

REPORT No. 118/12
PETITION 12.297
INADMISSIBILITY
EDILBERTO TEMOCHE MERCADO
PERU
November 13, 2012

I. SUMMARY

1. On May 5, 2000, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition that Edilberto Temoche Mercado (hereinafter also “the alleged victim” or “the petitioner”) filed on his own behalf¹ in which he alleged that the Republic of Peru (hereinafter also “Peru,” “the State” or “the Peruvian State”) had violated the rights recognized in articles 1, 5, 8, 9, 10, 11, 24 and 25 of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”). The petitioner’s contention was that on January 2, 1995, he was arbitrarily, unlawfully and unconstitutionally removed from his post as a general in the Peruvian National Police by President Fujimori, acting in his capacity as Commander-in-Chief of the Peruvian Armed Forces and Police. The petitioner alleged that he was forced into retirement in order to renew the ranks. The petitioner’s contention was that in its judgment of September 23, 1997, the Constitutional Court delivered a ruling in his favor in which it ordered that the petitioner was to be reinstated to active duty, with the same rank of general in the Peruvian National Police (PNP) and that all the rights, privileges and other benefits to which he was entitled were to be recognized. He argued that the State has thus far not complied with the Constitutional Court’s ruling.

2. For its part, the State alleged that it did comply with the Constitutional Court’s September 23, 1997 judgment through Supreme Resolution No. 0109-98-IN-PNP of March 16, 1998. It asserted that the foregoing notwithstanding, on March 17, 1998, the Ministry of the Interior issued Supreme Resolution No. 0146-98-IN-PNP in which it retired Mr. Edilberto Temoche Mercado, since under the internal regulations of the Peruvian National Police, by 1998 Mr. Temoche Mercado had served 35 years as an officer in the PNP, which was the maximum that PNP officers could serve. Furthermore, he was 62 years old at the time, which meant that he was not eligible for promotion to the rank of Lieutenant General, since the age limit for that rank was 61 under the laws in force at that time.

3. After examining the available information, the Commission concluded that it is competent to take cognizance of this case and that the latter is inadmissible under Article 47(b) of the American Convention. The Commission decided to notify the parties of this inadmissibility report, to make it public and to include it in its Annual Report.

II. PROCESSING WITH THE COMMISSION

4. The Commission received P-12.297 on May 5, 2000, and forwarded it to the State on July 25, 2000, with the request that it submit its observations within 90 days, in keeping with Article 34 of the Commission’s Rules of Procedure then in force. By a communication dated October 20, 2000, the State asked the Commission to extend the time period for presenting its response. The IACHR acceded to the State’s request on November 8, 2000, by granting it a 30-day extension. The Commission received a communication from the petitioner on November 27, 2000, whose receipt the Commission acknowledged on December 15, 2000. On December 11, 2000, the IACHR received a communication from the State in which it requested a second extension for submitting its response. On January 18, 2001, the Commission granted the State a second 30-day extension. The State presented its response to the original petition via a communication dated March 5, 2001, which was forwarded to the petitioner on

¹ In the original petition, Mr. Edilberto Temoche Mercado reported that he was also being represented by attorney Fermin Santiesteban Chávez.

March 16, 2001. The petitioner was given one month in which to present his observations, which were filed on April 16, 2001.

5. On April 23, 2001, the Commission sent the State and the petitioner a communication placing itself at their disposal with a view to reaching a friendly settlement of the matter, in accordance with Article 48(1)(f) of the American Convention and Article 45(1) and (2) of the Commission's Rules of Procedure in force at that time. On May 18, 2001, the IACHR received a communication from the petitioner in which he indicated his acceptance of the Commission's offer to begin the friendly settlement process.

6. On June 7, 2001, the IACHR sent the petitioner a communication acknowledging receipt of his April 16, 2001 communication and forwarded it to the State with the request that it submit its observations within one month. On June 15, 2001, the IACHR acknowledged receipt of the communication it had received from the petitioner on May 18, 2001 and forwarded it to the State, giving it one month in which to submit its observations. In a communication received on May 25, 2001, the State asked the Commission to grant it an extension on the deadline to present its reply to the offer the Commission made in its April 23, 2001 communication. The IACHR acceded to the State's request on June 27, 2001, granting it a 30-day extension. On July 11, 2001, the State presented observations, which were forwarded to the petitioner on August 13, 2001. On August 1, 2001, the petitioner sent the IACHR a communication, receipt of which was acknowledged on August 22, 2001.

7. The Commission received a communication from the petitioner on September 10, 2001, and forwarded it to the State on December 11, 2001. The State was given one month in which to present its observations. In a communication dated May 1, 2002, the State sent the Commission the requested observations, which on May 31, 2002 were forwarded to the petitioner for his information. The Commission received a communication from the petitioner on September 9, 2002, which was sent to the State on September 23, 2002. The State was given one month to present its observations. Via a communication dated October 23, 2002, the State asked the Commission to extend the deadline for filing its observations. In response, on February 11, 2003 the Commission acceded to the State's request by granting it a 20-day extension. The State's observations were submitted on March 13, 2003. On March 19, 2003, the Commission acknowledged receipt of the State's March 13, 2003 communication.

8. The State sent a communication dated May 5, 2011, which was forwarded to the petitioner on June 2, 2011. The petitioner presented his observations via a June 27, 2011 communication, forwarded to the State on July 29, 2011. The State had one month in which to present observations. The IACHR received a communication from the petitioner on October 17, 2011, and forwarded it to the State on November 9, 2011, giving it one month to present any observations it might have. The IACHR received a communication from the State on December 13, 2011, which it forwarded to the petitioner, giving him one month in which to submit his observations. The Commission received the petitioner's observation on May 11, 2012, and forwarded them to the State on June 4, 2012, which was given one month to present observations. On July 5, 2012, the State requested an extension of the deadline it was given to answer the petitioner's observations. In a communication dated July 9, 2012, the Commission acceded to the State's request. The State presented its observations on August 14, 2012, which were forwarded to the petitioner on October 10, 2012.

III. POSITIONS OF THE PARTIES

A. The petitioner

9. The petitioner states that Mr. Edilberto Temoche Mercado is a retired general in the Peruvian National Police (PNP) by virtue of the fact that the President of the Republic, Alberto Fujimori, as Commander-in-Chief of the Armed Forces and Police, ordered that the petitioner be forced into retirement effective January 1, 1995, in order to renew the ranks. January 1, 1995 was the date he was scheduled to be promoted to the rank of Lieutenant General in the PNP. The petitioner points out that prior to being forced into retirement, the alleged victim was serving as a PNP General in the Ministry of the Interior, under the command of Army Division General Juan Briones Davila.

10. The petitioner states that after being advised, via a memorandum dated December 26, 1994, that he was being forced into retirement, Mr. Edilberto Temoche Mercado filed a petition seeking *amparo* relief. On September 23, 1997, the Constitutional Court handed down a judgment in which it ordered that he be reinstated into active service with the same rank of PNP General and with the rights, privileges and other benefits to which he was entitled; the Constitutional Court concluded that in the *amparo* proceedings, the Ministry of the Interior had failed to show documentary evidence of an objective and impartial technical evaluation of the plaintiff's career and the services he had rendered to the police force; it held that based on his time of service and age, at the time he was forced into retirement he was still eligible to continue to serve on the police force. The petitioner alleges that the State has not yet complied with this decision, despite the fact that at the Commission's 98th session, held in 1999, the Peruvian State held up this ruling as an exemplary decision. The petitioner notes further that this ruling was published in the Official Gazette "*El Peruano*" on January 8, 1998.

11. The petitioner observes that in response to the Constitutional Court's judgment, the Ministry of the Interior issued R.S. No. 019-98-IN PNP on March 16, 1998, in which it ordered the alleged victim's reinstatement to active duty in the PNP, effective December 31, 1997. The petitioner alleges that this resolution is unconstitutional as it violates the constitutional principle under which laws may not be applied retroactively, a principle recognized in articles 103 and 205 of the Peruvian Constitution; the petitioner reasons that reinstatement should have been ordered effective the date following publication of the Constitutional Court's judgment in the Official Gazette "*El Peruano*", in other words, effective January 9, 1998.

12. The petitioner asserts that the Constitutional Court's judgment was not carried out, since on March 17, 1998 the Ministry of the Interior issued R.S. 0146-98-IN-PNP in which it again ordered that the alleged victim be relieved of active duty and forced into retirement as he had accumulated 35 years of active service in the PNP. The petitioner states that this resolution was false, because by that date the alleged victim had put in 32 years and 2 days of actual service to the State, as confirmed by Report No. 029-94-DRPS-PNP. The petitioner indicates that the Constitutional Court's September 23, 1997 judgment did not order that the period Mr. Temoche Mercado spent in retirement and in litigation should be counted toward his years of service.

13. The petitioner argues that on February 2 and 12, April 2, 6, 7, 20 and 22, and May 4 and 25, 1998, Mr. Edilberto Temoche Mercado filed petitions with the Temporary Corporate Court Specialized seeking execution of the Constitutional Court's September 23, 1997 judgment. The petitioner asserts that in a resolution dated May 21, 1998, the Temporary Corporate Specialized Court dismissed the alleged victim's petition as unfounded. The petitioner observes that on appeal, the Temporary Civil Specialized Chamber on Public Law confirmed this resolution in a decision dated August 31, 1998. The petitioner contends that the alleged victim challenged R.S. Nos. 109-98 and 0146-98-IN-PNP through a contentious-administrative appeal filed with the Temporary Civil Law Chamber of the Supreme Court (Case File No. 280-99), but to no avail. In July 1999, he also filed suit in the First Temporary Corporate Court Specialized in Public Law seeking compliance with the Constitutional Court's judgment, but the suit was dismissed in a resolution dated September 3, 1999 by the Temporary Chamber of the Supreme Court (Case File 1587-99).

14. The petitioner alleges that when Mr. Temoche was relieved of all active duty effective January 1, 1995, his expectations of being promoted to the next highest rank, i.e., lieutenant general in the PNP, were dashed. The rank of lieutenant general is the highest one can achieve in the PNP and, in the near term, opens up great opportunities for rising to the position of Director of the PNP. The petitioner points out that no disciplinary action had ever been taken against Mr. Temoche Mercado between the time he served as a sub-lieutenant to the time he rose to the rank of General in the PNP; in retirement he received the PNP's "Grand Cross" for meritorious service, which is the highest decoration the PNP bestows. The petitioner observes that between the time he was relieved of active duty in December 1994 and the present, Mr. Temoche Mercado has endured severe moral, personal, professional, financial and family suffering and his good name has been harmed.

B. The State

15. By way of background information, the State asserts that Mr. Temoche Mercado filed a petition seeking *amparo* relief, requesting nullification of Supreme Resolution No. 0932-94-IN-PNP of December 26, 1994, which ordered that he was to be relieved of active duty effective January 2, 1995, in order to renew the ranks. The State points out that on September 23, 1997 the Constitutional Court upheld his petition seeking *amparo* relief and ordered that Mr. Edilberto Temoche Mercado be reinstated in active service with the same rank of general in the PNP and with all the rights, privileges and other benefits of active service. According to the State, Mr. Temoche Mercado's reinstatement was ordered in Supreme Resolution No. 0109-98-IN-PNP of March 16, 1998.

16. The State explains that through Supreme Resolution No. 0146-98-IN-PNP of March 17, 1998, Mr. Temoche Mercado's forced retirement was ordered on the grounds that the alleged victim had served 35 years as an officer in the PNP, which is the maximum number of years of service for a PNP officer according to articles 50(b) and 52² of Legislative Decree No. 745 of November 8, 1991, which is the PNP Personnel Status Law. The State contends that under Article 50(b) of Law 745, police personnel shall be retired upon completion of 35 years of service as an officer, except in the case of the Director General of the PNP.

17. The State indicates that under the PNP's internal regulations, in the instant case the years of service were counted as of 1963, based on Mr. Temoche Mercado's résumé. Therefore, the State argues, the Ministry of the Interior was entirely within its rights to retire Mr. Temoche Mercado in 1998. The State points out that according to Mr. Temoche Mercado's résumé, he enrolled in the National Police Investigation Academy on April 2, 1959, and rose to the rank of Guard through Supreme Resolution No. 2134 of January 1, 1963. The State further contends that the alleged victim could not have been reinstated in active service by a real promotion to the rank of Lieutenant General in the Peruvian National Police, since this would have been a violation of Article 46 of Law No. 28857, which provides that the age limit for the rank of Lieutenant General is 61 and Mr. Temoche Mercado was 62 and, as of March 16, 1998, had put in over 35 years of active service as an officer in the PNP.

18. The State argues that the Constitutional Court's judgment of September 23, 1997, which held that the 1994 Supreme Resolution ordering the alleged victim's retirement did not apply, implied that the legal relationship between the alleged victim and the State had never changed; in other words, it meant that Mr. Temoche Mercado was still a PNP General in active service, even when he was not working for the PNP. The State argues, therefore, that by the Constitutional Court's line of reasoning, Mr. Mercado had completed 35 years of service on January 1, 1998, counting the period in which he was not actually working. The State contends that this was the premise on which the March 17, 1998 Supreme Resolution was issued, in which Mr. Temoche Mercado was retired on the basis of the regulations. The State argues that this resolution is valid inasmuch as the Peruvian courts have not declared it otherwise.

19. The State asserts that subsequent to issuance of the March 17, 1998 supreme resolution, the alleged victim brought three legal actions against the State-PNP: a petition seeking *amparo* relief; an action challenging a resolution, and an action demanding compliance.

20. The State observes that in the petition he filed with the Public Law Court seeking *amparo* relief, the alleged victim was asking Court to enforce the September 23, 1997, judgment and as a result to order his physical reinstatement retroactive to the moment he was relieved of active duty, and to order that he be included in the Police Promotion Roster and be promoted to the next highest rank. The State indicates that in a decision dated May 21, 1998, the Public Law Court declared the petition seeking *amparo* relief to be unfounded. It states that Mr. Temoche Mercado appealed that decision; the

² The State reports that Article 52 of Legislative Decree 745 reads as follows: "Upon completion of 35 years of service in the Peruvian National Police, an officer, no matter what his classification as determined by the nature and/or status in the service, will be retired, except in the case of the Director General of the Peruvian National Police, whose retirement shall be governed by the provisions of the article of this Legislative Decree."

Chamber Specialized in Public Law decided his appeal on August 31, 1998 by confirming the decision being appealed and ordered the case closed. The State observes that the alleged victim filed an objection to the decision to close the case, which was declared unfounded and inadmissible. The alleged victim subsequently filed an appeal against the decision to close the case, which the Chamber Specialized in Public Law decided on May 29, 2000 by confirming the decision on appeal. The State notes that the Constitutional Court's judgment of September 23, 1997, did not order that the alleged victim be promoted to the next highest rank of PNP Lieutenant General.

21. As for the suit challenging the March 16, 1998 Supreme Resolution, the State points out that the alleged victim filed suit against the State with the Temporary Civil Law Chamber of the Supreme Court. In his suit he asked that the March 16, 1998 Supreme Resolution be declared null and void because his reinstatement had not been carried out; he also requested that the March 17, 1998 Supreme Resolution in which he was retired by virtue of having completed 35 years of service be voided. The State indicates that this suit was declared unfounded and inadmissible, whereupon Mr. Temoche Mercado filed an appeal. The State asserts that on May 31, 2000, the Constitutional and Corporate Law Chamber of the Supreme Court confirmed the decision on appeal.

22. The State reports that the alleged victim also filed suit with the Court Specialized in Public Law, demanding compliance with the March 16, 1998 Supreme Resolution and asking the court to order him reinstated to active service in the PNP. That suit was declared inadmissible on September 3, 1998, a ruling that Mr. Temoche Mercado appealed. The State reports that on April 14, 1998 the Chamber Specialized in Public Law denied the appeal, whereupon the alleged victim filed an extraordinary appeal, which the Constitutional Court decided on December 20, 2000 by declaring the ruling being appealed to be null and void and ordering the case reheard, so that the Chamber Specialized in Public Law might decide the matter in accordance with the law. A decision in the matter was pending as of July 2001.

23. In the final analysis, the State alleges that with adoption of R.S. No. 109-98-IN-PNP of March 16, 1998, it has complied with the Constitutional Court's judgment of September 23, 1997 and that the alleged victim must institute the necessary administrative proceedings with the Ministry of the Interior to have whatever benefits he is entitled to by law. The State contends that in fact, what the petition is challenging is not the failure to comply with the judgment, but rather the language of the resolution issued in compliance with the Constitutional Court's judgment, which he contends is not adequate to fully comply with the orders of the Constitutional Court, although he does not offer sufficient legal arguments to support his claim.

24. As for the IACHR's offer to begin the friendly settlement process, the State answered in 2001 that, inasmuch as the Democratic Transitional Government was in its last days, it should be up to the new Government to decide whether or not to pursue that avenue.

25. Later, in 2011, the State asked the IACHR to close the record on the present petition, as there had been no procedural activity by the petitioner for 8 years (since 2002) and as the petition was inadmissible.

26. The State also argued that the American Convention does not make the Commission a court of "fourth instance"; hence, the petitioner cannot pretend to have the Commission review the rulings handed down in the domestic courts acting in accordance with the rules of due process, since, as a general rule, it is the function of the Peruvian (civil, labor, criminal and administrative) courts to evaluate and interpret the domestic norms in accordance with the law.

27. The State argues that while the alleged victim contends that moral harm has been done to his professional, personal and family life and to society and the institution, the moral harm he claims has not been proved

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

28. Under Article 44 of the American Convention, the petitioner is authorized to lodge complaints with the Commission. The petition names as alleged victims natural persons whose rights under the American Convention Peru pledged to respect and guarantee. Furthermore, Peru ratified the American Convention on July 28, 1978. Therefore, the Commission has competence *ratione personae* to examine the petition.

29. The Commission has competence *ratione loci* to take cognizance of the petition because it alleges violations of rights protected by the American Convention, said to have occurred within the territory of a State party thereto. The IACHR has competence *ratione temporis* because the events alleged in the petition took place when the obligation to respect and guarantee the rights established in the American Convention was already in force for the Peruvian State. Finally, the Commission has competence *ratione materiae* because the petition alleges violations of human rights protected by the American Convention.

B. Exhaustion of domestic remedies and characterization of the facts alleged

30. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission under Article 44 of the Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.

31. The Commission notes that while the petition was being processed, the Peruvian State did not file an objection alleging a failure to exhaust domestic remedies. Given the State's tacit waiver, the Commission will examine the issue of exhaustion of domestic remedies on the basis of the information in the case file.³

32. From the case file the Commission observes that the Constitutional Court's judgment of September 23, 1997, ordering Mr. Temoche Mercado's reinstatement with the same rank of General in the PNP and recognition of all the rights, privileges and other benefits to which he was entitled, was published in the Official Gazette "*El Peruano*" on January 8, 1998; on January 14, 1998, the petitioner sent a brief to the Minister of the Interior in which he requested execution of the Constitutional Court's judgment in the form of his reinstatement in the PNP with the rank of General, and pointed out that recognition of all the rights, privileges and benefits to which his rank entitled him implied the following:

- a. That his name had to be relisted on the 1994 General Police Officers' Promotion Roster, at the precise level he was at the time he was relieved from active duty.
- b. That he be promoted again to the next highest rank to which he was entitled based on his personal merit, which would be the rank of Lieutenant General in the PNP.
- c. That, because of the special circumstances of his case, articles 50(a)⁴ and 51(d)⁵ of Legislative Decree 745, which set age as grounds for officers' retirement and the retirement age for each rank, should not apply since, once promoted, he would no longer be subject to those provisions.
- d. Recognition of his time of service, which should be computed to include the time that passes until his reinstatement to active duty.

³ IACHR, Report No. 44/09, Petition 12.161, Peru, Ciro Abdías Boderó Arellano, March 27, 2009, paragraph 26; Report No. 41/09, Petition 459-03, Roberto Villeda Arguedas *et al.*, Guatemala, March 27, 2009, paragraph 33; Report No. 107/06, Petition 12.318, Peru, Jorge Teobaldo Pinzás Salazar, October 21, 2006, paragraph 28.

⁴ Article 50(a) of Legislative Decree 745.- "Police personnel shall be retired on any of the following grounds: a) Age limit, except in the case of the Director General of the Peruvian National Police."

⁵ Article 51(d) of Legislative Decree 745.- "Article 51. Retirement age varies according to rank: a) For police officers – Lieutenant General, 60 years."

33. The Commission observes that on March 16, 1998, the Ministry of the Interior issued R.S. No. 0109-98-IN-PNP, which ordered Mr. Temoche Mercado's reinstatement to active service in the PNP effective December 31, 1997; then, on March 17, 1998, the next day, the Ministry of the Interior issued R.S. 0146-98-IN-PNP in which it ordered that, pursuant to Article 50(b) and Article 52 of Legislative Decree 745, the alleged victim was relieved of active duty and retired effective January 1, 1998, because he had completed 35 years of actual service in the PNP.

34. The Commission observes that the petitioner filed suit with the Court Specialized in Public Law to demand compliance with the March 16, 1998 Supreme Resolution, with a view to securing fulfillment of the order for his reinstatement. That suit was declared inadmissible on September 3, 1998, whereupon the petitioner filed an appeal. The Commission also notes that when the Chamber Specialized in Public Law denied the appeal on April 14, 2000, the petitioner filed an extraordinary appeal, which the Constitutional Court decided on December 20, 2000, voiding the decision being appealed and ordering that the case be reheard so that the Chamber Specialized in Public Law might render a judgment in accordance with the law. As of this date, the Commission has not been informed as to whether a new decision was subsequently handed down, and if so, what it ordered.

35. The Commission notes that Mr. Temoche Mercado also filed a petition seeking *amparo* relief and challenged the Supreme Resolution of March 16, 1998. The domestic courts denied both these actions. In the case of the petition that Mr. Temoche Mercado filed seeking *amparo* relief, the case record shows that the Temporary Collegiate Chamber Specialized in Public Law dismissed the alleged victim's petition as inadmissible and ordered the case closed on August 31, 1998, reasoning that with Supreme Resolution 0109-98-IN-PNP of March 16, 1998, the Ministry of the Interior had fully complied with the judgment delivered by the Constitutional Court on September 23, 1997, since that supreme resolution had restored matters as they were prior to the violation of constitutional rights. The Commission therefore considers that the petition satisfies the requirement set forth in Article 46(1)(a) of the Convention.

36. The Commission is reminded that Article 47(b) of the Convention provides that a petition shall be inadmissible when it does not state facts that tend to establish a violation of the rights guaranteed by the Convention.

37. In the instant case, the petitioner is alleging that the State failed to comply with the September 23, 1997 judgment of the Constitutional Court and as a result he has not received the benefits, privileges and other entitlements established therein. For its part, the State alleges that with adoption of R.S. 109-98-IN-PNP of March 16, 1998, it has complied with the Constitutional Court's judgment; therefore, Mr. Temoche Mercado should have instituted the necessary administrative proceedings with the Ministry of the Interior seeking recognition of any benefits to which he was entitled by law. Here, the State argues that what the petitioner is alleging is not a failure to comply with the September 23, 1997 judgment; instead he is expressing his objection to the manner in which the judgment was executed. The State contends that the March 17, 1998 Supreme Resolution under which Mr. Temoche Mercado was retired on the grounds that he had completed 35 years of active service, is valid since the Peruvian courts have not declared it invalid.

38. The Commission observes that the alleged victim's objective in the actions he brought was that upon his reinstatement in 1998, his time of active duty should be calculated as 32 years and 2 days; in other words, the number of years of active service that he had accumulated as of January 2, 1995, the date on which he was forced into retirement, and that the age limit established in the police regulations should not be applied in his case. The Commission observes that his interpretation notwithstanding, Supreme Resolution No. 0146-98-IN-PNP of March 17, 1998 provided that Mr. Temoche Mercado's forced retirement took effect on January 1, 1998, since on that date he had completed 35 years of active service. The Commission further observes that, as the State points out, this resolution has been deemed valid by the Peruvian courts.

39. Under the petitions system established in Article 44 of the American Convention, the IACHR is competent to examine whether laws, policies or practices are compatible with a person's rights

under the Convention. However, in the instant case, the issue presented, first in the domestic courts and then to the IACHR, is the degree of compliance with the Constitutional Court's September 23, 1997 judgment. The Commission notes that the alleged victim asked the authorities to apply two exceptions when executing the Constitutional Court's September 23, 1997 judgment, namely: an exception for the age limit of 61, and an exception to the manner in which the time of service was calculated, to make allowance for the years that he was in retirement. Absent any other allegations of Convention-protected rights, the State's calculation does not imply a possible violation of the guarantees under the Convention. The IACHR is again confirming its principle that its function is not to replace the domestic judicial authorities in interpreting the sense of the applicable substantive and procedural law.⁶ The IACHR has asserted that it cannot serve as a higher court or court of fourth instance to review any errors of law or of fact that the domestic courts are alleged to have committed acting within the limits of their authority.⁷

40. Based on these considerations, the IACHR concludes that the allegations and facts presented by the petitioner do not assert facts that tend to establish a violation of the rights protected by the Convention. Therefore, the complaint does not satisfy the requirement established in Article 47(b) of the Convention.

41. Having concluded that the matter is not properly before it, the Commission refrains from examining the other admissibility requirements established in the American Convention.⁸

V. CONCLUSION

42. Based on the considerations of fact and of law set forth herein, the Inter-American Commission concludes that the petition is inadmissible because it does not satisfy the requirement established in Article 47(b) of the Convention. Therefore,

43. Given the foregoing considerations of fact and of law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present case inadmissible.
2. To notify the parties 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 13th day of November 2012. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González; Second Vice-President, Rosa María Ortiz and Rose-Marie Belle Antoine, Commission Members.

⁶ IACHR, Report No. 27/07, Petition 12.217, Peru, José Antonio Aguilar Angeletti, March 9, 2007, paragraphs 41 and 43; and Report No. 39/05, Petition 792-01, Peru, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre, March 9, 2005, paragraphs 52 and 54.

⁷ IACHR, Report No. 45/04, Petition 369-01, Peru, Luis Guillermo Bedoya de Vivanco, October 13, 2004, paragraph 41; Report No. 16/03, Petition 346-01, Ecuador, Edison Rodrigo Toledo Echeverría, February 20, 2003, paragraph 38; Report No. 122/01, Petition 15-00, Argentina, Wilma Rosa Posadas, October 10, 2001, paragraph 10; and Report No. 39/96, Case 11.673, Argentina, Santiago Marzioni, October 15, 1996, paragraph 71.

⁸ IACHR, Report No. 42/09, Petition 443-03, Peru, David José Ríos Martínez, March 27, 2009; Report No. 87/05, Petition 4580/02, Peru, October 24, 2005; Report No. 73/99, Case 11.701, Mexico, May 4, 1999; Report No. 24/99, Case 11.812, Mexico, March 9, 1999; and Report No. 82/98, Case 11.703, Venezuela, September 28, 1998, and others.