I. SUMMARY

1. On October 26, 1998, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or "IACHR") received a petition that Mr. Álvaro Vidal Rivadeneyra (hereinafter "the petitioner") filed in his own name, alleging responsibility on the part of the Republic of Peru (hereinafter "Peru," "the Peruvian State," or "the State") because he was sanctioned with removal from his position as surgeon and Chief of the Internal Medicine Service at the "Guillermo Almenara Yrigoyen" Hospital in Lima through a proceeding in which the judicial guarantees of due process were not respected and this was not subsequently remedied by the courts that heard the appeal for constitutional protection (amparo) filed for this purpose.

2. The petitioner asserts that the Peruvian State is responsible for violation of Article 8 (right to a fair trial) and Article 16 (freedom of association) of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention") as they relate to Article 1.1 (obligation to respect rights) of that convention. In addition, the petitioner claims violation of Article 6 (right to work), Article 7 (just, equitable and satisfactory conditions of work) and Article 8 (trade union rights) of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (hereinafter the "Protocol of San Salvador"). Regarding the admissibility of the claim, the petitioner maintains that the ruling on appeal issued by the Constitutional Court on October 15, 1997, about which he was given notice on May 6, 1998, exhausted the domestic remedies and that the petition was filed within a period of six months.

3. For its part, the State maintained that the petition was inadmissible because it had not been submitted on a timely basis and that the petitioner failed to sufficiently exhaust domestic remedies by filing his appeal when he should have first exhausted administrative proceedings.

4. After analyzing the information available and confirming that the admissibility requirements embodied in Articles 46 and 47 of the American Convention had been met, the Commission declared the case to be inadmissible because the facts presented by the petitioner do not characterize a violation of the American Convention or the Pact of San Salvador. Therefore, based on Article 47.b of the American Convention, the IACHR rules that the petition is inadmissible. Similarly, it decides to submit the report to the parties, publish it and order that it be published in its Annual Report.

II. PROCESSING BY THE COMMISSION

5. The petition was filed with the Commission on October 26, 1998. On June 21, 1999, the Commission proceeded to open the case under number 12.176 and sent the relevant portions of the petition to the Peruvian State for it to submit information within 90 days, in accordance with the regulations in effect at the time that communication was sent.

6. Through a communication dated September 21, 1999 and received by the Executive Secretariat of the IACHR on September 23, 1999, the State requested an extension for submission of its observations. Through a communication dated September 27, 1999, the IACHR granted the State the extension it had requested, allowing a period of 30 days for it to submit its observations.

7. On October 26, 1999 the State submitted its response, which was sent to the petitioners through a communication dated November 9, 1999, allowing a period of 30 days for submission of observations.

8. Through a communication dated December 14, 1999 and received by the Executive Secretariat of the IACHR on December 21, 1999, the petitioner submitted a brief containing observations regarding the State's response. This was sent to the State on March 20, 2000.

9. On May 3, 2000 the State submitted its observations regarding the information submitted by the petitioner, copy of which was sent to the petitioner. On July 10, 2000 the petitioner submitted his observations regarding the State's response.

III. POSITIONS OF THE PARTIES

A. Petitioner

10. The petitioner asserts that in 1992 he was serving as Surgeon and Chief of the Internal Medicine Service at the "Guillermo Almenara Yrigoyen" Hospital in Lima (formerly called the "Hospital Obrero") and had been providing his services at that institution for a period of 28 years and six months as of the date of his dismissal. In addition, the petitioner states that he was affiliated with the organization representing the medical profession at the Peruvian Social

Security Institute (hereinafter the IPSS), the Medical Association of the Peruvian Social Security Institute (hereinafter the AMSSOP), and ultimately became President of the National Front for the Defense of Social Security, a position he also held up to the date of his dismissal.

11. The petitioner maintains that through an Executive Board Ruling dated January 8, 1993, notice of which was given to him on February 17, 1993, the IPSS instituted a disciplinary administrative process against him for alleged commission of the offense indicated in Article 28 a) of Legislative Decree 276, for having made "improper use of medical leaves granted." In this regard, the petitioner asserts that the administrative process lacked the judicial guarantees of due process.

12. Specifically, the petitioner states that a new ruling was issued on March 11, 1993, the purpose of which was to correct a typographical error in the ruling dated January 8, 1993.

13. The petitioner asserts that the ruling that corrected the errors appearing in the previous ruling literally stated that the ruling must be communicated "personally." Despite this, the petitioner states that there were two different notices, the first through publication of the ruling in the journal "El Peruano" of March 13, 1993 and another personal notice that occurred days later on March 18, 1993.

14. The petitioner asserts that this duplication of notice was later reflected in a violation of his right to due process because the decision was made to perform an arbitrary calculation of the procedural deadlines. In effect, the petitioner states that for purposes of calculating the legal five-day period for submitting briefs in response to the referenced ruling, the administration should have considered the date when personal notice was given on March 18, 1993, given that such notice was expressly ordered in the text of the ruling. Nonetheless, the petitioner asserts that the date of notice effected through publication in the journal "El Peruano" was the date the administrative procedure considered for calculating the period for submission of response briefs, so that submission of his brief was considered untimely given that he submitted it based on the date when personal notice occurred.

15. The petitioner asserts that on March 30, 1993, through an Executive Board Ruling published on April 2 in the official journal "El Peruano," the Commission on Disciplinary Administrative Procedures imposed the penalty of dismissal from his position based on the view that he had failed to submit on a timely basis the response brief he was entitled to under the law.

16. In this regard, the petitioner asserts that he filed an appeal against the referenced resolution, which ended with his appeal being ruled unfounded by the Office of the Chairman on May 19, 1993. Faced with this situation, the petitioner states that on April 14, 1993 he filed an appeal for constitutional protection, alleging violation of his rights "of jurisdiction and process, equal treatment and non-discrimination in employment, stability in employment and union association."[FN1]

[FN1] Communication from the petitioner dated October 26, 1998.

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17. The petitioner states that in a decision dated October 27, 1993, the Third Civil Court of Lima declared his complaint to be well-founded and ordered that the complainant be reinstated to the same position he held prior to his dismissal. He states that the case was subsequently sent up to the Fifth Civil Chamber of the Superior Court of Lima and that court, in a decision dated September 21, 1994 confirming the decision on appeal, declared the complaint to be well-founded. The petitioner indicates that the IPSS then filed an appeal for nullification with the Constitutional and Social Chamber of the Supreme Court of Justice, which in a decision dated May 22, 1995 declared the appealed decision to be null and the action for constitutional protection to be without merit. Thus, the petitioner states that he filed an extraordinary appeal with the Constitutional Court, which in a decision dated October 15, 1997 upheld the decision of the Supreme Court that declared the action for constitutional protection to be without merit. As a result, the petitioner asserts that the violation of due process that tainted the sanction of dismissal was not corrected by the agencies with domestic jurisdiction and the petitioner was thus denied the judicial protection he sought.

18. In view of the previous considerations of fact, the petitioner alleges that the Peruvian State is responsible for violation of Article 8 (right to a fair trial) and Article 16 (right of association) of the American Convention (hereinafter the "Convention" or the "American Convention") as they relate to Article 1.1 (obligation to respect rights) of that convention. In addition, the petitioner alleges violation of Article 6 (right to work), Article 7 (just, equitable and satisfactory conditions of work) and Article 8 (trade union rights) of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (hereinafter the "Protocol of San Salvador").

19. Regarding the admissibility of the instant complaint, the petitioner alleges that he exhausted the remedies under domestic jurisdiction with the decision from the Constitutional Court dated October 15, 1997 and that he filed the petition within the period of six months allowed under the convention, given that he was informed of the decision on May 6, 1998. In addition, regarding the State's claims to the effect that he had not used the proper procedural route, namely filing an administrative action before filing the extraordinary appeal for constitutional protection, the petitioner stated that the Constitutional Court had established in its decisions that:

…it is not the role of the Panel, as stated repeatedly in the jurisprudence, to assess the viability of the disciplinary process nor whether that process has confirmed or disproved the allegations, nor to rule on the punishment, since this role falls to another route, but it is the Panel's role through the Action for Constitutional Protection to analyze whether the disciplinary process has been carried out in accordance with the law so as to safeguard the right to due process of all citizens.[FN2]

In this sense, the petitioner alleges that in his case the purpose of the appeals process was specifically to determine whether there had been a violation of his right to due process, which according to the summarized jurisprudence of the Constitutional Court is a subject that is within its purview given that it is responsible for acting to protect "the due process of all citizens." As a

result, the petitioner maintains that it is not valid to assert that the petitioner erred when he filed an appeal for constitutional protection.

[FN2] Communication from the petitioner dated December 14, 1999.

B. The State

20. In its arguments, the State summarizes the events that led to the petitioner's complaint, stating that those events date back to April 4, 1992, when Doctor Álvaro Vidal Rivadeneyra, surgeon and Chief of the Internal Medicine Service at the "Guillermo Almenara Irigoyen" Hospital came to the emergency service at that hospital for treatment because he had been in an automobile accident. The diagnosis at the time was a fractured right clavicle and injury to the right hand. The affected areas were put in a cast and the doctor was prescribed 30 days of medical leave.

21. Eventually, Dr. Vidal's injuries led to a series of physical complications that necessitated medical treatment and rehabilitation and thus meant that he had to be absent from his work as a physician at the Guillermo Almenara Yrigoyen Hospital for a period of more than two-hundred days in 1992.

22. The State alleges that despite the accident he had suffered, despite the alleged seriousness of the petitioner's state of health and despite the need to continue with rehabilitative treatment, the petitioner traveled to Chile between July 26 and August 9, 1992 to attend union activities even though leaves for such purposes were temporarily suspended by the IPSS and the petitioner also failed to request authorization to take a trip while his medical leave was in effect.

23. As a result, the State maintains that, given this situation, the order was given to open up an administrative process against Doctor Álvaro Vidal Rivadeneyra for improper use of medical leaves granted, because in accordance with domestic law the petitioner's having traveled to Chile without prior authorization during a medical leave constitutes an offense defined in Article 28 of Legislative Decree N° 276, the "Basic Law on Civil Service Careers and Public Sector Remuneration."

24. The State maintains that the administrative proceeding against the petitioner was initiated through the issuance of Ruling No. 026-D-IPSS-92, which the State asserts clearly stated the reason why the administrative process was being opened. The petitioner was in due time informed of the ruling on February 17, 1993. However, the State asserts that there was a typographical error in the ruling because instead of indicating the offense as a violation of Article 28 a) of Legislative Decree N° 276, the "Basic Law on Civil Service Careers and Public Sector Remuneration," reference was made to the offense stipulated in Article 28 c) of the same law.

25. Given the typographical error described above, the State asserts that a new ruling dated March 11, 1993 (Ruling N° 288-DE.IPSS-93) was issued to correct the error. According to the

State's arguments, that ruling reiterated that the proceeding that had been instituted was due to the improper use of medical leaves, clarifying that the offense was defined in paragraph a) of Article 28 of Decree Law N° 276. In that respect, the State maintains that the later resolution did not open the administrative process against the complainant since it had already been opened and proper notice given. Despite this, the State claims that the petitioner, based on the existence of the referenced typographical error and its subsequent correction through the issuance of a new ruling, felt that the administrative process should be counted as having started with the notice under Ruling N° 288-DE-IPSS-93. In addition, the State asserts that the confusion created in the process was aggravated still further because ruling N° 288-DE-IPSS-93 indicated that the petitioner must be personally informed so that he could submit his response under the law.

26. The State asserts that the notice under Ruling N° 288-DE-IPSS-93 of March 11, 1993 was carried out through its publication in the official journal "El Peruano," and this option is expressly governed by Article 167 of Supreme Decree N° 005, the Regulations for the Law on Civil Service Careers.[FN3] The State indicates that this notice was given personally on March 18, 1993. As a result, the State feels that by submitting his response on March 25, 1993 the petitioner exceeded the legal five day period allowed for submitting his defense pleadings, since that period should have been counted starting with the first notice, that is, as of the notice made through publication in the Official Journal on March 13, 1993.

[FN3] Article 167 of Supreme Decree No. 005, the Regulations for the Law on Civil Service Careers, states that the "administrative disciplinary process shall be instituted by order of the head of the agency or by the official who has been delegated authority for that purpose, and must be personally communicated to the civil servant being processed or published in the Official Journal "El Peruano," within seventy-two (72) hours starting on the day after that ruling is issued." Communication from the State dated June 12, 1999, received by the Executive Secretariat of the IACHR on October 26, 1999.

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27. The State maintains that Ruling N° 372-DE-IPSS-93 resolved to impose the disciplinary sanction of dismissal of the petitioner, considering that the petitioner had not submitted the respective responses within the legal period and had engaged in the improper use of his medical leave in order to attend a conference on social security held in Chile, in this way committing the serious offense of using his leave days and his allowance for purposes other than those established in the Regulations on Personnel Supervision and Disciplinary Actions of the National Social Security Institute.

28. Regarding the admissibility of this complaint, the State maintains that the petition was not filed within the six month period allowed under the convention given that the IACHR sent it the petition through a communication dated June 21, 1999 and that the petitioner indicates that he had exhausted the remedies under domestic jurisdiction with the decision of the Constitutional Court, which was reported to him on May 6, 1998, which is evidence that the period had clearly elapsed.

29. In addition, the State alleges that the petitioner improperly exhausted domestic remedies given that when faced with the sanction of dismissal imposed on him he filed an action for constitutional protection, when the appropriate route for disputing his dismissal was to file an administrative action. The State maintains that the petitioner cannot evade the appropriate procedural route by resorting to the exceptional appeal for constitutional protection based on the provision of Article 28(1) of Law No. 23506, the "Law of Habeas Corpus and Amparo," indicating that exhaustion of administrative action cannot be required when the final ruling in an administrative proceeding is enforced before the period runs out for it to be final, as he forgets that administrative orders are immediately enforceable, without any need for finality.

IV. ANALYSIS OF ADMISSIBILITY

30. The Commission proceeds to analyze the admissibility requirements for a petition as established in the American Convention.

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

31. The petitioner is entitled under Article 44 of the American Convention to lodge complaints with the IACHR. The petition indicates an individual as the alleged victim, with respect to whom Peru agreed to honor and guarantee the rights enshrined in the American Convention. As regards the State, the Commission notes that Peru has been a State Party to the American Convention since July 28, 1978, when it deposited the corresponding instrument of ratification. Thus, the Commission is competent ratione personae to examine the petition.

32. The Commission is competent ratione loci to hear this petition because it alleges violations of rights protected under the American Convention and occurring within the territory of a State Party thereto. The IACHR is competent ratione temporis in that the facts alleged in the petition took place when the obligation to honor and ensure the rights established in the American Convention was already in force for the Peruvian State. Finally, the Commission is competent ratione materiae because the petition claims violations of human rights protected by the American Convention. With respect to the alleged violations of human rights protected by the Protocol of San Salvador, the IACHR is competent under the provisions of Article 19 thereof to hear the alleged violations of Article 8.a and is not materially competent to hear the alleged violations of Articles 6 and 7 of that protocol.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

33. Article 46.1.a of the American Convention provides that in order for a complaint lodged with the Inter-American Commission to be admissible under the terms of Article 44 of the Convention, domestic remedies must have been sought and exhausted in accordance with generally accepted principles of international law. The purpose of this requirement is to allow national authorities to examine the alleged violation of a protected right and, if appropriate, resolve the matter before it is heard by an international body.

34. In the instant case, the petitioner has maintained that he exhausted the remedies under domestic jurisdiction, which culminated with the decision of October 15, 1997 handed down by the Constitutional Court of Peru, declaring the petition for constitutional protection to be without merit.[FN4] For its part, the State claims that the constitutional protection remedy was not the suitable route for enforcing the petitioner's rights and, on the contrary, he should have filed an administrative appeal for a decision on the merits of the case.[FN5]

[FN4] Communication from the petitioner dated October 20, 1998, received by the Executive Secretariat of the IACHR on October 26, 1998.
[FN5] Communication from the State dated June 21, 1999, received by the Executive Secretariat of the IACHR on October 26, 1999.

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35. In this regard, the Commission considers it relevant to examine several aspects. First, it should be pointed out that analysis of the objection filed by the State indicates that its claims relate to the alleged improper exhaustion of domestic remedies by Mr. Vidal Rivadeneyra because he resorted to filing an action for constitutional protection instead of filing an administrative action. Thus, in the instant case it is necessary to analyze whether the appeal for constitutional protection was the suitable domestic remedy for resolving Mr. Vidal Rivadeneyra's legal situation.

36. Secondly, the Commission notes that the subject of the complaint the petitioner lodged with the IACHR relates to an alleged violation of the American Convention because a punishment of dismissal from his position was imposed on him as a result of an administrative proceeding in which the guarantees of due process were not respected and that situation was not corrected by the judicial bodies with domestic jurisdiction.

37. In light of the above considerations and for purposes of considering the admissibility of this complaint in terms of the prior exhaustion requirement, the Commission will analyze whether in resorting to filing an appeal for constitutional protection the petitioner made use of the suitable judicial remedy to restore his allegedly violated rights. In this regard, the Commission notes that with respect to the alleged violation of due process in the administrative proceeding against the petitioner, the judicial bodies that heard the appeal for constitutional protection filed by him analyzed such claims and did not consider the case without merit because of a failure to exhaust earlier remedies. On the contrary, the language of the decision dated October 15, 1997 handed down by the Constitutional Court, the final body to hear the appeal filed for constitutional protection, indicates that the only aspect that was found to be outside its purview related to discussion regarding the validity of the grounds for removal, which the Court saw as being a matter to be decided through administrative proceedings. In effect, in its decision of October 15, 1997 the Constitutional Court established on this point that:

The petitioner learned of the disciplinary administrative process against him as of when he received notice of Executive Board Ruling No. 026-DE-IPSS-93, which led to the appeal he filed on March 25, 1993. In addition, Executive Board Ruling No. 288-DE-IPSS-93, clarifying the

earlier ruling, was published in the Official Journal "El Peruano" of March 13, 1993, using one of the methods for giving notice expressly allowed under Supreme Decree No. oo5-90-PCM, the Regulations for the Basic Law on Civil Service Careers. It should be noted that using the notice route does not imply any constitutional violation, and the petitioner had up to five days to submit his pleas and exercise his right of defense, which he did after the legal period had lapsed and after the Authority had issued its ruling. That ruling was issued without violating any legal provision.

[…]

The discussion regarding the validity of the grounds for removal has its own channel, which is not the appeal for constitutional protection.[FN6]

For its part, Law No. 23.506, the Law of Habeas Corpus and Amparo, provides that the appeal for constitutional protection is appropriate in defending jurisdictional and procedural rights under the terms indicated in the Constitution.

[FN6] Decision from the Constitutional Court of Peru dated October 15, 1997.

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38. In light of the above, the Commission feels that the appeal for constitutional protection is a suitable remedy with respect to the subject of this petition, i.e., whether there was a violation of the due process rights of Mr. Vidal Rivadeneyra given the way in which the period was calculated for submitting his pleas in the administrative process, which was reflected in his subsequent dismissal.

39. Based on the terms of Article 46 of the Convention and Article 31 of the Regulations, and its review of the file, particularly considering that the decision of the Constitutional Court of Peru of October 15, 1997 exhausted the domestic judicial discussion regarding the alleged violation of the right to due process to the detriment of Mr. Vidal Rivadeneyra, which constitutes the subject of this petition, the Commission concludes that the prior exhaustion requirement is met.

2. Deadline for submitting the petition

40. Pursuant to the provisions of Article 46.1.b of the Convention, in order for a petition to be admitted it must be submitted within a period of six months from the date on which the complainant was notified of the final judgment issued at the national level. The six months rule ensures certainty and legal stability once a decision has been adopted.

41. The petitioner asserts that the petition was submitted to the Commission on October 26, 1998, several days before the six month time period lapsed, given that notice was effected on May 8, 1998 regarding the decision of the Constitutional Court of Peru dated October 15, 1997. For its part, the State alleges that the petitioner's submission of the petition on June 21, 1999 was untimely and far beyond the expiration of the established six month period.

42. With respect to this petition, the IACHR has established that the domestic remedies were exhausted with the decision handed down by the Constitutional Court of Peru dated October 15, 1997, notice of which was given to the petitioner on May 8, 1998, according to the evidence appearing in the file; that the petition was filed with the IACHR on October 26, 1998 and that June 21, 1999 was the date on which the State was sent the petition submitted by Mr. Álvaro Vidal Rivadeneira, after which it was received, evaluated and the admissibility of its processing was determined in accordance with the requirements of the Convention and pertinent regulations. As a result, the Commission concludes that this requirement is met.

3. Duplication of international proceedings and res judicata

43. Article 46.1.b provides that the admission of petitions is subject to the requirement that the matter "is not pending in another international proceeding for settlement," and Article 47.d of the Convention stipulates that the Commission shall not admit a petition or communication that "is substantially the same as one previously studied by the Commission or by another international organization." In the instant case, the parties have not demonstrated the existence of either of these two circumstances of inadmissibility, nor are they deduced from the proceedings.

4. Characterization of the alleged facts

44. Article 47.b of the Convention establishes that the Commission shall consider a petition to be inadmissible when it does not state facts that tend to characterize a violation of the rights guaranteed by the Convention. In this respect, the Commission shall thus proceed to analyze whether the facts reported in the case depict a violation of the articles of the Convention invoked by the petitioner.

45. In the instant case, the petitioner has submitted a series of arguments regarding the alleged violation of the rights enshrined in Article 8 (right to a fair trial) and Article 16 (right of association) of the American Convention as they relate to Article 1.1 (obligation to respect rights) of that convention. In addition, the petitioner alleges violation of Article 6 (right to work), Article 7 (just, equitable and satisfactory conditions of work) and Article 8 (trade union rights) of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights. In particular, the petitioner states that the administrative proceeding that imposed on him the disciplinary sanction of dismissal lacked the judicial guarantees of due process and such violations were not corrected by the bodies that comprise the domestic jurisdiction given what the Constitutional Court determined in its decision dated October 15, 1997, which declared the appeal for constitutional protection to be without merit. For its part, the State asserts that the referenced decision of the Constitutional Court was reached in accordance with domestic law and the guarantees of due process.

46. Consistent with the jurisprudence of the Inter-American system, the Commission is not authorized to review "decisions handed down by national courts acting within their authority and applying the appropriate legal guarantees, unless it is found that there has been a violation of some right protected by the American Convention." [FN7] In this regard, the Commission has repeatedly maintained that:

Under the preamble of the American Convention on Human Rights, the international protection provided by the organs of the regional system is complementary in nature. As a result, the Commission cannot take upon itself the functions of an appeals court in order to examine alleged errors of fact or law that local courts may have committed while acting within the scope of their jurisdiction, unless there is unequivocal evidence that the guarantees of due process recognized in the American Convention have been violated.[FN8]

[FN7] IACHR, Report No. 8/98, Case 11.671, Carlos García Saccone (Argentina), March 2, 1998, para. 53.
[FN8] IACHR, Report No. 122/01, Petition 0015/00, Wilma Rosa Posadas (Argentina), October 10, 2001, para. 10.

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47. In view of the above considerations, the Commission feels it is not appropriate to analyze the alleged international responsibility of the Peruvian State based on the interpretation that the Constitutional Court gives to domestic legislation applicable to how notice procedures are handled regarding administrative rulings opening up disciplinary proceedings and thus on the basis of which the calculation is done for the start of periods for submitting pleadings, since such analysis would lead to an interpretation of the relevant procedural rules in order to determine whether or not these rules were correctly applied by the domestic courts. In effect, the Commission notes that the questions posed by the petitioner would require the IACHR to review the interpretation the Constitutional Court gave to the procedural laws applicable to the case in its decision of October 15, 1997.[FN9]

[FN9] In effect, on this point the Constitutional Court established in its decision of October 15, 1997 that:
The petitioner learned of the disciplinary administrative process against him as of when he received notice of Executive Board Ruling No. 026-DE-IPSS-93, which led to the appeal he filed on March 25, 1993. In addition, Executive Board Ruling No. 288-DE-IPSS-93, clarifying the earlier ruling, was published in the Official Journal “El Peruano” of March 13, 1993, using one of the methods for giving notice expressly allowed under Supreme Decree No. oo5-90-PCM, the Regulations for the Basic Law on Civil Service Careers. It should be noted that using the notice route does not imply any constitutional violation, and the petitioner had up to five days to submit his pleas and exercise his right of defense, which he did after the legal period had lapsed and after the Authority had issued its ruling. That ruling was issued without violating any legal provision.
[…]
The discussion regarding the validity of the grounds for removal has its own channel, which is not the appeal for constitutional protection.

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48. As a result, the petitioner’s mere disagreement with the interpretation that the Constitutional Court gave to the pertinent legal provisions is not sufficient to constitute

violations of the international instrument cited. The interpretation of the law, the relevant procedure and the assessment of the evidence, inter alia, are functions of domestic jurisdiction that cannot be replaced by the IACHR."[FN10]

[FN10] IACHR, Report No. 39/05 (Peru), Petition 792/01, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre.

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49. In summary, the arguments of the parties and the evidence appearing in the file do not indicate that the courts have acted arbitrarily or that the alleged victim has been barred from access to the remedies under domestic jurisdiction with the guarantees of legal due process.

50. In addition, with respect to the alleged violation of Article 16 of the American Convention and Article 8 of the Protocol of San Salvador, the IACHR feels that the petitioner has not submitted allegations of fact that constitute an alleged violation of the aforementioned rights that can be considered separately from the meaning of what the Constitutional Court determined in its decision of October 15, 1997. Finally, it bears repeating that the IACHR lacks substantive jurisdiction to rule on the alleged violations of Articles 6 and 7 of the Protocol of San Salvador in accordance with the provisions of Article 19.

51. The Commission concludes that in light of what has been stated above the alleged facts do not tend to characterize a violation of rights recognized in the American Convention and the petition must thus be declared inadmissible.

V. CONCLUSIONS

52. Based on the arguments of fact and law presented above, the Commission considers the petition inadmissible in accordance with the requirements established in Article 47.b of the American Convention because it does not present facts that constitute any violation of the rights protected by that Convention.

In view of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To notify the petitioners and the State of this decision.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 21st day of the month of October, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President;

Florentín Meléndez, Second Vice-President; Freddy Gutiérrez Trejo, Paolo Carozza and Víctor E. Abramovich, Commissioners.