the proceedings ha[d] not been caused by the Peruvian State and, thus, the passage of time cannot be attributed to the State." Lastly, regarding the alleged effects of non-compliance, the State argued that it had "never suspended or reduced the monthly pensions that the presumed victims had been collecting" and that they "had been receiving pensions in keeping with domestic laws and jurisprudence."

B.2. Considerations of the Court

135. The Court has indicated that, in each specific case, the reasonable time must be analyzed in relation to the total duration of the proceedings, which may also include execution of the final judgment. Thus, it has considered four elements to analyze whether the guarantee of a reasonable time has been observed, namely: (a) the complexity of the matter; (b) the procedural activity of the interested party; (c) the conduct of the judicial authorities, and (d) the effects on the legal situation of the person involved in the proceedings. The Court recalls that it is for the State to justify, based on these criteria, the reason why it has required the time that has elapsed to process the case and, if it does not do so, the Court has broad powers to draw its own conclusions in this regard.[199]

136. In this section, the Court's analysis will focus on evaluating the time that has passed since the adoption of the first judgment on the application for amparo of the Supreme Court on October 25, 1993, up until the present, based on the four elements indicated above.

B.2.1. Complexity of the matter

137. This Court has taken various criteria into account to determine the complexity of the matter, such as the complexity of the evidence, the plurality of procedural subjects or the number of victims, the time that has passed since the violation, the characteristics of the remedies established in domestic law, and the context in which the violation occurred.[200] In this case, the Court appreciates that the number of victims represented a disputed point between the parties from the start of the process of execution of the judgment of October 25, 1993, and even before this international jurisdiction. Owing to the particularities of the amparo as a brief and expeditious remedy, the application filed by ANCEJUB-SUNAT on December 19, 1991, did not identify each of the persons who were members of the Association at that time, so that the judgment of October

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199 *Cf. Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of September 22, 2009. Series C No. 202, para. 156, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 155.

200 *Cf. Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*. Judgment of January 29, 1997. Series C No. 30, para. 78, and *Case of Perrone and Preckel v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of October 8, 2019. Series C No. 385, para. 142.

25, 1993, did not identify them either, but merely made a general references to "the members of the plaintiff association."[201]

138. The Court notes that, starting in May 2002,[202] the sentence execution courts addressed the issue of determining the identity of the beneficiaries of the judgment of October 25, 1993, owing to the observation presented by SUNAT concerning compliance with the decision in favor of only the 11 persons who appeared in the incorporation documents of ANCEJUB-SUNAT,[203] a matter that was settled in the domestic jurisdiction by the ruling of June 3, 2005, which declared that 603 member of the said Association were the victims.[204] The Court considers that the number of victims, added to the nature of the benefits involved, which required the individualized calculation of the equalization and the reimbursements from January 1992 to December 2004, permits it to conclude that the execution of the judgment of October 25, 1993, was complex.

B.2.2. Procedural activity of the interested parties

139. To determine whether the time was reasonable, the Court has taken into consideration whether the procedural conduct of the plaintiff has contributed in some way to unduly prolonging the duration of the proceedings.[205] In this case, the Court observes that, since the judgment of October 25, 1993, was handed down, ANCEJUB-SUNAT on behalf of the presumed victims, has filed numerous actions addressed at advancing its execution. The Court notes that ANCEJUB-SUNAT appealed the rulings that imposed on the presumed victims the need to have recourse to administrative channels to achieve the execution of the said judgment and, in this regard, filed a second application for amparo in April 1999,[206] a remedy of appeal,[207] and a special remedy until the 2001 judgment of the Constitutional Court ordered execution of the 1993 judgment by the courts.[208] The Court also observes that ANCEJUB-SUNAT deposited the documentation required by the sentence execution courts opportunely,[209] and played an active role in the discussion of the expert reports.[210]

140. Regarding the State's argument that it was the actions filed by ANCEJUB-SUNAT against the rulings that "were not in its favor in relation to the scope of the judgment of the Supreme Court" that "prolonged the dispute unnecessarily for several years," the Court underlines that the parties to the said proceedings, including the presumed victims in this case, were using remedies recognized by the applicable laws to defend their interests.[211]

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201 Judgment of the Supreme Court of Justice of the Republic of October 25, 1993 (evidence file, folios 23 to 25).

202 *Cf.* Ruling of the Sixty-third Civil Court of Lima of May 30, 2002 (evidence file, folio 81).

203 *Cf.* Brief dated May 31, 2002, signed by SUNAT, addressed to the Sixty-third Civil Court of Lima (evidence file, folios 83 to 86).

204 *Cf.* Ruling of the Sixth Civil Chamber of the Superior Court of Lima of June 3, 2005 (evidence file, folios 15927 to 15935).

205 *Cf. Cantos v. Argentina. Merits, reparations and costs*. Judgment of November 28, 2002. Series C No. 97, para. 57.

206 *Cf.* Ruling of the Constitutional Court of May 10, 2001, in case No. 2001-AA/TC (evidence file, folios 70 to 73).

207 *Cf.* Report No. 588-2000-MP-FN-FSCA, issued on April 6, 2000, by the Supreme Contentious Administrative Prosecutor (evidence file, folio 66).

208 *Cf.* Ruling of the Constitutional Court of May 10, 2001, in case No. 2001-AA/TC (evidence file, folios 70 to 73).

209 *Cf.* Ruling of the Sixty-third Civil Court of Lima of June 24, 2002 (evidence file, folios 88 to 91).

210 *Cf.* Brief of April 22, 2003, with the observations of ANCEJUB-SUNAT on the expert report of April 3, 2003 (evidence file, folios 132 to 139), and Brief dated July 2, 2010, signed by SUNAT, addressed to the Twenty-third Civil Court of Lima (evidence file, folios 208 to 2010).

211 *Cf. Mutatis mutandis, Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs*. Judgment of January 29, 1997. Series C No. 30, para. 79.

B.2.3. Activity of the judicial authorities

141. The Court observes that certain conducts of the judicial authorities delayed the execution of the judgment of October 25, 1993, to the point that, at the present time, some of the benefits ordered have not yet been complied with.

142. First, the sentence execution courts were unsure as regards the authority responsible for compliance. The Court recalls that, even though the judgment of October 25, 1993, declared the inapplicability of the Third Transitory Provision of Decree 673, which meant that SUNAT was reinstated as the authority responsible for paying the pensions to the members of ANCEJUB-SUNAT, on January 21, 1997, the Social Security Court ordered the MEF to make the payment, a decision that was confirmed by the First Corporate Court on February 16, 1998. The remedies filed by the MEF against the said decisions resulted in the ruling issued by the Corporate Chamber on February 27, 1998, revoking them and indicating that the presumed victims should undertake, individually, and through administrative channels, the "appropriate procedures to permit the payments to be equalized and full compliance with their legally recognized rights."[212] Pursuant to this judgment, on October 2, 1998 the First Corporate Court ordered the presumed victims to file "the pertinent administrative and/or jurisdictional procedure, as applicable."[213]

143. The Court observes that the said rulings not only contributed to prolonging unnecessarily the execution process, creating uncertainty about an aspect that was clear from the judgment of October 25, 1993,[214] but also attributed to the victims the responsibility of pursuing the determination and subsequent payment of the equalized pensions and reimbursements through administrative channels. The fact that, having exhausted the pertinent remedy to safeguard their rights and having obtained a court judgment ordering the realization of those rights some five years before, a court then ordered the presumed victims to file new procedures to realize those rights, supposed the transfer to the presumed victims of the State's obligation to provide the means to execute the decisions of the competent authorities.

144. The Court considers that the need to exhaust other channels to obtain compliance with the State's obligations established in the judgment of October 25, 1993, delayed instead of facilitating their execution,[215] especially because the aforementioned rulings did not specify either the procedures that should be filed or the authority who should examine them. This resulted in an excessive or disproportionate effort for the members of ANCEJUB-SUNAT who, having obtained a judgment in their favor, were obliged to file a second application for amparo to obtain the revocation of those rulings. Thus, as a result of the rulings,[216] the presumed victims had to file new judicial actions[217] to revert the execution process to its situation when the judgment of June 25, 1996, was handed down, and this only occurred five years later with the May 10, 2001, judgment of the Constitutional Court recognizing that the said decisions "sought to annul the ruling

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212 Ruling of the Transitory Corporate Public Law Chamber of August 27, 1998 (evidence file, folios 46 and 47).

213 Ruling of the First Transitory Corporate Public Law Court of October 2, 1998 (evidence file, folios 49 and 50).

214 If, prior to the promulgation of Decree 673, SUNAT was the authority responsible for the payment of the pensions and the judgment of October 25, 1993, declared the inapplicability of the provision of this decree that transferred this function to the MEF, this necessarily meant the reversion of the situation to its state before this provision entered into force and, consequently, reinstated the responsibility of SUNAT.

215 *Cf. Mutatis mutandis, Case of the Punta Piedra Garifuna Community and its members v. Honduras. Preliminary objections, merits, reparations and costs*. Judgment of October 8, 2015. Series C No. 304, para. 249.

216 *Cf.* Ruling of the Social Security Court of Lima of January 21, 1997 (evidence file, folio 33); Ruling of the Transitory Corporate Public Law Chamber of August 27, 1998 (evidence file, folios 46 and 47); Ruling of the First Transitory Corporate Public Law Court of October 2, 1998 (evidence file, folios 49 and 50), and Ruling of the Transitory Corporate Public Law Chamber of January 21, 1999 (evidence file, folio 60).

217 *Cf.* Ruling of the Transitory Corporate Public Law Chamber of November 25, 1999 (evidence file, folios 62 to 64).

of the Social Security Court […] that ordered compliance with the judgment of the Supreme Court of October [25, 1993]."[218]

145. Second, the Court notes that, on October 25, 2006, the Office of Judicial Experts was ordered to prepare another expert report,[219] but a year passed before the case file was forwarded to that institution[220] and, once there, another year elapsed before the Technical Team of the Superior Court of Justice of Lima determined, on October 6, 2008, that it was unable to assume this task and that the file should be sent to the REPEJ.[221] In this regard, the Court notes that five years passed from the time that a new expert report was ordered until it was finally submitted in October 2011.[222]

146. Third, the Court notes that the case was inactive for a year after it was received by the Second Civil Court in March 2015[223] until, in July 2016, it was decided to hold a public hearing to respond to the observations of the parties and, after that, another year went by before the said court ruled on the adoption of the expert report.[224] The Court also reiterates that two years have passed since this expert report was adopted in June 2017 and, to date, the State has not paid the victims the reimbursements relating to the equalization of their pensions.

147. Consequently, the Court considers that, even though three final judgments were handed down in favor of the presumed victims, the judicial authorities failed to guarantee the means or to take the steps that would lead to achieving compliance with the said decisions within a reasonable time, revealing their ineffectiveness to resolve the vicissitudes in the execution procedure.[225] The Court therefore notes that the fact that the process of execution of judgment has not yet been concluded – because there are payment obligations that remain pending - can be attributed to delays caused by the State, including especially: (a) the uncertainty created by the domestic rulings concerning the authority responsible for complying with the judgment of October 25, 1993; (b) the need to undertake additional administrative procedures to obtain execution of this judgment; (c) the unjustified delay in the preparation of the expert report of October 18, 2011, and (d) the inertia of the sentence execution courts that maintained the case inactive, at times for more than a year. Consequently, there were delays and periods of inactivity during the execution process that can all be attributed to the State.

B.2.4. The effects caused

148. Regarding this fourth element, the Court has indicated that, to determine whether the time was reasonable, the effects caused by the duration of the proceedings on the legal situation of the person concerned must be taken into account considering, among other factors, the matter in dispute. Thus, the Court has established that if the passage of time has had a relevant impact on the legal situation of the individual concerned, the proceedings should be executed with greater

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218 Ruling of the Constitutional Court of May 10, 2001, in case No. 2001-AA/TC (evidence file, folios 70 to 73).

219 *Cf.* Ruling No. 138 of the Sixty-sixth Civil Court of Lima of October 25, 2006 (evidence file, folios 173 and 174).

220 *Cf.* Brief of May 21, 2009, signed by ANCEJUB-SUNAT, addressed to the Twenty-third Civil Court of Lima (evidence file, folios 188 and 189).

221 *Cf.* Report No. 001-2008-ETP-CSJLI of October 6, 2008, signed by Roger M. Santibáñez and Fernando Zeballos Velásquez, addressed to the Coordinator of the Technical Team of the Superior Court of Justice of Lima (evidence file, folio 191).

222 *Cf.* Expert report of October 18, 2011, prepared by the Technical Team of the Superior Court of Justice of Lima (evidence file, folios 225 to 238).

223 *Cf.* Ruling No. 240 of the Second Civil Court of Lima of May 28, 2015 (evidence file, folio 268).

224 *Cf.* Ruling No. 247 of the Second Civil Court of Lima of June 13, 2017 (evidence file, folios 15871 to 15878).

225 *Cf. Mutatis mutandis, Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 161.

promptness in order to settle the case in as soon as possible.[226] The Court reiterates that the instant case relates to non-compliance with a judgment concerning the right to a pension, so that the excessive prolongation of its execution necessarily had an impact on the right to social security of the presumed victims, who were in a situation of special vulnerability because they were older persons.[227] Since the case relates to the right to social security – in other words, a food-related benefit and a salary substitute – the Court considers that there was a heightened need for promptness, which the State did not comply with this case.[228]

B.3. Conclusion

149. Based on the above, the Court concludes that the State is responsible for failing to comply with the judgment of October 25, 1993, owing to its actions that delayed the proceedings, and resulted in the need for the members of ANCEJUB-SUNAT to undertake other procedures of an administrative nature to obtain the payment of their equalized pensions, and also owing to the failure to pay the reimbursements ordered by the said judgment. Also, the fact that 27 years have elapsed since the delivery of the judgment has violated the guarantee of a reasonable time.

150. Consequently, the State violated the rights to judicial guarantees and to judicial protection established in Articles 8(1), 25(1), 25(2)(c) of the Convention, as well as Article 26 for the reasons that will be described below, in relation to Article 1(1) of this instrument, to the detriment of the persons indicated in Annex 2 to this judgment.

C. Rights to social security, a decent life, and property

C.1. Arguments of the Commission and of the parties

151. The ***Commission*** argued that the precedents of the *Five Pensioners v. Peru* and *Acevedo Buendía v. Peru* were fully applicable in relation to the violation of the right to property. In particular, it indicated that the failure to comply with the judgments did not allow the members of ANCEJUB-SUNAT to fully enjoy their right to property in relation to the patrimonial effects of their legally-recognized equalized pension, understanding this as the sums they failed to receive. Regarding Article 26, Commission indicated that it had not ruled on the applicability of this article in its Merits Report, owing to the date on which the report was issued. The Commission noted that, in the *Case of Muelle Flores v. Peru,* the Court had specifically invoked the right to social security and requested that it take that decision into consideration in the instant case because of the similarities.

152. The ***representatives*** argued that the failure to comply with the judgments of the Social and Constitutional Chamber of the Supreme Court had resulted in a violation of the right to property that the victims possessed in view of the patrimonial effects of the right to an equalized pension that they had acquired under Peru's domestic laws. They indicated that it was sufficient that the right to a pension was acquired pursuant to the law for that pension to become part of a person's property and thus to be protected by Article 21. They added that this conclusion could be derived from article 886 of the Peruvian Civil Code. They also argued that the failure to make adequate payment of the pensions to which the victims were entitled from September 24, 1991,

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226 *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2018. Series C No. 359, para. 185.

227 *Cf. Case of Poblete Vilches et al. v. Chile*. *Merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 349, para. 143, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 163.

228 *Cf. Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 162.

to date constituted the violation of their right to social security pursuant to Article 26 of the American Convention. They alleged that, by adopting Decree 673, "the Peruvian State violated its obligation of progressivity in relation to the implementation of the human right to social security." In particular, they argued that the arbitrary modification of the way in which the said retirement pensions were determined entailed an evident retrogression in relation to the right to social security. The representatives indicated that, according to the case law of the Inter-American Court, the right to a decent life supposed access to the "necessary material conditions for a decent existence." They argued that the State did not take into account the risk entailed by eliminating the victims' right to equalization of their pensions, because this affected their means of subsistence and their enjoyment of the basic rights to health, social security, adequate housing and the education of their children. They also indicated that this violation constituted a clear threat to a decent life because it directly affected the victims' right to enjoy the minimum necessary to ensure this.

153. The ***State*** argued, with regard to the right to property, that the Court should take into account the provisions of article 3(c) of Decree 673. This article established that the increased remuneration that corresponded to employees under paragraphs (a) and (b) would be non-pensionable for those employees covered by the retirement regime of Decree 20530. The State indicated that it should be understood that this regulation was in force for both the active employees who belonged to the public regime of Decree 276 and for the discharged and retired employees, because it was illogical that pensioners who had never received this non-pensionable increase should receive it based on the interpretation of a judgment that, moreover, did not order it. The State concluded that since the pensioners, members of ANCEJUB, had never had the right to sums that were not of a pensionable nature, their right to property had not been violated. Consequently, the State argued that it was not responsible for the violation of the right to property pursuant to Article 21 of the Convention. Regarding the right to a decent life, the State argued that there was no factual support to adequately prove the alleged violation of the right to life. In this regard, it reiterated that it had never stopped paying the pensions that corresponded to the presumed victims and that, since the social security system includes the payment of such pensions and access to the health care system, the medical care required by the presumed victims was never affected or interrupted.

C.2. Considerations of the Court

154. The Court notes that, in the instant case, one of the legal problems raised by the representatives concerns the scope of the right to social security, understood as an autonomous right derived from Article 26 of the American Convention. The representatives' arguments were in line with the interpretation adopted by the Court since the case of *Lagos del Campo v. Peru,*[229] which has continued in subsequent judgments.[230] The Court recalls that it had already indicated the following in the case of *Poblete Vilches et al. v. Chile*:

> Hence, it is evident to interpret that the American Convention incorporated the so-called economic, social, cultural and environmental rights (ESCER) in its list of protected rights, by

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[229] *Cf. Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2017. Series C No. 340, paras. 141 to 150 and 54.

[230] *Cf. The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity – interpretation and scope of Articles 4(1) and 5(1) of the American Convention on Human Rights).* Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23, para. 57; *Case of the Dismissed Employees of PetroPeru et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2017. Series C No. 344, para. 192; *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348, para. 220; *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 349, para. 100; *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359, para. 73, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 175.

> derivation from the standards recognized in the Charter of the Organization of American States (OAS), as well as from the rules of interpretation established in Article 29 of the Convention; particularly, the rule that prohibits restricting the enjoyment or exercise of any right or freedom recognized by the American Declaration and even those recognized by virtue of domestic law. Moreover, based on a systematic, teleological and evolutive interpretation, the Court has had recourse to the national and international *corpus iuris* in this area to provide specific content to the scope of the rights protected by the Convention in order to deduce the scope of the specific obligations of each right.[231]

155. In this section, the Court will rule on the right to social security – in particular, on the right to a pension – autonomously, as an integral part of the economic, social, cultural and environmental rights (hereinafter "the ESCER"), and also on the presumed violations of the right to a decent life and to property alleged by the Commission and the representatives, in the following order: (a) the right to social security as an autonomous and justiciable right; (b) the content of the right to social security; (c) the violation of the rights to social security and to a decent life in this case, and (d) the violation of the right to property.

C.2.1. The right to social security as an autonomous and justiciable right

156. To identify those rights that may be derived, via interpretation, from Article 26, it should be considered that this article makes a direct referral to the economic, social, educational, scientific and cultural standards contained in the OAS Charter. The Court notes that this instrument recognizes social security in its Article 3(j)[232] when indicating that "social justice and social security are bases of lasting peace." Also, Article 45(b)[233] of the OAS Charter establishes that "(b) [w]ork is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working." Also, Article 45(h)[234] of the Charter establishes that "man can only achieve the full realization of his aspirations within a just social order," and therefore the States agree to dedicate every effort to the application of certain principles and mechanisms, including: (h) [d]evelopment of an efficient social security policy." Meanwhile, in Article 46 of the Charter, the States "recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries, especially in the labor and social security fields, so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal."

157. On this basis, the Court considers that there is a reference to the right to social security with a sufficient level of specificity to derive its existence and implicit recognition in the OAS Charter. In particular, from the different statements, it deduces that the purpose of the right to

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231 *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 349, para. 103, and *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, paras. 175 and 176.

232 Article 3(j) of the OAS Charter establishes: "[t]he American States reaffirm the following principles: (j) [s]ocial justice and social security are bases of lasting peace."

233 Article 45(b) of the OAS Charter establishes: "[t]he Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: (b) [w]ork is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working."

234 Article 45(h) of the OAS Charter establishes that "[t]he Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: (h) [d]evelopment of an efficient social security policy."

social security is to ensure life, health and a decent standard of living for individuals in their old age or when any circumstance deprives them of the possibility of working; in other words, in relation to future events that could affect their standard of living and the quality of their life. Consequently, the Court considers that the right to social security is a right protected by Article 26 of the Convention.[235]

158. The Court must now reiterate the scope of the right to social security, in particular of the right to a pension in the context of the facts of this case, in light of the relevant international *corpus iuris*. The Court recalls that, ultimately, it is the obligations contained in Articles 1(1) and 2 of the American Convention that form the basis for determining the international responsibility of a State for violations of the rights established in the Convention,[236] including those recognized by virtue of Article 26. However, the Convention itself refers expressly to the rules of general international law for its interpretation and application, specifically in Article 29, which establishes the *pro persona* principle.[237] Thus, as it has been this Court's consistent practice,[238] when determining the compatibility of the acts and omissions of the State or of its laws, in relation to the Convention or to other treaties for which the Court has jurisdiction, the Court is able to interpret the obligations and rights they contain in light of other pertinent treaties and laws.[239]

159. The Court reiterates the sources, principles and criteria of the international *corpus iuris* as special standards applicable when determining the content of the right to social security and indicates that these standards are used in a supplementary manner to the provisions of the Convention when determining the right in question. The Court indicates that it is not assuming competences with regard to treaties for which it does not have them, and it is not granting Convention rank to provisions contained in other national and international instruments relating to the economic, social, cultural and environmental rights.[240] To the contrary, the Court is making an interpretation pursuant to the standards established by Article 29, and in accordance with its jurisprudential practice, which allows it to update the meaning of the rights derived from the OAS Charter that are recognized by Article 26 of the Convention. The determination of the right to social security will accord special emphasis to the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration") because, as this Court has established:

> [T]he Member States of the Organization have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus, the

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235 *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 173.

236 *Cf. Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 107, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 174.

237 *Cf. Case of the Pacheco Tineo family v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 272, para. 143, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 174.

238 *Cf. Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 78 and 121; *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, para. 83; *Case of the Pacheco Tineo family v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 272, para. 129; *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs.* Judgment of November 30, 2016. Series C No. 329, para. 168; *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2017. Series C No. 340, para. 145; *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 349, para. 103, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359, para. 100.

239 *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 176.

240 *Cf. Case of the Pacheco Tineo family v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 272, para. 143, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 176.

> Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration.[241]

160. On other occasions, the Court has indicated that human rights treaties are living instruments, and their interpretation must evolve with the times and current circumstances. This evolutive interpretation is consequent with the general rules of interpretation established in Article 29 of the American Convention and in the Vienna Convention on the Law of Treaties[242] (hereinafter "the Vienna Convention"). In addition, the third paragraph of Article 31 of the Vienna Convention authorizes the use of means of interpretation such as agreements or practice or relevant rules of international law applicable in the relations between the parties, which are some of the methods related to an evolutive vision of the treaty. Accordingly, to determine the scope of the right to social security, in particular, the right to a pension within the framework of a State system of contributive pensions, as derived from the economic, social, educational, scientific and cultural standards of the OAS Charter, the Court will refer to relevant instruments of the international *corpus iuris*.

161. The Court will now verify the meaning and scope of this right for the effects of this case.

C.2.2. The content of the right to social security

162. As indicated previously, Article 45(b) of the OAS Charter expressly indicates that work "should be performed under conditions […] that ensure life, health and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working."

163. Furthermore, Article XVI of the American Declaration identifies the right to social security when stating that "[e]very person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living."[243]

164. Similarly, Article 9 of the Protocol of San Salvador establishes that: "1. Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security benefits shall be applied to his dependents. 2. In the case of persons who are employed, the right to social security shall cover at least medical care and an allowance or retirement benefit in the case of work accidents or occupational disease and, in the case of women, paid maternity leave before and after childbirth." [244]

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[241] *Cf.* Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights. *Advisory Opinion OC-10/89* of July 14, 1989. Series A No. 10. para. 43; *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359, para. 101, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 175.

[242] *Cf.* The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law. *Advisory Opinion OC-16/99* of October 1, 1999. Series A No. 16, para. 114; *The Institution of Asylum and its Recognition as a Human Right under Inter-American Protection System (interpretation and scope of Articles 5, 22(7) and 22(8), in relation to Article 1(1) of the American Convention on Human Rights).* Advisory Opinion OC-25/18 of May 30, 2018. Series A No. 25, para. 137, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 176.

[243] Adopted at the Ninth International Conference of American States, held in Bogotá, Colombia, 1948.

[244] Adopted in San Salvador, El Salvador, on November 17, 1988, at the eighteenth regular session of the General Assembly. It entered into force on November 16, 1999. Peru signed it on November 17, 1988, and ratified it on May 17, 1995.

165. In the universal sphere, Article 22 of the Universal Declaration of Human Rights[245] establishes that: "[e]veryone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." While Article 25 underscores that "[e]veryone has the right to a standard of living adequate for […] health and well-being […] and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." In addition, Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) also recognizes "the right of everyone to social security, including social insurance."[246]

166. The right to social security is also recognized at the constitutional level in Peru, in articles 10 and 11 of the 1993 Constitution.[247]

167. In this regard, the Court reiterates that, based on Article 45 of the OAS Charter, interpreted in light of the American Declaration and the other instruments mentioned above, it is possible to derive elements that constitute the right to social security; for example, that it is a right that seeks to protect the individual from future contingencies that, should they occur, could have harmful consequences for that person; therefore measures should be adopted to protect him.[248] In the instant case, the right to social security seeks to protect individuals from situations that will arise when they reach a certain age when they are physically or mentally unable to obtain the necessary means of subsistence for an adequate standard of living, which could, in turn, deprive them of their ability to exercise their other rights fully. The latter reflects one of the elements of this right, because social security must be implemented a way that guarantees conditions that ensure life, health and a decent standard of living.[249]

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[245] Adopted and proclaimed by General Assembly Resolution 217 A (iii) of December 10, 1948, in Paris. Article 25 establishes that: "(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

[246] Adopted and open to signature, ratification and accession by General Assembly Resolution 2200 A (XXI), of December 16, 1966, entry into force January 3, 1976. Ratified by Peru on April 28, 1978. Regarding social security, Article 10 indicates that "The States Parties to the present Covenant recognize that: […] (2) Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits."

[247] Article 10 establishes: "Right to social security. The State recognizes the universal and progressive right of everyone to social security, to protect them from the contingencies established by law and to promote their quality of life." Article 11 stipulates: "Free access to health care services and to pensions. The State guarantees free access to health care services and to pensions, through public, private or mixed entities. It will also ensure that their effective implementation. The law establishes the entity of the national Government that administers the State's pension regimes.

[248] *Cf.* Working Group to Examine the National Reports envisioned in the Protocol of San Salvador, *Progress Indicators for Measuring Rights under the Protocol of San Salvador*, OEA/Ser.L/XX*v.*2.1; GT/PSS/doc.2/11 rev.2, of December 16, 2011, para. 62. This document was prepared based on guidelines and criteria presented by the Inter-American Commission on Human Rights, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 183.

[249] *Cf.* Working Group to Examine the National Reports envisioned in the Protocol of San Salvador, *Progress Indicators for Measuring Rights under the Protocol of San Salvador*, OEA/Ser.L/XX*v.*2.1; GT/PSS/doc.2/11 rev.2, of December 16, 2011, para. 62. This document was prepared based on guidelines and criteria presented by the Inter-American Commission on Human Rights, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 183.

168. Even though the right to social security is extensively recognized in the international *corpus iuris*,[250] both the International Labour Organization (hereinafter "the ILO") and the United Nations Committee on Economic, Social and Cultural Rights (hereinafter "the CESCR"), pursuant to the principal instruments adopted by the former,[251] have developed the content of the right to social security with greater clarity, and this has allowed the Court to interpret the content of the right and the obligations of the Peruvian State in keeping with the facts of similar cases.[252]

169. In general, the ILO has defined the right to social security as "the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner."[253] In the specific case of the retirement pension derived from a system of contributions or quotas, this is a component of social security that seeks to meet the need for financial subsistence that persists for those who are no longer working, when the requirement of survival beyond a prescribed age is met. In such cases, the old-age pension is a type of deferred salary for the worker, an acquired right based on the contributions made and the years of employment.[254]

170. In its General Comment No. 19 on the right to social security, the CESCR established that this right "encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection" in different circumstances, in particular from "the lack of work-related income caused by […] old-age."[255] Similarly, CESCR General Comment No. 19 established the normative content of the right to social security[256] and underscored that it "includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage, whether obtained publicly or privately, as well as the right to equal enjoyment of adequate protection from social risks and contingencies." Regarding its essential elements, it emphasized the following:

> *a) Availability* The right to social security requires, for its implementation, that a system, whether composed of a single scheme or variety of schemes, is available and in place to ensure that benefits are provided for the relevant social risks and contingencies. The system should be established under domestic law, and public authorities must take responsibility for the effective

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[250] Article 11 of the United Nations Declaration on Social Progress and Development; Articles 11 and 13 of the Convention on the Elimination of All Forms of Discrimination against Women; Article 26(1) of the Convention on the Rights of the Child; Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination; Articles 27 and 54 of the International Convention on the Protection of the Rights of Migrant Workers and the Members of Their Families, and Articles 12, 13 and 14 of the European Social Charter.

[251] *Cf.* ILO, *Convention No. 102 Social Security (Minimum Standards),* adopted at the Thirty-fifth Session of the General Conference on June 28, 1952*;* ILO, *Convention No. 128, Invalidity, Old-Age and Survivors' Benefits,* adopted at the Fifty-first General Conference on June 29, 1967; ILO, *Recommendation No. 67 on income security,* 1944; ILO, *Recommendation No. 167 on maintenance of social security rights,* 1983, and ILO, *Recommendation No. 202 on social protection floors,* 2012.

[252] *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 184.

[253] *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 185, and ILO, *"Facts on social security,"* publication of the International Labour Office, Geneva, Switzerland, 2003, Available at: https://www.ilo.org/public/english/protection/socsec/pol/campagne/files/factsheet.pdf.

[254] *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 185.

[255] *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 186, and UN, Committee on Economic, Social and Cultural Rights, *General Comment No. 19, The right to social security (art. 9)*, February 4, 2008, para. 2.

[256] *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 187, and UN, Committee on Economic, Social and Cultural Rights, *General Comment No. 19*, *The right to social security (art. 9)*, February 4, 2008, paras. 9 to 28.

administration or supervision of the system. The schemes should also be sustainable, including those concerning provision of pensions, in order to ensure that the right can be realized for present and future generations.

b) Social risks and contingencies: the social security system should provide for the coverage of the following nine principal branches of social security: (i) health care; (ii) sickness: (iii) old-age; (iv) unemployment; (v) employment injury; (vi) family and child support; (vii) maternity; (viii) disability, and (ix) survivors and orphans. In the case of health care, the States Parties have an obligation to guarantee that health systems are established to provide adequate access to health services for all,[257] that must be accessible. While, in the case of old-age, the State parties should take appropriate measures to establish social security schemes that provide benefits to older persons, starting at a specific age, to be prescribed by national law.[258]

c) Adequacy: benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care. States parties must also pay full respect to the principle of human dignity contained in the preamble of the Covenant, and the principle of non-discrimination, so as to avoid any adverse effect on the levels of benefits and the form in which they are provided. Methods applied should ensure the adequacy of benefits. The adequacy criteria should be monitored regularly to ensure that beneficiaries are able to afford the goods and services they require to realize their Covenant rights. When a person makes contributions to a social security scheme that provides benefits to cover lack of income, there should be a reasonable relationship between earnings, paid contributions, and the amount of relevant benefit.[259]

d) Accessibility: should include: (i) coverage: all persons should be covered by the social security system, without discrimination. In order to ensure universal coverage, non-contributory schemes will be necessary; (ii) eligibility: qualifying conditions for benefits must be reasonable, proportionate and transparent; (iii) affordability: if a social security scheme requires contributions, those contributions should be stipulated in advance. The direct and indirect costs and charges associated with making contributions must be affordable for all, and must not compromise the realization of other rights; (iv) participation and information; beneficiaries of social security schemes must be able to participate in the administration of the social security system. The system should be established under national law and ensure the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner, and (v) physical access; benefits should be provided in a timely manner and beneficiaries

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257 UN, Committee on Economic, Social and Cultural Rights, *General Comment No. 14, The right to the highest attainable standard of health (art. 12),* August 11, 2000. Coverage must include any morbid condition, whatever its cause, and pregnancy and confinement and their consequences, general and practical medical care, together with hospitalization.

258 See: UN, Committee on Economic, Social and Cultural Rights, *General Comment No. 6, The Economic, social and cultural rights of older persons,* 1995.

259 *Cf.* ILO, *Recommendation No. 67 on income security,* 1944. Guiding principle 1 establishes that: Income security schemes should relieve want and prevent destitution by restoring, up to a reasonable level, income which is lost by reason of inability to work (including old age) or to obtain remunerative work or by reason of the death of a breadwinner." See also, ILO, *Recommendation No. 202 on social protection floors,* 2012. Article 3(b) and (c), establish that: "3. Recognizing the overall and primary responsibility of the State in giving effect to this Recommendation, Members should apply the following principles: […] (b) entitlement to benefits prescribed by national law, and (c) adequacy and predictability of benefits. Article 4 establishes that "4. Members should, in accordance with national circumstances, establish as quickly as possible and maintain their social protection floors comprising basic social security guarantees. The guarantees should ensure at a minimum that, over the life cycle, all in need have access to essential health care and to basic income security which together secure effective access to goods and services defined as necessary at the national level. Article 5 (a) and (d) indicated that: "5. The social protection floors referred to in Paragraph 4 should comprise at least the following basic social security guarantees: (a) access to a nationally defined set of goods and services, constituting essential health care, including maternity care, that meets the criteria of availability, accessibility, acceptability and quality, and (d) basic income security, at least at a nationally defined minimum level, for older persons. Article 8(b) and (c) underscore that "8. When defining the basic social security guarantees, Members should give due consideration to the following: (b) basic income security should allow life in dignity. Nationally defined minimum levels of income may correspond to the monetary value of a set of necessary goods and services, national poverty lines, income thresholds for social assistance or other comparable thresholds established by national law or practice, and may take into account regional differences; (c) the levels of basic social security guarantees should be regularly reviewed through a transparent procedure that is established by national laws, regulations or practice, as appropriate."

should have physical access to the social security services in order to access benefits and information, and make contributions where relevant. […]

e) Relationship with other rights: the right to social security plays an important role in supporting the realization of many of the economic, social and cultural rights.

171. In addition, General Comment No. 19 has established that the right of access to justice forms part of the right to social security, so that any persons or groups who have experienced violations of their right to social security should have access to effective judicial or other appropriate remedies at both the national and international levels, and also to the adequate reparation.[260]

172. Similarly, the States have the obligation to facilitate the exercise of the right to social security, adopting positive measures to help the individual exercise this right.[261] They should not only facilitate this, but also guarantee that "before any action is carried out by the State or any other third party that interferes with the right of an individual to social security, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and include: (a) an opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies."[262]

173. As it has reiterated in its recent case law, the Court considers that the nature and scope of the obligations derived from the protection of social security include aspects that are enforceable immediately, and also aspects that are of a progressive nature.[263] The Court recalls that, regarding the former (obligations enforceable immediately), the States must take effective measures to guarantee access, without discrimination to the services recognized by the right to social security, ensuring equal rights to both men and women, among other matters. With regard to the latter (obligations of a progressive nature), progressive realization means that States Parties have the specific and constant obligation to move forward as expeditiously and efficaciously as possible towards the full effectiveness of this right, subject to available resources, using legislative or any other appropriate means. Moreover, States have an obligation of non-retrogression in relation to the realization of the rights achieved. Accordingly, the Convention obligations to respect and ensure rights, as well as the adoption of domestic legal provisions (Articles 1(1) and 2), are essential to achieve its effectiveness.[264]

174. The Court must analyze the State's conduct with regard to compliance with its obligations to ensure pension rights as an integral part of the right to social security that prejudiced the presumed victims in this case, owing to the failure to execute and comply with the judgments delivered in their favor.

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260 *Cf.* UN, Committee on Economic, Social and Cultural Rights, *General Comment No. 19, The right to social security (art. 9)*, February 4, 2008, para. 77. See also, *Convention No. 102, Social Security (Minimum Standards),* adopted at the Thirty-fifth Session of the General Conference on June 28, 1952, Article 70(1).

261 *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 188.

262 *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 188, and UN, Committee on Economic, Social and Cultural Rights, *General Comment No. 19, The right to social security (art. 9)*, February 4, 2008, para. 78.

263 *Cf. Mutatis mutandis. Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 349, para. 104; *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359, para. 98, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 190.

264 *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 190.

175. Based on the above considerations on the right to social security, and bearing in mind the facts and particularities of this case, the State's obligations in relation to the right to a pension are, as follows: (a) to ensure the right to accede to a pension on acquiring the legal age to do so and having met the requirements established in domestic law. To this end, a functioning social security system must exist that guarantees the benefits and that must be administered by the State or supervised and monitored by the State (if it is administered by a private entity); (b) to guarantee that the benefits are adequate in amount and duration to allow the pensioner to enjoy an adequate standard of living and adequate access to health care, without discrimination; (c) to ensure accessibility to obtain a pension; in other words, reasonable, proportionate and transparent conditions of access must be ensured. Also, contributions should be affordable and the beneficiaries should receive clear and transparent information on the right, especially if any measure is taken than could affect the right; (d) to provide the benefits of retirement pensions in a timely manner, taking into account the importance of this element for older persons, and (e) to provide effective mechanisms for any complaint of a violation of the right to social security, in order to guarantee access to justice and effective protection, which also includes realization of the right by the effective execution of favorable decisions issued in the domestic sphere.[265]

176. Based on the criteria established in the preceding paragraphs, together with the Court's previous conclusions on the right to judicial guarantees and judicial protection and, above all, considering that SUNAT underwent a restructuring process in light of which the presumed victims retired, the Court will now examine the violation of the rights to social security, a decent life, and property in this specific case.

C.2.3. The violation of social security and a decent life in this specific case

177. The Court recalls that Decree 20530 regulated a pension regime that recognized that the pensions of those who were discharged after more than 20 years' service and those who retired from public administration should be progressively equalized with the remunerations of active public servants. The application of this pension regime has not been suspended for the presumed victims. However, as a result of the entry into force of Decree 673, both the entity responsible for paying the pensions and the employment regime of SUNAT's active public servants were modified. As a result, the Supreme Court determined in its judgment of October 25, 1993, that the right of the presumed victims to receive the equalized pension that corresponded to them under Decree 20530 should be reinstated together with the reimbursements of the amounts they had failed to receive owing to the application of the Third Transitory Provision of Decree 673. Subsequently, the Constitutional Court ordered that this judgment be executed in rulings of June 25, 1996, and May 10, 2001.

178. The Court has already established that the State violated the rights to judicial guarantees and judicial protection owing to acts and omissions that resulted in delays in the execution of the judgment of October 25, 1993, and failure to pay the reimbursements derived from the differences between the remunerations received by SUNAT active employees and the pensions received by the presumed victims while the Third Transitory Provision of Decree 673 was in force. In particular, the Court noted that, at the date of the delivery of the decision of the Constitutional Court on April 23, 2019, and as determined by that court, the State had still not guaranteed the payment of the reimbursements that corresponded to the presumed victims according to the expert report of October 18, 2011. This constituted a violation of the provisions of Article 25(2)(c) of the American Convention.

179. In this regard, first, this Court recalls that individuals or groups who have been victims of a violation of their right to social security should have access to judicial or other effective remedies,

[265] *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 192.

and also to the corresponding reparation.[266] In this case, there is no doubt that the mere recognition of the right of the presumed victims to receive their equalized pensions and the corresponding reimbursements did not mean that their right had been satisfied or realized. To ensure real effectiveness, it is essential that the judgments delivered in the domestic sphere in favor of the presumed victims are executed and that the pending amounts are paid as established by the judgment of August 9, 2011, and, definitively, by the decision of the Constitutional Court of April 23, 2019. Consequently, the Court concludes that the State also violated the right to social security.

180. The Court recalls that, although the judgment that recognized the presumed victims' right to a pension was handed down on October 25, 1993, the State did not determine the aspects that were essential for its execution immediately; rather, they were defined gradually by the domestic courts. In light of the fact that the judgment of October 25, 1993, recognized, in general, the right of the presumed victims to the equalization of their pensions, the State should have determined the essential elements to ensure the rapid and comprehensive execution of this judgment with particular promptness, given the nature of the right involved (social security). Based on the duality of the SUNAT employment regimes following Decree 673, the realization of the presumed victims' right to receive their equalized pensions depended on the State rectifying the ambiguity of the judgment of October 25, 1993, by determining the regime based on which the equalization should be calculated.

181. However, the Court notes that, even though the rights of the presumed victims were restored in October 1993 with the judgment of the Supreme Court, almost 18 years had to pass until the judgment of the Constitutional Court of August 9, 2011, for the State to make a final determination, with the nature of *res judicata,* of the employment regime with whose remunerations the pensions of the presumed victims would be equalized. This meant that, over all those years, the substantive content of the right to equalization was uncertain because neither the way in which it should be carried out nor, subsequently, what the pecuniary amount would be had been determined. The failure to establish the method for calculating the equalization also meant the failure to establish the real amount of the presumed victims' pensions. These facts constituted a violation of the right to social security of the presumed victims, because the Court considers that one of the State's immediate obligations in order to guarantee the full exercise of this right is to ensure that people can know the financial resources they can count on so as to be able to live with dignity in their old age.

182. Second, the Court notes that one of the elements of social security is its accessibility, which includes "the right of individuals and organizations to seek, receive and impart information on all social security entitlements in a clear and transparent manner."[267] In the instant case, the Court considers that the presumed victims had the right to be informed, in an opportune, clear, transparent and complete manner of the effects on their pensions of joining the Voluntary Resignation Program established in Decree 639 as one of the organizational restructuring measures to rationalize SUNAT's resources. This did not occur in the instant case because, even though when the presumed victims resigned from SUNAT they could reasonably have hoped that their pensions would be equalized based on "the remunerations of the active public servants,"[268] which were regulated by Decree 276 which was the general regime for all SUNAT employees,[269] the entry into force of Decree 673 modified the employment regime corresponding to SUNAT

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266 *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 194.

267 *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 187, and UN, Committee on Economic, Social and Cultural Rights. *General Comment No. 19: The right to social security (art. 9)*, February 4, 2008, paras. 9 to 28.

268 Peru. Constitution of July 12, 1979. Eighth Transitory Provision.

269 *Cf.* Legislative Decree No. 673 of September 23, 1991, articles 1 and 2 (evidence file, folios 15094 to 15096).

employees and, therefore, the expectations concerning the amount that, as pensioners, the presumed victims would receive.[270]

183. The information that the Court has received reveals that the State never advised the SUNAT employees, in a timely and complete manner, about the practical effects that the application of Decrees 639 and 673 would have on the payment of their pensions as persons subject to the pension regime of Decree 20530. Thus, the presumed victims lacked adequate information on the impact that this would have on the amounts they would receive as their pension. The absence of a clear regulation in this matter at the time of the facts that would have established how the rights to a pension of the former employees covered by the regime established by Decree 639 would be protected aggravated this situation and resulted in a litigation that lasted more than 27 years on the scope of the combined application of the said decrees. The Court takes note of the statement made by Ana María Ráez Guevara that she would not have retired in 1991 if she had known the effects that the application of the said decree would have on the equalization of her pension.[271] The Court also notes that, as expert witness Viviana Frida Vais Gen Rivera remarked, some of the presumed victims indicated that they felt the State had deceived them.[272]

184. Third, the Court underlines that another fundamental element of the right to social security is its relationship to the guarantee of other rights because it "plays an important role in supporting the realization of many of the economic, social and cultural rights."[273] In this regard, the Court has indicated that the pension derived from a system of contributions or quotas is a component of social security. Also, the State should provide special services to older persons because the retirement pension constitutes the only salary substitute they receive to cover their basic needs. Ultimately, the pension and, in general, social security constitute a measure of protection for the enjoyment of a decent life.

185. The Court considers that, in this case, the rights to social security and to a decent life are interrelated, and this situation is accentuated in the case of older persons. The Court has indicated that the absence of financial resources, owing to the failure to pay the monthly pension, directly impairs the dignity of older persons because, at this stage of their life, the pension constitutes the main source of financial resources to cover their primary and elementary needs as human beings. The same can be said of the lack of other concepts that are directly related to the pension, such

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[270] The Court recalls that Law 23495 established the progressive equalization of the pensions as the remunerations of the active employees increased; in other words, as the salaries of those employees increased, the amount of the pensions would increase correlatively. Having established that, with the exception of the employees who were already covered by Decree 276 and decided to continue under this decree, from then on the general regime applicable to SUNAT employees would be Decree 4916 and that the remunerations received as a result of the said decree would not be pensionable in the case of the discharged and retired employees covered by Decree 20530 – and neither would the increases that the employees subject to the regime of Decree 276 would receive based on the difference with those salaries – Decree 673 had an impact on the progressivity of the equalization of the victims' pensions. In other words, since most of SUNAT's active employees would thenceforth belong to the private employment regime of Decree 4916 and their remunerations would not be pensionable for the effects of Decree 20530,[270] the victims' pensions would not increase in proportion to the salary increases that the active employees of SUNAT would receive, as established by Law 23495, with the exception of any increases that might occur in the context of the remunerations granted under Decree 276, without this also including the amounts to be paid due to the difference with the salaries of the public employment regime. This necessarily signified a limitation of the increases in the pensions that the victims expected to receive owing to the right to progressive equalization.

[271] In her own words: "No sir, neither my husband or I would have resigned; we had to think of our children, that they could have a decent education so that they could live well; give our children a good education." *Cf.* Statement made by Ana María Ráez Guevara, during the public hearing on May 7, 2019 (p. 15).

[272] The expert report included statements such as: "I was deceived; if I had imagined that, I would never have risked the stability of my family; we were deceived, it was not fair." *Cf.* Expert report of Viviana Frida Vals Gen Rivera, provided by affidavit dated August 31, 2018 (evidence file, folios 942 to 959).

[273] *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 187, and UN, Committee on Economic, Social and Cultural Rights, *General Comment No. 19, The right to social security (art. 9)*, February 4, 2008, paras. 9 to 28.

as the payment of any reimbursements owed. Thus, for older persons, the violation of the right to social security, owing to the failure to pay such reimbursements, entails anguish, insecurity and uncertainty about the future owing to the possible absence of the financial resources required for their subsistence, because deprivation of an income inherently results in the deprivation of the development of their quality of life and personal integrity.[274]

186. The Court recalls that the right to life is fundamental in the American Convention because the realization of all the other rights depends on its protection.[275] If this right is not respected, the other rights disappear because the holder of the rights no longer exists.[276] Based on its fundamental nature, the Court has maintained that measures that restrict the right to life are not admissible and that this right includes not only the right of every human being not to be deprived of life arbitrarily, but also the right that conditions are not created that impede or inhibit access to a decent existence.[277] In its position as guarantor, one of the obligations that the State must unavoidably assume in order to protect and guarantee the right to life is to create the minimum living conditions compatible with the dignity of the human being and not to create conditions that impede or inhibit this.[278] Therefore the State has the obligation to adopt specific and positive measures addressed at realizing the right to a decent life, especially in the case of persons who are at risk and in a vulnerable situation whose care is a priority,[279] such as older persons.[280]

187. This Court also considers that the scope of the State's positive obligations with regard to the protection of the right to a decent life of older persons should be understood in light of the relevant international *corpus juris*. Thus, the content of these obligations consists of the provisions of Article 4 of the American Convention in relation to the general obligation to guarantee rights established in Article 1(1), and the obligation of progressive development contained in Article 26 of this instrument, and also Articles 9 (Social Security), 10 (Right to Health), and 13 (Right to Education) of the Protocol of San Salvador. In addition, Article 11 of the International Covenant on Economic, Social and Cultural Rights recognizes "the right of everyone to an adequate standard of living for himself and his family, including food, clothing and housing, and to the continuous improvement of living conditions."[281] Similarly, the Court notes that the United Nations Principles for Older Persons have established that States are encouraged to incorporate into their national programs principles that ensure that "[o]lder persons […] have access to adequate food, water,

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274 *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, paras. 205 and 206.

275 *Cf. Case of the "Street Children"" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359, para. 155.

276 *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, para. 152, and *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of June 17, 2005. Series C No. 125, para. 161.

277 *Cf. Case of the "Street Children"" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of June 17, 2005. Series C No. 125, para. 162.

278 *Case of the "Juvenile Re-education Institute" v. Paraguay. Preliminary objections, merits, reparations and costs*. Judgment of September 2, 2004. Series C No. 112, para. 159, and *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of June 17, 2005. Series C No. 125, para. 162.

279 *Cf. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of June 17, 2005. Series C No. 125, para. 162.

280 *Cf. Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 349, para. 140, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 163.

281 International Covenant on Economic, Social and Cultural Rights. Adopted and open for signature, ratification and accession by General Assembly Resolution 2200 A (XXI), of December 16, 1966, entry into force January 3, 1976. Ratified by Peru on April 28, 1978, Article 11.

shelter, clothing and health care through the provision of income, family and community support and self-help."[282]

188. The Court recalls that the members of ANCEJUB-SUNAT have received a pension ever since they stopped working. However, the Court notes the existence of evidence of the effects that the pensions that the presumed victims in this case received had on their possibilities of meeting some of their basic needs in the area of health, housing, food, and the education of their children. The Court considers that, because they did not obtain the reimbursements that corresponded to them while the Third Transitory Provision of Decree 673 was applicable, the financial possibility for the presumed victims to enjoy a decent life was also affected.

189. The Court takes note of the opinion of expert witness Viviana Frida Vais Gen Rivera, who noted the existence of certain psychosocial effects in the ANCEJUB-SUNAT members she interviewed owing to the suffering caused by the harm to their life project and the subsequent impact on their families and in relation to their children.[283] In particular, the expert witness found that the involuntary and forced exposure of the presumed victims to a litigation that lasted more than 27 years exposed them to stressful and traumatic situations that had an impact on their health and mental well-being. This was increased because most of the members of ANCEJUB-SUNAT were around 70 years of age and some of them were deceased. The expert witness also found that one of the elements that was emphasized most by the presumed victims during the interviews she conducted was "the surprise about what happened; the sensation of being confronted by a situation that did not seem real, and that, with the passage of time, confirmed their feeling of having been duped and ridiculed."[284]

190. In addition, the Court notes that the reduction in the presumed victims' income when they ceased to work for SUNAT led to a decline in their quality of life that materialized in the need to borrow from banks and family members, to sell their possessions, and not to be able to pay expenses relating to their children's education. This situation also resulted in an increase in the health problems of pensioners who were obliged to attend public health care institutions because they had lost their private health insurance, or because they did not have the financial resources to enjoy good quality medical care. The Court also notes the impact on their family life as a result of the impossibility of covering household expenses, which also had an impact on the possibility of ensuring the quality of life of their dependents, including their children.[285]

191. The Court considers that the decrease in the income of the presumed victims because they ceased to work for SUNAT had an impact on their quality of life and on their original life project. It is essential to recall that the members of la ANCEUB-SUNAT took early retirement as part of the organizational restructuring and rationalization that led to the presumed victims joining the Voluntary Resignation Program, and this resulted in their subsequent income being substantially reduced owing to the entry into force of Decree 673. This Court considers that the specific circumstances in which this change took place should be taken into account when determining the State's international responsibility in relation to the guarantee of the right to social security and to a decent life. Thus, the Court concludes that the effects that this change brought about in the quality of life of the presumed victims constituted, in addition to a violation of their right to social security, a violation of their right to a decent life.

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[282] UN. General Assembly, *United Nations Principles for Older Persons.* Adopted by Resolution 46/91 of December 16, 1991, Principle 1.

[283] *Cf.* Expert report of Viviana Frida Vals Gen Rivera, provided by affidavit dated August 31, 2018 (merits file, folios 948 to 956).

[284] *Cf.* Expert report of Viviana Frida Vals Gen Rivera, provided by affidavit dated August 31, 2018 (evidence file, folio 948).

[285] *Cf.* Expert report of Viviana Frida Vals Gen Rivera, provided by affidavit dated August 31, 2018 (evidence file, folio 954).

C.2.4. The violation of the right to property in this specific case

192. In its case law, this Court has developed a broad concept of property that encompasses the use and enjoyment of possessions, defined as those material items that may be appropriated, as well as any benefit that may form part of a person's patrimony.[286] Using Article 21 of the Convention, the Court has also protected acquired rights, understood as rights that have been incorporated into the patrimony of the individual.[287] It should be repeated that the right to property is not absolute and, in this sense, it may be subject to restrictions and limitations,[288] provided these are established by the appropriate norms+,[289] and based on the parameters established in the said Article 21.[290] In cases such as this one, the Court has declared the violation of the right to property owing to the adverse patrimonial effects caused by non-compliance with judgments intended to protect the right to a pension acquired by the victims under domestic law.[291]

193. In addition, as it did in the case of *Muelle Flores v. Peru*, the Court emphasizes and agrees with the expert report of Christian Courtis that "[t]he benefits derived from social security, including the right to an old-age pension, form part of the right to property and, therefore, should be protected against the arbitrary interference of the State. The right to property may even include the legitimate expectations of the holder of the right, in particular, when he has paid into a contributive system. With all the more reason, it covers acquired rights once the conditions have been met to obtain a benefit such as an old-age pension, especially when this right has been recognized in a court judgment. Additionally, among the range of interests protected by the right to property, social security benefits are of particular importance because they are food-related and a salary substitute."[292]

194. In the instant case, the Court recalls that based on Decree 20530, the presumed victims acquired the right to an equalized pension when retiring from SUNAT and taking advantage of the benefits established by Decree 639. The Court also recalls that the judgment of October 25, 1993, ordered that the right of the presumed victim be reinstated to receive the pensions that corresponded to them, equalized with the remunerations of the active employees of SUNAT and that they be paid the increases they had failed to receive as a result of the application of the Third

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286 *Cf. Case of Ivcher Bronstein v. Peru. Merits, reparations and costs.* Judgment of February 6,2001. Series C No. 74, paras. 120 and 122, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 212.

287 *Cf. Case of Ivcher Bronstein v. Peru. Merits, reparations and costs.* Judgment of February 6,2001. Series C No. 74, para. 122, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 212.

288 *Cf. Case of Ivcher Bronstein v. Peru. Merits, reparations and costs.* Judgment of February 6, 2001. Series C No. 74, para. 128, and *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs.* Judgment of December 1, 2016. Series C No. 330, para. 111.

289 Likewise, and as an example, the Court observes that Article 5 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights only allows the States to establish restrictions and limitations to the enjoyment and exercise of the economic, social and cultural Rights "by means of laws promulgated for the purpose of preserving the general welfare in a democratic society only to the extent that they are not incompatible with the purpose and reason underlying those rights."

290 *Cf. Case of Salvador Chiriboga v. Ecuador. Preliminary objection and merits.* Judgment of May 6, 2008. Series C No. 179, paras. 60 to 63; *Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 22, 2013. Series C No. 265, para. 170, and *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs.* Judgment of December 1, 2016. Series C No. 330, para. 111.

291 *Cf. Case of the Five Pensioners v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 103; *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller's Office") v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2009. Series C No. 198, para. 85, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 217.

292 *Cf.* Affidavit prepared by Christian Courtis on August 30, 2018 (evidence file, folio 1833).

Transitory Provision of Decree 673. Regarding the reimbursements they had failed to receive due to the application of the said Third Provision, the Court has noted that these had not been paid to the presumed victims, and that this constituted non-compliance with the obligation to execute the judgment of October 25, 1993, and resulted in the international responsibility of the State.

195. The Court considers that the right to an equalized pension acquired by the presumed victims, which included the sums they did not receive owing to the application of the Third Transitory Provision of Decree 673, affected the patrimony of the members of ANCEJUB-SUNAT. Indeed, the right to receive a pension was acquired when the presumed victims ceased to work for SUNAT, having met the requirements for this and having paid the corresponding contributions in keeping with the laws applicable at the time. Thus, their patrimony was directly affected by the State's failure to pay the reimbursements that corresponded to them pursuant to the expert report of October 18, 2011, adopted with the authority of *res judicata* by the decision of the Constitutional Court of April 23, 2019. Therefore, the victims could not fully enjoy their right to property in relation to the patrimonial effects on their pensions, understanding this as the amounts they failed to receive. And, as the Court has no evidence that would allow it to determine that these reimbursements have now been made to the presumed victims, the adverse effects on their patrimony continue, in violation of the right to property.

C.3. Conclusion

196. Based on the above, the State is responsible for the violation of Articles 26, 4(1) and 21 of the American Convention, in relation to Articles 8(1), 25(1), 25(2)(c) and 1(1) of this instrument, to the detriment of the persons indicated in Annex 2 to this judgment.

D. Obligation to adopt domestic legal provisions

D.1. Arguments of the parties and of the Commission

197. The ***Commission*** stressed that Peru's failure comply with judgments handed down against State entities since the 1990s forms part of a more general context that extends beyond the specific situation of the victims. It reiterated that the Court had ruled in this regard when monitoring compliance with the cases of the *Five Pensioners v. Peru*, *Acevedo Buendía et al. v. Peru* and *Muelle Flores v. Peru*, and emphasized their similarities with the instant case. It argued that this was an opportunity for the Court to rule on this context that went beyond the victims in this case and required the adoption of guarantees of non-repetition. Lastly, the Commission underscored that, despite being aware of this "structural problem," the State had not adopted the general measures required to rectify it and to avoid repetition." Consequently, it argued that the State was responsible for the violation of Article 2 of the American Convention.

198. The ***representatives*** argued that there was a significant similarly of elements between this case and other comparable ones that the Court had had occasion to hear. They indicated that these cases revealed systematic non-compliance with judgments ordering the reinstatement of economic and social rights, and this represented a systematic pattern of human rights violations that also constituted an "anti-Convention situation." The representatives argued that the case revealed the existence of a massive and generalized violation of several rights, a prolonged failure by the State authorities to comply with their obligations, the failure to adopt legislative, administrative and budgetary measures, the existence of a social problem that called for the adoption of complex and coordinated measures, and the existence of a vast number of individuals affected. They therefore asked the Court to order the removal of the obstacles that prevented compliance with judgments.

199. The ***State*** argued that it was not responsible for the violation of Article 2 of the American Convention because the case was not related to the non-execution of judgment; therefore, there

were no measures that the State should adopt to modify the alleged situation of non-compliance that the Commission sought to attribute to it. It also repeated that the supposed failure to execute the judgment that was attributed to it had no factual grounds, and thus the Court should not rule in that regard. Lastly, it emphasized that the cases of the *Five Pensioners v. Peru* and *Acevedo Buendía et al. v. Peru* were distinct litigations that could not automatically be applied to this case to find that the State was internationally responsible.

D.2. Considerations of the Court

200. The Court has indicated that Article 2 of the Convention establishes the general obligation of the States Parties to adapt their domestic laws to the provisions of this instrument in order to guarantee the rights established therein. This obligation entails the adoption of two types of measures. On the one hand, the elimination of laws and practices of any nature that entail the violation of the guarantees established in the Convention and, on the other, the enactment of laws and the implementation of practices that facilitate the effective observance of those guarantees.[293] It is precisely in relation to the adoption of such measures that this Court has recognized that all the authorities of a State Party to the Convention have the obligation to exercise control of conventionality,[294] so that the interpretation and application of domestic law is consistent with the State's international human rights obligations.[295]

201. The Court notes, as already indicated in this judgment, that the State has violated the human rights recognized in Articles 25, 8, 26, 4(1) and 21 of the Convention of the persons listed in Annex 2 to this judgment as a result of the failure to execute the judgment of October 25, 1993, and the effects of this on the rights to social security, a decent life, and property. The Court notes the similarity between this case and the cases of the *Five Pensioners v. Peru*, *Acevedo Buendía v. Peru* and *Muelle Flores v. Peru* that it has decided previously. In those cases, it verified the existence of a failure to comply with judgments in favor of individuals whose rights to a pension had been recognized by a judicial decision that had not been executed in the terms of Article 25(2)(c) of the American Convention.[296] In this regard, the Commission and the representatives have alleged the existence of a structural problem in Peru in relation to compliance with judicial rulings similar to those in this case, which constituted the failure of the State to comply with its obligations under Article 2 of the Convention.

202. In this regard, the Court emphasizes that the central purpose of the dispute in this case is the analysis of the alleged violation of the rights to judicial guarantees and judicial protection owing to the failure to execute the October 1993 judgment of the Supreme Court in relation to the presumed victims in this case, as well as the possible violation of other rights. The Court also recalls that the factual framework of this case is constituted by the facts contained in the Merits Report, and considers that the Commission's assertion that "the failure of the Peruvian State to comply with judgments handed down against State entities since the 1990s extends beyond the specific situation of the presumed victims in this case and forms part of a broader context" is

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293 *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs.* Judgment of May 30, 1999. Series C No. 52, para. 207, *and Case of Gorigoitía v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of September 2, 2019. Series C No. 382, para. 55.

294 *Cf. Case of Almonacid Arellano* et al. *v. Chile*. *Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 124, and *Case of Gorigoitía v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of September 2, 2019. Series C No. 382, para. 55.

295 *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 340, and *Case of Gorigoitía v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of September 2, 2019. Series C No. 382, para. 55.

296 *Cf. Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller's Office") v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of July 1, 2009. Series C No. 198, para. 77, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375, para. 149.

relevant "to situate the facts that are alleged to have violated human rights in the context of the specific circumstances in which they occurred,"[297] but not to argue an autonomous violation of the rights recognized in the Convention.

203. The Court also notes that the representatives did not submit any specific arguments on how the legal framework prevented the execution of domestic judgments for the presumed victims in this case or in others. Moreover, the body of evidence does not reveal that this violation has occurred. Therefore, the Court considers that there is insufficient evidence to determine whether those laws constituted a violation of Article 2 of the Convention. Likewise, the Court notes that the State has enacted a series of laws addressed at harmonizing "the payment of judgments with the principle of budgetary justice and legality" and has amended laws and norms of an inferior rank "relating to compliance with judicial rulings and judgments." Those norms were not contested by the representatives. In this regard, the Court recalls that "[t]he purpose of the Court's contentious jurisdiction is not to review domestic laws in the abstract; rather, it is exercised to decide concrete cases in which it is alleged that an act [or omission] of the State, executed against specific individuals, is contrary to que the Convention."[298]

204. Consequently, the facts examined by this Court in cases similar to this one cannot be analyzed autonomously in this case based on Article 2 of the Convention. Also, the Court notes that no arguments were submitted that would allow it to determine the domestic laws or practices that result in the failure to execute judgments relating to pensions. In addition, the Court notes that the State has enacted a series of laws addressed at harmonizing "the payment of judgments with the principle of budgetary justice and legality," and has amended laws and norms of a lesser rank relating to compliance with judicial rulings and judgments. Accordingly, the Court lacks evidence that would allow it to conclude the existence of a normative problem that prevents the execution of judgments that recognize the right to a pension in Peru. Consequently, the Court concludes that the State is not responsible for the violation of Article 2 of the American Convention.

E. Conclusions on the chapter

205. The Court recalls that an unjustified delay in execution of a judgment constitutes, in itself, a violation of judicial guarantees. In this case, the Court concludes that the procedure for the execution of the judgment of October 25, 1993, was irregular and ineffective for the following reasons: (a) lack of clarity of the authority responsible for complying with the judgment, and the issue of rulings that ordered its execution without directly including SUNAT, which significantly delayed the proceedings and meant that ANCEJUB-SUNAT had to file new remedies; (b) need for the presumed victims to undertake other procedures before the administrative authorities in order to obtain payment of the equalized pensions; thus attributing to them the State obligation to guarantee the necessary measures to ensure the effectiveness of its judgments, and (c) failure to pay the reimbursements ordered by the judgment of October 25, 1993. These facts constitute a violation of the right to an effective judicial remedy. Moreover, the Court considers that, based on the particularities of the case, the 27 years that have passed since the judgment was handed down without it having been executed has violated the guarantee of a reasonable time.

206. The Court concludes that the State failed to comply with its obligation to guarantee the right to social security owing to the presumed victims' lack of access to an effective judicial remedy to obtain the payment of the pending amounts of their pension in light of the judgment of October

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[297] *Case of J. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 53, and *Case of Yarce et al. v. Colombia. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2016. Series C No. 325, para. 75.

[298] *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights),* Advisory Opinion OC-14/94, December 9, 1994. Series A No. 14, para. 48, and *Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of February 5, 2018. Series C No. 346, para. 165.

25, 1993, owing to the absence of adequate information on the practical effects on their pensions of the entry into force of Decrees 639 and 673 as persons subject to the pension regime established by Decree 20530, and owing to the impact that this had on other rights. In particular, the Court has noted that, due to the interrelationship between the right to social security and a decent life, a situation that is accentuated in the case of older persons, the decrease in the presumed victims' income as a result of their retirement from SUNAT, and the amounts they failed to receive owing to the failure to pay the reimbursements, resulted in a violation of their right to a decent life. Also, the failure to pay these reimbursements resulted in the violation of the right to property.

207. Based on the above, the Court concludes that the State is responsible for the violation of the rights to a decent life, judicial guarantees, property, judicial protection, and social security, recognized in Articles 4(1), 8(1), 21, 25(1), 25(2)(c) and 26 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of the persons listed in Annex 2 of this judgment. However, the State is not responsible for the violation of its obligation to adopt domestic legal provisions established in Article 2 of the American Convention.

IX
REPARATIONS
APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION

208. Based on the provisions of Article 63(1) of the American Convention,[299] the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.

209. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in re-establishment of the previous situation.[300] If this is not feasible, as in most cases of human rights violations, this Court will determine measures to guarantee the rights that have been violated and to redress the consequences of such violations.[301] The Court has considered it necessary to grant different measures of reparation in order to redress the harm comprehensively; thus, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition have special relevance for the harm caused.[302]

210. The Court has established that reparations must have a causal nexus with the facts of the case, the violations that have been declared, the harm proved, and the measures requested to

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299 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 26, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 176.

300 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 26, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 177.

301 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 26, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 177.

302 *Cf. Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 177.

redress the respective harm. Therefore, the Court must observe the concurrence of these factors to rule appropriately and pursuant to the law.[303]

211. Based on the violations declared in the preceding chapter, the Court will now proceed to examine the claims of the Commission and the representatives, together with the arguments of the State, in light of the criteria established in its case law in relation to the nature and scope of the obligation to make reparation, in order to establish measures addressed at redressing the harm caused to the victims.[304]

212. International case law and, in particular, that of the Court, has repeatedly established that the judgment constitutes, in itself, a form of reparation.[305] Nevertheless, considering the circumstances of this case and the suffering that the violations committed have caused to the victims, the Court finds it pertinent to establish other measures.

A. Injured party

213. The Court reiterates that, in accordance with Article 63(1) of the Convention, the injured party is anyone who has been declared a victim of the violation of any right recognized in this instrument. Therefore, the Court considers that the persons mentioned in Annex 2 are the "injured party" and, as victims of the violations declared in Chapter VIII of this judgment, they will be considered beneficiaries of the reparations ordered by the Court.

B. Measures of restitution and satisfaction and guarantees of non-repetition

B.1 Measures of restitution

214. The ***Commission*** asked that the State comply with the judgments of the Supreme Court of October 25, 1993, and of the Constitutional Court of June 25, 1996, and May 10, 2001. This entails the immediate adoption of the necessary measures to pay the persons included in the Merits Report the pension under the regime of Decree 20530. The Commission indicated that this included the payment of the amounts they had failed to receive from the time of their retirement until the date on which the payment was made. It also requested the implementation of an expeditious mechanism to ensure that, as soon as possible, the patrimonial effects of the judgment in their favor are established and payment is made without any further delays or hindrances.

215. The ***representatives*** asked that the State: (a) execute the judgment of the Supreme Court of October 25, 1993, and the judgments of the Constitutional Court of June 25, 1996, and May 10, 2001, that required the reinstatement of the victims' right to receive a pension equalized with the remunerations of the active employees of SUNAT, and reimbursement of the periodic increases in their amount that have occurred over time, and which the victims have failed to receive as a result of the application of the Third Transitory Provision of Decree 673, pursuant to the provisions of Decree 20530, Law 23495 and its regulations adopted by Supreme Decree No. 0015-83-PCM, all in force at the time the victims acquired their right; (b) comply immediately with the ruling of the Sixty-sixth Civil Court of March 3, 2006, and (c) in the case of the victims

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303 *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 178.

304 *Cf. Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016. Series C No. 330, para. 189, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 179.

305 *Cf. Case of Neira Alegría et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 180.

who were not taken into account in the calculations of the expert report adopted by ruling No. 80, order the creation of an independent and impartial body to determine, within a reasonable time and by a final and binding decision, the amount of the equalized pensions and the reimbursements of the increases they failed to receive and that corresponded to them up until December 2004.

216. The ***State*** argued that it could not be attributed with failure to comply with a judgment because it did not execute something that the judgment did not order or because it did something that the judgment did not prohibit, and mandates could not be derived from a judgment that did not order them or that exceeded what was decided, because jurisdictional decisions must be complied with on their own terms, without modifying their scope or altering their meaning. In this regard, it argued that the expert report of October 18, 2011, had calculated certain financial differences based, fundamentally, on the length of service and other factors that had an impact on a pension but that were not related to its equalization. In light of this, the State maintained that it had complied fully and strictly with the final decision in the amparo proceedings provided by the final judgment of the Supreme Court of October 25, 1993. The State emphasized that the Constitutional Court, in a ruing of August 9, 2011, had concluded that the fundamental rights of the members of ANCEJUB-SUNAT had not been violated and therefore asked that this measure of restitution be rejected. In addition, regarding reparation to the victims who had not been taken into account, the State argued that, before this can happen, there had to be a judicial ruling recognizing the rights of individuals who were not party to this dispute; in other words, those who have not exhausted domestic remedies. Regarding the creation of an independent and impartial body, the State indicated that the need for a body of this type had not been duly substantiated by the representatives, and the corresponding determination had already been made by experts during the process of execution of judgment. Lastly, regarding the request to equalize the pensions, the State argued that it merely had to comply with the decisions of the jurisdictional organs and they had already ruled in this regard. Subsequently, it argued that the delivery of the judgment of the Constitutional Court of April 23, 2019, concluded any discussions in this case, and therefore asked the Court to assess and respect that decision, because it ratified the position taken by the State throughout the proceedings.

217. In this case, the Court has concluded that the State violated the right to judicial protection because it had not guaranteed the full execution, without unjustified delays, of the judgment of October 25, 1993. The Court determined that, even though approximately 27 years had passed since it was handed down, the process of executing this judgment was still ongoing because the reimbursements corresponding to the equalization of the victims' pensions while the Third Transitory Provision of Decree 673 was applicable had still not been paid. Consequently, the Court determined that the State had failed to comply with its obligation to guarantee the necessary means to achieve the execution of the judgment of October 25, 1993, contrary to the obligations established in Article 25(2)(c) of the Convention. The Court has also concluded that the period of 27 years that has passed since the delivery of the said judgment without the State having guaranteed full compliance at this time was not reasonable. Therefore, the Court orders the State to guarantee the effective and immediate payment of the reimbursements pending payment owing to the provisions of the judgment of October 25, 1993, as established in the expert report of October 18, 2011, which was adopted by rulings of June 13, 2017, and April 23, 2019.

B.2 Measure of satisfaction

218. The ***representatives*** asked that the State and its senior authorities organize an act to make a public apology and acknowledge international responsibility, and also that the judgment be published in the Official Gazette, "*El Peruano,*" with the respective headings and subheadings, as well as its operative paragraphs. The ***State*** indicated that it did not consider it necessary that the Court order this measure. The ***Commission*** did not express an opinion on the representatives' request.

219. The Court finds it pertinent to order, as it has in other cases,[306] that the State, within six months of notification of this judgment, make the following publications: (a) the official summary of the judgment prepared by the Court, once, in the Official Gazette, and in a national newspaper with widespread circulation, in an appropriate and legible font, and (b) this judgment in its entirety, available for at least one year, on a State website accessible to the public. The State shall immediately inform this Court when it has made each of the publications ordered, regardless of the one-year time frame for presentation of its first report ordered in the operative paragraphs of this judgment.

220. In addition, the Court finds it pertinent to order the State to organize a public act of apology and acknowledgement of international responsibility for the facts of this case to make amends to the victims. During the act, reference must be made to the human rights violations declared in this judgment; in particular acknowledging the State's responsibility for violation of the right to social security. This act must be carried out in a public ceremony in the presence of senior State officials and the victims. The State and the victims and/or their representatives must reach agreement on the method of compliance with this public act, as well as on the details, such as the date and the place it will be held.[307]

B.3 Guarantees of non-repetition

221. The ***Commission*** asked that the State adopt the necessary legislative or other measures to avoid repetition of the violations declared in this case. It asked that the State take the necessary measures: (a) to ensure that State entities comply with judicial rulings recognizing the rights to a pension of former employees; (b) to ensure that judgment execution procedures comply with the Convention standards of simplicity and promptness, and (c) to ensure that the judicial authorities who hear such proceedings are legally authorized and, in practice, apply the coercive measures required to guarantee compliance with judicial rulings.

222. The ***representatives*** asked that: (a) the State make the necessary amendments to the law to incorporate and guarantee the provisions of the American Convention on due process of law and judicial protection in the domestic sphere, ensuring the effectiveness of judicial decisions that reinstate economic and social rights, including implementation of the measures recommended by the Ombudsman in his reports on this problem, and also that it authorize amendments to Peru's National Budget to include a special allocation of specific resources to ensure compliance with judgments that oblige the State to restore rights of a social nature, so that any payment ordered is always made within one year of the final judgement ordering it, and (b) the Court order the extension of the effects of this judgment to the other persons who have been affected but were not party to these proceedings.

223. The ***State*** argued that the Congress of the Republic had been analyzing, amending and enacting laws of a lesser rank in relation to compliance with judgments and judicial rulings. It alleged that it had always been willing and predisposed to comply with the judgments and judicial rulings handed down. It also indicated that on August 19, 2018, Law 30841 entered into force, establishing criteria for prioritizing the payment of outstanding amounts relating to employment, social security and human rights violations to creditors over 65 years of age, and creditors with

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306 *Cf. Inter alia*, *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79; *Case of Favela Nova Brasília v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of February 16, 2017. Series C No. 333, para. 300; *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 299, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 185.

307 *Cf. Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2009. Series C No. 209, para. 353*, and Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 28, 2018. Series C No. 371, paras. 347 and 348.

advanced stage illnesses. Also, regarding the representatives' request for the extension of the effects of the judgment to the other affected persons, the State indicated that such persons must first comply with the exhaustion of domestic remedies.

224. In this case, the Court has ordered a measure of restitution based on the human rights violations declared in this judgment. However, the arguments of the Commission and the representatives reveal that other members of ANCEJUB-SUNAT may find themselves in similar situations to those examined in this case, given the possible failure to execute judgments on the equalization of their pensions and the reimbursement of amounts they failed to receive owing to the application of Decree 673. The Court emphasizes that guarantees of non-repetition must be ordered in cases in which the pension rights of vulnerable groups have been violated.

225. Consequently, as a guarantee of non-repetition, the Court finds it appropriate to order the State to create a list that identifies: (a) other members of ANCEJUB-SUNAT who are not among the victims in this case, and (b) other persons who, while not members of this association, are discharged or retired employees of the National Tax Administration Superintendence in a similar situation to the victims in this case, in that they have been the beneficiaries of a judicial ruling or an administrative decision – either in the context of an amparo proceeding or any other judicial remedy or administrative procedure against the application of Decree 673 – that recognizes, restitutes or grants the right to a pension, the execution of which has not started or is still ongoing.

226. The State shall be responsible for: (a) creating and managing the list, on which it will register and identify adequately all the persons who meet the conditions indicated in this measure, and (b) collecting, reviewing and recording the information and/or documentation of the judicial proceedings, conditions of employment while they worked for the State (position, category, salary, length of service, date of retirement/discharge, etc.) and any other information or document necessary to fully execute the judgments issued in their favor.

227. For the creation of this list, the State has six months from notification of the judgment. Once the list is created, the State shall, for three years, provide an annual report on the progress made regarding this guarantee of non-repetition. The Court will assess this information at the stage of monitoring compliance with this judgment and will rule in this regard.

C. Compensation

C.1 Pecuniary damage

228. The ***Commission*** asked that the State make full reparation for the violations that have been declared, including adequate compensation that includes the pecuniary damage caused. It indicated that this compensation should be provided not only with regard to the members of ANCEJUB-SUNAT who are still alive, but also to those who died while waiting for the execution of the judgment in their favor, making this reparation effective to their next of kin.

229. The ***representatives*** asked that the State pay the victims the amounts they failed to receive, to be determined by an independent and impartial body to which the victims should have access. These amounts relate to the differences between the resulting monthly pension at December 2004 and the "frozen" pensions paid from January 2005 until the month before the month in which the State begins to pay the new resulting pension, pursuant to the corresponding legal provisions. They asked that the said body determine, in a final and binding decision, the compensation for pecuniary damage, as of 2005, to paid by the State to each of the victims or their heirs should they be deceased. They also asked that this final decision be adopted and the determination of the amounts made within one year of notification of the judgment, and that the payment of pecuniary damage be made within one year of notification of that final decision.

230. The ***State*** argued that it had not violated any right established in the American Convention. Therefore, the State's international responsibility – requiring the Court to order a reparation that included pecuniary damage – had not been constituted and, thus, no reparation was appropriate in favor of the members of ANCEJUB-SUNAT. It also argued that the representatives had not provided adequate evidence to prove that they had been harmed, and had not substantiated the causal relationship between the acts or omissions attributed to the State and the direct and concrete generation of pecuniary damage.

231. Based on the violations declared in this judgment, the Court observes that the pecuniary damage caused in this case is a result of the failure to execute the judgment of the Supreme Court of Justice of October 25, 1993. Consequently, the Court considers that the measure of restitution ordered is sufficient to repair the pecuniary damage caused to the victims.

C.2 Non-pecuniary damage

232. The ***Commission*** asked that the State make full reparation for the violations that are declared, including due compensation that included the non-pecuniary damage caused. It indicated that this compensation should be implemented not only with regard to the members of ANCEJUB-SUNAT who are still alive, but also to those who died while waiting for the judgment in their favor to be executed, making this reparation effective to their next of kin.

233. The ***representatives*** asked that the State pay the victims compensation for non-pecuniary damage, and that the amount include reparation for: (a) the effects on the victims of the excessive duration of the proceedings; (b) the suffering that the violation of their human rights caused to the victims, and (c) the effects on their life project.

234. The ***State*** argued that it had not violated any right established in the American Convention. Therefore, the State's international responsibility – requiring the Court to order a reparation that included non-pecuniary damage – had not been constituted and, thus, no reparation was appropriate in favor of the members of ANCEJUB-SUNAT. Regarding the effects on the life project alleged by the representatives, the State indicated that the Court no longer used this concept and that the respective psychological expert opinion provided by the representatives was prepared before the Court had required it and indicated how it should be submitted; therefore, the State did not have the opportunity to pose questions to the other party's expert. It added that the said expert opinion was based on interviews with nine individuals and a focal group of 12 members of ANCEJUB-SUNAT, which could not prove, reliably and absolutely, the existence of a harm with regard to 703 persons. The State underlined that the conclusions of the said expert opinion were based on the premise that the retirement pensions had been reduced; however, this had not happened and was not the matter in dispute. Lastly, regarding the excessive delay in the proceedings alleged by the representatives, the State repeated that it was the intervention of ANCEJUB-SUNAT that resulted in the delay in the domestic judicial proceedings.

235. In its case law, the Court has established that non-pecuniary damage may include both the suffering and affliction caused by the violation and the impairment of values that have great significance for the individual, and also any alteration of a non-pecuniary nature in the living conditions of the victims. Also, since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, this can only be compensated, in order to make full reparation to the victims, by the payment of a sum of money or the delivery of goods and services with a monetary value that the Court determines in application of sound judicial discretion and in accordance with equity.[308]

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[308] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Martínez Coronado v. Guatemala. Merits, reparations and costs.* Judgment of May 10, 2019. Series C No. 376, para.114.

236. In the instant case, the Court determined that the State was responsible for the violation of judicial guarantees and judicial protection owing to the ineffectiveness of the execution of the judgment of October 25, 1993, and also for the violation of the guarantee of a reasonable time. It also determined that the State had failed to comply with its obligation to guarantee the right to social security owing to lack of access to an effective judicial remedy to protect that right, and also to the absence of adequate information on the practical effects that the entry into force of Decrees 639 and 673 would have on the payment of the presumed victims' pensions, and to the impact that this had on the enjoyment of other rights, which also constituted a violation of their right to a decent life. In addition, the Court concluded that the effects on the patrimony of the members of ANCEJUB-SUNAT, owing to the failure to make the reimbursements ordered in the said 1993 judgment, constituted a violation of their right to property. Consequently, the Court considers that the uncertainty, anguish and suffering caused to the victims in this case as a result of non-compliance with the judicial decisions that were issued on the equalization of their pensions, as well as the effects that this had on the enjoyment of their rights to social security, a decent life and property must be redressed by substitutive compensation for non-pecuniary damage, based on the equity principle.[309]

237. Therefore, the Court establishes, in equity, for non-pecuniary damage, the sum of US$25,000.00 (twenty-five thousand United States dollars) for each of the victims named in Annex 2 to this judgment. The State shall make the payment of this sum within one year of notification of this judgment.

D. Costs and expenses

238. In their brief with pleadings, motions and evidence, the representatives requested the payment of the costs and expenses incurred by the victims and/or their representatives to pursue the case before the Commission and the Court. In its answering brief, the State argued that the request for costs and expenses supposed the presentation of the receipts and other documents that would justify the admissibility of this reparation. It stressed that the representatives had not submitted documentation that would support the said expenses and therefore considered that their claim was inadmissible. Subsequently, in their brief with final arguments, the representatives attached, as annexes, a series of invoices and receipts for approximately US$85,000.00 (eighty-five thousand United States dollars). Consequently, in its brief with final written arguments, the State contested the admissibility of several of these vouchers considering that they: (a) were not related to the purpose of these proceedings; (b) did not meet the formal requirements, or (c) were illegible.

239. The Court reiterates that, pursuant to its case law,[310] costs and expenses form part of the concept of reparation because the activity deployed by the victims in order to obtain justice, at both the national and the international level, entails disbursements that should be compensated when the international responsibility of the State has been declared in a judgment. Regarding the reimbursement of costs and expenses, the Court must prudently assess their scope, which includes the expenses generated before the authorities of the domestic jurisdiction and those arising in the course of the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the equity principle and taking into

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309 *Cf. Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller's Office") v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of July 1, 2009. Series C No. 198, para. 133, and *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, paras. 266 and 267.

310 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 79, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 196.

account the expenses indicated by the parties, provided their *quantum* is reasonable.[311]

240. This Court has indicated that "the claims of the victims or their representatives for costs and expenses and the evidence that substantiates them must be submitted to the Court at the first procedural opportunity granted to them – that is, in the pleading and motions brief – without prejudice to these claims being updated subsequently in keeping with the new costs and expenses incurred due to the proceedings before this Court."[312] The Court also reiterates that "it is not sufficient merely to forward evidentiary documents; rather the parties are required to include arguments that relate the evidence to the fact that it is considered to represent and, in the case of financial disbursement, the items and their justification must be clearly established."[313]

241. In this case, the Court observes that the representatives did not mention the sum they were claiming for the concept of costs and expenses in their brief with pleadings, motions and evidence, or provide the corresponding evidentiary support. The Court also notes that many of the probative documents forwarded by the representatives with their final arguments are illegible and their justification is not clear. Thus, the Court lacks sufficient evidentiary support for the costs and expenses incurred by the victims and their representatives. However, the Court takes into account the amounts indicated by the representatives in the legible vouchers that were submitted. On this basis, the Court considers that the State must pay, in equity, the sum of US$15,000.00 (fifteen thousand United States dollars) for costs and expenses, a sum to be divided between the representatives. In the proceeding on monitoring compliance with judgment, the Court may order the State to reimburse the victims or their representatives any reasonable and duly proven expenses at that procedural stage.[314]

E. Method of complying with the payments ordered

242. The State shall make the payment of the compensation for non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the persons indicated herein, within one year of notification of this judgment.

243. If the beneficiary is deceased or dies before he or she receives the respective amount, this shall be delivered directly to the heirs, pursuant to the applicable domestic law.

244. The State shall comply with the monetary obligations by payment in United States dollars or the equivalent in national currency, using the exchange rate in force on the New York Stock Exchange (United States of America) the day before payment to make the respective calculation.

245. If, for causes that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts determined within the indicated time frame, the State shall deposit these amounts in their favor in a deposit account or certificate in a solvent Peruvian financial institution, in United States dollars, and in the most favorable financial conditions

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311 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 196.

312 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para. 275, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 197.

313 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 277, and *Case of Romero Feris v. Argentina. Merits, reparations and costs.* Judgment of October 15, 2019. Series C No. 391, para. 197.

314 *Cf. Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of August 24, 2010. Series C No. 214, para. 331, and *Case of Perrone and Preckel v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of October 8, 2019. Series C No. 385, para. 177.

permitted by banking law and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the interest accrued.

246. The amount allocated in this judgment as compensation for non-pecuniary damage and to reimburse costs and expenses shall be delivered to the persons indicated in full, as established in this judgment, without any deductions arising from possible taxes or charges.

247. If the State should fall into arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in Peru.

X
OPERATIVE PARAGRAPHS

248. Therefore,

THE COURT,

DECIDES:

By six votes to one:

1. To reject the preliminary objection filed by the State on failure to exhaust domestic remedies, pursuant to paragraphs 18 to 23 of this judgment.

Dissenting Judge Eduardo Vio Grossi.

By six votes to one:

2. To reject the preliminary objection filed by the State on "fourth instance," pursuant to paragraphs 27 to 29 of this judgment.

Dissenting Judge Eduardo Vio Grossi.

By five votes to two:

3. To reject the preliminary objection filed by the State based on the subject matter, pursuant to paragraphs 33 to 37 of this judgment.

Dissenting Judges Eduardo Vio Grossi and Humberto Antonio Sierra Porto.

DECLARES:

By five votes to two, that:

4. The State is responsible for the violation of the rights to a decent life, judicial guarantees, property, judicial protection, and social security established in Articles 4(1), 8, 21, 25 and 26 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the 597 persons listed as victims in Annex 2 attached to this judgment, pursuant to paragraphs 102 to 196 and 205 to 207 of this judgment.

Dissenting Judges Eduardo Vio Grossi and Humberto Antonio Sierra Porto.

By six votes to one, that:

5. The State is not responsible for the violation of the obligation to adopt domestic legal provisions established in Article 2 of the American Convention on Human Rights, pursuant to paragraphs 200 to 204 of this judgment.

Dissenting Judge Eduardo Vio Grossi.

AND ESTABLISHES:

By six votes to one, that:

6. The State shall pay, immediately, the concepts that remain pending under the provisions of the judgment of October 25, 1993, pursuant to paragraph 217 of this judgment.

Dissenting Judge Eduardo Vio Grossi.

By six votes to one, that:

7. The State shall make the publications indicated in paragraph 219 of this judgment, within one year of its notification, and shall organize a public act to acknowledge its international responsibility pursuant to paragraph 220 of this judgment.

Dissenting Judge Eduardo Vio Grossi.

By five votes to two, that:

8. The State shall create, within six months of notification of this judgment, a list in order to settle cases similar to this one, as established in paragraphs 225 to 227 of this judgment.

Dissenting Judges Eduardo Vio Grossi and Humberto Antonio Sierra Porto.

By five votes to two, that:

9. The State shall pay, within one year of notification of this judgment, the sum established in paragraph 237 of this judgment, as compensation for non-pecuniary damage, pursuant to that paragraph.

Dissenting Judges Eduardo Vio Grossi and Humberto Antonio Sierra Porto.

By six votes to one, that:

10. The State shall pay, within one year of notification of this judgment, the sum established in paragraph 241 of this judgment to reimburse costs and expenses, pursuant to that paragraph.

Dissenting Judge Eduardo Vio Grossi.

Unanimously, that:

11. The State shall provide the Court with a report on the measures adopted to comply with this judgment within one year of its notification.

Unanimously, that:

12. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfillment of its obligations under the American Convention on Human Rights, and will close this case when the State has complied fully with its provisions.

Judge Eduardo Vio Grossi informed the Court of his dissenting opinion, Judge Humberto Antonio Sierra Porto informed the Court of his partially dissenting opinion, and Judge Ricardo Pérez Manrique informed the Court of his concurring opinion.

DONE at San José, Costa Rica, on November 21, 2019.

ANNEX 1. LIST OF PRESUMED VICTIMS PROVIDED BY THE IACHR

N°	PRESUNTA VÍCTIMA
1	Abanto Carrera Eduardo
2	Acha Vergara Luis Antonio
3	Acuña Gayoso Víctor Guillermo
4	Adrianzén Palacios Carlos Augusto
5	Agüero Fitzgerald Estefania Dalmira
6	Agüero Granados Peter Manuel
7	Aguilar Nole Manuel Erasmo
8	Aguilar Obando Juan Manuel
9	Aguilar Ocampo Nilda Consuelo
10	Aguilar Torres Nora
11	Aguirre Medina Eduardo Dionicio
12	Aguirre Utos Francisco
13	Ajalcriña Cortez Herbig Victor
14	Alarcón Urquizo Primitiva Bertha
15	Albites Izquierdo Cesar Orlando
16	Alegre Sánchez Moisés
17	Alejos Torres Niceforo
18	Aliaga Ambukka Aurelio
19	Aliaga Lozano Jorge Horacio
20	Alonso Clemente Bertha
21	Altuna Paredes Adrián Eginhardo
22	Alva Valderrama Alejandrina
23	Álvarez Flores Antonio
24	Álvarez Gonzáles Darma Maximina
25	Álvarez Pacheco Leocadia Valeria
26	Álvarez Ramírez Glicerio
27	Alzamora Mendoza Martha Soledad
28	Alzamora Soto Julia Mercedes
29	Amado Tarazona Jesús Wilde
30	Ancaya Cortez Emilio Agustín
31	Antúnez Solís Eduardo Manuel
32	Antúnez Solís Eva Isabel
33	Antúnez Solís Teofilo Miguel
34	Aquino Landa Gerónimo Víctor
35	Arámbulo Castillo Carlos Enrique
36	Arana Arenas Elsa Betty
37	Arana Flores Pablo Eleazar
38	Arana Solsol José Cecilio
39	Arancibia Quintanilla Juan Andrés
40	Araujo De La Cuba María Mercedes
41	Arenas Arce Luis Enrique
42	Arenas Medina Luz Esperanza
43	Arévalo Veramatos Rodrigo
44	Armas Toro Priscila Eugenia
45	Arrese Villalta Juan
46	Arriola Oliva Nelli Consuelo
47	Arteta Cornejo Aurora Manuela
48	Ascuña Cáceres Héctor Raúl
49	Asencio Martel Pedro Constantino
50	Aspajo Tafur Max Julián
51	Astete Zamalloa Ruth Marina
52	Atarama Lonzoy César Augusto
53	Auqui Aguilar Celestino
54	Aybar Bravo Ezequiel Inmaculado
55	Ayo Sarmiento Cesar Adrián
56	Baissel Tapia Carmen Rosa
57	Bajonero Trujillo Fortunato
58	Balbín Calmet Víctor Raúl
59	Baltodano Sinues Julio
60	Balvfn Limaymanta Marcos Rodolfo
61	Bances Gonzáles Nila Cristina
62	Barreda Quiroz Florentino Erasmo
63	Barrera Bedoya Augusto
64	Barrera Cárdenas Grimanesa
65	Barrios Escobar Carlos Enrique
66	Basauri López Rita Mercedes
67	Bazalar Longobardi Carlos
68	Becerra Chara José Ernesto
69	Bedoya Martínez Julia Alicia
70	Bejar Canaza Oscar
71	Bello Zerpa Salvador
72	Benaducci Manrique José Francisco
73	Benavides Espinoza Fortunato Raúl
74	Bernal Bustamante José Luis
75	Bernal Bustamante Juan Adriano
76	Bernardo Villanueva Dulia María
77	Bernuy Acosta Francisco Agelio

78	Berrocal Barraza Nelly
79	Berrospi Trujillo José Santos
80	Blas Navarro José Daniel
81	Bobadilla Rojas Nélida Zenaida
82	Bonilla Gavino Eudora
83	Bravo Falcón Patricio
84	Bravo Hermoza José Arnaldo
85	Bringas Rodríguez Oscar Alberto
86	Broncano Vega Pedro Hernán
87	Bueno Bedregal Adrián Emigdio
88	Bustamante Fernández Ramón René
89	Cabrera Landeo María Consuelo
90	Cáceres Peláez Sonia Eva
91	Cáceres Salazar Rosa Elvira
92	Calderón Matta Luisa Amelia
93	Camino Williams María Carlota
94	Campos Serpa Oscar
95	Campos Tapia Aníbal
96	Canales Daños Rosa Mercedes
97	Canchaya Camacho Margarita
98	Canchaya Camacho Virgilio Raúl
99	Candela Lévano Luisa Aurora
100	Candela Lévano Víctor Alfredo
101	Capuñay Martínez Carlos
102	Carmona Raez Cesar Teodoro
103	Carpio Chicoma Ketty María
104	Carranza Alfaro Constantino Percy
105	Carranza Alfaro Magno Alejandro
106	Carranza Martínez Victoria Estela
107	Carranza Ulloa Javier Roberto
108	Carrasco Ferrel Eloy
109	Carrasco Orosco Jamblico Vicente
110	Carreño Llanos Judith Yolanda
111	Carreño Llanos Luisa Elizabeth
112	Carreño Mosquera José Carmen
113	Carrera Sandoval Meisse Helvecia
114	Carrillo Granda Sara Cleofe
115	Casas Sandoval Emilio Leonardo
116	Cassana Bazán Mercedes Irma
117	Castillo Deza Bertha Cecilia
118	Castillo Sánchez Julia Manuela
119	Castro Bernales María Rosalinda
120	Castro Buendía Fortunato Félix
121	Castro Cárdenas Hugo Heraclio
122	Castro Robles Zoila Rosa
123	Castro Vidal María Isabel
124	Castro Villalobos Santiago Neptalí
125	Castromonte Ramírez Artidoro
126	Cavero Ramos Gilberto Víctor
127	Ccalla Huañahui Antonio
128	Centeno Zavala Eva Marina
129	Cerna Palomino Manuel Marcial
130	Cerna Vásquez Cesar
131	Céspedes Vega Martín
132	Chaina Fernández Ricardo Luis
133	Chanduvi Ramírez Nelly Ana María
134	Charahua Flores Edilberto Guillermo
135	Chávez Bernal Víctor Francisco
136	Chávez Centti Miguel Ángel
137	Chávez Díaz Ángel Rosendo
138	Chicata Urquizo María Evangelina Salomé
139	Chienda Bazo Víctor Nicolás
140	Chiriboga Pardo Jesús Eduardo
141	Chirinos Arredondo Nancy Jesús
142	Chois Málaga Armando Juan
143	Chuquillanqui Domínguez Judith Elizabeth
144	Chuquisengo Castillo Marianella
145	Cipriani Rodríguez Jesús José
146	Cipriani Rodríguez Pablo Eusebio
147	Ciudad Amaya Francisco
148	Claros Chavera Manuel Williams Isaías
149	Cochachi Aguilar Sebastian
150	Collado Oré Jorge Percy
151	Concha Cervantes Luis Glider
152	Cóndor Quispe Rufina Teófila
153	Contreras Abanto Abdón Rufino
154	Contreras Gutiérrez Jesús Héctor
155	Contreras Ordóñez Rigoberto
156	Córdova Córdova Ismael Vicente
157	Córdova De La Cuba Víctor Enrique
158	Córdova Díaz Marco Amador
159	Cori Borja Saturnino
160	Cornejo Calsina Marcos Delfín
161	Correa Meza Dalila
162	Corzo Morón Juan Alejandro

163	Costa Morales Rosina
164	Cruz Mac Lean Dante Salomón
165	Cuba Torres José Luis
166	Cuervo Larrea Mario Antonio
167	Cueva Lluncor José Francisco
168	Cunti Bardales Nancy Ruth
169	Cunyas Pino Luis Antonio
170	Curse Montoya Jorge
171	Daga Soto Máximo
172	Dávila Avellaneda Demetrio
173	Dávila Mango Nemo Andrés
174	Dávila Ramírez Segundo Diómedes
175	Dávila Reátegui Jorge Alberto
176	De La Cruz Casos Oswaldo
177	De La Cruz López Juan
178	De La Fuente Guzmán María Adelina
179	Del Carmen Sánchez Martha
180	Del Pino Martínez Carmen Ofelia
181	Del Valle Gonzáles Jorge Atilio
182	Delgado Coronado Rosalie
183	Delgado Pedrozo Samuel Daniel
184	Delgado Rojas Ledy Bessy
185	Díaz Calderón Sixto Wenceslao
186	Díaz Campoblanco Gladys Clorinda
187	Díaz Cornejo Gladys Isolina
188	Díaz Delgado Gloria Lucero
189	Díaz Reátegui De Mayor Ángela
190	Díaz Silva Judith Juana
191	Díaz Villavicencio Víctor Augusto
192	Diez Cerruti Isabel Constanza
193	Domínguez Pando Santos
194	Domínguez Zabaleta Zene
195	Donayre Barrios José Carlos
196	Dugard Marquina Plutarco Julio
197	Dulanto Carrillo De Albornoz Enrique
198	Durán Picho Antonio Félix
199	Durán Ríos Jorge Eleazar
200	Echecopar Dávila Alberto Alejandro
201	Egocheaga Aguilar Prudencio
202	Eguiluz Mazuelos Efraín Sabino
203	Elguera Coronel Carlos Javier
204	Elías Cajo Reynaldo
205	Elías Herrera Luis Dictino
206	Enriquez Hilary Pedro Marcial
207	Enriquez Maguiña Orestes Constantino
208	Erazo Ramírez José María
209	Escobedo Juárez Celso
210	Espejo Aquije Delfin Fortunato
211	Espinoza Alvarado Armando Jorge
212	Espinoza Alzamora Manuel Antenor
213	Espinoza Chávarry Humberto Saúl
214	Espinoza Eyzaguirre María Del Carmen
215	Espinoza Guanilo Héctor Enrique
216	Espinoza Ramirez Manuel Demetrio
217	Estela Bravo Corina Elda
218	Esterripa Angeles Rolando Abdias
219	Estupiñán Ortiz Juan Alberto
220	Felipa Grimaldo Eduardo Donato
221	Fernández Lara María Soledad
222	Fernández Marrero Vicenta Elvira
223	Fernández Salazar Jorge Isabel
224	Figueroa Herbas Enrique Moisés
225	Figueroa Herbas Jorge Roberto
226	Filomeno Landivar Jorge Nicolás
227	Flores Almeza Wilma Consuelo Juana
228	Flores Bermúdez Magno Melecio
229	Flores Ferreyra Elmer
230	Flores Pastor Luis Manuel
231	Flores Plata Clemente Roberto
232	Flores Sandoval Víctor Marcos
233	Fonseca Bernuy Enrique Manuel
234	Franco De Manrique Olga Leonidas
235	Fry Montoya Enrique Antonio
236	Galarza Fernández Pablo Humberto
237	Galindo Espinoza Teresa De Jesús
238	Gallardo Flores Cesar Augusto
239	Gallegos Pérez Norberto
240	Gallo Agurto Cesar Augusto
241	Gálvez Mendoza Hernán Antonio
242	Gamarra Buendía Miguel Abilio
243	Gamarra Romero Simon Gustavo
244	García Caballero Rafael Cristóbal
245	García Hermoza Isidro Juvenal
246	García Muñoz Luisa Guadalupe
247	García Tamariz Carlos Arturo
248	García Valdizán Dora

249	Gavilano Mendoza Gertrudis Idilia
250	Geldres Salamanca Elizabeth Victoria
251	Gómez Castañeda Marcos
252	Gómez Lafaix Irene Violeta
253	Gómez Suárez Elsa Beatriz
254	Gonzáles Grados Manuel Mariano
255	Gonzáles Lombard Abrill Raúl
256	Gonzáles Rodríguez Fidel
257	Gonzáles Rodríguez Leopoldo
258	Gotelli Lugo Rubén
259	Grande Bolívar Norma Estela
260	Grande Cangahuala Gladys Dora
261	Guerra La Torre Félix Fausto
262	Guerrero Díaz César Lucio
263	Guerrero Lucas Humberto
264	Guevara Mucha Víctor Luis
265	Guillén Zarzosa Raymundo Manuel
266	Guimet Garro Germán
267	Guinassi Paz Edgard Román
268	Guiulfo Castillo Olga Isabel
269	Gutiérrez Martínez Guillermo
270	Gutiérrez Castro Armandina Viviana
271	Gutiérrez Cerna Álvaro Augusto
272	Gutiérrez Gálvez Oscar
273	Gutiérrez Tapia Tomas Wilbert
274	Guzmán Reyes Carmen Victoria
275	Haro Suárez Gladys Marietta
276	Heredia Solís Miguel Eugenio
277	Hernández La Fuente Abraham
278	Hernández Miranda Ofelia
279	Herrera Centurión Carlos Manuel
280	Hidalgo Guevara Silvio Raúl
281	Hinojosa Aybar Víctor Hugo
282	Hopkins Cangalaya José Edwing
283	Horna Arnao Enrique
284	Hoyos Díaz Humberto Javier
285	Huamán Lozano Constanza
286	Huamán Torres Fermín
287	Huamaní Serrano Asterio
288	Huambachano Antón Hugo Bernardo
289	Huapaya Mejía Julia Luz
290	Huaricancha Martínez José Luis
291	Huaygua Velásquez Lizardo
292	Huerta Pérez Juan
293	Huilca Chipana Juan De Dios
294	Hunder Perlacios Bernabé Gene
295	Ibazett Villacorta Germán
296	Iberico Ventocilla Angélica Mercedes
297	Infantas Lovatón Américo
298	Infante Vargas Dulio
299	Ipanaque Centeno Rafael
300	Isla Zevallos Dora Elisa
301	Jara Loayza José Bernardo
302	Jara Salcedo Julia Constantina
303	Javier Mamani Wenceslao
304	Jiménez Bravo Ygnacio
305	Jiménez Cedano Cesar Enrique
306	Jo Wong Luis Alberto
307	Jordán Ortiz Elsa
308	Joy García Norma María
309	Julca Herrera Alejandro Tiburcio
310	Koc Chavera Flossy Dolores
311	Kuramoto Huamán María Cruz
312	La Rosa Bardales César Antonio
313	La Rosa Chagaray Clara
314	La Rosa Sanssoni Juan Francisco
315	La Torre Díaz Clara Gemina
316	Lara Flores Enrique Sixto
317	Larru Salazar Angélica Dina
318	Lau Li Justa Virginia
319	Lau Quintana José
320	Lazarte Santos Clavio Honorato
321	Lazarte Villanueva Graciela Carmen
322	Lazo Bullón Carmen Nelly
323	Lazo García Ezequiel Horacio
324	León Ángeles Nelly Teodora
325	Leturia Romero José Néstor
326	Lévano Salhuana Luis Alberto
327	Liberato Martínez Victoria Gladys
328	Liendo Sánchez Eliana María
329	Lituma Agüero Cesar Humberto
330	Llamas Ordaya Emma Raquel
331	Llontop Braco Cristina Del Pilar
332	Llontop Effio Juana Mercedes
333	Loayza Paucar Feliciano
334	Loayza Portilla Graciela

335	Lombardo Gonzáles Francisco Gregorio
336	Loo Reyes Carmen Rosa
337	López Céspedes Alejandro Rubén
338	López Chu Tomas Emilio
339	López Guerrero Dante A.
340	López Paredes Mauricio
341	López Vera Gladys Lucila
342	Lora Reyes Wilfredo Absalon
343	Loyola Tordoya Nydia Liliana
344	Lucar Alba Lisandro Ernesto
345	Ludeña Cárdenas Fausto
346	Luglio Mar Edgar Américo
347	Lujan Burgos Gregorio Higinio
348	Luna Rojas Jesús Nora
349	Macedo Granda Víctor José
350	Macedo Medina Dora Emilia
351	Machicao Pereyra Jorge Guillermo
352	Makishi Inafuku Vicente
353	Manrique Alvarado Jorge Noe
354	Manrique Sánchez Lea Olga
355	Marin Carrera Clodomiro
356	Marmanillo Castro Walter
357	Márquez Morante María Delia
358	Márquez Vergara Jesús Antonio
359	Marro Ibarra Luis Ernesto Francisco
360	Martel López Carlos Orlando
361	Martínez Luyo Pedro
362	Martínez Poblete Ercilia
363	Masías Yarleque Víctor
364	Matías Aguirre Mario
365	Matysek Icochea Vladimir
366	Mayhua Vía Gregorio
367	Mayorca Poma Pedro Manuel
368	Medina Aguirre Alberto Alejandro
369	Medina Ayala Andrés
370	Medina Chávez Bertha
371	Medina De La Roca José
372	Medina Del Río Evorcio Claver
373	Medrano Tito Evangelina
374	Melgar Medina Gil Francisco
375	Mendoza Linares Luis Enrique
376	Mendoza Puppi Julia Josefina
377	Mendoza Puppi Rosa Amelia
378	Mendoza Yareta Andrés Jesús
379	Mera Zavaleta José Francisco
380	Mescua Bonifacio Esther Primitiva
381	Mesones Carmona Virginia Victoria
382	Mesones Núñez Ana Emperatriz
383	Meza Suárez Beltrán Abraham
384	Milla Figueroa Eduardo Gamaniel
385	Millones Mateo Luis Antonio Pedro
386	Miranda Coronel Weissen
387	Miranda Fontana Manuel Jesús
388	Miranda Sánchez Gloria Isabel
389	Misajel Yupanqui Jesús Bacilio
390	Mogollón Pérez Wilfredo
391	Mondoñedo Valle Rosa María Jesús
392	Mondragon Meléndez Anselmo Pedro
393	Mondragón Orrego Teodoro
394	Mondragón Vásquez Segundo Avelino
395	Mongrut Fuentes Antero Alfonzo
396	Montes Ballón Sofía Edelmira
397	Monteza Saavedra Segundo Miguel
398	Montoro Bejarano Julio
399	Morales Cruzatti Luis Oswaldo
400	Morales Vargas Héctor Álvaro
401	Moran Ascama Jorge Rufino
402	Moreano Casquino Carmen Bernardina
403	Moreno Araujo Eva María
404	Morillo Rojas Sara
405	Morocho Vásquez Rosa Adelguisa
406	Mostajo Pinazo Carmen Beatriz
407	Moy Pacora Alejandro José
408	Mozo Rivas Agustín
409	Muñoz Campos Ode Raúl
410	Muñoz Chávez Ángel
411	Muñoz Leguía María Rosa
412	Muñoz Zambrano Carlos
413	Napuri Rondoy Jorge Alberto
414	Navarro Aramburu Silvino Augusto
415	Navarro Ayaucan Raúl Andrés
416	Neyra Salas Luz Bari Miria
417	Noel Urbina Gilberto
418	Noriega Cossío Oscar
419	Núñez Alatrista Gloria Ruth
420	Núñez Barriga Juan Rolando

421	Núñez Gonzáles Yolanda
422	Núñez Quispe Gregorio
423	Núñez Talavera Gabriela Gladys
424	Oblitas Carrión Dina Augusta
425	Obregón Tello Erlinda
426	Ocrospoma Valdez Fermín Claudio
427	Ojeda Macedo Arturo
428	Ojeda Ovalle Joaquín Jacinto
429	Ojeda and Lazo Luz Ysolina Juliana
430	Olivera Torres Iris Mabel
431	Olivera Torres Judith Manuela Victoria
432	Olórtegui Ángeles Cristin Rodrigo
433	Ordeano Villanueva Demetrio
434	Orihuela Herrera Luis Mariano
435	Orrala Farfán Manuel Jacinto
436	Orrillo Chávez Esau
437	Ortega Ponce Oda Judith
438	Ortiz Basauri Carmen Eufemia
439	Ortiz León Mabel Noemf
440	Oshiro Oshiro Rosa Yosiko
441	Osiro Matusaki Lilian Lucy
442	Otoya Torres María Gusmara
443	Otoya Velezmoro Miguel Antonio
444	Oviedo Gómez Carlos Humberto
445	Pacheco Camargo Juan
446	Pacheco Lawva Leonidas Flavio
447	Pacheco Tueros Luis Enrique
448	Paco Contreras Teodoro Ninfo
449	Pajuelo Villegas Elsa Haydee
450	Palma Flores Ricardo Enrique
451	Palma Flores Rosa Elvira
452	Pantoja Marroquín Hilda Teresa
453	Pardo Heredia Alejandro
454	Pardo Vega José Armando
455	Paredes Meléndez Teresa Elizabeth
456	Paredes Panduro Luis
457	Parker Pacheco Estrella Luz
458	Parra Loli Wladimiro Hugo
459	Parra Sánchez José Santos
460	Pasco Fitzgerald Elva Hercilia
461	Pasquel Ormaza Francisco
462	Paulini Efio Elia Nora
463	Peña Flores Irma
464	Peppe Riega Nicolás
465	Peralta Zegarra Zoila Aurora
466	Pereyra Echegaray Elsa Rosario
467	Pérez Alejos Vicente Wilson
468	Pérez Castro Julián
469	Pérez Choque María Victoria
470	Pérez Frazer María De Lourdes
471	Pérez Minaya Luis Mariano
472	Pérez Salas Víctor Raúl
473	Pérez Vergara Marina Herminia
474	Perleche Moncayo Pablo
475	Pinedo López Lady
476	Placencia Carranza Hugo Alberto
477	Plasencia Torres Jorge Guillermo
478	Poblete Loayza Víctor
479	Polleri Dongo Cesar Ernesto
480	Portilla Palacios Luis
481	Posso Tornero Eduardo
482	Povis Carvajal Gloria Luz
483	Prado Pantoja Jorge Luis
484	Pujazón Morello Humberto Ernesto
485	Pulgar Omonte Pedro
486	Puntriano Torres Ríos Javier Gustavo
487	Queens Arias Soto Jesús Fernando
488	Quevedo Cabrera Máximo Valentín
489	Quevedo Revilla Servero Gastón
490	Quevedo Rivas Jorge José Gabriel
491	Quevedo Rivas María Emperatriz
492	Quezada Mejía Sandalio Diego
493	Quintana Palacios Flora Del Carmen
494	Quiñe Romero Rosa Elena
495	Quiroz Cauvi María Rosario
496	Quiroz Cervera Saúl Orestes
497	Quiroz Ortiz Haydee Dehera
498	Quiroz Vallejos Carmen Mercedes
499	Rado Farfán Federico
500	Raez Guevara Ana María
501	Ramírez Bustos Damaso Arístides
502	Ramírez Hoyos Juan Alberto
503	Ramírez Pérez Pablo Gilberto
504	Ramos Ballón Julio Nazario
505	Ramos Camacho Francisco
506	Ramos Correa Carmen

507	Ramos Espino Pedro Leoncio
508	Ramos Pacheco Henry Oswaldo
509	Reátegui Dubuc Rosa Ida
510	Reátegui Solano Daniel
511	Rejas Gómez José Luis
512	Rengifo Hidalgo Ramón
513	Rengifo Pezo Carlos Advelcader
514	Renilla Herrera Raúl Alberto
515	Renilla Herrera Segundo Camilo
516	Reque Cumpa Máximo
517	Retamozo Pareja Teofilo
518	Reyes Ato Rolando
519	Reyes Sosa Rosa Isabel
520	Reyna Savero Carmen Jerónima
521	Ribera Vargas Carlos
522	Rioja Sánchez Carmen Micaela
523	Ríos Ramos Paulina Laura Pilar
524	Ríos Zavaleta Fortunato David
525	Risso Colmenares Ramón
526	Rivas Lara Víctor Raúl
527	Rivas Puga Enrique
528	Rivera Egúsquiza Andrés Roberto
529	Rivera Egúsquiza Augusto A.
530	Rivera Valega Román Rodolfo
531	Riveros Rivas Rubén Abelardo
532	Robles Ventocilla Clara Rosa
533	Roca Vega Blanca Haydee
534	Rocca Sánchez Julio Eduardo
535	Rodríguez Arana Manuel Humberto
536	Rodríguez Aguirre Julio Raúl
537	Rodríguez Banda Angélica Josefina
538	Rodríguez La Madrid Eduardo
539	Rodríguez Márquez Jaime
540	Rodríguez Rodríguez Benjamin
541	Rojas Carriedo Yolanda Alejandrina
542	Rojas Gutiérrez Olga Angélica
543	Rojas Rosales Aída Roberta
544	Rojas Rosales Delia Jacinta
545	Rojas Santos Luis Alberto
546	Rojas Sebastian Pedro Silvio
547	Rojo Villanueva Mauro Cristóbal
548	Román Espinoza María Eugenia
549	Romero Díaz Luis
550	Rosales De La Cruz Alejandro
551	Rosas Flores Juana Arminda
552	Rosas Salas Víctor Adrián
553	Rubio Díaz Ezequiel Teodulo
554	Rubio Milla Luis Josue
555	Rueda Ruiz Luis Alberto
556	Ruiz Orellana Reddy Max
557	Ruiz Tecco Mirza
558	Ruiz Travezan Graciela Emma
559	Saavedra Miñán José Alfredo
560	Sáenz Espinoza Guillermo Milciades
561	Sáez Rodríguez Mirtha Rosa
562	Sagardia Marquina Higinio
563	Salas Paredes Julia Lourdes
564	Salas Ruiz Caro Edgar Walter
565	Salas Ruiz Caro María Elizabeth Ruth
566	Salazar Lozano Lucy Noemy
567	Salazar Quiroz Ricardo Hildebrando
568	Saldaña Malqui Alberto
569	Saldaña Serpa Filemón
570	Salhuana Sánchez Yolanda
571	Salinas Málaga Cesar Augusto
572	Salvador Chafalote Rosa Erlinda
573	Samaniego Gonzáles Olinda Nora
574	Sánchez Apolinares Elías Eugenio
575	Sánchez Canchari Marina
576	Sánchez Gambetta Carlos
577	Sánchez Sánchez Antenor
578	Sánchez Villanueva Antonio
579	Sánchez Villanueva Gregorio
580	Sandoval Valdez Víctor Daniel
581	Sansur Velarde Jorge
582	Santander Álvarez Leonidas Justo
583	Santillán Palomino Daniel Gabriel
584	Sarmiento Bendezú Federico Francisco
585	Segura Marquina Polidoro
586	Seminario Seminario Jorge Guillermo
587	Sihuay Sifuentes Elsa Paulina
588	Silva Flor Lourdes Mercedes
589	Silva Ludeña Julio Hildebrando
590	Solano Derteano Emma Francisca
591	Solís Espinoza Miguel
592	Soriano Pinche Maria Luisa

593	Sosa Andrade Marcial
594	Sosa Llacza Isabel
595	Sosa Rojas Víctor Aníbal
596	Stagnaro Narvaez Carlos Humberto
597	Stucchi Díaz Martha Raquel
598	Suárez Cuadrado Aquiles
599	Suárez Hernández Ramón Antonio
600	Suárez Molina Susano Tauro
601	Suárez Palomares Benedicta
602	Taboada Baltuano Idalia Antonieta
603	Talavera Rospigliosi Laura Rosario
604	Tam Loyola Perla Edith
605	Tamara Rivera Orestes
606	Tapia Gutiérrez José Enrique Leoncio
607	Távara Chirinos Carlos Alberto
608	Tenorio Rodríguez Vilma Elisa
609	Terán Márquez Víctor Manuel
610	Terrazas Mejia Rosi Jesús
611	Terreros Monteverde Haydee
612	Terrones Díaz Elba Nelly
613	Tipacti Aste Nelly Gabriela
614	Toledo La Rosa Ramón Lorenzo
615	Toledo Molina Pablo
616	Tompson Ruiz Rita Amparo
617	Torrejón Jiménez Luis Beltrán
618	Torres Araujo Antonio Ramiro
619	Torres Lazarte Teobaldo Félix
620	Torres Policarpo Emiliano
621	Torres Sánchez Amancio
622	Tueros Del Risco Nicolás Matías
623	Ubillus Morales Juan Carlos
624	Uchofen Tiparra Giordano
625	Uchuya Valencia Lorenza Soledad
626	Ugaz Diez Canseco Julia
627	Unchupaico Godoy Julia Agustina
628	Urcia Larios José Higinio
629	Uribe Collazos María Francisca
630	Urquizo Méndez Miguel Leoncio
631	Vaccaro Quiñónez Jorge
632	Valdez Cuellar María
633	Valdivia Cáceres Rosa
634	Valdivia Ruiz Eduardo
635	Valdivia Velásquez Saturnino Braulio
636	Valenzuela Huamán Santos pablo
637	Valerio Aguirre Inocenta Teofila
638	Valverde Dancourt Juan Manuel
639	Valverde Proaño Zoila Rosa
640	Varela Alzamora María Asunción
641	Vargas Cusi Justo Pastor
642	Vargas Guillén Manuel
643	Vargas Soriano Napoleón
644	Vargas Utrilla Eustaquio
645	Varias Hurtado Eleazar Antonio
646	Vásquez Euribe Isabel
647	Vásquez Giraldo Carlomagno
648	Vásquez Rivera José Leonidas
649	Vásquez Vásquez Wilber Gonzalo
650	Velarde Ortiz Héctor Raúl
651	Velarde Ruesta Conrado Francisco
652	Velásquez Quezada Pedro
653	Velita Palacios Antonio Gamaniel
654	Venegas Sussoni Fernando José Elías
655	Ventocilla Ureta Rafael
656	Vera Rosas Jesús Eduardo
657	Vera Toro Juana Elvira
658	Vera Valderrama Vignar Nerio
659	Verástegui Oscategui Robin
660	Vicente Dulanto Maura Isabel
661	Vidaurre Guillermo Juan
662	Vidondo Cortez José
663	Vigil Urdiales Rita María
664	Vigo Flores Carlos
665	Vigo Noriega Andrés José
666	Vilca Nieto Jaime Napoleón
667	Vilcas Palomino Germán
668	Vilchez Chávez José Isidro
669	Vilchez Ordóñez Manuel Isauro
670	Villacorta Bellota Nemesio
671	Villacorta Lozada Cesar
672	Villafuerte Rivera Nelly Marcela
673	Villalobos García Ascención
674	Villalobos Ruiz Saturnino Vicente
675	Villalta Castañeda Jorge Octavio
676	Villanueva Soriano José Reynaldo
677	Villanueva Vidal Carmelo Edmundo
678	Villar Calagua Isaura María

679	Villarán Cavero Carmen Rosa
680	Villavicencio Valdivia Jaime Alejandro
681	Villena Ponce Narda Luz
682	Vivanco Terry Yolanda Cristina
683	Weissel Santillán Teodoro
684	Wong Chang José Germán
685	Yabar Acurio Marina Mauricia
686	Yalta Mezquita Herman
687	Yana Siguacollo Pablo
688	Yoplac Caman José Segundo
689	Yoza Yoza Agustín
690	Zaldívar Carhuapoma Jorge
691	Zamora Capelli Olga Alicia

692	Zamudio Espinoza Silvestre
693	Zamudio Rojas Nancy Aurora
694	Zapana Mamani Florencio
695	Zapata Diez Canseco Percy Walter
696	Zavala Vela Gladys Emilia
697	Zavaleta Remy Rosa María Del Pilar
698	Zavalla Contreras Julio Víctor
699	Zegarra Matos Mario Antonio
700	Zevallos Huamaní Claudio
701	Zumaeta Reátegui Clara Melita
702	Zúñiga Montes Julio Evaristo
703	Zúñiga Stranguich Hilda
704	Zúñiga Vásquez Mariano Claudio

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ANNEX 2. LIST OF VICTIMS IN THIS CASE

1	Acuña Gayoso Víctor Guillermo
2	Adrianzén Palacios Carlos Augusto
3	Agüero Fitzgerald Estefania Dalmira
4	Agüero Granados Peter Manuel
5	Aguilar Nole Manuel Erasmo
6	Aguilar Ocampo Nilda Consuelo
7	Aguilar Torres Nora
8	Aguirre Utos Francisco
9	Ajalcriña Cortez Herbig Victor
10	Alarcón Urquizo Primitiva Bertha
11	Alegre Sánchez Moisés
12	Alejos Torres Niceforo
13	Aliaga Ambukka Aurelio
14	Alonso Clemente Bertha
15	Altuna Paredes Adrián Eginhardo
16	Alva Valderrama Alejandrina
17	Álvarez Gonzáles Darma Maximina
18	Álvarez Ramírez Glicerio
19	Alzamora Mendoza Martha Soledad
20	Alzamora Soto Julia Mercedes
21	Amado Tarazona Jesús Wilde
22	Antúnez Solís Eduardo Manuel
23	Antúnez Solís Eva Isabel
24	Antúnez Solís Teófilo Miguel
25	Aquino Landa Gerónimo Víctor
26	Arámbulo Castillo Carlos Enrique
27	Arana Arenas Elsa Betty
28	Arana Flores Pablo Eleazar
29	Arana Solsol José Cecilio
30	Arancibia Quintanilla Juan Andrés
31	Araujo De La Cuba María Mercedes
32	Arenas Arce Luis Enrique
33	Arenas Medina Luz Esperanza
34	Arévalo Veramatos Rodrigo
35	Armas Toro Priscila Eugenia
36	Arrese Villalta Juan
37	Arriola Oliva Nelli Consuelo
38	Arteta Cornejo Aurora Manuela
39	Ascuña Cáceres Héctor Raúl
40	Asencio Martel Pedro Constantino
41	Aspajo Tafur Max Julián
42	Astete Zamalloa Ruth Marina
43	Atarama Lonzoy César Augusto
44	Auqui Aguilar Celestino
45	Aybar Bravo Ezequiel Inmaculado
46	Ayo Sarmiento Cesar Adrián
47	Baissel Tapia Carmen Rosa
48	Bajonero Trujillo Fortunato
49	Baltodano Sinues Julio
50	Bances Gonzáles Nila Cristina
51	Barreda Quiroz Florentino Erasmo
52	Barrera Bedoya Augusto
53	Barrera Cárdenas Grimanesa
54	Barrios Escobar Carlos Enrique
55	Basauri López Rita Mercedes
56	Becerra Chara José Ernesto
57	Bedoya Martínez Julia Alicia
58	Bello Zerpa Salvador
59	Benaducci Manrique José Francisco
60	Benavides Espinoza Fortunato Raúl
61	Bernal Bustamante Juan Adriano
62	Bernardo Villanueva Dulia María
63	Bernuy Acosta Francisco Agelio
64	Berrocal Barraza Nelly
65	Berrospi Trujillo José Santos
66	Blas Navarro José Daniel
67	Bobadilla Rojas Nélida Zenaida
68	Bravo Falcón Patricio
69	Bravo Hermoza José Arnaldo
70	Bringas Rodríguez Oscar Alberto
71	Bueno Bedregal Adrián Emigdio
72	Bustamante Fernández Ramón René
73	Cabrera Landeo María Consuelo
74	Cáceres Peláez Sonia Eva
75	Cáceres Salazar Rosa Elvira
76	Calderón Matta Luisa Amelia
77	Camino Williams María Carlota
78	Campos Tapia Aníbal

79	Canales Daños Rosa Mercedes
80	Canchaya Camacho Margarita
81	Canchaya Camacho Virgilio Raúl
82	Candela Lévano Luisa Aurora
83	Candela Lévano Víctor Alfredo
84	Capuñay Martínez Carlos
85	Carmona Raez Cesar Teodoro
86	Carpio Chicoma Ketty María
87	Carranza Alfaro Constantino Percy
88	Carranza Martínez Victoria Estela
89	Carranza Ulloa Javier Roberto
90	Carrasco Ferrel Eloy
91	Carrasco Orosco Jamblico Vicente
92	Carreño Llanos Judith Yolanda
93	Carreño Llanos Luisa Elizabeth
94	Carreño Mosquera José Carmen
95	Carrera Sandoval Meisse Helvecia
96	Carrillo Granda Sara Cleofe
97	Cassana Bazán Mercedes Irma
98	Castillo Deza Bertha Cecilia
99	Castillo Sánchez Julia Manuela
100	Castro Bernales María Rosalinda
101	Castro Buendía Fortunato Félix
102	Castro Cárdenas Hugo Heraclio
103	Castro Robles Zoila Rosa
104	Castro Vidal María Isabel
105	Castro Villalobos Santiago Neptalí
106	Castromonte Ramírez Artidoro
107	Cavero Ramos Gilberto Víctor
108	Centeno Zavala Eva Marina
109	Cerna Palomino Manuel Marcial
110	Cerna Vásquez Cesar
111	Céspedes Vega Martín
112	Chaina Fernández Ricardo Luis
113	Chanduvi Ramírez Nelly Ana María
114	Charahua Flores Edilberto Guillermo
115	Chávez Centti Miguel Ángel
116	Chávez Díaz Ángel Rosendo
117	Chienda Bazo Víctor Nicolás
118	Chiriboga Pardo Jesús Eduardo
119	Chois Málaga Armando Juan
120	Chuquillanqui Domínguez Judith Elizabeth
121	Chuquisengo Castillo Marianella
122	Ciudad Amaya Francisco
123	Claros Chavera Manuel Williams Isaías
124	Cochachi Aguilar Sebastian
125	Collado Oré Jorge Percy
126	Concha Cervantes Luis Glider
127	Cóndor Quispe Rufina Teófila
128	Contreras Abanto Abdón Rufino
129	Contreras Gutiérrez Jesús Héctor
130	Contreras Ordóñez Rigoberto
131	Córdova Córdova Ismael Vicente
132	Córdova De La Cuba Víctor Enrique
133	Córdova Díaz Marco Amador
134	Cori Borja Saturnino
135	Cornejo Calsina Marcos Delfín
136	Corzo Morón Juan Alejandro
137	Costa Morales Rosina
138	Cruz Mac Lean Dante Salomón Guillermo
139	Cuba Torres José Luis
140	Cuervo Larrea Mario Antonio
141	Cueva Lluncor José Francisco
142	Cunti Bardales Nancy Ruth
143	Daga Soto Máximo
144	Dávila Avellaneda Demetrio
145	Dávila Mango Nemo Andrés
146	Dávila Ramírez Segundo Diómedes
147	Dávila Reátegui Jorge Alberto
148	De La Cruz López Juan
149	De La Fuente Guzmán María Adelina
150	Del Carmen Sánchez Martha
151	Del Pino Martínez Carmen Ofelia
152	Delgado Coronado Rosalie
153	Delgado Pedrozo Samuel Daniel
154	Delgado Rojas Ledy Bessy
155	Díaz Calderón Sixto Wenceslao
156	Díaz Campoblanco Gladys Clorinda
157	Díaz Cornejo Gladys Isolina
158	Díaz Delgado Gloria Lucero
159	Díaz Reátegui De Mayor Ángela
160	Díaz Silva Judith Juana
161	Díaz Villavicencio Víctor Augusto
162	Diez Cerruti Isabel Constanza
163	Domínguez Pando Santos
164	Domínguez Zabaleta Zene

165	Donayre Barrios José Carlos
166	Dugard Marquina Plutarco Julio
167	Dulanto Carrillo De Albornoz Enrique
168	Durán Picho Antonio Félix
169	Egocheaga Aguilar Prudencio
170	Eguiluz Mazuelos Efraín Sabino
171	Elías Cajo Reynaldo
172	Elías Herrera Luis Dictino
173	Enriquez Hilary Pedro Marcial
174	Erazo Ramírez José María
175	Escobedo Juárez Celso
176	Espinoza Alvarado Armando Jorge
177	Espinoza Alzamora Manuel Antenor
178	Espinoza Chávarry Humberto Saúl
179	Espinoza Eyzaguirre María Del Carmen
180	Espinoza Guanilo Héctor Enrique
181	Espinoza Ramirez Manuel Demetrio
182	Estela Bravo Corina Elda
183	Esterripa Angeles Rolando Abdias
184	Felipa Grimaldo Eduardo Donato
185	Fernández Lara María Soledad
186	Fernández Marrero Vicenta Elvira
187	Figueroa Herbas Enrique Moisés
188	Figueroa Herbas Jorge Roberto
189	Filomeno Landivar Jorge Nicolás
190	Flores Almeza Wilma Consuelo Juana
191	Flores Bermúdez Magno Melecio
192	Flores Ferreyra Elmer
193	Flores Pastor Luis Manuel
194	Flores Plata Clemente Roberto
195	Flores Sandoval Víctor Marcos
196	Fonseca Bernuy Enrique Manuel
197	Fry Montoya Enrique Antonio
198	Galarza Fernández Pablo Humberto
199	Galindo Espinoza Teresa De Jesús
200	Gallardo Flores Cesar Augusto
201	Gallo Agurto Cesar Augusto
202	Gálvez Mendoza Hernán Antonio
203	Gamarra Buendía Miguel Abilio
204	Gamarra Romero Simon Gustavo
205	García Caballero Rafael Cristóbal
206	García Hermoza Isidro Juvenal
207	García Muñoz Luisa Guadalupe
208	García Tamariz Carlos Arturo
209	García Valdizán Dora
210	Gavilano Mendoza Gertrudis Idilia
211	Geldres Salamanca Elizabeth Victoria
212	Gómez Castañeda Marcos
213	Gómez Lafaix Irene Violeta
214	Gómez Suárez Elsa Beatriz
215	Gonzáles Grados Manuel Mariano
216	Gonzáles Lombard Abrill Raúl
217	Gonzáles Rodríguez Fidel
218	Gonzáles Rodríguez Leopoldo
219	Gotelli Lugo Rubén
220	Grande Bolívar Norma Estela
221	Grande Cangahuala Gladys Dora
222	Guerra La Torre Félix Fausto
223	Guerrero Díaz César Lucio
224	Guevara Mucha Víctor Luis
225	Guillén Zarzosa Raymundo Manuel
226	Guiulfo Castillo Olga Isabel
227	Gutiérrez Cerna Álvaro Augusto
228	Gutiérrez Gálvez Oscar
229	Gutiérrez Martínez Guillermo
230	Gutiérrez Tapia Tomas Wilbert
231	Guzmán Reyes Carmen Victoria
232	Haro Suárez Gladys Marietta
233	Heredia Solís Miguel Eugenio
234	Hernández La Fuente Abraham
235	Hernández Miranda Ofelia
236	Hidalgo Guevara Silvio Raúl
237	Hinojosa Aybar Víctor Hugo
238	Hopkins Cangalaya José Edwing
239	Horna Arnao Enrique
240	Hoyos Díaz Humberto Javier
241	Huamán Lozano Constanza
242	Huamán Torres Fermín
243	Huamaní Serrano Asterio
244	Huambachano Antón Hugo Bernardo
245	Huapaya Mejía Julia Luz
246	Huaricancha Martínez José Luis
247	Huaygua Velásquez Lizardo
248	Huerta Pérez Juan
249	Huilca Chipana Juan De Dios
250	Hunder Perlacios Bernabé Gene

251	Ibazett Villacorta Germán
252	Iberico Ventocilla Angélica Mercedes
253	Infantas Lovatón Américo
254	Infante Vargas Dulio
255	Isla Zevallos Dora Elisa
256	Jara Salcedo Julia Constantina
257	Javier Mamani Wenceslao
258	Jiménez Bravo Ygnacio
259	Jiménez Cedano Cesar Enrique
260	Jo Wong Luis Alberto
261	Jordán Ortiz Elsa
262	Joy García Norma María
263	Julca Herrera Alejandro Tiburcio
264	Koc Chavera Flossy Dolores
265	Kuramoto Huamán María Cruz
266	La Rosa Bardales César Antonio
267	La Rosa Chagaray Clara
268	La Rosa Sanssoni Juan Francisco
269	La Torre Díaz Clara Gemina
270	Lara Flores Enrique Sixto
271	Larru Salazar Angélica Dina
272	Lau Li Justa Virginia
273	Lau Quintana José
274	Lazarte Villanueva Graciela Carmen
275	Lazo García Ezequiel Horacio
276	León Ángeles Nelly Teodora
277	Leturia Romero José Néstor
278	Lévano Salhuana Luis Alberto
279	Liberato Martínez Victoria Gladys
280	Liendo Sánchez Eliana María
281	Lituma Agüero Cesar Humberto
282	Llamas Ordaya Emma Raquel
283	Llontop Effio Juana Mercedes
284	Loayza Paucar Feliciano
285	Loayza Portilla Graciela
286	Lombardo Gonzáles Francisco Gregorio
287	Loo Reyes Carmen Rosa
288	López Céspedes Alejandro Rubén
289	López Chu Tomas Emilio
290	López Guerrero Dante A.
291	López Paredes Mauricio
292	López Vera Gladys Lucila
293	Lora Reyes Wilfredo Absalon
294	Loyola Tordoya Nydia Liliana
295	Ludeña Cárdenas Fausto
296	Luglio Mar Edgar Américo
297	Lujan Burgos Gregorio Higinio
298	Luna Rojas Jesús Nora
299	Macedo Medina Dora Emilia
300	Makishi Inafuku Vicente
301	Manrique Alvarado Jorge Noe
302	Manrique Sánchez Lea Olga
303	Marin Carrera Clodomiro
304	Marmanillo Castro Walter
305	Márquez Morante María Delia
306	Marro Ibarra Luis Ernesto Francisco
307	Martel López Carlos Orlando
308	Martínez Poblete Ercilia
309	Masías Yarleque Víctor
310	Matías Aguirre Mario
311	Matysek Icochea Vladimir
312	Mayhua Vía Gregorio
313	Medina Aguirre Alberto Alejandro
314	Medina Chávez Bertha
315	Medina Del Río Evorcio Claver
316	Medrano Tito Evangelina
317	Melgar Medina Gil Francisco
318	Mendoza Linares Luis Enrique
319	Mendoza Puppi Julia Josefina
320	Mendoza Puppi Rosa Amelia
321	Mescua Bonifacio Esther Primitiva
322	Mesones Carmona Virginia Victoria Sofía
323	Mesones Núñez Ana Emperatriz
324	Meza Suárez Beltrán Abraham
325	Milla Figueroa Eduardo Gamaniel
326	Miranda Coronel Weissen
327	Miranda Fontana Manuel Jesús
328	Miranda Sánchez Gloria Isabel
329	Mogollón Pérez Wilfredo
330	Mondragon Meléndez Anselmo Pedro
331	Mondragón Orrego Teodoro
332	Mondragón Vásquez Segundo Avelino
333	Mongrut Fuentes Antero Alfonzo
334	Montes Ballón Sofía Edelmira
335	Monteza Saavedra Segundo Miguel
336	Montoro Bejarano Julio

337	Morales Cruzatti Luis Oswaldo
338	Morales Vargas Héctor Álvaro
339	Moran Ascama Jorge Rufino
340	Moreano Casquino Carmen Bernardina
341	Moreno Araujo Eva María
342	Morillo Rojas Sara
343	Morocho Vásquez Rosa Adelguisa
344	Mostajo Pinazo Carmen Beatriz
345	Moy Pacora Alejandro José
346	Muñoz Campos Ode Raúl
347	Muñoz Chávez Ángel
348	Muñoz Leguía María Rosa
349	Muñoz Zambrano Carlos
350	Napuri Rondoy Jorge Alberto
351	Navarro Ayaucan Raúl Andrés
352	Neyra Salas Luz Bari Miria
353	Noel Urbina Gilberto
354	Noriega Cossío Oscar
355	Núñez Alatrista Gloria Ruth
356	Núñez Gonzáles Yolanda
357	Núñez Quispe Gregorio
358	Núñez Talavera Gabriela Gladys
359	Oblitas Carrión Dina Augusta
360	Obregón Tello Erlinda
361	Ocrospoma Valdez Fermín Claudio
362	Ojeda Macedo Arturo
363	Ojeda Ovalle Joaquín Jacinto
364	Ojeda and Lazo Luz Ysolina Juliana
365	Olivera Torres Iris Mabel
366	Olivera Torres Judith Manuela Victoria
367	Olórtegui Ángeles Cristin Rodrigo
368	Orihuela Herrera Luis Mariano
369	Orrala Farfán Manuel Jacinto
370	Orrillo Chávez Esau
371	Ortiz Basauri Carmen Eufemia
372	Ortiz León Mabel Noemí
373	Oshiro Oshiro Rosa Yosiko
374	Osiro Matusaki Lilian Lucy
375	Otoya Torres María Gusmara
376	Otoya Velezmoro Miguel Antonio
377	Oviedo Gómez Carlos Humberto
378	Pacheco Camargo Juan
379	Pacheco Tueros Luis Enrique
380	Pajuelo Villegas Elsa Haydee
381	Palma Flores Ricardo Enrique
382	Palma Flores Rosa Elvira
383	Pantoja Marroquín Hilda Teresa
384	Pardo Heredia Alejandro
385	Pardo Vega José Armando
386	Paredes Meléndez Teresa Elizabeth
387	Paredes Panduro Luis
388	Parker Pacheco Estrella Luz
389	Parra Loli Wladimiro Hugo
390	Parra Sánchez José Santos
391	Pasco Fitzgerald Elva Hercilia
392	Pasquel Ormaza Francisco
393	Paulini Efio Elia Nora
394	Peña Flores Irma
395	Peppe Riega Nicolás
396	Peralta Zegarra Zoila Aurora
397	Pereyra Echegaray Elsa Rosario
398	Pérez Alejos Vicente Wilson
399	Pérez Castro Julián
400	Pérez Choque María Victoria
401	Pérez Frazer María De Lourdes
402	Pérez Minaya Luis Mariano
403	Pérez Salas Víctor Raúl
404	Pérez Vergara Marina Herminia
405	Pinedo López Lady
406	Placencia Carranza Hugo Alberto
407	Plasencia Torres Jorge Guillermo
408	Poblete Loayza Víctor
409	Polleri Dongo Cesar Ernesto
410	Posso Tornero Eduardo
411	Povis Carvajal Gloria Luz
412	Prado Pantoja Jorge Luis
413	Pujazón Morello Humberto Ernesto
414	Pulgar Omonte Pedro
415	Puntriano Torres Ríos Javier Gustavo
416	Queens Arias Soto Jesús Fernando
417	Quevedo Cabrera Máximo Valentín
418	Quevedo Rivas Jorge José Gabriel
419	Quevedo Rivas María Emperatriz
420	Quezada Mejía Sandalio Diego
421	Quintana Palacios Flora Del Carmen
422	Quiñe Romero Rosa Elena

423	Quiroz Cauvi María Rosario
424	Quiroz Ortiz Haydee Dehera
425	Quiroz Vallejos Carmen Mercedes
426	Rado Farfán Federico
427	Raez Guevara Ana María
428	Ramírez Bustos Damaso Arístides
429	Ramírez Hoyos Juan Alberto
430	Ramírez Pérez Pablo Gilberto
431	Ramos Camacho Francisco
432	Ramos Correa Carmen
433	Ramos Espino Pedro Leoncio
434	Ramos Pacheco Henry Oswaldo
435	Reátegui Dubuc Rosa Ida
436	Reátegui Solano Daniel
437	Rejas Gómez José Luis
438	Rengifo Hidalgo Ramón
439	Rengifo Pezo Carlos Advelcader
440	Renilla Herrera Raúl Alberto
441	Reque Cumpa Máximo
442	Retamozo Pareja Teofilo
443	Reyes Ato Rolando
444	Reyes Sosa Rosa Isabel
445	Reyna Savero Carmen Jerónima
446	Ríos Ramos Paulina Laura Pilar
447	Ríos Zavaleta Fortunato David
448	Risso Colmenares Ramón
449	Rivas Puga Enrique
450	Rivera Egúsquiza Andrés Roberto
451	Rivera Egúsquiza Augusto A.
452	Rivera Valega Román Rodolfo
453	Robles Ventocilla Clara Rosa
454	Roca Vega Blanca Haydee
455	Rocca Sánchez Julio Eduardo
456	Rodríguez Aguirre Julio Raúl
457	Rodríguez Arana Manuel Humberto
458	Rodríguez Banda Angélica Josefina
459	Rodríguez La Madrid Eduardo
460	Rodríguez Márquez Jaime
461	Rodríguez Rodríguez Benjamin
462	Rojas Carriedo Yolanda Alejandrina
463	Rojas Gutiérrez Olga Angélica
464	Rojas Rosales Aída Roberta
465	Rojas Rosales Delia Jacinta
466	Rojas Santos Luis Alberto
467	Rojo Villanueva Mauro Cristóbal
468	Román Espinoza María Eugenia
469	Romero Díaz Luis
470	Rosales De La Cruz Alejandro
471	Rosas Flores Juana Arminda
472	Rubio Díaz Ezequiel Teodulo
473	Rueda Ruiz Luis Alberto
474	Ruiz Travezan Graciela Emma
475	Saavedra Miñán José Alfredo
476	Sáenz Espinoza Guillermo Milciades
477	Sáez Rodríguez Mirtha Rosa
478	Sagardia Marquina Higinio
479	Salas Paredes Julia Lourdes
480	Salas Ruiz Caro Edgar Walter
481	Salas Ruiz Caro María Elizabeth Ruth
482	Salazar Lozano Lucy Noemy
483	Salazar Quiroz Ricardo Hildebrando
484	Saldaña Malqui Alberto
485	Salhuana Sánchez Yolanda
486	Salvador Chafalote Rosa Erlinda
487	Samaniego Gonzáles Olinda Nora
488	Sánchez Apolinares Elías Eugenio
489	Sánchez Canchari Marina
490	Sánchez Gambetta Carlos
491	Sánchez Sánchez Antenor
492	Sánchez Villanueva Antonio
493	Sandoval Valdez Víctor Daniel
494	Sansur Velarde Jorge
495	Santander Álvarez Leonidas Justo
496	Santillán Palomino Daniel Gabriel
497	Sarmiento Bendezú Federico Francisco
498	Segura Marquina Polidoro
499	Seminario Seminario Jorge Guillermo
500	Sihuay Sifuentes Elsa Paulina
501	Silva Flor Lourdes Mercedes
502	Solano Derteano Emma Francisca
503	Solís Espinoza Miguel
504	Soriano Pinche Maria Luisa
505	Sosa Andrade Marcial
506	Sosa Llacza Isabel
507	Sosa Rojas Víctor Aníbal
508	Stucchi Díaz Martha Raquel

509	Suárez Cuadrado Aquiles
510	Suárez Molina Susano Tauro
511	Taboada Baltuano Idalia Antonieta
512	Talavera Rospigliosi Laura Rosario
513	Tam Loyola Perla Edith
514	Tamara Rivera Orestes
515	Tapia Gutiérrez José Enrique Leoncio
516	Tenorio Rodríguez Vilma Elisa
517	Terán Márquez Víctor Manuel
518	Terrazas Mejia Rosi Jesús
519	Terreros Monteverde Haydee
520	Terrones Díaz Elba Nelly
521	Tipacti Aste Nelly Gabriela
522	Toledo La Rosa Ramón Lorenzo
523	Tompson Ruiz Rita Amparo
524	Torrejón Jiménez Luis Beltrán
525	Torres Araujo Antonio Ramiro
526	Torres Lazarte Teobaldo Félix
527	Torres Policarpo Emiliano
528	Torres Sánchez Amancio
529	Tueros Del Risco Nicolás Matías
530	Ubillus Morales Juan Carlos
531	Uchofen Tiparra Giordano
532	Uchuya Valencia Lorenza Soledad
533	Ugaz Diez Canseco Julia
534	Unchupaico Godoy Julia Agustina
535	Uribe Collazos María Francisca
536	Urquizo Méndez Miguel Leoncio
537	Vaccaro Quiñónez Jorge
538	Valdez Cuellar María
539	Valdivia Cáceres Rosa
540	Valdivia Ruiz Eduardo
541	Valdivia Velásquez Saturnino Braulio
542	Valenzuela Huamán Santos pablo
543	Valerio Aguirre Inocenta Teofila
544	Valverde Dancourt Juan Manuel
545	Valverde Proaño Zoila Rosa
546	Varela Alzamora María Asunción
547	Vargas Cusi Justo Pastor
548	Vargas Guillén Manuel
549	Vargas Soriano Napoleón
550	Vargas Utrilla Eustaquio
551	Varias Hurtado Eleazar Antonio
552	Vásquez Euribe Isabel
553	Vásquez Giraldo Carlomagno
554	Vásquez Rivera José Leonidas
555	Velarde Ruesta Conrado Francisco
556	Velásquez Quezada Pedro
557	Velita Palacios Antonio Gamaniel
558	Ventocilla Ureta Rafael
559	Vera Toro Juana Elvira
560	Verástegui Oscategui Robin
561	Vidaurre Guillermo Juan
562	Vidondo Cortez José
563	Vigil Urdiales Rita María
564	Vigo Noriega Andrés José
565	Vilcas Palomino Germán
566	Vilchez Chávez José Isidro
567	Villacorta Bellota Nemesio
568	Villacorta Lozada Cesar
569	Villafuerte Rivera Nelly Marcela
570	Villalobos García Ascención
571	Villalobos Ruiz Saturnino Vicente
572	Villalta Castañeda Jorge Octavio
573	Villanueva Vidal Carmelo Edmundo
574	Villar Calagua Isaura María
575	Villarán Cavero Carmen Rosa
576	Villavicencio Valdivia Jaime Alejandro
577	Villena Ponce Narda Luz
578	Vivanco Terry Yolanda Cristina
579	Wong Chang José Germán
580	Yabar Acurio Marina Mauricia
581	Yalta Mezquita Herman
582	Yana Siguacollo Pablo
583	Yoza Yoza Agustín
584	Zamora Capelli Olga Alicia
585	Zamudio Espinoza Silvestre
586	Zamudio Rojas Nancy Aurora
587	Zapana Mamani Florencio
588	Zapata Diez Canseco Percy Walter
589	Zavala Vela Gladys Emilia
590	Zavaleta Remy Rosa María Del Pilar
591	Zavalla Contreras Julio Víctor
592	Zegarra Matos Mario Antonio
593	Zevallos Huamaní Claudio
594	Zumaeta Reátegui Clara Melita

595	Zúñiga Montes Julio Evaristo
596	Zúñiga Stranguich Hilda

597	Zúñiga Vásquez Mariano Claudio

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Eduardo Ferrer Mac-Gregor Poisot
President

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Secretary

DISSENTING OPINION OF JUDGE EDUARDO VIO GROSSI

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE NATIONAL ASSOCIATION OF DISCHARGED AND RETIRED EMPLOYEES OF THE NATIONAL TAX ADMINISTRATION SUPERINTENDENCE (ANCEJUB-SUNAT) *v.* PERU
JUDGMENT OF NOVEMBER 21, 2019

I. INTRODUCTION

1. I issue this partially dissenting opinion in relation to the Judgment in the above-mentioned case[1] because I disagree with the decision set forth in Operative Paragraph N° 1[2], regarding the preliminary objection filed by the Republic of Peru[3] on the prior requirement to exhaust domestic remedies established in the American Convention on Human Rights.[4]

2. To better understand this dissenting opinion, I consider it necessary to reiterate and expand on what I have already stated in other separate opinions[5] concerning compliance with the said requirement. I will therefore address some prior and general considerations setting forth the reasons that underlie this dissent, the conventional norms on this matter, the associated regulatory provisions and, finally, the

[1] Hereinafter, the Judgment. Whenever the footnotes refer to "para." or "paras." this should be understood to refer to a paragraph or paragraphs of the Judgment.

[2] *"To reject the preliminary objection filed by the State on the failure to exhaust domestic remedies, pursuant to paragraphs 18 to 23 of this Judgment."*

[3] Hereinafter, the State.

[4] Hereinafter, the Convention.

[5] *Dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Díaz Loreto et al. v. Venezuela, Judgment of November 19, 2019 (Preliminary objections, Merits, reparations and costs); Concurring opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Terrones Silva et al. v. Peru, Judgment of September 26, 2018, (Preliminary objections, merits, reparations and costs); Separate opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Amrhein et al. v.. Costa Rica, Judgment of April 25, 2018, (Preliminary objections, merits, reparations and costs); Concurring opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Yarce et al. v. Colombia (Preliminary objection, merits, reparations and costs). Judgment of November 22, 2016. Series C No. 325; Concurring opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of September 1, 2016. Series C No. 316; Concurring opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs. Judgment of November 19, 2015. Series C No. 307; Dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of the Campesino Community of Santa Bárbara v. Peru. Preliminary objections, merits, reparations and costs. Judgment of September 1, 2015. Series C No. 299; Dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs. Judgment of June 30, 2015. Series C No. 297; Dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs. Judgment of April 17, 2015. Series C No. 292; Dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Liakat Ali Alibux v. Suriname. Preliminary objections, merits, reparations and costs. Judgment of January 30, 2014. Series C No. 276, and Dissenting opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs. Judgment of June 26, 2012. Series C No. 244.*

consequences arising from adopting a criterion that differs from the one set forth in these lines.

II. PRIOR AND GENERAL CONSIDERATIONS

3. The prior and general considerations regarding the matter at hand are related to the function of the Inter-American Court of Human Rights[6] and the role of the separate opinion.

A. Regarding the function of the Court

4. This opinion is based on the view that the Court's function[7] is to impart justice on human rights issues according to the law and, more specifically, according to the Convention and, therefore, based on international human rights law of which it forms part as well as public international law.[8]

5. Thus, strictly speaking, the Court is not responsible for promoting and defending human rights, since the Convention expressly assigns that function to the Commission,[9] which could be described as an "activist" body, this term being understood in the most positive sense possible.[10] By contrast, the role of the Court is to settle disputes concerning human rights matters that may arise between the States Parties to the Convention, which may appear before it,[11] or, where a person, a group of persons or a

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[6] Hereinafter, the Court.

[7] Article 62(3): *"The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement."*

[8] Article 31(3)(c) of the Vienna Convention on the Law of Treaties: "*There shall be taken into account, together with the context: ... c) "any relevant rules of international law applicable in the relations between the parties."*

[9] Article 41: "*The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers:*

a) to develop an awareness of human rights among the peoples of America;

b) to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;

c) to prepare such studies or reports as it considers advisable in the performance of its duties;

d)) to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;

e) to respond, through the General Secretariat of the Organization of American States, to inquiries made by the Member States on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;

f) to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and

g) to submit an annual report to the General Assembly of the Organization of American States."

[10] *Diccionario de la Lengua Española, Real Academia Española*, 2019: *"Activism: 1.Tendency to act in an extremely dynamic manner. 2. Exercise of proselytism and social action of a public nature. Activist: 1. Associated with or related to activism.2. A person engaged in activism."*

[11] Article 45(1): *"Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and*

nongovernmental entity[12] has lodged a complaint against one or several of them, the other States Parties are represented by the Commission[13] and may even examine cases in which the State Party denounced has not complied with the rulings issued in the proceedings instituted against it.[14]

6. The function of the Court is, I reiterate, to issue rulings by applying and interpreting the Convention; in other words, it must determine the meaning and scope of the latter's provisions which, because they are sometimes perceived as obscure or vague, may be subject to various options in terms of their application. Thus, the Court must try to ensure that this results in the effective protection of human rights and, where these have been violated, their prompt reestablishment.[15]

7. Obviously, to accomplish this task, the Court does not have the power to adjudicate outside of the law, or to disregard the provisions of the Convention. In this order of ideas, the Court must uphold the principle of public law that stipulates that one must act only in accordance with the law; therefore, where a matter is not regulated, it must be governed by the internal, domestic or exclusive jurisdiction of the State in question.[16]

8. Furthermore, for that same reason, the Court must, on the one hand, proceed solely in accordance with the provisions of the Convention, rather than as it would wish to proceed and, on the other, it must avoid modifying those provisions, which is a

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examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention."

[12]Article 44: *"Any person or group of persons, or any non-governmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party."*

[13] Article 61(1): *"Only the States Parties and the Commission shall have the right to submit a case to the Court."* Article 35: *"The Commission shall represent all the member countries of the Organization of American States."*

Article 57*:"The Commission shall appear in all cases before the Court."*

[14] Article 65: *"To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a State has not complied with its judgments, making any pertinent recommendations."*

[15] Article 63(1): *"If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."*

[16] "*The question of whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations. Thus, in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within the reserved domain.*" Permanent Court of International Justice, Advisory Opinion on Nationality Decrees Issued in Tunis and Morocco, Series B Nº 4 Page 24.

Protocol No. 15 amending the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1: *"At the end of the preamble to the Convention, a new recital shall be added, which shall read as follows: "Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention."*

function granted expressly to the States Parties.[17] Consequently, if the Court is not in agreement with the content of a conventional norm, it must not exercise the international regulatory function - the States alone are responsible for this task- but rather it must persuade them of the need to modify the provision in question. Thus, any new provision that might eventually emerge from the exercise of this function by the States, will certainly enjoy a broader and more solid democratic legitimacy.

9. In this regard, it is also appropriate to recall that this document responds to the fact that the Court, as a jurisdictional body, enjoys the broadest autonomy in its role, since there is no higher body that can oversee its conduct.[18] This attribute requires it to be very rigorous in the exercise of its jurisdiction, so that it does not distort its nature and thereby weaken the inter-American system for the protection of human rights. For this reason, the arguments set forth in this opinion seek to ensure that the Court enjoys the broadest possible recognition on the part of all those who appear before it, that is, the presumed victims of human rights violations,[19] the Commission[20] and the States Parties to the Convention that have recognized its jurisdiction.[21] The aim is to strengthen it as a judicial body given that it is the most consolidated entity of continental scope that seeks to safeguard human rights. Therefore, it is vital to continue with its consolidation and improvement, without subjecting it to risks that could negatively affect that effort.

10. All the above should be accomplished bearing in mind that the Court must, on the one hand, exercise its functions based on principles of impartiality, independence, objectivity, non-partisanship, equanimity, full equality before the law and justice, non-discrimination and absence of prejudice, as characteristics inherent to every jurisdictional organ, and, on the other, fulfill the ultimate purpose of its mission, which is to provide effective and timely protection to the alleged victims of human rights violations. In other words, it must act taking into account that its function is similar to that of the juvenile and labor courts, for example - in the first case, the court considers the child's best interests, and in the second case, the protection of the worker, but in both cases they act within the framework of the administration of justice.

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[17] Article 31: *"Recognition of Other Rights. Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention."*

Article 76(1)*:" Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General."*

Article 77(1)*:"In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection."*

[18] *Article 67: "The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment."*

[19] *Infra* Footnote N° 12.

[20] *Infra* Footnote N° 13.

Article 25(1) of the Rules of Procedure of the Court*: "Participation of the alleged victims or their representatives. Once notice of the brief submitting a case before the Court has been served, in accordance with Article 39 of the Rules of Procedure, the alleged victims or their representatives may submit their brief containing pleadings, motions, and evidence autonomously and shall continue to act autonomously throughout the proceedings."*

[21] *Supra* Footnote N° 7.

11. Considering all the foregoing points and given that the Convention is a treaty agreed to by the States[22] that establishes their obligations towards the human beings under their respective jurisdictions,[23] we may conclude that the Court's role is to ascertain the will expressed by those States in the Convention when they signed it and, ultimately, determine how that conventional expression should be understood in the face of new situations.

12. To this end, and for the purposes of interpreting the Convention, the Court may refer not only to its text, but also to other sources of public international law, such as international custom, the general principles of law and equity and unilateral legal acts. In addition, with the agreement of the States that appear before it, the Court may refer to auxiliary means, such as the jurisprudence, doctrine and declaratory legal acts of international organizations.[24]

13. That said, the main rule for the interpretation of treaties is contained in the Vienna Convention on the Law of Treaties,[25] which states that: [26]

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[22] Article 2(1)(a) of the Vienna Convention on the Law of Treaties: "*Use of terms. 1. For the purposes of the present Convention: "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.*"

[23] Article 1: "*The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.*

2. For the purposes of this Convention, "person" means every human being."

[24] Article 38 of the Statute of the International Court of Justice: "*1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.*

2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto."

It is the only international conventional provision that refers to sources of public international law. It does not include unilateral legal acts or declaratory legal resolutions of international organizations.

[25] Hereinafter, the Vienna Convention.

[26] Article 31: "*General rule of interpretation. I. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty;

3. There shall be taken into account, together with the context:

a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

c) any relevant rules of international law applicable in the relations between the parties.

"(a) treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

14. This rule includes four methods of interpretation. The first is the method based on good faith, which implies that the agreement made by the States Parties to the treaty in question must be understood to reflect their willingness to agree to it, so that it can be properly applied or have an *effet útile*. The second is the textual or literal method that focuses on analyzing the text of the treaty, the vocabulary used and the ordinary meaning of its terms. The third is the subjective method, which tries to ascertain the intention of the States Parties to the treaty and, to that end, also analyzes the preparatory work and their subsequent conduct. And the fourth is the functional or teleological method, which aims to determine the object and purpose for which the treaty was signed. These four methods should be applied simultaneously and harmoniously in interpreting a treaty, without favoring one over another.[27]

15. Finally, the main premise that underlies this opinion is that the inter-American jurisdiction contemplated in the Convention is the peaceful mechanism for settling disputes that arise between States Parties regarding respect for the human rights of the human beings under their respective jurisdictions and that the Court, by acting in accordance with the Convention, ensures that its rulings have the necessary and appropriate legal certainty. And all this is based on the notion that the law is the means to achieve justice, and through justice, peace.

B. Regarding the role of the separate opinion

16. This partially dissenting opinion is offered with full and absolute respect for the judgment issued by the Court in this case, which must therefore be complied with. Consequently, this opinion cannot be interpreted, in any way or under any circumstance, as undermining the legitimacy of the decision adopted in the instant case.

17. It is also appropriate to clearly state that the view expressed in this opinion does not seek to weaken or restrict, in any way, the effective exercise of human rights; rather, it seeks precisely the opposite. Indeed, my comments here respond to an inner certainty that effective respect for human rights can only be achieved if the States Parties to the Convention are required to do what they actually agreed to, in a free and sovereign manner.[28] In this regard, legal certainty plays a fundamental role and, therefore, cannot

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4. A special meaning shall be given to a term if it is established that the parties so intended."

Article 32: *"Supplementary means of interpretation. Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31:*

a) leaves the meaning ambiguous or obscure; or

b) leads to a result which is manifestly absurd or unreasonable."

[27] This is what differentiates it from the interpretation of the law in some countries, such as Chile, where according to Article 19 of its Civil Code, the literal interpretation prevails: *"When the meaning of the law is clear its literal tenor shall not be disregarded under excuse of consulting its spirit."*

"But it is possible, in order to interpret an obscure expression of the law, to have recourse to its intention or spirit, clearly manifested in itself or in the trustworthy history of its enactment."

[28] *Supra* Footnotes N° 18 and 23.

be considered as a constraint or a restriction to the exercise of human rights. Instead, it should be considered as the instrument that can best ensure that these rights are fully respected, or, if such rights have been breached, that they are promptly restored by the respective State.[29] It is not merely a question, then, of issuing solid and well-founded judgments aimed at promoting human rights; rather, when these have been breached, the main aim is to ensure their prompt and effective restoration by the State concerned.

18. Furthermore, the issuance of separate opinions, which can sometimes lead to misunderstandings and even disqualification or discrimination, not only constitutes a right, but is also the fulfilment of a fundamental duty to contribute to a better understanding of the Court's function.[30] In addition, separate opinions may ultimately reflect the exercise of the right to freedom of thought and expression, enshrined in the Convention.[31]

Article 33: *"The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:*

a) the Inter-American Commission on Human Rights, referred to as "The Commission;" and

b) the Inter-American Court of Human Rights, referred to as "The Court."

[29] *Supra* Footnote N° 15.

[30] Article 66(2): *"If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment."*

Article 24(3) of the Statute of the Court: "The decisions, judgments and opinions of the Court shall be delivered in public session, and the parties shall be given written notification thereof. In addition, the decisions, judgments and opinions shall be published, along with judges' individual votes and opinions and with such other data or background information that the Court may deem appropriate."

Article 32(1)(a) of the Rules of Procedure of the Court: *"The Court shall make public: a. its judgments, orders, opinions, and other decisions, including separate opinions, dissenting or concurring, whenever they fulfill the requirements set forth in Article 65(2) of these Rules;"*

Article *65(2)* of the Rules of Procedure of the Court: *"Any Judge who has taken part in the consideration of a case is entitled to append a separate reasoned opinion to the judgment, concurring or dissenting. These opinions shall be submitted within a time limit to be fixed by the Presidency, so that the other Judges may take cognizance thereof before notice of the judgment is served. Said opinions shall only refer to the issues covered in the judgment."*

[31] Article 13: *"Freedom of Thought and Expression. 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.*

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a) respect for the rights or reputations of others; or

b) the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds

19. For this reason, also, the institution of the separate opinion is contemplated in the rules of other international courts such as the European Court of Human Rights,[32] the African Court of Justice and Human Rights,[33] the International Court of Justice,[34] the International Criminal Court[35] and the Tribunal of the Law of the Sea.[36]

20. I offer this opinion, then, harboring the hope that in the future its content will be accepted, either by the Court's own case law, or by a new rule of international law. In the first case, given that the Court's ruling is binding only for the State Party involved in the case under examination,[37] the Court, as an auxiliary source of international law, and therefore responsible for "*determining the rules of law*" established by an autonomous source of international law, that is, by a treaty, a custom, a general principle of law or a unilateral legal act,[38] may in future adopt variations when ruling on another case. With respect to the second situation, given that the States have an international regulatory function and, in the case of the Convention, the States Parties, this would occur through amendments to the latter.[39]

III. CONVENTIONAL RULES

A. Articles on the exhaustion of domestic remedies

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including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law."

[32] Article 74(2) of the Rules of Procedure: "*Any judge who has taken part in the consideration of the case shall be entitled to annex to the judgment either a separate opinion, concurring with or dissenting from that judgment, or a bare statement of dissent.*"

[33] Article 44 of its Statute: *"Dissenting Opinion –If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate or dissenting opinion."*

[34] Article 57 of its Statute: "*If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion."*

[35] Article 74(5) of the Statute of Rome of the International Criminal Court: *"The decision shall be in writing and shall contain a full and reasoned statement of the Trial Chamber's findings on the evidence and conclusions. The Trial Chamber shall issue one decision. When there is no unanimity, the Trial Chamber's decision shall contain the views of the majority and the minority. The decision or a summary thereof shall be delivered in open court."*

[36] Article30 (3) of its Statute: *"If the judgment does not represent in whole or in part the unanimous opinion of the members of the Tribunal, any member shall be entitled to deliver a separate opinion."*

[37] *Supra* Footnote N°18.

Article 68(1): "*The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties*."

Article 46(1) of the European Convention on Human Rights: "*The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties*."

Article 46 (1) and (3) of the Statute of the African Court of Justice and Human Rights: "*Binding force and execution of Judgments. (1) The decision of the Court shall be binding on the parties ... 3. The parties shall comply with the judgment delivered by the Court in any dispute to which they are parties and shall guarantee its execution within the time stipulated by the Court."*

Article 59 of the Statute of the International Court of Justice: "*The decision of the Court has no binding force except between the parties and in respect of that particular case*."

[38] *Supra* Footnote N° 24.

[39] *Supra* Footnote N° 17.

21. The rule of prior exhaustion of domestic remedies is contemplated in Article 46(1)(a) of the Convention, which establishes that:

> *1. Admission by the Commission of a petition or communication lodged in 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;*

22. For its part, Article 47(a) of the Convention adds:

> *"The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:*
> *a) any of the requirements indicated in Article 46 has not been met;"*

B. Basis

23. The basis for the rule of prior exhaustion of domestic remedies in the inter-American system of human rights is found in the third paragraph of the Preamble to the Convention, which states:

> *"Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states."*

C. The auxiliary or complementary nature of inter-American protection

24. Having established the basis and the applicable rules on this matter, it is appropriate to emphasize that the rule on prior exhaustion of domestic remedies and, therefore, the *"international protection"* afforded by the inter-American Human Rights System, is envisaged by the Convention as *"reinforcing or complementing the protection provided by the domestic law of the American states,"* which logically implies that it does not replace the latter. Among other reasons, this is because in matters concerning compliance with the provisions of the inter-American system, at least in disputes between the Commission and the petitioners, on the one hand, and the State concerned, on the other, the law must always be complied with or executed by the latter.[40]

25. Thus, it is important to note that the inter-American jurisdiction does not substitute or replace the domestic jurisdiction; it merely reinforces or complements it, helping or contributing to the restoration, as soon as possible, of the effective exercise of human rights where these have been violated. In this regard, we must not forget that it is the State that is obligated by the Convention;[41] therefore, it not only has the international obligation to respect and ensure respect for the rights enshrined therein[42] but also, on many occasions, must do so through its own courts of justice.

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[40] *Supra* Footnote N° 23.

[41] *Idem*.

[42] *Supra* Footnote N° 25.

26. It is for that reason that the Court has stated that,

> "*The rule of prior exhaustion of domestic remedies allows the State to resolve the problem under its internal law before being confronted with an international proceeding.*[43]

27. Finally, the above rule is a mechanism that allows the State to fulfill its obligations in human rights matters without waiting for the inter-American system to eventually intervene in that regard, after a proceeding.[44] It aims to provide the State with an opportunity to restore, as soon as possible, the effective exercise of and respect for the human rights violated, which is the object and purpose of the Convention. Thus, it is ultimately in our interest that this should occur as soon as possible, making unnecessary the subsequent intervention of the inter-American jurisdiction.

28. The rule of prior exhaustion of domestic remedies is important in situations where it has already been alleged in the relevant sphere of the domestic jurisdiction that the State has not fulfilled its commitments to respect and guarantee the free and full exercise of human rights, since it is possible to seek the intervention of the international jurisdictional body. Then, if appropriate, the latter will order the State to comply with the international obligations that it has violated, provide guarantees that it will not violate them again and provide reparation for all the consequences of such violations.[45]

29. From that perspective, we can argue that although the *effet útile* of the aforementioned rule is that the State will restore, as soon as possible, respect for the human rights that have been violated, which is the object and purpose of the Convention, it is also true that said rule was perhaps established mainly for the benefit of the alleged victim of the human rights violation.

D. Holder of the obligation

30. At the same time, it is important to emphasize that the Convention conceives this rule as an obligation that must be fulfilled prior to *"the petition or communication (being) lodged pursuant to Articles 44*[46] *or 45,*[47]*"* which is tantamount to affirming that responsibility for ensuring such compliance falls to whoever submits the petition to the Commission, that is, *"(a)ny person or group of persons, or any non-governmental entity*

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[43] *Case of Velásquez Rodríguez v. Honduras*. *Merits*. Judgment of July 29, 1988. Series C No. 4, para. 61.

[44] *Supra* Footnote N° 15.

[45] *Idem*.

[46] *Supra* Footnote N° 12.

[47] *"1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.*

2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.

3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case.

4. Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member states of that Organization."

legally recognized in one or more member states of the Organization," which could intervene subsequently in the corresponding trial.[48]

31. Indeed, under the provisions of Article 46, we can argue that in order for the pertinent petition or communication to be admitted, the domestic remedies must have been previously exhausted, an effort that is obviously up to the the alleged victim, his representative or the person who presented the petition or communication. Clearly, it would neither be logical nor understandable that the admissibility of a petition or communication concerning a human rights violation should depend upon the State against which said petition is directed, being required to exhaust the domestic remedies against its own actions, precisely for having violated human rights. Under such an absurd hypothesis, it would never be possible to have recourse to an international body.

32. The foregoing point seems obvious and, if I mention it, it is merely to emphasize and leave no room for doubt that the reference made in the Court's case law to the fact that the rule in question *"is conceived in the interest of the State*" does not mean that it has the obligation to certify its compliance. The party obliged to do this can only be the alleged victim, his or her representative or the petitioner who, by fulfilling this obligation, enables the State to respond to the petition submitted before the Commission and possibly file the objection of failure to exhaust domestic remedies.

E. Timing of the petition

33. It is also worth reiterating that the rule on prior exhaustion of domestic remedies is obviously a requirement that must be met prior to submitting the petition to the Commission, and that the petition should provide information on compliance with that requirement or on the impossibility of doing so.

34. Indeed, it should be noted that Articles 46(1)(a) and 47(b) of the Convention refer to the *"petition or communication lodged,"* that is to say, to an instant act that occurs at a given moment and is not prolonged over time. The same may be said of Article 48(1)(a) of the Convention, which establishes that:

> *"When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows: If it considers the petition or communication admissible, it shall request information from the government of the State indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case."*

[48] The Rules of Procedure of the Court of 1996 state: *"At the reparations stage, the representatives of the victims or of their next of kin may independently submit their own arguments and evidence" (Article 23). The* Rules of Procedure of 2000 and 2003, established that *"When the application has been admitted, the alleged victims, their next of kin or their duly accredited representatives may submit their pleadings, motions and evidence, autonomously, throughout the proceedings"* (Article 23). The current Rules of Procedure, approved by the Court during its LXXXV Regular Period of Sessions held from November 16 to 28, 2009, states: *"Once notice of the brief submitting a case before the Court has been served, in accordance with Article 39 of the Rules of Procedure, the alleged victims or their representatives may submit their brief containing pleadings, motions, and evidence autonomously and shall continue to act autonomously throughout the proceedings"* (Article 25(1)).

35. In other words, the Convention specifies that it is the *"pertinent portions of the petition or communication"* that are transmitted to the State concerned. This means that the petition must indicate compliance with the prior requirement to exhaust domestic remedies, or the impossibility of doing so, owing to any of the circumstances contemplated in Article 46(2), so that the State can respond and possibly file the corresponding objection, which implies that this should already have occurred at the time of submitting the petition.

36. This interpretation is reaffirmed in Article 46(1)(b) of the Convention, which requires:

> "*that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment."*

37. Certainly, it should be understood that this final judgment is the outcome of the last remedy pursued, with no other actionable recourse available. In other words, the time stipulated for submitting the petition is counted from the moment of notification of the final decision by the national authorities or the domestic courts on the remedies filed before them, which are, therefore, the ones that could have generated the State's international responsibility. Obviously, this implies that at the time when the petition was "*lodged*" or presented, those remedies must have been exhausted.

38. This reinforces the meaning of Article 6(1)(a) inasmuch as it refers to the fact that "*the remedies of the domestic legal system have been pursued and exhausted,"* since it alludes to something that has occurred prior to submitting the respective petition.

F. Peremptory norm

39. In accordance with the foregoing, we may also recall that Article 47(a) establishes that:

> *(t)he Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: any of the requirements indicated in Article 46 has not been met."*

40. In other words, that provision is peremptory. The Commission must declare inadmissible any "*petition or communication lodged*" for which domestic remedies have not been exhausted or which does not conform to any of the situations described in Article 46(2).

41. Obviously, the Commission can only act in accordance with that rule; thus, for example, it must declare admissible a petition or communication even if, at the moment of being "*lodged,*" the prior requirement to exhaust domestic remedies has not been met, but so long as this requirement *has* been satisfied at the moment when it is "*admitted.*" If it does otherwise, it would invalidate its effect in any real or practical sense, only allowing for the start of a proceeding, rather than the *litis*.

42. Indeed, if there were no requirement to exhaust domestic remedies prior to submitting the petition, or to submit it within six months of the final notification, then one could also not require that "*the subject of the petition or communication is not*

pending in another international proceeding for settlement" or that it *"contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition"* - requirements that are also stipulated in Article 46 of the Convention- since all this could be rectified subsequently and prior to the declaration of admissibility, which is evidently not compatible with the provisions of the aforementioned rule.

G. Submission and admissibility of the petition

43. Finally, it should be noted that the aforementioned articles of the Convention do not state that the above requirements must be met at the moment when the Commission rules on the admissibility of the petition or communication. Rather, it could be argued that these articles of the Convention distinguish between two moments, namely, the one in which the petition is "*lodged*" and another in which it is "*admitted.*" This idea is also endorsed in Article 48(1)(a) as well as in provisions (b) and (c) thereof.[49]

44. These rules establish that once the petition or communication has been "*lodged*" before the Commission, the admissibility procedure begins, whereby the latter must decide on the matter submitted, and whether or not it complied with the requirements stipulated in Article 46 at the time when it was "lodged." In the event of an affirmative decision, said petition or communication must be declared "*admissible*" and in the event of a negative decision, it must be declared "*inadmissible.*" It should be emphasized that the aforementioned conventional rule does not state that it is sufficient that the petition comply with those requirements at the moment when the Commission rules on its admissibility. It only states that in order for the "*petition lodged"* to be admitted, the remedies under domestic law must have been pursued and exhausted. Consequently, the Commission must rule on the petition or communication "*lodged,*" deciding whether at that particular moment - and not subsequently - it satisfied the prior requirement to exhaust domestic remedies or argued that this was not applicable.

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[49] "*1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows:*

a) If it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case;

b) After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed;

c) The Commission may also declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received;

d) If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the States concerned shall furnish to it, all necessary facilities;

e) The Commission may request the States concerned to furnish any pertinent information and, if so requested, shall hear oral statements or receive written statements from the parties concerned;

f) The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.

2. However, in serious and urgent cases, only the presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an investigation with the prior consent of the State in whose territory a violation has allegedly been committed."

H. Supplementary means of interpretation

45. In relation to the supplementary means of interpretation, it should be noted that there is no record of which antecedents of the Convention provided the doctrinal inspiration for Article 46(1)(a), and particularly of the phrase *"that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."*

46. For this reason, we must presume that this occurred without the need to justify the reference to those principles, because they were already solidly incorporated or recognized by public international law, as occurred when the International Court of Justice (ICJ) ruled on the third preliminary objection filed by the United States of America in the *Interhandel Case*, 1959. In this regard the ICJ stated:

> "*The rule that local remedies must be exhausted before international proceedings may be instituted is a well-established rule of customary international law.*"[50]

47. Given that this is a principle of public international law, based on international custom, and that it is particularly well established, it was probably considered unnecessary to justify its inclusion in the Convention. Thus, the latter not only consolidated it further by enshrining it therein, but also did not limit it to nationals ("*ressortissant*") of the State concerned. Indeed, it was made applicable "*to all persons subject to (the) jurisdiction*[51]*"* of the States Parties, whether or not they are citizens.

48. That said, the main point in relation to the position expressed in this opinion is that, pursuant to the decision of the International Court of Justice, which should be understood as the antecedent of Article 46(1)(c) of the Convention, domestic remedies should have been exhausted prior to the complaint being formulated, which serves to confirm the interpretation expressed in this document.

49. Having regard to all the foregoing points, it is clear that, pursuant to the Convention, and accepting the view that the requirement of prior exhaustion of domestic remedies could be met after the relevant petition has been submitted to the Commission, based on that hypothesis, said petition might not have any content or would be impossible to understand, thereby allowing the case to which it refers to be addressed simultaneously by the domestic jurisdiction and by international justice - an absurd situation and certainly not one envisaged by the Convention.

I. Exceptions to the rule of prior exhaustion of domestic remedies

50. Paragraph 2 of Article 46 establishes that:

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[50] 27 Interhandel Case (Judgment of 21 III 59*): "The rule that local remedies must be exhausted before international proceedings may be instituted is a well-established rule of customary international law; the rule has been generally observed in cases in which a State has adopted the cause of its national whose rights are claimed to have been disregarded in another State in violation of international law. Before resort may be had to an international court in such a situation, it has been considered necessary that the State where the violation occurred should have an opportunity to redress it by its own means, within the framework of its own domestic legal system. A fortiori, the rule must be observed when domestic proceedings are pending, as in the case of Interhandel, and when the two actions, that of the Swiss Company in the United States courts and that of the Swiss Government in this Court, in its principal Submission, are designed to obtain the same result: the restitution of the assets of Interhandel vested in the United States."*

[51] *Supra* Footnote N° 23.

"The provisions of paragraphs 1(a) and 1(b) of this article shall not be applicable when:
a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies."

51. Thus, compliance with the rule of prior exhaustion of domestic remedies admits the three exceptions stipulated in the above rule, as matters of fact under international law that must be considered by the Commission or the Court, as and when appropriate.

52. However, regarding the timing for invoking these exceptions, it is evident that for processing purposes, the petition must also cite these exceptions to the rule of prior exhaustion of domestic remedies.

IV. REGULATORY NORMS

53. The above considerations are also contemplated in the Commission's own Rules of Procedure which regulate the admissibility procedure of the petition submitted before the Commission and which, therefore, reflect its interpretation of Article 46 of the Convention.[52] That procedure distinguishes between the lodging of the petition and its initial review, the transmission of the petition to the State, the latter's response, the observations of the parties and, finally, the decision on its admissibility.

A. Initial review by the Commission

54. Indeed, it is appropriate to consider Article 26 of those Rules:

"Initial review. 1. The Executive Secretariat of the Commission shall be responsible for the study and initial processing of petitions lodged before the Commission that fulfill all the requirements set forth in the Statute and in Article 28 of these Rules of Procedure.
2. If a petition or communication does not meet the requirements called for in these Rules of Procedure, the Executive Secretariat may request that the petitioner or his or her representative satisfy those that have not been fulfilled.
3. If the Executive Secretariat has any doubt as to whether the requirements referred to have been met, it shall consult the Commission."[53]

55. In turn, Article 27 of these Rules establishes that:

"Condition for considering the petition. The Commission shall consider petitions regarding alleged violations of the human rights enshrined in the American

[52] The current Rules of Procedure were approved on March 18, 2013, and entered into force on August 1 of the same year. Given that the 1980 Rules of Procedure were in effect at the time when the petition was presented, the equivalent to these will be indicated in the footnotes to the corresponding articles of the current Rules of Procedure.

[53] Article 27.

Convention on Human Rights and other applicable instruments, with respect to the Member States of the OAS, only when the petitions fulfill the requirements set forth in those instruments, in the Statute, and in these Rules of Procedure."[54]

56. For its part, Article 28(h) of these Rules establishes that:

"...*Requirements for the consideration of petitions. Petitions addressed to the Commission shall contain the following information: ... any steps taken to exhaust domestic remedies, or the impossibility of doing so as provided in Article 31 of these Rules of Procedure."*[55]

57. It is worth pointing out that Article 29(1) and (3) of the same text reiterates the provisions of Article 26(1) and 3:

"Initial processing: 1. The Commission, acting initially through the Executive Secretariat, shall receive and carry out the initial processing of the petitions presented as follows: it shall receive the petition, register it, record the date of receipt on the petition itself and acknowledge receipt to the petitioner.
…
3. if the petition does not meet the requirements of these Rules of Procedure, it may request that the petitioner or his or her representative complete them in accordance with Article 26(2) of these Rules."[56]

58. From this we infer that the information required in order to "*process*" or "*consider*" the petition must refer either to the actions undertaken to exhaust remedies of the domestic jurisdiction, or to the impossibility of doing so. In other words, the petition must describe the steps taken to exhaust those remedies or state that it was impossible to do so and, if the petition does not mention this point, then the Commission must require the applicant to address it under the regulatory admonition that unless he does so, it will not consider the petition.

59. In this sense, the Commission, acting through its Executive Secretariat, must first carry out conventionality control of the petition, that is to say, contrast it with the provisions of the Convention and the Rules cited. In other words, it must determine whether the petition meets the relevant requirements when it is "lodged" or presented, and, if it does not comply, it must require this to be done. Otherwise, it is hard to understand the logic and need for the *"study and initial processing"* of the petition or of the reason why the petitioner is required to complete the requirements by indicating the steps taken to exhaust the domestic remedies or the impossibility of doing so.

60. Thus, it is the Commission's own Rules that require that petitions submitted to it include information concerning the steps taken, obviously prior to their presentation, to exhaust domestic remedies or mention the impossibility of doing so, for which a proper record must be provided. This regulatory requirement, which reflects the interpretation that the Commission itself makes of the relevant conventional norms, it of the utmost importance and it is compliance with that requirement that allows for the subsequent opening of the *litis* on the matter.

[54] Article 27.

[55] Article 29(d)

[56] Articles 30 and 31(1)(a) and b).

B. Forwarding of the petition to the State involved

61. With regard to the forwarding of the petition to the State concerned, the Rules of the Commission also confirm the above interpretation, that is, that the requirement to exhaust domestic remedies must be met prior to submitting the petition to the Commission and that this must be duly reported within that petition.

62. In fact, Article 30(1) and (2) of the Rules establishes the following:

> *"Admissibility Procedure 1. The Commission, through its Executive Secretariat, shall process the petitions that meet the requirements set forth in Article 28 of these Rules of Procedure.*
> *2. For this purpose, it shall forward the relevant parts of the petition to the State in question. ... the request to the State for information shall not constitute a prejudgment with regard to any decision the Commission may adopt on the admissibility of the petition."*[57]

63. In this regard, we must bear in mind that the forwarding of the petition to the State in question, as established by the Commission, must occur only if it complies with the requirement to provide information concerning the steps taken to exhaust domestic remedies or the impossibility of doing so. In other words, the petition is forwarded on the assumption that it meets the aforementioned requirement.

64. This rule does not establish, however, that said requirement can or must be fulfilled at a time after the petition has been presented. Likewise, it should be noted that the petition must be forwarded as it was "*lodged*" or presented and therefore it must include a reference to the aforementioned requirement. Otherwise, the State would be unable to eventually file the respective objection.

C. Response of the State and observations of the parties

65. That said, according to Article 30(3), first phrase, and (5) of the Rules in question,

> *"3. The State shall submit its response within two months counted from the date the request is transmitted.*
> *...*
> *5. Prior to deciding upon the admissibility of the petition, the Commission may invite the parties to submit additional observations, either in writing or in a hearing, as provided for in Chapter VI of these Rules of Procedure."*[58]

66. Obviously, the State's response to the petition transmitted to it and the additional observations of the parties in response to the aforesaid invitation, must refer to the relevant petition which, I repeat, must meet all the requirements established, including the report on the steps taken to exhaust domestic remedies prior to its presentation. For these purposes, it should be emphasized that the rule in question refers expressly to the fact that *"prior to deciding upon the admissibility of the petition,"* the Commission will invite "*the parties to submit additional observations*," which logically can only refer to the contents of the petition "lodged."

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[57] Article 31 (1) (c).

[58] Article 30(5) and (6).

67. For this reason, Article 31(3) of the Commission's Rules stipulates that:

> "*When the petitioner contends that he or she is unable to prove compliance with the requirement indicated in this article, it shall be up to the State concerned to demonstrate to the Commission that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record."*[59]

68. But it should also be noted that logically, in the event - not expressly considered in those Rules- that the petitioner indicates in his or her petition, that the domestic remedies have been previously exhausted, in other words, that the requirements of Article 46(1)(a) of the Convention have been met, the State may file the objection that this has not occurred.

69. Thus, it is indisputable that the State's response must logically and necessarily be related to the petition *"lodged"* with the Commission and that it is in response to what occurs in that instant, and not afterwards, that the litigation or the dispute becomes stalled over the prior exhaustion of domestic remedies.

70. It is clear, then, that compliance with the rule of prior exhaustion of domestic remedies or the impossibility of doing so, must be indicated in the petition; otherwise, the State could not respond to this point. In other words, only if the petition indicates that the rule in question has been complied with or that it is impossible to do so, that the State will be in a position to claim non-compliance and demonstrate the existence of available adequate, effective, prompt and appropriate domestic remedies that have not been exhausted. Accordingly, I reiterate once again, this means that the petitioner must have previously satisfied this requirement or else argued the impossibility of doing so, before formulating the petition, the pertinent portions of which are forwarded to the State precisely so that it can provide a response.

71. However, if the petition makes no allusion to the requirement in question, the State must merely point out that fact, i.e. that the petition does not comply with that requirement. In such a situation, imposing on the State the obligation to demonstrate the existence of adequate, appropriate and effective remedies that have not been exhausted, implies substituting the role of the petitioner, as contemplated in the Convention and in the Rules of the Commission, by making the State the one obligated to exhaust domestic remedies and requiring it to provide "*information* (on) *any steps taken to exhaust domestic remedies or the impossibility of doing so,"* thereby imposing the burden of an extraneous obligation on the State.

72. It is also worth repeating that, at the moment when the petition is lodged, the petitioner must have already exhausted the domestic remedies or indicated the impossibility of doing so, given that arguing that those remedies could be exhausted after the petition has been *"lodged"* and, consequently, after being notified to the State, would affect the indispensable procedural balance and would leave the latter defenseless, being unable to file the pertinent preliminary objection in time and form.

73. It is within that context that we should understand the view held by the Court that *"an objection to the exercise of its jurisdiction based on the supposed failure to exhaust domestic remedies must be presented at the appropriate procedural moment,*

[59] Article 34(3).

that is, during the admissibility proceeding before the Commission,"[60] since the latter covers the period from the moment at which the petition is received and undergoes initial processing by the Commission, through its Executive Secretariat, until the moment when the Commission rules on its admissibility. However, this does not imply that it must be at this final moment that said requirement must have been met, regardless of whether or not it was met previously.

D. Decision on admissibility

74. In fact, Article 31(1) of the same regulatory text, entitled *"Exhaustion of Domestic Remedies,"* establishes that:

> *"In order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.*[61]*"*

75. It should be noted that this rule indicates that, in order to decide on the admissibility of a matter, the Commission must *"verify"*, that is, confirm or determine,[62] whether the remedies of the domestic legal system have been pursued and exhausted, which certainly should have occurred prior to adopting the corresponding decision. However, the aforementioned rule does not require that such verification take place regarding remedies pursued and exhausted after the petition has been lodged

76. Moreover, Article 32(1) of those Rules, entitled *"Deadline for the Presentation of Petitions,"* coincides with the above interpretation when it indicates that:

> *"The Commission shall consider those petitions that are lodged within a period of six-months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies."*[63]

77. Said provision establishes the petitions that will be considered by the Commission for admissibility and reiterates the content of Article 46(1)(b) of the Convention, namely, that petitions must be lodged within six months from notification of the final decision of the domestic authorities or the national courts on the remedies filed before them and that are, therefore, the ones that could have generated the State's international responsibility; this obviously implies that, at the moment when the petition is *"lodged,"* these remedies must have been exhausted.

78. Thus, according to Article 37 of these Rules, entitled *"Decision on Admissibility,"*

> *"1. Once it has considered the positions of the parties, the Commission shall make a decision on the admissibility of the matter. The reports on admissibility and inadmissibility shall be public and the Commission shall include them in its Annual Report to the General Assembly of the OAS.*

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[60] Para.16.

[61] Article 31(1).

[62] Diccionario de la Lengua Española, Real Academia Española, edition 2018.

[63] Articles 32(1) and 35.

2. When an admissibility report is adopted, the petition shall be registered as a case and the proceedings on the merits shall be initiated. The adoption of an admissibility report does not constitute a prejudgment as to the merits of the matter.
3. In exceptional circumstances, and after having requested information from the parties in keeping with the provisions of Article 30 of these Rules of Procedure, the Commission may open a case but defer its treatment of admissibility until the debate and decision on the merits. The case shall be opened by means of a written communication to both parties."[64]

79. On this point, it should be noted that the above rule does not state that the remedies of domestic law must necessarily have been exhausted in order to adopt a decision on admissibility, since the Commission may ultimately decide not to admit the petition precisely because those remedies have not been exhausted.

80. Likewise, it should be emphasized that this rule does not establish that domestic remedies must have been exhausted at the moment when the decision on admissibility is taken, even if these have not been exhausted beforehand; it simply states that*, "once it has considered the positions of the parties, the Commission shall make a decision on the admissibility of the matter,"* nothing more. This rule does not specify when the prior requirement to exhaust domestic remedies must have been met, but rather the moment at which the decision should be adopted on the petitions lodged on November 11, 1998, August 27, 2003 and October 8, 2004, when the execution of judgment proceeding was still open and pending a decision. It may also be argued that, where the petition has reported on the exhaustion of domestic remedies or on the impossibility of doing so, it is with the submission of the petition and the State's answer thereto that the *litis* on the matter becomes stalled. Consequently, it is whether at that moment- and not afterwards - such remedies have been exhausted or whether it was not required to do so, that the Commission must consider when it rules on admissibility.

81. From the record, it is also clear that the facts concerning the requirement of prior exhaustion of domestic remedies are as follows:

a) The first petition in this case is dated November 10, 1998; subsequently, the representatives submitted other briefs dated November 11, 1998, August 27, 2003 and October 8, 2004, alleging a delay in the execution of the judgment in this case. However, there was no mention of compliance with the requirement of prior exhaustion of domestic remedies or the impossibility of doing so and, in this regard, the Secretariat of the Commission did not carry out conventionality control;

b) On May 27, 2005, the State responded to the petition forwarded by the Commission on March 29, 2005, by filing the objection regarding the alleged failure to exhaust domestic remedies and recalling that the case concerns the execution of a judgment, a proceeding that remains open to this day and pending a decision; and

c) On March 19, 2009, the Commission approved the Admissibility Report indicating that the provision set forth in Article 46(2)(c) was applicable owing to the remedies filed by the respondent authorities, the delay by the judicial

[64] Articles 37(1), (2) and (3), 38.

authorities in ruling on the remedies filed, and the lack of clarity regarding the appropriate means to ensure the execution of the judgment.

82. Having regard to the foregoing arguments, I voted to reject operative paragraph No. 1 of the Judgment, namely, to dismiss the preliminary objection filed by the State regarding the failure to exhaust domestic remedies.[65]

83. But, in addition, I consider that for the sake of coherence and consistency, I should also have voted against the rest of the operative paragraphs because, on the one hand, had that objection been accepted, it would not have been appropriate to rule on those matters, and, on the other hand, despite this view, it was necessary to respect the provisions of Article 16(1) of the Rules - in other words, I could not abstain in this regard.[66] It should be understood, therefore, that my votes against operative paragraphs 2 to 10 do not really reflect a decision on their content and that my votes in favor of operative paragraphs 11 and 12 are solely related to procedural aspects of the process subsequent to the Judgment, which, as mentioned previously, must certainly be respected.[67]

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

[65] *Supra*, Footnote N°2.

[66] *"The President shall present, point by point, the matters to be voted upon. Each judge shall vote either in the affirmative or the negative; there shall be no abstentions."*

[67] *Supra* para. 16 of this opinion.

PARTIALLY DISSENTING OPINION OF
JUDGE HUMBERTO ANTONIO SIERRA PORTO
INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE NATIONAL ASSOCIATION OF DISCHARGED AND RETIRED EMPLOYEES OF THE NATIONAL TAX ADMINISTRATION SUPERINTENDENCE (ANCEJUB-SUNAT) *V.* PERU
JUDGMENT OF NOVEMBER 21, 2019

I. Introduction

1. I offer this partially dissenting opinion with the customary respect for the decisions of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"). This opinion relates to the ongoing discussion within the Court concerning the analysis of cases involving violations of economic, social, cultural and environmental rights (hereinafter "ESCER"), based on Article 26 of the American Convention on Human Rights (hereinafter "the Convention"). Specifically, a propos of the instant case, I will provide a brief outline of my thoughts on what I consider to be the inappropriate manner in which the rights examined in this case were grouped together in the analysis. I will also refer to a central aspect of the judgment that demonstrates–once again - the deficient analysis technique adopted by the Court to examine ESCER in cases such as this. In that sense, my deliberations complement the views I have already expressed in my opinions in the cases of *Gonzales Lluy et al, v. Ecuador*, *Lagos del Campo v. Peru*, *Dismissed Employees of PetroPerú et al. v. Peru*, *San Miguel Sosa et al. v. Venezuela*, *Poblete Vilches et al. v. Chile*, *Cuscul Pivaral et al. v. Guatemala*, *Muelle Flores v. Peru, and Rodríguez Revolorio et al. v. Guatemala* concerning the multiple logical, legal and practical problems arising from the trend initiated by the majority of Judges since the judgment in the case of *Lagos del Campo*.

II. Regarding the inappropriate grouping of the violations analyzed in this case in a single chapter

2. The central dispute in this case is whether or not the State is responsible for the violation of the rights to judicial guarantees and judicial protection to the detriment of members of ANCEJUB-SUNAT owing to the failure to properly execute the Supreme Court Judgment of October 25, 1993, and the effect that this fact may have had on other rights (particularly the rights to social security, a decent life and property). For this reason, the majority decided to analyze the case in a single chapter that encompassed arguments related to the violation of the right to have access to an effective judicial remedy (Articles 25(1) and 25(2) of the Convention), the guarantee of a reasonable time (Article 8(1)), the right to social security (Article 26), to a decent life (Article 4(1)), to property (Article 21) and failure to adopt domestic legal provisions (Article 2 of the Convention).

3. Based on that analysis, the majority of the Judges concluded that the process to execute the judgment of October 25, 1993, was rendered irregular and ineffective by a series of facts attributable to the State authorities which, in practical terms, resulted in a 27-year delay in complying with the judgment and, therefore, a failure to pay the amounts awarded therein to the workers of ANCEJUB-SUNAT. This delay also constituted a violation of the guarantee of reasonable time. The majority of the Judges also

concluded that the State failed in its obligation to ensure the right to social security owing to the victims' lack of access to an effective legal recourse, the lack of adequate information concerning the effects that the implementation of Decrees 639 and 673 would have on their pensions, and the impact that this had on their right to a decent life and to property.

4. By virtue of the foregoing, the fourth operative paragraph of the judgment the Court determined that: "The State is responsible for the violation of the rights to a decent life, judicial guarantees, property, judicial protection, and social security established in Articles 4(1), 8, 21, 25 and 26 of the American Convention […] to the detriment of the 597 persons listed as victims in Annex 2 attached to this Judgment […]"

5. In the first place, I emphasize the inappropriateness of the approach taken by the majority of Judges in grouping together the conclusions reached on all the rights analyzed in the Judgment in the same operative paragraph. This situation obliged the members of the Court to issue a single vote in favor or against –all - the central aspects of the Judgment, even though it is clear that each right was analyzed autonomously. Moreover, there were points of agreement and of difference that are not reflected in the "single" operative paragraph. Article 16 of the Court's Rules of Procedure establishes that the vote of each Judge shall be "affirmative" or "negative" and that "there shall be no abstentions." The grouping together of all the rights violated did not allow for an accurate expression of their position on each of the points of debate in the operative paragraphs, as determined by the rules. Moreover, it constituted an evident lack of consideration of the right of all Judges to express our positions through our "affirmative" and "negative" votes regarding the points under discussion. In my case, I was unable to rule in favor of the State's responsibility for the violation of the rights to judicial guarantees and judicial protection (Articles 8(1), 25(1) and 25(2) of the Convention in relation to Article 1(1) thereof).

6. In the second place, I consider that condensing the analysis into a single chapter was artificial given the manner in which the legal problems of this case were addressed. In fact, this case could have been analyzed in a single chapter using as a starting point the violations of Articles 25(1), 25(2) and 8(1), owing to the failure to execute the judgment of October 25, 1993. This analysis could then have taken into consideration the effects that the delay in executing that judgment had on rights such as social security or property. Such an analysis would have highlighted the way in which the other rights of members of ANCEJUB-SUNAT were adversely affected by the violation of the rights to judicial protection and reasonable time. Under this hypothesis, the Court could have analyzed some relevant aspects of social security, a decent life or property in light of procedural guarantees and judicial protection. This would have given more weight to the arguments and greater probative force to the Judgment and would have allowed for a systematic analysis of the different aspects involved in the case.

III. Regarding the weakness of the analysis of ESCER in the case

7. As has been the tendency since the case of *Lagos del Campo*, the majority of the Court once again decided to artificially separate the aspects related to ESCER from the central dispute of the case. This has resulted in an unnecessary compartmentalization of the Judgment and a weaker argumentation and probative value. The logic of analyzing these matters in a single chapter fulfills a practical purpose when the different elements involved are integrated into a single analysis, but not when the same fact is reiterated time and again in order to declare different violations in various subchapters. This situation has occurred in this case, especially in relation to the analysis of the right to

social security, a decent life and property. The violation of these three rights is doubtful in this case, since the reimbursements not paid to the workers of ANCEJUB-SUNAT owing to the failure to execute the judgment of October 25, 1993, can hardly be considered as the cause of the autonomous violations of those rights.

8. The superficiality of the analysis is aggravated by the fact that it reiterates an enormous number of case law standards in relation to the right to social security (reiterated in 9 pages, of paragraphs 154-176), but declares a violation of that right for reasons that are peripheral to the central question that underlies this case in relation to ESCER: whether the steps taken in Peru to restrict the equalization of the pensions of persons subject to the pension scheme governed by Decree 20530 violated the right to social security of members of ANCEJUB-SUNAT. The judgment avoided answering this question, as it did in the cases of *Five Pensioners v. Peru and Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller's Office) v. Peru*. The silence of the majority on that point is not necessarily unjustified, since the international litigation of the case had as its focus the failure to execute a judgment that recognized pension rights. Nevertheless, I consider it pertinent to mention that an autonomous analysis based on Article 26 of the Convention would entail the determination of whether the State policies related to ESCER were retrogressive.

9. With the foregoing comments I am not suggesting that in all cases such as this, the Court should examine the public policy of States in relation to ESCER, since that type of analysis usually goes beyond the specific situation of a victim or a group of victims in specific cases. Furthermore, such analyses are particularly sensitive. Instead, I suggest that in the event of conducting an autonomous analysis based on Article 26 of the Convention, this should fulfill the purpose of analyzing compliance with the obligations of progressive development by the States. In the rest of these cases – where it is alleged that an ESCER of an individual or a group of individuals has been impaired as a result of non-compliance with a civil or political right, as in the instant case- the analysis must be based on the principal right claimed (in this case, the right to judicial protection) and its relationship with the ESCER in question. Not doing so leads to two undesirable extremes: either to an analysis of a public policy in relation to a limited number of persons, or to the declaration of autonomous violations of ESCER with weak arguments and insufficient evidence.

10. In any case it is essential to properly define the elements for assessing progressive development, in order to prevent the Court from becoming a counter-majoritarian court on matters of profound political and social interest. That interpretation considers Article 26 as the basis for declaring the State's international responsibility and the possibility of declaring invalid constitutional norms, laws, regulations or judgments for being retrogressive and for disregarding ESCER. This approach implies the possibility of endorsing decisions on matters that limit the applicability of public policies and government programs related to issues such as social security and particularly the pension system. Such decisions can serve to give political legitimacy to measures that diminish the rights of workers and citizens but which, so long as they have adequate justification, cannot be declared retrogressive. In this sense we must not forget that the principle of non-retrogression does not mean that there cannot be retrogression, but rather that it must be a justified retrogression.

11. It is also important to bear in mind that in those countries subject to the Inter-American Court's contentious jurisdiction, the Court's case law is used to enrich the legal arguments of the national judges and authorities who can utilize it to make decisions on human rights matters in the most appropriate, erudite and fair manner. This is another

reason to ensure that the Court makes a responsible use of its competencies to analyze violations of ESCER. Failure to do so could open the door to a situation whereby, via conventionality control, the Court's case law on ESCER could be understood as grounds for allowing the domestic courts to become judges of public policies. This could lead to possible social and political conflicts and the prospect of a court facing a crisis of legitimacy by entering the political debate on pension matters. The Court must promote efforts to ensure that the materialization of rights in the national sphere is attained by developing the competencies that each State has granted to its different powers and authorities.

Humberto Antonio Sierra Porto
Judge

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF
JUDGE RICARDO C. PÉREZ MANRIQUE

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF THE NATIONAL ASSOCIATION OF DISCHARGED AND RETIRED EMPLOYEES OF THE NATIONAL TAX ADMINISTRATION SUPERINTENDENCE (ANCEJUB-SUNAT) V. PERU
JUDGMENT OF NOVEMBER 21, 2019

I. Introduction

1. The justiciability of economic, social, cultural and environmental rights (hereinafter "ESCER") in the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") is one of the most significant and debated issues of our current jurisprudence. The discussion around this topic is reflected both in the cases settled by the Court involving matters related -directly or indirectly – to ESCER, and in the concurring or dissenting opinions of my colleagues that have accompanied the judgments. The case of ANCEJUB-SUNAT affords me an opportunity to issue a first personal assessment of this matter.

2. As a first point, I consider it opportune to express my conviction that human rights are interdependent and indivisible and, therefore, the so-called civil and political rights are completely intertwined with the so-called economic, social, cultural and environmental rights. The interdependence and indivisibility of these rights allows us to see the human being in an integral manner, as a full holder of rights. Otherwise, we would be artificially fragmenting human rights and human dignity.

3. As a second point, I consider it timely to express my view concerning the special importance of guaranteeing ESCER in our region. It is well known by everyone that Latin America has high levels of poverty and inequality, and that millions of people do not have real access to the basic necessities required for a decent life. In that sense, I am convinced that all judicial, political and social actors must be mindful of this reality and act accordingly. In my particular case, my commitment to ESCER is based on ethical and juridical principles that I have expressed previously as a Judge of the Supreme Court of Justice of Uruguay and that I maintain as a Judge of the Inter-American Court. A lack of mindfulness of ESCER when administering justice from the Inter-American Court would go against my vision of the interdependence and indivisibility of rights and, I believe, would also limit a person's effective access to inter-American justice.

II. The debate in the Inter-American Court

4. In my view, the debate within the Court has revolved around two perspectives or approaches: the first is that individual violations of ESCER should be analyzed exclusively in relation to the rights expressly recognized in Articles 3 to 25 of the Convention, or else on the basis of what is expressly permitted by the Protocol of San Salvador. My understanding of this viewpoint was reflected in cases such as the *Case of "Juvenile Reeducation Institute" v. Paraguay* (2004) or the *Case of the Yakye Axa Indigenous Community v. Paraguay* (2005), to mention two examples, as well as in the *Case of González Lluy v. Ecuador* (2015).

5. The second perspective is based on the notion that the Court has jurisdiction to examine autonomous violations of ESCER based on Article 26 of the Convention. These rights – which would be individually justiciable – are derived either implicitly or explicitly from the Charter of the Organization of American States (hereinafter, "OAS Charter"), as well as from numerous international and national instruments that recognize rights, such as the American Declaration of the Rights and Duties of Man, the Protocol of San Salvador, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and even the constitutions of the States Parties to the Convention. This thesis has prevailed in most cases associated with ESCER since Lagos *del Campo v. Peru*, in relation to the right to work, as well as in cases concerning the rights to health and social security. In these cases, the Court has declared the State's international responsibility for violations of social rights based on Article 26 of the Convention. These changes in case law have occurred since 2017.

III. A third vision: connectivity-simultaneity

6. Article 26 of the Convention may be described as a framework article, inasmuch as it refers in general terms to ESCER without specifying what they are and what they consist of. This article marks a shift or reorientation toward the OAS Charter for its interpretation and content. Moreover, the Protocol of San Salvador, an instrument subsequent to the American Convention, individualizes and gives content to the ESCER. The Protocol explicitly states the types of individual cases involving ESCER that may be submitted to the consideration of the Court, namely those related to trade union rights and education. Furthermore, other instruments of the inter-American *corpus juris* mention ESCER.

7. At the beginning of this opinion I outlined my vision regarding the indivisibility and interdependence of human rights, which leads me to consider that the Inter-American Court is indeed competent to examine and rule on matters involving ESCER. This consideration allows me to make a systematic analysis of the Convention, the Protocol of San Salvador, the OAS Charter and other instruments of the inter-American *corpus juris.* In the following paragraphs I will try to explain my views regarding the grounds upon which the Inter-American Court may examine and rule on ESCER.

8. Part II of the American Convention, entitled "Means of Protection," states in Article 44 that: "Any person or group of persons …may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party." For its part, Article 48 establishes that: "When the Commission receives a petition or communication alleging the violation of any of the rights protected by this Convention, it shall proceed as follows …" Likewise, Article 62(3) of the Convention indicates that: "The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it …" (underlining added by the author).

9. The aforementioned articles of the Convention are clear insofar as they state that any of the rights indicated in the Convention (civil, political, economic, social, cultural and environmental) may be submitted to the consideration of both competent organs of protection and that these have jurisdiction to examine such matters. The articles in question make no distinction between civil, political, social, cultural and environmental rights, in terms of protection. Moreover, to claim that the inter-American organs of protection may only examine civil and political rights and not

ESCER would, on the one hand, be contrary to the notion of the indivisibility and interdependence of rights and, on the other, would lead to a fragmentation of the international protection of the individual and of his entitlement to such protection as a subject of international law.

10. In relation to the foregoing, it is interesting to note the provisions of Article 4 of the Protocol of San Salvador regarding the inadmissibility of restrictions to ESCER. On this particular point, that article states: "A right which is recognized or in effect in a State by virtue of its internal legislation or international conventions may not be restricted or curtailed on the pretext that this Protocol does not recognize the right or recognizes it to a lesser degree." (Underlining added by the author). In my opinion, this article read in conjunction with the American Convention allows us to conclude that, with regard to alleged violations of ESCER, it is not acceptable to restrict access to inter-American justice by invoking the American Convention; in doing so, one would be contravening the Protocol itself which does not permit restrictions and, as mentioned previously, one would affect the individual as a subject of rights. This would also violate the *pro personae* principle in the interpretation of human rights (Article 29 of the American Convention).

11. On the other hand, we cannot ignore the fact that the Protocol of San Salvador, while introducing advances in the content of rights also expressly limited the use of the system of individual petitions solely to the rights to work and education. In my view, the Court may consider an autonomous violation of ESCER only in relation to these two rights (education and work), in light of the provisions of Article 19 paragraph 6 of the Protocol of San Salvador.

12. Notwithstanding the above, there is nothing to prevent the Court from undertaking a harmonious interpretation of the inter-American instruments through consideration of the interdependence and indivisibility of civil and political rights on the one hand, and economic, social and cultural rights on the other, so that it may rule on ESCER based on the connectivity and interrelationship between both groups of rights. Given that a same fact by action or omission may signify, simultaneously, the violation of a civil and political right and of an ESCER, it may be addressed based on its importance. This is what has occurred in the instant case as I explain below.

IV. The case of ANCEJUB-SUNAT

13. In the instant case the Court could have conducted an analysis of the type I am proposing. From the Judgment it is clear that the matter that gave rise to the case was the failure to comply with a judgment that recognized certain pension rights, and the manner in which this could have affected the exercise or enjoyment of other rights. Thus, the Court concluded that the process to execute the judgment issued by the Constitutional and Social Chamber of the Supreme Court of Justice on October 25, 1993, was irregular and ineffective, owing to a series of facts that resulted in an unwarranted delay in its implementation, in violation of the right to an effective judicial remedy and the guarantee of a reasonable time established in Articles 8(1) and 25 of the Convention.

14. The Court also concluded that the State did not fulfill its obligation to ensure the right to social security, given its failure to guarantee access to an effective legal remedy, to provide adequate information on the practical effects that the entry into force of Decrees 639 and 673 would have on the victims' pensions, and the impact that this would have on other rights. Accordingly, it considered that there was a violation of

the right to a decent life, resulting from the fall in income experienced by the victims after their retirement was brought forward, and a violation of the right to property for not having received the reimbursements owed to them with the entry into force of the Third Transitory Provision of Decree 673. These facts constituted violations of Articles 26, 4(1) and 21 of the Convention.

15. In that regard, the Judgment concludes that the State is responsible "for the violation of the rights to a decent life, judicial guarantees, property, judicial protection, and social security," established in Articles 4(1), 8(1), 21, 25(1), 25(2)(c) and 26 of the Convention, in relation to Article 1(1), to the detriment of the persons listed in Annex 2 of this judgment.

16. In essence I agree with the conclusion reached by the Court, and for that reason I voted in favor of the Judgment. However, I consider that the most appropriate approach to analyzing the case would have been through the theory of simultaneity. This would have produced the same outcome (reflected in the fourth operative paragraph), but the Court would have analyzed the violation of Articles 8(1) and 25 –which were the central theme of the dispute - in conjunction with Articles 4(1), 21 and 26 of the Convention. The practical effects of this analysis would have been that, instead of dividing each of the violations into "compartments" (which resulted in an autonomous declaration of the violation of each one), the Court would have analyzed matters related to social security, a decent life and property based on their close connection with judicial guarantees and judicial protection.

17. The type of analysis proposed here would avoid the need to keep on reiterating the same fact– in this case, the failure to execute a domestic judgment – in order to declare violations of different rights. It would also avoid the need to mention in excessive breadth the Court's jurisprudential doctrine in relation to each of the rights involved and to make a separate– and therefore repetitive– analysis of each one. Finally, such an approach would strengthen the arguments and give greater probative force to the analysis of the violations, by presenting these as a whole. The fourth operative paragraph of the Judgment is, in my opinion, a good result; however, it is necessary to adjust the method of analyzing problems that involve ESCER in future cases.

18. With regard to the method of analysis used in cases involving ESCER, I consider it pertinent to mention the manner in which the European Court of Human Rights has addressed the question. In some cases, it has used Article 14 of the European Convention of Human Rights (prohibition of discrimination) and Article 1 of the Additional Protocol to that Convention (protection of property), which are key to analyzing violations related to the right to a pension.[1] This occurred recently in the case of *Mockiené v. Lithuania*, in which the Court assessed the effects of a 15% reduction of Ms. Mockiené's pension, concluding that although the reduction limited her right to property, it did not constitute a violation of the Convention.[2]

V. Conclusion

[1] *Cf.* ECHR, *Case of Danuté Mockiené v. Lithuania*, Judgment of July 4, 2017, Application No. 75916/13, and ECHR, *Case of Stummer v. Austria*, Judgment of July 7, 2011, Application No. 37452/02

[2] *Cf.* ECHR, *Case of Danuté Mockiené v. Lithuania*, Judgment July 4, 2017, Application No. 75916/13, para. 48.

19. The Court should not lose sight of the fact that its primary function is to hear cases that require the interpretation and application of the provisions of the Convention, in order to decide whether a protected right or freedom was violated, and to ensure that the injured party is guaranteed the enjoyment of the infringed right or freedom. In that sense, the Court is called upon to do justice in specific cases within the limits contemplated by the law of treaties. But it also has the function of contributing to the implementation of the Convention's objectives, and that implies addressing the problems that afflict our societies. In that regard, it is also worth noting the goals established by the United Nations in its 2030 Agenda for Sustainable Development, wherein the States undertook to "end poverty and hunger," "combat inequalities within and among countries," "build peaceful, just and inclusive societies," and "promote gender equality and the empowerment of women and girls," while reaffirming the Rule of Law and the need to guarantee the most comprehensive access to justice to all human beings. These goals should, without a doubt, also inspire the actions of the Inter-American Court.

20. I look forward to analyzing this matter in greater depth in a future opinion.

Ricardo C. Pérez Manrique
Judge

Pablo Saavedra Alessandri
Secretary