

**REPORT Nº 128/01**  
CASE 12.367  
MAURICIO HERRERA ULLOA AND FERNÁN VARGAS ROHRMOSER  
OF "LA NACIÓN" NEWSPAPER  
COSTA RICA  
December 3, 2001

**I. SUMMARY**

1. On February 28, 2001, Fernando Lincoln Guier Esquivel, Carlos Ayala Corao, Mauricio Herrera Ulloa, and Fernán Vargas Rohrmoser (hereinafter the petitioners") lodged a petition with the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or the "IACHR"), in which they alleged that the Republic of Costa Rica (hereinafter "the State," "Costa Rica," "the Costa Rican State," or "the State of Costa Rica") violated the freedom of expression and the rights protected under Articles 1, 2, 8, 13, 24, 25, and 29 of the American Convention on Human Rights, to the detriment of Mauricio Herrera Ulloa, a journalist, and Fernán Vargas Rohrmoser, as the legal representative of the newspaper, "La Nación" (hereinafter referred to as "the presumed victims").

2. Mauricio Herrera Ulloa and "La Nación" newspaper, represented by Fernán Vargas Rohrmoser, were convicted by the courts for certain articles published on Félix Przedborski, a diplomat, who, according to their allegations, had committed various illegal acts abroad. When a Costa Rican court issued the order for execution of the judgment, the petitioners appealed to the Commission to request that the State adopt precautionary measures. Those measures were requested by the Commission, but the State of Costa Rica refused to execute them. The IACHR thereupon requested that the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") order provisional measures, which were granted on September 7, 2001.

3. The State presented arguments regarding the application of legitimate restrictions to freedom of expression and the lack of legal standing of the parties, *inter alia*, and requested that the Commission declare itself unqualified to hear this case.

4. After considering the arguments presented by both parties, the Commission decided to admit the case and proceed with an analysis of its merits.

**II. PROCESSING BY THE COMMISSION**

5. The petition and the request for precautionary measures were received by the Commission on March 1, 2001. The Commission opened the case as case Nº 12,367, sent the relevant parts of the petition to the State, and asked it to adopt the following precautionary measures: suspend execution of the judgment until the Commission had examined the case and adopted a decision on its merits; refrain from including the name of the journalist, Mauricio Herrera Ulloa, in the Costa Rican Judicial Register of Criminal Offenders; and, refrain from taking any action that would affect his right to freedom of expression.

6. The request for precautionary measures was forwarded to the State, which was given a period of 15 days to report to the Commission on specific action taken to comply with said request. On March 19, 2001, the Commission received a reply from the State, in which it asked for an extension of the period of time allotted by the IACHR to submit information. The Commission granted an extension of the deadline to April 3, 2001. On March 23, the petitioners sent additional information.

7. On March 29, 2001, the Commission received a letter from the State in which it reported that the Secretariat of the Supreme Court of Justice had decided not to adopt the precautionary measures requested by the Commission, because it lacked jurisdiction to order them.

8. On March 21, 2001, the petitioners asked the Commission to place itself at the disposal of the parties with a view to reaching a friendly settlement. The Commission convened the parties to a meeting on March 30, to determine whether the two sides were willing to seek a friendly

settlement of the matter. At the request of the State, this meeting was postponed to April 23, and subsequently, at the request of both parties, to May 4, the date on which it took place.

9. On March 24, 2001, Dr. Pedro Nikken requested that he be included as a petitioner in the case.

10. On March 23, 2001, the petitioners requested the Commission to refer a request for provisional measures to the Inter-American Court of Human Rights, or, in the event that the Court was not in session, to submit a request for emergency measures to the President of the Court.

11. In a letter dated March 28, 2001, the Commission decided to request that the Court order provisional measures, since the precautionary measures requested by the IACHR in favor of the petitioners had not been put into effect. The President of the Court, Antonio Cançado Trindade, in a decision dated April 6, 2001, decided to give the IACHR and Costa Rica until May 12 of that year to submit information on the urgency and gravity of the situation, the probability of irreparable damage to the victims, and the possible implications of a decision to order provisional measures on the merits of the case. At the same time, it convened the parties to a hearing to be held on May 22, and it ordered the State to maintain the *status quo* with regard to the situation. On May 10, 2001, the Commission submitted the information requested. The Costa Rican State requested that the deadline for submitting the information requested by the Court be extended to May 16. Once the extension was granted, it submitted the pertinent information within the time limit authorized.

12. After the aforesaid hearing, the Court, by decision dated May 23, 2001, gave the Costa Rican State until August 16 to present a report on the options available under Costa Rican domestic legislation to prevent or remedy the damage in question. It further called on the State to refrain from engaging in any act that would alter the *status quo*. The State sent the report in question to the Court, which forwarded it to the Commission on August 17, with the instructions that the IACHR submit its comments on it by August 23. The Commission submitted its comments on August 24, 2001, within the additional time granted by the President of the Court.

13. The Secretariat of the Court then called on the State to provide additional information, which was sent on August 31, 2001. On September 1, 2001, the Commission submitted its observations on that document. On September 7, the Inter-American Court decided to authorize the provisional measures requested by the Commission, and called on Costa Rica to suspend the entry for Mauricio Herrera Ulloa in the Judicial Register of Criminal Offenders, and the order to publish the operative part of the judgment and to establish a connection between the articles and that judgment, until such time as a final decision on the case is issued by the inter-American system.

14. On April 23, 2001, Féliz Przedborski Chawa petitioned the Commission and the Court to grant his attorneys a hearing, so that they could explain why the judgment handed down against the petitioners does not violate their freedom of expression and why crimes against one's honor and the crime of *desacato* [insult or injury to a public functionary] cannot be confused in Costa Rican criminal law. The Commission asked the Court to reject *in limine* Mr. Przedborski's request to intervene in the case, on the grounds it was contrary to the practices and precedents of the inter-American system, among other reasons.

15. On March 30, the Commission received a document expanding the initial petition sent by the petitioners. On April 16, the Commission transmitted the pertinent parts of that document to the State and granted it 90 days to submit its response. On July 13, it granted an extension of one month to Costa Rica, which proceeded to send its response to the original petition and to the document expanding it on August 13, 2001.

16. On November 16, the IACHR conducted a hearing of the parties, at which time they gave their opinions on the admissibility of the petition. The petitioners requested that the petition be declared admissible and that the report on admissibility be issued pursuant to Article 37 of the Commission's Regulations, while the State requested the Commission to declare the case inadmissible on the grounds that it did not have jurisdictional competence *ratione personae*, because domestic remedies had not been exhausted and because the acts in question were not

a violation of the Convention. The Commission requested the State of Costa Rica to send in writing its response to certain questions raised in the course of the hearing, since a representative of the Attorney General of the Republic had failed to appear at the hearing.

17. On November 30, 2001, the State sent the Commission a document presenting its latest comments on the admissibility of the complaint, including the replies to the questions the Commissioners had raised during the November 16, 2001 hearing.

### **III. POSITION OF THE PARTIES ON ADMISSIBILITY**

#### **a. Position of the petitioners**

18. The petitioners allege that the petition meets all the requirements for admission by the Commission.

19. The journalist, Mauricio Herrera Ulloa, wrote two articles published in "*La Nación*" newspaper pertaining to the diplomat, Féliz Przedborski, an *ad honorem* representative of Costa Rica to the International Atomic Energy Commission headquartered in Austria. In those articles, reference was made to various reports in the Belgian press which linked the diplomat to serious illegal acts, such as drug trafficking, tax fraud, and fraudulent bankruptcy, among others. The articles also linked him with Costa Rican politicians and questioned his suitability to serve as a public official.

20. The diplomat in question brought a criminal and civil suit for damages before the Costa Rican courts. This suit was resolved in a decision handed down on November 12, 1999. The operative part of that decision found that Mauricio Herrera Ulloa was liable for four offenses of publication of insults constituting defamation, and punished him with 120 days in fines, or 300,000 colones, while "*La Nación*," legally represented by Fernán Vargas Rohrmoser, was fined 60 million colones for moral damages or injury to reputation caused by the publications on May 19, 20, and 21 and December 13, 1995, plus one thousand colones for court costs and three million eight hundred ten thousand colones for personal costs. At the same time, the judgment ordered that the links on the case be withdrawn from the Internet edition of "*La Nación*" and that a connection be established between them and the operative portion of the judgment. It further ordered publication of the judgment, to be done specifically by the journalist, Mauricio Herrera Ulloa. On February 27, 2001, the Criminal Trial Court of the First Judicial Circuit of San José ordered execution of the judgment, at which time the petitioners requested the precautionary measures of the Commission.

21. The petitioners maintain that the Costa Rican courts have violated the rights enshrined in Articles 1, 2, 8, 13, 24, 25, and 29 of the Convention, restricting the freedom of expression of the presumed victims, and that this entails international responsibility on the part of the Costa Rican State. The petitioners further allege that Costa Rican criminal legislation limits individual freedoms because it contains *desacato* laws or "offenses against one's honor," which any person may commit by threatening or offending anyone performing public functions. They argue that the institution of *exceptio veritatis* is also a restriction of individual freedoms, to the extent that it exonerates from culpability the person charged with defamation or injury, once the truth of the allegations is proven.

22. Moreover, the petitioners allege that due process and judicial guarantees were violated as well, because, in the second appeal proceeding, the court failed to review the substance of the conviction, the judges were not impartial, and the principle of *non reformatio in peius* was violated. They argue that the legal prohibition of maintaining Internet links, and the order to establish others constitute a case of judicial censure, in violation of the American Convention.

23. On the issue of admissibility, the petitioners indicated that the Commission has jurisdiction to hear the petition on the basis of *ratione loci*, *ratione materiae*, *ratione temporis* and *ratione personae*. As regards its jurisdiction based on *ratione personae*, they maintain that there is active and passive justification or proof in the present petition. The active proof is reflected in the fact that the petition identifies as victims two human beings. The victims were identified as Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser, and not the newspaper, "*La Nación*." They alleged that Mr. Rohrmoser is qualified as a victim because he was the subject of the

execution of judgment order, since on April 3, the Costa Rican Court issued a decision ordering him to comply with the judgment and threatening him with a prison sentence.

24. The petitioners made reference to the precautionary measures requested by the IACHR in favor of Mr. Herrera and Mr. Rohrmoser, and the provisional measures ordered by the Inter-American Court, which allowed Mr. Rohrmoser to excuse himself from execution of the judgment of November 12, 1999. They stated that for those reasons, the rights of Mr. Vargas Rohrmoser protected under the Convention were violated. In addition, they cited the Cantos case heard by the Inter-American Court of Human Rights. They contended that the same principle is applicable in the present petition, since even though Mr. Rohrmoser acted on behalf of a legal person, the primary interest at stake was his own interest as a natural person. They alleged that he was acting in representation of "La Nación" newspaper as a vehicle of communication, and not as a commercial concern.

25. Therefore, insofar as admissibility is concerned, the petitioners maintained that the petition was filed within the six month period required under Article 46(1), that the facts alleged represent a violation of the American Convention, and that domestic remedies have been exhausted, since the last judicial decision was handed down by the Supreme Court of Justice and cannot be appealed, since it confirms and finalizes the judgment of the lower court.

#### **b. Position of the State**

26. The Costa Rican State alleges that the petition is inadmissible, because the alleged violation is the basis or foundation of a legitimate limitation or restriction of the exercise of freedom of expression. Therefore, the facts do not represent a violation of the right to freedom of expression protected under the Convention. The State based its case primarily on Article 47, subsection (c) of the Convention, which stipulates that a petition shall be considered inadmissible whenever "the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order." Hence it argued that the petition was inadmissible because it was manifestly groundless, among other reasons, because the grounds were "... the basis of a legitimate restriction or limitation of the exercise of said right..."<sup>1</sup>

27. Pursuing this argument, the State of Costa Rica invokes Article 13(2)(a) of the American Convention, which stipulates that legal provisions established by a state to ensure "respect for the rights or reputations of others..." are an exception to the right to freedom of expression. Based on that paragraph, it alleges that the law and the judicial decision applied to the presumed victims are part of the legitimate restrictions to freedom of expression, and on that basis, the petition is manifestly groundless, and therefore inadmissible.

28. The State further alleges that the Commission lacks jurisdiction "*ratione personae*" to hear the petition. On this point, Costa Rica requested the Commission to declare itself incompetent to consider the petition filed by Fernán Vargas Rohrmoser, in his capacity as president with the authority to act as the legal representative of "La Nación," because of the fact that the latter does not have active legal capacity or standing [*legitimación activa*].

29. The State based its argument on Article 1(2) of the Convention, which stipulates that presumed victims of a violation of the rights established by the Convention must be physical persons, and not legal persons. It also cites the practice of the Inter-American Commission in this regard, making reference to cases in which it decided that the protection of the Convention does not extend to legal persons, but only pertains to natural persons, including the following cases: Banco de Lima (Peru);<sup>2</sup> Tabacalera Boquerón, S.A. (Paraguay);<sup>3</sup> Bendeck-Cohdinsa (Honduras);<sup>4</sup> Bernard-Merens and family (Argentina);<sup>5</sup> and, Mevopal, S.A. (Argentina).<sup>6</sup>

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1 Fáundez Ledesma, The Inter-American System for the Protection of Human Rights, Constitutional and Procedural Aspects, San José, Inter-American Human Rights Institute, second edition, 1999, p.415.

2 Inter-American Commission on Human Rights, Report Nº 10/91, case 10.169, February 22, 1991.

3 Inter-American Commission on Human Rights, Report Nº 47/97, petition, October 16, 1997.

4 Inter-American Commission on Human Rights, Report Nº 106/99, petition, September 27, 1999.

5 Inter-American Commission on Human Rights, Report Nº 103/99, petition, September 27, 1999.

6 Inter-American Commission on Human Rights, Report Nº 39/99, petition, March 11, 1999.

30. The State also contends that it did not adopt any measure that could be presumed to have violated any rights of Fernán Vargas Rohrmoser. It alleges that Mr. Rohrmoser acted in bad faith in petitioning the Commission and the Court on his own behalf and on behalf of the journalist, Mr. Herrera Ulloa, and in heading some of his pleadings with their names, followed by the words “*del Diario La Nación*” [“from *La Nación* newspaper”]. In the opinion of the State, the use of that expression caused confusion on the part of the Commission and the Court, which proceeded to issue, respectively, precautionary measures to prevent irreparable damage to Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser and judicial decisions, in which parity of treatment was granted to the two petitioners. The State holds that this was not appropriate under the law.

31. In the final comments sent by the State to the IACHR on November 30, 2001, additional considerations regarding the legal standing or capacity of Mr. Vargas Rohrmoser were put forward. In the first place, it contended that the petitioners made a false statement when they declared that the order of execution dated February 21, 2001 entailed a warning of a possible criminal sanction for committing the offense of disobedience of authority, since that circumstance arose under the decision of April 3, 2001, and was notified on May 1 of that year, subsequent to the date on which the petition was filed with the IACHR. The State pointed out that this decision is not referred to in the written documents submitted earlier by the petitioners, and that it should therefore be disregarded on those grounds. As for the allegation by petitioners that Mr. Vargas Rohrmoser would be subject to imprisonment, the State alleged that this would not occur even in the event that he failed to comply with the order of execution of judgment, since under Costa Rican criminal law, there is provision for conditional execution of sentence. Two requirements are established under this provision: that there be an earlier offense; and, that the sentence imposed be less than three years. Consequently, the State maintains that even if Mr. Vargas Rohrmoser has no criminal record, a prison sentence would never ultimately be served, because the sentence applicable to offenses of disobedience of authority is less than three years.

32. The State alleged that the petition is inadmissible because of a failure to exhaust domestic remedies, since the alleged victims could have used the recourse of unconstitutionality, in an attempt to derogate the law which in their view violated their freedom of expression and to prevent it from having legal effect, thereby failing to observe the principle of the subsidiary character of the inter-American system. It went on to state that this recourse would have been appropriate and effective in derogating the law which the petitioners considered to be a violation of their rights, since “the matter pending settlement in the national courts is suspended until a decision is issued in this case.”<sup>7</sup> Finally, the State indicated that the declaration of unconstitutionality causes the law or legal instrument being challenged become null and void, produces *res judicata*, and eliminates the legal provision or instrument from the body of law, and that the constitutional judgment providing for nullity has retroactive effect in favor of persons suspected or convicted of a crime.

#### **IV. ANALYSIS OF ADMISSIBILITY**

##### **A. Jurisdiction of the Inter-American Commission, on the basis of *ratione personae*, *ratione materiae*, *ratione temporis* y *ratione loci***

###### **a. Competence “*ratione personae*”**

33. Article 44 of the American Convention and Article 23 of the Regulations of the IACHR stipulate that “any person or group of persons” may lodge petitions with the Commission referring to alleged violations of the American Convention. Therefore, Fernando Lincoln Guier Esquivel, Carlos Ayala Corao, Pedro Nikken, Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser are authorized to appear as petitioners before this Commission.

34. In the case in point, the legal standing of the presumed victims [*legitimación procesal*] has been questioned. The petitioners presented Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser, the latter in his capacity as legal representative of “*La Nación*,” as victims of the reported acts, and requested precautionary measures in favor of both of them.

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<sup>7</sup> See the letter from the Office of the Public Prosecutor of the Republic of Costa Rica to the Inter-American Court of Human Rights, Nº PGA-293-2001 of November 30, 2001, p. 9.

35. In the first place, the Commission observes that the character of presumed victim attributed to Mauricio Herrera Ulloa, is not disputed at all, since he fits within the scope of the definition of person pursuant to Article 1(2) of the Convention, which stipulates that "person means every human being." Moreover, Mr. Herrera Ulloa, as the subject of the judicial proceedings initiated by the diplomat Féliz Przedborski, is directly affected by the judicial decisions of November 12, 1999 and January 24, 2001, and by the order of execution dated February 27, 2001, *inter alia*. Pursuant to these judgments, he was ascribed responsibility for committing various offenses and ordered to execute the sentence. Finally, the IACHR is fully competent from the standpoint of *ratione materiae* with regard to Mauricio Herrera Ulloa, to ascertain whether there were violations of his rights as established by the American Convention.

36. As regards the legal standing of Fernán Vargas Rohrmoser, the State contends that Fernán Vargas Rohrmoser, as the legal representative of "*La Nación*," acted on behalf of a legal person and not on his own behalf, and that therefore the Commission is not competent *ratione personae* to consider the petition. The petitioners allege that the individual rights of Mr. Vargas Rohrmoser were directly affected by the Execution and Prevention Order dated February 21, 2001, which required the presumed victims to execute the order "immediately, ... peremptorily, irrevocably, without delay." At the same time, they allege that the judicial decision of April 3, 2001 warned the presumed victims of the possibility of being charged with the crime of disobedience of authority in the event they should fail to comply with the judgment, which would entail imposition of a criminal sanction or a prison sentence for Mr. Vargas Rohrmoser if he should fail to execute the judgment, which would directly violate his rights protected under the Convention. The State alleges that the Execution and Prevention Order is binding on Mr. Vargas Rohrmoser exclusively in his capacity as the legal representative of "*La Nación*," and not in a personal capacity, and that noncompliance on his part does not entail a criminal sanction or prison sentence against him, since execution of the sentence is subject to commutation under Costa Rican national law.

37. The Commission is of the opinion that to determine whether or not Mr. Vargas Rohrmoser was a victim will require a complex analysis both of conventional laws, such as laws applicable to the Costa Rican national jurisdiction, and of the jurisprudence of the Commission and the Court, which is closely linked to decisions to be adopted by the IACHR on the merits of the case. Therefore, the Commission is reserving its decision on the qualification of Fernán Vargas Rohrmoser as a victim for the later stage of the proceedings on the substance of the matter.

38. Therefore, for the purposes of admissibility, the Commission decides that it is competent *ratione personae* insofar as Mauricio Herrera Ulloa is concerned, and it is deferring its decision on Fernán Vargas Rohrmoser to a later stage, when it reaches a determination on the merits of this petition.

#### **b. Competence *ratione materiae***

39. Having identified the presumed victim in this petition, the Commission will now consider the question of its competence by reason of the subject matter of the reported violations.

40. In this regard, the Commission notes that the judgment of November 12, 1999 was binding on the journalist, Mauricio Herrera Ulloa and "*La Nación*" newspaper jointly, since it stated that the journalist, Mauricio Herrera Ulloa, was the author of four crimes of publication of offensive material constituting defamation and sentenced him jointly and severally with *La Nación* to payment of a separate fine for moral prejudice. At the same time, the judgment established similar obligations for Mauricio Herrera Ulloa and "*La Nación*" newspaper, as it ordered the former to publish the operative part of the judgment and the latter to withdraw the link between the articles in dispute written by Mauricio Herrera and establish a new link between said articles and the operative part of the conviction. In view of these facts, which are not disputed by the parties, the Commission considers that it is competent to determine whether they constitute violations of Article 13 of the American Convention.

41. Consequently, the Commission finds that the petition reports violations of human rights protected by the American Convention. Therefore, the Commission is competent *ratione materiae* to consider the petition.

**c. Competence “*ratione temporis*”**

42. The Commission also has jurisdiction on the basis of *ratione temporis*, since the acts alleged in the petition took place at a time when the obligation to respect and guarantee the rights established by the Convention was in force in the State of Costa Rica.<sup>8</sup>

**d. Competence “*ratione loci*”**

43. Finally, the Commission is competent *ratione loci* to consider the petition, because it contains allegations of violations of rights protected by the American Convention which took place in the territory of the State of Costa Rica.

**B. Other requirements for admissibility of the petition**

**a. Exhaustion of domestic remedies**

44. On May 29, 1998, the Criminal Court of the First Judicial Circuit of San José handed down a decision absolving Mauricio Herrera Ulloa and “*La Nación*” newspaper of any guilt in the criminal complaint with civil suit for damages filed by Féliz Przedborski. Mr. Przedborski then filed a *recurso de casación* [extraordinary appeal for reversal of the lower court opinion] with the Third Chamber of the Supreme Court of Justice. The Supreme Court vacated the earlier decision and sent the case back to the Criminal Court of the First Judicial Circuit, which, in a verdict handed down on November 12, 1999, convicted the journalist, Mauricio Herrera Ulloa, and the newspaper “*La Nación*” of the offenses. The petitioners filed a *recurso de casación* with the Third Chamber of the Supreme Court of Justice, which rejected the appeal in a decision issued on January 24, 2001. In view of the fact that no further appeals on that decision are legally admitted, the judgment remains firm and executory.

45. The State alleged that domestic remedies were not exhausted, and it pointed to the appeal of unconstitutionality as the appropriate, effective remedy to be exhausted by the petitioners. In this regard, the Commission notes that the central object of the petition is the sanction imposed on the assumed victims in the conviction issued on November 12, 1999 and the order of execution dated February 1, 2000, which they challenged using the ordinary appeals available in criminal procedure, and, when they were rejected, arrived at a situation of *res judicata*. The Inter-American Court of Human Rights has found that an appeal of internal jurisdiction is adequate whenever it is sufficient to protect the infringed legal situation, since “in all national bodies of law, there are many remedies, but not all of them are applicable in all circumstances.”<sup>9</sup> Finally, the Commission notes that the petitioners were not required to exhaust the remedy of unconstitutionality, since it is not a suitable remedy to protect the legal situation that was supposedly affected in the case in point, consisting of a conviction the immediate execution of which was ordered by the Costa Rican courts.

46. At the same time, the Commission points out that on a number of occasions, the Court has found that “prior exhaustion of domestic remedies allows the State to solve the problem on the basis of domestic law before having to face an international process.”<sup>10</sup> In this regard, the Commission notes that Article 8(1) of the Law of Constitutional Jurisdiction states the following:

Officials who administer justice may not:

1. Apply laws or other rules or legal instruments of any kind that are contrary to the Constitution.

If there are doubts regarding the constitutionality of these rules and legal instruments, they must consult on the constitutional jurisdiction.

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<sup>8</sup> Costa Rica ratified the American Convention on April 8, 1970, and on July 2, 1980 it presented to the OAS General Secretariat its instrument of recognition of the jurisdiction of the Inter-American Commission on Human Rights, pursuant to Articles 45 and 62 of the Convention.

<sup>9</sup> Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, paras. 63 and 64.

<sup>10</sup> Inter-American Court of Human Rights, *Velásquez Rodríguez Case*. Judgment of July 29, 1998, para. 61.

They may not interpret or apply them in a manner contrary to the precedents or jurisprudence of the Constitutional Court.

As a result, in accordance with its practices,<sup>11</sup> the Commission holds the opinion that the process initiated against the assumed victims contemplated the possibility that the Costa Rican courts would have recourse to judicial consultation on constitutionality with the Supreme Court of Justice, so that it could decide on the applicability or inapplicability of the criminal laws that the petitioners denounced as being in violation of the human rights of the victims. Article 8.1 of the Law of Constitutional Jurisdiction offers the judicial authorities the possibility of redressing the matter domestically. The Commission believes that in this specific case, in view of the fact that the principal object of the petition is the questioning of the conviction referred to earlier, the petitioners were not required to exhaust action in regard to unconstitutionality. Therefore, they did exhaust domestic remedies pursuant to Article 46(1)(a).

**b. Deadline for lodging the petition**

47. The six-month term stipulated in Article 46.1 (b) was complied with in this case, since the petitioners lodged the petition on March 1, 2001, after the last decision was handed down by the Third Chamber of the Supreme Court of Justice on January 24, 2001.

**c. Duplication of procedures and res judicata**

48. It appears from the case file that the petition lodged with the Inter-American Commission is not currently pending in any other international settlement proceedings, nor is it a substantial reproduction of another previous petition or communication already considered by the Commission or another international organization, as established in Articles 46(1)(c) and 47(d), respectively.

**d. Characterization of the alleged events**

49. The State requested that the Commission reject the petition *in limine* on the grounds that it is "manifestly groundless."

50. The Commission is of the view that it is not appropriate to determine whether or not there was a violation of the American Convention at this stage of the proceedings. 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, and if the petition is "manifestly groundless" or "obviously out of order," pursuant to subparagraph (c) of that Article. The standard for evaluating these factual requirements is different from the requirement 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. This determination involves a summary analysis which does not imply a prejudgment or advance opinion on the substance of the matter. The Commission's Regulations, by establishing two clear stages, one involving admissibility and the other the substance of the petition, reflects this distinction between the evaluation the Commission must conduct for the purpose of declaring a petition admissible and that required to establish a violation.

51. The extensive arguments presented by the State on this point demonstrate in and of themselves that the petition is not "manifestly groundless," that it is not "obviously out of order," or that it does [not] characterize a presumed violation. On the contrary, the very response of the State deserves a more careful examination of the petition during the stage involving its merits. The IACHR considers that, *prima facie*, the petitioners have proven the factual requirements stipulated in Article 47(b) and (c).

**V. CONCLUSIONS**

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11 Inter-American Commission on Human Rights, Report No 77/01, case 11.571, *Humberto Antonio Palamara Iribarne*, Chile, October 10, 2001, paras. 33-35.



52. For the reasons given earlier, the Commission considers that it is competent to hear this case and that, pursuant to Articles 46 and 47 of the American Convention, the petition is admissible, on the terms set forth above.

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

**DECIDES:**

1. To declare the present case admissible insofar as the presumed violations of the rights protected in Articles 1, 2, 8, 13, 24, 25, and 29 of the American Convention are concerned, and to reserve its analysis of an individual consideration of the rights of the presumed victims until it decides on the merits of the case.
2. To notify the parties of this decision.
3. To continue with its examination of the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the third day of December, 2001. (Signed:) Claudio Grossman, President; Marta Altolaguirre, First Vice-President; Commissioners Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.