INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE NATIONAL FEDERATION OF MARITIME AND PORT WORKERS (FEMAPOR) *V.* PERU

JUDGMENT OF FEBRUARY 1, 2022

(Preliminary Objections, Merits, Reparations and Costs)

In the *Case of the National Federation of Maritime and Port Workers* (*FEMAPOR) v. Peru,*

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), composed of the following judges:[1]

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

also present,

Pablo Saavedra Alessandri, Registrar, and
Romina I. Sijniensky, Deputy Registrar,

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

---

[1] This judgment was delivered at the 145th regular session of the Court. Pursuant to Articles 54(3) of the American Convention, 5(3) of the Statute of the Court and 17(1) of its Rules, the "judges shall continue in office until the expiration of their term. However, they shall continue to serve with regard to cases that they have begun to hear and that are still pending, for which purposes they shall not be replaced by the newly elected judges." Therefore, by decision of the Court, the members of the Court, including its officers, who participated in the deliberation and signing of this judgment are those who heard the case.

I
INTRODUCTION OF THE CASE AND THE CAUSE OF ACTION

1. *The case submitted to the Court.* – On July 26, 2019, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court the case of the *National Federation of Maritime and Port Workers* against the Republic of Peru (hereinafter "the State" or "Peru"). According to the Commission, this case concerns the alleged infraction of the right to judicial protection due to the failure to comply with a decision on a writ of amparo by the Supreme Court of Justice of Peru (hereinafter "the Supreme Court") delivered on February 12, 1992 (hereinafter also "the decision of February 12"), which fixed the method of calculating the additional pay increase of 4,091[2] former maritime, port and river workers. It added that 2,317[3] beneficiaries of the original decision have continued their judicial claim since 2010, arguing that the computation of the payment of their social benefits was erroneous. The Commission considered that, with respect to those workers, the violation continues to the present date and that the lapse of more than 25 years without full compliance of the Supreme Court's decision was "by any lights" longer than could be deemed reasonable The Commission concluded that the State had violated Articles 8(1), 21(1), 21(2), 25(1) and 25(2)(c), read in conjunction with the obligations established in Article 1(1) thereof.

2. *The following proceedings took place before the Commission*:

a) *Petition.* – On November 10, 1998, the representatives[4] lodged the initial petition before the Commission.

b) *Admissibility Report.* – On October 10, 2001, the Commission adopted Admissibility Report No. 86/01, by which it declared the petition admissible.[5]

c) *Report on the Merits.* – On May 9, 2018, the Commission, pursuant to Article 50 of the Convention, adopted the Report on the Merits No. 66/18 (hereinafter also "Merits Report"), in which it arrived at a series of conclusions[6] and formulated various recommendations to the State.

d) *Notification to the State.* – The Merits Report was notified to the State on July 26, 2018. In its first report, the State "fully denied" that there was an issue of general interest regarding the failure to comply with the decisions.

3. *Submission to the Court.* – On July 26, 2019, after having granted the State three extensions, the Commission submitted to the jurisdiction of the Court the totality of the facts and human rights violations described in the Merits Report "due to the necessity of obtaining justice and reparations."[7]

---

[2] The Court preliminarily notes that, although the Commission refers to 4,091 alleged victims in its Merits Report, according to the reasoning and the determination in Chapter V (Preliminary Consideration) of this judgment, the number of alleged victims in this case 4,090 (see *infra* paras. 30 to 34).

[3] The Court preliminarily notes that, although both the parties and the Commission refer to a sub-group of 2,309 workers, according to the evidentiary file in this case this number should be 2,317. These persons are listed in Annex II of this judgment (see *infra* para. 60 and footnote 63).

[4] Sergio S. Valdivia Ayala, Víctor J. Guerrero Cassuso, Julio G. Rossi Mérida and María Luisa G. Valdivia represented a group of the alleged victims before the Court. Annex I of this judgment includes the names of the victims in this case and the names of their respective representatives.

[5] The Report was notified to the parties on October 24, 2001.

[6] The Commission concluded that Peru was responsible for violating Articles 8(1), 21(1), 21(2), 25(1) and 25(2)(c) of the Convention, read in conjunction with the obligations established in Article 1(1) thereof, to the detriment of the persons included in the sole annex to the Merits Report.

[7] As its delegates before the Court, the Commission named Commissioner Joel Hernández García and the then

4. *Requests of the Inter-American Commission.* – The Commission requested that the Court declare the international responsibility of the State for the violations described in its Report on the Merits (*supra* para. 2(c)). It also requested that the Court order the State to grant measures of reparation, which are specified and analyzed in Chapter IX of this judgment. The Court notes with concern that more than 20 years had elapsed between the lodging of the initial petition before the Commission and the submission of the case to the Court, which has resulted in an even greater impact on the alleged victims in this case, who were than older than 70 years of age with some of them even in their nineties, which requires the application of a reinforced standard of expeditiousness of the procedures. The Court notes that, in cases in which the alleged victims are older persons on whom eventual violations may have a greater impact, this type of cases must be given priority and be resolved expeditiously.

II
PROCEEDINGS BEFORE THE COURT

5. *Notification to the representatives and to the State.* – The Court notified the Commission's submission of the case to the representatives[8] and to the State on February 11, 2020.

6. *First brief with pleadings, motions and evidence.* – By decisions 1/20 of March 17, 2020 and 2/20 of April 16, 2020, the Court suspended the calculation of all the time limits due to the emergency caused by the COVID-19 pandemic and extended the deadline for the presentation of the brief with pleadings, motions and evidence (hereinafter "the brief with pleadings and motions") until June 21, 2020. On June 18, 2020, the representatives presented their brief, which substantially coincided with the Commission's arguments, and requested that the Court declare the international responsibility of the State for the violation of the same articles alleged by the Commission.

7. *Second brief with pleadings and motions.* – On April 11, 2020, Dora Meneses Huayra appeared before the Court as the representative of 1,560[9] alleged victims. After having examined the observations of the parties and the evidence presented, the President of the Court accepted the representation of Ms. Meneses Huayra on behalf of those persons and granted her a new deadline to present the corresponding brief with pleadings and motions. On September 20, 2020, Ms. Meneses Huayra presented her brief, which substantially coincided with the Commission's arguments and which requested that the Court declare the international responsibility of the State for the violation of the same articles alleged by the Commission.

8. *Answering brief.* – On March 18, 2021,[10] the State presented its answering brief to the submission of the case, the Report on the Merits and the briefs with pleadings and motions of the representatives. In its brief, the State filed two preliminary objections and refuted the alleged violations and the measures of reparations proposed by the Commission and the representatives.

9. *Public hearing.* – On May 20, 2021, the President of the Court (hereinafter "the President") issued an order that called the State, the representatives and the Commission to a public hearing in

---

Executive Secretary Pablo Abrão. It also named Paulina Corominas, as legal advisor.

[8] Sergio S. Valdivia Ayala, Víctor J. Guerrero Cassuso, Julio G. Rossi Mérida and María Luisa G. Valdivia were the representatives of one group of alleged victims, while Dora Meneses Huayra represented another group. Annex I of this judgment contains the names of the victims in this case and the names of their respective representatives.

[9] Annex I of this judgment contains the names of the alleged victims in this case and the names of their respective representatives. The information in the annex is taken from information included in the evidentiary record of this case.

[10] On November 18, 2020, the second brief with pleadings and motions of Ms. Meneses Huayra was transmitted to the State. Since there were two briefs, the State was granted four months to present an answering brief to the submission of the case and to the two briefs with pleadings and motions.

order to receive their final oral arguments and observations, respectively, on the preliminary objections and on the eventual merits, reparations and costs, as well as to receive the statements of two experts proposed by the State.[11] Due to the exceptional circumstances caused by the COVID-19 pandemic, the public hearing was held June 7-8, 2021, during the 142nd regular session of the Court, by video conference in accordance with the terms of the Rules of the Court.[12]

10. *Final written arguments and observations.* – On July 6, 2021, Ms. Meneses Huayra submitted her final written arguments. Two days later, Mr. Valdivia Ayala, Mr. Guerrero Cassuso, Mr. Rossi Mérida and Ms. Valdivia and the Commission presented their final written arguments and observations, respectively. The State submitted its final written arguments on July 12, which was after the deadline; thus the Court, on September 1, declared them inadmissible.[13]

11. *Deliberation of the present case.* – The Court deliberated this judgment in meetings held virtually on January 31 and February 1, 2022.[14]

III
JURISDICTION

12. The Court has jurisdiction to hear this case, pursuant to the terms of Article 62(3) of the Convention, since Peru ratified the Convention on July 12, 1978 and accepted the contentious jurisdiction of the Court on January 21, 1981.

IV
PRELIMINARY OBJECTIONS

13. The ***State*** filed two preliminary objections: (i) a request that the Court carry out a control of legality of the Commission's act of incorporating into its Merits Report events that occurred after the issuance of its Admissibility Report and (ii) the failure to exhaust domestic remedies. The Court will analyze each objection separately.

A. Preliminary objection regarding control of legality of the actions of the Commission

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

14. The ***State*** indicated that the Commission, in its Merits Report, incorporated "events that occurred after the admissibility stage of the case, events about which the State was not able to adopt

---

[11] *Cf. Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru.* Call to a public hearing. Order of the President of the Court of May 20, 2021. Available at: https://www.corteidh.or.cr/docs/asuntos/federacion_nacional_de_trabajadores_maritimos_y_portuarios_20_05_21.pdf. On May 31, 2021, in view of the request for reconsideration filed by the State, the Court modified the manner of the statement of the expert Ernesto Alonso Aguinaga Meza and that of Edmundo Villacorta Ramírez, both proposed by the State. *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru.* Order of the Court of May 31, 2021. Available at: https://www.corteidh.or.cr/docs/asuntos/femapor_31_05_21.pdf

[12] Appearing at the hearing were: (a) for the Commission: Flávia Piovesan, Marisol Blanchard, Erick Acuña and Daniela Saavedra; (b) for the representatives: Mr. Valdivia Ayala, Ms. Valdivia Bocanegra, Ms. Meneses Huayra, Fernando Joel Munayco Castro and Hugo Juan López Avanto; (c) for the State: Carlos Miguel Reaño Balarezo, Carlos Llaja Villena, Nilda Peralta Zecenarro, Judith Cateriny Córdova Alva and Dévora Eloísa Silva Ipince.

[13] Note of the Secretariat of the Court-18-2019/165, of September 22, 2021.

[14] The judgment was deliberated and adopted during the 146th regular session, which, due to the exceptional circumstances caused by the COVID-10 pandemic, was held using technological means in accordance with the terms of the Rules of the Court.

a position at that stage and, therefore, could not dispute them, which affected the State's right of defense." It specifically pointed out that the facts related to the subsequent additional claim by 2,317 of the original beneficiaries regarding "fringe benefits" and "other calculations" found in the Expert Report 240-2015-PJ-EV of December 2, 2015 (hereinafter "the Expert Report") were "erroneously" included in the Report on the Merits. It added that this claim is being processed and has not yet been resolved with the force of *res judicata* domestically The State also claimed that it was "severely limited in exercising its right of defense since it was not able to file preliminary objections and/or to substantiate arguments that would refute it."

15. Mss. ***Valdivia Ayala, Guerrero Cassuso, Rossi Mérida*** and ***Valdivia Bocanegra*** pointed out that the State had not questioned the Admissibility Report in a "timely fashion" nor "did it do so subsequently." They also indicated that the State carried out actions and actively participated in the proceedings before the Commission "presenting the documentation that proved its position regarding the merits of the matter" and, thus, the State cannot claim that its right of defense was affected.

16. Ms. ***Meneses Huayra*** indicated that the facts related to the claim of 2,317 alleged victims, to which the State referred, involve the alleged failure to comply with the decision of February 12 and that, therefore, they are part of the controversy submitted to the Commission. She added that the payments suggested in the Expert Report were not a new fact, but rather that it was the materialization of what had been decided in the aforementioned decision. Finally, she noted that it was not demonstrated that the State was prejudiced in any way.

17. The ***Commission*** claimed that the State had not proved the "existence of serious harm to its right of defense" that would justify that the petition be declared inadmissible and stated that the proceedings respected the adversarial principle in all its aspects. It also noted that the alleged events were supervening to the Admissibility Report and stem from the principal violation.

a.2 Considerations of the Court

18. The ***Court*** recalls that, in matters under its consideration, it is authorized to exercise a control of legality over the Commission's actions, which implies maintaining a fair balance between the protection of human rights, the ultimate goal of the inter-American system, and legal security and procedural fairness that would ensure stability and confidence in international protection. This control is appropriate in cases in which a party alleges that there has been a serious error that infringes its right of defense, in which event it must effectively demonstrate such harm. A mere complaint of discrepancy of criteria with respect to the actions of the Commission is not sufficient.[15]

19. The Court observes that the events to which the State referred are related to the additional and subsequent claim, which stem from the principal events that are claimed to be violations, made by a sub-group of alleged victims regarding the delayed enforcement of the decision of February 12. The Court, therefore, agrees with the argument of Ms. Meneses Huayra and of the Commission and holds that the claim is a supervening act to the Admissibility Report that, in principle, stems from the primary events that are alleged to be in violation of the Convention. The Court also notes that the Commission, upon being informed of the supervening event, transmitted that information to the State, which had the opportunity to present the observations that it deemed pertinent.[16] Therefore, the State has not only not demonstrated that the Commission committed an error that affected its

---

[15] *Cf. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2007. Series C No. 172, para. 32 and *Case of Cuya Lavy et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 28, 2021. Series C No. 438, para. 35.

[16] The Court observes that, at least as of June 22, 2016, the State was aware of these supervening events (evidence file, f. 1182).

right of defense before the Commission, but also that the inclusion of those events is proper to the extent that they have been ruled supervening. The Court, therefore, rejects the preliminary objection.

B. Preliminary objection on the alleged failure to exhaust domestic remedies

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

20. The ***State*** put forward two arguments relating to this preliminary objection. The first, regarding the 2,317 original beneficiaries' subsequent claim of "fringe benefits" and "other calculations"[17] as indicated in the Expert Report, that it is "an issue that has not yet been resolved by the domestic jurisdiction" where, moreover, there is "a precautionary measure issued by the judiciary that suspends its effects." The State added that there has not been an unjustified delay that would be an exception to the rule of the exhaustion of domestic remedies since the Expert Report was issued on December 2, 2015, adopted on July 1, 2016 and confirmed on March 16, 2017, although the legality of the confirmation is now being "questioned by the State."

21. Secondly, it indicated that, in relation to this same controversy on a subsequent claim made by 2,317 beneficiaries, the process of executing the decision was not an appropriate channel for such claim, but rather the proper manner was through a labor body that is designed for the payment of social benefits and other work-related rights, such as that of receiving fringe benefits. It specified that the procedure for enforcement lacks an evidentiary stage and, therefore, is "not an appropriate and effective channel" to formulate these claims.

22. Mss. ***Valdivia Ayala, Guerrero Cassuso, Rossi Mérida*** and ***Valdivia Bocanegra*** pointed out that it is the State itself that has been filing different remedies and claims "with the clear motive to delay and to not comply with its obligation."

23. Ms. ***Meneses Huayra*** argued that the determination in the Expert Report was final since it had been adopted and confirmed on appeal. She also indicated that the precautionary measure referred to by the State had been "lifted judicially."

24. The ***Commission*** indicated that this preliminary objection concerned supervening events and that the victims should not be "required to exhaust domestic remedies for each supervening event." It stressed, moreover, that the State did not invoke this objection at the proper procedural moment, which was when it became aware of the representatives' brief that contained additional observations on the merits.

b.2 Considerations of the Court

25. Pursuant to Article 46(1) of the Convention, in order to admit a petition or a communication lodged with the Commission under Articles 44 or 45 of the Convention, it is necessary that "the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."[18] However, the remedies must not only formally exist, but

---

[17] That is: compensation for time of service, bonuses of July and December, the payment of 30% for years of service, schooling, vacation pay for 90 and 91, May 1 holiday pay and educational allowance.

[18] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, supra*, para. 85 and *Case of Teachers of Chañaral and other municipalities v. Chile. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 10, 2021. Series C No. 443, para. 24.

they must also be adequate and effective, as shown by the exceptions contemplated in Article 46(2).[19]

26. It is the Court's consistent case law that an objection to the exercise of its jurisdiction based on the failure to exhaust domestic remedies must be presented at the proper procedural moment;[20] in other words, during the admissibility proceedings before the Commission[21] and must precisely indicate the remedies that must be exhausted and their effectiveness. Here, however, the State alleged the failure to exhaust domestic remedies on events occurring after the admissibility stage and, therefore, the principle of procedural preclusion is not applicable.[22] The Court, nevertheless, considers that the State had the duty to present its arguments on admissibility before the Commission at the first possible opportunity.[23] The Court notes that, as indicated by the Commission and not rebutted by the State, when the Commission learned of these supervening events, that information transmitted to the State, which had the opportunity to submit the observations that it deemed pertinent, including, if it so wished, the exception to the exhaustion of the corresponding domestic remedies. The Court observes that the State filed this preliminary objection for the first time with its answering brief; in other words, at a procedural moment long after it was informed on these supervening events and, therefore, its presentation is time-barred and, thus, the preliminary objection is rejected.

V
PRELIMINARY CONSIDERATION

27. The ***State*** questioned the inclusion of various groups of alleged victims by the Commission and indicated that:

1) Of the 4,091 persons identified by the Commission, 30 should be excluded as it has not been able to fully identify them domestically.

2) The Commission did not identify, in its Merits Report, 2,317 former maritime and port workers represented by FEMAPOR who have continued their claims since March 2010 and, therefore, the State requested that they be excluded from the case.

3) Of these 2,317 alleged victims, there were questions about 64 persons as it was considered that they were not part of this subsequent domestic proceeding.

4) Finally, it questioned the addition, by the representative Meneses Huayra, of 310[24] persons who were not part of the sub-group of 2,317 alleged victims.

28. Ms. ***Meneses Huayra*** argued that the group of 2,317 alleged victims were part of the 4,091 alleged victims who were the beneficiaries of the decision of February 12 and, therefore, should not be excluded from this process.

---

[19] *Cf. Case of Velásquez Rodríguez v. Honduras*. *Merits*. Judgment of July 29, 1988. Series C No. 4, para. 63 and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 6, 2019. Series C No. 375, para. 25.

[20] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, supra*, para. 88 and *Case of Muelle Flores v. Peru, supra*, para. 26.

[21] *Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 2, 2004. Series C No. 107, para. 81 and *Case of Teachers of Chañaral and other municipalities v. Chile, supra*, para. 21.

[22] *Cf. Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 25, 2010. Series C No. 212, para. 28 and *Case of Mémoli v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 22, 2013. Series C No. 265, para. 48.

[23] *Cf. Case of Mémoli v. Argentina, supra*, para. 50.

[24] *Infra* para. 34 and footnote 31.

29. The ***Commission*** indicated that the Merits Report identified 4,091 beneficiaries of the decision of February 12 and that, within that group, a sub-group of 2,317 persons have continued to make additional claims since March 2010. The Commission, therefore, considered that those persons were identified as they were part of the group of 4,091 persons identified as alleged victims.

30. The ***Court*** preliminarily notes that, although the Commission refers to 4,091 alleged victims in its Merits Report, it submitted a list that contained 4,043 alleged victims.[25] Moreover, the Court observes that Ms. Meneses Huayra included and accredited documentation on the existence of another four alleged victims[26] who were not on the list transmitted by the Commission. This is also true regarding 70 alleged victims whom the Court has verified as part of the group that domestically litigated the non-compliance of the decision of February 12.[27] Pursuant to Article 35(2) of the Rules, the Court considers that these 74 persons are also alleged victims.

31. With respect to the 30 persons whose exclusion was requested by the State, the Court observes that there is no evidentiary documentation on 27 of them that accredits their condition as alleged victims and, therefore, they should be excluded.[28] With respect to José Antonio Cirilo Crisóstomo Bellaza, whose exclusion was also requested by the State, the Court notes that he was identified in the record of the case, where it is noted that the State had made payments to him under the terms of the decision of February 12.[29] Therefore, the petition to exclude must fail. Finally, with respect to Andrés Ríos Soto and Alberto Carrasco, both of whom the State also requested that they be excluded, the Court notes that they were not included as alleged victims by the Commission. Thus, the number of alleged victims is, in principle, 4,090, barring subsequent determinations in this judgment's chapter on the Merits.

32. Secondly, the Court observes that, as indicated by the Commission, the sub-group of 2,317 persons referred to by the State is part of the group of persons who have been identified as alleged

---

[25] The final number was arrived at by excluding repeated names and the blank spaces that were on the list that was consecutively numbered.

[26] They are: Eloy Asunción Barrientos Espinosa, Wilfredo Jesús García Oballe, Leonardo Jesús Zuluoaga Cáceres and Jorge Zuta Vásquez.

[27] They are: Carlos Aguilar Mogollon, Guillermo Amaya Moreno, Humberto Araujo Miranda, Augusto Avila Augurto, Juan Francisco Benites Gomez, Andres Avelino Carrascal Bellodas, Francisco Javier Castellano Rivandeneyra, Juan Manuel Castillo Benavides, Miguel Jesus Castro Chunga, Roberto Castro Mena, Marcelino Castro Moran, Bernardo Chunga Alzamora, Nicolas Alfredo Coronado Castro, Hermilio Eufracio Crisostomo Belleza, Fren Espinoza Farias, Norberto Segundo Farfan Cupen, Walter Flores Chunga, Jorge G. Flores Jimenez, Felix Luciano Flores Macedo, Pedro Cesar Gil Nuñez, Pedro Gomez Alban, Francisco Gomez Preciado, Ruben Grados Meza, Pablo Guillermo Soto, Manuel Hidalgo Rojas, Matias Incio Barboza, Francisco Izquierdo Galan, Melecio Casimiro Lopez Marquez, Felix Alberto Lopez Rios, Tomas Mauricio Alamo, Eduardo Mauricio Peña, Jesus Mauricio Peña, Manuel Mauricio Peña, Marcelino Mauricio Peña, Fidel Mogollon Neyra, Luis Jorge Morales Lopez, Antonio Emiliano Murillo Pacheco, Marcos Alberto Navarro Ayala, Ricardo Ysidro Pachas Almeryda, Luis Miguel Palomino Salazar, Jose Esteban Paz Zapata, Manuel Natividad Pinday Monasterio, Raymundo Prieto Martinez, Pedro Alfonso Quevedo Silva, Victor Hipolito Quinde Coronado, Jose Pedro Risco Vivas, Juan Manuel Rojas Reyes, Manuel Alberto Rosado Cobeñas, Julio Humberto Rosado Galvez, Jose Rosado Taboada, Miguel Rueda Agurto, Arnulfo Ruiz Boulanger, Victor Luis Sancarro Oballe, Pedro Sanjinez Saucedo, Fernando Renee Santa Cruz Salas, Manuel Ignacio Sernaque Farias, Manuel Alfredo Sotero Barriga, Carlos Gerardo Timana Guarnizo, Carlos Alberto Torres Urbina, Jose Ponciano Valerio Rodriguez, Wilfredo Vargas Atoche, Higinio Efren Vargas Benites, Carlos Enrique Vargas Coronado, Antonio Cesar Vasquez Landa, Martin Venegas Morales, Alejandro Villacres Ramirez, Santos Victor Vivas Vargas, Pedro Adulfo Zapata Agurto, Pedro Orlando Zevallos Gamboa and Domingo Bernardino Zapata Agurto.

[28] They are: Jorge M.Aguilar Arana, Julio Aguilar Hernandez, Marco A.Angeldonis Alcazar, Pedro Aponte Ochoa, Felix Baluarte Rojas, Abelardo Cardenas Goyoneche, Ernesto C.Casana Calderon, Jorge Cortez Martinez, Felix Curay Dioses, Luis Farro Gonzales, Antonio Felipa Sanchez, Vicente Lopez Riega, Julio Padilla Torrico, Domingo Paiva Querebalu, Guillermo Paniagua Vargas, Miguel Pastor Salazar, Freddy Peña Fuentes, Segundo Ramirez Chiroque, Andres Reyes Soto, Rolando Ruiz Mendoza, Guillermo Salazar Hurtado, Servando Sanjinez Palacios, Fermin Segura Rojas, Ricardo Ugolini Murillo, Vicente Valencia Nuñez, Jaime Vivanco Medina and Jesus Zevallos Solari.

[29] *Cf*. List "Account of the duly identified former workers who were paid by the MEF, pursuant to the statement approved by the Sixth Civil Court of Callao" (evidence file, fs. 55010 and ff.)

victims due to the non-compliance of the decision of February 12. The Court notes that, although it is true that the Commission did not specify which persons belong to this sub-group, they are clearly identifiable since they were named in the part of the Expert Report on the subsequent claims made by this sub-group on "fringe benefits" and "other calculations."[30] Although the validity of the contents of that report was rebutted by the State, it does not affect the fact that these alleged victims are identified as such, which rebuts the State's arguments on the failure to identify the victims.

33. Thirdly, with respect to the State's argument that the persons belonging to that sub-group must be excluded because they are involved in the domestic controversy that is being questioned, the Court considers that those alleged victims were identified during the domestic proceedings and that the validity of the domestic decision depends on the analysis of the merits of the case. Therefore, the State's request to exclude those persons must be denied.

34. Finally, with respect to the group of 309[31] persons who have been added as alleged victims by Ms. Meneses Huayra,[32] the Court notes that those persons are on the Commission's list of alleged victims and, thus, the State's request to exclude those persons is without merit.

VI
EVIDENCE

A. Admissibility of the documentary evidence

35. The Court received various documents submitted as evidence by the Commission, by the representatives and by the State that, as in other cases, are admitted in the understanding that they were presented at the proper procedural moment (Article 57 of the Rules).[33]

36. The Court notes, in the first place, that Mss. ***Valdivia Ayala, Guerrero Cassuso, Rossi Mérida*** and ***Valdivia Bocanegra*** submitted liquidations of several of the former workers with briefs of September 1 and 14, 2020 and October 7, 2021, prior to the presentation of the brief with requests and arguments.

---

30 That is: compensation for time of service, bonuses for July and December, payment of 30% for years of service, schooling, vacation pay for 90 and 91, May 1 holiday pay and educational allowance.

31 The Court has verified that the number of victims is 309 and not 310, since one of the victims appears twice (Enrique Maresco Atoche).

32 *Cf.* List "Of the remaining 1,789 alleged victims of the second (II) group: 310 are represented by Ms. Meneses Huayra (evidence file, f. 54031 and ff.).

33 Documentary evidence may be presented, in general and pursuant to Article 57(2) of the Rules, together with the briefs of submission of the case, with pleadings and motions and the answering brief, as appropriate. It is not admissible after those procedural opportunities, save for the exceptions established in that article (force majeure, serious impediment) or unless it involves a supervening event; in other words, occurring after those procedural moments. *Cf. Case of the Barrios Family v. Venezuela. Merits, Reparations and Costs.* Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18 and *Case of Digna Ochoa and family members v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 25, 2021. Series C No. 447, para. 39.

37. The Court also observes that Ms. ***Meneses Huayra*** submitted 11 new annexes,[34] together with her observations on the preliminary objections filed by the State, and two more annexes[35] with her final arguments.

38. The ***State*** opposed the admission of the annexes submitted by Ms. Meneses Huayra with her observations to the preliminary objections, arguing that they had been presented extemporaneously and that the representative did not offer any allegations, arguments or a clear justification on the matter.

39. With respect to Annex 6 to the brief on her observations on the preliminary objections, as well as to the two annexes with her final arguments, the ***Court*** observes that they contain information on events after the presentation of her brief with pleadings and motions and, therefore, are admissible under the terms of Article 57(2) of the Rules.

40. Regarding the remaining annexes submitted by Mss. Valdivia Ayala, Guerrero Cassuso, Rossi Mérida and Valdivia Bocanegra, as well as by Ms. Meneses Huayra, the Court observes that those representatives have not provided a justification, in the terms of the aforementioned article, for their exceptional admittance inasmuch as they bear a date prior to their respective briefs with pleadings and motions. Therefore, those documents are inadmissible for being time-barred.

B. Admissibility of the testimonial and expert evidence

41. The Court deems it pertinent to admit the statements made by affidavit[36] and in the public hearing[37] to the extent that they are in accordance with the object that was defined by the President in the order that authorized their receipt and stated the object of the case.[38]

---

[34] That is, Annex 1: Copy of Order 529 of July 1, 2016, issued by the Sixth Civil Court in File 225-1990, which adopted the Report of the Expert No. 240-2016-PJ-EV of December 2, 2015; Annex 2: Copy of Court Order 538 of March 16, 2017 issued by the Standing Civil Chamber of the Superior Court of Callao, which confirmed Order 529; Annex 3: Copy of the Report of the Expert 9768-2017 regarding the writ of amparo filed by the Office of the Legal Counsel of the Superior Court of Lima; Annex 4: Copy of Order No. 1 of June 14, 2017 of 9768-2017, which declares inadmissible the request; Annex 5: Copy of the Court Order of May 8, 2018 issued by the Second Constitutional Chamber of the Superior Court of Lima, which confirms Order No. 01; Annex 6: Copy of the decision issued by the judge of the First Constitutional Court of Lima in File 8128-2014, of April 5, 2021, which declared without merit the request of amparo filed against Order 496 issued by Sixth Civil Court of Callao and against Court Order No. 4 issued by the Standing Civil Chamber of the Superior Court of Callao; Annex 7: Copy of the Report of File 19987-2011, relating to the remedy of amparo filed by the Office of the Legal Counsel of the MEF before the Ninth Constitutional Court of Lima, which impugned Order 437 of December 28, 2010 and Court Order 04 of June 8 issued in File 225-1990; Annex 8: Copy of Order 437 of December 28, 2010 and Court Order 04 of June 8, 2011 issued in File No. 225-1990; Annex 9: Copy of the judgments of the Constitutional Court in Files 03088-2009- PA/TC and 5200-2011-PA/TC, of August 23, 2010 and September 7, 2021; Annex 10: FINAL MEMORIAL 1991-1992, of the Commission of the Dissolution of the CCTM, and Annex 11: the "(70) files," which contain the liquidations of the social benefits, calculations of interest, vacations, extra month of pay at the end of the year and the Additional Pay Increase, as well as the procedures and the API calculations tables of the Commission of Dissolution, to the maritime and port workers.

[35] That is, Annex 1: Order 34, notified on May 6, 2021, decision of the First Constitutional Court of Lima, which declared without merit the writ of amparo filed by the Office of the Legal Counsel of the MEF, and Annex 2: Resolution 13, which upheld the challenge presented by the Maritime Workers and which left without effect the precautionary measure, agreeing to send the matter to the judge of the Sixth Civil Court, so as to leave without effect the suspension of Resolution 496 and Resolution 04 issued in File 225-1990.

[36] Affidavits were received from Rocío del Pilar Mercedes Montero Lazo, Julio La Rosa Sánchez Bayes, Edmundo Villacorta Ramírez, Marco Antonio Lozano Huaracha and Joel Freddy Segura Alania, all proposed by the State.

[37] Statements were received from Ernesto Alonso Aguinaga Meza and Dante Ludwig Apolín Meza, both proposed by the State.

[38] The purposes of the statements may be found in the Order of the President of the Court of May 20, 2021. Available at: https://www.corteidh.or.cr/docs/asuntos/federacion_nacional_de_trabajadores_maritimos_y_portuarios_20_05_21.pdf

VII
FACTS

42. In this chapter, the Court will establish the facts of the case on the basis of the factual framework submitted to it by the Commission with respect to (i) the background information; (ii) the domestic proceedings initiated by all the maritime and port workers, and (iii) the additional subsequent claims initiated by a sub-group of 2,317[39] maritime and port workers.

A. Background information

43. This case concerns 4,090[40] maritime and port workers, organized locally into unions and affiliated nationally with the National Federation of Maritime and Port Workers (FEMAPOR) of Peru, who until March 11, 1991 worked on a rotational basis under the control and rules of the Maritime Labor Control Commission (hereinafter "the CCTM"), a dependency of the Ministry of Defense, which was charged with regulating and enforcing the existing work rules related to maritime work, as well as to oversee their compliance.

44. That same day, due to the "serious economic-financial crisis" of the CCTM that prevented it from "continuing to comply with the objectives for which it was created,"[41] the workers were dismissed, the CCTM was dissolved and a Commission of Dissolution of that agency was created with certain obligations, such as payment of the workers' entitlements and social benefits.[42] In order to collect the workers' wages, entitlements and social benefits, the Government issued Ministerial Resolution 303-91 TC/15.03, by which it created a fund from multiple employers that averaged USD 1,300,000.[43]

B. Domestic proceedings regarding the total number of alleged victims

b.1) First writ of amparo

45. On August 20, 1990, prior to the dissolution of the CCTM, FEMAPOR presented a writ of amparo before a lower court of Callao against the CCTM because it considered that Article 5 of Law 25,177 was being applied incorrectly. That article reads as follows:

> Article 5. The additional pay increase referred to in Supreme Decree 025-88-TR, which is to be granted as of July 1, 1989 to the maritime, river and lake workers at the ports of the Republic, shall be applied on the total basic pay that they receive.

46. FEMAPOR claimed that there had been an erroneous application of the additional pay increase,[44] because it had not been calculated on the true basic pay that the workers received.

---

[39] The Court notes that, while both the parties and the Commission refer to a sub-group of 2,309 workers, according to the evidence file the effective number is 2,317.

[40] The Court underlines that this is the number of victims who have been brought before it and it is not necessarily the number that corresponds to the totality of the persons who were affiliated to FEMAPOR at the time of the events and were part of the domestic proceedings regarding this case. As determined in the section of Prior Consideration (Chapter V), the total of alleged victims in this case is 4,090 (see *supra* paras. 30 to 34).

[41] *Cf*. Supreme Decree 054-91 PCM, of March 11, 1991 (evidence file, f. 3035).

[42] *Cf*. Supreme Decree 054-91 PCM, of March 11, 1991 (evidence file, fs 3035 and 3036).

[43] *Cf*. Ministerial Resolution 303-91 TC/1503, of April 25, 1991 (evidence file, f. 3038).

[44] Supreme Decree 010-86-TR established the Additional Pay Increase as a mechanism to increase the remuneration with reference to the variations in the cost of living.

47. On January 8, 1991, FEMAPOR broadened the complaint since the CCTM continued to erroneously apply Article 5.[45]

48. On April 12, 1991, after the order to dissolve the CCTM, the Second Civil Court of Callao (hereinafter "the Second Civil Court") accepted the writ of amparo, declaring that "the additional pay increase should be applied on the basic income that the worker received at the time it is calculated and paid and not as it is being applied by taking as a reference for calculating the basic amount when the collective bargaining was initiated."[46] This decision was confirmed on August 12, 1991 by the Civil Chamber of the Superior Court of Callao, which reiterated that the additional pay increase should be applied according to the terms of Article 5; in other words, on the total basic pay.[47]

49. Finally, on February 12, 1992, the Supreme Court confirmed the decision of the Superior Court.[48]

b.2) Subsequent actions of the Executive Branch

50. On September 2, 1992, the Executive Branch issued Decree-Law 25,702, which derogated the norms on the dissolution of the CCTM, had an impact on the payment of the social benefits of the maritime and port workers: (i) Article 4 of the Supreme Decree 054-91 PCM derogated a provision that would have financed the social benefits of the CCTM workers[49] and (ii) Ministerial Resolution 303-91 TC/15.03, as previously stated, created a special fund from multiple employers to pay the wages, entitlements and social benefits of the workers.[50]

51. In view of this situation, on September 24, 1992 FEMAPOR formally requested the Ministries of Transportation and of Economy and Finances, respectively, to restore the derogated norms or, in the alternative, to apply Article 4 of Decree-Law 25,702:[51] (i) by allocating an amount equivalent to the total settlement of the maritime and port workers' entitlements and social benefits and (ii) by assigning monthly amounts, as of January 1993, equivalent to the retirees' statements of their pensions administered by the entity being dissolved.

---

45 *Cf*. Broadening of the claim filed by FEMAPOR, in the actions against the CCTM, on the writ of amparo, before the lower court of Callao, File 2801-90, of January 8, 1991 (evidence file, fs. 3044 to 3046).

46 *Cf*. Second Civil Court, File 13-91, Resolution of April 12, 1991(evidence file, f. 3054).

47 *Cf*. Standing Civil Chamber of the Superior Court, File 120-A-91, Resolution of August 12, 1991, (evidence file, f. 3056).

48 *Cf*. Supreme Court, File. 2460-91, Resolution of February 12, 1992 (evidence file, f. 3058).

49 "Article 1.- Derogate, as of the date that this Decree Law enters into force, the following provisions:

[…]

i) Article 4 of Supreme Decree 054-91-PCM and of Ministerial Resolution 303-91-TC/15.03, referring to the loading and unloading taxes for products of international commerce, for financing the social benefits of the workers, which are the responsibility of the CCTM and of the Offices de Maritime and River Workers. *Cf*. Decree-Law 25,702, of September 2, 1992 (evidence file, f. 3062).

50 *Cf*. Ministerial Resolution 303-91 TC/1503, of April 25, 1991 (evidence file, f. 3038).

51 This article states the following:

> Article 4.- The Public Treasury shall transfer the equivalent amount to those persons who no longer receive the corresponding amounts due to the derogation of Article 1 (e), (f), (j) and (m). The allocation of the amounts, not included in the previous paragraph, that were derogated under the Decree-Law, equivalent to the remuneration that they would no longer receive for this concept may be requested from the Ministry of the Economy and Finances, within 30 natural days after the entry into force of this norm.
>
> *Cf*. Decree Law 25.702, of September 2, 1992 (evidence file, f. 3062).

b.3) Second writ of amparo

52. On August 11, 1997, in pursuit of the execution of the decision of February 12, FEMAPOR filed a second writ of amparo before the Special Collective Court of Callao asking that the Ministry of Economy and Finances (hereinafter "the MEF") be ordered, lest it be subject to the attachment of State property, to pay the sum owed to the maritime and river workers.[52] On January 15, 1998, this request was denied since "it was not possible at this stage of the execution of the process […] to decide whether the MEF is the body that has the obligation to implement the decision in question even against its opposition," since that right should be upheld "administratively and judicially,"[53] which led to the filing of several motions and an appeal of complaint before the Constitutional and Social Chamber of the Supreme Court, which, on December 15, 1999, declared it without merit and proceeded to file it.[54]

b.4) Procedure before the Office of the Human Rights Ombudsperson (Defensoría del Pueblo)

53. On November 21, 1996, FEMAPOR presented a claim to the Office of the Human Rights Ombudsperson. On November 3, 1997, the latter issued a resolution in which it:

> URGES the Ministry of Economy and Finance, in keeping with the terms of Decree-Law 25,702, to consider, in drawing up the General Budget of the Republic for 1998 and, if necessary, those immediately following, the resources that would make it possible to cover the social benefits that must be paid to the affiliates of FEMAPOR.[55]

54. The Office of the Human Rights Ombudsperson sent communications to the MEF on January 12, May 4 and August 14, 1998, urging compliance of the decision.[56]

55. In October 1998, the Office of the Human Rights Ombudsperson issued a report entitled "Failure of the State administration to enforce judgments." The Office found that the failure to enforce judgments against State institutions is a constant problem with respect to the judiciary. It argued that, since it was created in 1993, it had brought about 101 complaints against various State agencies for failure to comply with final judgments against them. It indicated that more than 50% of the complaints refer to "court orders with labor-related content that go unenforced." The Office explained that the vast majority of cases refer to court orders that "regard the performance of a patrimonial content, such as adjusting pensions."[57]

b.5) Approval of the liquidation of pension statements and payments made by the State

56. On June 4, 2003, Supreme Decree 078-2003-MEF was issued, which established a Multisectoral Commission charged with compiling qualitative and quantitative information on the maritime and port workers and comprised of one representative each from the MEF, the Ministry of Labor and Work

---

Cf. Writ of amparo presented before the Collective Civil Court, of August 11, 1997 (evidence file. fs. 3112 to 3118).

53 Cf. Collective Civil Court of Callao. Resolution of January 15, 1998 (evidence file, f. 3121).

54 *Cf*. Constitutional and Social Law Chamber of the Supreme Court, Resolution 445-98, of December 15, 1999 (evidence file, f. 3130).

55 *Cf*. Office of the Human Rights Ombudsperson, Resolution 059-97, of November 3, 1997 (evidence file, f. 4340).

56 *Cf*. Office of the Human Rights Ombudsperson, Communication DP-98-021, by Walter Albán Peralta, First Deputy Ombudsman, addressed to the MEF, of January 12, 1998, Communication DP-98-407, by Jorge Santisteban de Noriega, Ombudsperson, addressed to the MEF, of May 4, 1998, and Communication DP-98-0690, by Jorge Santisteban de Noriega, addressed to the Minister of State of the Office of Economy and Finances, of August 14, 1998 (evidence file, fs. 4343 to 4347).

57 *Cf*. Office of the Human Rights Ombudsperson, Report 19, "Failure of the State administration to enforce judgments." October 1998, pp. 6 and 7. Available at: https://www.defensoria.gob.pe/wp-content/uploads/2018/05/informe_19.pdf

Promotion, the Ministry of Defense, FEMAPOR and the Union of Stevedores of Large Coastal Trade of Callao.[58] This Commission issued a Final Report, Point 5 of which established that some of the workers' claims had been calculated inaccurately or had been omitted and encouraged the workers who believed that their calculation was incorrect to file the relevant additional claim before the corresponding court:

> In the case of workers with inaccurate calculations and those who were omitted, as well as those who were laid off in 1989, since the error and the omission are not sources of law, the workers with claims must show the corresponding judicial authority their specific claim, in order to uphold before such authority the right to recalculation, as the case may be.[59]

57. On August 20, 2003, the Sixth Civil Court adopted Resolution 333, which approved the accounting of the statements presented by the claimants in a brief of January 1995, which totaled USD 41,688,176.00. On that same date, the Court issued Resolution 336, by which it approved the accounting presented by the claimants with respect to the workers' educational allowance that amounted to USD 934,439.00.[60]

58. Beginning on June 15, 2004, the State authorized the MEF, by Law 28,254, to make progressive payments of the social benefits to the maritime, port and river workers up to "the amount of ten million New Soles (PES 10,000,000.00)" to be charged to its institutional budget.[61]

59. The State, through the MEF, began to make gradual payments to the workers in 2004. In December 2017, the State reported that it had fully complied with the payment of USD 44,060,949.65 that it owed.[62] Neither the Commission nor the parties questioned this affirmation.

C. Internal proceedings with respect to the sub-group of workers who claimed additional amounts derived from the application of the additional pay increase and other fringe benefits

60. Since March 5, 2010 and in the context of the execution of the decision of February 12, 1992, a sub-group of 2,317[63] beneficiaries of that decision, on the basis of the Final Report of the Multisectoral Commission (*supra* para. 56), has been judicially reclaiming before the Sixth Civil Court the correct liquidation of the additional pay increase, requesting (a) the additional pay increase; (b) the restoration of rights and social benefits; (c) the payment of the educational allowance and (d) the corresponding legal interest.[64] On December 29, 2010, the Sixth Court ordered that the MEF be incorporated as a passive party to the proceedings.[65]

---

58 *Cf.* Supreme Decree 078-2003-MEF, of June 5, 2003 (evidence file, fs. 3132 and 3233).

59 *Cf.* Commission created by Supreme Decree 078-2003-EF, Final Report, of December 5, 2003, Point 5 (evidence file, f. 46819).

60 *Cf.* Sixth Civil Court, Resolution 336, on writ of Amparo presented by FEMAPOR, of August 20, 2003 (evidence file, fs. 3147 and 3148).

61 *Cf.* Law 28.254, of July 15, 2004 (evidence file, fs. 3150 to 3156).

62 *Cf.* Answering brief to the Merits Report, as well as the observations to the brief with pleadings and motions presented by the representatives Valdivia B. et al. and to the brief with pleadings and motions presented by Ms. Meneses Huayra, para. 24.

63 The Court recalls that, while both the parties and the Commission refer to a sub-group of 2,309 workers, according to the evidentiary record the Court notes that this number should effectively be 2,317. These persons are listed in Annex II of this judgment.

64 *Cf.* Recourse presented by FEMAPOR before the Sixth Civil Court, File 225-1990, in execution of the decision of March 5, 2010 (evidence file, fs. 4110 to 4143).

65 *Cf.* Sixth Civil Court, Resolution 437, File 00225-1990-0-0701-JR-Cl-06, of December 28, 2010 (evidence file, f. 4148) and First Civil Chamber of the Superior Court, Resolution 04, File 225-1990-41, of June 8, 2011 (evidence file, f. 4157).

61. On May 29, 2012, the Sixth Civil Court approved the Expert Report that ordered the MEF to comply with the payment of USD 191,427,294.16 to the 2,317[66] maritime workers affiliated with FEMAPOR. That ruling was voided on May 8, 2013. Therefore, on June 19, 2013, the Sixth Civil Court ordered that the file be forwarded to the Office of Judicial Expert Examinations so that an expert could determine how much each worker was due when the additional pay increase was applied correctly and to pay on that basis "the other fringe benefits that have been impaired as a consequence of the repayment of the [additional pay increase], such as compensation for time of service, July and December bonuses, the payment of 30% for years of service, schooling, vacation allowance for 90 and 91, May 1 holiday pay, educational allowance and others that they are entitled to by the application of the additional pay increase."[67] This decision was appealed and confirmed by the Standing Civil Chamber of Callao on January 7, 2014.[68]

62. The Expert Report established the following:

> Once the liquidation is executed in keeping with the criteria established by the court in Resolution 496, and once the calculations are made in the manner detailed in the preceding points, the liquidation of the additional pay increase made as per Article 5 of Law 25,177 for each one of the workers affiliated with the plaintiff Federation for the period from July 1, 1989 to March 11, 1991 […] is the following:
>
> A. The total reimbursement as a result of the correct application of the Additional Pay Increase (IAR) and its respective Labor Legal Interest, in addition to the Compensation of Time of Service (CTS) and its respective Bank Interests, corresponding to the 2,317 former maritime and port workers amount to USD 214,226,785.99; for the total reimbursement of the Fringe Benefits and their respective Labor Legal Interest amount to USD 27,261,584.38; and for the reimbursement of the Educational Allowance and its respective Labor Legal Interest amount to USD 1,112,688.61, which represents a total of USD 242,601,058.98.[69]

63. The Expert Report was transmitted to the parties, granting them a period of three days to present the observations that they deemed pertinent.[70] On February 15, 2016, the Legal Counsel of the MEF requested that the Sixth Court extend the period for at least 45 days in order to make its observations on the Expert Report,[71] as well as in order to hold a special hearing. On April 12, 2016, the Sixth Court denied the request for being time-barred and rejected the request for a hearing.[72] On July 1, 2016, the Sixth Court issued Resolution 529 that approved the Expert Report and ordered the MEF to proceed with the payment of USD 242,601,058.98.[73] The MEF appealed this decision, which was confirmed, on March 16, 2017, by the Standing Civil Chamber of the Superior Court.[74] On May 23, 2017, the Sixth Court ordered the execution of the decision.[75] The MEF presented a writ of

---

66 *Cf*. Sixth Civil Court, Resolution 466, File 225.1990, of May 29, 2012 (evidence file, f. 4159 to 4165). Although the domestic resolutions refer to 2,309 workers, the Court has noted that, according to the evidentiary record in the case, that number should be 2.317.

67 *Cf.* Sixth Civil Court Resolution 496, of June 19, 2013 (evidence file, f. 4197).

68 *Cf*. Standing Civil Chamber, Resolution 04, of January 7, 2014 (evidence file, fs. 4199 to 4208).

69 *Cf*. Expert Report 240·2015-PJ-EV, of December 2, 2015 (evidence file, f. 4231).

70 *Cf.* Sixth Civil Court, Resolution 523, of December 22, 2015 (evidence file, f. 4216).

71 *Cf*. Brief of the Legal Counsel of the MEF, of February 15, 2016 (evidence file, fs. 4290 to 4292).

72 *Cf*. Sixth Civil Court, Resolution 527, of April 12, 2016 (evidence file, f. 4296).

73 Specifically, this resolution:

> Approved the Expert Report 240-2015-PJ-EV of December 2, 2015, which required the MINISTRY OF ECONOMY AND FINANCES to pay USD 242,601,058.98 AMERICAN DOLLARS to the two thousand three hundred seventeen (2,317) maritime workers affiliated with the NATIONAL FEDERATION OF MARITIME AND PORT WORKERS OF PERU-FEMPOR, an amount that shall be accredited to and paid from the Budget of the Ministry of the Economy and Finances […].

Cf. Standing Civil Chamber of the Superior Court, Resolution 538, of March 16, 2017 (evidence file, f. 4322).

74 *Cf*. Standing Civil Chamber of the Superior Court, Resolution 538, of March 16, 2017 (evidence file, f. 4322).

75 This resolution specifically ordered the following:

amparo, which was declared without merit on June 14 by the Third Constitutional Court of Lima.[76] This decision was confirmed by the Second Constitutional Chamber of Lima.[77]

64. The MEF then filed a writ of amparo before the First Constitutional Court of Lima requesting that the resolution of June 19, 2013, which forwarded the matter to the Office of Judicial Expert Examinations so that the expert might establish the amount corresponding to each worker for the correct application of the additional pay increase, be left without effect. During this process, a precautionary measure was adopted that suspended the effects of the resolution. The measure was left without effect on April 7, 2021 when the First Constitutional Court declared the request without merit.[78] By Resolution 13, of May 18, 2021, that court also left the precautionary measure without effect.[79]

65. At the time of the delivery of this judgment, it is alleged that the State had not complied with the payment to the sub-group of 2,317 workers in the terms established in the Expert Report that was approved by the judiciary. The obligation to make this payment will be analyzed in the following chapter. According to the representatives and not refuted by the State, most of the alleged victims are older than 70 years of age and more than 800 have died.

VIII
MERITS

66. This case concerns the alleged failure to execute a February 12, 1992 decision by the Supreme Court on a writ of amparo that favored 4,090[80] maritime, port and river workers.

67. Bearing in mind the arguments of the parties and of the Commission, the Court will first examine the alleged violation of the rights to judicial guarantees and to judicial protection in relation to the duty to respect and guarantee the rights and to adopt provisions of domestic law to the detriment of 4,090 alleged victims and to the detriment of a sub-group of workers who continued to present their monetary claim before the courts. The Court will then analyze the alleged harm that the non-compliance of the judgment had on the rights to private property and to work to the detriment of the 4,090 alleged victims in this case.

> Having received File 225-1991 remitted by the Standing Civil Chamber of this Court, to which is attached Resolution 538, dated March 16, 2016, which confirms the order contained in Resolution 529 of July 1, 2016; therefore, COMPLY WITH THE ORDER […].

Cf. Sixth Civil Court, Resolution 540, of May 23, 2017 (evidence file, f. 4325).

[76] *Cf*. Third Constitutional Court of Lima, Resolution of June 14, 2017 (evidence file, f. 63003 and ff.).

[77] *Cf*. Second Constitutional Court of Lima, Resolution of May 8, 2018 (evidence file, f. 63010 and ff.).

[78] *Cf*. First Constitutional Court, Resolution 34, of April 7, 2021 (evidence file, f. 63257 and ff.).

[79] *Cf*. First Constitutional Court, Resolution 13, of May 17, 2021 (evidence file, f. 63297).

[80] The Court repeats that this is the number of victims that is included in the case before the Court and does not necessarily correspond to the total of persons who were affiliated with the FEMAPOR at the time of the events and were part of the domestic proceedings that are the object of this judgment. In addition, as determined in Chapter 5 (Prior Consideration), the total number of alleged victims is, in principle, 4,090, unless later determinations are made in the chapter on the merits (see *supra* paras. 30 to 34).

VIII-1
RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION IN RELATION TO THE DUTY TO RESPECT AND GUARANTEE THE RIGHTS AND TO ADOPT PROVISIONS OF DOMESTIC LAW[81]

A. Arguments of the parties and of the Commission

68. With respect to the proceedings to reclaim the amounts due for all the former maritime, port and river workers, the ***Commission*** indicated that the CCTM was dissolved on March 11, 1991 and those workers were laid off. After the filing of the first writ of amparo against the CCTM so that the amounts owed be correctly calculated, the proceedings culminated on February 12, 1992 with the decision of the Supreme Court. The Commission added that it was not until August 20, 2003 that the Sixth Civil Court approved the settlement of the statements that had been presented by the workers on January 10, 1995 and that it was not until June 2004 that the State authorized the MEF to make gradual payments. It noted that the payments began twelve years after the Supreme Court's decision and that the payments were not completed until December 2017, which is a violation of the right to effective judicial protection.

69. The Commission also pointed out that there was a sub-group of workers who, beginning in March 2010, continued to judicially claim the amounts not included or incorrectly calculated. With regard to this sub-group's claim, it stated that, as recently as July 1, 2016, the Expert Report determined the amounts still owed, a decision that was later confirmed by the Standing Civil Chamber of the Superior Court and that, on May 23, 2017, that court ordered its compliance. The Commission noted that this 2010 order to comply added seven years to the 18 years that had elapsed since the Supreme Court's decision in 1992. Moreover, the Commission claimed that the payment ordered for this sub-group was not made. It also argued that to require each worker to individually accredit the amounts owed before the corresponding court and again bring a case would be incompatible with the right to judicial protection.

70. The Commission concluded that the State did not adopt the necessary measures to implement a judicial decision favorable to the workers and that, therefore, it violated and continues to violate the right of the former maritime, port and river workers to effective judicial protection due to the failure to enforce a decision in their favor, as well as the ineffectiveness of the judicial mechanisms to achieve such compliance, which did not meet the standards of clarity and promptness required by the Convention. The foregoing, under the terms of the Convention, presupposes a violation of its Article 25(1) and 25(2)(c), read in conjunction with Article 1(1) thereof. In addition, the Commission concluded that the State is also responsible for violating the right to a reasonable time established in Article 8(1) of the Convention, in relation to the obligations established in Article 1(1). Finally, the Commission considered that the case of the workers represented by FEMAPOR is "one more example of an overall structural issue in Peru that consists in non-compliance with court judgments" made worse by "a practice by which the judicial authorities in charge of the execution of those decisions do not take the necessary measures to resolve fundamental issues regarding the implementation of the judgments, nor does it implement coercive mechanisms to ensure such compliance, thus materializing the right to effective judicial protection." The Commission underscored that, with respect to the FEMAPOR workers, the State did not adopt and "has failed to adopt the necessary overall measures to remediate this situation and to prevent its reiteration." Therefore, it concluded that the State also is responsible for violating Article 2 of the Convention.

71. Mss. ***Valdivia Ayala, Guerrero Cassuso, Rossi Mérida*** and ***Valdivia Bocanegra*** added that, from 1990 to date, successive governments have not complied with their obligation to the alleged

---

[81] Articles 8 and 25 of the American Convention on Human Rights, read in conjunction with Articles 1(1) and 2 thereof.

victims, indicating that in 2004 the State began to pay "thanks to the intervention of the Inter-American Commission on Human Rights." They added that the State has fallen behind in enforcing the decision and that, to date, "there are already more than 800 former workers who have died or between 80 and 90 years old" and asked that the passage of time be taken into account as a "decisive factor" due to its impact on the aged persons.

72. Ms. ***Meneses Huayra*** pointed out that the State "violated and continues to violate the right of the maritime workers to effective judicial protection, obstructing the execution of the final decision in their favor with precautionary measures that are obviously arbitrary, a situation that leaves them in a state of defenselessness and legal insecurity, impeding them from obtaining restoration of their labor rights recognized by the competent authorities." She indicated that 28 years have elapsed since the lower court's decision "without the beneficiaries, the former maritime workers, […] having been fully granted the additional pay increase," as ordered in the decision of February 12, "perhaps" waiting for the beneficiaries to continue to die, as has occurred, and therefore not recognize its obligation to their heirs." The foregoing presupposes a "violation of the *pro homine*" principle and a failure to recognize "the vulnerable situation of the plaintiffs who are mostly older than 70." In addition, she mentioned that a period of 29 years, which has elapsed without the due enforcement of the decision of February 12, does not represent a reasonable time. In her final written arguments, the representative also considered that this implies a violation of Articles 1(1) and 2 of the Convention.

73. The ***State*** denied, in the first place, that there was "an overall or structural problem" concerning the non-compliance of domestic judicial decisions against the State. It added that it had paid "substantial amounts from the annual budget in order to comply with the payment of the obligations acquired due to the judicial decisions and the arbitral awards during the past 20 years." It also indicated that it had fully complied with the decision of February 12 and that the alleged failure to enforce the judgment that the sub-group of workers has claimed since 2010 (and that resulted in the approval of the Expert Report) is due to "the erroneous inclusion of claims not requested at the enforcement stage of the judgment." In addition, it indicated that the fringe benefits and other calculations were not part of the basic pay of the maritime and port workers and, therefore, were not part of the basis for the recalculation of the additional pay increase and, even less to the point, were not included within the scope of the decision of February 12.

74. The State denied that there was a failure to execute the decision because it has been shown that the State "never had the intention of evading or not assuming the obligation arising from the decision of February 12. On the contrary, the legislative measures that have been introduced attest to the State's efforts to assume an obligation that corresponds to the private employers and in this complex context provide an appropriate solution for the maritime and port workers."

75. The State claimed that FEMAPOR had access to a simple and effective recourse to enforce its rights and claims that would result in an adequate application of the additional pay increase, thus obtaining a favorable decision based on the law, a decision, moreover, that it has already complied with. The State, therefore, concluded that it did not infringe the right to an effective remedy governed by Article 25(1) and 25(2)(c) of the Convention, read in conjunction with Article 1(1) thereof.

76. The State also indicated that the alleged delay in executing the decision of February 12 was due to a serious budgetary problem. It also rejected the alleged "obstruction" in executing the decision and reiterated that the decision "was already executed under its own terms, in spite of the different characteristics that made its execution more complex and that limited the possibility of a prompter execution by the State." It also noted that, although the judgment dates from 1991 and was made final by the decision of February 2, 1992, Resolution 333 issued in File 225-1990 (which approved the dissolution presented by FEMAPOR) was issued on August 20, 2003 and, therefore, it was not until 2003 that the State had a "definitive obligation." It pointed out that the payments

began in 2004. The State also indicated that "another factor contributing to the complexity of this case was the large number of alleged victims."

B. Considerations of the Court

77. Article 25 of the Convention recognizes the right to judicial protection. The Court has stated that, in protecting this right, the State has two specific obligations: (i) enact into law and ensure the due application of effective remedies before the competent authorities that protect all persons under its jurisdiction against acts that violate their fundamental rights or that lead to the determination of their rights and obligations[82] and (ii) guarantee the means to enforce the decisions and judgments of those competent authorities in order to effectively protect the declared and recognized rights.[83] In turn, Article 25(2)(c) establishes the right to the compliance, by the competent authorities, of all decisions in which the remedy has been granted.[84]

78. The Court has indicated that State responsibility does not end when the competent authorities render a decision or judgment. The State must also guarantee the effective means and mechanisms to enforce final decisions so that they effectively protect the declared rights.[85] The Court has also established that the effectiveness of a judgment depends on its enforcement, the process that materializes the protection of the right recognized in the judicial ruling by the appropriate application of such ruling.[86] The Court has also noted that, to fully achieve a judgment's effectiveness, the enforcement must be complete, perfect, integral and without delay.[87]

b.1 Duty of special protection for older persons

79. The obligation to comply with the final decisions and judgments of the competent authorities is greater with respect to older persons and requires an increased standard of promptness. This increased duty of protection for older persons, which is based on their special vulnerability, is a general principle of public international law.[88]

---

82 *Cf. Case of the "Steet Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 237 and *Case of the Former Employees of the Judiciary v. Guatemala. Preliminary Objections, Merits and Reparations.* Judgment of November 17, 2021. Series C No. 445, para. 79.

83 *Cf. Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 79 and *Case of the Formers Employees of the Judiciary v. Guatemala, supra*, para. 79.

84 *Cf. Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375, para. 124 and *Case of Teachers of Chañaral and other municipalities v. Chile, supra*, para. 142.

85 *Cf. Judicial guarantees during states of emergency (Arts. 27.2, 25 and 8 American Convention on Human Rights).* Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24 and *Case of Teachers of Chañaral and other municipalities v. Chile, supra*, para. 143.

86 *Cf. Case of Las Palmeras v. Colombia. Reparations and Costs*. Judgment of November 26, 2002. Series C No. 96, para. 58 and *Case of Teacher of Chañaral and other municipalities v. Chile, supra*, para. 143.

87 *Cf. Case of Mejía Idrovo v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 5, 2011. Series C No. 228, para. 105 and *Case of Teachers of Chañaral and other municipalities v. Chile, supra*, para. 143.

88 *Cf*. UN, Principles of the United Nations for older persons, adopted by the UN General Assembly, Resolution 46/91, of December 16, 1991; UN, Proclamation on ageing, adopted by the UN General Assembly, Resolution 47/5, of October 16, 1992; UN, Madrid International Plan of Action on Ageing and the Political Declaration, adopted by the Second World Assembly on Ageing in April 2002; Regional strategy on the implementation for Latin America and the Caribbean of the Madrid International Plan of Action, adopted during the Regional Intergovernmental Conference on Ageing, held in Santiago, Chile November 19-21, 2003; Brasilia Declaration, adopted during the Second Intergovernmental Conference on Ageing in Latin America and the Caribbean: towards a society for all ages and rights-based social protection, held December 4-6, 2007; Pan-American Health Organization, Plan of Action on the health of older persons, including active and healthy ageing, CD49/8, of July 10, 2009; OAS, Declaration of Commitment of Port of Spain, adopted at the Fifth Summit of the Americas, Port of Spain, Trinidad and Tobago, April 19, 2009; San José Charter on the rights of older persons of Latin America and the Caribbean, adopted at the Third Regional Intergovernmental Conference on Ageing in Latin America and the Caribbean, held May 8-11, 2012, and Inter-American Convention on Protecting the Human Rights of Older Persons, of June 15, 2015.

80. The Inter-American Convention on Protecting the Human Rights of Older Persons, to which Peru is a party,[89] has developed and defined this principle by recognizing the States' obligations to guarantee equality and non-discrimination (Article 3(d)), proper treatment and preferential care (Article 3(k)) and effective judicial protection (Article 3(n)). Article 31 of this international treaty also recognizes the right to access to justice[90] and states that "older persons have 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 them or for the determination of their rights and obligations of a civil, labor, fiscal, or any other nature." Paragraph three of that article states that "the States Parties shall ensure due diligence and preferential treatment to the older person for the processing, settlement of and enforcement of decisions in legal and administrative proceedings at any stage." This creates a right to a preferential treatment for older persons in the enforcement of judgments in their favor and a correlative State duty to guarantee a diligent, prompt and effective access to justice for older persons, in administrative as well as legal processes.[91]

81. This obligation to guarantee the effective judicial protection of older persons and, especially, to promote accelerated procedures, is also reflected in other instruments of international law such as the Brasilia Regulations on access to justice for vulnerable people, adopted by the XIV Ibero-American Judicial Summit in 2008 and updated at the XIX Summit in 2018. Pursuant to Section 2 of those Rules, vulnerable people are defined as follows:

> 1.- Definition of vulnerable people
> (3) A person or a group of persons are vulnerable, when their capacity to prevent, resist or overcome an impact that places them at risk, are not developed, are limited by diverse circumstances to fully exercise their rights before the justice system as recognized by law.
> Vulnerable people are defined here as those who, due to reasons of age, gender, sexual orientation or gender identity, physical or mental state, or due to social, economic ethnic and/or cultural circumstances, or related to their religious practices or creeds or the absence thereof have special difficulties to fully exercise the rights recognized by the juridical order before the system of justice.
> (4) The following may constitute causes of vulnerability: age, disability, belonging to indigenous communities or to other ethnic-cultural diversities, including Afro-descendant persons, as well as caused by victimization migration, refugee status and internal displacement, poverty, gender, sexual orientation and gender identity and deprivation of liberty.
> The specific determination of vulnerable people in each country will depend on their specific characteristics, and even on their level of social and economic development.
> 2.- Age
>
> […]
>
> (6) Ageing can also constitute a cause of vulnerability if an elderly adult person finds special difficulties, on the basis of their functional abilities and/or economic and social barriers, to exercise their rights before the justice system, with full respect for their dignity.

82. Specifically, with respect to access to justice of vulnerable persons, Regulation 38 establishes:

> (38) Swiftness and priority. The necessary measures shall be adopted to avoid delays in processing each case, guaranteeing a prompt judicial resolution, as well as the fast execution of the resolution. When the circumstances of the situation of vulnerability so require, priority shall be given to the attention, resolution and execution of the case by the bodies of the system of justice. A visible notice shall be placed on the files,

---

89 Peru deposited its instrument of accession to the Inter-American Convention on Protecting the Human Rights of Older Persons on March 1, 2021.

90 The San José Charter on the rights of older persons of Latin America and the Caribbean, adopted at the Third Regional Intergovernmental Conference on ageing in Latin America and the Caribbean of 2012, establishes in its Paragraph 5 that "access to justice is an essential human right and the fundamental instrument for guaranteeing that older persons are able to exercise and actively defend their rights".

91 *Cf. Case of Teachers of Chañaral and other municipalities v. Chile, supra*, para. 149.

which will show that the process affects a person in a situation of vulnerability.

83. Therefore, it may be concluded that in the case of persons who are in a situation of vulnerability, such as the alleged victims in the instant case, who are all older persons, *a reinforced standard of expeditiousness can be required in all judicial and administrative proceedings, including the execution of judgments.*[92]

b.2 Alleged non-compliance with the decision of February 12, 1992

84. The Court notes that there is no controversy as to whether the alleged victims worked on a rotational basis under CCTM control and rules until March 11, 1991, the date on which the CCTM was dissolved, which led to the creation of the Commission of Dissolution of the CCTM, charged with paying the workers' entitlements and social benefits.

85. To arrive at a correct calculation of the amounts owed, FEMAPOR –the national body with which the alleged victims were affiliated- filed a writ of amparo that culminated in the decision of February 12, which determined the correct manner to calculate the payments. The parties and the Commission have recognized that the State began to make gradual payments to the workers in 2004, having paid out, as of December 2017, a total of USD 44,060,949.65.

86. In addition, the Multisectoral Commission, responsible for compiling information on the payments to the workers, published in 2003 a Final Report in which it warned that there were workers "with an incorrect payment or a lack of payment" and indicated that they should make a new claim "before the corresponding judicial body."[93] Therefore, on March 5, 2010 and as part of the enforcement of the decision of February 12, a sub-group of workers, beneficiaries of the decision made an additional claim for the correct liquidation of their "entitlements and benefits, educational allowance and interest."[94] The State did not make any payment in this respect to these workers and claimed that the controversy continues to be examined domestically.

87. The Commission argued that, with respect to the workers who were not party to the claim of March 5, 2010, the requirement to make a new claim violated the right to judicial protection. The Court notes, however, that, as indicated by the Multisectoral Commission, it was necessary to initiate a judicial proceeding in order to analyze the situation of each worker and to determine whether there were adequate amounts after the payment made by the State of USD 44,060,949.65 in executing the decision of February 12, a matter that was not done and, therefore, prevented an analysis by the Inter-American Court with respect to this specific sub-group.

88. The controversy in this case, and especially in this chapter, turns on two issues: (i) the Court must determine whether the judicial proceeding, initiated by the workers who are the alleged victims, that partially culminated with gradual State payments from 2004 to 2017 infringed a reasonable time in violation of Articles 8(1) and 25 of the Convention and (ii) the Court is asked to analyze whether the additional claim for the correct liquidation of its "entitlements and benefits, and educational allowance and interest" presented by the sub-group of 2,317[95] workers also infringed Articles 8(1), 25(1) and 25(2)(c) of the Convention. Finally, the Court will also analyze whether all these shortcomings violated Article 2 of the Convention.

---

92 *Cf*. *Case of Teachers of Chañaral and other municipalities v. Chile, supra*, para. 152.

93 *Cf*. Final Report of the Commission created by Supreme Decree 078-2003-EF (evidence file, fs. 4110 to 4143).

94 *Cf*. Final Report of the Commission created by Supreme Decree 078-2003-EF (evidence file, fs. 4110 to 4143).

95 The Court recalls that, while both the parties and the Commission refer to a sub-group of 2,309 workers, in accordance with the file of the case, this number should be 2,317.

b.2.1 Regarding the 4,090 workers

89. The Court has noted that an evaluation of a reasonable time must be examined in each specific case relative to the total duration of the proceedings, which also includes the execution of the final judgment. This examination should consider four elements: (a) the complexity of the matter, (b) the procedural activity of the interested party, (c) the conduct of the judicial authorities, and (d) the impairment of the legal situation of the individual involved in the proceedings. The Court recalls that the State has the obligation to justify, on the basis of those criteria, why the period that has elapsed to process a case was necessary. Otherwise, the Court has broad powers to make its own analysis of the matter.[96]

90. The analysis of this section will center on evaluating, on the basis of those four elements, the period from the adoption of the decision of February 12,1992 until December 2017, when the State made full payment to all of the workers of a total of USD 44,060,949.65.

91. The Court has taken into account different criteria to determine the complexity of the issue, such as the complexity of the evidence, the number of persons involved or the number of victims, the time elapsed from the violation, the characteristics of the remedy set forth in the domestic legislation and the context in which the violation occurred.[97] In this case, the Court understands that the number of victims who are affected by the delay in the execution of the decision of February 12 is more than 4,000, which gives a certain complexity to the matter in that it required individual calculations and the itemization of the amounts owed.

92. In determining whether a period is reasonable, the Court has taken into consideration whether the procedural conduct of the claimant in seeking justice has contributed to some degree to unduly prolonging the length of the process.[98] The Court does not find any activity by the workers that impeded the proceedings, but rather the opposite. The Court observes that, by the year 2003, calculations had not been made to comply with the payments established in the decision of February 12, 1991. The Court notes that the decision that favored the workers referred to FEMAPOR as a litigating party and, therefore, it did not individualize all the members of the Association. Thus, it was not until 2003 when the Final Report of the Multisectoral Commission established the relationship of the beneficiaries.[99] That report was approved by the Sixth Court on August 20, 2003, notwithstanding that the workers' statements were presented on January 10, 1995.[100] After the judicial approval, the State authorized in June 2004, by Law 28,254, the gradual payment of the amounts owed. This phase, amounting to USD 44,060,949.65, was completed in 2017; in other words, thirteen years after the payments were initiated. The Court notes that about 25 years had elapsed from the time of the decision of February 12, 1991 until full payment. Although the Court understands the budgetary difficulties involved in the payment of large sums of money and in the large number of claimants, the period elapsed in the present case is clearly incompatible with a reasonable time.

---

96 *Cf. Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of September 23, 2009. Series C No. 202**,** para. 156 and *Case of Digna Ochoa and family members v. Mexico, supra*, para. 131.

97 *Cf*. *Case of Genie Lacayo v. Nicaragua. Merits, Reparations and Costs*. Judgment of January 29, 1997. Series C No. 30, para. 78 and *Case of Digna Ochoa and family members v. Mexico, supra,* footnote 207.

98 *Cf. Case of Cantos v. Argentina. Merits, Reparations and Costs*. Judgment of November 28, 2002. Series C No. 97, para. 57 and *Case of Digna Ochoa and family members v. Mexico, supra,* footnote 208.

99 *Cf*. Final Report of the Commission created by Supreme Decree 078-2003-EF, of November 20, 2003. Conclusion 5 (evidence file, f. 46819).

100 *Cf.* Final Report of the Commission created by Supreme Decree 078-2003-EF, of November 20, 2003, Conclusion 5 (evidence file, f. 46819).

93. With reference to the fourth element, the Court has stated that, in determining a reasonable time, it must bear in mind the harm caused to the individual involved by the length of the judicial proceedings, while considering, inter alia, the issue of the controversy. Thus, the Court has established that, if the passage of time has an important impact on the legal situation of the individual, the proceedings must be carried out as promptly as possible so that the case is resolved within a brief time.[101] The Court reiterates that this case concerns the non-compliance of a decision that resulted in the failure to pay during approximately 25 years, thus affecting a group of persons who, for the most part, are especially vulnerable since they are elderly.[102]

94. The Court, therefore, concludes that, with respect to all the members of the group of 4,090 workers listed in Annex I of this judgment (all of the annexes are available on the Court's Web site), the State is responsible for failing to comply with the guarantee of a reasonable time in the execution of the decision of February 12, 1992, in violation of Articles 8(1) and 25(2)(c) of the Convention, read in conjunction with Article 1(1) thereof.

b.2.2 Regarding the sub-group of 2,317 workers

95. The Court observes that the principal controversy regarding the execution of the decision of February 12 with respect to the sub-group of 2,317 workers who continued their judicial claim consists in determining whether this claim derives from and corresponds to what was ordered by the Supreme Court on February 12 and, therefore, whether the State has complied by fully executing that decision. To verify the full execution, which has been claimed by the State, it is essential to rule on whether the scope of that decision includes the additional amounts claimed by the sub-group.

96. The Court notes that, on June 19, 2013, the Sixth Court forwarded the file to the Office of Judicial Expert Examinations so that an expert might establish the amounts due to each worker for the correct application of the additional pay increase, all of this -in opposition to the position of the State- in the framework of the execution of the decision of February 12. On July 1, 2016, the Expert Report was approved,[103] a decision confirmed on March 16, 2017 by the Standing Civil Chamber of the Superior Court.[104] On May 23, 2017, the Sixth Court ordered its compliance.[105] The State questioned the resolution that approved the expert opinion, indicating that it lacked *res judicata* since it had been questioned domestically, even to the point that it was subject to a precautionary measure that had been ordered by another judicial body that suspended its effect. Nonetheless, the Court notes that that measure was lifted on April 7, 2021, when the First Constitutional Court declared without merit the request of the Legal Counsel of the MEF.[106]

97. By Resolution 13 of May 18, 2021,[107] that court lifted the precautionary measure.[108] The State had no reason to affirm that the Expert Report continued in controversy since, according to the domestic judicial decisions, the remedies filed by the State to challenge it had been denied. Moreover, the national courts had already ordered compliance of the payments set out in that report on multiple occasions; for example, the resolution of the Sixth Civil Court of July 1, 2016, that of the Standing

---

101 *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 192, para. 155 and *Case of Digna Ochoa and family members v. Mexico, supra*, para. 135.

102 *Cf. Case of Poblete Vilches et al. v. Chile*. *Merits, Reparations and Costs*. Judgment of March 8, 2018. Series C No. 349, para. 143 and *Case of Teachers of Chañaral and other municipalities v. Chile, supra*, para. 182.

103 *Cf*. Expert Report 240-2015-PJ-EV of December 2, 2015 (evidence file, f. 4219 and ff.).

104 *Cf*. Standing Civil Chamber of the Superior Court of Callao, Resolution 538 of March 16, 2017 (evidence file, f. 4298 and ff.).

105 *Cf*. Sixth Civil Court, Resolution 540 of May 23, 2017 (evidence file, f. 4325).

106 *Cf*. First Constitutional Court, Resolution 34 of April 7, 2021 (evidence file, f. 62357 and ff.).

107 *Cf*. First Constitutional Court, Resolution 34 of April 7, 2021 (evidence file, f. 63257 and ff.).

108 *Cf*. First Constitutional Court, Resolution 13 of May 18, 2021 (evidence file, f. 63297).

Civil Chamber and that of the Sixth Civil Court of May 23, 2017, which confirmed the resolution that approved the Expert Report and ordered compliance "with what had been ordered."[109]

98. The Court reiterates that, under Article 25 of the Convention, the public authorities cannot limit the meaning and the scope of judicial decisions nor unduly delay their execution.[110] Notwithstanding the existence of a judicial debate on determining the specific amounts to be paid to the alleged victims, which had an influence on its immediate enforcement, the Court notes the existence of a series of activities by State authorities that delayed the enforcement and that, necessarily, had an impact on the failure to pay the additional amounts to the victims. The Court recalls that judicial remedies are not effective when, due to the particular circumstances of a case, they are illusory because the State did not provide the necessary means to execute final judgments or when there were unjustified delays in the decisions.[111] These actions, having directly impacted on the execution of the decision of February 12, also have had an impact on the guarantee of a reasonable time since, to date, more than 29 years have elapsed since the decision of February 12 and the victims in this case -especially, the sub-group of workers who continued their claim in the courts- have not received the payments that were determined in the Expert Report and that were already approved and confirmed judicially. Moreover, the delay in the payment of these amounts has resulted in some of the workers, more than 800, according to Ms. Meneses Huayra in her brief with final written arguments, have died without having satisfactorily been granted their legitimate right to receive the amounts owed,[112] which violates Articles 8(1), 25(1) and 25(2)(c) of the Convention, read in conjunction with Article 1(1) thereof, to the detriment of the victims who are listed in Annex II of this judgment.

b.3 Alleged violation regarding the adoption of provisions of domestic law

99. The Court has pointed out that Article 2 of the Convention contemplates the general duty of the States Parties to adapt their domestic law to the provisions of the Convention in order to guarantee the rights set forth therein. This duty implies the adoption of measures in both: (i) the suppression of norms and practices of any nature that cause a violation of the guarantees set forth in the Convention and (ii) the enactment of norms and the development of practices that lead to the effective observance of those guarantees.[113] With specific regard to the adoption of those measures, the Court has recognized that each authority of a State Party to the Convention has the obligation to exercise a control of conventionality,[114] so that the interpretation and application of the domestic law is consistent with the international human rights obligations of the State.[115]

100. The Court notes the relative similarity between this case and others that it has already decided, such as "*Five Pensioners" v. Peru, Acevedo Buendía et al. (Discharged and Retired Workers of the Office of the Comptroller) v. Peru* and *Muelle Flores v. Peru.* In those cases, the Court verified the failure to comply with judgments in favor of persons whose rights to a pension had been recognized by a judicial decision and had not been executed in the terms of Article 25(2)(c) of the

---

109 *Cf*. Sixth Civil Court, Resolution of May 23, 2017 (evidence file, f. 4325).

110 *Cf. Case of Mejía Idovro v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 5, 2011. Series C No. 228, para. 106 and *Case of Teachers of Chañaral and other municipalities v. Chile, supra*, para. 170.

111 *Cf. Case of Ivcher Bronstein v. Peru. Merits, Reparations and Costs.* Judgment of February 6, 2001. Series C No. 74, para. 137 and *Case of Teachers of Chañaral and other municipalities v. Chile, supra*, para. 170.

112 *Cf*. Brief with final written arguments of Ms. Meneses Huayra (evidence file, f. 1513).

113 *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs.* Judgment of May 30, 1999. Series C No. 52*,* para. 207 *and Case of Teachers of Chañaral and other municipalities v. Chile, supra*, para. 185.

114 *Cf. Case of Almonacid Arellano* et al. v*. Chile*. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Serie C No. 154, para 124 and *Case of Vera Rojas et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs.* Judgment of October 1, 2021. Series C No. 439, para. 138.

115 *Cf. Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2009. Series C No. 209, para. 340 and *Case of Vera Rojas et al. v. Chile, supra*, para. 138.

Convention.[116] The Commission and the representatives alleged the existence of a structural problem in Peru regarding compliance of judicial decisions analogous to this case, which constituted a failure to comply with the State's obligations set forth in Article 2 of the Convention.

101. The Court underscores that the main object of the controversy in this case was the alleged violation of the rights to judicial guarantees and to judicial protection due to the delayed or the partial execution of the Supreme Court's decision of February 12, as well as the possible infringement of other rights. The Court also recalls that the factual framework of the case is found in the Merits Report and considers that the claims made by the Commission on the "failure of the Peruvian State to comply with judgments against the State bodies since the 1990s goes beyond the individual situation of the alleged victims in the instant case and is part of a more general context" are relevant facts in "situating the acts that were alleged to violate [human rights] within the framework of the specific circumstances in which they occurred,"[117] but are not an autonomous violation of the rights recognized in the Convention.

102. The Court notes that neither the Commission nor the representatives offered specific arguments on how the domestic juridical framework impeded the execution of domestic decisions of the alleged victims in this case or in other cases. Nor does the record show that such a violation occurred. The Court, therefore, considers that there are not sufficient elements to determine whether these norms violated Article 2 of the Convention. Nevertheless, the Court notes that, in this specific case, there is an obvious attitude on the part of the State to delay compliance with the decision of 1992. The Court also notes that, in 2007, the Office of the Human Rights Ombudsperson urged that the MEF proceed with the payments, pointing out the State's non-compliance as a habitual practice of failing to execute decisions against state institutions with judicial mandates containing patrimonial obligations (*supra* para. 55). Particularly illustrative is the statement of Sergio Valdivia -victim and also Secretary General of FEMAPOR- who, in the public hearing before the Court, requested that the State be ordered to pay the amounts owed "so that the victims do not continue to die without obtaining justice."[118] Although it has not been possible to determine a violation of the duty to adopt provisions of domestic law set forth in Article 2 of the Convention, the Court notes, with concern, that the passage of time in the present case has had a particularly serious impact on the victims, because, as pointed out by the representatives, more than 800 of the victims have died, a matter that is not surprising when account is taken that the great majority of them are between 80 and 90 years old and the life expectancy from birth in Peru is 77 years.[119]

---

116 *Cf. Case of Acevedo Buendía et al. ("Discharged and Retired Workers of the Office of the Comptroller v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 1, 2009. Series C No. 198, para. 77 and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 6, 2019. Series C No. 375, para. 149.

117 *Cf. Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 27, 2013. Series C No. 275, para. 53 and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2019. Series C No. 394, para. 202.

118 *Cf.* Statement of Sergio Valdivia in the public hearing held during the 142nd regular session.

119 *Cf*. World Bank, Life expectancy at birth. Available at: https://datos.bancomundial.org/indicador/sp.dyn.le00.in?locations=PE

VIII-2
RIGHTS TO WORK AND TO PRIVATE PROPERTY[120]

A. Arguments of the parties and of the Commission

103. On the basis of the Court's case law in "*Five Pensioners" v. Peru*, *Acevedo Buendía et al. (Discharged and Retired Employees of the Office of the Comptroller) v. Peru, Muelle Flores v. Peru* and *National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*, the ***Commission*** noted that, in this case, the workers: (i) pursued judicial remedies to claim their labor entitlements and benefits; (ii) had a judicial judgment favorable to their claim; (iii) for many years the patrimonial effects of that judgment were not determined, giving rise to uncertainty and legal insecurity, and (iv) to date said decision has yet to be fully executed. In conclusion, the Commission considered that the State is responsible for violating the right to private property guaranteed in Article 21(1) and 21(2) of the Convention, read in conjunction with the obligations established in Article 1(1) thereof.

104. In its final written observations, the Commission underscored that its Report on the Merits was adopted before the Court's case law evolved on the justiciability of Article 26 of the Convention. It indicated that the Court had already made a specific application of work rights under that article within the scope of the immediate obligations in two cases against Peru (*Muelle Flores* and *ANCEJUB-SUNAT),* which are juridically similar to this case. Therefore, the Commission asked that the Court declare the State responsible for violating Article 26 of the Convention, read in conjunction with Article 1(1).

105. In her final written arguments, Ms. ***Meneses Huayra*** claimed that the alleged victims should receive all the work benefits to which they entitled for having worked and contributed to the State for years and that the harm occurred when the CCTM "erroneously made the liquidation of the additional pay increase, under Article 5 of Law 25,177, which meant a loss in their income and patrimony," obliging them to resort to the judicial system to have their rights restored, which involved "years of fighting in the courts," and "causing uncertainty and legal insecurity revictimizing them by impeding the enjoyment of their patrimonial rights, especially in the case of some victims whose right to a pension has been affected." She, therefore, concluded that the State is also responsible for violating the right to property.

106. The ***State*** specified that, when a person has a certain "acquired" right, that right should be recognized, respected and guaranteed by the public authorities. However, in this case the payment of fringe benefits and other calculations that FEMAPOR claimed should be included in the stage of execution were not rights recognized in the decision, especially if the State, at the time, had already complied by paying the social and fringe benefits, thus complying with a judicial mandate. It also alleged the following:

> i. That the judicial decisions on amparo did not recognize the payment of fringe benefits for the maritime and port workers;
>
> ii. That the liquidation of a new amount for entitlements and social benefits, educational allowance and interest that 2,317 former workers have been claiming since the execution of the decision of February 12, exceed the terms of the judicial decisions and there is no judicial decision with the force of *res judicata* that recognizes such payment; therefore, the rights being claimed have not been incorporated into their patrimony, and

---

120 Articles 26 and 21 of the American Convention on Human Rights.

iii. That the State has complied with the execution of the final decision of the Supreme Court of February 12, 1992 in all its terms and, therefore, there is not in the present controversy an alleged failure to comply with the domestic decisions in this controversy that would result in a violation of the right to property, recognized in Article 21 of the Convention.

B. Considerations of the Court

b.1 Right to work

107. The Court notes that the delay -in the case of all the victims- and/or the failure to execute the decision of February 12 -in the case of the sub-group of 2,317 workers- has had a direct impact on receiving their duly earned, and not paid, wages, which, in turn, affected their right to work. In *Lagos del Campo v. Peru* the Court developed and held that labor rights were protected by Article 26 of the Convention. The Court has the responsibility to continue to define the scope of the right to work and, particularly, the right to receive wages according to the international *corpus iuris* in the matter. The Court recalls that the obligations set forth in Articles 1(1) and 2 of the Convention constitute, definitively, the basis to determine the international responsibility of a State for violations of the rights established in the Convention,[121] including those recognized by Article 26. However, the same Convention expressly refers to the standards of general international law for its interpretation and application, specifically through Article 29, which establishes the principle of *pro persona.*[122] Thus, it has been the consistent practice of the Court,[123] in determining the compatibility of the acts and omissions of the State or of its norms with the Convention or other treaties with respect to which it has competence, to interpret the obligations and rights contained therein in light of those other relevant treaties and norms.[124]

108. In view of the foregoing, the Court notes that the terms of the right to work are those rights that are derived from the economic and social norms and, especially, the educational, scientific and cultural norms contained in the OAS Charter.[125] Articles. 45(b)[126] and 34(g)[127] of the Charter establish

---

121 *Cf. Case of the "Mapiripán" Massacre v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 107 and *Case of Vera Rojas et al. v. Chile, supra*, para. 34.

122 *Cf. Case of the Pacheco Tineo Family v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 25, 2013. Series C No. 272, para. 143 and *Case of Vera Rojas et al. v. Chile, supra*, para. 34.

123 *Cf. Case of Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011. Series C No. 221, paras. 78 and 121; *Case of Atala Riffo and daughters v. Chile. Merits, Reparations and Costs*. Judgment of February 24, 2012. Series C No. 239, para. 83; *Case of the Pacheco Tineo family v. Bolivia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 25, 2013. Series C No. 272, para. 129; *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 30, 2016. Series C No. 329, para. 168; *Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2017. Series C No. 340, para. 145; *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs.* Judgment of March 8, 2018. Series C No. 349, para. 103 and *Case of Vera Rojas et al. v. Chile, supra*, para. 34.

124 *Cf. Case of Vera Rojas et al. v. Chile, supra*, para. 34.

125 *Cf. Case of Lagos del Campo v. Peru, supra,* para. 143 and *Case of the Former Employees of the Judiciary v. Guatemala, supra,* para. 128.

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

127 *Cf*. Article 34 of the OAS Charter. - The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals:(g) Fair wages, employment opportunities and acceptable working conditions for all.

that "work is a right and a social duty" and that it should be performed with "fair wages, employment opportunities and acceptable working conditions for all." Article XIV of the American Declaration of the Rights and Duties of Man,[128] supports this by establishing, in the section entitled "Right to Work and Fair Remuneration," that "every person has the right to work under proper conditions" […]. Moreover, Article 1 of ILO Convention No. 100 on equal remuneration establishes that "the term remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment."[129] These provisions demonstrate that the right to work also implies obtaining a fair wage, which, in turn, must include all the emoluments that are contained in the term remuneration. The Court has also pointed out that the States have the duty to respect and guarantee those rights, which would allow levelling the unequal relation that exists between workers and employers and also access to fair wages and safe working conditions.[130]

109. In this case, the Court has determined that there was a violation of the reasonable time to execute the decision of February 12 for all the victims. The Court has also noted that the State had not proceeded with the payments owed to the sub-group of 2,317 maritime and port workers who continued to claim the additional amounts that they were owed. The Court considers that this had an impact on the right to the full payment of their remuneration, which impacted on their right to work.

110. The Court also notes that this harm had a differentiated impact on the victims due to their age, as most of them were in their 80s or 90s and some of them had even died, more than 800 victims according to Ms. Meneses Huayra, and whose right was never made effective. The Court recalls that, in *Poblete Vilches et al. v. Chile,* it pointed out that "older persons have the right to increased protection and, consequently, this requires the adoption of differentiated measures,"[131] as was indicated in *Professors of Chañaral and other municipalities v. Chile,* which required a reinforced standard of expeditiousness in all judicial and administrative proceedings, including the execution of judgments.[132]

111. The State, far from taking this fact into consideration, has caused by its actions that the decision of February 12 has not yet been effectively or fully complied with, which has had a serious impact on the victims who, in spite of continuing to litigate for almost 30 years to obtain the payments that they are owed, have seen their legitimate claims frustrated, which has also affected their right to receive a fair remuneration for their work, in violation of Article 26 of the Convention. Moreover,

---

128 In determining the right to social security, special emphasis is given to the American Declaration since, as the Court stated "[…] the member states […] have signaled their agreement that the Declaration contains and defines those fundamental human rights referred to in the Charter. Thus, the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration." *Cf.* Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. *Advisory Opinion OC-10/89* of July 14, 1989. Series A No. 10. para. 43; *Case of Cuscul Pivaral et al v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 23, 2018. Series C No. 359, para. 101 and *Case of Former Employees of the Judiciary v. Guatemala, supra,* para. 129.

129 *Cf*. ILO, Convention 100 – Convention on the equality and remuneration, 1951 (No. 100), ratified by Peru on February 1, 1960.

130 *Cf*. *Rights to freedom to organize, collective bargaining and strikes, and their relation to other rights, with a gender perspective (interpretation and scope of articles 13, 15, 16, 24, 25 and 26 in relation to articles 1(1) and 2 of the American Convention on Human Rights, of Articles 3, 6, 7 and 8 of the Protocol of San Salvador, of articles 2, 3, 4, 5 and 6 of the Convention of Belem do Pará, of Articles 34, 44 and 45 of the Charter of the Organization of American States and of Articles II, IV, XIV, XXI and XXII of the American Declaration of the Rights and Duties of Man). Advisory* Opinion OC-27/21 of May 5, 2021. Series A No. 27, para. 141.

131 *Cf. Poblete Vilches et al. v. Chil*e, *supra*, para. 127.

132 *Cf*. *Case of Teachers of Chañaral and other municipalities v. Chile*, *supra,* para. 152.

the Court notes that wages have an nutritional and survival nature as they are necessary to satisfy the worker's basic needs, which implies that any disruption in receiving a wage impacts on the enjoyment of other rights of the Convention, especially those contained in Article 26, the increased protection of which has been emphasized by the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 6 on older persons, by indicating that "the States Parties to the Covenant are obligated to pay particular attention to promoting and protecting the economic, social and cultural rights of older persons."[133]

b.2 Right to private property

112. The Court has developed in its jurisprudence a broad concept of property that covers the use and enjoyment of goods, defined as appropriable things, as well as any right that may form part of the patrimony of a person.[134] The Court has also protected, by means of Article 21 of the Convention, acquired rights, understood as rights that have been incorporated into the patrimony of the person.[135] It must be reiterated that the right to property is not absolute and can be subject to restrictions and limitations,[136] as long as they are done legally[137] and within the parameters established by Article 21.[138]

113. The Court recalls that the decision of February 12 ordered that the additional pay increase be applied to the basic income that the worker received at the moment of its calculation and payment. With respect to these amounts, the Court held that the guarantee of a reasonable time with respect to these payments was infringed and that, regarding the sub-group of 2,317 workers, there was a failure to fully comply with the relevant payments of the additional claims.

114. The Court considers that the right to receive these amounts affected the patrimony of the FEMAPOR members since the payment was delayed or sometimes was not made and, therefore, the victims could not fully enjoy their right to private property, understood as the amounts that they did not receive.

b.3 Conclusion

115. In view of the above, the Court concludes that the serious delay in the payment of the amounts owed to the totality of the workers, as well as the failure to pay the amounts that were subsequently claimed by the sub-group of 2,317 workers, implied a violation of the right to work protected by Article 26 of the American Convention, read in conjunction with Article 1(1) thereof, as well as the right to private property guaranteed by Article 21 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the persons listed in Annex I of this judgment.

---

133 *Cf.* UN, ESCR Committee DESC, General Comment No. 6, (1995), para. 13.

134 *Cf. Case of Ivcher Bronstein v. Peru, supra*, paras. 120 and 122 and *Case Palacio Urrutia et al. v. Ecuador. Merits, Reparations and Costs.* Judgment of November 24, 2021. Series C No. 446, para. 136**.**

135 *Cf. Case of Ivcher Bronstein v. Peru, supra*, para. 122 and *Case of Palacio Urrutia et al. v. Ecuador, supra*, para. 136**.**

136 *Cf. Case of Ivcher Bronstein v. Peru, supra*, para. 128 and *Case of Palacio Urrutia et al. v. Ecuador, supra*, para. 136**.**

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

138 *Cf. Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits.* Judgment of May 6, 2008. Series C No. 179, paras. 60 to 63; *Case of Mémoli v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 22, 2013. Series C No. 265, para. 170 and *Case of Palacio Urrutia et al. v. Ecuador, supra*, para. 136**.**

IX
REPARATIONS

116. On the basis of Article 63(1) of the Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the duty to make adequate reparations and that this provision reflects the customary norm that constitutes one of the fundamental principles of contemporary international law of State responsibility.[139]

117. Reparation for the damages caused by the infringement of an international obligations requires, to the extent possible, full restitution (*restitutio in integrum*), which consists in the restoration of the prior situation. If this is not possible, as occurs in most cases of human rights violations, the Court will determine the measures to guarantee the rights violated and redress the consequences produced by the infringements.[140] The Court has, therefore, found it necessary to grant diverse measures of reparation in order to redress the harm comprehensively so that, in addition to the pecuniary compensations, the measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition have special relevance for the harm caused.[141]

118. The Court has held that the reparations must have a causal link with the facts of the case, the violations declared, the proven harm, as well as the measures requested to repair the resulting harm. The Court, therefore, must "observe such coincidence in order to adjudge and declare according to law."[142]

119. Bearing in mind the violations to the Convention declared in the preceding chapters and in light of the criteria set in the Court's case law concerning the nature and scope of the obligations to make reparation,[143] the Court will analyze the claims presented by the Commission and by the representatives as well as the arguments of the State with the object of ordering the measures that would redress those violations.

A. Injured party

120. The Court considers an injured party to be, in the terms of Article 63(1) of the Convention, anyone who has been declared a victim of a violation of a right recognized in the Convention. Therefore, the Court considers as an "injured party" the persons listed in Annex I of this judgment,[144] who, as victims of the violations declared in Chapter VIII, will be the beneficiaries of the reparations that the Court orders. The Court reiterates that, according to the representatives, more than 800 victims have died to date. In addition, also according to the representatives, the age of most of the victims ranges between 80 and 90 years. The Court will bear this in mind in determining reparations and when they are to be complied with by the State, in view the increased protection that should be granted to older persons.

---

139 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25 and *Case of Digna Ochoa and family members v. Mexico, supra*, para. 150.

140 *Cf. Case of Velásquez Rodríguez v. Honduras*. Reparations and Costs, *supra*, paras. 25 and 2 and *Case of Digna Ochoa and family members v. Mexico, supra*, para. 151.

141 *Cf. Case of the Las Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 24, 2009. Series C No. 211, para. 226 and *Case of Digna Ochoa and family members v. Mexico, supra*, para. 151.

142 *Cf. Case of Ticona Estrada v. Bolivia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110 and *Case of Digna Ochoa and family members. Mexico, supra*, para. 152.

143 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs, supra*, paras. 25 to 27 and *Case of Digna Ochoa and family members v. Mexico, supra*, para. 153.

144 Notwithstanding the additional and differentiated identifications that were made in the context of the totality of the victims, who are individualized in Annexes II and III of this judgment (see *infra* paras. 125 and 141).

B. Measures of restitution

121. The ***Commission*** requested that the Court order the State to fully comply, as promptly as possible, with the decision of February 12, based on the finding of the Expert Report that calculated the correct amount of liquidation owed to each of the 2,317 workers and to proceed to immediately pay them.

122. Mss. ***Valdivia Ayala, Guerrero Cassuso, Rossi Mérida*** and ***Valdivia Bocanegra*** also requested "full compliance with the decision of the Supreme Court of February 12, 1992."

123. Ms. ***Meneses Huayra*** requested, in general terms, "integral reparation" for the violations suffered, which would include "due compensation" for all the victims for "the harm caused by the delay and the consequent denial of justice."

124. The ***State*** recalled that the Merits Report was issued on May 9, 2018, after it had complied with the execution of the decision of February 12. It added that this amount was fully paid from 2004 until 2017 and that this information was provided to the Commission and was not refuted by the alleged victims.

125. The Court has concluded that, with regard to the sub-group of 2,317 workers who continued to claim the amounts owed due to the decision of February 12, in spite of more than 29 years having elapsed since its issuance its execution is still open because the effective payment of the amounts established in the Expert Report has not been made. Therefore, the Court orders that the State comply with the domestic decisions and, thus, guarantee the effective payment of the sums due under the terms of the decision of September 12, and especially of the Expert Report, to the 2,317 victims listed in Annex II or their heirs, according to domestic law, in the amounts established in that list as established in the Expert Report that total of USD 242,601,058.98 (two hundred forty-two million, six hundred one thousand, fifty-eight dollars and ninety-eight cents in the currency of the United States of America). The State must, as of the notification of this judgment, begin to make gradual payments, which cannot exceed two years to fully pay the amounts owed.

C. Measures of satisfaction

126. The ***Commission*** requested, in general terms, that the Court adopt the pertinent measures to "fully redress the violations declared" in its Report on the Merits.

127. Neither the ***representatives*** nor the ***State*** made any type of claim in this regard.[145]

128. The ***Court*** orders, as it has done in other cases,[146] that the State publish, within six months of notification of this judgment: (a) the Court's official summary of this judgment, once, in the Official Gazette in a legible and adequate font; (b) the Court's official summary of this judgment, once, in a newspaper of national circulation in a legible and adequate font, and (c) the complete judgment, available for one year, on an official Web site of the State that is accessible to the public. The State must immediately inform the Court when it has published each of the above, notwithstanding the period of one year to submit its first report ordered in paragraph 10 of this judgment.

---

[145] Ms. Meneses Huayra requested certain measures of satisfaction in her brief with final written arguments, which were declared inadmissible for being time-barred, pursuant to the terms of Article 40 of the Rules.

[146] *Cf. Case of Montesinos Mejía v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 27, 2020. Series C No. 398, para. 226 and *Case of Digna Ochoa and family members c. Mexico, supra*, para. 167.

D. Other measures of reparation

129. La ***Commission*** recommended that the State adopt "the legislative or other measures necessary to avoid the repetition of the violations declared in the [Report on the Merits]." In addition, the State "should take the necessary measures to ensure that the execution of the judgment comply with the conventional standard of simplicity and swiftness and ensure that the judicial authorities that hear such proceedings are legally authorized and apply in practice the coercive mechanisms necessary to guarantee the compliance of judicial decisions."

130. None of the ***representatives***[147] offered specific comments on the matter.

131. The ***State*** claimed that, under the existing norms, "there are procedural mechanisms that are appropriate and conducive to guarantee the effectiveness of the judicial mandates contained in the final decisions of the judiciary." It added that it denied that there was a general or structural problem with regard to the failure to comply with judicial decisions against the State. It also indicated that it has "made compatible the expense for the payment of the judicial judgments with the principle of budgetary legality."

132. The ***Court*** notes that it has declared that it does not have sufficient elements to determine that the State violated its obligation to adopt provisions of domestic law, as prescribed in Article 2 of the Convention. Therefore, the request is denied since there is no causal link between the facts of this case and the violations declared.

E. Compensation

133. The ***Commission*** requested the Court "to integrally repair the violations declared in the [Merits Report], including due compensation to all the victims in this case, for damages caused by the delay ad consequent denial of justice."

134. Mss. ***Valdivia Ayala, Guerrero Cassuso, Rossi Mérida*** and ***Valdivia Bocanegra*** requested "compensation for damages caused by the delay and the denial of justice by the State for almost 30 years."

135. Ms. ***Meneses Huayra*** requested "integral reparation for the violations suffered and declared in the Merits Report […], including due compensation for all the 4,106 victims."

136. The ***State*** argued that it had not infringed any right established in the Convention and, therefore, there is no "international State responsibility that requires that reparations be ordered that would include pecuniary and/or non-pecuniary damages or any other related measures."

E.1. Pecuniary damages

137. The ***Court's*** case law has developed the concept of pecuniary damages and has established that it involves the loss of or detriment to the income of the victims, the expenses incurred as a result of the facts and the monetary consequences that have a causal nexus with the facts of the case.[148]

---

147 Ms. Meneses Huayra requested the adoption of guarantees of non-repetition in her brief with final written arguments, which were declared inadmissible for being time-barred, pursuant to the terms of Article 40 of the Rules.

148 *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91., para. 43 and *Case of Digna Ochoa and family members v. Mexico, supra*, para. 181.

138. In view of the violations declared in this judgment, the Court observes that the pecuniary damages are the result of the failure to fully execute the decision of September 12, 1992 and, especially, the non-compliance of the payment of the amounts established in favor of the sub-group of 2,317 workers by virtue of the Expert Report. The Court, therefore, considers that the measure of restitution ordered *supra* is sufficient to redress the pecuniary damages caused to the victims.

E.1. Non-pecuniary damages

139. The ***Court*** has established in its case law that non-pecuniary damages "may include the suffering and distress caused by the violation as well as the the impairment of values that are highly significant to the victims, as well as non-monetary alterations in their living conditions." Since it is not possible to assign a precise monetary equivalent to non-pecuniary damages, the victims, to be integrally redressed, can only be compensated by a monetary payment or by the assignment of goods or services that can be assessed monetarily, as prudently determined by the Court, applying judicial discretion and the principle of equity.[149]

140. The Court has determined that the State is responsible for violating the rights to judicial guarantees and to judicial protection for having infringed a reasonable time with regard to the victims listed in Annex I of this judgment, as well as for the ineffectiveness of the execution of the decision with regard to a sub-group of workers listed in Annex II of this judgment. The Court also determined that the State did not comply with its duty to guarantee the right to private property and to the right to work to the detriment of all the victims. The Court, thus, considers that the uncertainty, anguish and suffering caused to the victims of this case, as a consequence of the delayed or failed compliance with the decision of February 12, 1992, merits compensation for non-pecuniary damages in equity.[150]

141. The Court notes that, although it has been determined in this chapter that the persons belonging to the sub-group of 2,317 workers listed in Annex II who obtain restitution by the order to pay the amounts subsequently claimed (*supra* para. 125), the remaining group that decided not to continue to judicially pursue that claim lack such compensation. The Court has referred to the dilatory attitude of the State domestically (*supra* para. 102), which led many of the victims to abandon their claims due to the fatigue of a prolonged litigation at their advanced age and to the delay in complying with the decision of 1992. The Court bears this in mind when it sets the corresponding compensation for non-pecuniary damages and, therefore, orders, in equity, as non-pecuniary damages, the payment of USD 4,000.00 (four thousand United States dollars) to each person listed in Annex II of this judgment and USD 7,000.00 (seven thousand United States dollars) to each person listed in Annex III of this judgment, those who did not continue their pecuniary claims and who, therefore, are not beneficiaries of the measure of restitution mentioned *supra*. The State shall make the payment of these amounts immediately and in a period of no more than eight months from notification of this judgment.

F. Costs and expenses

142. The ***Court*** observes that none of the representatives made an allegation or specific petition regarding this area in their respective briefs with petitions and motions. The Court, however, notes that Ms. Meneses Huayra requested in her final written arguments the reimbursement of the costs and expenses incurred "at the domestic as well as the international jurisdiction during 29 years of

---

149 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, supra*, para. 84 and *Case of the Former Employees of the Judiciary v. Guatemala, supra,* para. 157.

150 *Cfr. Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 1, 2009. Series C No. 198, para. 133 and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375, paras. 266 and 267.

seeking justice," without indicating a specific sum. The Court has held that "the claims of the victims or their representatives in the matter of costs and expenses, with the supporting evidence, must be presented to the Court at the first procedural moment, that is, in the brief with pleadings, motions and evidence, although such claims may later be adjusted if new costs and expenses have been incurred during the procedure before this Court."[151] In view of the above, the request is extemporaneous and must be rejected. Nevertheless, at the stage of monitoring compliance of this judgment, the Court may order that the State reimburse the victims or their representatives the reasonable expenses that they incurred at that procedural step.[152]

G. Method of compliance of the payments ordered

143. The State shall make immediate payment of the compensation established as restitution in this judgment, was well as the non-pecuniary damages, directly to the persons indicated therein within a period no greater than two years and eight months, respectively as was specified, of notification of this judgment, although the State may make full payment at an earlier date, in the terms of the paragraphs that follow.

144. If the beneficiaries have died or die before they have been paid the respective amount, this shall be delivered directly to their heirs, in accordance with the applicable domestic law.

145. The State shall comply with the monetary obligations by payment in United States dollars, or its equivalent in the national currency, using the exchange rate published or calculated by a banking authority or pertinent financial institution on the date closest to the payment.

146. If for causes that can be attributed to the beneficiaries of the compensations or to their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit said amount in their favor in a bank account or certificate of deposit in a solvent Peruvian financial institution, in United States dollars, and in the most favorable conditions permitted by banking laws and practice. If the corresponding amount is not claimed after ten years, the amounts shall be returned to the State with the interest accrued.

147. The amounts allocated in this judgment as compensation for pecuniary restitution and non-pecuniary damages shall be delivered in full to the persons and organizations indicated, as established in this judgment, without any deductions arising from possible taxes or charges.

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

X
OPERATING PARAGRAPHS

149. Therefore,

THE COURT

---

[151] *Cf*. Article 40(d) of the Rules of the Court. See also, *Case of Garrido and Baigorria v. Argentina. Reparations and Costs,* supra, paras. 79 and 82, *Case of Coc Max et al. (Xamán Massacre) v. Guatemala. Merits, Reparations and Costs.* Judgment of August 22, 2018. Series C No. 356, para. 194 and *Case of Valle Ambrosio et al. v. Argentina. Merits and Reparations*. Judgment of July 20, 2020. Series C No. 408, para. 81.

[152] *Cf*. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia, supra,* para. 29 and *Case of Digna Ochoa and family members v. Mexico. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 25, 2021. Series C No. 447, para. 193.

unanimously,

DECIDES,

1. To reject the preliminary objection concerning the control of legality of the actions of the Commission, in the terms of paragraphs 18 and 19 of this judgment.

2. To reject the preliminary objection concerning the failure to exhaust domestic remedies, in the terms of paragraphs 25 and 26 of this judgment.

DECLARES,

unanimously, that:

3. The State is responsible for violating Articles 8(1) and 25(2)(c) of the American Convention on Human Rights, read in conjunction with Article 1(1) thereof, to the detriment of the persons listed in Annex I of this judgment.

unanimously, that:

4. The State is responsible for violating Articles 8(1), 25(1) and 25(2)(c) of the American Convention on Human Rights, read in conjunction with Article 1(1) thereof, to the detriment of the persons listed in Annex II of this judgment, in the terms of paragraphs 95 to 98 of the judgment.

By five votes in favor and two votes against, that:

5. The State is responsible for violating Articles 26 and 21 of the American Convention on Human Rights, read in conjunction with Article 1(1) thereof, to the detriment of the persons listed in Annex I of this judgment, in the terms of paragraphs 107 to 115 of this judgment.

Dissenting: Judges Eduardo Vio Grossi and Humberto A. Sierra Porto.

AND ESTABLISHES:

unanimously, that:

6. This judgment constitutes, per se, a form of reparation.

7. The State shall make the effective payment of the pending reimbursements according to what has been ordered by the decision of February 12, 1992, in the terms of paragraphs 125 and 143 to 148 of this judgment.

8. The State shall issue the publications ordered in paragraph 128 of this judgment.

9. The State shall pay the amounts fixed in paragraph 141 of this judgment as non-pecuniary damages, in the terms of paragraphs 143 to 148 of this judgment.

10. The State shall, within one year of notification of this judgment, present the Court with a report on the measures adopted to comply with this judgment.

11. The Court will monitor full compliance with this judgment, in exercise of its attributions and in compliance with its duties pursuant to the American Convention on Human Rights, and will declare this case closed once the State has fully complied with all the measures ordered therein.

Judges Eduardo Ferrer Mac-Gregor and Ricardo Pérez Manrique presented their separate concurring opinions. Judges Eduardo Vio Grossi and Humberto A. Sierra Porto presented their partially dissenting and concurring opinions, respectively.

Done in the Spanish language at San José, Costa Rica on February 1, 2022.

I/A Court HR. *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru*. Preliminary Objections, Merits and Reparations and Costs. Judgment of the Inter-American Court of Human Rights of February 1, 2022.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire Eduardo Vio Grossi

Humberto Antonio Sierra Porto Eduardo Ferrer MacGregor-Poiset

Eugenio Raúl Zaffaroni Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Registrar

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Registrar

SEPARATE OPINION OF JUDGE
EDUARDO FERRER MAC-GREGOR POISOT

CASE OF THE NATIONAL FEDERATION OF MARITIME AND PORT WORKERS (FEMAPOR) v. PERU

JUDGMENT OF FEBRUARY 1, 2022
(Preliminary Objections, Merits and Reparations)

I. INTRODUCTION: THE "REINFORCED STANDARD OF EXPEDITIOUSNESS" FOR OLDER PERSONS IN THE EXECUTION OF JUDGMENTS AND WAGES AS PART OF THE RIGHT TO WORK

1. This is not the first time that the Inter-American Court of Human Rights (hereinafter "the Court") has ruled on the rights of older persons. Nevertheless, I believe it relevant to present this opinion to emphasize the manner in which the rights of older persons are slowly, but each day more apparent in the inter-American region, especially since *Poblete Vilches v. Chile* in 2018.[1] There has been a belated recognition of a differentiated focus of the rights of this group of persons in all geographical areas and now is the time to visibilize the special situation of vulnerability of older persons.

2. It is my belief that *National Federation of Maritime and Port Workers (FEMAPOR) v. Peru* convincingly underscores and crystallizes the impact that a lack of a guarantee of social rights has on older persons, especially as a result of the failure to enforce domestic judgments. I particularly wish to bring to light the manner in which inter-American jurisprudence and norms are being gradually broadened to the point of identifying "age" as a category, derived from Article 1(1) of the Convention, that protects older persons from acts of discrimination.

3. An aspect of this judgment that should not be ignored is the special attention that the Court devotes to the span of ages of the victims, which ranges between 70 and 90 years of age,[2] the great majority of them being between 80 and 90 years of age, and the fact that, unfortunately, more than 800 of them have died without having been able to effectuate their rights, which is not surprising since the life expectancy in Peru is 77 years of age."[3]

4. These reflections complement those that I developed in 2019 in my concurring opinion in *Muelle Flores v. Peru,* where I put forward the importance of a differentiated perspective in the execution of decisions that guarantee social rights (in that case, the right to social security).[4] Although the instant case concerns the failure to execute domestic decisions on the right to work, it contains, as I mentioned, some elements that more emphatically identify older persons as a socially vulnerable group.

---

[1] *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs.* Judgment of March 8, 2018. Series C No. 349.

[2] *Cf. Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru. Preliminary Objections, Merits and Reparations.* Judgment of February 1, 2022, paras. 65 and 102.

[3] *Cf. Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru. Preliminary Objections, Merits and Reparations.* Judgment of February 1, 2022, para. 102 and footnote 109: World Bank, Life expectancy at birth. Available at: https://datos.bancomundial.org/indicador/sp.dyn.le00.in?locations=PE

[4] Separate opinion in *Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375, paras. 44 to 68.

5. This judgment dedicates a special section to "The Duty of Special Protection for Older Persons,"[5] an issue that it transversally considers[6] and that, in general terms, states that "in the case of people who are in a situation of vulnerability, such as the alleged victims in this case, who are all older persons, *a reinforced standard of expeditiousness can be required in all judicial and administrative processes, including the execution of the judgments.*"[7]

6. It is important to develop two aspects of this opinion: (i) visibilizing the rights of older persons, especially those that the Court has evolved in its case law since 2018 and those established in the Inter-American Convention on Protecting the Human Rights of Older Persons of 2015 (hereinafter also "the IACPOP") and (ii) in enriching other reflections that have been offered on the issue, I will refer to wages as part of the right to work derived from Article 25 of the Convention.

II. TO MAKE VISIBLE THE "INVISIBLE?": OLDER PERSONS AS AN ESPECIALLY VULNERABLE GROUP

A. "Age" as a category of special protection for older persons

7. Domestic and international law has been particularly distinguished by the continual evolution of the content of different rights that are recognized everywhere and particularly where the regional human rights systems have an impact. Hand in hand with this continual evolution of the substantive content of human rights has been the evolution of the groups of persons to which these rights are directed.

8. For example, we have seen this tendency embodied in the international instruments that, in the historic moment of their adoption, identified only certain specially protected groups. As an example, Article 1(1) of the American Convention in its clause on non-discrimination (the article has also served as a reference point to identify especially vulnerable groups),[8] lists as protected categories "race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition," which is the same formulation used in other international human rights treaties.[9]

9. However, these clauses were not sufficiently ample when other sectors of society claimed rights and did not find in those formulations a category that protected them or that granted them a differentiated focus with regard to their rights. Fortunately, some international instruments contemplated "clauses that incorporate suspect categories." The Convention contemplates, in its Article 1(1), such a possibility with the phrase "or any other social condition." In the words of the Court: "when interpreting the phrase 'any other social condition' of Article (1) of the Convention, the most favorable alternative for the safeguard of the rights protected by the treaty must be chosen, according to the *pro homine* principle."[10]

---

[5] *Cf. Case of National Federation of Maritime and Port Workers (FEMAPOR) v. Peru. Preliminary Objections, Merits and Reparations.* Judgment of February 1, 2022, paras. 79-83.

[6] *Ibídem*, paras. 4, 79-83 and 110.

[7] *Ibídem*, para. 83. Se also, *Case of Teachers of Chañaral and other municipalities v. Chile. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 10, 2021. Series C No. 443, para. 152.

[8] In this regard, in *Ximenes Lopes v. Brazil,* the I/A Court stated that "103. […] any person who is in a vulnerable condition is entitled to special protection, which must be provided by the States if they are to comply with their general duties to respect and guarantee human rights. The Court reaffirms that not only should the States refrain from violating such rights, but also adopt positive measures, to be determined according to the specific needs of protection of the legal person, either because of his personal condition or the specific situation he is in […]."

[9] For example, see Articles 2(1) of the International Covenant on Civil and Political Rights and 2(2) of the International Covenant on Economic, Social and Cultural Rights.

[10] *Cf. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights).* Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para.

Thus:

> The list of specific standards by which it is prohibited to discriminate, according to Article 1(1) of the American Convention, is neither exhaustive nor limiting but rather merely declarative. Conversely, the wording of this article leaves the standards open by including the phrase "other social condition" to the incorporation of other categories that were not explicitly indicated. The phrase "any other social condition" of Article 1(1) of the Convention should, therefore, be interpreted by the Court under the perspective of the option most favorable to the person and to the evolution of the fundamental rights in contemporary international law.[11]

10. Thus, the Court, through its case law, has been identifying other categories and groups of special protection by use of the phrase "any other social condition," such as in the case of LGBTI persons (who find protection under the categories of "sexual orientation," "gender identity" or the "expression of gender"), disabled persons (protected under the category of disabled) and, recently, older persons (protected by age).

11. Age as a protected category, as we have seen, is not expressly contemplated in Article 1(1). However, since 2003 the Court has included "age" among the categories that could be included within the scope of Article 1(1).[12]

12. Prior to 2018, the use "of age" as a category of special protection was directed (although not expressly in the Court's decisions) toward those under 18 years of age; in other words, children and adolescents. Age, therefore, was not also seen as a category applicable to persons older than 60 years.[13]

13. This infrequent use of "age" as a category of special protection for older persons was inserted into a context where there was no specific development or focus that protected this group of persons. This changed substantially when, for example, the United Nations appointed the first Independent Expert on the rights of older persons (2014)[14] and the Inter-American Commission on Human Rights created The Unit on the Rights of Older Persons (2017), which later became the Rapporteurship on the Rights of Older Persons (2019)[15].

B. The slow development of differentiated standards for older persons: the crystallization of the "right to a preferential treatment"

14. As I expressed in *Muelle Flores*, two instruments have given visibility to the differentiated rights of older persons:[16] the Inter-American Convention on Protecting the Human Rights of Older Persons and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons of 2016.[17]

52.

11 *Cf. The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law.* Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 101.

12 *Cf. Juridical Condition and Rights of the Undocumented Migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 101.

13 For the effects of Article 2 of the Inter-American Convention on Protecting the Human Rights of Older Persons, an "older person" is one 60 years of age or older, except where the domestic legislation has determined a minimum age that is lesser or greater, provided that it is not over 65 years. This concept includes, among others, elderly persons.

14 Available at: https://www.ohchr.org/SP/Issues/OlderPersons/IE/Pages/RosaKornfeldMatte.aspx .

15 Available at: http://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/r/PM/default.asp

16 Although not differentially, the revised European Social Charter contemplate a protection for elderly persons in its Article 23.

17 In the African System of Human Rights, Article 18(4) of the African Charter on Human and Peoples' Rights provides for a special protection of older persons. Also worthy of mention in the African System, Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Human Rights of Women in Africa. That article states: Special Protection of the Older Woman. The States Parties undertake to: (a) Special Protection for African

15. In particular, and for our regional system, the IACPOP, in its Preamble, emphasizes that "older persons have the same human rights and fundamental freedoms as other persons" and that "as a person ages, they should continue to enjoy a full, independent, and autonomous life, health, safety, integration, and active participation in the economic, social, cultural and political spheres of their society." Thus, "the adoption of a broad, comprehensive convention will contribute significantly to protecting, promoting, and ensuring the full enjoyment and exercise of the rights of older persons and to foster an active ageing process in all regards." In other words, the treaty itself recognizes the need to place the human rights of older persons in the context of the inter-American system. In addition, and as will be developed *infra,* the IACPOP emphasizes the special situation of vulnerability to which older persons are subjected. In this regard, some general principles that apply to all the provisions of the IACPOP are rather illustrative, such as: (i) a "preferential care," (ii) the application of a "differentiated focus" for the effective enjoyment of the rights of older persons and (iii) an effective judicial protection.[18] An example of these principles can be found in the context of a friendly settlement before the Inter-American Commission where, at the moment of indicating the measures of rehabilitation, the Commission pointed out that two beneficiaries would be treated "differentially taking into account their condition of older persons."[19]

16. Moreover, the IACPOP establishes that the States must "adopt and strengthen such legislative, administrative, *judicial*, budgetary and other measures as may be necessary […] to ensure differentiated and preferential treatment for older persons in all areas."[20] Finally, and especially for the effects of this case, these considerations must be read in conjunction with its Article 31 (Access to justice), which establishes that the States Parties undertake "to ensure effective access to justice on an equal basis with others, including through the provision of procedural accommodations in all legal and administrative proceedings at any stage." The States must, therefore, "ensure due diligence and preferential treatment for older persons in the processing, settlement of, and enforcement of decisions in administrative and legal processes."[21] An example of the expression of these principles in the inter-American system may be found in the 2013 Rules of Procedure of the Inter-American Commission, in the figure of *per saltum,* by stating that in the norms that govern the initial processing of a petition, that, although a petition is studied according to "the order that it was received," in exceptional cases and due to the special situation of vulnerability of the petitioner "the Commission may expedite the evaluation of a petition" when, among others, "the alleged victim is an older person."[22]

17. As has been stated on another occasion,[23] prior to *Poblete Vilches (2018)* and *Muelle*

Women. The States Parties undertake: a) to take specific measures commensurate with their physical, economic and social needs as well as their access to employment and professional training; b) to ensure the right of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity."

[18] Article 3(k), (l) and (n) of the IACPOP.

[19] IACHR, Report No. 67/16, Case 12.541, Report on the Friendly Settlement, Omar Zúñiga Vásquez and Amira Isabel Vásquez de Zúñiga, Colombia, November 30, 2016, p. 8.

[20] *Cf.* Article 4(c) of the IACPOP.

[21] *Cf.* Article 31 of the IACPOP.

[22] Rules of Procedure of the Inter-American Commission on Human Rights, Art. 29 (2)(a)(i). Since the 1990's, the Commission has ruled on decisions that involve the human rights of older persons, (Report No. 90/90. Casoe 9893).[22] The Commission, in setting out the facts placed special emphasis on the particular situation of a person who was the victim of a forced disappearance (Report No. 43/47, Case 10.562, Héctor Pérez Salazar, Peru, February 19, 1998). Or had evaluated whether the internal modification of pension systems had been regressive (Report No. 38/09, Case 12.670. Admissibility and merits, National Association of Former Employees of the Social Security Institute of Peru et al. v. Peru. March 27, 2009).,

[23] In my separate opinion in *Muelle Flores,* I indicated that*:* "51*.* […] we can identify two stages in the Inter-American Court's case law in relation to older persons: (a) the first in which, timidly and tangentially, it addressed

Flores (2019), the Court's case law had not visibilized the special situation of vulnerability of older persons. *Poblete Vilches* was the first case in which the Court addressed the violations under the optic of the prohibition of discrimination "owing to his condition as an older person."[24]

18. Since that case, the Court has slowly and increasingly developed more specific standards on the rights of older persons, some of those standards in accordance with the obligations that have been embodied in the IACPOP. For example, in *Muelle Flores*, when the Court evaluated the fourth element of a reasonable time to implement domestic decisions, it recognized the right to social security —harm caused by the legal situation of the person involved in the process— and held that "given that this case concerns the right of an older person with a hearing impairment to social security, a benefit associated with income substitution and nutrition […] *a reinforced standard of expeditiousness was required.*"[25] This holding of the Court may be understood as an expression of the obligations arising from the IACPOP with respect to the right to access to justice (Article 31). The Court, aware of the special impact caused by the non-payment of an old-age pension, specified that "the violation of one right directly affects another, a situation that is accentuated in the case of older persons," which affects their "dignity" as persons.[26]

19. Similar considerations were reiterated by the Court in *ANCEJUB-SUNAT,* the only difference being that that case established the link between the failure to pay the pension of social security and the violation of the right "to a dignified life."[27] Thus, the Court's case law crystallized what the IACPOP expresses in its Article 6 by indicating that "[a]ll older persons have the right to social security to protect them so that they can live in dignity."

20. Recently, in *Teachers of Chañaral and other municipalities*, in a section entitled "The right to judicial protection, especially regarding older persons in situations of vulnerability," for the first time the Court expressly pointed out the differentiated focus in the access to justice of older persons,[28] stating that there exists for older persons the "right to a preferential treatment."

21. In that case, the Court held that "the State's obligation to guarantee compliance with judicial rulings takes on particular significance in cases […], in which a government institution has been sentenced to pay an amount of money to older adults."[29] Thus, the Court considered

---

the specific situation of an older person, and (b) the second, in which the Court addressed the case from a perspective of "age" as a factor that had a differentiated impact on older persons and their rights". In the first stage are *Yakye Axa Indigenous Community vs. Paraguay* (2005) and *García Lucero et al. v. Chile* (2013). While the cases in the second stage are *Poblete Vilches et al. v. Chile* (2018) and *Muelle Flores v. Peru* (2019).

[24] *Cf. Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs.* Judgment of March 8, 2018. Series C No. 349, para. 142.

[25] *Cf. Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375, para. 162.

[26] *Cf. Muelle Flores v. Perú. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375, paras. 204 to 207. In this regard, the IACPOP stresses that one of the principles that govern the Convention is "dignity" (Art. 3(c).

[27] *Cf. Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2019. Series C No. 394, paras. 184 to 191.

[28] Specifically, the Court stated that: 148. […] it would emphasize that the alleged victims in the instant case are all of an advanced age […] many of them especially vulnerable. As regards these people, the Inter-American Convention on Protecting the Human Rights of Older Persons, to which Chile is a party, recognizes certain applicable principles, including equality and non-discrimination (Article 3(d)), proper treatment and preferential care (Article 3(k)) and effective judicial protection (Article 3(n)).")

[29] *Cf. Case of Teachers of Chañaral and other municipalities v. Chile. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 10, 2021. Series C No. 443, para. 147.

that, with respect to access to justice, "older persons acquire a right to preferential treatment in the enforcement of judgments favorable to them, and that the State has a corresponding obligation to guarantee that older persons enjoy diligent, speedy, effective access to justice in both administrative and judicial proceedings."[30] Finally, the Court added that the obligation to act expeditiously in the case of older persons is justified to a great extent because they belong to a vulnerable group[31] and, therefore, "we can deduce that, in the case of people who are vulnerable […] a reinforced standard of expeditiousness can be required in judicial and administrative processes."[32]

22. Another significant aspect, although it might appear to be minor, is the manner in which the facts of the case incorporated -disconnectedly- the span of the ages of the declared victims.[33] For example, although it was not the first time that the Court resolved similar questions of fact,[34] it was the first time that it clearly delineated the range of the "age" of the older persons who were declared victims.

C. The "reinforced standard of expeditiousness" for older persons

23. Finally, this case fits into an expedited line of case law began in 2018, which contrasts with more than three decades in which the Court timidly, and almost absently, addressed the rights of older persons as a vulnerable group.[35]

24. This judgment, in addition to the reflections in the preceding paragraphs that stress the right to a "preferential treatment" for older persons,[36] incorporates in its considerations "the reinforced standard of expeditiousness" as a general principle of international law for those persons.

25. It should not be forgotten that the Court had already ruled on this "differential perspective." In *Furlan and family v. Argentina,* in the context of the analysis of a reasonable time in "the civil suit for damages [that] involved a minor, and later on an adult, with a disability" and who "had few financial resources to obtain adequate rehabilitation" implied that the judicial authorities should observe "an even greater obligation to respect and guarantee his rights."[37] In that case, the Court held that: (i) the authorities did not take into account the vulnerability of the victim; (ii) the case called for a "greater diligence" and (iii) the "main objective of the suit […] depended on the promptness of the proceeding."[38]

---

30 *Cf. Case of Teachers of Chañaral and other municipalities v. Chile. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 10, 2021. Series C No. 443, para. 149.

31 *Cf. Case of Teachers of Chañaral and other municipalities v. Chile. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 10, 2021. Series C No. 443, paras. 150 and 151.

32 *Cf. Case of Teachers of Chañaral and other municipalities v. Chile. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 10, 2021. Series C No. 443, para. 152.

33 The judgment states that: "125. The alleged victims are all older adults. Since June 30, 2021, the date of the transmission of the parties' closing arguments, 149 alleged victims, or eighteen percent of the total, were between 80 and 92 years of age; 325 alleged victims, or thirty-eight percent of the total, between 70 and 79 years of age, and 189 alleged victims, or twenty-two percent of the total, between 61 and 69 ears of age. As of the same date, 185 alleged victims, or over one-fifth of the total, had passed away."

34 For example: *Case of the National Association of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2019. Series C No. 394.

35 See *supra,* para. 17, footnote 23 of this opinion.

36 See, *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru. Preliminary Objections, Merits and Reparations.* Judgment of February 1, 2022, para 79.

37 *Cf. Case of Furlán and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2012. Series C No. 246, para. 201.

38 *Cf. Case of Furlán and family v. Argentina. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2012. Series C No. 246, para. 202.

26. Moreover, "this reinforced standard" in *Furlan* led, in the context of a reasonable time, on the one hand, to a detailed analysis of the fourth element in evaluating a reasonable time; in other words, "the adverse effect of the duration of the proceedings on the judicial situation of the person involved in it,"[39] a criterion that the European Court of Human Rights had identified as "an exceptionally diligent action since emphasis is placed on what was [or is] at stake."[40] Although those standards were developed in the context of the substantiation of the proceedings and not during the stage of execution, the same guidelines, *mutatis mutandis,* may be applied to the stage of execution of judicial and administrative decisions.

27. In its judgment, the Court affirmed that the "reinforced standard of expeditiousness," which it had already incorporated in *Muelle,*[41] in the case of older persons derives its justification from the vulnerability of this group and, therefore, is a general principle of international law. The relevance of accentuating this criterion that the Court has established for older persons is not insignificant, since it finds its justification in the fact that this group suffers different afflictions and in a differentiated manner, and due to the particularities at this stage of their lives, establishing access to justice must be a priority as much for the individual as for the possible rights that might be in play in each specific case.

28. As we have seen in this section, the Court's jurisprudential evolution -which was also a latent scenario in all of the international law of human rights- has gone from a panorama that did not place special attention on the "age" of the victims as a determining factor permeating the analysis of a specific case to the point of recognizing for older persons an international principle that should govern the actions of judicial and administrative bodies that are called upon to hear and to materialize the rights of persons who belong to this age group.

III. WAGES AS AN INTEGRAL PART OF THE RIGHT TO WORK

29. In my opinion in *Former Employees of the Judiciary v. Guatemala,* I recounted how the right to work had evolved from *Lagos del Campo* (2017) to the Guatemalan case in 2021, to which I now refer.[42] The instant judgment, however, develops another facet that has not been considered by the Court's jurisprudence: *the right to the payment of a salary, in accordance with the international corpus iuris in the matter*.[43]

30. The Court, in this judgment, specified that the concept of "remuneration" arises from the fact that "the right to work also implies receiving a fair wage, which, in turn, must include all of the emoluments that are included in the term remuneration."[44] The Court's judgment in this case is supported by the European Social Charter, which states that "4. […] the right of workers to a remuneration such as will give them and their families a decent standard of

---

[39] *Cf. Case of Furlán and family v. Argentina. Preliminary Objections, Merit, Reparations and Costs.* Judgment of August 31, 2012. Series C No. 246, para. 194.

[40] In *Furlan*, the Court indicated that: "195. The European Court of Human Rights has, on several occasions, used this criterion in the analysis of a reasonable time. Indeed, in the case of *H. v. The United Kingdom*, the Court placed special emphasis on the importance of "what was at stake" for the applicant and determined that the result of the proceeding in question had a particular quality of irreversibility. Therefore, in cases of this kind, the authorities are under the duty to exercise exceptional diligence. Moreover, in the case of *X. v. France*, the Court indicated that the judicial authorities were under a duty to exercise exceptional diligence in a proceeding involving a person infected with AIDS virus, having regard to the incurable nature of the disease from which he was suffering and the reduced life expectancy. Likewise, in the cases of *Codarcea v. Romania* and Jablonska v. Poland, the European Court considered that, in view of the victim's old age, the courts should apply exceptional diligence in processing the case."

[41] See *supra,* para. 17 of this opinion.

[42] See paras. 9 to 13 of the opinion presented in *Former Employees of the Judiciary v. Guatemala*.

[43] *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Perú. Preliminary Objections, Merits, and Reparations.* Judgment of February 1, 2022, para. 108.

[44] *Ibidem.*

living,"[45] which the Charter develops more specifically.[46] Thus, for example, the European Committee on Social Rights has also indicated that the concept of "remuneration" refers to the "consideration that an employer pays to his or her employee for the work carried out," which may also include "special premiums and bonuses."[47]

31. In this specific case, establishing a link between the importance of the remuneration and the wages -as an integral part of the right to work- and the violation of the right to a reasonable time of a sub-group of 2,317 maritime and port workers who continued to claim additional amounts that they were owed, the Court concluded that this had an impact on the right to the full payment of their remuneration, which impacted on their right to work and to receiving a fair and previously agreed upon salary. Moreover, in applying this differential focus, the Court complemented its conclusion by stressing that the harm (infringement of those rights) had a greater impact "due to their age, most of them between 80 and 90 years of age and the fact that, unfortunately, more than 800 victims […] have died without having been able to properly effectuate their right."[48]

IV. CONCLUSIONS

32. Although regarding a different area, the Independent Expert on the enjoyment of all the human rights of older persons has stated that "there is a serious gap in the data to capture the lived realities of older persons and the enjoyment of their human rights. This lack of significant data and information on older persons is, per se, an alarming sign of exclusion and renders meaningful policy making and normative actions practically impossible."[49] What the Independent Expert recognizes is that there is not sufficient input to visibilize the reality felt by older persons.

33. In this context, the effort to jurisprudentially construct the rights and focusses that belong to older persons (as well as the aforementioned impacts) is none other than to visibilize the particular situation of this group in our region. Curiously, the contentious cases regarding older persons heard by the Court (except *Poblete Vilches)* concern the failure to execute judgments that recognize rights (pensions or social security), but those rights do not materialize for the beneficiaries, which constitutes, as has been embodied in this judgment, a serious lack of compliance of the obligations assumed by the States under the American Convention.

34. As we have attempted to demonstrate, the Court's case law has, since 2018, slowly developed diverse standards in favor of older persons. A short summary of that record could be condensed into three core aspects: (i) age as a category of special protection for older persons (*Poblete Vilches, 2018*); (ii) the right to a "preferential treatment" (*Teachers of*

---

[45] Part I, No. 4 of the European Social Charter.

[46] Article 4. Right to a fair remuneration. To ensure the effective exercise of the right to a fair remuneration, the Parties undertake: "1 to recognize the right of workers to a remuneration such as will give them and their families a decent standard of living; 2 to recognize the right of the workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases; 3 to recognize the right of men and women workers to equal pay for work of equal value; 4 to recognize the right of workers to a reasonable period of notice for termination of employment; 5 to permit deductions of wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards. The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

[47] *Cf. European Committee of Social Rights, Complaint, 37/2006. European Council of Police Unions (CESP) v. Portugal*, December 2, 2007, para. 21.

[48] See, *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru. Preliminary Objections, Merits and Reparations.* Judgment of February 1, 2022, paras. 108-110.

[49] *Cf.* UN, *Report of the Independent Expert, rights of the aged persons: the data gap,* 2020, para. 19.

Chañaral and other municipalities, 2021) and (iii) a "reinforced standard of expeditiousness" for older persons (*National Federation of Maritime and Port Workers [FEMAPOR], 2022*). To these may be added the considerations in the judgment on the payment of a remuneration and wages as an integral part of the right to work and that, in the case of older persons, the lack or improper payment thereof is accentuated with special intensity. All these elements are of vital importance for the region and, in general, for the inter-American public order.

35. These efforts that have been constructed jurisprudentially have served to strengthen the rights of older persons in the inter-American system and, generally, to place in evidence the different realities that confront these persons as a differentiated group who, at this stage of their lives, experience in a special manner violations to their human rights. The inter-American jurisprudence is now making visible what for many years remained vague in the inter-American system: the rights of older persons as an especially vulnerable group.

36. This visibility is fundamentally important in Latin America and the Caribbean since, of its around 654 million inhabitants, thirteen percent are older than 60 years of age, a percentage that is projected to rise to twenty-five percent in 2050. As ECLAC has expressed, older persons are among the most vulnerable groups and they, unfortunately, have suffered from the pandemic and they continue suffering direct consequences in their quality of life and they confront great challenges in achieving their rights.[50]

Eduardo Ferrer Mac-Gregor Poisot
Judge

Pablo Saavedra Alessandri
Registrar

[50] *Cf.* ECLAC, *Challenges for the protection of older persons and their rights during the COVID-19 pandemic,* December 2020, Available at: https://repositorio.cepal.org/bitstream/handle/11362/46487/1/S2000723_es.pdf

CONCURRING OPINION OF
JUDGE RICARDO C. PÉREZ MANRIQUE
CASE OF THE NATIONAL FEDERATION OF MARITIME AND PORT WORKERS (FEMAPOR) V. PERU
JUDGMENT OF FEBRUARY 1, 2022
(Preliminary Objections, Merits and Reparations)

I. INTRODUCTION

1. This judgment declares the violation of Articles 8(1), 21, 25(1), 25(2)(c) and 26, read in conjunction with Article 1(1) of the American Convention on Human Rights (hereinafter "the Convention"). The case concerns the infringement of the right to judicial protection due to the failure to comply with the February 12, 1992 decision on a writ of amparo of the Supreme Court of the Republic of Peru, which determined the method of calculating the additional pay increase for 4,047 former maritime, port and river workers. Since 2010, 2,317 of the beneficiaries of the original decision have continued to present a claim before the judiciary because they believe that the payment of their social benefits was incorrectly calculated. The Court also held that the passage of 25 years to fully execute the Supreme Court's decision was not a reasonable period.

2. I hereby concur with the judgment and present this opinion in order to examine more in depth the importance of the right to a salary as an economic, social, cultural and environmental right (ESCER) and, at the same time, to emphasize some aspects related to the generational vulnerability of victims who are more than 70 years of age.

3. My opinion is structured as follows: (i) the direct justiciability of ESCER, (ii) the importance of wages as a component of the right to work, and (iii) the vulnerability of older persons.

II. DIRECT JUSTICIABILITY OF ESCER

4. The justiciability of ESCER has been debated, both doctrinally and by the Court, and has resulted in at least three positions, among other issues that I mentioned in my concurring opinion in *National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (Ancejub-Sunat) v. Peru* of November 21, 2019.[1]

5. The first position proposes that individual violations of ESCER lack a "direct justiciability." This is not to say that they are not justiciable, but rather that they are so "indirectly." In other words, in order to analyze a violation of those rights, the Court can only do so in relation to the civil and political rights expressly recognized in Articles 3 to 25 of the Convention, with the exception that the infringement of two of the ESCER rights may be declared directly: the right to education and the right to organize. Both those rights are expressly recognized as "justiciable" by Article 19(6) of the Additional Protocol to the American Convention on Human

[1] *Cf. Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2019. Series C No. 394.

Rights in the Area of Economic, Social and Cultural Rights (hereinafter "Protocol of San Salvador").[23]

6. The second position, in contrast to the first, argues for "direct justiciability." It claims that the Court has jurisdiction to hear autonomous violations of economic, social, cultural and environmental rights on the basis of Article 26 of the Convention, in the understanding that they are justiciable on an individual basis.[4] This viewpoint analyzes violations of ESCER through the lens of Article 26, recognizing a direct remittance to the economic, social, educational, scientific and cultural standards found in the OAS Charter. The analysis of the infringements of ESCER will always be seen as a violation of Article 26, by reference to the OAS Charter or the American Declaration, leaving aside an integration with civil and political rights.

7. The third position, which is the one that I endorse, is that which we could call the "position of simultaneity." As I mentioned in previous concurring opinions and repeating my reasoning there,[5] my view on this option derives from a full recognition of the universality, indivisibility, interdependence and inter-relationship among the human rights, which serves as the foundation of the Court's jurisdiction when it hears cases of violations of economic, social, cultural and environmental rights. I state this in the belief that human rights are interdependent and indivisible in such a way that civil and political rights are intertwined with economic, social, cultural and environmental rights. They are, particularly, indivisible in circumstances such as those encountered in this case.

8. That is why I have stated that this interdependence and indivisibility allows us to see the individual in an integral manner as a full holder of rights, which has an impact on the justiciability of his or her rights. The Preamble to the Protocol of San Salvador has a similar view: *"Considering the close relationship that exists between economic, social and cultural*

---

[2] This was the majority position of the Inter-American Court until the judgment in *Lagos del Campo v. Peru*. Among other cases in which this position was taken are: *"Juvenile Reeducation Institute" v. Paraguay. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 2, 2004. Series C No. 112 and *Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of June 17, 2005. Series C No. 125 to mention two examples, as well as *Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 1, 2015. Series C No.298.

[3] 6. In the case in which the rights established in Articles 8(a) and 13 were violated by an act directly imputable to a State Party of this Protocol, such a situation could occur through the participation of the Inter-American Commission on Human Rights, and, when appropriate, of the Inter-American Court of Human Rights, in the application of the system of individual petitions governed by Articles 44 to 51 and 61 to 69 of the American Convention on Human Rights. Protocol of San Salvador.

[4] *Cf. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2017. Series C No. 340, paras. 142 and 154; *Case of the Dismissed Employees of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2017. Series C No. 344, para. 192; C*ase of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs.* Judgment of February 8, 2018. Series C No. 348, para. 220; *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs.* Judgment of March 8, 2018. Series C No. 349, para. 100; *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 23, 2018. Series C No. 359, paras. 75 to 97; *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of March 6, 2019. Series C No. 375, paras. 34 to 37; *Case of National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2019. Series C No. 394, paras. 33 to 34; *Case of Hernández v. Argentina. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 22, 2019. Series C No. 395, para. 62 and *Case of the Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina. Merits, Reparations and Costs.* Judgment of February 6, 2020. Series C No. 400, para. 195.

[5] *Cf*. Concurring opinion in *National Association of the Discharged and Retired Employees of the National Tax Administration Superintendence (Ancejub-Sunat) v. Peru* (November 21, 2019); *Hernández v. Argentina* (November 22, 2019); *Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina* and *Employees of the Fireworks Factory of Santo Antonio de Jesús and their families v. Brazil* (July 15, 2020).

rights, and civil and political rights in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person, for which reason both require permanent promotion and protection if they are to be fully realized, and the violation of some rights in favor of the realization of others can never be justified."

9. Under this position, Article 26 of the Convention functions as a framework article in that it refers in general terms to economic, social, cultural and environmental rights, the reading and the determination of which remits us to the OAS Charter. The Protocol of San Salvador, in turn, individualizes and provides content to those rights. In my view, the great importance of these rights, the Protocol states that they should be reaffirmed, developed, perfected and protected (see Preamble). Finally, there is a group of instruments of the inter-American *corpus juris* that also refer to ESCER.

10. This viewpoint does not place Article 26 on a higher (nor a lower) plane than civil and political rights, but rather it integrates them under a framework article that protects ESCER and allows a greater and more coherent confluence with the other articles of the Convention in determining the object and scope of the violations. In reaffirming the position of simultaneity, we are seeking to leave aside the reductionisms that might lead to representing the two aforementioned positions. On the one hand, a position that eliminates the possibility of declaring a violation of Article 26 would, in the end, completely make invisible the autonomy and existence of ESCER as true rights, justiciable and, therefore, in force. On the other hand, a position that simply considers Article 26 as the only instrument to process cases of ESCER ignores their interdependence and inter-relationship with civil and political rights.

11. This case perfectly demonstrates the need for a coherent and congruent protection not only with regard to ESCER, but also from a consolidated analysis of the violations in simultaneity with civil and political rights. I repeat that human rights can never be treated in isolation, but rather as a group, because the complex reality requires an analysis that favors their interdependence and inter-relationship. This case very clearly exemplifies this confluence because it concerns the failure to execute a judgment, a component of access to justice recognized in Articles 8 and 25. It not only has to do with a matter of access to justice, but also access to justice of economic and social rights; the right to work in particular. Therefore, we need a full analysis of this specific right that has, as one of its components, the right to a salary (see Title II). Otherwise, to address the analysis only from the optic of access to justice would be limiting, as if to solely concentrate on the work issue. When interpreting and applying the Convention, the Court is, more than anything, a regional human rights court and, as such, it must be able to understand the general panorama. It is, therefore, necessary to address these infringements by taking into account the coexistence of various rights of the victims that are, per se, indivisible and justiciable before this Court. Access to justice in this case, as in several others already heard by the Court, will be a key to access to the other rights. I note that the metaphor of the key does not mean that we are presenting a viewpoint that restricts the direct justiciability of the right to work (or any other ESCER), but rather it is a matter of justiciability in simultaneity due to the inter-relationship of the rights. I repeat that we are not dealing with the thesis of connectivity, but rather simultaneity. Therefore, it cannot be said that Article 19(6) of the Protocol of San Salvador is an impediment for the Court to consider its joint violation.

12. In this case, Operating Paragraph No. 1 declared violations of Articles 8(1), 21, 25(1), 25(2)(c) and 26, read in conjunction with Article 1(1) of the Convention. I understand that from the concept that I have endorsed on the interpretation and application of the Convention, the right to work is justiciable in function of the coexistence of the violation of various rights in the Convention, without the need to recur to justifications such as the autonomous invocation of Article 26. That invocation, in my opinion, is unnecessary or at least superfluous.

III. WAGES AS A FUNDAMENTAL COMPONENT OF THE RIGHT TO WORK

13. In paragraph 107 of the judgment, the Court holds that the delay and the failure to enforce the decision of February 12, 1992 had a direct impact on the payment of duly earned and not paid wages. In turn, the Court understands that the impediment to receiving wages affected the victims' right to work. I stress that, in this judgment, the Court made an advance in determining the scope of the right to work in relation to the right to the payment of wages.

14. The judgment referred to Articles 45(b)[6] and 34(g)[7] of the OAS Charter that establish that "*work is a right and a social duty"* and should be performed with "*fair wages, employment opportunities, and acceptable working conditions for all."* It also refers to Article XIV of the American Declaration of the Rights and Duties of Man, which states that "*Every person has the right to work, under proper conditions [….].*" Moreover, Article 1 of ILO Convention No. 100 on equal remuneration establishes that "*the term remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether by cash or in kind, by the employer to the worker and arising out of the worker's employment.*"[8]

15. The Court concludes that the right to work also implies obtaining a fair wage, which must include all the emoluments that are included in the term remuneration. The payment of wages as an element of the right to work is related to its nutritional and survival nature since it is meant to satisfy the basic needs of the worker.

16. The Court has also stated that the States have the duty to respect and guarantee those rights, which allows leveling the unequal relationship between the employee and the employer, as well as access to fair wages and safe working conditions.[9]

17. In this case, which concerns the right to wages, the Court compared it with the violation of a reasonable time with respect to all the victims since the State did not proceed with the payments owed to the sub-group of 2,317 maritime and port workers who continued to claim the additional amounts that they were owed. This violation of a reasonable time had an impact on the right to the full payment of their wages, which affected the right to work of all the victims. This is so due to the unjustified delay in payment to all the victims since the payment was obviously partial or incomplete for those who continued to litigate.

---

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

[7] Article 34(g) of the OAS Charter. – The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their people in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: […] (g) Fair wages, employment opportunities and acceptable working conditions for all.

[8] *Cf*. ILO, C100 – Convention on equal remuneration, 1951 (No. 100), ratified by Peru on February 1, 1960.

[9] *Cf*. Rights to trade union freedom, collective bargaining, and strike, and their relation to other rights with a gender perspective (interpretation and scope of Articles 13, 15, 16, 24, 25 and 26 in relation to Articles 1(1) and 2 of the American Convention on Human Rights, of Articles 3, 6, 7 and 8 of the Protocol of San Salvador, of Articles 2, 3, 4, 5 and 6 of the Convention of Belem do Pará, of Articles 34, 44 and 45 of the Charter of the Organization of American States, and of Articles II, IV, XIV, XXI and XXII of the American Declaration of the Rights and Duties of Man). Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27, para. 141.

18. A reasonable time is particularly important in this case since most of the victims are aged, more than 70 years old. This will be analyzed in the following section.

IV. THE VULNERABILITY OF OLDER VICTIMS

19. It is relevant that the Court emphasized that the harm involved in the reasonable time had "*a differentiated impact on the victims due to their age, as most of them were in their 80s or 90s and some of them had even died, more than 800 victims, […] whose right was never made effective."* The decision of February 12, 1992 has not been fully complied with, which has had a serious impact on the victims in that they are older persons who have not obtained the payments that they are owed. As was analyzed, the right to wages is related to its nutritional and survival nature.

20. The Court, therefore, refers to the Inter-American Convention on Protecting the Human Rights of Older Persons, to which Peru is a party.[10] That Convention includes the obligation of the States to guarantee equality and non-discrimination (Article 3(d)), proper treatment and preferential care (Article 3(k)) and effective judicial protection (Article 3(n)). The Court also refers to the Brasilia Regulations regarding access to justice for vulnerable people, approved by the XIV Ibero-American Judicial Summit in 2008 and updated at the XIX Summit in 2018, which places older persons in the category of especially vulnerable people.

21. This special vulnerability requires expeditiousness in the judicial processes in which older persons are a party. Thus, Article 4 of the Inter-American Convention expressly establishes that the States undertake to "*Adopt and strengthen such legislative, administrative, judicial, budgetary, and any other measures […], including adequate access to justice, in order to ensure a differentiated and preferential treatment for older persons in all areas."* Along the same line, Article 31 of that treaty states that "*judicial action must be particularly expedited in instances where the health or life of the older person may be at* risk."

22. The "increased protection" has also been mentioned by the UN ESCER Committee in its General Comment No. 6 on "the economic, social and cultural rights of older persons," by stating "[...] the States parties to the Covenant are obligated to to pay particular attention to promoting and protecting the economic, social and cultural rights of older persons."[11] In that same General Comment, the Committee refers to the Vienna International Plan of Action on Ageing of the United Nations,[12] which reports that "*in most areas of the world efforts of older persons to participate in work and economic activities which will satisfy their need to contribute to the life of the community and benefit society as a whole meet with difficulties. Age discrimination is prevalent: many older workers are unable to remain in the labour force or to re-enter it because of age discrimination. In some countries this situation tends to impact women more severely. The integration of the aged into the machinery of development affects both the rural and urban population groups."*

23. The European Court of Human Rights has stressed the need for special diligence in processing cases in which the issue raised is urgent and has identified among those cases; for example, those that concern employment and pension disputes;[13] those that involve a petitioner with an incurable disease or a reduced life expectancy;[14] those in which the dispute

---

[10] Peru deposited its instrument of accession to the Inter-American Convention on Protecting the Human Rights of Older Persons on March 1, 2021.

[11] *Cf*. UN, ESCR Committee, General Comment No. 6, (1995), para. 13.

[12] UN, Vienna International Plan of Action on Ageing, 1982.

[13] *Cf*. ECHR. *Case of Borgese v. Italy*, January 24, 1992, para. 18.

[14] *Cf*. ECHR, Case of *Konig v. Germany*, June 28, 1978, para. 111

consists in the amount of the pension for disability of persons who depend on this benefit,[15] and those in which the petitioner is an older person who suffered physical injuries and claims damages for them.[16] With specific regard to pensions, the Inter-American Court has held that "*a special diligence is necessary in employment disputes, which include pension disputes*."[17]

24. A generational perspective must be considered when evaluating the special vulnerability of the victims who, due to their advanced age, would also require a protection that takes into account this characteristic when acting. In *Poblete Vilches at al. v. Chile,* the Court stressed that aged persons have the right to an increased protection, which requires differentiated measures.[18]

25. Finally, mention should be made of the recent precedent of *Teachers of Chañaral and other municipalities v. Chile* in which the Court also recognized the vulnerability of older persons who seek access to justice. Therefore, in the instant case the Court held the State responsible for violations of Articles 8(1), 21, 25(1) and 25(2)(c) of the Convention due to the unjustified delay in complying with the judgment, which was a violation of judicial guarantees. The Court particularly bore in mind that the victims were of an advanced age and that many of them had died. The wait of more than 25 years for those decisions to be executed demonstrated that the State did not recognize its reinforced duty to guarantee due diligence regarding access to justice of older persons and the expeditiousness of the proceedings in which this vulnerable population participates.[19]

Ricardo Pérez Manrique
Judge

Pablo Saavedra Alessandri
Registrar

---

15 *Cf*. ECHR, *Case of Mocié v. France*, April 8, 2003, para. 22.

16 *Cf*. ECHR, *Case of Codarcea v. Romania*, June 2, 2009, para. 89

17 *Cf*. ECHR, *Case of Borgese v. Italy*, January 24, 1992, para. 18

18 *Cf*. *Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs*. Judgment of March 8, 2018. Series C No. 349., para. 127.

19 *Cf*. *Case of Teachers of Chañaral and other municipalities v. Chile. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 10, 2021. Series C No. 443, paras. 192 and 193.

PARTIALLY DISSENTING OPINION OF JUDGE EDUARDO VIO GROSSI
CASE OF THE NATIONAL FEDERATION OF MARITIME AND PORT WORKERS (FEMAPOR) *V.* PERU
JUDGMENT OF FEBRUARY 1, 2022,
(Preliminary Objections, Merits and Reparations)

I present this partially dissenting opinion to the above-mentioned judgment because I do not share the reference in Operating Paragraph No. 5[1] to Article 26 of the American Convention on Human Rights that makes justiciable, before the Inter-American Court of Human Rights, the infringement of the rights referred to in that provision.

In this regard, I reiterate my position in my dissenting opinion in *Casa Nina v. Peru.*[2]

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Registrar

[1]

[2] *"The State is responsible for violating Articles 26 and 21 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of the persons listed in Annex I of this judgment, in the terms of paragraphs 107 to 115 of this judgment.*
[2] *Case of Casa Nina v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2020.[2]

PARTIALLY DISSENTING OPINION OF

JUDGE HUMBERTO ANTONIO SIERRA PORTO

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE NATIONAL FEDERATION OF MARITIME AND PORT WORKERS (FEMAPOR) *V.* PERU

JUDGMENT OF FEBRUARY 1, 2022

(Preliminary Objections, Merits and Reparations)

1. With the customary respect for the majority decisions of the Inter-American Court of Human Rights (hereinafter "the Court"), this opinion has the purpose of explaining my disagreement with Operating Paragraph 5, which declares the international responsibility of the State of Peru (hereinafter "the State" or "Peru") for violating the rights to work and to property to the detriment of the victims listed in Annex II of the judgment. This opinion is based on the position already expressed in my partially dissenting opinions in *Lagos del Campo v. Peru,*[1] *Dismissed Employees of Petroperú et al. v. Peru,*[2] *San Miguel Sosa et al. v. Venezuela,*[3] *Cuscul Pivaral et al. v. Guatemala,*[4] *Muelle Flores v. Peru,*[5] *Discharged and Retired Employees of the National Association of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru,*[6] *Hernández v. Argentina,*[7] *Indigenous Communities of the Association of Lhaka Honhat (Our Land) v. Argentina,*[8] *Guachalá Chimbo et al. v. Ecuador;*[9]

---

[1] *Cf. Case of Lagos del Campo v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 31, 2017. Series C No. 340. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[2] *Cf. Case of the Dismissed Workers of Petroperú et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 23, 2017. Series C No. 344. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[3] *Cf. Case of San Miguel Sosa et al. v. Venezuela. Merits, Reparations and Costs*. Judgment of February 8, 2018. Series C No. 348. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[4] *Cf. Case of Cuscul Pivaral et al. v. Guatemala. Preliminary Objection, Merits, Reparations and Costs.* Judgment of August 23, 2018. Series C No. 359. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[5] *Cf. Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of March 6, 2019. Series C No. 375. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[6] *Cf*. Case of the Discharged and Retired Employees of the National Association of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2019. Series C No. 394. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[7] *Cf*. Case of Hernández v. Argentina. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2019. Series C No. 395. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[8] *Cf*. *Case of the Indigenous Communities of the Association of Lhaka Honhat (Our Land) v. Argentina. Merits, Reparations and Costs.* Judgment of February 6, 2020. Series C No. 400. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

[9] *Cf*. *Case of Guachalá Chimbo et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of March 26, 2021. Series C No. 423. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

as well as my concurring opinions in *Gonzales Lluy et al. v. Ecuador,*[10] *Poblete Vilches et al. v. Chile,*[11] *Casa Nina v. Peru,*[12] *Buzos Miskitos v. Honduras,*[13] *Vera Rojas v. Chile,*[14] *Manuela v. El Salvador,*[15] *Former Employees of the Judiciary v. Guatemala*[16] with respect to the justiciability of Article 26 of the American Convention on Human Rights (hereinafter "the Convention").

2. The judgment reiterates the position first articulated in *Lagos del Campo v. Peru*, regarding the direct and autonomous justiciability of economic, social, cultural and environmental rights (hereinafter "ESCER"). I must insist in the arguments that demonstrate a lack of a juridical basis for this theory in the context of the contentious jurisdiction of the Inter-American Court.[17] What I wish to make manifest at this time is the practical irrelevance of declaring the responsibility of the State for violating the right to work by invoking Article 26 of the Convention in the specific case.

3. The Court held that there was a violation of a reasonable time regarding 4,091 former maritime, port and river workers, the beneficiaries of a decision on a writ of amparo by the Supreme Court of the Republic because the order to calculate an increase in their wages was not implemented for more than 20 years. Moreover, the Court declared the international responsibility of Peru regarding Articles 8(1), 21, 25(1), 25(2)(c) and 26 of the Convention because, at the time of the judgment, the State had not proceeded with the payments owed to the sub-group of 2,317 former workers who claimed additional amounts. In specifically referring to the right to work, the Court stated that "[…] the sub-group of 2,317 maritime and port workers were deprived of their right to the integral payment of their wages, as was determined domestically and has been explained *supra*. This had an impact on their right to work and to receive a fair and previously agreed upon wage. In view of the above, the Court concludes that the State also violated the right to work of the 2,317 victims identified in Annex II."[18] I do not agree with this statement because I consider that it is superficial and that it has no effect on the decision.

4. I am also of the opinion that the rationale behind the declaration of the violation of the right to work was the same that appears in paragraphs 94 and 95 regarding the right to judicial protection. Although, in referring to Article 26, the Court stated that the right to receive a fair and previously agreed upon salary was affected, that harm was due to the failure to

---

10 *Cf. Caso Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of September 1, 2015. Series C No. 298**.** Concurring opinion of Judge Humberto Antonio Sierra Porto.

11 *Cf. Case of Poblete Vilches et al. v. Chile. Merits, Reparations and Costs*. Judgment of March 8, 2018. Series C No. 349. Concurring opinion of Judge Humberto Antonio Sierra Porto.

12 *Cf. Case of Casa Nina v. Peru. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2020. Series C No. 419. Concurring and partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

13 *Cf. Case of the Buzos Miskitos (Lemoth Morris et al.) v. Honduras*. Judgment of August 31, 2021. Series C No. 432.

14 *Cf. Case of Vera Rojas et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 1, 2021. Series C No. 439.

15 *Cf. Case of Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 2, 2021. Series C No. 441.

16 *Cf. Case of Former Employees of the Judiciary v. Guatemala. Preliminary Objections, Merits and Reparations.* Judgment of November 17, 2021. Series C No. 445.

17 It ignores the scope of Article 26 as governed by the rules of interpretation of the Vienna Convention on the Law of Treaties (literal, systematic and teleological); modifies the nature of the obligation of progressivity established with absolute clarity in Article 26; ignores the will of the States set forth in Article 19 of the Protocol of El Salvador and undermines the legitimacy of the Court in the region, to mention only a few of the arguments.

18 *Cf. Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru*. Judgment of February 1, 2022, para. 109.

observe the obligation to guarantee that the competent authorities comply with judicial decisions; in this case, those that order the payment of the workers' remuneration. Thus, it is clear that the scope of protection was the same as that under Article 25(2)(c) of the Convention and that the mention of the right to work was unnecessary due to the declaration of State responsibility or the redress for the victims, which was the principal object of the proceedings before the Inter-American Court. Dealing with the issue solely as one of the right to judicial protection or a related issue would have been sufficient to achieve a broad degree of protection for the victims in this case without incurring in the logical and juridical inconsistencies of the direct justiciability of the ESCER. To have done so, the decision would have been unanimous and a reiterated jurisprudential position that weakens the legitimacy of the Court would have been avoided.

Humberto A. Sierra Porto
Judge

Pablo Saavedra Alessandri
Registrar