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CASE 13.263

REPORT ON ADMISSIBILITY AND MERITS

GINO ERNESTO YANGALI IPARRAGUIRRE
PERU

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I. INTRODUCTION

1. On January 30, 2003 the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by Mr. Gino Ernesto Yangali Iparraguirre (hereinafter “the petitioner” or “the alleged victim”) alleging the international responsibility of the Republic of Peru (hereinafter “the Peruvian State,” “the State,” or “Peru”)¹ for the alleged violation of rights enshrined in the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) as a result of being removed from his position as judge of the Superior Court of Justice of Lima and the subsequent impossibility of pursuing constitutional remedies to challenge that decision.

2. On October 2, 2017, the Commission communicated to the parties that in keeping with the instruments that govern its mandate it deferred addressing the admissibility of the instant petition to the deliberations and decision on the merits. The Commission made itself available to the parties to pursue a friendly settlement, yet the conditions for doing so never materialized. The parties had the time periods as per the Rules of Procedure for submitting their observations on the case. All the information received by one party was as duly transmitted to the other.

II. THE ARGUMENTS OF THE PARTIES

A. The petitioner

3. The petitioner indicates that as of November 1, 1979 the alleged victim worked in various positions in the Judicial Branch, and that he was appointed to the post of Principal Judge (Juez Titular) of the Second Court for Labor Matters and Labor Communities of the Superior Court of Justice of Lima by Supreme Resolution No. 178-88-JUS of May 27, 1988. He states that in the course of his judicial activities he was not the subject of any disciplinary measure or complaint, nor was he subjected to any proceeding whatsoever. Moreover, he says that he held leadership positions, such as National Secretary of the National Association of Judges of Peru (Asociación Nacional de Magistrados del Perú) and Secretary of the District Association of Judges of Lima, which are provided for in the Organic Law on the Judicial Branch.

4. He indicates that in the context of the measures adopted by the administration of Alberto Fujimori after it dissolved the Congress in April 1992 the Executive issued a series of decrees regarding the operation of the Judicial Branch with the aim of removing judges and impairing judicial independence in the country. Accordingly, he specifies that on May 13, 1992, Decree-Law No. 25492 was adopted, which ordered the separation from their posts of the alleged victim and 16 other judges in labor courts.

5. He argues that he has suffered violations of his rights to **judicial guarantees and judicial protection**, as that provision lacked any foundation or justification, and that his removal from the judicial position did not result from an administrative proceeding that respected legal guarantees. He argues that the minimum provisions of due process were not abided by, such as prior and detailed communication of charges or accusations that may have motivated his removal, and that he did not have the right to defense.

6. He alleged that the State kept him from accessing judicial remedies to enable him to challenge the decree ordering his removal from his judicial position. He explains that on May 15, 1992, Decree-Law No. 25496 was issued; it established the procedural inadmissibility of the constitutional *amparo* action aimed at mounting a direct or indirect challenge to the effects of the application of Decree-Law No. 25492.

7. Petitioner further notes that on March 10, 2001, Law No. 27433 was published, derogating Decree-Law No. 25492 and ordering the reinstatement of the judges of the Judicial Branch and the Attorney General’s Office (Ministerio Público) dismissed after April 5, 1992. He alleges that despite that order the state authorities obstructed the reinstatement of the victims. Accordingly, he notes that the Executive Council of the Judicial

¹ In keeping with Article 17(2) of the Commission’s Rules of Procedure, Commissioner Julissa Mantilla Falcón, of Peruvian nationality, did not participate in the deliberations or decision in the instant case.

Branch handed down Administrative Resolution No. 030-2003-CE-PJ of March 31, 2003, ordering that the chief judges of the Superior Courts of Justice should refer all applications for reinstatement to the National Judicial Council, for it to rule on them, including those that had already been carried out. He specifies that on May 22, 2003 the National Judicial Council published Resolution No. 037-2003-PCNM of May 19, 2003, by which it found inadmissible the 202 applications for reinstatement filed by dismissed judges, including his own.

8. He asserts that in tandem the Constitutional Court, by constitutional judgment of March 13, 2003, found Articles 3 and 4 of Law No. 27433 unconstitutional, as it considered that those provisions that required the judges and prosecutors unconstitutionally removed from their positions to pass an exam given by the National Judicial Council violated rights and went beyond the established powers of that institution.

9. He notes that despite the impossibility of filing the *amparo* action, described above, on August 7, 1992 the alleged victim filed an *amparo* action before the Third Civil Chamber of the Superior Court of Justice of Lima, which was found inadmissible on March 17, 1993, alleging that the aforementioned Decree Laws were binding. He states that the appellate court vacated the judgment for failure to notify all the respondents. He states that after a change in the judicial organization that drew the process out for four years, his case was referred to the Court of First Instance, which on June 5, 2001 found his *amparo* action unfounded on the grounds that any violation of rights had ended with the issuance of Law No. 27433 and that there was no longer any matter in dispute. He explains that in a new delay maneuver no higher-ranking chamber considered that it had jurisdiction to review the decision of first instance. He indicates that it was not until November 29, 2002 that the Third Civil Chamber of the Superior Court of Lima vacated the judgment ordering the judge below to rule on the merits of the action. He indicates that on June 16, 2003, the 64th Court Specialized in Civil Matters of Lima ruled favorably on his *amparo* action regarding his dismissal, ordering that he immediately be reinstated as principal judge, yet it considered his claim for recognition of salary not received to be unfounded. He states that after an appeal that decision was upheld on October 21, 2003 by the Third Civil Chamber of Lima, and that his reinstatement was effective as of March 2, 2004. He adds that even though after 12 years he was able to be reinstated to his judicial position, the state authorities denied him his accrued salaries and other labor benefits.

10. In response to this situation, he states that he filed an action for damages on May 26, 2008, which was resolved in the first instance in 2014; the decision recognized the harm caused him, and ordered the payment of compensation. He indicates that said judgment was affirmed in 2016. Nonetheless, he states that “to date the State has not given any sign or indication of interest whatsoever that evinces its willingness to honor the reparation imposed with the judgment.” In that regard, he alleges that said decision has not been informed in its own terms and within a reasonable time, thus violating his right to **judicial protection** provided for at Article 25(2) of the American Convention.

11. He further clarifies that he filed an action for failure to pay remuneration called “operating costs” that was resolved in his favor in 2015. Nonetheless, he asserts that that proceeding is not related to the instant petition in any way, for the claims in the two cases are manifestly different. Without prejudice to the foregoing he notes that the payment ordered in the context of that proceeding is being made capriciously.

12. Petitioner states that Decree-Law No. 25492 violated the **principle of legality** for it determined the removal of the alleged victim without it being provided for as a sanction in any statutory or constitutional provision in force. He further indicates that Decree-Law No. 25496 was applied retroactively, as the prohibition of a constitutional remedy set out therein was not in force as of the date of his arbitrary dismissal. The petitioner states, in addition to the economic harm that he was caused by his arbitrary removal the then-President of the Republic said that the judges who had been removed were corrupted or had ties to political parties, thus tarnishing their honor and good reputation. Moreover, he indicates that the State has not held a ceremony for redress for the harm caused by the application of the aforementioned provisions.

13. In addition, he argues that his right to **humane treatment** has been violated because his removal had a detrimental impact on his physical and mental integrity due to the stress and depression that he experienced. He also alleges violation of the right to **protection of the family**, since due to his removal his wife had to move to the city of Puno for work. He further notes that the State has not taken measures to facilitate the unity of his core family group.

B. The State

14. The State argues that the Commission is not competent to rule on violations of the rights to health and well-being, to work and fair remuneration, or to social security, all provided for in the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights. In addition, it indicates that as Peru is a state party to the American Convention, it is this instrument, and not the American Declaration of the Rights and Duties of Man, that is the principal source of international obligations.

15. Initially the State affirmed that there was a failure to exhaust domestic remedies, since the damages action has not yet been decided. Nonetheless, in its last briefs it emphasized that said judicial proceeding had concluded favorably for the petitioner. Accordingly, it indicates that on May 12, 2014, the Tenth Civil Court of Lima found that the damages action filed by the alleged victim had a solid basis and ordered the payment of compensation. It notes that in response to the petitioner's inconformity, related to the payment of legal interest, he filed an appeal, which was the subject of a ruling by the First Civil Chamber of Lima on April 6, 2016. It specifically notes that said judgment upheld the decision of May 12, 2014, and recognized the payment of legal interest to Mr. Yangali Iparraguirre.

16. The State indicates that after the intervention of the courts, in 2004 the petitioner was reinstated and is currently active in the judicial career service, serving as one of the judges on the Third Criminal Chamber for Trials with Defendants in the Superior Court of Justice of Lima. It also asserts that he enjoys the same opportunities in the judiciary, having acceded to the position of superior judge (*juez superior*).

17. The State argues that the petitioner has enjoyed all the guarantees of due process and that as a result of the judicial proceedings instituted he had access to the corresponding measures of reparation. It notes that measures were adopted domestically to cure the violations alleged by the petitioner *motu proprio*, and that therefore, in application of the principle of subsidiarity, the case has been resolved in the domestic jurisdiction. The State further emphasizes that the reparations granted in the context of the domestic proceedings meet the international standards developed by the inter-American system.

18. It notes that in the context of the action for damages brought by the alleged victim, on May 12, 2004 the Tenth Civil Court of Lima found that it was well-founded and ordered the payment of 20,000 nuevos soles for consequential damages, 50,000 nuevos soles for moral damages, and 586,124.56 nuevos soles for lost earnings. It mentions that the petitioner appealed that decision for he considered that legal interest had not been taken into account. It states that on April 6, 2016, the First Civil Chamber of Lima ratified the decision of first instance, also recognizing the recognizing the payment of legal interest, and it established that no discount of any sort would apply. It indicates that in this connection on July 5, 2018, the Tenth Civil Court of Lima required the respondents, the Presidency of the Council of Ministers and the Judicial Branch, to pay the plaintiff the total sum of 656,124.56 nuevos soles. It emphasizes that the Office of Legal Defense reported that "the payment would be made based on criteria for prioritization for attending to the payment of court judgments."

19. In addition, it indicates that the petitioner filed a complaint in the contentious-administrative jurisdiction, seeking the payment of the operating expenses set for principal superior judges during the period in which he held the position of provisional superior judge, as of 2001, plus legal interest. It notes that on October 31, 2012, the 19th Specialized Labor Court of Lima found that the action was well-grounded and ordered the Judicial Branch to make the required payment. It notes that said judgment was affirmed by the Second Labor Chamber of the Superior Court of Justice of Lima on July 30, 2014. It notes that in light of that proceeding the Office of the Manager for Human Resources and Well-being of the Judicial Branch issued Resolution No. 1372-2015-GRHBGG-PJ of October 30, 2015, recognizing an accrued credit, to the order of Mr. Yangali Iparraguirre, in the amount of 86,396.67 nuevos soles for operating expenses. It notes that the petitioner has been receiving the payment in sums that are paid out monthly.

III. ANALYSIS OF ADMISSIBILITY

A. Competence, duplication of procedure and international *res judicata*

Competence <i>ratione personae</i> :	Yes
Competence <i>ratione loci</i> :	Yes
Competence <i>ratione temporis</i> :	Yes
Competence <i>ratione materiae</i> :	Yes, American Convention (instrumented deposited on July 28, 1978)
Duplication of procedure and international <i>res judicata</i>	No

B. Admissibility requirements

1. Exhaustion of domestic remedies

20. Article 46(1)(a) of the American Convention provides that for a complaint lodged with the Commission in keeping with Article 44 of the same instrument to be found admissible, one must have pursued and exhausted domestic remedies in keeping with generally accepted principles of international law. The purpose of this requirement is to enable the national authorities to take cognizance of the alleged violation of a protected right and, if appropriate, have the opportunity to resolve it before it is taken up by an international body or mechanism.

21. In the instant case the Commission takes note that the petitioner's claims gave way to two judicial proceedings, one related to his reinstatement, and the other regarding compensation for damages arising from his dismissal.

22. As for the first, the Commission observes that Decree-Law No. 25496, established the inadmissibility of a constitutional *amparo* action aimed at directly or indirectly challenging the effects of the application of Decree-Law No. 25492. Notwithstanding the above-mentioned legal impediment, the Commission takes note that the petitioner filed an *amparo* action on August 7, 1992, which was found inadmissible on March 17, 1993. Subsequently, on June 21, 1994, the appellate court vacated the judgment, for it considered that not all the respondents had been notified, and remanded the case for processing.

23. Based on the case file for this petition, it is apparent that as a result of the creation of the courts and chambers of public law, the petitioner's case was finally referred for resolution to the First Transitory Corporate Court Specialized in Public Law, which on June 5, 2001 found the action inadmissible. That decision was adopted arguing that given that Decree-Law No. 25492 had been struck down by Law No. 27433, therefore the violation of rights invoked by the plaintiff had ceased. On review, the Third Civil Chamber of the Superior Court of Lima vacated the judgment, for it considered that even with the noted express derogation, the violation of the moving party's constitutional rights had not ceased, nor had the state of affairs prior to the violation been restored; and the judge below was ordered to rule on the merits of the action.

24. Accordingly, on June 16, 2003, the 64th Court Specialized in Civil Matters of Lima found the action to be well-founded, and ordered the immediate reinstatement of the petitioner as principal judge, but considered that his claim regarding recognition of salary not paid to be without foundation. That decision was affirmed on October 21, 2003 by the Third Civil Chamber of Lima.

25. The Commission considers that mindful of the legal context and circumstances of the case, pursuing the *amparo* action would suffice to consider domestic remedies exhausted.² Accordingly, the Commission concludes that the alleged victim exhausted domestic remedies with the handing down of the judgment of October 21, 2003 by the Third Civil Chamber of Lima, in keeping with Article 46(1)(a) of the Convention.

² IACHR, Report No. 163/17. Admissibility. Yngrit Hermelinda Garro Vásquez. Peru. November 30, 2017, para. 13.

26. As regards the action for damages, it appears that it was filed on May 26, 2008, and was resolved in the petitioner's favor by the Tenth Civil Court of Lima on May 12, 2014. That judgment was affirmed on April 6, 2016 by the First Civil Chamber of Lima.

27. The Commission recalls that the requirement of exhaustion of domestic remedies refers to remedies that are adequate and effective. Accordingly, if the alleged victim raised the issue by one of the valid and adequate alternatives in the domestic legal system and the State had the opportunity to remedy the issue in its jurisdiction, the aim of the international rule is satisfied.³

28. In light of the foregoing, the Commission considers that the requirement Article 46(1)(a) of the American Convention is satisfied with respect to the action for compensation filed by the petitioner.

2. Timeliness of the petition

29. Article 46(1)(b) of the Convention provides that for a petition to be found admissible it must have been filed within six months from the date on which the interested person was notified of the final decision that exhausted the domestic jurisdiction.

30. The Commission recalls that in the instant case domestic remedies were exhausted, both by the decision that resolved the amparo action, handed down on October 21, 2003; and by the judgment that resolved the damages action, handed down on April 6, 2016. The State has expressly recognized that the petitioner filed the legal actions in domestic courts.

31. As a result, as the petition was filed on January 30, 2003, the exhaustion of remedies occurred while the case was being reviewed for admissibility. According to the doctrine of the Commission, the analysis on the prerequisites established in Article 46(1)(b) of the Convention should be done in light of the situation at the time of the ruling on admissibility or inadmissibility of the petition.⁴ Therefore, the Commission concludes that the petition meets the requirement established at Article 46(1)(b) of the American Convention.

3. Colorable claim

32. For purposes of admissibility, the Commission must decide whether the petition states facts that tend to establish a violation, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," as per Article 47(c). The standard of appreciation for these rules is different from that required for deciding on the merits of a complaint. The Commission must perform a *prima facie* evaluation to examine whether the complaint establishes a foundation for the apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. That examination is a summary analysis that does not entail pre-judging or giving any opinion on the merits.

33. As regards colorable claim, the petitioner considered that the State violated the rights contained in Articles 5, 8, 9, 11, 17, and 25 of the American Convention to the detriment of Mr. Yangali Iparraguirre for being removed from his position as judge of the Superior Court of Lima, the impediment to questioning that decision by an amparo action, the delay in the judicial proceedings and in paying the compensation ordered. The State argued that the petitioner had proper guarantees in the judicial proceedings and that as a result of them the alleged victim was reinstated and obtained reparation that satisfies inter-American standards. Accordingly, it alleged that the measures adopted domestically cured and made reparation for the alleged violations.

34. In the instant case, the Commission observes that despite the legal impediment in Decree-Law No. 25496, the *amparo* action filed by the petitioner was finally resolved favorably by the Third Civil Chamber of Lima, making possible his effective reinstatement to his judicial post on March 2, 2004.

³ IACHR, Report No. 57/03, Admissibility, Case 12,337, Marcela Andrea Valdés Díaz v. Chile. October 10, 2003, para. 40.

⁴ IACHR, Report No. 15/15, Petition 374-05. Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015, para. 41. See I/A Court H.R., Case of Wong Ho Wing v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2015. Series C No. 297, paras. 25-28.

35. In this regard, the 64th Court Specialized in Civil Matters of Lima, which took cognizance of the *amparo* action in first instance, established in its decision of June 16, 2003, that:

“one can appreciate that certainly the plaintiff was removed from the position he held as principal judge by application of Decree Laws 25492 and 25494, it being noted that said situation violated the laws and the constitutional order in force at the time, which guaranteed the judges of the Supreme Court of Justice permanence up to the age of 70, as well as tenure in the position so long as they observed the conduct and suitability particular to the function, and that they could be removed by resolution after an administrative proceeding, accordingly it was an obligation of the State to conduct an administrative-disciplinary proceeding prior to removing the plaintiff, which required that one not only respect the right to defense, but also guarantee due process, before proceeding to remove him from the position. Yet in the instant case these procedures were not followed, as the above-noted decrees were issued with no stated justification and he was removed without any allegation of professional misconduct.”

36. The same court declared that those decrees were inapplicable to the plaintiff and ordered his immediate reinstatement as Principal Judge and that the time not worked be counted for purposes of seniority and for determining his pension.

37. Similarly, the judgment on review of October 21, 2003 handed down by the Third Civil Chamber of Lima considered that “the aim of the *amparo* is to return to the state of affairs prior to the violation or threat of violation, therefore, one must seek to have the petitioner’s rights restored,” and affirming the judgment it ordered that the relevant authorities proceed as ordered by the judge below.

38. In addition, according to what was stated by both the petitioner and the State, Mr. Yangali Iparraguirre at present sits on the Third Criminal Chamber for Trials with Defendants in the Superior Court of Justice of Lima. Therefore, the Commission considers that the alleged violation ceased.

39. In that regard the Commission will analyze, in the merits phase, the possible existence of the alleged failure to enforce the judgment that determined the payment of compensation for damages to the alleged victim, which if proven could constitute a violation of the right to judicial protection enshrined in Article 25 of the American Convention in relation to its Article 1(1).

IV. FINDINGS OF FACT

A. Relevant legal framework

40. The Commission noted that the instant case is related to the enforcement of a judgment in favor of the alleged victim in a case against the Judicial Branch and the Presidency of the Council of Ministers. The case seeking compensation for damages is regulated in the Civil Code and in Supreme Decree No. 013-2008-JUS.

41. The Civil Code provides:

Article 1321 (Compensation for fraud, ordinary and inexcusable negligence). One who does not carry out his or her obligations due to fraud, inexcusable negligence, or ordinary negligence is subject to the payment of compensation for damages.

Compensation for failure to perform the obligation or for its partial, late, or defective performance includes both consequential damages and lost earnings, insofar as they are the immediate and direct consequence of such failure to perform.

If the failure to perform or partial, late, or defective performance of the obligation is due to ordinary negligence, the compensation is limited to the harm that could be anticipated at the time it was contracted.

Article 1322 (Compensation for moral damages). Moral damages, when incurred, can also give rise to the obligation to pay compensation.

Article 1969 (Compensation for damages caused by lateness and negligence). One who due to fraud or negligence causes harm to another is obligated to compensate him. Exculpating oneself by arguing lack of fraud or negligence corresponds to the party accused of such conduct.

Article 1983 (Joint and several liability). If various persons are responsible for the harm, they shall be held jointly and severally liable.

However, the one who paid the entirety of the compensation may bring an action against the others; it is up to the judge to set the proportion in light of the breach of each of the participants. When it is not possible to distinguish the level of responsibility of each one, the distribution shall be done in equal parts.

42. Supreme Decree No. 013-2008-JUS establishes:

Article 47 (Enforcement of obligations to give a sum of money). Judgments that are *res judicata* that order the payment of a sum of money shall be addressed by the state-funded public body in which the debt was generated, under the responsibility of the head of the body; compliance with them shall be done in keeping with the following procedures:

47.1 The General Office of Administration or that which occupies the same role in the state-funded public body requested shall proceed in keeping with the judicial mandate and within the framework of the annual budget laws.

47.2 In the event that the financing ordered in the previous paragraph is insufficient for carrying out the judgment, the head of the state-funded public body, after an evaluation and prioritization of the budgetary goals, may make the budgetary modifications within 15 days of being notified, which should be communicated to the corresponding judicial organ.

47.3 If there are requirements that go beyond the possibilities of financing expressed in the preceding paragraphs, the state-funded public bodies, under the responsibility of the head of the respective body, by written communication from the General Office of Administration, shall inform the judicial authority of its commitment to address those judgments in the following budget year, for which it undertakes to earmark up to three percent (3%) of the budgetary allocation that corresponds to the state-funded public body as regular funds. The Ministry of Economy and Finance and the Office of Social Security Adjustments as the case may be, shall calculate the three percent (3%) referred to in the preceding paragraph, deducting the value corresponding to the allocation for payment of service on the public debt, the contingency reserve, and the social security obligations.

47.4 After six months have elapsed after judicial notification without having initiated the payment and without having obligated it in keeping with one of the procedures established in paragraphs 47.1, 47.2, and 47.3 above, one must begin the process of enforcing judicial resolutions provided for in Article 713 ff. of the Code of Civil Procedure. Government-owned property may not be the subject of enforcement, according to Article 73 of the Constitution of Peru.

B. On the reparations proceeding begun by Mr. Yangali Iparraguirre and the failure to enforce it

43. On May 26, 2008 the alleged victim filed an action for compensatory damages against the Judicial Branch and the Presidency of the Council of Ministers. The Commission does not have information about that action.

44. The Tenth Civil Court of Lima, by Resolution No. 44 of May 12, 2014, found the action well-founded and ordered the payment of 20,000 nuevos soles for consequential damages, 50,000 nuevos soles for moral damages, and 586,124.56 nuevos soles for lost earnings. That judgment established that the arbitrary nature of the dismissal and cancellation of his title as judge in the case of Mr. Yangali Iparraguirre, as well as the

violation of his constitutional rights, were duly shown, as reflected in the decision in the *amparo* proceeding brought by the petitioner.⁵

45. In addition, the Court argued:

“... As regards the causal nexus, conceived of as the link between the harmful event and the harm produced, that the instant case, as the plaintiff has indicated repeatedly, refers to the dismissal of the plaintiff as judge, for with that he was blocked from exercising his profession for more than 11 years. This was shown by Decree-Law 25492 of May 11, 1992, which ordered the dismissal of the plaintiff, among other judges, from the position of Judge that he performed up until that date. This provision was endorsed by the Council of Ministers and carried out by the Judicial Branch. This Decree Law, which was noted in the judgment at folio 21 ff., affirmed by the judgment at folios 29 to 32, declared Decree Laws 25492 and 25494 inapplicable to the petitioner, as the State had breached its duties to act in keeping with the law, thus impairing the plaintiff's constitutional rights – as a judge he had the right to remain in the position up to the age of 75, and could only be removed from his position after a judicial proceeding. And that as the plaintiff's dismissal occurred by Decree Law 25492, that act constitutes an illicit and arbitrary act. This conduct cannot be subsumed as a regular exercise of the law of the state as has been indicated by the Judicial Branch...”⁶

46. It also determined, at its eighth preambular paragraph, that the amount of 586,124.56 nuevos soles corresponding to the lost earnings should be discounted by the sum of 110,329.45 nuevos soles, recognized as severance pay, which was recognized by Resolution No. 1101-2008-GPEJ-GG-PJ.

47. The petitioner filed a motion of appeal against that decision, which was granted with staying effect by the Tenth Civil Court on August 24, 2015.⁷

48. The First Civil Chamber of Lima, by Resolution No. 24 of April 6, 2016, upheld the decision appealed, establishing that no discount should be made for any item from the sums indicated. In this respect, it indicated that:

“In this regard, the judgment appealed should be affirmed nonetheless; it must be noted that what is stated in the eighth preambular paragraph of the judgment appealed is not consistent with what is defined as restitution for the harm caused and what the right to a pension entails, for the court below has improperly determined that the amount paid to the moving party on account of Administration Resolution No. 1101-2008-GPEJ-PJ for severance pay should be discounted in the enforcement of the judgment, without considering that said category is not part of the reparation sought to be made to the party for the harm caused to the appellant but the (illegible) severance pay, which derives from a right to the salary earned and not from the compensation that the moving party seeks to have respondents pay for the harm caused upon arbitrarily and illegally removing him from the Judicial branch, which is why the motion of appeal filed by the moving party should be considered out of order, therefore no discount to the sum established for lost earnings.”⁸

49. On July 5, 2018, the Tenth Civil Court of Lima issued Resolution No. 58, by which it ordered the Presidency of the Council of Ministers and the Judicial Branch to comply with the order of Resolution No. 24 of April 6, 2016, and the amounts defined there.⁹ In this respect it indicated:

“The respondents, Presidency of the Council of Ministers and the Judicial Branch, are ordered to comply with the order of the judgment contained in Resolution 44, incorporated in Resolution 45, and affirmed by the First Civil Chamber of Lima by resolution of April 6, 2016, and that they pay the plaintiff the sum of 20,000 nuevos soles for consequential damages, 50,000 nuevos soles for moral damages, and 586,000 nuevos soles and 50 cents for lost earnings for a total of 656,124 nuevos soles and 50 cents; it being understood that no discount should be made to any of the aforementioned amounts.”¹⁰

⁵ Tenth Civil Court of Lima, Resolution No. 44 of May 12, 2014. Annex to the State's brief of January 11, 2019.

⁶ Tenth Civil Court of Lima, Resolution No. 44 of May 12, 2014. Annex to the State's brief of January 11, 2019.

⁷ Tenth Civil Court of Lima, Resolution No. 55 of August 24, 2015. Annex to the State's brief of January 11, 2019.

⁸ First Civil Chamber of Lima, Resolution No. 24 of April 6, 2016. Annex to the State's brief of January 11, 2019.

⁹ Tenth Civil Court of Lima, Resolution No. 58 of July 5, 2018. Annex to the State's brief of January 11, 2019.

¹⁰ Tenth Civil Court of Lima, Resolution No. 58 of July 5, 2018. Annex to the State's brief of January 11, 2019.

50. On September 19, 2018, the chief officer of the Office of Legal Defense of the Judicial Branch informed the Management for Administration and Finance of the obligation to pay and the breakdown of the amount it should take into consideration of the judicial proceeding. In that same report it indicated:

“... The aforementioned information is provided pursuant to Article 9(1) of Supreme Decree No. 001-2014-JUS, approving the Regulation of Law 30137, which establishes criteria for prioritization for addressing the payment of court judgments.”¹¹

V. FINDINGS OF LAW

A. Right to judicial protection¹² in relation to compliance with domestic judgments and reasonable time¹³

1. General considerations on compliance with domestic judgments and effective judicial protection

51. Article 25(2)(c) provides that the states undertake “to ensure that the competent authorities shall enforce such remedies when granted.” In this regard, the Inter-American Court has held that one of the components of the right to judicial protection, established at Article 25 of the American Convention is precisely that the States “guarantee the means for enforcing the respective decisions and final judgments handed down by ... competent authorities so that they provide effective protection to the rights declared or recognized. This is because a judgment that is *res judicata* confers certainty on the right or dispute addressed in the specific case and therefore has as one of its effects the obligation or need for compliance.”¹⁴

52. The Court has also indicated that the state has the obligation to enforce every decision in which it has been considered that the remedy is in order. This presupposes the guarantee of adequate and effective measures of coercion so that, if necessary, the authorities who hand down decisions or judgments can enforce them, and thereby give material effect to the protection of what is recognized in the final decision.¹⁵

53. In this respect, the effectiveness of judgments depends on their enforcement. Any other situation is tantamount to the very denial of the right involved.¹⁶ The IACHR has held that judicial decisions should be carried out, voluntarily or coercively if necessary.¹⁷ In addition the Inter-American Court has emphasized that the enforcement of judgments should be governed by those specific standards that make it possible to give effect to the principles, *inter alia*, of judicial protection, due process, juridical security, judicial independence, and the rule of law.¹⁸

¹¹ Office of Legal Defense of the Judicial Branch (Procuraduría Pública del Poder Judicial), Official note No. 4394-2018-PP-P/PJ of September 19, 2018. Annex to the State’s brief of January 11, 2019.

¹² Article 25 of the American Convention on Human Rights establishes in its relevant parts that: “1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties. 2. The States Parties undertake: ... (c) to ensure that the competent authorities shall enforce such remedies when granted.”

¹³ Article 8(1) of the Convention provides: “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

¹⁴ I/A Court H.R.. Case of Suárez Rosero v. Ecuador. Merits. Judgment of November 12, 1997. Series C No. 35, para. 65; Case Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 6, 2019. Series C No. 375, para. 128.

¹⁵ Case of Flores v. Peru. Preliminary Objections, Merits, Reparations and Costs, *supra*, para. 128.

¹⁶ I/A Court H.R., Case of Acevedo Jaramillo v. Peru, Preliminary Objections, Merits, Reparations and Costs. Judgment of February 7, 2006, para. 220.

¹⁷ IACHR. Case 12,357, Application before the I/A Court H.R., Discharged and Retired Employees of the Comptroller, Peru, April 1, 2008, para. 53.

¹⁸ I/A Court H.R.. Case of Mejía Idrovo v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 5, 2011. Series C No. 228, para. 105, and Case of the Garífuna Community of Punta Piedra and its members v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 8, 2015. Series C No. 304, para. 244.

54. For its part, the European Court of Human Rights has held that to attain the full effect of the judgment, enforcement should be complete, perfect, integral¹⁹, and without delay.²⁰ In addition, it has indicated that the right to a fair trial would be illusory if the domestic legal system of the State allows for a final and binding judicial decision to remain inoperative to the detriment of one of the parties. In this respect that Court has held that the enforcement of judgments handed down by courts should be considered an integral part of a trial.²¹

55. The Inter-American Court has held that in a legal system based on the principle of the rule of law all public authorities, within the scope of their competence, should heed court decisions and give impetus to and enforce them.²² Along these lines, the IACHR has noted that “securing the enforcement of court judgments does to the very essence of the rule of law.”²³

56. As regards the reasonable time in relation to the stage of enforcement of judgments, the Court notes that it must be shorter due to the existence of a firm decision regarding a specific matter. It is inadmissible for a procedure to enforce a judgment to distort the implementation, in time, of what was decided in a final judgment, or any other judgment, so as to render it ineffective, prolonging in an exaggerated or indefinite manner the litigious situation that has already been resolved. In these cases, the judicial guarantee of reasonable time established in Article 8(1) of the American Convention must be analyzed along with the duty of the state to act with particular celerity in enforcing domestic decisions.²⁴

2. Analysis of the instant case

57. It is not controverted, in the instant case, that the domestic courts recognized that Mr. Yangali Iparraguirre should receive compensation for damages due to his removal from his position as judge. Accordingly, the Tenth Civil Court of Lima, by Resolution No. 44 of May 12, 2014, found that the petitioner’s action was well-founded and ordered the payment of 20,000 nuevos soles for consequential damages, 50,000 nuevos soles for moral damages, and 586,124.56 nuevos soles for lost earnings.

58. This decision was appealed by Mr. Yangali Iparraguirre, and on April 6, 2016 the First Civil Chamber of Lima affirmed the decision appealed, and also established that no discount whatsoever should be applied to the sums indicated. Subsequently, the Tenth Civil Court issued Resolution No. 58 of July 5, 2018, ordering the Presidency of the Council of Ministers and the Judicial Branch to carry out the mandate of the Resolution of April 6, 2016, and the amounts defined there.

59. Regarding the evidence in the record, the Commission observes that despite the adoption of the judgment that ordered the payment of compensation to Mr. Yangali Iparraguirre in April 2016, the Judicial Branch and the Presidency of the Council of Ministers did not carry out the order of the First Civil Chamber of Lima. The Commission notes that two years later, i.e. on July 5, 2018, the Tenth Civil Chamber of Lima ordered the respondent to carry out the obligation established in the judgment, which to date has not happened. Moreover, it is noted that on September 19, 2018 the chief officer of the Office of Legal Defense of the Judicial Branch informed the Management for Administration and Finance that the obligation recognized in favor of Mr. Yangali had become *res judicata*, and that no further remedies were in order, spelling out the amount that was to be paid. The Commission takes into account that the State noted, by its brief of January 11, 2019, that the payment would be made based on criteria of prioritization. In this respect, the Commission observes that the State has not taken any measure since the judgment handed down in 2016 to comply swiftly and effectively with the order of the judicial authorities to guarantee compensation for the damages that have been judicially recognized.

¹⁹ ECHR, Case of *Matheus v. France*. Judgment of March 31, 2005, para. 58; and Case of *Sabin Popescu v. Romania*. Judgment of March 2, 2004, paras. 68 ff.

²⁰ ECHR, Case of *Cocchiarella v. Italy*. Judgment of March 29, 2006, para. 89.

²¹ ECHR, Case of *Hornsby v. Greece*. Judgment of March 19, 1997, para. 27.

²² I/A Court H.R., Case of *Mejía Idrovo v. Ecuador*, *supra*, para. 106.

²³ IACHR, Case 12,357, Application before the I/A Court H.R., Discharged and Retired Employees of the Comptroller, Peru, April 1, 2008, para. 54.

²⁴ I/A Court H.R., Case of *Muelle Flores v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 6, 2019. Series C No. 375, para. 157.

60. The Commission finds that the judgment that concluded the action for damages filed by the petitioner was handed down on April 6, 2016 by the First Civil Chamber of Lima, yet to date it has not been enforced. The Commission notes that in the instant case there is only one victim and there was already a firm judicial decision that should have been complied with or, lacking compliance, enforced. As regards the procedural activity of the interested party, one notes the procedural impetus on the part of Mr. Yangali Iparraguirre throughout the enforcement process. With respect to the conduct of the authorities, the Commission notes that despite a firm court judgment in 2016, and an order to pay issued in 2018, the judicial authorities were unable, with their activity, to provide the resources and take the measures needed to secure compliance with the decision. Finally, as regards the impairment of the legal situation of the person involved in the proceeding, the Commission observes that the compensation sought by the petitioner is related to reparations for his arbitrary dismissal from his position as judge, in 1992, and the salaries and benefits that he ceased receiving as a result, up until 2004 when he was reinstated. In consideration of the foregoing, the Commission observes that the drawing out of enforcement of the judgment has had an impact on the legal situation of Mr. Yangali Iparraguirre.

61. Accordingly, the Commission finds that the Peruvian State is responsible for violating the rights established at Articles 8(1) and 25(2)(c) of the American Convention in relation to the obligations established at Article 1(1) of the same international instrument, to the detriment of Yangali Iparraguirre.

VI. CONCLUSIONS AND RECOMMENDATIONS

62. The Commission finds that the Peruvian State is responsible for violating the rights established in Article 8(1) (judicial guarantees) and Article 25(2)(c) (judicial protection) of the American Convention on Human Rights, in relation to the obligations established at Article 1(1) of the same instrument.

63. Based on the analysis and conclusions of this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF PERU THAT IT:

1. Adopt the measures necessary for there to be compliance by the Presidency of the Council of Ministers and the Judicial Branch with the decision handed down on May 12, 2014.
2. Adopt the payment of compensation to the victim for the violation found in this report, specifically, the failure to adopt adequate measures to guarantee the enforcement of a court judgment.