

OAS/Ser.L/V/II.162
Doc. 53
May 23, 2017
Original: Spanish

REPORT No. 41/17

CASE 12.701

MERITS REPORT

National Association of Discharged and Retired Staff from the National
Tax Administration Superintendence

PERU

Approved by the Commission at its session No. 2083 held on May 23, 2017
162 Special Period of Sessions

Cite as: IACHR, Report No. 41/17, Case 12.701, Merits, National Association of Discharged and
Retired Staff from the National Tax Administration Superintendence, Peru, May 23, 2017.



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NATIONAL ASSOCIATION OF DISCHARGED AND RETIRED STAFF FROM
THE NATIONAL TAX ADMINISTRATION SUPERINTENDENCE
PERU
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**NATIONAL ASSOCIATION OF DISCHARGED AND RETIRED STAFF FROM
THE NATIONAL TAX ADMINISTRATION SUPERINTENDENCE**

PERU¹

MAY 23, 2017

I. SUMMARY

1. Between November 1998 and October 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission”, “the Inter-American Commission” or “IACHR”) received four petitions, in which the allegation was that the Republic of Peru (hereinafter “the State”, “the Peruvian State” or “Peru”) was responsible for failure to comply with a court judgment from the Supreme Court, dated October 1993, which recognized pension rights for 703 individuals.

2. The State recognized that the legal proceedings aimed at determining the specific pension for the alleged victims are in the execution stage. It claimed that the delay in the execution of the judgment issued in October 1993 was due to dilatory acts on the part of the alleged victims, and that, in any case, the SUNAT [the Superintendence] had been granting them the pensions. It was highlighted that the alleged victims have had every judicial guarantee in the different legal proceedings that were initiated.

3. After analyzing the available information, the Commission has concluded that the Peruvian State is responsible for the violation of the rights to judicial guarantees, private property and judicial protection established as per Articles 8.1, 21 and 25.2.c) in the American Convention, referring to the obligations established as per Articles 1.1 and 2 in the same legal instrument, against the individuals identified in the only Annex to this Report.

II. PRESENTATIONS BEFORE THE COMMISSION

Case 12.701

4. On November 11, 1998, August 27, 2003 and October 8, 2004, the Commission received three petitions in favor of a total of 703 individuals. The proceedings, from the presentation of the petitions to the decision about admissibility, are detailed in Admissibility Report No. 21/09².

5. The Commission presented Admissibility Report No. 21/09 to the petitioners and the State via a communication dated April 1, 2009. Also, the IACHR placed itself at the disposal of the parties to reach an amicable solution. On June 1 and 3, 2009, the petitioners and the State submitted their respective background observations, and afterwards the IACHR received communications from both parties, that were duly submitted.

Case 12.382

6. On December 15, 1999, the IACHR received the initial petition indicating Mr. Rafael Ipanaqué Centeno as the alleged victim. On July 30, 2001, the Commission submitted the petition to the State, which presented its report on October 1, 2001. On October 19, 2001, the IACHR sent a communication to the parties indicating that, based on Article 37.3 of its Regulations then in force and “taking into account the position of

¹ As per provisions in Article 17.2 of the Commission Regulations, Commissioner Francisco Eguiguren, a Peruvian citizen, did not participate in the discussion or the decision in this case.

² IACHR, Report No. 21/09, Petitions 965-98, 638-03 and 1044-04 Accumulated, Admissibility, National Association of Discharged and Retired Staff from the National Tax Administration Superintendence, Peru, March 19, 2009.

the Peruvian State in connection with admissibility requirements”, the decision was to defer the admissibility analysis until the substantial resolution was issued.

7. In that communication, the Commission gave the petitioner a deadline for his observations as per Article 38.1 in its Regulations then in force. The petitioner submitted his observations on December 10, 2001. Said communication was presented before the State with a term of two months to submit its observations. On March 7, 2002, the State submitted its observations. Later on, both parties submitted communications, which were duly presented.

8. Before the drafting of this Report, the Commission realized that Mr. Ipanaqué Centeno was on the list of alleged victims in Case 12,701 and that he was expressly mentioned in Admissibility Report No. 21/09. Also, the Commission confirmed that the objet in the separate petition made by Mr. Ipanaqué Centeno was the same as the object in the admitted case, and therefore informed the parties that the file in Case 12.382 became part of the file in Case 12,701, and that the situation of Mr. Ipanaqué Centeno would be analyzed in this Report referring to beneficiaries of the judgment presumably not complied with, in the understanding that Mr. Ipanaqué Centeno case was already under the admissibility decision in the framework of Case 12,701.

III. POSITION OF THE PARTIES

A. Position of the petitioners

9. The petitioners alleged that the State is intentionally responsible for failing to comply with a court judgment from the Supreme Court, dated October 1993, which recognized pension rights to 703 individuals. The detailed account of facts and proceedings is in the “Proven Facts” section.

10. The petitioners indicated that all of the alleged victims were workers at the *Superintendencia Nacional de Aduanas y de Administración Tributaria* (National Tax Administration Superintendence, hereinafter “SUNAT” by its acronym in Spanish) during 1991. They stated they had been incorporated in the Retirement Regime by Decree Law 20530, which established that all pensions and compensations for civil servant services provided to the State had to be adjusted against the remunerations paid to active workers.

11. The petitioners declared that they enjoyed said pension system until September 24, 1991. They also pointed out that Legislative Decree 673 was issued on that date and, based on the Third Temporary Provision therein, application of Decree Law 20530 in their favor was suspended.

12. The petitioners declared that they applied for an amparo action [unconstitutionality recourse] in order to question the abovementioned decision, a remedy that was ultimately acknowledged by the Supreme Court of Justice. They indicated that in its ruling dated October 1993, the Supreme Court ordered that the alleged victims were reincorporated into the pension scheme as per Decree Law 20530. They pointed out that in June 1996, the Constitutional Court declared that the Supreme Court ruling constituted an enforceable, final and binding judicial mandate.

13. The petitioners added that, since said ruling was not executed by the judicial authorities, they applied for a second amparo action. They declared that in May 2001, the Constitutional Court ordered that SUNAT should comply with the ruling dated October 1993. They also stated that, despite that order, the Supreme Court ruling has not been executed to date. The petitioners added that even though it is true that SUNAT is paying the pensions, they are not in compliance with provisions pursuant to the ruling dated October 1993. They explained that it has not been taken into account that the abovementioned ruling declared the Third Temporary Provision in Legislative Degree 673 not applicable, and therefore the increases that were not made effective due to the application of the abovementioned provision, as well as other compensation items, should be paid.

14. Regarding Mr. Ipanaqué, the allegation was that he brought an action before the Court under his own name so that SUNAT was ordered to comply with the ruling dated October 1993. He pointed out that in March 1999 the judge hearing this issue required SUNAT to pay him his pension benefit, but that despite the final nature of the judgment, SUNAT failed to comply.

15. The petitioners alleged the violation of their **right to judicial guarantees and judicial protection**, given that the State failed to comply with its obligation to abide by the judicial judgments ordered so as to adjust pensions in favor of the alleged victims. Regarding **private property rights**, the petitioners alleged that failure to make the pension payments effective as per the final court judgment orders had affected their net worth.

B. Position of the State

16. The State recognized the judgments issued by the Supreme Court of Justice and the Constitutional Court in 1993, 1996 and 2001. It held that, notwithstanding that, it is not responsible for the violations alleged by the petitioners since each of the proceedings filed by alleged victims afforded them their judicial guarantees.

17. The State held that due process was followed throughout the amparo actions, given that petitioners were granted a judicial recourse to channel their claim. Also, it has been pointed out that said recourses followed proceedings in compliance with procedural rules, respectful of the principle of the right of appeal, right to defense and access to an impartial judge, among other rights.

18. The State held that in its ruling, the Supreme Court did not establish in what way the adjustment was supposed to be applied. In its report, dated June 2016, it indicated that as from 2003, SUNAT “reestablished pension payments (...) adjusted according to the compensations received by SUNAT workers subject to the public service scheme, pursuant to the rules and provisions of the pension scheme established by Decree Law 20530”. It added that “that is the framework within which the abovementioned pensions are being paid to this day.”

19. On the other hand, said report also recognized that enforcement of the judgment dated October 25, 1993, “has been filed before [and is currently at] the Second Civil Court of the Superior Appeals Court of Lima.” It added that “the delay to enforce the judgment dated October 25, 1993 is solely due to the dilatory actions interposed by the National Association of Discharged and Retired Staff from SUNAT”.

20. The IACHR noted the fact that in prior reports the State held that the delay in enforcing the judgment is not due to arbitrary actions on the part of the judicial authorities but to the right to defense and contesting exercised both by SUNAT and the alleged victims, since “the Supreme Court of Peru failed to establish the way in which the pension adjustment is to be calculated, and only ruled on the right to said pension”.

21. Additionally, the State indicated that after 2006 the petitioners stopped acting proactively in the judgment execution stage and refused to pay for the fees corresponding to the expert appointed to calculate the pension amounts. It added that the petitioners also filed untimely recourses and repeatedly made requests for copies from the competent court, which contributed to delays in the process.

22. Regarding Mr. Rafael Ipanaqué’s case, the State requested the case file, since it considered that the alleged facts of the case were circumscribed to Case 12,701.

IV. PROVEN FACTS

A. About the situation of the alleged victims and the applicable legal framework

23. The IACHR has observed that there is no controversy regarding the fact that the members of the National Association of Discharged and Retired Staff from SUNAT (ANCEJUB-SUNAT) were included in the retirement regime as per Decree Law 20530 in 1991. Also, the members of the abovementioned Association received their pensions pursuant to said Decree until September 24, 1991, when Legislative Decree 673 was issued. Below, the Commission presents some of the contents of the most relevant rules and provisions.

24. Decree Law 20530 – known as the Pensions and Compensation Regime for Civil Service provided to the State, and supplemented by the Eighth Temporary Provision of the Political Constitution 1979- established the right to progressive pension adjustments for discharged staff with more than 20 years of service, under the following terms:

EIGHTH.- The pensions for discharged staff members with more than twenty years of service and staff retired from the public administration, not included in the Social Security regime in Peru or in other special regimes shall be progressively adjusted according to the remuneration corresponding to active public servants in the respective categories, for a term of ten fiscal years, as from January 1, 1980, and should therefore be duly assigned in the corresponding items of the National Budget³.

25. The abovementioned constitutional provision was enforced through Decree Law 23495 dated November 20, 1982 and its implementing regulations, establishing the right to automatic and progressive adjustment in favor of the beneficiaries of Decree Law 20530:

(...) any increase after the adjustment that is granted to active public servants who have a similar position to the last one the discharged or retired staff member had shall trigger an increase in the pension to the same amount obtained by the active public servant⁴.

26. There is no controversy between the parties regarding the fact that the payment to the alleged victims of adjusted pensions as per Decree Law 20530, supplemented by the abovementioned regulations, was suspended through Legislative Decree 673. In this scenario, the first amparo action was filed, and a final ruling was issued. The claim is that this final ruling was not complied with in the Case in question, as described below.

B. About the first amparo action

27. On December 19, 1991, ANCEJUB-SUNAT filed an amparo action before the Specialized Examining Magistrate in the First Instance Civil Court against the State in order to contest Legislative Decree 673 and request that its members were reincorporated to the pension scheme as per Decree Law 20530⁵.

28. On February 7, 1992, the Fifth Civil Court of Lima declared that the amparo action was inadmissible, since it was deemed untimely, and declared that the petitioners were entitled to seek remedy through the corresponding instance⁶.

³ Political Constitution of the Republic of Peru, 1979.

⁴ Law 23495. Enacted on November 20, 1982.

⁵ Amparo action filed before the Fifth Civil Court of Lima on December 19, 1991 (Attached to the petitioners' writ dated October 3, 1998).

⁶ Judgment issued by the Fifth Civil Court on February 7, 1992 (Attached to the petitioners' writ dated October 3, 1998).

29. ANCEJUB-SUNAT appealed the abovementioned resolution and on September 1, 1992, the Second Civil Chamber of the Superior Court confirmed the decision of the first instance court⁷. The Chamber stated that the amparo action is not the “lawful and legitimate way” to nullify the effects of Legislative Decree No. 673, whose status is that of “Law from the Congress”⁸.

30. ANCEJUB-SUNAT filed a plea to nullify and on October 25, 1993, the Constitutional and Social Law Chamber of the Supreme Court of Justice of Peru issued a ruling declaring that the amparo action was well founded⁹. The Supreme Court declared the following:

(...) [It is determined that it is] not applicable to former civil servants members of [SUNAT] the Petitioning Association entitled to receive a pension as discharged or retired staff as per Decree Law [20530], whose right has been recognized by the Third Temporary Provision of the Legislative Decree [673]; it was ordered that the right to their due pension adjusted according to the remunerations of [SUNAT] active servants be reinstated, and they be reimbursed for the increases they had not received as a consequence of the application of the abovementioned Third Temporary Provision of the Legislative Decree [673]¹⁰.

31. On June 25, 1996, the Constitutional Court issued a resolution indicating that “resolutions that are favorable to the petitioning parties filing amparo actions where the State is a party, pending appeal and review by the Constitutional Guarantee Court shall be deemed final and binding.”¹¹ The Constitutional Court returned the court files to the Constitutional and Social Law Chamber of the Supreme Court of Peru so as to cause its execution¹². On October 11, 1996, the file was received by Fifth Civil Court of Lima¹³ to that end.

32. On January 21, 1997, the Judge Specializing in Social Security Matters of Lima decided to notify “the State Attorney in charge of the MEF affairs [Ministry of Economy and Finance], the ONP [Social Security Administration], and (...) the Minister of Economy so that the final supreme order dated October [25] [1996] (*sic*) and also ordered by the Constitutional Court on June [25][1996] are complied with within the terms imposed by the law.”¹⁴

33. On February 18, 1997, the MEF requested that said resolution be deemed null and void¹⁵. On April 8, 1997, the Judge Specializing in Social Security Matters of Lima declared it null and void in view of the following considerations:

(...) the final supreme order “declares that the Third Temporary Provision of the Legislative Decree [673] is not applicable, and it is precisely that temporary provision that establishes that this provision is made in the [MEF] proposed budget, transferring contributions to the

⁷ Resolution issued by the Second Civil Chamber of the Superior Court of Lima on September 1, 1992 (Attached to the petitioners’ writ dated October 3, 1998).

⁸ Resolution issued by the Second Civil Chamber of the Superior Court of Lima on September 1, 1992 (Attached to the petitioners’ writ dated October 3, 1998).

⁹ Judgment issued by Constitutional and Social Law Chamber of the Supreme Court of Peru on October 25, 1993 (Attached to the petitioners’ writ dated October 3, 1998).

¹⁰ Judgment issued by Constitutional and Social Law Chamber of the Supreme Court of Peru on October 25, 1993 (Attached to the petitioners’ writ dated October 3, 1998).

¹¹ Resolution issued by the Constitutional Court on June 25, 1996 (Attached to the petitioners’ writ dated October 3, 1998).

¹² Resolution issued by the Constitutional Court on June 25, 1996 (Attached to the petitioners’ writ dated October 3, 1998).

¹³ Resolution issued by the Judge of the Fifth Civil Court of Lima on October 11, 1996 (Attached to the petitioners’ writ dated June 30, 2003).

¹⁴ Resolution issued by the Judge Specializing in Social Security Matters of Lima on January 21, 1997 (Attached to the petitioners’ writ dated October 3, 1998).

¹⁵ Plea to nullify, filed by Ministry of Economy [MEF] on February 18, 1997 (Attached to the State’s writ dated May 27, 2005).

service of pensions, remunerations and/or similar payments due to SUNAT”; it declared the resolution dated January 21, 1997 null and void, and requested SUNAT “to comply with the final supreme order’s mandate within the terms established by law.”¹⁶

34. On August 18, 1997, the resolution dated April 8 was declared null and void¹⁷ due to the fact that SUNAT was not served notice of the plea to nullify filed by the MEF State Attorney regarding the Resolution dated January 21, 1997¹⁸.

35. On February 16, 1998, the First Temporary Corporate Court Specializing in Public Law declared the plea to nullify filed by the MEF against the resolution dated January 21, 1997 unfounded¹⁹. The First Court considered that “the Third Temporary Provision of Legislative Decree 673 contains two rules: one the one hand, it transfers [to MEF] the obligation to pay the pensions in question, and on the other hand, it establishes that they are adjusted, taking the remunerations paid [by MEF] as a reference point.”²⁰

36. In view of the fact that the MEF appealed said resolution, on August 27, 1998, the Temporary Corporate Chamber Specializing in Public Law revoked the resolution dated February 16, 1998 and declared the resolution dated January 21, 1997 null and void²¹. The Chamber explained that “the request made [of the MEF] regarding compliance with the final resolution does not follow from the legal history, and consequently the legal process principle, and therefore, the plea to nullify is worthy of consideration.”²²

37. On October 2, 1998, the First Temporary Corporate Court Specializing in Public Law issued a new resolution declaring that “the request submitted for the execution of the intended payment is inadmissible, even when the members of the petitioning association may be entitled to rights they can exercise as applicable.”²³ The Court deemed it necessary for the members of ANCEJUB-SUNAT to “file individual administrative and/or jurisdictional proceedings as they see fit in order to settle the economic side of the case in question.”²⁴

38. The ANCEJUB-SUNAT appealed said resolution on the grounds that: i) it violated constitutional and legal principles and provisions; ii) the judge disregarded the restorative and condemnatory nature of the judgments referring to guarantee actions; iii) the judgment enforcement in guarantee actions is regulated by procedural laws; and iv) final resolutions are to be executed within the process itself before the petition judge and not through an administrative procedure or through new judicial proceedings²⁵.

¹⁶ Resolution issued by the Judge Specializing in Social Security Matters of Lima on April 8, 1997 (Attached to the petitioners’ writ dated October 3, 1998).

¹⁷ Resolution issued on August 18, 1997 (Attached to the petitioners’ writ dated October 3, 1998).

¹⁸ Resolution issued on August 18, 1997 (Attached to the petitioners’ writ dated October 3, 1998).

¹⁹ Resolution issued by the First Temporary Corporate Court Specializing in Public Law on February 16, 1998 (Attached to the petitioners’ writ dated October 3, 1998).

²⁰ Resolution issued by the First Temporary Corporate Court Specializing in Public Law on February 16, 1998 (Attached to the petitioners’ writ dated October 3, 1998).

²¹ Resolution issued by the Temporary Corporate Chamber Specializing in Public Law on August 27, 1998 (Attached to the petitioners’ writ dated October 3, 1998).

²² Resolution issued by the Temporary Corporate Chamber Specializing in Public Law on August 27, 1998 (Attached to the petitioners’ writ dated October 3, 1998).

²³ Resolution issued by the First Temporary Corporate Court Specializing in Public Law on October 2, 1998 (Attached to the petitioners’ writ dated October 3, 1998).

²⁴ Resolution issued by the First Temporary Corporate Court Specializing in Public Law on October 2, 1998 (Attached to the petitioners’ writ dated October 3, 1998).

²⁵ Appeal filed by ANCEJUB-SUNAT on October 15, 1998 (Attached to the petitioners’ writ dated October 3, 1998).

39. On January 21, 1999, the Temporary Corporate Chamber Specializing in Public Law confirmed the resolution issued by the First Temporary Corporate Court Specializing in Public Law²⁶.

C. About the second amparo action

40. In April 1999, ANCEJUB-SUNAT filed an amparo action against the magistrates in the Temporary Corporate Chamber Specializing in Public Law²⁷. In their amparo action, they pointed out that the prior resolutions had gravely affected their constitutional entitlement to judicial protection and their right to an adjusted pension²⁸. Consequently, they requested “that the case be reinstated to its judgment execution state, and that the judicial body complies with the final supreme order dated October 25, 1993, by enforcing it.”²⁹

41. On November 25, 1999, the Temporary Corporate Chamber Specializing in Public Law declared that the recourse was inadmissible³⁰. The Chamber considered the following:

“[the contested resolutions] do not affect rights that are at the constitutional level for any of the members of the petitioning association; on the contrary, since it protects their rights regarding labor actions referring to remuneration it so happens that for the execution of said judgment, the proposed execution requested by the petitioner is not admissible, given that the claim was filed without determining or identifying its individual members. On the other hand, the action was addressed generically against the State (...), which means that in order to make the execution viable it is necessary for (...) each of the unionized members to be duly identified as an individual, and to instrument the relevant processes before the administrative agency that keeps their pension records, so that they suitably enable the corresponding settlement adjustments in order to establish the correct amounts and proceed to full enforcement of their jurisdictionally recognized rights (...), this not being the suitable action to that end.”³¹

42. On April 6, 2000, in view of the appeal filed by ANCEJUB-SUNAT, the Supreme Attorney for the Administrative Jurisdiction entered a legal opinion before the Chamber of Social and Constitutional Law of the Supreme Court of Justice of Peru³². The Attorney considered that the appealed resolution should be revoked and the action declared admissible under the following terms:

[the] amparo action is admissible in case of violation or threat of violation of a constitutional right, either by action or omission, of binding acts; that with the contested resolutions, the alleged constitutional rights would be violated (...) since the fact that it had been brought before the Court by the association instead of each of its members represented as a whole

²⁶ Resolution issued by the Temporary Corporate Chamber Specializing in Public Law on January 21, 1999 (Attached to the initial petition dated November 11, 1998).

²⁷ Amparo action filed by ANCEJUB-SUNAT in April 1999 before the Temporary Corporate Chamber Specializing in Public Law (Attached to the initial petition dated November 11, 1998).

²⁸ Amparo action filed by ANCEJUB-SUNAT in April 1999 before the Temporary Corporate Chamber Specializing in Public Law (Attached to the initial petition dated November 11, 1998).

²⁹ Amparo action filed by ANCEJUB-SUNAT in April 1999 before the Temporary Corporate Chamber Specializing in Public Law (Attached to the initial petition dated November 11, 1998).

³⁰ Resolution issued by the Temporary Corporate Chamber Specializing in Public Law on November 25, 1999 (Attached to the petitioners’ writ dated June 30, 2003).

³¹ Resolution issued by the Temporary Corporate Chamber Specializing in Public Law on November 25, 1999 (Attached to the petitioners’ writ dated June 30, 2003).

³² Legal opinion N°588-2000-MMP-FN-FSCA from the Supreme Attorney for the Administrative Jurisdiction dated April 6, 2000 (Attached to the petitioners’ writ dated June 30, 2003).

would not constitute an obstacle in the execution of the judgment that gave rise to the original amparo action³³.

43. On August 25, 2000, the Chamber of Social and Constitutional Law of the Supreme Court of Justice of Peru issued a resolution confirming the first instance court decision³⁴. The Chamber stated that “the judgment issued in the amparo action process is limited to (...) the right to adjustment, but not the payment of the obligation itself.”³⁵ It added that “the settlement has to be effected on a case by case basis, in favor of each of the discharged and retired individuals, and it has to be dealt with before the pertinent administrative entity.”³⁶

44. On May 10, 2001, the Constitutional Court issued a judgment in connection with the extraordinary recourse submitted by ANCEJUB-SUNAT on August 25, 2000³⁷. The Constitutional Court decided to revoke said resolution, and declared that the resolution issued by the Court Specializing in Social Security Matters on January 21, 1997 was valid and in force³⁸. The Constitutional Court explained the following:

(...) no authority can nullify or abolish the effect of a resolution that has already been passed as a final decision, nor can they stop procedures that have already been initiated, or modify judgments or defer their execution; this is not being observed when [the Chamber of Social and Constitutional Law of the Supreme Court of Justice of Peru], through its resolutions contested on record, intends to nullify the resolution issued by the Court Specializing in Social Security Matters on January [21] [1997], which, in strict compliance with procedural rules, orders the final supreme order dated October [25] [1993] to be complied with (...)

[The] final judgment giving rise to a guarantee action is a final resolution with the immutable force of *res judicata*; and in virtue of that, it has to be enforced in the terms contained in the resolution.”³⁹

45. On March 25, 2002, the Sixth Civil Chamber of the Superior Court of Lima requested the 63rd Court Specializing in Civil Law of Lima to comply with the order issued by the Constitutional Court in its resolution dated May 10, 2001⁴⁰. On April 11, 2002, the Court “reinstated the case to the execution state ordering compliance with the final supreme order issued on October 25, 1993”⁴¹. It also urged the SUNAT and the MEF to abide by the resolution issued on May 10, 2001⁴².

³³ Judgment N°588-2000-MMP-FN-FSCA from the Supreme Attorney for the Administrative Jurisdiction dated April 6, 2000 (Attached to the petitioners’ writ dated June 30, 2003).

³⁴ Resolution issued by the Constitutional and Social Law Chamber of the Supreme Court of Peru on August 25, 2000 (Attached to the petitioners’ writ dated June 30, 2003).

³⁵ Resolution issued by the Constitutional and Social Law Chamber of the Supreme Court of Peru on August 25, 2000 (Attached to the petitioners’ writ dated June 30, 2003).

³⁶ Resolution issued by the Constitutional and Social Law Chamber of the Supreme Court of Peru on August 25, 2000 (Attached to the petitioners’ writ dated June 30, 2003).

³⁷ Judgment issued by the Constitutional Court on May 10, 2001 (Attached to the petitioners’ writ dated June 30, 2003).

³⁸ Judgment issued by the Constitutional Court on May 10, 2001 (Attached to the petitioners’ writ dated June 30, 2003).

³⁹ Judgment issued by the Constitutional Court on May 10, 2001 (Attached to the petitioners’ writ dated June 30, 2003).

⁴⁰ Request made by the Sixth Civil Chamber of the Superior Court of Lima on March 25, 2002 (Attached to the petitioners’ writ dated June 30, 2003).

⁴¹ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on April 11, 2002 (Attached to the petitioners’ writ dated June 30, 2003).

⁴² Resolution issued by the 63rd Court Specializing in Civil Law of Lima on April 11, 2002 (Attached to the petitioners’ writ dated June 30, 2003).

46. On May 30, 2002 the 63rd Court Specializing in Civil Law of Lima issued a resolution pointing out that SUNAT “has failed to attach a suitable document as proof of compliance (...) despite the time elapsed”⁴³. Consequently, it ordered SUNAT to comply with the resolution issued in October 1993 by the Supreme Court⁴⁴. On the next day, SUNAT submitted a writ declaring their compliance⁴⁵. SUNAT submitted the resolutions “referring to the individuals comprised by the effects of the final supreme order issued on October 25, 1993, and they are no other than the 11 individuals accredited as members of ANCEJUB at the time when the petition was filed”⁴⁶. IACHR does not have information on whether SUNAT did in effect comply with the pension rights of the 11 abovementioned individuals.

47. On June 24, 2002, the 63rd Court Specializing in Civil Law of Lima issued a new resolution requiring the following of SUNAT and MEF:

[the] payment of the corresponding pensions, adjusted according to [SUNAT] active public servants’ remunerations, plus the reinstated increases that they failed to receive as a consequence of the application of the abovementioned Third Temporary Provision of Legislative Decree [673] to all the members of the petitioning association [ANCEJUB-SUNAT], credited as per legalized copy of the members’ book of records and the list of discounts for discharged staff from [SUNAT]”, under penalty [of law]⁴⁷.

48. On July 8, 2002, SUNAT issued Resolution N°042-2002-SUNAT establishing the following:

Article 1.- Order that, as from August 2002, and in compliance with the final supreme order issued on October 25, 1993, with the resolution issued by the Constitutional Court on May 10, 2001, with the order issued by the 63rd Court Specializing in Civil Law of Lima, and pursuant to the provisions set forth in Law N°27719, SUNAT assumes payment of discharge and retirement pensions to the former public servants listed in the documents attached to this Resolution, according to the amounts detailed therein.

Article 2.- Determine that, as long as there is no difference in the pension amounts referred to in the previous article and the amounts said former public servants have been receiving from the Ministry of Economy y Finance, there shall be no reimbursement to pay in their favor.”⁴⁸

49. On August 1, 2002, ANCEJUB-SUNAT requested that the 63rd Court Specializing in Civil Law of Lima “apply the penalty of law as prescribed, ordering that certified copies are produced so that the Attorney’s Office proceeds to prosecute the public officials of [SUNAT] for disobeying authority and other concurrent offenses.”⁴⁹

50. On September 23, 2002, the 63rd Court Specializing in Civil Law of Lima resolved as follows:

⁴³ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on May 30, 2002 (Attached to the petitioners’ writ dated June 30, 2003).

⁴⁴ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on May 30, 2002 (Attached to the petitioners’ writ dated June 30, 2003).

⁴⁵ Judgment compliance writ filed by SUNAT before the 63rd Court Specializing in Civil Law of Lima on May 31, 2002 (Attached to the State’s writ dated May 27, 2005).

⁴⁶ Judgment compliance writ filed by SUNAT before the 63rd Court Specializing in Civil Law of Lima on May 31, 2002 (Attached to the State’s writ dated May 27, 2005).

⁴⁷ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on June 24, 2002 (Attached to the petitioners’ writ dated June 30, 2003).

⁴⁸ Resolution issued by the Associate Superintendence N°042-2002/SUNAT on July 8, 2002 (Attached to the petitioners’ writ dated June 1, 2009).

⁴⁹ Writ from ANCEJUB-SUNAT addressed to the 63rd Court Specializing in Civil Law of Lima dated August 1, 2002 (Attached to the petitioners’ writ dated June 30, 2003).

(...) appoint an accounting expert in order to settle the payments due to each of the members of the association (...), in order to determine the amounts corresponding to the pensions adjusted according to the [SUNAT] active public servants' remunerations and the reimbursements for increases that were not received as a consequence of the application of the Third Temporary Provision of Legislative Decree N°673". The expert to be appointed shall be selected from the Court-appointed Experts' Roster of the Judiciary⁵⁰.

51. On February 25, 2003, el CPA Association of Lima sent a communication to SUNAT stating that "it is apparent that in this case explicit provisions are being infringed by not complying with the final supreme order and the judgment issued by the Constitutional Court", and they urged the parties to abide by the rules⁵¹.

52. On April 7, 2003, expert José de la Rosa Pinillos Reyes submitted his expert report⁵², where he concluded that "the reimbursements for increases not received as a consequence of the application of Third Temporary Provision del Legislative Decree 673 (...) amount to PEN442,404,571[Peruvian "soles"]"⁵³. He also pointed out the following:

(...) [in order] to determine the increases not received by ANCEJUB-SUNAT pensioners between 1992 and July 1994, I took into account the increases shown in the payroll under the item Legislative Decree N°673 for SUNAT active workers comprised under the labor regime regulated by Legislative Decree N°276. For the following years, i.e. from August 1994 to December 31, 2002, I considered the remuneration scales enclosed in the following resolutions: Supreme Resolution N°109-94-EF dated September 12, 1994, in force between August 1, 1994 and July 31, 1995⁵⁴.

53. On the next day, the 63rd Court Specializing in Civil Law of Lima made this report available to the parties⁵⁵. On April 22 and 23, ANJECUB-SUNAT and SUNAT submitted their observations to the expert report, respectively⁵⁶. Those observations were sent to the accounting expert so that he could address them⁵⁷.

⁵⁰ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on September 23, 2002 (Attached to the State's writ dated July 26, 2006).

⁵¹ Letter No. 003-CDP-CCPL-2003 from the CPA Association of Lima dated February 25, 2003 (Attached to the initial petition dated September 15, 2004).

⁵² Writ from the Court-appointed expert dated April 7, 2003 addressed to the 63rd Court Specializing in Civil Law of Lima (Attached to the State's writ dated July 26, 2006) and Expert Report drafted by José de la Rosa Pinillos Reyes on April 3, 2003 (Attached to the State's writ dated July 26, 2006).

⁵³ Expert Report drafted by José de la Rosa Pinillos Reyes on April 3, 2003 (Attached to the State's writ dated July 26, 2006).

⁵⁴ Expert Report drafted by José de la Rosa Pinillos Reyes on April 3, 2003 (Attached to the State's writ dated July 26, 2006).

⁵⁵ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on April 8, 2003 (Attached to the State's writ dated July 26, 2006).

⁵⁶ Observations made by ANCEJUB-SUNAT to the Expert Report and expert settlement calculation dated April 22, 2003 (attached to the State's writ dated May 27, 2005); observations made by SUNAT to the Expert Report, dated April 23, 2003 (attached to the State's writ dated May 27, 2005) and supplementary observations from SUNAT to the Expert Report, dated May 16, 2003 (attached to the State's writ dated May 27, 2005).

⁵⁷ Resolutions issued by the 63rd Court Specializing in Civil Law of Lima on May 6, 2003 (Attached to the State's writ dated May 27, 2005); Resolution issued by the 63rd Court Specializing in Civil Law of Lima on June 6, 2003 (attached to the State's writ dated May 27, 2005), and Resolution issued by the Legal Specialist of the Superior Court of Justice of Lima on August 1, 2003 (attached to the State's writ dated May 27, 2005).

54. On September 4, 2003 the Judge of the 63rd Court Specializing in Civil Law of Lima issued a resolution where she abstained from continuing to hear in this case⁵⁸ on the grounds of “respect and honor, since (...) the counsel representing the petitioners (...) has recently become [her] father’s lawyer”⁵⁹. On November 26, 2003, the Sixth Civil Chamber of the Superior Court of Lima resolved that the Judge should continue hearing in the case⁶⁰.

55. On April 21, 2004, the 63rd Court Specializing in Civil Law of Lima requested that the parties “submit suitable documentation to determine full identification of all the people who, at the time when the action was set forth [December 19, 1991], were members of the petitioning association, and also inform the position, category or hierarchy they had, as well as the amount received by way of pension after retirement under the regime stipulated by Law 20530”⁶¹.

56. ANCEJUB-SUNAT issued a plea to nullify said resolution on the grounds of failure to comply with the submission requested on May 24, 2002⁶². On the other hand, SUNAT declared before the Court that the records submitted before ANCEJUB SUNAT on May 24, 2002 cannot be considered since they were notarized 4 years after the action was filed on December 19, 1991, and demanded the plea to nullify be declared inadmissible⁶³.

57. On May 5, 2005, the 63rd Court Specializing in Civil Law of Lima issued a resolution rejecting the Expert Report issued and declared the observations submitted by SUNAT regarding said document admissible⁶⁴. The Court stated the following:

(...) it should be understood that the adjustment the pensioners are entitled to, as pensioners enjoying the right to an adjustable pension, should be adjusted according to the remuneration of officials or workers who are active in the Public Administration in the same hierarchical level or category that the pensioner had at the time when he or she stopped in the position, pursuant to Article 6 of Decree Law 20350, Article 5 of Law 23495 and Article 5 of Supreme Decree N°015-83-PCM. (...) in that sense, even though discharged and retired members of [SUNAT] staff do enjoy a renewable pension, it is also true that the claim to adjust their pensions according to the corresponding remuneration in the private labor regime is not admissible, given that pursuant to constitutional and statutory mandate, the adjustment of pensions under Decree Law 20530 (...) is incompatible with remunerations of active workers subject to the private labor regime. (...) [T]herefore, it is clear from reading the Expert Report that the court-appointed expert (...) has wrongfully applied a rule that is not applicable to discharged and retired staff from the petitioning association⁶⁵.

⁵⁸ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on September 4, 2003 (Attached to the State’s writ dated May 27, 2005).

⁵⁹ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on September 4, 2003 (Attached to the State’s writ dated May 27, 2005).

⁶⁰ Resolution issued by la Sixth Civil Law Chamber of the Superior Court of Lima on November 26, 2003 (Attached to the Petitioners’ writ dated February 4, 2005).

⁶¹ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on April 21, 2004 (Attached to the State’s writ dated May 27, 2005).

⁶² Plea to nullify filed by ANCEJUB-SUNAT before the 63rd Court Specializing in Civil Law of Lima on May 17, 2004 (Attached to the State’s writ dated May 27, 2005).

⁶³ Acknowledgement of proper service issued by de la SUNAT and presented before the 63rd Court Specializing in Civil Law of Lima on June 4, 2004 (Attached to the State’s writ dated May 27, 2005).

⁶⁴ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on May 5, 2005 (Attached to the State’s writ dated July 26, 2006).

⁶⁵ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on May 5, 2005 (Attached to the State’s writ dated July 26, 2006).

58. On November 9, 2005 a new Expert Report⁶⁶ was submitted. SUNAT presented observations against the expert opinion, whereas ANCEJUB-SUNAT was in agreement with the report and requested its approval⁶⁷.

59. On March 3, 2006, the 60th Court Specializing in Civil Law of Lima issued a resolution declaring the observations to the Expert Report presented by SUNAT unfounded and ordered pensions should be adjusted for the 566 members of ANCEJUB-SUNAT as per the report's details⁶⁸.

60. In view of the appeal filed by SUNAT, on March 20, 2006, the 60th Court Specializing in Civil Law of Lima submitted the court records to the Superior Court of Justice of Lima⁶⁹.

61. On July 24, 2006, the Sixth Civil Chamber of the Superior Court of Lima declared the resolution issued on March 3, 2006 null and void and ordered a new accounting expert review to be conducted⁷⁰.

62. On September 28, 2006, ANCEJUB-SUNAT brought a complaint before the Head of the District Office Governing the Magistrates' Council of Lima against two of the members of the Sixth Civil Chamber of the Superior Court of Lima⁷¹. ANCEJUB-SUNAT presented said claim considering that the members "had incurred disciplinary administrative responsibility in the amparo action process in the judgment execution stage (...) for issuing the resolution dated July 24, 2006, (...) in violation of the *res judicata*, judicial protection and due process rights."⁷²

63. On October 25, 2006, the 63rd Court Specializing in Civil Law of Lima ordered "a new accounting expert's report [be issued] in observance of paragraph c) in article 3 of Legislative Decree [N°] 673, since the adjustment has to refer to the remuneration of an active official or worker in the Public Administration at the same hierarchical level or category the pensioner occupied at the time he or she stopped working"⁷³. Furthermore, the Court ordered that the Court-appointed Experts' Roster of the Judiciary (REPEJ) intervenes in the appointment of the court-appointed accounting expert⁷⁴.

64. On May 17, 2007, ANCEJUB-SUNAT rejected the professional fee proposal submitted by the REPEJ court-appointed accounting expert to the court because the amount was considered "disproportionate, making it impossible for them to afford such an amount, especially since the fees approved for the first

⁶⁶ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on March 3, 2006 (Attached to the State's writ dated July 26, 2006).

⁶⁷ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on March 3, 2006 (Attached to the State's writ dated July 26, 2006).

⁶⁸ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on March 3, 2006 (Attached to the State's writ dated July 26, 2006).

⁶⁹ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on March 20, 2006 (Attached to the State's writ dated March 28, 2006).

⁷⁰ Resolution issued by the Sixth Civil Chamber of the Superior Court of Lima de on July 24, 2006, (Attached to the petitioners' writ dated December 29, 2009).

⁷¹ Complaint filed by ANCEJUB-SUNAT before the Head of the District Office Governing the Magistrates' Council of Lima on September 28, 2006, (Attached to the petitioners' writ dated August 24, 2006).

⁷² Complaint filed by ANCEJUB-SUNAT before the Head of the District Office Governing the Magistrates' Council of Lima de on September 28, 2006, (Attached to the petitioners' writ dated August 24, 2006).

⁷³ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on October 25, 2006 (Attached to the State's writ dated June 3, 2006).

⁷⁴ Resolution issued by the 63rd Court Specializing in Civil Law of Lima on October 25, 2006 (Attached to the State's writ dated June 3, 2006).

Expert Report had already been paid⁷⁵. On May 30, 2007, the 63rd Court Specializing in Civil Law of Lima submitted the file to the Judicial Expert Report Office to have a new Expert Report⁷⁶.

65. On October 6, 2008, the Expert Report Technical Team of the Superior Court of Justice of Lima informed its Coordinator that in the “file there is a previous Expert Report (...) drafted by a REPEJ-appointed expert, which points at logistic and operational difficulties and [the Report] concludes (...) it should be turned to an instance that has the proper time and logistic resources to complete the requested expert report”⁷⁷. It was also mentioned that “the expert report (...) was accepted by the expert responsible for its completion on December 4, 2002, and that the final report was submitted on November 9, 2009”, and therefore it requested that the court files be sent to REPEJ expert to complete the expert report⁷⁸.

66. On May 11, 2009 the 23rd Court Specializing in Civil Law of Lima received the report from the Legal Technical Team that was attached to the file and requested the file be sent to a REPEJ expert⁷⁹.

67. On January 14, 2010, the 23rd Court Specializing in Civil Law of Lima informed the ANCEJUB-SUNAT about two expert reports submitted by SUNAT and granted 60 days to submit observations⁸⁰. The Court also stated that “in case there are observations, they should be accompanied by ex-parte supporting documentation attached --namely individual settlements for each of the workers, duly detailed and explained, indicating item, amount and supporting rule”⁸¹. The Court also ordered SUNAT to facilitate “verification of documentation, systems and IT tools, and any other relevant element at their offices.”⁸²

68. On February 12, 2010, ANCEJUB-SUNAT submitted a writ to SUNAT stating the following:

(...) after the ex-parte expert review and report submitted by SUNAT under the terms of the arbitrary resolution issued by the Sixth Civil Chamber of Lima, which concludes that there is no adjustment to apply or increases to reimburse, and ratifies the violation of our members’ rights and the failure to comply with the final supreme order, our party (...) abstains from appearing in SUNAT’s offices to receive the documentation and other elements that served as the basis for said report⁸³.

⁷⁵ Writ drafted by ANCEJUB-SUNAT addressed to the 23rd Court Specializing in Civil Law of the Superior Court of Lima dated May 21, 2009 (Attached to the State’s writ dated September 29, 2010).

⁷⁶ Writ drafted by ANCEJUB-SUNAT addressed to the 23rd Court Specializing in Civil Law of the Superior Court of Lima dated May 21, 2009 (Attached to the State’s writ dated September 29, 2010).

⁷⁷ Report issued by the Expert Report Technical Team of the Superior Court of Justice of Lima N°001-2008-ETP-CSJLI dated October 6, 2008 (Attached to the communication issued by the State on September 20, 2010).

⁷⁸ Report issued by the Expert Report Technical Team of the Superior Court of Justice of Lima N° 001-2008-ETP-CSJLI dated October 6, 2008 (Attached to the communication issued by the State on September 20, 2010).

⁷⁹ Resolution issued by the 23rd Court Specializing in Civil Law of the Superior Court of Lima on May 11, 2009 (Attached to the State’s writ dated September 29, 2010); Official Notice No. S/N-2009-ETP-CBP-PJ issued by the Expert Report Technical Team de la Superior Court of Justice of Lima on February 3, 2009 (Attached to the State’s writ dated September 29, 2010); and, Report N°1-2008-ETP-CSJLI issued by the Expert Report Technical Team of the Superior Court of Justice of Lima addressed to the Expert Report Technical Team Coordinator CSJLI dated October 6, 2008 (Attached to the State’s writ dated September 29, 2010).

⁸⁰ Resolution issued by the 23rd Court Specializing in Civil Law of Lima on January 14, 2010 (Attached to the writ issued by the State on March 12, 2010).

⁸¹ Resolution issued by the 23rd Court Specializing in Civil Law of Lima on January 14, 2010 (Attached to the writ issued by the State on March 12, 2010).

⁸² Resolution issued by the 23rd Court Specializing in Civil Law of Lima on January 14, 2010 (Attached to the writ issued by the State on March 12, 2010).

⁸³ Writ drafted by ANCEJUB-SUNAT addressed to SUNAT dated February 12, 2010 (Attached to the writ issued by the State on March 12, 2010).

69. On March 22, 2010, ANCEJUB-SUNAT presented a plea to nullify the resolution dated January 14, 2010 since “the legal action does not comply with the indispensable requirements to fulfill its purpose.”⁸⁴ Furthermore, they requested that “the file be submitted to Technical Team of the Judicial Expert Report Office so that they draft the Expert Report”⁸⁵.

70. On August 3, 2010, the 23rd Court Specializing in Civil Law of Lima declared the plea to nullify presented by ANCEJUB-SUNAT⁸⁶ unfounded. The Court submitted the court files to the Expert Report Technical Team in the Judicial Expert Report Office of the Superior Court of Justice of Lima so that they issued an Expert Report pursuant to the guidelines set forth in the resolution dated July 24, 2006,⁸⁷.

71. On October 18, 2011, the expert technical report issued by the Technical Area in REPEJ was presented before the 22nd Court Specializing in Civil Law of Lima⁸⁸. The expert technical report concluded the following:

- 1.- Existence of accrued amounts payable to discharged staff members of ANCEJUB-SUNAT, due to adjustment of their pensions according to a comparable active worker at the time they stopped in the position.
- 2.- The reimbursements have been determined by contrast against comparable income received by an active public servant versus the total income received by the discharged staff member.
- 3.- The monthly and annual total amounts per worker, and the overall final total amount are detailed in the Comparison and Reimbursement Charts, and in the Annual Consolidated Reimbursement Chart.
- 4.- The accrued amounts corresponding to the highest figures found are mainly due to the regularization after the remuneration increases granted by the Federal Administration became effective; and to social security pensions granted to workers whose salary level determination was not found in the payroll.
- 5.- The total accrued amounts for the period January 1992-December 2004 comes to PEN193,751.69 [Peruvian “*nuevos soles*”]⁸⁹.

72. On March 21, 2012, the 22nd Court Specializing in Civil Law of Lima, in view of the request made by ANCEJUB-SUNAT, requested SUNAT to grant every facility so that the association appointed expert can survey and review the original forms corresponding to active workers comprised by Legislative Decree N°276 and for discharged staff members in the period between January 1992 and December 2004⁹⁰.

⁸⁴ Writ drafted by SUNAT addressed to the 23rd Court Specializing in Civil Law of Lima dated July 2, 2010 (Attached to the State’s writ dated July 26, 2010).

⁸⁵ Writ drafted by ANCEJUB-SUNAT addressed to the 23rd Court Specializing in Civil Law of the Superior Court of Lima dated March 22, 2010 (Attached to the State’s writ dated September 29, 2010) and Rationale and Resolution issued by the 23rd Court Specializing in Civil Law of the Superior Court of Lima on June 22, 2010 (Attached to the State’s writ dated September 29, 2010).

⁸⁶ Resolution issued by the 23rd Court Specializing in Civil Law of the Superior Court of Lima on August 3, 2010 (Attached to the petitioners’ writ dated October 17, 2010).

⁸⁷ Resolution issued by the 23rd Court Specializing in Civil Law of the Superior Court of Lima on August 3, 2010 (Attached to the petitioners’ writ dated October 17, 2010).

⁸⁸ Expert Technical Report dated October 18, 2011 presented before the 22nd Court Specializing in Civil Law of the Superior Court of Lima (Attached to the State’s writ dated January 19, 2012) and Resolution issued by the 22nd Court Specializing in Civil Law of Lima on October 21, 2011 (Attached to the communication issued by the petitioners on May 31, 2016).

⁸⁹ Expert Technical Report dated October 18, 2011 presented before the 22nd Court Specializing in Civil Law of the Superior Court of Lima (Attached to the State’s writ dated January 19, 2012) and Resolution issued by the 22nd Court Specializing in Civil Law of Lima on October 21, 2011 (Attached to the communication issued by the petitioners on May 31, 2016).

⁹⁰ Resolution issued by the 22nd Court Specializing in Civil Law of Lima on March 21, 2012 (Attached to the communication issued by the petitioners on May 31, 2016) and Official Notice N°092-2012-SUNAT-4F0000 submitted by SUNAT on April 17, 2012 (Attached to the communication issued by the petitioners on October 18, 2012).

73. On April 12, 2012, SUNAT informed ANCEJUB-SUNAT that the discharged staff members' original payroll sheets are filed in the Ministry of Economy and Finance (MEF), in charge of administering payments in the abovementioned period⁹¹. They added that the expert would be granted every facility regarding the payroll sheets kept at SUNAT⁹².

74. On August 14, 2012, the MEF replied to the request for information regarding active and discharged workers kept by the Ministry for the court-appointed expert report, stating the following:

From the regulations governing Court-appointed Experts' performance it is understood that, given their specialization, the experts are the ones that should carry out a number of tasks that enable them to arrive to a given conclusion that assists the Judge to resolve the controversy subject to his or her decision; and said responsibility should not be transferred to the Public Administration servants or officials, as intended by the document in question, which details a number of requirements, entailing not only documentation but also time and effort on the part of this Office's personnel, which would result in a delay in our daily work and urgent issued that require attention⁹³.

75. On September 5, 2012, SUNAT submitted before the 22nd Court Specializing in Civil Law of Lima an executive summary about the differences detected in the Expert Report⁹⁴. On September 21, 2012, the Court ordered the MEF to deliver the requested documentation to the ANCEJUB-SUNAT experts⁹⁵. The ANCEJUB-SUNAT experts had access to the information between November 7, 2012 and December 19, 2012⁹⁶.

76. On September 12, 2013, ANCEJUB-SUNAT presented its observations to the Expert Report before the 22nd Court Specializing in Civil Law of Lima, and submitted the report itself on August 22, 2013⁹⁷.

77. On May 18, 2014, the Expert Report Technical Team cleared the observations to the Expert Report and concluded that "(...) the expert review has followed the Supreme Court's guidelines, the Sixth Civil Chamber of the Court of Lima ruling and the stipulations in the judgment issued by the Constitutional Court, which rules over the right way to construe the Supreme Court's judgment and settles the interpretation controversy put forth"⁹⁸.

78. On August 5, 2014, the 22nd Court Specializing in Civil Law of Lima informed the parties about the report drafted by the Expert Report Technical Team⁹⁹. In view of the observations made by ANCEJUB-SUNAT to said report in the sense that the remuneration items are inadequately determined, on

⁹¹ Official Notice N°092-2012-SUNAT-4F0000 submitted by SUNAT on April 17, 2012 (Attached to the communication issued by the petitioners on October 18, 2012).

⁹² Official Notice N°092-2012-SUNAT-4F0000 submitted by SUNAT on April 17, 2012 (Attached to the communication issued by the petitioners on October 18, 2012).

⁹³ Official Notice N°092-2012-SUNAT-4F0000 submitted by SUNAT on April 17, 2012 (Attached to the communication issued by the petitioners October 18, 2012).

⁹⁴ Writ drafted by SUNAT and presented before the 22nd Court Specializing in Civil Law of Lima on September 5, 2012 (Attached to the communication issued by the petitioners on May 31, 2016).

⁹⁵ Resolution issued by the 22nd Court Specializing in Civil Law of Lima on September 21, 2012 (Attached to the communication issued by the petitioners on May 31, 2016).

⁹⁶ Writ addressed to ANCEJUB-SUNAT dated February 4, 2013 (Attached to the communication issued by the petitioners on March 4, 2013).

⁹⁷ Writ drafted by ANCEJUB-SUNAT and presented before the 22nd Court Specializing in Civil Law of Lima on September 12, 2013 (Attached to the communication issued by the petitioners on May 31, 2016).

⁹⁸ Expert Report N°092-2014-JAVM-PJ issued by the Expert Report Technical Team on May 18, 2014 (Attached to the communication issued by the State on August 18, 2014).

⁹⁹ Resolution issued by the 22nd Court Specializing in Civil Law of Lima on August 5, 2014 (Attached to the communication issued by the State on August 18, 2014).

January 5, 2015, the Judicial Expert Report Office issued a document pointing out that that it is not competent to make a decision about it¹⁰⁰, since the subject matter has to be analyzed by a competent court¹⁰¹.

79. On May 28, 2015, the Second Civil Court received the judgment execution file¹⁰². In their writ drafted in May 2016, the petitioners informed that to that date the court has not issued a decision about the abovementioned Expert Report, as well as the execution status of the judgment dated October 1993¹⁰³. They added that to that date, 125 members of the Association had passed away¹⁰⁴.

80. On May 26, 2016, SUNAT interposed a “complaint for functional misconduct, as well as misdemeanors, and minor and serious offenses” against the Judge in the Second Civil Court of the Superior Court of Justice of Lima and against the Legal Specialist in said Court for failing to issue a resolution referring to the approval of the Expert Report¹⁰⁵.

D. About the third amparo action

81. Parallel to the judgment execution process described so far, on December 15, 2006, ANCEJUB-SUNAT filed an amparo action before the Civil Chamber on Duty of the Superior Court of Lima against the members of the Sixth Civil Chamber of the Superior Court of Lima¹⁰⁶. They alleged violation of their fundamental rights to effective judicial protection, and failure to enforce final court resolution on the amparo action with *res judicata* authority¹⁰⁷. They furthermore submitted a plea to nullify the resolution dated July 24, 2006, declaring that the resolution that deemed the observations made by SUNAT to be unfounded, and approved the Expert Report issued by the 66th Court Specializing in Civil Law of Lima¹⁰⁸ null and void.

82. On September 28, 2009, the Seventh Civil Chamber of the Superior Court of Justice of Lima declared the amparo action submitted to be unfounded¹⁰⁹. The Chamber provided the following considerations:

(...) it can be gathered that instead of showing that any constitutional rights have been affected, the presentation denotes dissatisfaction on the part of the petitioning party regarding the criteria adopted by the jurisdictional body evaluating the case¹¹⁰.

¹⁰⁰ Expert Report N°003-2015-ETP-JAVM-PJ issued by the Court Services Area on January 5, 2015 (Attached to the communication issued by the petitioners on May 31, 2016).

¹⁰¹ Expert Report N°003-2015-ETP-JAVM-PJ issued by the Court Services Area on January 5, 2015 (Attached to the communication issued by the petitioners on May 31, 2016).

¹⁰² Resolution issued by the Second Civil Court on May 28, 2015 (Attached to the communication issued by the petitioners on May 31, 2016).

¹⁰³ Communication issued by the petitioners on May 31, 2016.

¹⁰⁴ Communication issued by the petitioners on May 31, 2016.

¹⁰⁵ Complaint filed by SUNAT before the Chief Magistrate of the Local Delegation Governing the Magistrates’ Council of the Superior Court of Justice of Lima on May 26, 2016 (Attached to the communication issued by the State on June 6, 2016).

¹⁰⁶ Writ of amparo interposed by ANCEJUB-SUNAT before the Civil Chamber on Duty of the Superior Court of Lima on December 15, 2006 (Attached to the petitioners’ writ dated August 24, 2006).

¹⁰⁷ Writ of amparo interposed by ANCEJUB-SUNAT before the Civil Chamber on Duty of the Superior Court of Lima on December 15, 2006 (Attached to the petitioners’ writ dated August 24, 2006).

¹⁰⁸ Writ of amparo interposed by ANCEJUB-SUNAT before the Civil Chamber on Duty of the Superior Court of Lima on December 15, 2006 (Attached to the petitioners’ writ dated August 24, 2006).

¹⁰⁹ Appeal action interposed by ANCEJUB-SUNAT before the Seventh Civil Chamber of the Superior Court of Lima on December 2nd, 2009 (Attached to the petitioners’ writ dated October 17, 2010).

¹¹⁰ Resolution issued by the Seventh Civil Chamber of the Superior Court of Justice of Lima on September 28, 2009 (Attached to the State’s writ dated July 26, 2010).

83. On December 2nd, 2009, ANCEJUB-SUNAT brought an appeal before the Seventh Civil Chamber of the Superior Court of Lima, requesting that the petition be declared admissible¹¹¹.

84. On July 22, 2010, the Permanent Chamber of Social and Constitutional Law of the Supreme Court of Justice of Peru confirmed the resolution dated September 28, 2009 that declared the amparo action unfounded¹¹². The Chamber considered the following:

[upon] review of the court records, it becomes apparent that we are before a resolution issued in the execution stage, which declares the appealed resolution null and void, and orders the *a quo* to resume the contested procedure by ordering a new accounting expert report (...) since the debate around the items and scope comprised within the execution of the final supreme order (...) has not been settled, pending completion of the new expert review (...) the appellant has the possibility of challenging it by means of an appeal to a higher court, as well as making observations as they see fit (...) therefore, we are not facing a final and permanent resolution, a prerequisite that would call for the analysis of the disputed issue (...), and the opposite would entail turning the amparo action into a third national supra-instance¹¹³.

85. On August 9, 2011, the Constitutional Court declared the constitutional remedy action brought before the Court by ANCEJUB-SUNAT against the judgment dated July 2010 unfounded¹¹⁴. The Court stated the following:

[T]he 'non pensionable' nature that paragraph c) of Article 3 in Legislative Decree N°673 gives to the abovementioned 'higher remuneration' pursuant to paragraphs a) and b) of said Article was not contested on constitutionality grounds, nor was the consequent inapplicability of the Supreme Court ruling execution. Therefore (...) the abovementioned judgment only disregards application of the Third Temporary Provision of the Decree to the petitioner association's members (...).

(...) Thus, the petition in question would entail adjusting the petitioners' members' pensions against the remunerations of the SUNAT staff comprised within the private labor regime, which would be contrary to the jurisprudence based on numerous rulings issued by this Court, pursuant to which 'the adjustment the pensioners are entitled to according to the regime set forth in Decree Law N°20530 should be based on the remuneration corresponding to active public officials or public servants who have the same hierarchical level, category or labor regime as the pensioner at the time he or she stopped in that position; the adjustment is not applicable, however, between different pension schemes, or in connection with workers that to this date are in a private labor regime (...).

(...) the resolution issued by the Sixth Civil Chamber of the Superior Court of Lima dated July 24, 2006 (...), contrary to the appellants' allegations, does not construe the facts of the case in an arbitrary or restrictive way, nor does it repeal the judgment issued by the Supreme Court on October 25, 1993 (...) and therefore, since the fundamental rights invoked by the appellant have not been affected, the petition is dismissed."¹¹⁵

¹¹¹ Appeal action interposed by ANCEJUB-SUNAT before the Seventh Civil Chamber of the Superior Court of Lima on December 2nd, 2009 (Attached to the petitioners' writ dated October 17, 2010).

¹¹² Judgment issued by the Permanent Chamber of Social and Constitutional Law of the Supreme Court of Justice of Peru on July 22, 2010 (Attached to the State's writ dated January 6, 2010).

¹¹³ Judgment issued by the Permanent Chamber of Social and Constitutional Law of the Supreme Court of Justice of Peru on July 22, 2010 (Attached to the State's writ dated January 6, 2010).

¹¹⁴ Judgment issued by the Constitutional Court on August 9, 2011 (Attached to the State's writ dated August 17, 2011).

¹¹⁵ Judgment issued by the Constitutional Court on August 9, 2011 (Attached to the State's writ dated August 17, 2011).

86. On September 22, 2011, the Constitutional Court decided to declare the ANCEJUB-SUNAT request for judgment clarification inadmissible¹¹⁶, considering that:

(...) instead of asking for clarification, what the petitioner does is to speculate, without any grounds whatsoever, on the alleged origin of the basis for the ruling, claiming that they could be based on the 'grounds of a minority vote by two (2) members of the Supreme Court', when in fact, as shown by the ruling in question, (...) this Court has based its decision on the provisions set forth in the ruling issued by the Supreme Court of Justice of Peru dated October 25, 1993¹¹⁷.

E. Actions brought before the Court by Mr. Ipanaqué

87. The IACHR acknowledges and notes that Mr. Ipanaqué was a member of ANCEJUB-SUNAT and, as such, was a party to the amparo actions and judgment execution process described in the previous sections of this Report. Below, the Commission summarizes the available information about the actions brought before the court by him as an individual.

88. On March 10, 1999, Mr. Ipanaqué submitted a petition before the First Corporate Court Specializing in Public Law, requesting the court to order SUNAT to pay for the pension he was entitled to¹¹⁸, pursuant to provision in the Supreme Court ruling dated October 1993, ratified by the Constitutional Court ruling dated June 1996¹¹⁹.

89. On March 30, 1999, the Court issued a resolution requesting SUNAT to abide by the Supreme Court ruling dated October 1993 in the term of ten days¹²⁰. SUNAT stated in a writ dated June 23, 1999, that it is not competent to comply with said resolution, and that the competent authority is the ONP [Social Security Administration] or the MEF [Ministry of Economy and Finance]¹²¹. Mr. Ipanaqué declared that despite the fact that he had sent different writs to SUNAT, the Superintendence had failed to pay for the pension he was entitled to¹²².

90. On April 29, 1999, the First Corporate Court Specializing in Public Law issued a new resolution, stating the following:

(...) even though it is true that Mr. Rafael Ipanaqué Centeno is a member of the National Association of Discharged and Retired Staff from SUNAT, he has not substantiated the existence of interests to litigate separately, especially if we consider that should all the many members of said association decide to appear individually, the proceedings would become really cumbersome (...). [G]iven the resolution dated October 2 of year (...) it has been clearly determined that the petitioners with a jurisdictional precedent of res judicata, should bring forth an individual administrative or jurisdictional action, before the entity where the documentation corresponding to their pensions is kept, and not in this process, which lacks such documentation¹²³.

¹¹⁶ Decree issued by the Permanent Chamber of Social and Constitutional Law of the Supreme Court of Peru on November 25, 2011 (Attached to the petitioner's writ dated on December 13, 2011).

¹¹⁷ Resolution issued by the Constitutional Court on September 22, 2011 (Attached to the petitioner's writ dated December 13, 2011).

¹¹⁸ Attachments to the initial petition.

¹¹⁹ Attachments to the initial petition.

¹²⁰ Attachments to the initial petition.

¹²¹ Attachments to the initial petition.

¹²² Attachments to the initial petition.

¹²³ Attachments to the initial petition.

91. The Court concluded that, in view to the abovementioned resolution, Mr. Ipanaqué should have not appeared in court, and therefore the resolution dated March 12, 1999, and all the subsequent proceedings were declared null and void¹²⁴. The IACHR notices that in said resolution there was no indication about the content of the resolution of March 12, 1999. The Commission has observed that a copy of that resolution was attached to this case's file, and that it states the following:

The writ handed in today via the General Secretary Office is duly received, with its attachments thereof. What it states regarding legal provisions, in connection with the resolution of the relevant issue, will be taken into account, after consideration by Secretary General of what his Superior has resolved as regards the appeal granted on October 19, last year, and signed by the Judge, resuming in his position¹²⁵.

92. Mr. Ipanaqué brought forth an appeal action, stating that the resolution in question, issued on March 12, 1999 was not attached to the court file¹²⁶. He also indicated that the judges cannot revoke their own resolutions¹²⁷. He held that the resolution of March 30, 1999 constitutes *res judicata*, since it was not appealed by SUNAT¹²⁸.

93. On September 30, 1999, the la Corporate Chamber Specializing in Public Law confirmed the resolution of April 29¹²⁹. The Chamber stated the following:

(...) even though it is true that Mr. Rafael Ipanaqué (...) is a member of the National Association of Discharged and Retired Staff from SUNAT, the petitioning party in this case, it is also true that it has been clearly established in these court records that the petitioners with a jurisdictional precedent of *res judicata*, should bring forth an individual administrative or jurisdictional action, before the entity where the documentation corresponding to their pensions is kept, and not in this process, since it exceeds the legal framework of a constitutional proceeding, and therefore his appearance in this case becomes irrelevant to proceed with the action regarding the resolved claim¹³⁰.

94. The Chamber declared the resolution of March 12, 1999 and all the proceedings concerning Mr. Ipanaqué appearance null and void¹³¹. The Chamber stated that "it[...] protects his rights to be exercised as he sees fit in the proceedings brought forth by the National Association of Discharged and Retired Staff from SUNAT against the State"¹³².

V. LEGAL ANALYSIS

A. Introductory considerations

95. Before we start with the legal analysis of the matter in the light of the proven facts and the parties' allegations, the Commission considers it relevant to state a few introductory considerations.

¹²⁴ Attachments to the initial petition.

¹²⁵ Attachments to the State communication dated October 12, 2001.

¹²⁶ Attachments to the initial petition.

¹²⁷ Attachments to the initial petition.

¹²⁸ Attachments to the initial petition.

¹²⁹ Attachments to the State communication dated October 12, 2001.

¹³⁰ Attachments to the State communication dated October 12, 2001.

¹³¹ Attachments to the State communication dated October 12, 2001.

¹³² Attachments to the State communication dated October 12, 2001.

96. The first one is connected to the discrepancy between the parties on whether the judgment issued by the Supreme Court of Justice on October 25, 1993 has been effectively enforced. While the petitioners state that it has not been complied with to this day, the State has argued that SUNAT has been paying the alleged victims their adjusted pensions since 2003.

97. The Commission considers that, given the circumstances of this case, it is not competent nor does it have elements to make a pronouncement on the correct compliance modality for the judgment in question or on the issues that are still being internally debated. To the effect of this Report, the Commission highlights that there is no controversy between the parties around the fact that after more than 23 years since the court judgment, the execution process is still open internally; the fundamental debates about its implementation have not been settled yet, and this issue will have to be analyzed in the light of the relevant provisions in the Convention, in particular, the right to get judicial remedies enforced, the guarantee of a reasonable term in the judgment execution process and the impact of this analysis on the right to private property.

98. The second point is connected to the alleged victims in this case. In that respect, the IACHR notes the fact that the petitioners alleged that at the time of the events of the case, there were 703 members in ANCEJUB-SUNAT. The Commission has observed that in the execution process there have been debates about who the beneficiaries of the judgment of October 25, 1993 should be. Taking into account that this issue is still subject to expert opinions and reports internally, and that after 23 years the State has not been able to solve it, the Commission deems it reasonable to consider the 703 individuals identified by the petitioners in their initial claim, who were included in Admissibility Report No. 21/09, as the alleged victims in the case, without prejudice to applicable determinations at the time of implementation of the recommendations.

B. Right to judicial guarantees, private property and judicial protection (Articles 8.1¹³³, 21.1¹³⁴ and 25.2.c)¹³⁵ of the American Convention, vis-a-vis Article 1.1 of the same legal instrument)

1. General considerations regarding effective judicial protection and compliance with internal judgments

99. The Inter-American Court has pointed out that one of the components of the right to judicial protection established in Article 25 of the American Convention is that States "[have an obligation to establish by law, and] ensure the application of effective remedies and guarantees of due process before the competent authorities."¹³⁶ This is to effectively protect declared or recognized rights from acts that violate fundamental rights.¹³⁷ For its part, the IACHR has maintained that "if the judicial branch is to serve effectively as an organ for the control, guarantee, and protection of human rights, it must not only be constituted formally, but it also has to be independent and impartial, and its rulings must be carried out."¹³⁸

¹³³ Article 8.1: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

¹³⁴ Article 21.1: Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

¹³⁵ Article 25.2.c): The States Parties undertake to ensure that the competent authorities shall enforce such remedies when granted.

¹³⁶ I/A Court HR. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, par. 65; and *Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 31, 2010. Series C No. 216, par. 166.

¹³⁷ I/A Court HR. *Case of Mejía Idrovo v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 5, 2011. Series C No. 228, par. 104.

¹³⁸ IACHR, Case 12.357, Application to the I/A Court H.R., Members of the National Association of Discharged and Retired Staff of the Office of the Comptroller General of the Republic of Peru, April 1, 2008, par. 52.

100. In that sense, the effectiveness of judgments depends on their execution.¹³⁹ If judgment is not enforced, the right involved is denied.¹⁴⁰ The IACHR has maintained that judicial decisions must be complied with, be it voluntarily or, if necessary, coercively.¹⁴¹ Likewise, the Court has underscored that execution of judgments must be governed by those specific standards that allow for effective application of the principles of, inter alia, judicial protection, due process, legal certainty, judicial independence, and the rule of law.¹⁴² Accordingly, the principle of effective judicial protection requires that the parties have access to enforcement procedures, without hindrance or unguaranteed delays, in order for them to achieve their objective in a swift, straightforward, and comprehensive manner.¹⁴³

101. For its part, the European Court of Human Rights has maintained that for a judgment to be fully effective, its execution must be complete, perfect, comprehensive,¹⁴⁴ and prompt.¹⁴⁵ For that reason, the provisions governing the independence of the judiciary must be appropriately formulated in order to ensure prompt enforcement of judgments without interference from other branches of government and they must guarantee the binding and mandatory nature of final instance decisions.¹⁴⁶

102. The Inter-American Court has maintained that in a political system based on the principle of the rule of law, all public authorities, within their spheres of competence, must heed judicial decisions, and support and enforce them without thwarting the meaning or scope of the decision or unduly delaying its execution.¹⁴⁷ Accordingly, the IACHR has stressed that "ensuring the execution of judicial judgments thus constitutes a fundamental aspect that is the very essence of the rule of law."¹⁴⁸

2. Information regarding the issue of failure to comply with internal judgments in Peru

103. The IACHR notes that noncompliance by the Peruvian State with judgments handed down against State entities since the 1990s extends beyond just the case of the alleged victims in this case and forms part of a broader context.

104. Thus, the Inter-American Court already pronounced on two cases in the 1990s of failure to comply with judgments in Peru regarding the adjustment of pensions for former public servants pursuant to

¹³⁹ I/A Court HR. *Case of Mejía Idrovo v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 5, 2011. Series C No. 228, par. 104.

¹⁴⁰ I/A Court H.R., *Case of Acevedo Jaramillo v. Peru*, Preliminary Objections, Merits, Reparations and Costs. Judgment of February 7, 2006, par. 220.

¹⁴¹ IACHR, Case 12.357, Application to the I/A Court H.R., Members of the National Association of Discharged and Retired Staff of the Office of the Comptroller General of the Republic of Peru, April 1, 2008, par. 53.

¹⁴² I/A Court HR. *Case of Mejía Idrovo v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of Tuesday, July 05, 2011. Series C No. 228, par. 105.

¹⁴³ I/A Court HR. *Case of Mejía Idrovo v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of Tuesday, July 05, 2011. Series C No. 228, par. 106.

¹⁴⁴ ECHR, *Case of Matheus v. France*, No. 62740/01, Judgment of March 31, 2005, par. 58; and ECHR, *Case of Sabin Popescu v. Romania*, n° 48102/99, Judgment of March 2, paragraphs 68ff.

¹⁴⁵ ECHR, *Case of Cocchiarella v. Italy*. Judgment of March 29, 2006, par. 89.

¹⁴⁶ ECHR, *Matheus v. France*. Judgment of June 31, 2005, par. 58.

¹⁴⁷ I/A Court HR. *Case of Mejía Idrovo v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 5, 2011. Series C No. 228, par. 106.

¹⁴⁸ IACHR, Case 12.357, Application to the I/A Court H.R., Members of the National Association of Discharged and Retired Staff of the Office of the Comptroller General of the Republic of Peru, April 1, 2008, par. 54.

Decree Law 20530.¹⁴⁹ Both judgments handed down by the Court point out that court rulings restoring certain labor and pension rights to the victims were not executed.

105. For its part, in connection with one of those cases, the IACHR maintained that the Peruvian State's failure to comply with judgments "distorts the practice and meaning of administration of justice and diminishes the trust felt by members of the Association in the pronouncements of judges."¹⁵⁰ The Commission has also admitted several cases alleging the same problem,¹⁵¹ which are currently awaiting a decision on the merits.

106. Along the same lines, the Commission observes that in October 1998, the Ombudsperson's Office issued a report entitled "Failure by the State Administration to Comply with Judgments."¹⁵² The Ombudsperson's Office singled out as one issue in the Judiciary the failure to execute judgments against a State entity.¹⁵³ It stated that since the Office had been established in 1993, it had processed some 101 complaints filed against a number of State entities for failure to comply with final judgments against them.¹⁵⁴ It pointed out that over half the complaints referred to "court mandates on labor matters that are then ignored."¹⁵⁵ The Office of the Ombudsperson explained that the vast majority of cases refer to judicial mandates that "involve complying with a financial obligation [such as] the adjustment of pensions"¹⁵⁶.

107. The IACHR takes note that the Ombudsperson's Office pronounced expressly on cases of judgments admitting amparo actions brought by former workers seeking payment of their pensions pursuant to Decree Law 20530.¹⁵⁷ In its report, the Ombudsperson's Office concluded that

(...) failure to execute a judgment against a State entity would amount to evasion of the State's responsibility to comply with its obligations (...).

The judge enforcing the judgment must render criminal liability effective by filing the corresponding complaint against public servants who fail to comply with judicial mandates either through a flat refusal, or by unreasonably delaying compliance with some

¹⁴⁹ I/A Court HR. *Case of the "Five Pensioners" v. Peru*. Merits, Reparations and Costs. Judgment of February 28, 2003. Series C. No. 98; and *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller) v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198.

¹⁵⁰ IACHR, Case 12.357, Application to the I/A Court H.R., Members of the National Association of Discharged and Retired Staff of the Office of the Comptroller General of the Republic of Peru, April 1, 2008, par. 63.

¹⁵¹ See, for example, IACHR. Report No. 21/09. Petitions 965.-98, 638.-03, and 1044.-04. Joined. Admissibility. National Association of Discharged and Retired Staff of the Tax Authority (SUNAT). Peru. March 19, 2009; IACHR. Report No. 4/09. Petition 914-98. Admissibility. Members of the ECASA Workers' Trade Union. Peru. February 11, 2009; and IACHR. Report No. 86/01 Case 12.319. National Federation of Maritime and Port Workers of Peru (FEMAPOR). Félix Campos Caipo, Sergio Valdivia Ayala, Asiscló Chinapro Fernández, Víctor Briceño Miranda et al. 4.101 Maritime and Riverine Workers. Peru. October 10, 2001.

¹⁵² Report of the Ombudsperson's Office No. 19, Ombudsperson's Office, The State Administration's Failure to Comply with Judgments. October 1998.

¹⁵³ Report of the Ombudsperson's Office No. 19, Ombudsperson's Office, The State Administration's Failure to Comply with Judgments. October 1998.

¹⁵⁴ Report of the Ombudsperson's Office No. 19, Ombudsperson's Office, The State Administration's Failure to Comply with Judgments. October 1998.

¹⁵⁵ Report of the Ombudsperson's Office No. 19, Ombudsperson's Office, The State Administration's Failure to Comply with Judgments. October 1998.

¹⁵⁶ Report of the Ombudsperson's Office No. 19, Ombudsperson's Office, The State Administration's Failure to Comply with Judgments. October 1998

¹⁵⁷ Report of the Ombudsperson's Office No. 19, Ombudsperson's Office, The State Administration's Failure to Comply with Judgments. October 1998.

administrative prerequisite, or by arguing a legal impossibility to comply based on an incorrect interpretation of provisions.¹⁵⁸

3. Analysis of the specific case

108. As is apparent from the proven facts, in this case there is no controversy around the fact that the members of ANCEJUB-SUNAT were incorporated to the pension scheme under Decree Law 20530 through a resolution issued by a public agency called SUNAT [National Tax Administration Superintendence]. Later, the same organization sent them a communication announcing that the application of the abovementioned scheme had been suspended. In view of this situation, the members of ANCEJUB-SUNAT filed the first amparo action. After several instances, the amparo action process ended on October 25, 1993 when the Supreme Court of Justice issued a judgment ordering the reincorporation of those people to the pension scheme under Decree Law 20530. The Constitutional Court ordered in turn to execute the judgment issued by the Supreme Court of Justice.

109. In view of the fact that said judgment was not being enforced, the members of ANCEJUB-SUNAT filed a second amparo action, which was finally dealt with by the Constitutional Court on May 10, 2001. The Constitutional Court ordered again that the judgment issued by the Supreme Court, later relapsed in a guarantee proceeding, should be complied with, reinstating the petitioners to the pension scheme under Decree Law 20530.

110. The Commission observes that it has been more than 23 years since the judgment dated October 25, 1993 issued by the Supreme Court. Furthermore, the IACHR insists that there is no controversy between the parties around the fact that the judgment execution process is still open to the date of approval of this Report.

111. The Commission sums up that throughout this long judgment execution process there have been numerous controversies for which the judicial authorities have been unable to find a final resolution for more than two decades. Thus, after the ruling issued by the Constitutional Court in June 1996, and throughout 1997 and 1998, different judicial authorities made pronouncements and nullified pronouncements on whether payments should be made by SUNAT [National Tax Administration Superintendence] or MEF [Ministry of Economy and Finance]. Later on, between 1998 and 2001 – with a second amparo action – the judicial authorities debated over whether each member of ANCEJUB-SUNAT had to bring an individual administrative and judicial claim before the courts in order to determine the concrete implications of the Supreme Court ruling for each person. It was as late as 2002, nine years after the original judgment, when the case was referred back to the execution stage and both SUNAT and MEF were repeatedly urged to be in compliance. By this time, the debate focused on identifying the individual members of ANCEJUB-SUNAT, an issue that was not solved then by the judicial authorities in the execution process. That year, SUNAT issued a resolution stating that there is no difference between the amounts derived from the judgment of the Supreme Court and the amounts the petitioners had been receiving, and therefore no reimbursement was necessary. In September 2002, this situation led to the judicial authorities to appoint an accounting expert to settle the accrued payments owed to each member of the association, including the amounts corresponding to the pensions and the reimbursements for the amounts not received as a consequence of the application of Decree Law No. 673.

112. As from that point in time to date, 16 years, there have been multiple expert reports but none of them has received final approval from the judicial authorities in charge of the judgment execution process. In this 16-year lapse, there have been periods of significant inaction and the process has faced logistic obstacles and limitations to the institutional capacity to deal with expert reports, which have been acknowledged by the Expert Report Technical Team of the Supreme Court.

¹⁵⁸ Report of the Ombudsperson's Office No. 19, Ombudsperson's Office, The State Administration's Failure to Comply with Judgments. October 1998.

113. In conclusion, the Commission considers that in this case it has been proven that, regarding the judgment execution process, the Judiciary in Peru has not implemented the necessary measures to resolve fundamental aspects, such as compliance authorities, judgment beneficiaries, net worth implications of the pension amounts, and accrued amounts not received by the beneficiaries for a period of time comprising many years, in order to comply with a court decision in favor of a group of pensioners. The abovementioned aspects are still under debate even to this day, subject to several expert reviews and reports, which have not received final approval from the judicial authorities. To that we have to add that during that period of time the alleged victims had to assume additional financial burdens, such as payment of expert fees and the costs of litigating for more than two decades seeking enforcement of a favorable judgment.

114. Given the abovementioned points, the Commission considers that 23 years after the first court judgment in favor of the members of ANCEJUB-SUNAT, the State remains in violation of their right to effective judicial protection in the event of failure to execute a final judgment in favor of the petitioners, as well as lack of effectiveness of the judicial mechanisms, which were activated later to achieve compliance. This situation rendered these individuals defenseless and in a state of judicial uncertainty that hinders enjoyment and adequate restitution of their rights recognized by the competent authorities --a status that remains the same to this date.

115. Consequently, the IACHR concludes that the Peruvian State is responsible for the violation of the rights established in Articles 25.1 and 25.2 c) of the American Convention, in connection with the obligations established in Article 1.1 of the same legal instrument, against the individuals identified in the only Annex to this Report.

116. Additionally, and taking into account the abovementioned considerations, the Commission considers that the case of the members of ANCEJUB-SUNAT is one more example of an overall structural issue that consists in noncompliance with court judgments. This situation is made even worse due to a common practice by which the judicial authorities in charge of the execution of these judgments do not take the necessary measures to resolve fundamental debates about the implementation of the judgments, nor does it use mechanisms to coercively ensure enforcement, thus materializing the right to effective judicial protection. The Commission highlights that despite being aware of this issue, the State has failed to adopt the necessary overall measures to remediate this situation and prevent its reiteration. Consequently, the Commission considers that the State is also responsible for the violation of Article 2 of the American Convention.

4. Reasonable term for execution of internal court judgments

117. Article 8.1 of the American Convention establishes that courts should decide in cases subjected to their competence within a reasonable term, as one of the elements of due process. In that sense, an extended delay may constitute, in itself, a violation of judicial guarantees¹⁵⁹. Even though the IACHR and the Court have made extensive pronouncements about reasonable terms in criminal processes, this provision may also apply to the execution of a final and binding court judgment.

118. This has been reflected in the European Court jurisprudence, establishing that an unjustified delay in the execution of a court judgment can constitute a violation to the right to have a legal process resolved in a reasonable term¹⁶⁰. The European Court emphasized that in no case shall the delay in the execution of a final and binding court judgment “compromise the essence of the laws that consecrate the right [to due process]”¹⁶¹.

¹⁵⁹ I/A Court HR. *Case of García Asto and Ramírez Rojas vs. Peru*. Judgment of November 25, 2005. Series C No.137, par. 166; *Case of Gómez Palomino vs. Peru*. Merits, Reparations, and Costs. Judgment of November 22, 2005. Series C No. 136, par. 85; and *Case of the Moiwana Community vs. Surinam*. Judgment of June 15, 2005. Series C No. 124, par. 160.

¹⁶⁰ ECHR, *Hornsby vs. Greek*. Judgment of March 19, 1997, par. 40.

¹⁶¹ ECHR, *Di Pede vs. Italy*. Judgment of September 26, 1996, par. 16.

119. As per the provisions in Article 8.1 of the American Convention, and in the light of the specific circumstances of this case, the Commission will take into consideration the following four elements to analyze reasonability of the terms: i) the complexity of the issue; ii) the procedural activity on the part of the stakeholders; iii) the behavior of the judicial authorities; and iv) how the juridical situation affects the individuals involved in the process¹⁶².

120. In connection with complexity, the IACHR notes that, in principle, this el issue is not complex, since there is a final and binding court judgment that had to be executed. Notwithstanding that, even though the specific action to determine the net worth effects of said decision for each one of the beneficiaries could entail a certain degree of complexity, but it is absolutely disproportionate for the resolution of these issues to extend over a period of 23 years.

121. Regarding stakeholders' involvement, the Commission notes that the State alleged that the delay in the process was due to the multiplicity of actions files by the members of ANCEJUB-SUNAT. In that respect, the IACHR reminds all parties of the fact that the individuals affected filing actions or remedies available in the internal legal system so as to seek enforcement of a court judgment is compatible with their rights and in itself does not imply a justification for delays in the process. In this case, the Commission has observed that the members of ANCEJUB-SUNAT followed and promoted the execution of the judgment, and the complained many times about the delay in the proceedings. In this sense, the State has failed to demonstrate that the actions of ANCEJUB-SUNAT constituted an obstacle or deferment beyond the exercise of legal means seeking enforcement of the judgment.

122. Regarding the behavior of the of judicial authorities, the Commission repeats all of the terms stated in paragraphs 110, 111 and 112 of this Report, about the way in which the judicial authorities actions during the judgment execution stage has been remarkably ineffective to solve aspects that are indispensable for enforcement.

123. As for the fourth element, the Court has stated that in order to determine reasonability of the term what has to be considered is how the duration of the process affects the legal situation of the individual involved in the process, as well as the interests at stake¹⁶³. The IACHR takes into account that when it comes to pensions, the time elapsed can have a very particular and impactful effect. Thus, the Commission noted that the petitioners informed that to date more than 100 members of ANCEJUB-SUNAT have passed away due to their age. Also, the IACHR has observed that many of these individuals are in a precarious financial and health condition, a piece of information that has not been challenged by the State. In that sense, the Commission considers that this element is applicable in this case and that it constitutes an additional factor to establish that the term is not reasonable.

124. To sum up, then, the Commission considers that the period of time elapsed –more than 23 years- without enforcing the judgment issued by the Supreme Court in October 1993 clearly exceeds a term that could be considered reasonable. Consequently, the IACHR concludes that the Peruvian State is also responsible for the violation of the right to a reasonable term established in Article 8.1 of the American Convention referring to the obligations set forth in Article 1.1 of the same legal instrument, against the individuals identified in the only Annex to this Report.

5. Right to private property vis-a-vis failure to execute internal judgments referring to pensions

¹⁶² IACHR, Report No. 28/16, Case 11,550, Admissibility and Merits, Maurilia Coc Max and others (Xaman Massacre), Guatemala, June 10, 2016. par. 145. Inter-American Court of Human Rights. *Case of Santo Domingo Massacre vs. Colombia*. Preliminary Exceptions, Merits and Reparations. Judgment of November 30, 2012. Series C No.259, par. 164.

¹⁶³ I/A Court HR. *Case of Garibaldi vs. Brazil*, Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 23, 2009. Series C No. 203, par. 138; *Case of Valle Jaramillo and others, vs. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par. 155; and *Case of Kawas Fernández vs. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, par. 115.

125. In their jurisprudence, both the Commission and the Court have developed a broad concept of property, which comprises, among other aspects, the use and enjoyment of "property," defined as those material objects susceptible of being appropriated, as well as any rights which may be part of a person's assets.¹⁶⁴ In addition, the Court has protected acquired rights, understood as rights that have been incorporated into personal net worth.¹⁶⁵ The Commission recalls that the right to property is not absolute and, accordingly, may be subject to restrictions and limitations, provided that the latter are imposed through appropriate legal channels and in accordance with the parameters established in Article 21 of the American Convention¹⁶⁶.

126. In the Case of the "*Five Pensioners*" v. Peru, the Inter-American Court declared that there had been violation of the right to property due to the financial impairment caused by failure to comply with judgments seeking to protect the right to a pension acquired by the victims in accordance with domestic regulations. In that judgment, the Court pointed out that from the time a pensioner pays his or her contributions to a pension fund and ceases to serve in the institution concerned with a view to acceding to a retirement scheme provided for by law, he or she acquires the right for the pension to be governed by the terms and conditions of that law. It also declared that the pension rights acquired by that person have "property implications" (*efectos patrimoniales*) protected under Article 21 of the American Convention.¹⁶⁷

127. Consequently, in that case the Court declared that since the State had changed the amount of the pensions being received by the alleged victims, and had not complied with court judgments issued following the filing of amparo suits, the State had violated the right to property recognized in Article 21 of the American Convention.¹⁶⁸

128. Subsequently in the judgment in the case of *Acevedo Buendía y otros Discharged and Retired Employees of the Office of the Comptroller* v. Peru, the Inter-American Court analyzed a similar case of failure to comply with judgments ordering that the victims be incorporated in the Decree Law 20530 pension scheme. The Court considered that those victims met the requirements established by that Decree and that the pension entitlement that they had acquired had an impact on the property of those who received the monthly payments¹⁶⁹. The Court took into account the fact that the Constitutional Court had issued judgments ordering the State to pay the victims the pension amounts that had been withheld. Based on that, the Court considered that the victims had been harmed inasmuch as they "could not effectively exercise their right to property over the patrimonial effects of their legally recognized adjustable pension; those effects would refer to the amounts the victims stopped receiving."¹⁷⁰

129. The Commission considers that said precedents are fully applicable to this case, to the extent that both the members of ANCEJUB-SUNAT, and the victims in the two abovementioned issues: i) legally accessed the pension scheme under Decree Law 20530; ii) were deprived of the possibility to continue enjoying the benefits of said scheme; iii) filed court actions in order to request reinstatement; iv) obtained a

¹⁶⁴ IACHR, Case 12.357, Application to the I/A Court H.R., Members of the National Association of Discharged and Retired Staff of the Office of the Comptroller General of the Republic of Peru, April 1, 2008, par. 72. I/A Court HR. *Case of Chaparro Álvarez and Lapo Ñiquez vs. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 21, 2007. Series C No. 170, par. 174.

¹⁶⁵ I/A Court HR. *Case of the "Five Pensioners" v. Peru*. Merits, Reparations, and Costs. Judgment of February 28, 2003. Series C No. 98, par. 102.

¹⁶⁶ I/A Court HR. *Case of Salvador Chiriboga vs. Ecuador*. Preliminary Exception and Merits. Judgment of May 6, 2008. Series C No. 179, par. 54.

¹⁶⁷ I/A Court HR. *Case of the "Five Pensioners" v. Peru*. Merits, Reparations, and Costs. Judgment of February 28, 2003. Series C No. 98, par. 103.

¹⁶⁸ I/A Court HR. *Case of "Cinco Pensionistas" vs. Peru*. Merits, Repairs and Costs. Judgment of February 28, 2003. Series C No. 98, par. 103.

¹⁶⁹ I/A Court HR. *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") vs. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, par. 88.

¹⁷⁰ I/A Court HR. *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") vs. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2009. Series C No. 198, par. 88.

final and binding court judgment favorable to their petition; and v) to date, the execution of said judgments has not been enforced, given that the concrete property effects of the judgment issued on October 25, 1993 have not been determined. Failure to determine those effects has generated a situation of uncertainty regarding the amounts pursuant to the judgment that were received or should have been received by the victims.

130. In conclusion, the Commission considers that the Peruvian State is responsible for the violation of the right to private property set forth in Article 21 of the American Convention referring to the obligations established in Article 1.1 of the same legal instrument, against the individuals identified in the only Annex to this Report.

VI. CONCLUSIONS

131. Based on the factual and legal considerations presented throughout this Substantial Report, the Inter-American Commission concludes that the State of Peru is responsible for the violation of the right to judicial guarantees, private property and judicial protection, established in Articles 8.1, 21, 25.1 and 25.2.c) of the American Convention, referring to the obligations established in Article 1.1 of the same legal instrument, against the individuals identified in the only Annex to this Report. Furthermore, the Commission concludes that the State has failed to comply with the obligations established in Article 2 of the same legal instrument.

VII. RECOMMENDATIONS

132. Based on the preceding conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE PERUVIAN STATE TO,

1. Comply as soon as possible with court judgments issued by the Supreme Court of Justice on October 25, 1993, and by the Constitutional Court on June 25, 1996, and May 10, 2001. This entails immediate adoption on the part of the Peruvian State of any necessary measures to effect the payment of pensions to the individuals identified in the only Annex herein, under the terms in which the benefit was legally recognized in Court, i.e., under the scheme set forth as per Decree Law 20530. The previous statement includes the payment of any amounts the petitioners failed to receive from the moment of their retirement to the date when the payment is made effective. Taking into account how ineffective the court judgment execution process has been for more than 23 years, and how urgent enforcement of the decision is, given the advanced age of the victims, the Commission urges the State to immediately implement an expeditious mechanism so that in the briefest possible term the property effects of the favorable judgment are established and payment is made effective without any further delays or hindrances.

2. Entirely repair the violations detailed in this Report, including due compensation for material and immaterial damages caused. This reparation should not only be implemented in the case of members of ANCEJUB-SUNAT who are still alive, but also in the case of those who have passed away waiting for compliance with their favorable judgment. In the latter case, the State shall make the reparation effective for their family members.

3. Adopt measures of a legal nature, or other nature, that may be necessary to avoid reiteration of the violations listed in this Report. To that end, the State shall order measures so as to: i) Ensure that State bodies or agencies comply with court judgments recognizing pension rights for former workers; ii) Ensure that court judgment execution processes are in line with conventional standards to make them simple and expeditious; and iii) Ensure that judicial authorities dealing with these processes are legally empowered and put the necessary coercive mechanisms in practice in order to guarantee compliance and enforcement of court judgments.