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Session:	Hundred Twenty-First Regular Session (11 – 29 October 2004)
Title/Style of Cause:	Laura Guadalupe Tena Colunga, Alberto Piera Ornelas, Esperanza Aurelia Chacon Lopez, Rafael Antonio Zamora Quiroga, Arturo Galindo Godinez and Manuel Eduardo Castellano Apellaniz v. Mexico
Doc. Type:	Decision
Decided by:	President: Jose Zalaquett; First Vice-President: Clare K. Roberts; Second Vice-President: Susana Villaran; Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez, Florentin Melendez.
Dated:	13 October 2004
Citation:	Tena Colunga v. Mexico, Petition 2582/02, Inter-Am. C.H.R., Report No. 44/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
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## I. SUMMARY

1. On August 8, 2002, the Inter-American Commission on Human Rights (hereinafter the “IACHR” or the “Commission”) received a petition lodged by Laura Guadalupe Tena Colunga, Alberto Piera Ornelas, Esperanza Aurelia Chacon Lopez, Rafael Antonio Zamora Quiroga, Arturo Galindo Godínez and Manuel Eduardo Castellano Apellaniz (hereinafter, jointly, the “petitioners” or the “alleged victims”) against the United Mexican States (the “State” or the “Mexican State”). The complaint alleges that the State is responsible for violations of the petitioners’ right to work, the right to equality before the law and non-discrimination, and the right to freedom of association. These violations are supposedly substantiated because the petitioners, who used to work as flight attendants for the Mexican Aviation Company (Compañía Mexicana de Aviación), were fired, and then were denied reincorporation into the company in similar positions because they were over 32 years old and no longer members of the respective labor union. The complaint also alleges that the petitioners have been denied justice by Mexican courts, inasmuch as they failed to apply Mexican law and jurisprudence properly, thus failing to remedy the violations of their rights.

2. The petitioners assert that the facts reported in their complaint are violations of the following rights protected under the American Declaration of Rights and Duties of Man (the “American Declaration”): the right to equality before the law (Article II) and the right to a fair trial (Article XVIII). Also, the petitioners allege violations of the following rights guaranteed under the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”): obligation of non-

discrimination (Article 3), right to work (Articles 6.1 and 6.2), right to just equitable, and satisfactory conditions of work (Article 7.a, b, c, d). Finally, the complaint claims violations of Article 23 (right to work) of the Universal Declaration of Human Rights (“Universal Declaration”). The State, for its part, argues that the petition was filed after the time period had expired, since the Mexican courts handed down the final judgment on March 20, 2002, and the petition was presented to the IACHR on December 13, 2002. The State further contends that the facts do not tend to establish human rights violations attributable to it and that the petition is manifestly groundless, since the petitioners purport to use the Commission as a quasi-judicial fourth instance. Due to these reasons, the Mexican State asks that the petition be declared inadmissible.

3. In this report, the Commission analyzes the available information in light of the provisions of the American Convention, and concludes that the petition does not tend to establish a violation of the rights guaranteed by the Convention or other Inter-American instruments. The Commission therefore decides that the petition is inadmissible under Article 47(b) of the American Convention; transmits the report to the parties; publishes the report, and orders its publication in the Commission’s Annual Report.

## II. PROCESSING BEFORE THE COMMISSION

4. The petition was lodged on August 8, 2002, and registered as number 2582/02. On December 13, 2002, the Inter-American Commission requested information from the State concerning the facts alleged by the petitioners within two months. At the State’s request, the Commission granted it an extension. The State’s response was submitted on March 17, 2003, and the pertinent parts of it were forwarded to the petitioners on April 17, 2003 with a request for their observations on the State response’s within a month.

5. The petitioners’ observations were sent to the IACHR on May 20, 2003, and forwarded to the State on December 16, 2003 for comments within a month. At the State’s request, the Commission granted it an extension, whereupon its observations were filed on February 24, 2004. On March 16, 2004, the Inter-American Commission forwarded to the petitioners the pertinent parts of the State’s last observations for their comments within a month.

6. The petitioners responded on April 14, 2004, and their observations were accordingly submitted to the State on May 5, 2004 for answer within a month. After requesting an extension, which was granted by the IACHR, the State presented its observations on July 8, 2004. These were remitted to the petitioners for their observations within a month, on August 11, 2004. After the deadline had expired, the petitioners submitted additional information, on September 30 and October 4, 2004.

## III. THE POSITIONS OF THE PARTIES ON ADMISSIBILITY

### A. The petitioners

7. The petitioners state they were employed as flight attendants by the Mexican Aviation Company (hereinafter the “Company”) and were members of the respective labor union

(Asociación Sindical de Sobrecargos de Aviación, or “ASSA”). At one point, according to the petitioners, they were promoted and accepted the position of flight attendant supervisors. Since this was considered to be a management position (cargo de confianza), they had their union membership temporarily suspended.

8. A while after their promotion, the Company and the labor union decided those positions were not at management-level, so they decided to extinguish them. This allegedly reinstated the petitioners’ union membership, but simultaneously left them unemployed.

9. The petitioners allege that, come time later, the Company and ASSA consented on a new collective labor agreement (contrato colectivo de trabajo) that created some jobs for flight attendants. Then, the alleged victims tried to claim those jobs in accordance with domestic law provisions (Ley Federal del Trabajo, Article 154), which establish the right to preference for time of service. However, the Company refused to hire them back, because the petitioners did not meet the requisites of the collective agreement, namely that applicants had to be under 32 years old and union members (in accordance with Ley Federal del Trabajo, Article 154, paragraphs 2 and 3).

10. The petitioners allege that the denial of the Company and the age and membership requirements for the jobs were discriminatory. Moreover, they argue that Article 154 of the Ley Federal del Trabajo is unconstitutional.

11. The petitioners assert that they have exhausted all available domestic remedies, but have not been able to obtain a fair judgment from the domestic tribunals. According to them, they first tried filing a labor lawsuit with the Federal Conciliation and Arbitration Council (Junta Federal de Conciliación y Arbitraje), but the decision favored the Company.

12. Then, the petitioners appealed that decision by means of a remedy of amparo filed with the First Circuit Appellate Court (Décimo Tribunal Colegiado del Primer Circuito en Materia Laboral), but the decision was once again contrary to the alleged victims. According to them, the decision of the Appellate Court was contrary to the Mexican Constitution, because it wrongfully interpreted Articles 1, 5 and 9 of that document.

13. Lastly, the petitioners appealed the latter decision to the Supreme Court (Suprema Corte de Justicia de la Nación) through a direct writ of amparo (amparo directo en revision). They claimed that the decision of the Appellate Court violated the Constitution and also the human right treaties ratified by the Mexican State. Nevertheless, the Supreme Court rejected the amparo on March 20, 2002. The petitioners understand that the Supreme Court’s decision was contrary to the Constitution, to its own jurisprudence, and to the respect of their human rights; they further allege that this decision effectively exhausted available domestic remedies.

14. The petitioners add that the action of the domestic courts in Mexico has also violated their human rights. They claim that the decision of the Supreme Court against both the Constitution and its own jurisprudence leads to a violation of articles II and XVIII of the American Declaration. Moreover, the petitioners argue that the Supreme Court failed to examine the substance of their allegations, and rather dismissed their appeal because they had failed to

raise constitutionality issues before the Appellate Court, which in the petitioners' opinion violates Article 3 of the Protocol of San Salvador in connection with Articles 1, 133, 5 and 9 of the Mexican Constitution. They also claim violations of articles 23(1), 23(2), 23(3) of the Universal Declaration, and articles 6(1), 6(2) and 7(a), (b), (c) and (d) of the Protocol of San Salvador.

15. In their last communication dated April 14, 2004, the petitioners reiterated their previous allegations, and stressed that the facts alleged in their petition indeed constitute violations of their human rights. These violations can allegedly be expressed in two ways. First, the petitioners explain, the State violated several of their labor rights, such as the right to work, the right to equality and the right not to be discriminated against, the right to freely associate and to be freely hired.

16. Second, they allege that the State violated their rights when the Supreme Court did not apply its own jurisprudence and failed to supplement the deficiencies in their plea, which they deem to result in denial of justice to their detriment. They contest that due process is lacking when the Courts do not follow the domestic jurisprudence the State's allegations that they were able to enjoy due process of law guarantees throughout the domestic proceedings, since in the sense of supplementing occasional deficiencies in employees' pleas before them.

17. Finally, while the petitioners firmly state that they are still members of ASSA, they contest the validity of both membership and age as requirements contained in the collective labor agreement between the Company and ASSA, which they consider to be discriminatory. The petitioners assert that, in any event, they should enjoy the right to preference when applying for jobs with the Company because of the time of service criterion, which in their view has supremacy over the others in Mexican law. Additionally, they claim that the ASSA membership and the maximum age (32 years old) requirements are not reasonable justifications for discrimination since flight attendants retire at 60 years old.

#### B. The State's position

18. In its response The State purports to clarify some of the facts of the matter. It asserts that the petitioners were employees of the Company who benefited from a collective labor agreement signed between the Company and ASSA on September 21, 1989.

19. According to the State, as a result of this agreement the petitioners became flight attendant supervisors, but the agreement did not require them to discontinue their ASSA membership. Yet they decided to do so on October 1, 1989, with the exception of Laura Tena Colunga, who suspended her membership on July 1, 1990. The State asserts that the discontinuance of their membership was an act of freedom of association performed by them, and that it did not entail the loss of any labor rights.

20. The State adds that during 1996 all the petitioners voluntarily decided to sign agreements with the Company and terminate their labor relationship, most of them on May 6, 1996, while Alberto Piera Ornelas and Rafael Zamora Quiroga did so on September 6, 1996 and August 6,

1996, respectively. The State emphasizes that all the labor rights applicable to the alleged victims were ensured at termination, although they were no longer members of ASSA.

21. According to the State's response, on April 23, 1996, the Company and ASSA reached another collective agreement which created 50 new supervisor posts, but the applicants were required to fulfill certain conditions, one being that they had to be ASSA members, which the petitioners were not anymore.

22. The State affirms that the petitioners applied for those positions, but did not fulfill the requirements such as the aforementioned, and they also were above the age limit, which was 32 years old. The State argues that the petitioners sought judicial remedies before the Junta Federal de Conciliación y Arbitraje, but the decision issued on September 21, 1999 was in favor of the Company.

23. Further, the State contends that the petitioners appealed that decision before the Décimo Tribunal Colegiado de Distrito en Materia de Trabajo del Primer Circuito, and managed to obtain a favorable decision on June 28, 2000, due to some irregularities with the previous decision. Consequently, the case went back to the Junta Federal de Conciliación y Arbitraje, which corrected its previous procedural errors, but still found against the petitioners. The State asserts that this decision was again appealed by means of an amparo, but this time the Décimo Tribunal Colegiado confirmed the Junta's decision on August 23, 2001.

24. Lastly, the State declares that the petitioners tried their last recourse through a revision appeal (recurso de revision) that was filed with the Suprema Corte de Justicia de la Nación, and rejected on March 20, 2002.

25. On admissibility, the State stresses that the petition must be declared inadmissible because the petitioners failed to present facts that tend to establish a violation of the rights guaranteed by the American Convention. Furthermore, the State claims that the petition is manifestly groundless, and that the petitioners are trying to use the Commission as a quasi-judicial fourth instance.

26. According to the State, the petition is focused on the fact that the Mexican judicial bodies have failed to examine the petitioners' claim in line with previous domestic decisions which established that, when labor claims lack fundamental elements, courts must supplement the plea in benefit of the employees. The State observes that it is this alleged incongruence that gives rise to the petitioners' claims of violations to the right to work and freedom of association.

27. The State challenges those assertions because it deems that the domestic judicial organs have ruled in accordance with Mexican legislation. Moreover, while acknowledging that the petitioners' claims could characterize violations of articles 8 and 25 of the Convention, the State emphasizes that the petitioners' account itself makes it clear that their judicial guarantees have been respected throughout the domestic proceedings. Additionally, the State argues that the petitioners have been able to access adequate and effective remedies, but that this does not necessarily mean that the respective decisions must favor them.

28. On top of that, the State affirms that the responsibility for the judicial decisions that were contrary to the petitioners' interests cannot be placed on the State, as it was the errors from the petitioners themselves and from their private lawyers that led to the findings of the Courts. Thus the State concludes that the petition is manifestly groundless, and that what the petitioners seek is to have the Commission review the decisions of the domestic courts as if it were a fourth instance.

29. In conclusion, the State alleges that the facts that the petitioners claim to establish violations of the rights to equality and non-discrimination, right to work and freedom of association do not in fact tend characterize the possible violation of those rights. Indeed, the State stresses that establishing certain requisites, such as maximum age, to applicants for certain jobs is not a discriminatory practice, since it is not imposed in a general manner, but rather serves a specific purpose and it is related with the kind of activity and work schedule of flight attendants. The State adds that the facts presented by the petitioners also fail to substantiate violations of article 6 of the Protocol of San Salvador, as the petitioners' right to work has never been hindered by the Mexican State.

30. In its additional observations submitted to the Commission on July 8, 2004, the Mexican State reiterates the previous points and stresses that all acts pertaining to the petitioners' hiring, termination, ASSA joining and the suspension of their ASSA membership were voluntary.

31. Furthermore, on due process guarantees and the right to judicial protection, the State emphasizes that, according to Mexican law, Courts can only supplement employees' pleas when the concepts of violation are defective or incomplete. The State contests the petitioners' arguments that Courts are also obliged to do so when the pleas totally lack grievances or concepts of violations. In any case, the State observes that the Supreme Court's decision indeed took into account the condition of the petitioners as employees and also the possibility of supplementing their plea when it ruled against them.

32. Finally, the State also argues that the petition should be declared inadmissible for its lack of timeliness. The State asserts that the petitioners were notified of the final judgment on their case on March 20, 2002, but they only presented the petition to the IACHR on December 13, 2002. That is to say, the petition was allegedly presented more than 9 months after the petitioners' notification of the final judgment, which exceeds the six-month rule enshrined in Article 46(1)(b) of the American Convention.

#### IV. ANALYSIS OF ADMISSIBILITY

##### A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

33. Under Article 44 of the American Convention, the petitioners are authorized to lodge petitions with the IACHR. The petition names as alleged victims persons whose rights under the American Convention the Mexican State has pledged to respect and to guarantee. The State has been a party to the American Convention since March 24, 1981, the date on which its instrument of ratification was deposited. It must be noted, however, that some of the facts that the

petitioners allege to be violations attributable to the Mexican State seem to have been practiced by private entities, i.e., the Company and ASSA, such as the collective labor agreement and the definition of its contents and requirements. All the same, in keeping with article 1(1) of the American Convention, the judicial overview over acts practiced by private actors is under State responsibility. The Commission is, therefore, competent *ratione personae* to examine the present petition inasmuch as it alleges violations perpetrated by the Mexican judicial organs upon the examination of the petitioners' claims at the domestic level.

34. As regards the competence *ratione materiae*, the Commission observes that the petitioners maintain that the State violated their right to work under Articles 23(1), 23(2) and 23(3) of the Universal Declaration. Also, the complaint claims violations of their right to equality before the law (Article II) and right to a fair trial (Article XVIII) under the American Declaration. Finally, the petitioners allege violations of the following rights guaranteed under the Protocol of San Salvador: obligation of non-discrimination (Article 3), right to work (Articles 6(1) and 6(2)), right to just equitable, and satisfactory conditions of work (Article 7(a), (b), (c) and (d)). Thus, in keeping with its previous practice, the Commission deems it correct and appropriate to examine the petition in light of the rights claimed by the petitioners.[FN1]

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[FN1] See, e.g., IACHR, Annual Report 2000, Amílcar Méndez et al. v. Argentina, Case 11.670, Report No. 3/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 95, para. 40.  
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35. First, as regards the alleged violations of the Universal Declaration, the Commission notes that Article 23 of the IACHR's Rules of Procedure states the following

Any person . . . may submit petitions to the Commission . . . concerning alleged violations of a human right recognized in, as the case may be, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the Protocol to Abolish the Death Penalty, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons, and/or the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, in accordance with their respective provisions, the Statute of the Commission, and these Rules of Procedure.

36. Thus, in accordance with the aforementioned rule and notwithstanding the current character of the Universal Declaration as customary international law, the IACHR is not competent *ratione materiae* to determine *per se* violations of the Universal Declaration.

37. With regards to the alleged violations of the American Declaration, and bearing in mind aforementioned Article 23 of the Commission's Rules of Procedure, as well as Article 49 of the same instrument, the Commission states that it is, in principle, competent *ratione materiae* to examine violations of the rights set forth by the

Declaration.[FN2] However, the Commission has previously established[FN3] that once the Convention has entered into force in relation to a State, it is the Convention and not the Declaration that becomes the specific source of law to be applied by the Commission, as long as the petition alleges violation of substantially identical rights enshrined in both instruments[FN4] and a continuing situation is not involved.[FN5]

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[FN2] See also 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, July 14, 1989, Inter-Am. Ct. H.R. (Ser. A) No. 10 (1989), para. 41.

[FN3] See IACHR, *Amílcar Menéndez et al. v. Argentina*, supra note 1, para 41.

[FN4] Advisory Opinion OC-10/89, supra note 2, para. 46.

[FN5] The IACHR has established that it has competence to examine violations of the Declaration and the Convention as long as ongoing violation of the rights protected in both instruments is verified. See, e.g., IACHR, Annual Report 1987-88, Resolution 26/88, Case 10.190, Argentina; and IACHR, Annual Report 1998, Report 38/99, Argentina, para. 13.

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38. In the case under consideration, Articles II and XVIII of the American Declaration invoked by the petitioners are subsumed in Articles 24 (combined with 1(1)), 8 and 25 of the American Convention. Thus, the Commission is competent *ratione materiae* insofar as the petition refers to violations of human rights protected by the American Convention. Notwithstanding the petitioners' claims of violations of the American Declaration, due to all the aforementioned, the IACHR will refer only to the norms of the Convention when addressing the alleged violations of the Declaration.

39. Lastly, on the alleged violations of the Protocol of San Salvador, specifically of Articles 3, 6(1), 6(2), and 7 (a) (b) (c) and (d), the Commission notes that Article 19(6) of this instrument states that

Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights.

40. Consequently, the IACHR is not competent *ratione materiae* through the system of individual petitions to determine *per se* violations of the articles of the Protocol of San Salvador mentioned by the petitioners. It must be noted, however, that the Commission can consider this Protocol in the interpretation of other applicable provisions of the American Convention and other treaties over which the Commission has competence *ratione materiae*, in view of the provisions of Articles 26 and 29 of the American Convention.[FN6]

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[FN6] See IACHR, Annual Report 2000, Jorge Odir Miranda Cortez et al v. El Salvador, Case 12.249, Report No. 29/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 284, para. 36.

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41. The Commission is competent *ratione temporis* because the facts alleged occurred when the obligation to respect and guarantee the rights established by the Convention was already in force for the State, as it ratified the Convention on March 24, 1981.[FN7]

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[FN7] As regards the competence *ratione temporis* and the alleged violations of the Protocol of San Salvador, one additional consideration that must be made is that the Mexican State ratified the Protocol on April 16, 1999, when the Protocol was not yet into force, which only happened on November 16, 1999. Therefore, to the extent that the Commission might consider examining the petition in light of the articles over which it has competence *ratione materiae*, namely Articles 8(a) and 13, the IACHR only has competence *ratione temporis* over facts that occurred after the entry into force of the Protocol of San Salvador.

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42. The Commission is also competent *ratione loci* because the facts denounced allegedly occurred within the territory of a State party to the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

43. In the present case, the State did not allege failure to exhaust domestic remedies, thus the Commission may presume a tacit waiver of the right to invoke the objection of non-exhaustion of domestic remedies. In fact, both parties agree that the domestic remedies available to the petitioners were exhausted on March 20, 2002, when the Suprema Corte de Justicia de la Nación ruled against the petitioners in their *recurso de revisión*.

2. Time period for submission

44. Article 46(1)(b) of the Convention stipulates that for a petition to be admissible it must be “lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.” This six-month rule is always applied when the domestic courts have rendered a final judgment. In the present case, the parties are in dispute over the timeliness of the petition submitted by the petitioners, and the Commission must therefore pronounce itself on this point.

45. In its last communication sent to the Commission on July 8, 2004, the State claimed that the petition should be declared inadmissible, as it had been submitted to the Commission on December 13, 2002, i.e. more than nine months after the petitioners were informed of the final judgment. As already noted above in paragraph 42, there is consensus among the parties regarding the date on which the petitioners were notified of the final judgment.

46. The petition in question was submitted on August 8, 2002. That is to say, it was sent less than five months after the petitioners were notified of the final judgment on March 20, 2002. Therefore, the requirement established in Article 46(1)(b) of the Convention is satisfied.

3. Duplication of procedure and *res judicata*

47. The Commission does not see any indication in the record that the complaint brought before this Commission is pending before any other international procedure, and it did not receive any information indicating the existence of such a situation; likewise, there is no indication that it reproduces any petition or communication previously examined by the IACHR. Accordingly, the Commission determines that the requirement of Articles 46(1)(c) and 47(d) have been met.

4. Characterization of the violations

48. In accordance with what the Commission has previously stated in paragraph 32 about the realm of its jurisdiction *ratione personae* over the facts presented by the petitioners, the Commission shall first underline that it considers its competence in the present case to be restricted to acts that are attributed to the Mexican judicial organs upon examining the petitioners' claims at the domestic level. Within this context, the Commission shall examine the claims alleging irregularities in the domestic judicial proceedings that could result in manifest violations of due process or of any of the rights protected by the Convention and other applicable instruments, as well as the claim that the domestic judicial decisions ratified a private labor agreement that is discriminatory and violates the petitioners' right to freedom of association.

49. Article 47 of the American Convention explicitly sets forth grounds for inadmissibility of petitions presented to the Commission. Among these, Article 47(b) specifically establishes that a petition that "does not state facts that tend to establish a violation of the rights guaranteed by this Convention" should be considered inadmissible. With respect to the petitioners' arguments concerning alleged arbitrariness and wrongfulness in the interpretation and application of domestic law, pursuant to "the fourth instance formula" the Commission cannot in principle review judgments handed down by the national courts acting within their sphere of competence and with due judicial guarantees, unless it believes that a possible violation of the American Convention is involved.[FN8]

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[FN8] See e.g., IACHR, Annual Report 1998, Report 87/98, Case 11.216, Vila-Masot (Venezuela), para. 15; and IACHR, Annual Report 1996, Report 39/96, Case 11.673, Marzioni (Argentina), para. 50.

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50. The IACHR has consistently ruled that, while it has authority to examine claims alleging irregularities in domestic judicial proceedings that result in manifest violations of due process or of any of the rights protected by the Convention, it shall not review domestic judicial decisions if the claim simply alleges that the judgment was mistaken or unjust. In such cases, the petition must be rejected pursuant to the fourth instance formula.[FN9] The Commission's task is to

ensure the observance of the obligations assumed by the States Parties to the Convention. However, it cannot serve as a court of fourth instance to examine alleged errors of fact or internal law that may have been made by the national courts acting within the scope of their jurisdiction.[FN10]

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[FN9] IACHR, Annual Report 1996, Marzoni, supra note 9, para. 57. See also IACHR, Annual Report 1990-91, Report N° 74/90, Case 9850, López Aurelli (Argentina), para., 20 (for examples of distinctions between claims found to violate the right to due process from those barred by the fourth instance formula).

[FN10] IACHR, Annual Report 1997, Juan Carlos Abella v. Argentina, Case 11.137, Report N° 55/97, OEA/Ser.L/V/II.95 Doc. 7 rev. at 271, para. 142. See also IACHR, Annual Report 2001, Ernesto Galante v. Argentina, Petition 12.055, Report No. 70/00, OEA/Ser.L/V/II.114 Doc. 5 rev. at 353, para. 66.  
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51. The petitioners' claims alleging due process violations raise some quite intricate questions of domestic law, including constitutionality of federal law and stare decisis, among others, and there seems to be no consensus as to which resolution is the most adequate one, as demonstrated in the opinions of the parties and the jurisprudential sources they cite.

52. In any case, after examining the record, the Commission understands that the main controversy under discussion in this case is whether the Suprema Corte de Justicia de la Nación was obliged by its own previous jurisprudence and by the Mexican legislation to apply the rule of "suplencia de la deficiencia de la queja" in benefit of the petitioners. In sum, the petitioners allege that it was mandatory, and that the Supreme Court failed to do so. On the other hand, the State claims that it was not mandatory, as that rule allegedly only applies when an employee's petition is defective and incomplete, not when it totally lacks grievances or allegations of violations. Moreover, the State adds that the Supreme Court did take into account the special vulnerable conditions of the petitioners as employees and considered the possibility of supplementing their plea on their behalf, but still found that their cause was not validated.

53. Given the nature of the claims and the available evidence in question, the Commission decides that the petitioners' claims regarding due process violations essentially pose questions of domestic law which do not raise issues with respect to State compliance with Convention guarantees or other applicable instruments under the jurisdiction of the IACHR.

54. In addition to that, the petitioners also claim violations of their right to equal protection and freedom of association resulting from the contents of the collective labor agreement signed between the Company and ASSA. This agreement created 50 new supervisor posts and required that applicants fulfill two requisites, namely they had to be less than 32 years old and members of ASSA.

55. On equality and the right to non-discrimination, the Commission has previously established that

A distinction which is based on 'reasonable and objective criteria' may serve a legitimate state interest in conformity with the terms of Article 24 [ . . . ] A distinction based on reasonable and objective criteria (1) pursues a legitimate aim and (2) employs means which are proportional to the end sought.[FN11]

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[FN11] IACHR, Annual Report 2000, Maria Eugenia Morales de Sierra v. Guatemala, Case 11.625, Report No. 4/00, OEA/Ser.L/V/II.111 Doc. 20 rev. at 929 (2000), para. 31.

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56. As regards the petitioners' claim of violations of their labor rights, which would be reflected in the requirement of ASSA membership to the supervisor posts, the Commission notes that the Inter-American Court has declared that

In labor matters, and pursuant to the terms of Article 16 of the American Convention, freedom of association includes a right and a freedom, to wit: the right to form associations without restrictions other than those permitted according to sections 2 and 3 of that conventional precept, and the freedom of all persons not to be compelled or forced to join the association.[FN12]

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[FN12] Baena Ricardo et al. Case, Judgment of February 2, 2001, Inter-Am Ct. H.R. (Ser. C) No. 72 (2001), para. 159.

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57. According to the record, the requisites established under the collective labor agreement in question are not applied in a general manner for all flight attendant positions in the Company. On the contrary, they are restricted to 50 positions created as a result of the aforementioned agreement, which was achieved through negotiations between the Company and the respective labor union. These facts do not tend to establish a violation of the rights guaranteed by the American Convention or other applicable instruments under the jurisdiction of the Commission.

58. In view of all the aforementioned, the Commission finds that this petition must be declared inadmissible in accordance with Article 47(b) of the American Convention and the application of the fourth instance formula.

## V. CONCLUSIONS

59. On the basis of the submissions of the parties, and the foregoing analysis of the requirements for admitting a petition, the Commission concludes that the petition does not state facts that, if proven, would constitute a violation of any of the rights protected by the American Convention or any other applicable instrument. Accordingly, the petition is inadmissible pursuant to Article 47(b) of the American Convention.

60. On the basis of the preceding analysis of the facts and the law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition inadmissible inasmuch as it does not characterize possible violations of human rights protected by the American Convention.
2. To notify the parties of this decision.
3. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington, D.C., on the 13th day of the month of October, 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice President; Susana Villarán, Second Vice President; Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez, and Florentín Meléndez, Commissioners.