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**REPORT No. 73/18**  
**PETITION 1350-07**  
REPORT ON ADMISSIBILITY

JOSÉ ANTONIO PÉREZ PÉREZ  
MEXICO

Approved by the Commission electronically on June 20, 2018.

**Cite as:** IACHR, Report No. 73/18, Petition 1350-07. Admissibility. José Antonio Pérez Pérez.  
Mexico. June 20, 2018.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	José Antonio Pérez Pérez
<b>Alleged victim:</b>	José Antonio Pérez Pérez
<b>Respondent State:</b>	Mexico <sup>1</sup>
<b>Rights invoked:</b>	Articles 8 (fair trial), 9 (freedom from <i>ex post facto</i> laws), 10 (compensation), 11 (privacy), 21 (private property) and 25 (judicial protection) of the American Convention on Human Rights, <sup>2</sup> in relation to its Article 1.1 (obligation to respect rights); and Articles 4, 6 and 7 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights <sup>3</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	October 17, 2007
<b>Additional information received at the stage of initial review:</b>	May 29 and September 15, 2009; June 10 and September 1, 2010
<b>Notification of the petition to the State:</b>	June 7, 2011
<b>State's first response:</b>	January 29, 2014
<b>Additional observations from the petitioner:</b>	January 23, 2012; May 30, 2013; March 23, 2015
<b>Additional observations from the State:</b>	October 9, 2015

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes; American Convention (deposit of ratification instrument on March 24, 1981)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 8 (fair trial), 21 (private property), 23 (political rights), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes; June 13, 2007
<b>Timeliness of the petition:</b>	Yes; October 17, 2007

<sup>1</sup> In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the discussion or the decision on this matter.

<sup>2</sup> Hereinafter "Convention" or "American Convention."

<sup>3</sup> Hereinafter "Protocol of San Salvador."

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. Mr. José Antonio Pérez Pérez (hereinafter “the petitioner” or “the alleged victim”) alleges that the State of Mexico is internationally responsible for several infringements of his labor rights and of due process in view of the arbitrary annulment of his appointment as Numerary Judge of the Superior Court of Baja California. He complains that his groundless and arbitrary removal was due to the reinstatement of a previously dismissed judge and that neither his judicial performance nor his lawful appointment was considered. He adds that the authorities failed to apply the principle of irrevocability by ignoring the principle of *res judicata* in relation to a decision issued in his favor.

2. The petitioner indicates that on September 7, 2001, by a decree of the Congress of the State of Baja California, he was appointed Numerary Judge of the Superior Court of Justice of Baja California for a first term of six years, and then appointed to the Fourth Chamber of the Superior Court by an administrative decision of the Plenary of the Judiciary of the State, replacing a judge that the Congress of Baja California had not confirmed for the post. He submits that on October 23, 2003 the District First Judge, in deciding on the direct *amparo* proceedings filed by said judge, ordered his reinstatement. He also indicates that after the filing of several appeals for review, on February 8 2005, in compliance with the *amparo* resolution, the Congress of the State not only reinstated the judge but also groundlessly annulled the petitioner’s appointment as judge, even though the decree by which he had been appointed had not been contested in the above mentioned *amparo* proceedings. He claims that he filed an appeal of complaint as the injured third party in which he alleged abuse in the execution of the sentence due to the annulment of the decree of his appointment. He submits that on November 25, 2005 this remedy was rejected by the District First Judge. Additionally, he indicates that in this context a smear campaign in the media was set up by state agents who, among other things, argued that his appointment as judge “destabilized the judiciary” and that he earned a salary as a judge despite not holding office, which allegedly harmed his reputation.

3. The petitioner alleges that he appealed against the decision of November 25, 2005 by submitting an appeal of complaint (“a complaint of a complaint”) before the Fifteenth Circuit First Collegiate Court, and that on January 24, 2006 it was decided in his favor. He affirms that the First Collegiate Court ordered his reinstatement as judge and the restitution of the corresponding emoluments, thus his appointment was found valid and indisputable. The court established that the petitioner’s appointment was not provisional and that it was not contested or analyzed in the *amparo* proceedings leading to his dismissal and that, therefore, the execution of the *amparo* resolution by which the preceding judge was reinstated in his job does not entail the annulment of the petitioner’s appointment. The petitioner indicates that on March 1, 2007 the Congress of Baja California issued a decree ruling his reinstatement and that on March 28, 2007 the Plenary of the Council of the Judiciary ordered his reinstatement. He also submits that on May 24, 2007 the authorities passed the decree ruling the payment of benefits corresponding to the period from February 11, 2005 to March 27, 2007.

4. The petitioner explains that after the issue of the first decision by the First Collegiate Court, he filed several requests to the Congress of Baja California to obtain the execution of a sentence by means of a procedural issue concerning the lack of enforcement of a court order before the First Collegiate Court. He indicates that on March 22, 2007, in the framework of this procedural issue, the court forwarded the case files to the Supreme Court of Justice in order that it would determine the punishment applicable to the authorities that ignored the court order. However, on June 13, 2007 the Second Chamber of the Supreme Court, in deciding on that procedural issue, ordered to annul the resolution of January 24, 2006 on the grounds that the enforcement of an *amparo* judgment does not allow for the reinstatement of an injured third party. He alleges that the resolution of the Supreme Court cannot be appealed and that on August 29, 2007 the Congress, in application of the Supreme Court’s decision, revoked the decision ruling the petitioner’s reinstatement, which he was notified on August 30, 2007. He asserts that as a result of said decree, the payment of the financial benefits established by the First Collegiate Court was annulled.

5. The petitioner claims that the Supreme Court exceeded its powers because it ruled on an issue beyond its jurisdiction and other than the matter brought to its attention, thus revoking a judgment that was final, which violated the judicial safeguards concerning the respect of *res judicata*, fair trial and freedom

from *ex post facto* laws. He affirms that under none of the court resolutions issued on this matter was his appointment found unconstitutional. He alleges that all these violations occurred in the framework of a procedure that does not foresee the right to a hearing, thus he was dismissed without prior analysis of or questioning over his appointment or his performance as a judge, and that all this took place before the end of the term for which he had been appointed. In addition, he claims that the resolution of the Supreme Court violated his right to property because it annulled the payment of the benefits corresponding to the term between February 11, 2005 and March 27, 2007 although the payment had been approved in the budget of the Congress. Finally, he asserts that given his unfair and unlawful removal from office, it must be ordered that the unearned salaries to date be paid to him.

6. For its part, the State claims that the petitioner had access to an effective, fast and simple remedy before a court of law and able enough to file remedies against the alleged violations against him. It affirms that all the remedies he lodged were processed by impartial, independent and competent courts; that, therefore, he intends to have the Inter-American Commission work as a body of fourth instance. Moreover, it alleges that Mr. Pérez did not exhaust all the domestic remedies available regarding the right to work and to just, equitable, and satisfactory conditions of work, the right to privacy and to private property in view of the fact that he did not lodge any remedy before the corresponding courts.

7. In addition, it submits that the IACHR is not competent to decide on alleged violations of the rights enshrined in the Protocol of San Salvador, except for those established in its articles 8 and 19. Thus, it requests that the instant petition be declared inadmissible in all respects.

## **VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

8. The petitioner asserts that, following his appeal of complaint, on January 24, 2006 the First Collegiate Court of the Fifteenth Circuit ordered his reinstatement as judge, a decision that was final. He claims, however, that the Supreme Court issued a new resolution that invalidated that decision. He claims that it was impossible to appeal against a decision of the Supreme Court. For its part, the State alleges that the petitioner did not exhaust the domestic remedies concerning articles 4, 6 and 7 of the Protocol of San Salvador and articles 11 and 21 of the American Convention. In regard to the other allegations, the State did not submit observations on the fulfillment of the requirement of exhaustion of domestic remedies.

9. In the instant case, for the analysis of admissibility, the Commission notes that the above mentioned decision of the Supreme Court was final and that the remedies were exhausted; that, therefore, the petition meets the requirement established in Article 46.1.a of the Convention. In relation to the requirement of timeliness, the Commission notes that the final decision by which the domestic jurisdiction was exhausted was issued on June 13, 2007 and that the petition to the IACHR was filed on October 17, 2007, thus it meets the requirement set forth in Article 46.1.b of the Convention.

10. Concerning the allegations about the violations of the right to privacy, the Commission notes that based on the information submitted said claims were not brought to the attention of the domestic authorities. As a result, the Commission concludes that in relation to the right protected by Article 11 (privacy) of the Convention, the petition does not meet the requirement established in Article 46.1.a of the Convention.<sup>5</sup>

## **VII. ANALYSIS OF COLORABLE CLAIM**

11. Based on the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that, if proved, the alleged arbitrary removal from office as Numerary Judge before the end of his term, the resulting violation of the basic right to work and of due

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<sup>5</sup> IACHR, Report No. 104/17, Petition 1281-07. Admissibility. Mirta Cármen Torres Nieto. Argentina, September 7, 2017, par. 10.

process applicable to any judge,<sup>6</sup> as well as the decision to annul the payment of the financial benefits that had been ordered by a final judgment could all establish possible violations of articles 8 (fair trial), 21 (private property), 23 (participation in government),<sup>7</sup> 25 (judicial protection) and 26 (economic, social and cultural rights) of the Convention, in relation to all the general obligations foreseen in its articles 1.1 and 2.

12. Considering that Article 26 of the Convention broadly refers to economic, social and cultural rights, and that these must be determined in relation to the OAS Charter, the Commission believes that when a possible violation of said right is established, all instruments applicable to the state concerned must be used in the merits stage, like the Protocol of San Salvador. In regard to the allegations concerning articles 4, 6 and 7 of the Protocol of San Salvador, the Commission notes that under Article 19.6 of said treaty its competence to rule on individual cases is limited to Articles 8 and 13. Regarding the same article, Article 29 of the Convention establishes that the Commission may consider it in the interpretation and application of the American Convention.

13. As to the petitioner's claims regarding the violation of the right enshrined in Article 9 (freedom from *ex post facto* laws) of the Convention, the Commission notes that the petitioner did not submit evidence for it to *prima facie* consider a possible violation. In regard to the alleged violation of Article 10 (compensation) of the American Convention, the Commission considers that the petition must be declared inadmissible because the foregoing provision refers to compensation in the event of a sentence through a miscarriage of justice.

14. Finally, as to the State's claim about the establishment of a body of fourth instance, the Commission notes that by declaring this petition admissible it does not seek to replace the domestic authorities' competence. Instead, it will analyze in the merits stage whether the domestic judicial proceedings conformed to the rights of due process and judicial protection and ensured the alleged victim's right of access to justice under the terms of the American Convention.

## VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8, 21, 23, 25 and 26 of the American Convention, in connection with its Articles 1.1 and 2;

2. To find the instant petition inadmissible in relation to articles 9, 10 and 11 of the American Convention on Human Rights, and articles 4, 6 and 7 of the Protocol of San Salvador; and

3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 20<sup>th</sup> day of the month of June, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, and Flávia Piovesan, Commissioners.

<sup>6</sup>IACHR, Report No. 38/06, Petition 549-06. Admissibility. Mercedes Chocrón Chocrón. Bolivarian Republic of Venezuela, March 15, 2006, par. 40.

<sup>7</sup>IACHR, Report No. 60/06, Petition 406-05. Admissibility. María Cristina Reverón Trujillo. Bolivarian Republic of Venezuela, July 20, 2006, par. 32.

