

**REPORT No. 13/10**  
PETITION 480-00  
INADMISSIBILITY  
FIDEL GUTIÉRREZ GAYOSO  
PERU  
March 16, 2010

**I. SUMMARY**

1. On September 12, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission”, “the Inter-American Commission” or “the IACHR”) received a petition that Fidel Gutiérrez Gayoso (hereinafter “the petitioner” or “the alleged victim”) lodged on his own behalf in which he alleged that the Republic of Peru (hereinafter “the State” or “the Peruvian state”) had failed to enforce and comply with a judgment delivered on an *amparo* suit. The petitioner claimed that the ruling acknowledged that he had certain rights, including –according to his allegations – the promotion to the rank of Colonel in the Peruvian National Police Force with active-duty status. The petitioner contended that the failure to enforce and comply with this ruling constitutes a violation of the rights recognized in articles 24 and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”).

2. The State, for its part, argued that the petition must be declared inadmissible inasmuch as the *amparo* ruling ordered Mr. Gutiérrez Gayoso to be granted the Colonel rank only in retirement, a holding with which the Peruvian National Police Force has already complied. It observed that during the process of enforcing the *amparo* ruling, the alleged victim retracted his claim to the rank of Colonel with active-duty status, whereupon the case record was closed. It also asserted that the claim made to the IACHR would not constitute violations of Convention-protected rights, especially inasmuch as Mr. Fidel Gutiérrez Gayoso’s claim had been upheld in the domestic jurisdiction.

3. After examining the positions of the parties in light of the admissibility requirements set forth in Articles 46 and 47 of the Convention, the Commission concluded that while it is competent to take up the petition, the facts narrated therein do not tend to establish a violation of rights protected under the American Convention. It also decided to notify the parties of the present Inadmissibility Report and to publish it in its Annual Report.

**II. PROCESSING BEFORE THE COMMISSION**

4. The Commission received the petition on September 12, 2000, and registered it as P 480-00. The petitioner submitted additional communications on October 12, December 11 and 22, 2000; September 21 and October 9, 2001; February 2, May 11 and August 25, 2004.

5. On September 28, 2004, the IACHR forwarded the relevant parts of the original petition and additional communications to the State and, in keeping with its Rules of Procedure, gave the State two months to present its response. On January 10, the State submitted its response, which was forwarded to the petitioner on January 18 of that year.

6. The petitioner submitted still more communications on October 6, 2004; January 5, February 18 and 22, April 19 and August 31, 2005; August 4, 2006; October 18, 2007; August 6, 2008; February 2, 2009; January 4 and February 3, 4, 15, 16 and 28, 2010.

7. On August 31, 2005, the petitioner requested that a public hearing be called during the Commission’s 123<sup>rd</sup> Regular Session. On September 19, 2005, he was notified that his request could not be accommodated.

8. The State filed additional submissions on February 1, 2005; April 19, May 4 and 11, August 22, September 20, October 25 and November 29, 2006; February 5, 2007; May 19 and June 2, 2008; December 24, 2009; January 20 and February 2, 2010.

### III. POSITIONS OF THE PARTIES

#### Preliminary question

9. In his original petition, officer Fidel Gutiérrez Gayoso of the Peruvian National Police Force claimed to have been forced into retirement several times between January 1987 and July 1990, in violation of the laws and regulations then in force. He asked the IACHR to have him reinstated to active duty as Commander in the National Police Force, and that he is to be paid the benefits that he ceased to receive.

10. Subsequent to the original petition, Mr. Fidel Gutiérrez Gayoso maintained that the subject matter of the petition he filed with the IACHR was the failure to enforce and comply with the *amparo* ruling delivered by Lima's 29<sup>th</sup> Civil Court on April 8, 2002.<sup>1</sup>

11. Both the State and the petitioner have made reference to administrative decisions and court rulings that predate or are unrelated to the April 8, 2002 ruling delivered by Lima's 29<sup>th</sup> Civil Court. The Commission will examine these allegations simply as background information in its narration of the parties' positions.

#### A. Position of the Petitioner

##### Background

12. The petitioner alleged that on January 12, 1987, when he was a Major in the Peruvian National Police Force, he was forced into retirement on the grounds of staff renewal. After being reinstated with active-duty status by virtue of an administrative decision dated June 6, 1990, he was forced into retirement again on July 31, 1990, on the very same grounds: staff renewal.

13. According to the petitioner, he asked for reinstatement<sup>2</sup> and payment of benefits accrued<sup>3</sup> to the Peruvian courts, which ruled in his favor and ordered his reinstatement in active service on June 19, 1998. However, he indicated that on the very same day, the National Police Force issued Supreme Resolution No. 0287-98-IN/PNP, ordering him into retirement again, effective March 23, 1997, on the grounds that he had reached the age limit. The resolution notes that on March 23, 1997, Mr. Fidel Gutiérrez Gayoso had reached the age limit established for continuance in the rank of Major in the National Police Force.<sup>4</sup> The petitioner also pointed out that at the time the Supreme Resolution was issued, a final decision was pending on an *amparo* petition that he had filed on October 18, 1990, in which he demanded, *inter alia*, promotion to the rank of Commander effective January 1, 1989.

14. According to the information in the case file, on August 10, 1998, the Peruvian National Police Force, acting in compliance with the court order issued by the Specialized Transitory Public Law

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<sup>1</sup> Communication received from the petitioner on February 2, 2004, pp. 9 and 10.

<sup>2</sup> The original petition alleges that on October 18, 1990, the alleged victim filed a petition of *amparo* with Lima's 5<sup>th</sup> Court Specializing in Civil Law, requesting to be reinstated to active service. According to the documents enclosed, the Specialized Transitory Public Law Chamber decided this case in favor of Mr. Fidel Gutiérrez Gayoso on March 18, 1998.

<sup>3</sup> In the original petition, it is asserted that on January 21, 1993, the alleged victim filed an ordinary action with Lima's 25<sup>th</sup> Civil Law Court of First Instance requesting recognition of his time of service from January 12, 1987 to July 31, 1990, his fitness for duty and listing in the Table of Merit for 1990. The petitioner indicated that the Constitutional and Social Chamber of the Supreme Court, acting as court of last instance, decided this case in his favor on August 21, 1996.

<sup>4</sup> Communication received from the petitioner on September 21, 2001, annexes, Supreme Resolution No. 0287-98-IN/PNP of June 19, 1998.

Chamber, awarded the petitioner the rank of Commander, effective January 1, 1989, but solely for pension purposes.<sup>5</sup>

### Facts related to the petition

15. The petitioner alleged that on January 28 and September 20, 1999, he sent an administrative request to the National Police Force demanding recognition of his right to stand for “another roll call and inspection, his eligibility, seniority in grade, fitness for duty and inclusion in the 1993 Table of Merit for Promotion.”<sup>6</sup> He pointed out that on June 13, 2000, the National Police Force issued Directorial Resolution No. 1371/2000-DGPNP in which it declared his requests to be out of order, on the following grounds:

[S]ince JAN. 21, 1987, when [Mr. Gutiérrez Gayoso] reached the age of his retirement, he has not performed any real, effective and duly remunerated services; he lacks computable service time to be declared fit for duty, and therefore does not meet the requirements stipulated in article ten, paragraph a) of the Regulations Governing Officer Promotions in the Peruvian National Police Force ...<sup>7</sup>

16. The petitioner claimed to have filed an *amparo* petition with Lima’s 29<sup>th</sup> Civil Court in order to challenge the foresaid directorial resolution. He asserted that the *amparo* writ was decided on April 8, 2002, as follows:

[T]he Court hereby finds that Directorial Resolution No. 1371-2000-DGPNP, of June 13, 2000, does not apply to the plaintiff and orders the restoration of his right to stand for another roll call and inspection and that his fitness for duty and inclusion in the 1993 Table of Merit for Promotion be recognized; in the proceedings instituted by Fidel Gayoso with the Minister of Interior, on an *amparo* suit.<sup>8</sup>

17. The petitioner asserted that on July 9, 2002, Lima’s 5th Civil Chamber upheld the ruling of Lima’s 29<sup>th</sup> Civil Court. He stated that between August 2002 and February 2004, Lima’s 29<sup>th</sup> Civil Court issued dozens of orders demanding that the Ministry of the Interior and the Peruvian National Police Force enforce and comply with the *amparo* ruling. He pointed out that when the National Police Force refused to comply, the judge of Lima’s 29<sup>th</sup> Civil Court notified the Public Prosecutor’s Office so that it would bring criminal charges against the Directors General of that institution.<sup>9</sup> He observed that on February 13, 2004, Lima’s 29<sup>th</sup> Civil Court adopted order No. 97 instructing the National Police to “affix the Supreme Resolution in which it promotes plaintiff Fidel Gutiérrez Gayoso from the rank of Commander to the rank of Colonel, as ordered in the ruling the court delivered in the case...”

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<sup>5</sup> Communication received from the petitioner on October 9, 2001, annexes, Supreme Resolution (no number), seal dated June 15, 2001, signed by the Minister of the Interior, Director General and Director of Personnel of the National Police Force.

<sup>6</sup> In order to explain the expressions employed in his demand, in the communication of August 4, 2006 the petitioner indicated that the Dictionary of Police Terms contains the following definitions:

**Roll Call:** 1) Measure taken in the units and offices on the first day of every month according to regulation, to confirm the presence of the corresponding personnel; 2) a document that the units and offices prepare on the first day of every month for monthly verification and certification of staff, livestock and vehicles.

**Table of Merit:** Document listing the candidates in descending order of point score, from the candidate with the highest to the candidate with the lowest; the latter cannot be below the minimum point score that qualifies one for approval.

<sup>7</sup> Communication received from the petitioner on February 2, 2004, annexes, Directorial Resolution No. 1371/2000-DGPNP of June 13, 2000.

<sup>8</sup> Communication received from the petitioner on February 2, 2004, annexes, April 8, 2002 ruling, Lima’s 29<sup>th</sup> Civil Law Court, Case file 09394-2002-0-1801-JR-CI-28, pp. 8 and 9.

<sup>9</sup> In his communication of August 6, 2008, the petitioner enclosed copies of the criminal proceedings (case file 958-04) against the then Directors General of the National Police Force, Eduardo Jaime Perez Rocha and Jorge Gustavo Félix Carrion Zavala. These documents show that they were both convicted on criminal and civil charges for failure to comply with the ruling of Lima’s 29<sup>th</sup> Civil Court, dated April 8, 2002. The criminal court judge classified their conduct as a crime against the public administration, refusal or delay to perform one’s official duty.

18. The petitioner alleged that in view of court order No. 97, of June 16, 2004, the National Police Force adopted Supreme Resolution No. 248-2004-IN/PNP, promoting the petitioner to the rank of Colonel in retirement, effective that day, June 16, 2004. He argued that this supreme resolution did not fully comply with the *amparo* ruling delivered by Lima's 29<sup>th</sup> Civil Court because in his view, the court ruling had ordered the National Police to promote him to the rank of colonel with active-duty status, effective January 1, 1993, and to pay him the economic benefits corresponding to that rank as of that date.

19. The petitioner asserted that both court order No. 97 and Supreme Resolution No. 248-2004-IN/PNP were appealed during enforcement of the ruling. He stated that after the National Police Force filed a series of remedies demanding that court order No. 97 be vacated, Lima's 5<sup>th</sup> Civil Chamber definitively confirmed the court order. He added that on September 2, 2009, Lima's 29<sup>th</sup> Civil Court ordered the close of the *amparo* case file.

20. The petitioner claimed that although the National Police Force did promote him to the rank of Colonel in retirement, effective June 16, 2004, the ruling of Lima's 29<sup>th</sup> Civil Court had ordered him promoted to that rank effective January 1, 1993, with active-duty status. He argued that inasmuch as no administrative resolution stating his retirement has been dully issued by the National Police, he should be regarded as a Colonel with active-duty status of such security body. He attached a series of administrative requests sent to the Director General and Director of Human Resources of the National Police Force, requesting recognition of these benefits. He observed that the National Police Force has not answered any of his requests, which he contends should be interpreted as administrative silence signaling assent.<sup>10</sup>

21. Finally the petitioner maintained that in the case of other officers moved into retirement, the National Police Force had promptly enforced and complied with the court orders for their reinstatement and payment of benefits. He contended that a number of years have passed and the ruling of Lima's 29<sup>th</sup> Civil Court has still not been enforced in all its parts; which he concluded to constitute a violation of the right recognized in Article 24 of the American Convention.

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<sup>10</sup> In a communication dated August 6, 2008, the petitioner cited excerpts and enclosed a copy of Law 29060 of June 28, 2007 – *Administrative Silence Act*.

## B. Position of the State

### Background

22. The State described a series of administrative and court decisions issued in connection with the employment status of Fidel Gutiérrez Gayoso. It indicated that while Lima's 29<sup>th</sup> Civil Court was hearing the case that it ultimately decided on April 8, 2002, the Peruvian Judicial Branch was also seized of another petition of *amparo* originally filed on September 15, 2000. It pointed out that in this second legal action, the alleged victim was seeking, *inter alia*, reinstatement in the National Police Force with the rank of Commander, retroactive to July 31, 1990 and with active-duty status.

23. The State asserted that in the second *amparo* petition, the Constitutional Court issued a definitive ruling on January 30, 2003, in which it upheld National Police Supreme Resolution No. 386-98-IN/PNP of August 10, 1998. This resolution granted promotion to Mr. Gutiérrez Gayoso to the rank of Commandant, effective July 31, 1990, but "solely for pension purposes."<sup>11</sup> The State concluded that with the January 30, 2003 ruling, the Constitutional Court made clear that Mr. Gutiérrez Gayoso was not entitled to be reinstated in the National Police Force with active-duty status. It also held that the petitioner had received a number of economic benefits that go with the promotions that he has been given over the course of the years by virtue of court orders.

### Facts related to the petition

24. The State's account of the *amparo* ruling that Lima's 29<sup>th</sup> Civil Court delivered on April 8, 2002 was similar to that of the petitioner.<sup>12</sup> It alleged that in Supreme Resolution No. 248-2004-IN/PNP of June 16, 2004, the National Police Force accorded the alleged victim the rank of Colonel and complied with what the court ordered in the ruling of *amparo*.

25. The State alleged that the petitioner and the Ministry of the Interior had disagreed about the scope of the April 8, 2002 ruling, as did Lima's 29<sup>th</sup> Civil Court, which delivered the decision. It observed that the petitioner's interpretation was that recognition of his right to stand for an "another roll call and inspection, his eligibility, seniority in grade, fitness for duty and inclusion in the 1993 Table of Merit for Promotion" implied his promotion to the rank of Colonel with active-duty status retroactive to January 1, 1993. Its contention was that this interpretation was different from the Constitutional Court's finding in its January 30, 2003 ruling and from the resolutions issued by the Ministry of the Interior.

26. The State asserted that through Resolution No. 149, dated April 15, 2005, Lima's 29<sup>th</sup> Civil Court dismissed the claims of plaintiff Fidel Gutiérrez Gayoso "inasmuch as his demands –promotion to the rank of Colonel in the Peruvian National Police Force retroactive to January 1, 1993 and with active-duty status- is not what the courts of first and second instance ordered."<sup>13</sup>

27. In its initial communications, the State argued that because the process of enforcing the *amparo* ruling had still not been finalized, the petition did not satisfy the rule requiring exhaustion of local remedies. It subsequently argued that after the parties involved in the enforcement of the ruling filed a series of remedies, the petitioner expressly stated his agreement with National Police Supreme Resolution No. 0248-2004-IN/PNP of June 16, 2004. With that, the case record was closed.

28. As for the alleged violation of the right recognized in Article 24 of the American Convention, the State asserted that the claims made in the petition "have no direct bearing on the right to

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<sup>11</sup> Communication received from the State on May 4, 2006, pp. 8 and 9 and annexes, January 30, 2003 Judgment of the Constitutional Court, case file No. 543-2002-AA/TC, *amparo* petition filed by Fidel Gutiérrez Gayoso against the Ministry of the Interior – Peruvian National Police Force.

<sup>12</sup> See paragraphs 16 and 17 above.

<sup>13</sup> Communication received from the State on May 4, 2006, p. 8.

equal treatment before the law inasmuch as the petition fails to show that some domestic provision has been issued or interpreted in a discriminatory way.”<sup>14</sup> As for the alleged violation of the right recognized in Article 25 of the Convention, the State argued that the facts narrated by the petitioner did not tend to establish a violation of that provision.

29. Finally, the State pointed out that within the domestic system, the petitioner did agree to have the enforcement process definitively closed. It therefore asked that the Commission declare the petition inadmissible on the grounds of Article 47 (b) and (c) of the American Convention.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

##### **A. The Commission’s competence *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae***

30. The petitioner is authorized by Article 44 of the American Convention to lodge petitions with the IACHR. The alleged victim named in the petition is a natural person whose Convention-protected rights Peru undertook to respect and ensure. Furthermore, Peru ratified the American Convention on July 28, 1978. The Commission, therefore, has competence *ratione personae* to examine the petition.

31. The Commission is competent *ratione loci* to hear the petition, because it alleges violations of rights protected by the American Convention that were said to have taken place within the territory of a State party to that instrument.

32. The Commission is also competent *ratione temporis* because the obligation to respect and guarantee the rights protected by the American Convention was already binding upon the State at the time the facts alleged in the petition were said to have occurred.

33. Lastly, the Commission is competent *ratione materiae*, because the petition alleges that human rights protected by the American Convention were violated.

##### **B. Exhaustion of domestic remedies**

34. Article 46(1)(a) of the American Convention provides that for a complaint lodged with the Inter-American Commission in accordance with Article 44 of the Convention to be admissible the domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to take cognizance of the alleged violation of a protected right and, if appropriate, resolve the matter before it is heard in an international venue. The Peruvian State presented the objection of failure to exhaust domestic remedies in a timely manner.

35. In the instant case, the petitioner alleged a failure to enforce and comply with the *amparo* ruling that Lima’s 29<sup>th</sup> Civil Court delivered on April 8, 2002. In cases of an alleged failure on the part of public entities to comply with court rulings, the Commission held that, for purposes of the rule requiring exhaustion of domestic remedies, the alleged victim must at least inform the competent judicial body that the ruling has still not been enforced, so that it may take whatever course of action the law prescribes for the ruling to be enforced. The purpose of this course of action on the part of the alleged victim is to give the State the opportunity to correct an alleged violation of the right to judicial protection, before the matter is taken up in an international venue.<sup>15</sup>

36. Notwithstanding the characterization of the facts, which will be analyzed later in this Report, the information available indicates that the petitioner not only reported the non-enforcement of the

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<sup>14</sup> Communication received from the State on May 4, 2006, p. 7.

<sup>15</sup> IACHR, Report No. 43/09, Petition 1166-05, Peru, Jorge Rafael Valdivia Ruiz, March 27, 2009, para. 38.

April 8, 2002 judgment to Lima's 29<sup>th</sup> Civil Court, but also actively participated in the enforcement process. That information also indicates that the enforcement process was definitively closed on September 2, 2009,<sup>16</sup> as there were no other remedies to be exhausted.

37. Based on the above considerations, the Commission concludes that the petition satisfies the requirement set forth in Article 46(1)(a) of the American Convention.

### **C. Deadline for lodging the petition**

38. Article 46(1)(b) of the Convention provides that for a petition to be admissible, it must be lodged within a period of six months from the date on which the interested party was notified of the final judgment that exhausted the domestic remedies.

39. From the information reported above, the enforcement of judgment process ended on September 2, 2009, subsequent to the date on which the petition was lodged with the Commission. In that sense, fulfillment of the requirement set forth in Article 46(1)(b) of the American Convention is intrinsically linked to the exhaustion of the remedies under domestic law; therefore that requirement is deemed to have been met.

### **D. Duplication of proceedings and *res judicata***

40. Article 46(1)(c) of the Convention establishes that in order for a petition to be admissible, its subject must not be "pending in another international proceeding for settlement." Article 47(d) of the Convention establishes that a petition will not be admissible if it is substantially the same as one previously studied by the Commission or by another international organization. In this case, neither party has argued that either of these two grounds for inadmissibility is present, nor can their presence be inferred from the case file.

### **E. Characterization of the facts**

41. Article 47(b) of the Convention provides that the Commission shall declare a petition inadmissible if it does not state facts that tend to establish a violation of the rights guaranteed by the Convention. The present petition alleges violation of the rights recognized in articles 24 and 25 of the Convention, by virtue of a failure to comply with a ruling that Lima's 29<sup>th</sup> Civil Court delivered on April 8, 2002, and that Lima's 5<sup>th</sup> Civil Law Chamber confirmed on July 9, 2002. The pertinent part of that ruling holds that the Peruvian National Police Force has an obligation to:

[R]ecognize [Mr. Fidel Gutiérrez Gayoso's] right to stand for an "another roll call and inspection, his fitness for duty and his inclusion in the 1993 Table of Merit for Promotion; in the proceedings that Fidel Gayoso pursued with the Minister of the Interior in connection with an *amparo* petition."<sup>17</sup>

42. Concerning the alleged violation of the right to equal protection of the law, the petitioner's only claim is that Peru's Judicial Branch allegedly enforced without delays *amparo* rulings delivered in favor of other officers in the Peruvian National Police Force, whose situation he claimed was similar to his own. The IACHR is of the view that these generic allegations have not been sufficiently substantiated and therefore do not tend to establish a violation of the right protected in Article 24 of the American Convention.

43. As for the right to judicial protection, the Commission observes that during the process of complying with the April 8, 2002 ruling, the Peruvian National Police Force affixed a series of

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<sup>16</sup> Communication received from the petitioner on January 4, 2010, attachments, Resolution No. 155 of September 2, 2009, delivered by Lima's 28th Specialized Civil Law Court, Record No. 2002-9394-28.

<sup>17</sup> Communication received from the petitioner on February 2, 2004, annexes, decision of Lima's 29<sup>th</sup> Civil Court, dated April 8, 2002, case record 09394-2002-0-1801-JR-CI-28, pp. 8 and 9.

administrative resolutions indicating that it had complied with the court order. Mr. Fidel Gutiérrez Gayoso, on the other hand, told the enforcement judge that the ruling in question would only be complied when the Peruvian National Police Force grants him the rank of Colonel in active-duty status, retroactive to January 1, 1993, and pay him the corresponding benefits.

44. The information in the case record indicates that after the parties involved in the process of enforcing the judgment had filed various motions, Lima's 29<sup>th</sup> Civil Court adopted Resolution No. 97 on February 13, 2004, which states that

[...] in order for the enforcement process to be definitively finalized, defendant MUST attach the supreme resolution in which plaintiff Fidel Gutiérrez Ganoso (*sic*) is promoted from the rank of Commander to the rank of Colonel, as ordered in the ruling of record. Defendant is SO ORDERED under penalty of law.<sup>18</sup>

45. According to the claims made by the parties, on June 16, 2004, the Peruvian National Police Force, in compliance with court order No. 97, adopted Supreme Resolution No. 248-2004-IN/PNP, which confers the rank of Colonel in retirement on the petitioner, effective on the date the resolution was issued.

46. The information presented indicates that both parties filed various petitions seeking to have Court Order No. 97 vacated; after that, on June 22, 2006, Mr. Fidel Gutiérrez Gayoso withdrew his procedural demand, which was that Lima's 29<sup>th</sup> Civil Court should again order the National Police Force to comply with the *amparo* ruling. The Peruvian courts interpreted his retraction as his acceptance of the measures ordered in Supreme Resolution No. 248-2004-IN/PNP and therefore deemed that the dispute as to enforcement of and compliance with the *amparo* ruling was settled. In resolution No. 8 of May 23, 2007, Lima's 5<sup>th</sup> Civil Chamber interpreted Mr. Fidel Gutiérrez Gayoso's retraction as follows:

[...] in advising of his decision to desist, Mr. Fidel Gutiérrez Gayoso has stated his intention not to pursue further action on the request he made in writing on May 11, 2005, precisely because the defendant has issued Supreme Resolution No. 0162-2006/INPNP,<sup>19</sup> dated February 14, 2006, and the plaintiff accepts it. He believes that the ruling of record has been complied with. Therefore, inasmuch as the decision to desist is only prejudicial to the party who makes that decision, and the retraction satisfies the requirements set forth in articles 341 and 342 of the Code [of Civil Procedure] the retraction should be deemed credible. Given these considerations [...] the court holds that the plaintiff has retracted his submission of May 11, 2005 in which he asked that the defendant be ordered to comply with the judgment; hence, this case and everything it contains is closed and returned for the record.<sup>20</sup>

47. The information available indicates that after settling a series of motions filed by the Peruvian National Police Force, Lima's 28<sup>th</sup> Civil Court deemed that no procedural measure was pending and, on September 2, 2009, ordered that the record be closed once and for all.<sup>21</sup> The very same Civil Court had ordered the record closed previously, on April 22, 2008, in Resolution No. 162, but that action was suspended when the Public Prosecutor from the Ministry of the Interior in charge of the judicial affairs of the Peruvian National Police Force filed an appeal seeking to have the *amparo* case reopened.<sup>22</sup>

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<sup>18</sup> Communication received from the petitioner on January 4, 2010, annexes, Resolution No. 97 of February 13, 1004, Lima's 29<sup>th</sup> Court Specialized in Civil Law, case file 2002-9394-29.

<sup>19</sup> According to the information supplied by the parties, that resolution confirmed Supreme Resolution No. 248-2004-IN/PNP, which had bestowed the rank of Colonel on Mr. Fidel Gutiérrez Gayoso, effective June 16, 2004.

<sup>20</sup> Communication received from the State on June 2, 2009, annexes, Resolution No. 8 of May 23, 2007, Lima's 5<sup>th</sup> Civil Law Chamber, case file No.228-2006, operative paragraph eight.

<sup>21</sup> Communication received from the petitioner on January 4, 2010, annexes, Resolution No. 155 of September 2, 2009, Lima's 28<sup>th</sup> Court Specialized in Civil Law, case file No 2002-9394-28.

<sup>22</sup> Communication received from the State on January 20, 2010, annexes, excerpts from court record 9394-2002-29, Resolution No. 162, which Lima's 29<sup>th</sup> Court Specialized in Civil Law delivered on April 22, 2008.

48. The petitioner has told the IACHR that the Peruvian National Police Force has not complied with the obligation to give him the rank of Colonel with active-duty status retroactive to January 1, 1993. He alleges that this was the order given by Lima's 29<sup>th</sup> Civil Court in its *amparo* ruling of April 8, 2002. Despite this allegation, the court record indicates that Mr. Fidel Gutiérrez Gayoso petitioned before the internal tribunals the close of the enforcement process, stating that he himself considered the case settled by virtue of resolution No. 8 of Lima's 5<sup>th</sup> Civil Chamber, cited above, and National Police Force Supreme Resolution No. 248-2004-IN/PNP, dated June 16, 2004. These submissions were filed in response to the appeals by the National Police Force for nullification and to have the proceedings in the *amparo* case reopened in order to prevent the record from being closed and to re-litigate the obligation of conferring the rank of Colonel on Mr. Fidel Gutiérrez Gayoso in retirement. The alleged victim requested that the record be closed once and for all with respect to the enforcement process of the *amparo* ruling, as follows

*Excerpts from the brief of May 18, 2007, addressed to Lima's 5<sup>th</sup> Civil Chamber:*

As a consequence of enforcement orders Nos. 07 and 09 of January 18 and 24, 2005, respectively, the Police Administration issued **Supreme Resolution No. 162-2006-IN/PNP of February 14, 2006, which confirms Supreme Resolution No. 248-2004-IN/PNP of June 16, 2004.** Through these instruments, the National Police are complying with the Process of Enforcing the Judgment resulting **FROM THE PROCEEDINGS ON THE AMPARO PETITION**, which is why this Retraction was written on May 11, 2005. **BASED ON THESE CONSIDERATIONS, THE COURT ORDERED THE RECORD IN THIS CASE CLOSED.**

[...]

[t]he Police Administration has complied with the Enforcement of the Ruling on the *Amparo* Petition through Supreme Resolution No. 248-2004-IN/PNP of **June 16, 2004**, ratified through Supreme Resolution No. 162-2006-IN/PNP of **February 14, 2006, BOTH OF WHICH HAVE BECOME FINAL AND THEREFORE NOT SUBJECT TO CHANGE.** For these reasons, in due course the plaintiff asked that the process of Enforcement of Judgment be closed.<sup>23</sup>

*Excerpts from the brief of June 12, 2008, addressed to Lima's 29<sup>th</sup> Civil Court*

Your Honor: the brief from the Public Prosecutor in charge of the judicial affairs of the Ministry of the Interior, dated May 8, 2008, requesting court appearance and to have the *amparo* proceedings reopened, should be **DISMISSED** for the following reasons:

[...]

**IN THE FINAL PART OF RESOLUTION NO. 08, DATED MAY 23, 2007, DELIVERED IN APPEALS CASE NO. 2288-2006, THE SUPERIOR COURT HAS ORDERED, VERBATIM, THE FOLLOWING: THE AMPARO CASE FILE IS TO BE CLOSED. THIS ORDER OF THE SUPERIOR COURT IS TO BE COMPLIED WITH AND THE RECORD IN THE CASE CLOSED.**<sup>24</sup>

49. The information available, therefore, indicates that despite the allegation that the petitioner has made to this international organism to the effect that the *amparo* ruling of April 8, 2002, has still not been fully enforced, the corresponding enforcement process was definitively closed by virtue of Mr. Gutiérrez Gayoso's own requests before the domestic courts. Based on the foregoing considerations,

<sup>23</sup> Communication received from the State on January 20, 2010, annexes, excerpts from court record 9394-2288-2006, brief dated May 18, 2007, prepared by Fidel Gutiérrez Gayoso and submitted to Lima's 5<sup>th</sup> Civil Chamber, pp. 2 and 3. In this brief, the alleged victim asks the court to dismiss the appeal filed by the Peruvian National Police Force to challenge the decision to close the record on the enforcement of the *amparo* decision. The capitalization, bold print, and underlining are from the original version

<sup>24</sup> Communication received from the State on January 20, 2010, annexes, excerpts from court record 9394-2002-28, brief dated June 12, 2008, prepared by Fidel Gutiérrez Gayoso and submitted to Lima's 29<sup>th</sup> Court Specialized in Civil Law, pp. 1 and 2. In this brief, the alleged victim asks the court to dismiss the appeal filed by the Peruvian National Police Force on May 8, 2008, to reopen the proceedings on the *amparo* case. The capitalization, bold print, italics and underlining are entirely from the original version.

the IACHR concludes that the original allegations claiming a violation of the right to judicial protection have changed substantially, and the petitioner has not provided any new factual information that tend to establish a violation of the rights protected in the American Convention.

## **V. CONCLUSIONS**

50. Based on the arguments of fact and of law set forth herein, the Commission deems that the petition is inadmissible under Article 47(b) of the Convention, inasmuch as it does not state facts that tend to establish a violation of rights protected by the Convention. Therefore,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

#### **DECIDES:**

1. To declare the present petition inadmissible under Article 47(b) of the American Convention.
2. To notify the parties of this decision.
3. To publish the decision and include it in the Annual Report to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 16<sup>th</sup> day of the month of March, 2010. (Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, Commissioners).