

REPORT Nº 40/02*
ADMISSIBILITY
PETITION 12.167
ARGUELLES *ET AL*
ARGENTINA
October 9, 2002

I. SUMMARY

1. The present report addresses the admissibility of petition 12.167. The petition was opened by the Inter-American Commission on Human Rights (hereinafter "Inter-American Commission, "Commission" or "IACHR") pursuant to the receipt of a series of petitions filed between June 5 and October 28, 1998, on behalf of 21 individuals: Hugo Oscar Arguëlles, Miguel Angel Maluf, Miguel Ramón Taranto, Ambrosio Marcial, Miguel Oscar Cardozo, Julio Cesar Allendes, Luis José López Mattheus, Enrique Jesús Aracena, Felix Oscar Morón, Ricardo Omar Candurra, Carlos Julio Arancibia, José Eduardo Di Rosa, Enrique Luján Pontecorvo, Aníbal Ramón Machín, Carlos Alberto Galluzzi, Gerardo Feliz Giordano, Nicolás Tomasek, José Arnaldo Mercáu, Alberto Jorge Pérez, Horacio Eugenio Oscar Muñoz and Juan Italo Obolo. On the basis of the close identity of the allegations of fact and law presented, the respective petitions were accumulated into one file, numbered 12.167 (hereinafter "the petition"). The following have acted as petitioners in representation of one or more of the alleged victims in the proceedings before the Commission: Hugo Oscar Arguëlles; attorneys Ruth Irene Friz (since deceased) Alberto Antonio De Vita and Angel Mauricio Cueto; attorney Eduardo Barcesat; and attorney Juan Carlos Vega (hereinafter "the petitioners").

2. The alleged victims were prosecuted for military fraud and related offenses in proceedings initiated in September of 1980. The crimes at issue concerned the handling and channeling of military funds, spanned several years, and were committed in various departments and installations of the military. Those proceedings terminated with the dismissal of their final "*recurso de hecho*" against their convictions by the Supreme Court in April of 1998. The petitioners contend that the alleged victims were arbitrarily and illegally deprived of their liberty because they were held in preventive detention for periods exceeding 7 or 8 years, and were held in incommunicado detention for periods of days between their initial detention and declarations. They maintain that the alleged victims were not tried within a reasonable time, and suffered multiple violations of their right to judicial protection and guarantees, including lack of adequate legal representation and the systematic transgression of the principle of equality of arms between the prosecution and defense. They allege that the military justice regime applied was incompatible with the requirements of the American Convention on Human Rights (hereinafter "American Convention"), and affirm related violations of the right to appeal a conviction before a higher court. The petitioners contend that the proceedings to which the alleged victims were subjected gave rise to violations of the rights to personal liberty (Article 7), judicial protection and guarantees (Articles 25 and 8), equal protection of the law (Article 24), to receive the benefit of a lesser penalty enacted subsequent to the commission of the offense (Article 9), and to be compensated in the case of being sentenced by a final judgment through a miscarriage of justice (Article 10) recognized in the American Convention.

3. The State maintains that the alleged victims, members of the military at the time of the offenses for which they were prosecuted, were duly tried in accordance with the military justice system, which protects specific values and necessarily has special characteristics. The State emphasizes that the proceedings at issue were complex, involving numerous defendants in various locations, an extensive case file, and a highly technical investigation of accounting and fraud issues. To summarize, the State considers the petition inadmissible, first, because the principal allegations raised were addressed by the competent military and judicial authorities and found to lack merit. Second, the State argues that the alleged victims never invoked judicial remedies to seek the compensation they now pursue before the Commission. Third, the State indicates that, in any case, the petitioners have failed to set forth any facts characterizing a violation of the Convention.

4. As set forth below, pursuant to its examination, the Commission concluded that it is competent to take cognizance of the petitioners' complaints concerning alleged violations of Articles 1, 5, 7, 8, 10, 24 and 25 of the American Convention, and to the extent necessary Articles I, XXV and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter "American Declaration"), and that the case is admissible pursuant to the terms of Articles 46 and 47 of the American Convention. The Commission determined that the claims concerning Article 9 of the American Convention are inadmissible.

II. PROCESSING BEFORE THE COMMISSION

5. The principal communications that form the basis of petition 12.167 were received as follows (some alleged victims are named more than once): (1) June 5, 1998, Hugo Oscar Arguëlles; (2) September 10, 1998, Miguel Angel Maluf; (3) September 11, 1998, Hugo Oscar Arguëlles, Miguel Ramon Taranto, Ambrosio Marcial and Miguel Oscar Cardozo; (4) September 11, 1998, Julio Cesar Allende and Luis Jose Lopez Mattheus; (5) September 11, 1998, Enrique Jesus Arecena and Felix Oscar Moron; (6) September 11, 1998, Nicolas Tomasek; (7) September 11, 1998, Juan Italo Obolo and Alberto Jorge Perez; (8) September 11, 1998, Gerardo Félix Giordano, Enrique Jesús Aracena, José Arnaldo Mercau, Carlos Julio Arancibia, Félix Oscar Morón, Miguel Oscar Cardozo, Luis José López Mattheus, Julio Cesar Allende, Ambrosio Marcial, Alberto Jorge Pérez, Horacio Eugenio Oscar Muñoz and Juan Italo Obolo; (9) September 15, 1998, Carlos Alberto Galluzzi; (10) October 28, 1998, Ricardo Omar Candurra, Carlos Julio Arancibia, Jose Eduardo di Rosa, Enrique Lujan Pontecorvo and Anibal Ramon Machin. An additional presentation on behalf of 15 of those already named was filed on December 1, 1998.

6. To recount the principal steps in processing, on June 7, 1999, the Commission transmitted the pertinent parts of petition 12.167 to the State, with information in response requested within 90 days. By note of that same date, the respective petitioners were informed that the processing of the petition had been initiated.

7. By note of September 7, 1999, the State requested an extension for its response. By notes of September 13, 1999, the Commission granted the State an additional 60 days and informed the petitioners that this action had been taken. By note of November 11, 1999, the State requested an additional extension. The State was granted an additional 30 days, and the petitioners were informed accordingly.

8. The State presented its response on December 28, 1999. This was transmitted to the petitioners on January 5, 2000, with observations in response requested within 60 days. Observations were presented by various petitioners on February 7, February 22, March 3, March 6, March 8 and May 1, 2000. These were duly transmitted to the State on May 24, 2000, with observations in response requested within 60 days. Additional information was received from the petitioners on June 5, 2000, and transmitted to the State on June 9, 2000. By note of July 7, 2000, the Commission clarified that observations in response to both communications would be due 60 days following June 9, 2000. By note of August 11, 2000, the State requested an extension for its response. On August 15, 2000, the Commission granted the State 30 additional days and informed the petitioners that this had been done.

9. The State presented its observations by note of September 19, 2000. The Commission transmitted those to the petitioners by note of October 27, 2000, with any observations in response requested within 60 days.

10. Observations were presented by the petitioners on October 31 and November 10, with two presentations received on November 29, 2000. These were transmitted to the State on December 27, 2000, with any observations in response requested within 60 days. In response to the State's February 27, 2001 request for an extension, the Commission issued a new deadline of April 5, 2001, and informed the petitioners that this had been done. The State's observations were presented on April 18, 2001, and transmitted to the petitioners for their information on May 17, 2001.

11. The petitioners filed additional presentations on June 16 and July 10, 2001, which were in turn transmitted to the State on September 10, 2001, with any observations requested within one month. Additional observations from the State were received on October 2, 2001, and transmitted to the petitioners for their information on October 12, 2001.

12. It may be noted that various petitioners requested hearings before the Commission, first at the time of filing, and on three subsequent occasions. In each instance the petitioners were informed that the Commission was unable to grant the request due to the volume of hearings already scheduled.

III. POSITION OF THE PARTIES

Introduction

13. The questions of fact and law at issue in the petition arise out of criminal proceedings initiated against a group of 32 defendants, including the 21 alleged victims, on September 9, 1980. Those proceedings were titled "*Galluzzi, Carlos Alberto y otros s/ defraudación militar s/ art. 445 bis del Código de Justicia Militar –causa Nº 56.*" All the defendants were military personnel, more specifically, members of the Air Force, at that time. The case was investigated first before the *Juzgado de Instrucción Militar Nº 12*, and as from December 1980 before the *Juzgado de Instrucción Militar Nº 1*. As of October 4, 1982, it was placed before the *Consejo Supremo de las Fuerzas Armadas*, which issued its sentence on June 5, 1989.

14. Both the prosecution and defense filed appeals against that sentence, and these were placed before the *Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal de la Capital Federal* on June 14, 1989. On April 23, 1990, that Chamber issued its order admitting certain claims raised. On December 5, 1990, the Chamber declared the statute of limitations to have expired on two of the three offenses. The prosecution then filed an extraordinary appeal. That appeal was resolved by the Supreme Court, which revoked the decision of prescription on July 30, 1991. On September 16, 1993, the *Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal de la Capital Federal* declared that it was not competent to continue hearing the matter, indicating that competence properly corresponded to the National Chamber of Criminal Casation. The latter declined to exercise that competence. The jurisdictional conflict was resolved by the Supreme Court, which ruled that competence resided with the National Chamber of Criminal Casation. The latter issued its ruling on March 20, 1995 (the resolution) and April 3, 1995 (the considerations). On April 3, 1995, it denied the defendants' extraordinary appeal. In August of 1995 the defendants filed a final "*recurso de hecho*," and the proceedings culminated with the April 28, 1998 dismissal of that appeal by the Supreme Court of the Nation.

15. While there are certain distinctions in the situation of the alleged victims, the claims arise from the criminal proceedings to which they were subjected as a group. The present admissibility report accordingly deals with the positions of the parties with respect to the group.

A. The Petitioners

16. For the purposes of this admissibility report, the petitioners' allegations may be summarized as follows. They contend that the State of Argentina bears responsibility for having: failed to respect and guarantee the rights of the alleged victims set forth in the American Convention (Article 1); violated their right to physical integrity and to be free from torture (Article 5); arbitrarily and illegally deprived them of their liberty, failed to try or release them within a reasonable time, and failed to promptly present them before a judge to determine the legality of their arrest (Article 7); violated their right to be heard with due guarantees and within a reasonable time, violated their right to be presumed innocent during the proceedings, failed to provide prompt, adequate notification of the charges against them, denied them adequate means for their defense, denied them access to representation by qualified legal counsel, obliged them to declare against their own interests in their initial statements, and denied them a valid appeal (Article 8); violated their right to benefit from a

more beneficial procedural rule enacted after the commission of the offenses (Article 9); failed to provide them with compensation for having been convicted by a final sentence issued through judicial error (Article 10); denied them equal protection of the law (Article 24); and denied their right to judicial protection (Article 25).

17. The central claims posed by the petitioners concern the length of the criminal proceedings against them. First, with respect to the claims under Article 7, the petitioners indicate that the alleged victims were held in preventive detention for periods of more than 7 or 8 and a half years while the proceedings were pending. They allege that this far exceeded the applicable limits under both national and international law.

18. The petitioners emphasize that the alleged victims were held in preventive detention for over twice as long as the prison sentences eventually issued. According to the information provided, 14 of the defendants were sentenced to prison terms between 2 and 4 and ½ years. Two others were sentenced to 5-year terms, 1 to 6 years and 1 to 7 years. Additionally, the petitioners argue that the preventive detention orders lacked the necessary foundation in law and fact from the very start of the proceedings.

19. The petitioners maintain that the defendants were held incommunicado when first detained, and that, as a matter of domestic due process, this was not duly authorized, and was in any case unjustifiably prolonged. The information presented suggests that most were held incommunicado in excess of 7 days, for periods of up to 10 or 12 days. They note that the relevant authorities recognized that certain violations had taken place in this regard, when the Supreme Council and the National Chamber of Criminal Casation determined that the file contained no grounds for the extension of the incommunicado detention of certain defendants. Neither the Supreme Council nor the Chamber, however, accepted the defendants' claims that this should nullify the proceedings, and instead only indicated that the statute of limitations on proceedings to sanction the judge in question had expired.

20. Second, with respect to Article 8, the petitioners allege the violation of the right to be tried within a reasonable time, as well as a series of fair trial guarantees. In particular, they allege that the prolongation of the proceedings prejudiced the right of the defendants to be presumed innocent, and adversely affected their ability to defend themselves.

21. The petitioners maintain that the right to an adequate legal defense was not respected, first because the defendants had no legal counsel in the initial stages of the process against them. They allege that the defendants lacked counsel for the first two and a half years of the proceedings. The petitioners indicate that even once they obtained representation, the defenders in question were not lawyers. In this regard, they note that the Code of Military Justice provides for the right of an accused to be assisted in presenting his or her defense by a "military defender"--an active or retired member of military personnel.

22. The petitioners further argue that the American Convention, the Argentine Constitution and the Code of Criminal Process recognize the right of a defendant not to be compelled to testify against him or herself, but that the Code of Military Justice does not respect that guarantee. They indicate that, consistent with the terms of the Code of Military Justice, the judge presiding over the investigation exhorted the accused to tell the truth in their initial declarations and indicated that this would be viewed favorably. They argue that this is especially problematic because the Code of Military Justice does not recognize the right of the accused to have counsel present at that stage of the proceedings. They indicate that this constituted pressure for the purpose of obtaining a confession. The petitioners also refer to other largely unspecified threats against the defendants at the time of these initial declarations.

23. Additionally, the petitioners maintain that the designation of expert accountants by the military tribunal prejudiced the defense of the accused. They argue that the three experts – each a military official in charge of an accounting department within the military – were "intimately linked" to the facts then under investigation, and had worked in direct proximity with at least two of the defendants. Consequently, the petitioners allege that they could not

have been independent. They further indicate that: under the terms of the Code of Military Justice, the experts were designated without notice to the accused, so there was no opportunity to recuse them; the accused had no opportunity to name their own experts; and, the "experts" were not certified public accountants.

24. The petition includes very general allegations to the effect that the quality and quantity of proof brought against the accused were insufficient to justify conviction. Further, the petitioners allege that the military tribunal arrived at its sentence following a secret meeting and vote of its members, in violation of the procedures required by the Code of Military Justice.

25. As noted above, a number of the defendants were condemned to pay monetary sanctions as part of the sentence, as well as other penalties. In this regard, the petitioners maintain that these defendants have been gravely prejudiced by being required to pay high rates of interest for the period of delay attributable to the State. They indicate that with the adjustment for interest over the years, the penalties are approximately doubled. There are ancillary claims to the effect that the parameters for establishing the rates of interest were neither clear nor fair.

26. The petitioners raise two allegations concerning the competence of the courts involved in the proceedings that relate to both Articles 8 and 25 of the American Convention. First, they indicate that the military judge assigned to direct the initial investigation was suffering from psychological problems at the time, was replaced approximately 3 months into the investigation, and was later relieved of his duties for the same reasons. Second, they contend that the National Chamber of Criminal Casation, which was directed to assume jurisdiction over their appeal by the Supreme Court, was not the proper court of review. Their principal allegation in this regard is that the National Chamber of Criminal Casation was established in 1992, subsequent to the commission of the offenses at issue, so that the right of the alleged victims to be tried by preexisting courts was violated. They further allege that the Supreme Court improperly denied their final "*recurso de hecho*" absent any substantive examination of the claims raised.

27. The petitioners argue that the right of the alleged victims to equal protection of the law under Article 24 of the American Convention was violated because, pursuant to their status as military personnel at the time of the offenses in question, they were processed through military jurisdiction prior to having access to the civilian judicial system. The petitioners emphasize that the military jurisdiction is an administrative tribunal, and not judicial in nature, so that military personnel such as the alleged victims were obliged to pass through a procedural stage not required of civilians. The petitioners question the compatibility of the military justice system with the requirements of the American Convention, noting, for example, the refusal of the National Chamber of Criminal Casation to review any questions of fact decided by the Supreme Council.

28. The petitioners' allegations concerning Article 9 of the American Convention are that the alleged victims were subjected to the harsher of two norms concerning the applicable statute of limitations. They maintain that the Supreme Court violated the alleged victims' right to application of the more beneficial of the two by arbitrarily opting to apply the statute of limitations in the Code of Criminal Procedure, thus permitting the continuation of the proceedings, as opposed to the 10 year statute of limitations applicable under the Code of Military Justice, which would have terminated central aspects of the prosecution.

29. Finally, the petitioners invoke the rights of the alleged victims under Article 10 of the American Convention to receive compensation for having been convicted by a final sentence through judicial error. In this regard, they emphasize in particular the right of the alleged victims to be compensated for the time spent in preventive detention in excess of the final prison sentences issued.

30. On the basis of the foregoing arguments, the petitioners maintain that the proceedings against them were flawed from the very beginning, and should have been nullified on the basis of numerous violations of their basic rights. They contend that the present petition meets all the requirements of admissibility. In particular, they affirm that domestic remedies were

exhausted with the decision of the Supreme Court rejecting the final "*recurso de hecho*," and that in each case the alleged victim filed a petition within six months from the date of notification of that judgment. With respect to the State's contention that the alleged victims have not exhausted domestic remedies with respect to their claims for compensation, the petitioners maintain that they did in fact file an administrative action seeking compensation for the period they were held in preventive detention in excess of the final judgment rendered—and were denied.

B. The State

31. In its submissions before the Commission, the State first emphasizes that the exercise of military jurisdiction in the criminal proceedings against the defendants was in full accordance with national and international law. The State notes that the defendants were members of military personnel at the time of the crimes for which they were ultimately convicted, and that the crimes were integrally linked to their military service. Further, the State maintains that its military tribunals were set up by the legislative branch to dispense justice in such cases, and were not subordinate to the executive. Accordingly, the State affirms that War Councils, such as that which issued the sentence of conviction, are tribunals of justice with appeal before the federal jurisdiction, thus fully respecting the guarantees of the right to a second instance review of any conviction.

32. The State underlines that military jurisdiction is a necessary corollary to the special characteristics of the military as an institution and the distinct values protected by military codes. Consequently, military tribunals are competent and constitutional to judge military personnel for crimes set forth in the Code of Military Justice. On the basis of its position with respect to the validity of military jurisdiction in this case, and in relation to the so-called "doctrine of fourth instance" the State affirms that the Commission would only be competent to review claims insofar as the petitioners alleged some failure to comply with the procedures set forth in the Code of Military Justice or that the proceedings had violated the American Convention.

33. With respect to the alleged violations of the right to liberty under Article 7 of the American Convention, the State emphasizes that the alleged victims regained their liberty approximately 10 years ago, so that this aspect of the petition is essentially moot and should be dismissed. The State notes that the claims before the Commission to the effect that the orders authorizing the preventive detention of the alleged victims were not duly founded were raised before both the Supreme Council and the National Chamber of Criminal Casation, and rejected as lacking any basis. With respect to the petitioners' claim that the alleged victims should be compensated for the time spent in detention, in particular that which exceeded the length of the prison sentences issues, the State indicates that they did not invoke or exhaust internal remedies for such compensation, so that such claims were inadmissible pursuant to the terms of Article 46(1) of the American Convention.

34. With regard to the petitioners' claims concerning detention incommunicado, the State affirms that the decision to extend this form of detention for certain alleged victims was duly founded in conformity with the Code of Military Justice. While this foundation was not recorded for certain other alleged victims, the State notes that the Supreme Council of the Armed Forces considered this a disciplinary infraction on the part of the judge concerned, but determined that it did not give rise to any nullity in the proceedings, and that this determination was upheld on appeal by the National Chamber of Criminal Casation. Similarly, with respect to the petitioners' allegations concerning threats or mistreatment at the time of the alleged victims' initial declarations, the State indicates that such claims were placed before the competent judicial authorities and judged to be without merit.

35. In response to the claims that the alleged victims were not tried within a reasonable time in violation of the guarantees of Article 8, the State contends that the calculation of reasonableness should take into account the number of persons involved, the kind of proof that had to be obtained, and the duration of the facts under investigation. The State notes that in the present instance, the proceedings involved 32 defendants, a principal file of over 14,000

pages with parallel administrative and criminal proceedings, fraud committed over a three-year period in 14 different units of the Air Force, large sums of money and a complicated, highly technical accounting investigation. The State argues that the principal defendant, then-Vice Commodore Galluzzi, fled the country and only presented himself before the authorities on April 1, 1982, thereby delaying the investigation. Additionally, the State emphasizes that delay in the trial stage was largely attributable to actions brought by the defendants, which had the effect of interrupting the proceedings. It further contends that, as the alleged victims had attempted to seek the benefit of the expiration of the statute of limitations on the crimes, the delay in the trial could not be imputed to the State.

36. In response to the petitioners' claims that the defendants lacked the assistance of a lawyer at trial in violation of Article 8, the State indicates that neither the judges nor the defenders in military proceedings were required to be lawyers. However, the State points out that the armed forces includes a *Cuerpo de Auditores*, comprised of military personnel who graduated in law prior to joining the military. Defendants in military proceedings were free to designate members of this Corps as their defenders, and in numerous cases had done so. The State further indicates that when such defendants chose a command official to handle their defense, it was a common practice for such officials to be advised by a member of the *Cuerpo de Auditores* in all presentations. Moreover, the State notes, when the proceedings passed to the appeals stage, the defendants were either represented by their own attorneys or qualified public defenders.

37. In relation to the assertion that the defendants were compelled to declare against their own interests in violation of Article 8, the State argues first, that the defendants' initial statements were taken prior to the entry into force of the American Convention with respect to Argentina, and that because the American Declaration does not contain a similar provision this claim is inadmissible. The State maintains that the statements were duly taken in accordance with the requirements of the Code of Military Justice. According to the provisions of the Code then in effect, in taking such statements, an oath or promise to tell the truth could not be required, but it could be strongly encouraged. Moreover, the State adds, the defendants were not convicted solely on the basis of their statements, but on the basis of other evidence as well.

38. In relation to the claims under Article 8 to the effect that the alleged victims were unable to appeal their sentences before a higher court, the State maintains that the National Chamber of Criminal Casation processed the defendants' appeal and pronounced upon it as a court of second instance. In this sense, the State cites Article 7 of Law 24.050, which established the competence of the National Chamber of Criminal Casation, and directed that one of its chambers hear the recourses set forth in Article 445 bis of the Code of Military Justice.

39. In relation to the violations alleged with respect to equal protection of the law under Article 24 of the American Convention, the State affirms that not all differences of treatment are violative of this principle, but only those that lack a reasonable and objective justification. In the present case, the alleged victims were members of the military, committed the crimes for which they were prosecuted in military installations and against the interests of the military. The application of the Code of Military Justice therefore gave rise to no violation of the principle of equal protection.

40. With respect to alleged violations of the right to judicial protection set forth in Article 25 of the American Convention, the State argues that the proceedings complied with the due process norms set forth in the military justice system. The State reiterates that the military justice system may not be measured against the civilian justice system, as the petitioners wish to do, because the procedures and interests concerned are necessarily distinct. The State rejects any claims to the effect that the appeals before the National Chamber of Criminal Casation or Supreme Court were not adequately dealt with, noting that the Chamber in fact upheld certain claims raised by the defendants.

41. With respect to the petitioners' claims that the Supreme Council refused to order the production of or accept certain relevant evidence, and that this was violative of basic judicial

protections, the State notes that the Supreme Council was vested with the discretion to determine which evidence was relevant, and that this decision was not subject to appeal. The State further notes that such discretion was not unique to military tribunals, but was a matter of national criminal procedural law, and that the petitioners' claims in this regard had been considered and rejected by both the Supreme Council and the National Chamber of Criminal Casation. Finally, the State indicates that the alleged victims are not claiming innocence, and do not allege the lack of independence or impartiality of any of the magistrates at any of the levels of the proceedings against them.

42. Consistent with the foregoing position, the State argues that petition 12.167 is inadmissible for three main reasons. First, the State maintains that the central claims placed before the Commission were brought before and decided by the competent national judicial authorities. Accordingly, the State indicates that the alleged victims are seeking that the Commission review sentences issued by the national courts acting within their spheres of competence and in accordance with due process—an objective outside the competence set forth in the American Convention. Second, with respect to the requirement that domestic remedies be invoked and exhausted in order for the Commission to admit a petition, the State notes that the petition only satisfies this requirement insofar as the alleged victims challenged their convictions, and the constitutionality of the norms of the Code of Military Justice. The State argues that any claims concerning compensation and Article 10 of the American Convention are inadmissible for failure to invoke and exhaust domestic remedies as required under Article 46 of the Convention. The alleged victims failed to invoke or exhaust available remedies with respect to their allegedly unduly prolonged preventive detention, and failed to seek compensation for the time they were detained in excess of their prison sentences, thereby rendering such claims inadmissible. Third, the State contends that, in any case, the petitioners have failed to allege facts that could characterize a violation of the American Convention.

IV. ANALYSIS OF ADMISSIBILITY

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

43. In accordance with the terms of Article 44 of the American Convention, the petitioners have standing to present a petition before the Commission. The petition under study indicates that the named victims were subject to the jurisdiction of the Argentine State at the time of the alleged facts. Argentina has been a member State of the Organization of American States since its ratification of the OAS Charter in 1948, and as such subject to the jurisdiction of the Commission in respect of individual complaints since that competence was established by statute in 1965 with reference to the terms of the American Declaration of the Rights and Duties of Man. Argentina has been subject to the Commission's jurisdiction under the terms of the American Convention since it deposited its instrument of ratification on September 5, 1984. Accordingly, the Commission has the competence *ratione personae* to examine the claims presented.

44. With respect to the question of competence *ratione temporis*, the Commission notes that the claims raised relate in the first stage to the American Declaration, and as from Argentina's ratification of the American Convention, to the latter. Neither party has questioned the Commission's jurisdiction in this respect.¹ With respect to the claims concerning the first stage, it may be reiterated that for any State that has yet to ratify the American Convention, the fundamental rights it undertakes to uphold as a Party to the OAS Charter are those set forth in the American Declaration, which constitutes a source of international obligation.² The Commission's Statute and Rules of Procedure provide additional norms concerning the exercise of its jurisdiction in this regard. That jurisdiction was in effect at the time of the first facts alleged by

¹ While the State maintains that the petitioners' claims concerning the prohibition against pressure for the purpose of self-incrimination fail because the American Convention was not applicable at the time of the defendants' initial declarations, and the American Declaration contains no express protection in this regard, what the State is sustaining is that the petitioners have failed to state facts tending to characterize a violation. The State has not argued that the Commission lacks competence *ratione temporis* over the petition.

² IACtHR, Advisory Opinion OC-10/89, July 14, 1989, "Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights," Ser. A Nº 10, paras. 43 - 46.

the petitioners, and the Declaration, like the Convention, protects the rights to liberty and due process (Articles I, XXV and XXVI) invoked in the case. Once Argentina's ratification became effective, the American Convention became the principal source of legal obligation,³ and the rights and obligations expressly cited by the petitioners became applicable. Accordingly, the Commission is competent *ratione temporis* to address the claims presented by the petitioners.⁴

45. Finally, the Commission is competent *ratione materiae* to examine the substance of the complaints raised because, if proven to be true, they could constitute violations of rights protected under the American Convention and Declaration.

46. Given that the petition alleges violations of rights protected under the American Convention and Declaration that have taken place in the territory of a State Party, the Commission concludes that it has the competence *ratione loci* to take cognizance of it.

B. Other requirements for the admissibility of the petition

a. Exhaustion of domestic remedies

47. Article 46 of the American Convention specifies that, in order for a case to be admitted, "remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement exists to ensure the state concerned the opportunity to resolve disputes within its own legal framework.

48. The parties agree that the prosecution of the alleged victims terminated with the denial of the "*recurso de hecho*" by the Supreme Court on April 28, 1998. In this sense, the parties are in accord that domestic remedies were invoked and exhausted with respect to the claims arising in relation to the prosecution and concerning the constitutionality of the application of the Code of Military Justice.

49. The State has advanced two basic arguments with respect to the requirements of Article 46 at different points in the proceedings before the Commission. In its initial response, the State indicated in general terms and without further explanation that the petitioners had failed to exhaust domestic remedies with respect to their prolonged preventive detention. However, a review of the domestic proceedings indicates that claims concerning the length of the proceedings, including the period of preventive detention, were raised before and reviewed by the National Chamber of Criminal Casation. That Chamber noted in its considerations that the length of the proceedings had been challenged based on the right of the accused to a decision within a reasonable time defining their respective legal positions, and putting an end to the restriction of their liberty. The petitioners sought further review before the Supreme Court, which declined to hear the claims. The defendants also challenged the sufficiency of the legal basis for the preventive detention orders and the legality of the detention incommunicado. The Commission deems this sufficient to show that the State was placed on notice of the claims now pending before the Commission, and that applicable remedies were invoked and exhausted.

50. The alternative argument asserted by the State is that the petitioners never sought compensation before the domestic courts for having been sentenced in judicial error or for the period they were held in preventive detention in excess of their prison sentences. The petitioners, for their part, affirm having filed an administrative action seeking compensation for the latter. For the purposes of the present analysis, the Commission considers that the petitioners invoked and exhausted domestic remedies with the objective of obtaining a judicial decision as to the invalidity of the sentences against them and the length of their preventive detention. Given that they invoked a series of remedies, including before the Supreme Court, and did not obtain a decision in their favor, it is not clear, nor has the State explained, what other available and effective domestic remedies remained to be exhausted that could have

³ *Id.*, para. 46.

⁴ See generally, IACHR, Report Nº 67/01, Case 11.859 Carvallo Quintana (Argentina), June 14, 2001, paras. 48-49; Report Nº 3/02, Case 11.498, Grande (Argentina), Feb. 22, 2002, paras. 32, 34.

provided the necessary legal foundation for an eventual adjudication of compensation.⁵ Accordingly, the Commission deems the requirements of Article 46 to have been met.

b. Time period for submission of the petition

51. In accordance with Article 46(1)(b) of the Convention, a petition must be presented in a timely manner to be admitted, namely, within six months from the date on which the complaining party was notified of the final judgment at the domestic level. The six months rule ensures legal certainty and stability once a decision has been taken.

52. As indicated above, the communications which gave rise to petition 12.167 were received between June 5 and October 28, 1998. The decision of dismissal of the "*recurso de hecho*," the final judgment at the domestic level, was issued by the Supreme Court on April 28, 1998. Consequently, the Commission deems the petition to have been timely filed.

c. Duplication of proceedings and *res judicata*

53. Article 46(1)(c) sets forth that admission of a petition is subject to the requirement that the subject "is not pending in another international proceeding for settlement," and Article 47(d) of the Convention stipulates that the Commission shall not admit a petition which "is substantially the same as one previously studied by" it "or by another international organization." In the present case, the parties have not claimed and the proceedings do not indicate the existence of either of these circumstances of inadmissibility.

d. Characterization of the facts alleged

54. Article 47(b) of the American Convention sets forth that allegations which do not state facts tending to establish a violation shall not be admitted. In the present case, the State has argued in general terms that the petition should be found inadmissible for failing to state a cognizable claim. For the purposes of admissibility, the Commission must decide if the events can be characterized as a violation, as stipulated in Article 47(b) of the American Convention, or if the petition is "manifestly groundless" or "obviously out of order," pursuant to subparagraph (c) of that Article. The standard for evaluating these requirements is different from that for deciding on the merits of a petition; the IACHR must conduct a *prima facie* evaluation to determine whether the petition establishes grounds for the apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation.⁶ This determination involves a summary analysis that does not imply a prejudgment on the substance of the matter. In establishing two stages, one involving admissibility and the other the merits, the Commission's Rules of Procedure reflect this distinction.⁷

55. In this regard, the Commission finds for the purposes of admissibility that the petitioners have stated claims which, if consistent with other requirements and shown to be true, could tend to establish the violation of rights protected under the American Convention insofar as Articles 1, 5, 7, 8, 10, 24 and 25 are concerned.

56. More specifically, the State argues that the petitioners have failed to state a cognizable claim under the American Declaration with respect to their allegations that the defendants were pressured to declare against their own interests. The State indicates that while Article 8 of the American Convention contains express guarantees against self-incrimination, the American Declaration—the instrument applicable at the time those statements were given—contains no express provision to that effect. Whether, or to what extent the more general due process protections and presumption of innocence set forth in the American Declaration may include

⁵ It may further be noted in this regard that, pursuant to the burden of proof set forth in Article 31 of the Commission's Rules of Procedure and the applicable case law, the party alleging non-exhaustion must raise specific rather than generic allegations concerning the remedies available and report on their effectiveness. The allegations of the State with respect to the efficacy of an action seeking compensation in the present case have been generic at best. See IACHR, Report N° 72/01, Case 11.804, Juan Angel Greco (Argentina), October 10, 2001, at para. 49; Report N° 52/97, Case 11.218, Arges Sequeira Mangas (Nicaragua), *Annual Report of the IACHR 1997*, para. 95.

⁶ IACHR, Report N° 128/01, Herrera and Vargas ["La Nación"] (Costa Rica), Case 12.367, Dec. 3, 2001, para. 50.

⁷ *Id.*

guarantees against self-incrimination is a question the Commission will examine during the merits phase of these proceedings.

57. The State maintains that because the petitioners were released from detention over ten years ago, their claims concerning the right to liberty no longer exist or subsist and should be dismissed. In this regard, the Commission reiterates that the fact that an individual is subsequently released or even convicted does not vitiate the possible transgression of the reasonable length of pre-trial detention required under the American Convention.⁸

58. The petitioners maintain that the prosecution of the alleged victims violated what they characterize as the right to the application of the more beneficial of two laws, as protected by Article 9 of the American Convention. They essentially argue that the judiciary chose between the statute of limitations in the Code of Criminal Procedure and that of the Code of Military Justice, and arbitrarily applied the former to ensure the continuation of the proceedings, when the latter would have been more beneficial. In this regard, the right set forth in Article 9 is to benefit from the imposition of a lesser penalty if one is enacted subsequent to the commission of the offense. Even assuming that what the petitioners allege is true, they have provided no basis to characterize a potential violation of Article 9, and their claims in this regard are consequently inadmissible. The Code of Military Justice they contend should have been applied was enacted prior to the commission of the offenses in question. To the extent any claims in this regard may relate to due process guarantees, they will be examined at the merits stage.

59. Finally, the Commission will examine the petitioners' claims with respect to Article 10 of the American Convention concurrently with its review of the other claims on the merits. Article 10 recognizes the right to be compensated in the event of sentencing via a final judgment issued through judicial error. The determination as to whether there may have been such error--which in this instance is a question to be reviewed in the merits phase of the proceedings--is a precondition for the possible application of Article 10.

60. The Commission finds in the present case that the petitioners have stated claims concerning alleged violations of the right to liberty, personal integrity, equal protection, and judicial protection and guarantees, which, if consistent with other requirements and shown to be true, could tend to establish the violation of rights protected under Articles 1, 5, 7, 8, 10, 24 and 25 of the American Convention. To the extent that it may be necessary, the Commission shall also review Articles XI, XV and XXVI of the American Declaration in its examination of the merits.

V. CONCLUSIONS

61. The Commission concludes that it is competent to take cognizance of the instant case and that the petition is admissible, pursuant to Articles 46 and 47 of the American Convention.

62. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:

1. To declare the present case admissible with respect to the alleged violation of the rights recognized in Articles 1, 5, 7, 8, 10, 24 and 25 of the American Convention, and to the extent relevant, Articles I, XXV and XXVI of the American Declaration. The claims concerning Article 9 of the American Convention are inadmissible.

2. To notify the parties of this decision.

3. To continue with the analysis of the merits of the case.

4. To make this report public, and publish it in its Annual Report to the General Assembly of the OAS.

⁸ IACHR, Report Nº 12/96, Giménez (Argentina), Case 11.245, March 1, 1996, para. 55

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on this the 9th day of October 2002. Signed: Marta Altolaguirre, First Vice President; José Zalaquett, Second Vice President; Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, and Susana Villarán Commission members.

*Pursuant to the terms of Article 19(2) of the Regulations of the Commission, its President, Juan E. Méndez, a national of Argentina, did not participate in the discussion or decision on the present case