I. INTRODUCTION

1. The cases discussed in this report deal primarily with the presumed violation by the Government of the Argentine Republic of Article 16 of the American Convention on Human Rights (hereinafter called the Convention), which stipulates freedom of association. The plaintiffs contend that by virtue of passage of Law 23,187 of June 5, 1985, [FN1] which creates the Colegio Publico de Abogados de la Capital Federal (Federal Capital Bar Association), the aforementioned right is violated by requiring obligatory registration of attorneys in that city, "making it impossible to practice the profession if the aforementioned registration is not carried out," according to paragraph two of Article 18 (Title III) of the aforementioned law.

[FN1] Official Gazette, June 28, 1985.

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2. Cases 9777 and 9718 have been combined into the first of the two to facilitate their processing (Article 40.2 of the Regulations), and since both cases deal with petitions on substantially the same matter. Furthermore, the cooperating petitioners themselves have stated that they agree in all terms with the complaint or principal petition submitted by Mr. Maximo Bomchil in his own behalf and that of Mr. Alejandro Meliton Ferrari (Case 9777).

3. Nevertheless, in consideration of the request by the parties to the complaint in the sense that each one of their presentations be transmitted in a request for information to the interested government, pursuant to Article 34.1.a of the Regulations, the Commission decided to allow this procedure in order to afford each opportunity to state his points of view, with the understanding that this decision in no way affected the combining of the cases nor the review of the question as though it dealt, as in fact it did, with just one problem.

4. For its part, the Government of the Argentine Republic (hereinafter called the Government) replied separately to the requests for information from the Commission, in the form they were transmitted to it.

5. In this way, the Commission believes it has accorded the plaintiffs fair treatment in the processing

of the case and thanks the Government of the Argentine Republic for its cooperation in this sense and for having expressly accepted the combining of the cases, in accordance with the terms of its note dated March 26, 1986.

6. Included below is a written summary submitted by the principal plaintiff in the matter and the reply from the Government of the Argentine Republic. The other petitions and the replies to them from the Argentine Government are discussed in summary fashion, in the same way as the principal charge.

II. PETITION OF MESSRS. MAXIMO BOMCHIL AND ALEJANDRO M. FERRARI

7. The petition of the persons mentioned above, dated August 8, 1986, complies with the requirements of form stipulated in Article 32.a of the Regulations of the Commission and related provisions of the Convention (Art. 46.d).

8. In summary, the petition sets out the following: [FN1]

[FN1] See Annex I.

A. That Law 23,187 violates fundamentally the freedom of association and further violates domestic legislation of Argentina regarding that right as well as the American Declaration of Rights and Duties of Man, the Universal Declaration of Human Rights, and Convention 87 of the International Labour Organization (ILO);
B. That the causa pretendi is that the Commission submit to the Inter-American Court of Human Rights (hereinafter called the Court) "the decision on the existence of the alleged violations, with the pertinent legal consequences" and that "in the hypothetical case that the Commission does not agree to permit the Court to intervene, the former (the Commission) should issue its opinion to the effect that such violations have occurred";
C. That everything set out in the petition "is formulated under sworn oath" and the documents attached are authentic;
D. That attached is a copy of the appeal for protection filed with the Argentine courts to request that Law 23,187 be declared unconstitutional, a copy of the official document (at the second instance) answering the allegation by the state and a copy of the allegation to the Supreme Court of Justice on special appeal of the ruling by the Federal Chamber which overturned the ruling of the first instance court;
E. That the petitioner is directly affected by the provisions of Law 23,187 since he acts professionally in the city of Buenos Aires and was enrolled on the register of the Supreme Court of Justice of the nation until the aforementioned law was passed;
F. That all remedies under domestic jurisdiction have been exhausted, as required by Article 46.a of the Convention (Art. 37.1 of the Regulations of the IACHR), considering that since the passage of Law 23,187, the following rules have been reached on the matter:
i. First instance court ruling on the protection appeal against the national government, handed down by a judge of Federal Administrative-Contentious Court No. 3, declaring Law 23,187 unconstitutional;
ii. Appeals Chamber (Court IV) ruling, on appeal of the ruling of Judge No. 3 filed by the Minister of Education and Justice, overturning the ruling of said judge and denying the protection appeal;
iii. Ruling of the Supreme Court of Justice, on a special appeal filed by the petitioner, which upheld the denial ruling of the Chamber of Appeals and, therefore, that Law 23,187 was constitutional.
G. That the Supreme Court's ruling was notified to the plaintiff on June 27, 1986, and thus the complaint was submitted to the IACHR within the term of Article 46.b of the Convention (Art. 38 of the Regulations);

H. That the subject of the petition is not pending in any other international procedure (Art. 46.c of the Convention) and the charge is not the same as an earlier petition (Art. 46.d of the Convention);

I. That Law 23,187, establishing the Colegio Publico de Abogados, encompasses basically four aspects, namely: requirements to practice law (Title I), enrollment system (Title II), mandatory membership (Title III), and disciplinary powers (Title IV); that the provisions of the law dealing with points a, b and d are not the subject of the complaint since they do not possess the character of violation of human rights invoked even though they do constitute "useless regulation" which makes matters already properly legislated more complex, onerous, and bureaucratic, and transfers to this bar association the professional registration that was until that time a free service of the Supreme Court of Justice, and that, as a consequence, the petitioner wishes to have it clearly stated that this claim "is aimed exclusively at declaring as a violation of the Convention the system of obligatory, compulsory, and automatic membership stipulated by the articles of Law 23187" which set up this mandatory membership system;[FN1]

[FN1] Title III - Arts. 17 or 42, both in Law 23,187.

J. That the city of Buenos Aires has two bar associations that offer open membership to practicing attorneys in either one or the other, although some attorneys are not affiliated with either of them while others are affiliated with smaller bar associations for these professionals. Examples are the Corporación de Abogados Católicos, the Colegio de Abogados del Estado, and the Asociación de Abogados de Empresa;

K. The first of these bar associations is the Colegio de Abogados de Buenos Aires. This association, founded in 1913, has stood for more than thirty years for opposition to any form of compulsory membership, and has long fostered initiatives to maintain a democratic structure in Argentina and an independent posture by the judicial branch of government;

L. That the second is the Asociación de Abogados de Buenos Aires which, even though it has a democratic leaning and has fought for civil liberties, "has turned its efforts toward establishing the mandatory membership requirement," and has prepared a draft law to this end (which was the reference document for current Law 23,187), to establish a single bar association in the federal capital city;

M. That while the Colegio Público de Abogados de la Capital Federal, established by Law 23,187, is a not-for-profit association whose purpose is to bring together persons of the same stature and profession--which legally is a contractual and consentual act perfected by the "later admission and membership of others to the association already created"--it too must follow all the requirements of corporate law according to which "there is no association without free expression of will formulated upon the founding or joining of the association and acceptance as a member";

N. That sufficient proof that the "Colegio Público" created by Law 23,187 is an association is that "such qualification is conferred to it by the Chamber of Deputies, according to the record of the minutes of meetings" and that, it should be added, "as an association it constitutes a legal person under non-state public law, which status arises from the source of its creation (Art. 17, Law 23,187), the nature of its objectives (public interest), its financial independence and the fact that it is not part of the active, central or decentralized public administration"; it should be recalled, it is stated, that "colegio" and "asociación" are legally and grammatically synonymous terms [describing organizations that] can exist only with the free will to join of their members (affection societatis);

O. That, furthermore, Law 23,187 violates the American Declaration of Rights and Duties of Man (Art. XII) and the Universal Declaration of Human Rights which expressly provides (Art. 20.2) that "no person may be obligated to join an association."[FN1] It also violates Art. 29.c of the Convention in that it excludes other inherent human rights and guarantees, limiting the effect of the American Declaration and other international acts of the same nature, although the terminology of the law, especially that of Art. 18, leads to confusion by equating the terms "matriculation" [enrollment or registration] and "asociación"

[association] and making such enrollment obligatory; it also violates Art. 11 of the Convention because the act of requiring membership "is an abusive attack on private life which is victimized when the state seeks to impose on it a compulsory association as a consequence ... of the establishment of a cooperative body ..."

[FN1] On this point, the petitioner agrees with the arguments set out in the consultative opinion of the Court OC-5/85 of November 13, 1985, on obligatory association of journalists, drawing from pages 8 and 9 the opinion of judges Nieto Navia and Pizza Escalante about the scope of Art. 16 of the Convention.

P. That the right to establish professional associations in Argentina ought to attend to the context and quality of degrees issued in Argentina since "Argentine universities award certifying degrees" which authorize those who hold the degrees to exercise the profession and therefore the state's action should be limited to "being vigilant to prevent the state from certifying irresponsibly any person who is not prepared and also ensuring that the same state does not use that power to discriminate or limit in any way access to the profession. Under such conditions, then, the matter of obligatory association is subordinate to other guidelines, is a response also to other traditions and has well defined purposes."

Q. That, likewise, Argentine domestic law (Arts. 14 and 14 bis of the Constitution) guarantees all inhabitants freedom of association for useful purposes, with trade union organizations being free, a fact that entails the right of not being obligated to join any social or trade union organization.

R. That, likewise, Argentine jurisprudence has recognized, in several Supreme Court of Justice rulings, the non binding nature of the freedom of association (Article 14 of the constitution)[FN5] and that, therefore, the court's ruling in relation to Law 23,187 is not consistent with the right because it based its ruling upholding the constitutionality of that law on the belief that the Colegio Público is neither an association nor a trade union. The terms of the dissenting vote of Judge Dr. Pablo Galli, set out below, are applicable here:

[FN2] See Chapter XV of the petition.

The trade union is a voluntary associational union which is set up for those in the same skill category of workers or employees...." (Livio, Labor, Sindicalismo y Sociedad, Ediciones de Atlántico, Buenos Aires, 1957, page 17). "Every trade union is an association..." (Guillermo Cabanellas, in Enciclopedia Jurídica Omeba, Voz Asociaciones Profesionales, Tomo I, page 857), and finally, and I transcribe this once again: "What is this Colegio Público lacking to make the grade as a trade union?" since the law entrusts to it the representation of professionals ... Necessarily, these persons feel compelled to have a common opinion ..."[FN1]

[FN1] See page 23 of the petition.

S. That this case ought to be remitted to the Court given the optional authority conferred by Article 51 of the Convention. This request, already mentioned, is based on the criterion expressed by the Court in consultative opinion OC-5/85,[FN7] which states that the Court ought to have submitted to it cases in which there could have been domestic legal problems in the country against which the charge would have been made, such as opposing court decisions on the same case submitted to the Commission, or if the latter did not reach a unanimous opinion in its review of the matter. In support of this petition, the plaintiff recalls that in connection with Law 23,187 there has been an initial contrary ruling from the

Federal Contentious-Administrative Court, which held the law unconstitutional.

[FN2] See pp. 14-15, Court, Series A., Fallos y Opiniones, San José, 1985.

T. That in this case, the "nature of the matter submitted to this Honorable Commission leaves no room for a friendly settlement" since, being faced with a law passed by the Argentine Congress, the executive branch of government has no power to amend its provisions and therefore a compromise agreement is manifestly impossible. Consequently, the claimant asks that the procedure of friendly settlement not be applied (Article 45.7 of the IACHR Regulations).

U. In a note dated September 5, 1986, the Commission transmitted the denunciation in full to the Argentine government, following authorization by the petitioner who further renounced his right to secrecy of identification, in accordance with Article 34 of the Regulations. A copy of the letter was remitted to the Argentine mission to the OAS.

9. The Argentine government, in a note dated March 26, 1986 (No. 15), replied to the Commission's request for information in a lengthy brief whose principal points are set out further on.[FN8]

[FN3] See Appendix II.

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a. Regarding the description of the law, the Government states:

Description of Law No. 23,187: Analysis of Argentine Law 23,187 leads to the conclusion that it establishes the Official Association of Lawyers of the Federal Capital with jurisdiction and exclusive competence in the territory of the City of Buenos Aires.

This Law was enacted by the Argentine Congress in accordance with and under the terms of Article 67, paragraph 27 of the National Constitution.

This Article states:

Article 67: The Congress shall have power: ... 27. To exercise sole power of legislation throughout the territory of the Capital of the Nation..."

This legal norm is directly related to Article 86, paragraph 3 of the National Constitution, which states:

Article 86: The President of the Nation has the following powers: ... He is the immediate and local head of the Capital of the Nation.

Article 3 of the Argentine National Constitution states:

Article 3: The authorities who direct the federal Government shall reside in the city that is declared the Capital of the Republic by a special law of Congress, after cession by one or more provincial legislatures of the territory to be federalized.

Law 23,187 applies exclusively to the territory of the city of Buenos Aires.

b. As for stipulating bar association systems, the Government says:

Information on systems of association of lawyers in Argentina: Argentina is a Federal State (Article 1 of the National Constitution). Distribution of competence between the Federal State and the provinces is governed by the National Constitution. The basic article is Article 104, which reads as follows:

Article 104. The provinces shall retain all powers not delegated by this Constitution to the Federal Government and those expressly reserved by special pacts at the time of their incorporation.

The powers of the Legislative Branch are fundamentally set forth in Article 67 and its components of the National Constitution; those of the Executive Branch in Article 86 et seq.; and those of the Judiciary Branch in Articles 100 and 102 of the Argentine National Constitution, which apportions competence.

The purpose of this chapter, as indicated by its title, is to inform the Honorable Commission of the system of association of lawyers as it exists in Argentina.

The Argentine federal system has been explained above. In consequence, the power of supervision of the exercise of the free professions is reserved for the provinces, and therefore each province has solved for itself the question of association.

It is very important to point out that there are 22 provinces: Buenos Aires, Córdoba, Catamarca, Corrientes, Entre Ríos, Jujuy, Mendoza, La Rioja, Salta, Santiago del Estero, San Juan, Santa Fé, San Luis, Tucumán, Formosa, Chaco, Misiones, La Pampa, Chubut, Río Negro, Neuquén, and Santa Cruz, in addition to the Federal Capital, which is Buenos Aires, and a territory consisting of Tierra del Fuego, the Malvinas, and the Islands of the South Atlantic and Antartica.

The topic of association thus involves the 22 provinces, the Federal Capital and the territory of Tierra del Fuego, that is, 24 judicial districts. Of the 22 provinces, 19 have an official association similar to that of the Federal Capital under the terms of Law 23,187. It should also be pointed out that in the provinces the associations fall within the competence of their respective courts. Thus, for example, in the province of Buenos Aires there are numerous judicial districts. The law authorizes an official association for each judicial district, and those registered in an association are empowered to exercise their profession throughout the jurisdiction of the province with no need to register again in the province. The same situation obtains in other provinces, such as Santa Fé, Córdoba, Mendoza, and so forth.

Association as described in the provisions of Law 23,187 applies in 19 Argentine provinces and in the Federal Capital. The three provinces that do not have associations are in the process of forming them.

In the three remaining provinces there is a strong movement toward association in a manner similar to that prescribed by Law 23,187.

c. In connection with the effective term of the law, the Government states:

The fact is that the legal profession in the city of Buenos Aires has registered somewhat more than 32,000 lawyers.

The Bar Association has approximately 1,700 members and the Association of Lawyers some 3,600 members.

All lawyers are registered under Law 23,187 in the Official Bar Association of the Federal Capital, to which original membership under de facto Law 22,192 was transferred, a law which was largely repealed by Law 23,187.

In this respect, see Article 65 of Law 23,187, and also Decision No. 54 of the Supreme Court dated August 22, 1985, which partially establishes the limits of the repeal of de facto Law 22,192.

It is a concrete fact, nevertheless, that the pattern initiated by de facto Law 22,192 in November 1982, and continued in Law 23,187, by virtue of its transitory provisions and Article 60 and its component parts, the number of registered lawyers as of the date of this presentation is that specified above.

Numerical comparison of these figures provides a sufficiently objective example of the extent of membership of the two voluntary organizations that have attracted the lawyers of the city of Buenos Aires in the past and continue to do so at the present time.

It should also be noted that the position of the complainants with respect to Law 23,187 is accompanied by only a minuscule number of lawyers in the legal profession in the city of Buenos Aires.

d. On the legitimacy of the Colegio Público de Abogados de la Capital Federal, the Government makes the following statement:

e. Legitimacy of the Official Bar Association of the Federal Capital as a legal entity under Law 23,187 in the legal profession in the city of Buenos Aires: There is not the least doubt that the legality of the Official Bar Association of the Federal Capital in the city of Buenos Aires is founded on Law 23,187.

This Law is founded on Article 67, paragraph 27 of the National Constitution, but the legitimacy of the Official Bar Association of the Federal Capital is based on a sociopolitical fact and on its precedents and consequences.

This legitimacy is manifested as follows:

Law 23,187 makes voting on the Law compulsory, but establishes no penalties for those who fail to vote on it.

This is absolutely objective and is evident from reading the Law.

Although under the terms of this legal provision elections were called for April 29, 1986, no fewer than

nine voting lists contended in the election. What is truly extraordinary is that from a list of approximately 27,000 registered, no fewer than 17,500 turned out for the vote.
Consequently, it should be pointed out that of the 27,000 registered, approximately 10,000 were and are lawyers residing more than 400 or 500 kilometers from Buenos Aires, losses for other reasons in the voting lists notwithstanding.
This means that if voting on April 29, 1986, is analyzed in detail, it may be concluded that more than 95% of those who resided less than 400 or 500 kilometers from Buenos Aires voted--and this without sanctions for those who did not vote. Without fear of error it may be said that such extraordinary support for the vote gave the Official Bar Association of the Federal Capital absolute and total legitimacy. There were no more than 900 blank or invalidated ballots out of a total of more than 17,500 voters and the election took place in a single day.
Some 3,500 votes were cast for the majority list as the first minority. This was followed by some 3,200, 2,000, and more than 1,500 for the second, third and fourth lists respectively. The remaining lists garnered fewer than 1,000 votes each.
Participation in the election was the most impressive political event taking place in Buenos Aires in 1986.
All the newspapers and magazines commented on the extraordinary support shown for Law 23,187, which involved the participation of more than 17,500 voters in the election held on April 29, 1986.
The foregoing facts are public knowledge, to which must be added the strictest regularity and propriety during and after the election. It should also be noted that the electoral campaign preceding the election on April 29, 1986, was of unusual intensity, a factor that further supports the legitimacy of this extraordinary attendance at the polls. Law 23,187 gave legal status to the Official Bar Association of the Federal Capital, and participation in the election on April 29, 1986, gave it legitimacy.
It must be remembered that failure to vote in this emergency was not penalized in any way, thereby objectively demonstrating the legitimacy of Law 23,187 in the minds of those exercising the legal profession in Buenos Aires.
f. As regards the nature of the "Colegio Público de Abogados", the Government makes the following statement:
The means by which the distinguished petitioners present the problem to the Inter-American Commission on Human Rights fail to take into consideration the fact that all systems designed to protect human rights internationally are founded on presumed, concrete denunciation of violations.
In this regard the requirements of Article 32 of the Regulations of the Commission are clear:
Petitions addressed to the Commission shall include: ... an account of the act or situation that is denounced, specifying the place and date of the alleged violations and, if possible, the name of the victims of such violations as well as that of any official that might have been appraised of the act or situation that was denounced.
The petitioners do not consider that the part of Law 23,187 that refers to the admission requirements and the disciplinary powers of the Official Bar Association is in violation of the pact (See p. 9).
Nor do they object to the payment of annual dues by members, considering such annual dues to be a natural and necessary consequence of membership.
On the other hand they consider to be a violation of the Convention the fact that (in the opinion of the petitioners) forced representation of lawyers is imposed upon the Bar Association (See p. 10).
This topic will be taken up again later on, but it may be pointed out here and now that such representation does not appear expressly or tacitly in the text of the Law. Furthermore, the complainants do not mention any specific case in which such representation has taken place.
As a consequence of the alleged forced representation the complainants state that the lawyers are compelled to have a common opinion by means of the Association (See p. 10).
This topic will also be taken up later on.
At this point the complainants do not present any specific cases in which such alleged violation of the freedom of expression, referred to in the beginning of the preceding paragraph, has taken place.
It should additionally be emphasized that the complainants fail to specify which of the provisions of the Pact are in conflict with the alleged opinion.

The complainants add that the regulations providing for compulsory voting on the part of the members in elections to the Bar Association violate the Pact. Again in this case, however, they fail to specify which of the provisions of the Pact are in conflict with compulsory voting.
As has been pointed out already in this reply, the complainants also fail to mention that Law 23,187 does not provide for any penalties for non-participation in elections.
As a first significant reply to the alleged charges of conflict of Law 23,187 with the Pact, it is to be noted that in presenting their transcript the complainants have not demonstrated that they have exhausted all applicable Argentine domestic juridical procedures.
In the case in which Attorney Alejandro Meliton Ferrari was the complainant in the amparo procedure that questioned various aspects of the constitutionality of Law 23,187, the Argentine Supreme Court handed down a decision on June 26, 1986.
This decision has legal foundations that extend beyond the resolution of the topics debated in the case itself.
It is a unanimous decision, although two of the Judges of the Court presented separate explanations of their votes. The conclusions, however, were unanimous and the arguments supportive and to the point.
The sentence is an example of "peaceful jurisprudence," and we defer to it.
The essence or core of the decision implies and signifies a juridical demonstration of the nature of the Official Bar Association of the Federal Capital as the originator of Law 23,187.
The decision may be summarized as follows: The Official Bar Association of the Federal Capital is a legitimate delegation of the State's administrative power to an organization established for the purpose of receiving such delegation of power.
The Official Bar Association of the Federal Capital is a public law democratically organized legal person in which rights and obligations are exercised in accordance with reciprocal controls of the internal organs of this body as established by law. These organs are democratically constituted by election. The terms of office are reasonable. Inter-organ controls guarantee sound functioning of the organization.
g. On the essence of the Law, the Government points out:
The essence of Law 23,187 lies not only in the prestige it accords the exercise of the legal profession but also, fundamentally, to the protection of the liberty and dignity of lawyers.
Four articles provide the key to the Law under discussion. The essence of Law 23,187 is the respect shown for the liberty and dignity of lawyers in the exercise of their profession.
This is expressly stated in Article 1 of Law 23,187.
Article 1, which is the essence of Law 23,187, has been incomprehensibly omitted in the transcript to which the present statement is a reply.
It may be said that Article 1 constitutes the totality of Law 23,187 insofar as its objectives, purposes, and essence are concerned.
A reading of the Law is essential for understanding it and is sufficient to answer all the charges of the complainants.
It is the crux of reply to the alleged charges and demonstrates how the Law dovetails with the political philosophy of the Argentine National Constitution and the political philosophy of the Pact of San José, Costa Rica.
Article 1 of Law 23,187 agrees with the Argentine Constitution and with the Pact of San José, Costa Rica, in that it is the best reply to all the alleged charges of the complainants. Article 1 reads:
Article 1: The exercise of the legal profession in the Federal Capital shall be governed by the provisions of the present Law and subordinately by the provisions of national procedural codes and any other laws that are not repealed by the present Law.
h. On the purpose of the Law:
In the alleged violation of freedom of association, it is pertinent to point out that under the terms of Law 23,187 the Official Bar Association of the Federal Capital is a creation of that same Law, that is, a delegation of the exercise of enforcing power with regard to the legal profession in the City of Buenos Aires.
Article 17 accurately describes the Association as being of a public nature, as follows:

Article 17: The Official Bar Association of the Federal Capital is hereby established, which shall supervise the exercise of the legal profession and be responsible for registration in the Association in the geographic area of the Federal Capital and with reference to professional activities in that jurisdiction in conformity with the provisions of this Law.
The Official Bar Association of the Federal Capital shall function with the character, rights, and obligations of legal persons under public law.
Special waivers notwithstanding, the Association's administrative activities assigned it by his Law shall be carried out supplementary by observing Law 19,549 on administrative procedures.
Private associations or organizations that may be constituted in the future shall be prohibited from using the denomination Official Bar Association of the Federal Capital or any others which by their similarity may lead to confusion.
Lawyers registered in the Official Bar Association are and were those registered in the list maintained by the Office of the Undersecretary for Registration of the Supreme Court of Argentina under the terms of de facto Law 22,192.
Moreover, the numeration of de facto Law 22,192 was continued in the same books the Supreme Court used for that purpose.
At the present time the Official Bar Association continues with the same books, and registration is now being recorded in Volume 37 under the terms of Article 18 of Law 23,187, which states:
Article 18: Lawyers presently registered in the list maintained by the Office of the Undersecretary for Registration of the Supreme Court of Argentina shall be registered in the Official Bar Association of the Federal Capital, as shall lawyers who in the future are registered in the Association under the terms of the present Law.
There is no difference between registration with the Supreme Court and with the Bar Association at the present time.
Moreover, judicial control of legality exists with regard to all matters concerning registration under the provisions of Articles 12 and 13 of Law 23,187.
It is most instructive to bear this in mind in noting that, far from violating the right of association, all matters concerning practice of the legal profession in the Federal Capital are presently guaranteed in exactly the same manner as they were previously.
Effective delegation to the Association by virtue of Law 23,187 with respect to registration of the police power of the State is consequently evident.
Also evident is the State's control of legality through the Judiciary Branch, all of which demonstrate that no essential modification has taken place in detriment to the right of association.
An opinion was provided on these procedures by Dr. Nieto Navia in advisory opinion OC-5/85 of the Inter-American Court of Human Rights, which states "... freedom of association is violated if the law compels individuals to join associations, if the proposed aims of that association are such that they could be achieved by associations created by individuals using their freedom..."
It is evident that police power does fall within the scope of such creative powers of individuals. Police power is within the political-juridical structure of the state.
Consequently, Dr. Nieto Navia's opinion is not applicable in the case at hand.
i. As for the mandatory nature of the registration and other characteristics of the Law, the Government expresses:
Compulsory registration of the Official Bar Association of the Federal Capital under `Law 23,187 constitutes reasonable regulation of a public function and personal services as legitimized in Articles 16 and 17 of the Argentine Constitution. Consequently, those registered in the Official Bar Association of the Federal Capital have no associative ties among themselves.
The relationship of each lawyer and the Association is therefore an ope legis relationship, and consequently the obligations imposed by the law on those registered are also ope legis obligations.
An important segment of the statement of Dr. Augusto C. Belluscio, Supreme Court Judge, regarding Ferrari, Alejandro Meliton V. Argentina (P.E.N.) regarding remedy of Amparo decision handed down on June 26, 1986 and published in Derecho on June 29, 1986.

Professor Belluscio stated:
Control of professional practice is indispensable by virtue of the great number of professionals on the condition that it does not impair their particular and private nature and the essence of sound social order. This may be achieved through control of a state body or by the social entity formed by the members of each profession. The constitutionality and indisputable common benefit must be emphasized here of a legal system that provides the regularly constituted members of a specific social sector with attention to the problems concerning their own interests and not to an exclusively public organization.
The Judge also stated with regard to the Ferrari case that the Official Bar Association constituted by Law 23,187 is not an association in that the Law does not contain any provisions under which registration signifies entering into associative ties with the other members. On the contrary, its juridical nature and essential purpose are defined in Article 17, which provides it with the character of a public law juridical person, and therefore the position of lawyers regarding the Association is one of ope legis submission to the public authority it exercises and the obligations the same Law directly imposes, without any societal ties and without detriment to the freedom to associate in trade unions provided for in Article 14 bis of the Constitution, inasmuch as the association under discussion is not a trade union organization.
Member of the Court Enrique Petracchi said in the Ferrari case:
Law 23,187 does not contain any provisions according to which compulsory registration in the Official Bar Association involves entering an associative tie with the other members of the organization, which is a public organization designed to fulfill public functions and play a non-associative, advisory, and participatory role, founded on the principles of social democracy and subordination.
The individualistic viewpoint according to which each being appears to be isolated is not compatible with the social spirit of the Constitution, since although the human personality can only develop through intercommunication and solidarity, it should not be forgotten that it is also preserved in the autonomy of its decisions by Article 19 of the Constitution.
The State cannot impose membership in a given association or group, nor should it regulate actual links among persons that derive from the spontaneously restrictive structures emerging in the course of history of society rather than from consensus.
The functioning of representation can be strengthened and improved through socio-professional consultation and participation without such modalities involving compulsion of the members of each sector to participate regularly in societal activities.
It is not a question of the Bar Association, in its advisory function, of compromising the opinion of each of its members, but rather of the members, without prejudice to the expression of their opinions as individuals or in spontaneously established groups, contributing to the establishment of discussion and planning forums sponsored by those who desire to improve representative democracy.
In the same Ferrari decision Dr. Belluscio stated:
The right to associate for practical purposes doubtless implies the right not to associate, but that refers to societies whose existence is not required for the order and welfare of society as a whole. Consequently, the system of association does not damage the right to associate and the correlative right not to do so because it is precisely a question of the legal statute of a social structure preconstituted by the nature of things in which the formation of a society is not imposed on the lawyers that is different from that which they are joining by the mere fact of registration and the exercise of their profession in that forum in a community organized for discipline and the greatest possible moral safeguard of professional practice.
Substantively, paragraph 28 of Article 67 of the Argentine Constitution authorizes the constituted powers--specifically the Congress--to make all laws, and the Executive Branch all appropriate regulations to exercise such powers, and all others granted by the Constitution to the Government of Argentina.
The delegation of police power, as provided for in Law 23,187, is compatible with this doctrine and with jurisprudence.
Delegation was accorded a body established by the delegating Law. It granted to that body, the Bar Association, police power in all matters pertaining to the legal profession, its registration and discipline. Its purpose is the liberty and dignity of lawyers in practicing their profession in accordance with Article 1 of Law 23,187. Control by the Judiciary and control of administration and government by the Executive

Branch through possible intervention in the Bar Association were set aside. The delegation is legitimate, since all the precepts in this respect are present and also because the delegator continues to hold the power, inasmuch as it merely delegates and transfers the exercise of powers.
Congress may amend Law 23,187 at will.
The State is the original holder of the power it delegates and is at the same time the entity that conserves the power of control. Consequently, delegation of police power and its adjuncts to the Bar Association under Law 23,187 is legitimate in accordance with Article 67, paragraphs 27 and 28, and Article 86, paragraphs 2 and 3 of the Constitution.

j. As precedents for registration of attorneys of the Argentine Republic, the Government notes the following:

In addition to the case already referred to in the present case as a valid legal basis for the topics under discussion, mention should be made again of the Supreme Court decision in Inchauspe, Pedro V. Junta Nacional de Carnes, handed down on September 1, 1944, and published in Fallos, Volume 199, p. 516, which is applicable to the case; and of Supreme Court decision of September 7, 1944, in Oscar Agustín Avico V. Saúl G. de La Pesa, in Fallos, Volume 172, p. 29, in which delegation is legitimized as in Law 23,187.
Also of interest is Cavic V. Maurin y Cía SRL Juan, published in Volume 139, p. 527 et seq. In this important decision the Supreme Court recognized police power to intervene through the use of legal instruments to guarantee reasonable interests of the community.

k. Inconsistency on the part of Attorney Alejandro Meliton Ferrari as a member of the Bar Association of the City of La Plata, Province of Buenos Aires, from March 3, 1955, to date in accepting there a membership system absolutely analogous to Law 23,187, which he impugns in this procedure and in the preceding judicial action. Application of the principle of estoppel by deed (Translator's note: See Black's Law Dictionary: Nemo contra factum suam venire potest). Arbitrariness of the contradiction and its consequences:

This chapter is brief and points to actions of juridical importance that invalidate the objections of Attorney Alejandro Meliton Ferrari.
Attorney Meliton Ferrari, as set forth in his objections on page 2, Chapter 4, Vital Statistics, graduated with a law degree in 1954 from the School of Law and Social Science of the University of Buenos Aires. In addition to registering as a lawyer in the Civil Chambers of the City of Buenos Aires, he also registered in the city of La Plata, capital of the Province of Buenos Aires.
As is well known, in the Province of Buenos Aires a registration system exists that is practically identical to that established by Law 23,187. Attorney Ferrari, at least as far as is known, never questioned registration in the Judicial Department of La Plata, Province of Buenos Aires.
It has already been explained that in accordance with the law, registration in the Province of Buenos Aires is structured in accordance with the judicial departments into which the Province is divided. Each judicial department has a bar association, and registration in one association gives lawyers the right to practice in all judicial departments. All the associations are centered around the Bar Association of the Province of Buenos Aires.
The provincial law that established the bar association system in the province of Buenos Aires is Law 5177, which has been in force in the Province of Buenos Aires since November 13, 1947.
Membership is compulsory under the provisions of Chapter Two, Article 6 and its components of the Law.

l. As for exhausting all remedies of domestic jurisdiction, the Government stated:

In the two cases being replied to jointly it may be considered that the remedies under domestic law have been exhausted. This being the case, by its decisions the Supreme Court of Justice formally admitted the special recourses (Law No. 48), examined the substance of the question and upheld the decisions of the previous instance. However, notwithstanding compliance with this formal requirement (Art. 46, American Convention on Human Rights), for the reasons given earlier, it is incumbent on the Commission to evaluate the possible admissibility of these cases. By virtue of the foregoing, the Government of Argentina requests that communications No. 9777 and 9819 be declared inadmissible in light of the

provisions of Article 47, b and c, of the American Convention on Human Rights.

10. The Commission, in a letter dated April 15, 1987, transmitted to the petitioner the reply from the government and gave him a term of 45 days to formulate his observations and comments.

11. The plaintiff, in a letter dated June 1, 1987, formulated the observations that are summarized below:[FN1]

[FN1] See Annex III.

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a) That Law 23,187, under the pretext or "innocent excuse of an enrollment, the consequence of the delegation of power by the state, manipulated a mechanism used to bring all attorneys together into a single body that groups them in an obligatory fashion." (p. 8);
b) That the bar association established by Law 23,187 is not a "public law agency that exercises the function of professional police power delegated by the state, as the Argentine government contends, but is, on the other hand, a professional association with all the characteristics of such since it groups attorneys, acts in their defense, represents them before public authority and the community at large, issues opinions on problems and current events in their behalf" and, in short, carries out all the purposes that qualify it as a representative association of the attorneys of the federal capital city (p. 11).
c) That in view of the characteristics of the situation created by Law 23,187 with regard to which violations of the Convention (Article 16) occur, as well as the right to dignity (Article 11) and the right to free expression (Article 13), and the controversy that exists in the area of domestic jurisdiction, considering that there are opposing court decisions on the constitutionality of that law, it is requested again that the IACHR submit the case to the Court in accordance with Article 51 of the Convention.

12. The Commission, in a letter dated June 17, 1987, transmitted the observations of Mr. Meliton Ferrari to the government for the purpose of replying to them if it considered such action appropriate. A copy of that letter was transmitted to the Argentine mission to the OAS on the same date.

13. Meanwhile, the government transmitted in a letter dated July 7, 1987, (No. 19) additional information on the case, consisting of a copy of the ruling of the Supreme Court of Justice of the Nation, dated March 3, 1987, in the documents filed under "Bereraggi de la Rua and others vs. the National State": the subject of those documents would be substantially analogous to those presented to the Commission, that is, the constitutional validity of Law 23,187.[FN10]

[FN2] In documents.

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14. The Argentine government, in a letter dated September 17, 1987, (No. 24) referring to the letter dated June 17, 1987, submitted its reply to the observations made by the petitioner. A discussion of the principal points of that reply follows.[FN11]

[FN3] See Annex IV.

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a. With respect to the scope of Law 23,187 and from a reading of its Articles 1, 2, 18 and 60, the Government observes the following (pp. 3-4).

Pursuant to these articles, the State has delegated to the Official Bar Association the control of the registration of those who, being legally licensed to practice law, seek to do so in the jurisdiction of the Federal Capital. Since that is the case, it is logical that all lawyers registered according to the system previously in effect in their jurisdiction shall be considered as being listed on the registry kept by the Bar Association.

The petitioner has seen in these provisions an "associative linkage," a sort of "affectio societatis" that would link each lawyer registered with the Bar Association. That is not the case.

In fact, Article 17 of Law 23,187 states:

Article 17. The Official Bar Association of the Federal Capital, which shall supervise the exercise of the legal profession and be responsible for registration with the Association in the geographic area of the Federal Capital, with reference to professional activities in that jurisdiction in conformity with the provisions of this law, is hereby established.

The Official Bar Association of the Federal Capital shall function with the character, rights and obligations of legal persons under public law. Except for special waivers, the Association's administrative activities assigned to it by this Law shall also be governed by Law 19,549 on Administrative Procedures.

. . . .

The Bar Association then is an organization that acts "with the character, rights, and obligations of legal persons under public law." According to Article 33 of the Argentine Civil Code, these persons are the State, the Provinces, the Municipalities, independent agencies, and the Catholic Church.

A reasonable legal interpretation leads to the view that the Bar Association acts "with the character, rights, and obligations of legal persons under public law" because it acts by delegation of power from the National Government. This assertion is in accord with the same Article 17 when it provides for the application--in addition to Law 23,187--of National Law 19,549 on Administrative Procedures, which governs nation-wide actions of and before the National Government, except for military, defense and security agencies.

The provisions of the functions and jurisdiction of the Bar Association support this interpretation, particularly the following:

"Keeping the registry of lawyers practicing law in the Federal Capital..." (Article 20, subparagraph a).

"The exercise of disciplinary power over registered lawyers" (Article 20, subparagraph b).

"Monitor and control of the practice of law to see that persons who are not qualified, or are not registered do not practice..." (Article 21, subparagraph b).

"The rules of professional ethics shall apply..." (Article 21, subparagraph c).

The mere reading of these paragraphs indicates that the Organization concerned can only be a public agency under national law.

This reasoning is found in the ruling of the Supreme Court of June 26, 1986, as a result of which the petitioner has filed a complaint with the Inter-American Commission on Human Rights.

That the law mentioned (23,187) contains no provisions whereby being listed on the registry would entail entry into an associative linkage with the other persons registered with that Bar Association. On the contrary, the Association's legal nature and basic purpose are defined in Article 17 of the Law, which assigns it the character of a legal person under public law, so that the position of a lawyer vis-à-vis the Bar Association is that of being subject ope legis to the public authority that the agency exercises, and to those obligations the Law imposes directly on such attorney, without regard to his linkage with any organization (F.446-XX- Ferrari, Alejandro Melitón V. Argentina (P.E.N.) on Amparo. CSJ June 26-1986, paragraph 10 of the preamble).

b. With respect to the consultative opinion, the Government states the following:

In OC-5/85 the Court stated that "the assertion that compulsory membership is structural by the way to organize the practice of professions in general ... implies that such membership is based on public order." In this regard, it has considered that "a possible meaning of public policy in the Convention is that it refers to conditions that ensure the harmonious and normal operation of institutions on the basis of a consistent system of values and principles. In that sense, restrictions on the exercise of certain rights and duties might be justified to ensure public order" (CF. OC-5/85 paragraph 64).

In the same context, the Court has said that "it can be maintained in general that the exercise of the rights guaranteed by the Convention must be consistent with the general welfare," which is understood as "a concept referring to the conditions of life in a society that enables its members to achieve a higher degree of personal development and greater observance of democratic values," so that "statements that compulsory membership is a way to ensure professional ethics and responsibility ... must be considered as based on the idea that such membership represents a requirement of the general welfare" (CF. OC-5/85 paragraphs 65 and 66).

However, the ideas of "public policy" and "general welfare" are not enough in themselves to make restrictions on protected rights legitimate except to the extent that such rights are "necessary in a democratic society." Democratic public policy and democratic general welfare are involved in a restriction imposed by a democratic law.

Along these lines, the Court has recognized that organizing professions in general into professional associations is not per se contrary to the Convention, and it concludes that such organization is implied in democratic public policy (CF. OC-5/85 paragraph 68).

c. As for Argentine law, the Government says:

It is in light of law in force in the Argentine Republic, including the American Convention on Human Rights, binding since September 5, 1984, that the delegation of powers by the Government to the Official Bar Association of the Federal Capital should be analyzed.

According to the view expressed, there can be no doubt that keeping the Registry (Article 18 and 20 subparagraph a) of Law 23,187), the exercise of disciplinary power and supervision (article 20, subparagraph b) and 231 (subparagraph B) idem) and the enforcement of standards of professional ethics (article 21 subparagraph c), idem) are government powers expressly delegated to the Official Bar Association by Law 23,187. Accordingly, the Supreme Court has stated:

"... (The Official Bar Association) is an organization intended to accomplish public purposes that were originally the Province of the State and that the State by delegation, as specified normatively, transfers to the institution that it establishes to administer the registration and the disciplinary regime of all lawyers in the Federal Capital, as auxiliaries of the administration of justice" (F.446-xx-Ferrari Alejandro Melitón vs. Argentina (Federal Executive Branch) (PEN) on amparo, CSJ, June 26, 1986, preambular clause 11).

d. With respect to the point that the law violates freedom of association, the Government adds the following:

3. In another part of its observations, the petitioner contends that violation of the right protected by the Convention, Freedom of Association (article 16), occurred with the passage of National Law 23,187.

The GOVERNMENT OF THE ARGENTINE REPUBLIC is pleased that its nationals are enabled under the law to have recourse to an international nonjudicial body in the field of human rights, as a result of Argentina's ratification of the American Convention on September 5, 1984. Along this line of thought, it regards as legitimate the petitioner's labeling as a "violation" an act of the State that, in its view, breached a human right whose free and full exercise the Argentine Government has undertaken to respect and guarantee.

This characterization by the petitioner is legitimate insofar as it is a ground for a complaint or denunciation (Article 4 of the American Convention) but it is not definitive because the American Convention describes such characterization as "alleged." Thus, Article 44, paragraph 2, subparagraph b) on admissibility refers to "alleging violation". Similarly, the regulations of the Inter-American Commission on Human Rights regarding conditions for considering a petition uses the term "alleged violations" (Article 31) and regarding requirements for petitions refers to "alleged violations" (Article 32.b).

Accordingly, the ARGENTINE GOVERNMENT maintains that this is not a matter of the type of violation but rather of a legitimate restriction of freedom of association, which is necessary in a democratic society in the interest of public policy.

Since the position of a lawyer vis-à-vis the Official Bar Association is that of being subject ope legis to the public authority that the association exercises and to the obligations that the law directly imposes on him, without relation to membership in any organization, the petitioner cannot point to any specific

damage or damages that enforcement of national Law 23,187 has caused him.
Actually, he has continued practicing his profession in the jurisdiction of the federal capital without the need for going through any formalities. His membership in other professional organizations under private law--specifically the Bar Association (Colegio de Abogados) that he mentions in his brief--have not been affected by enforcement of National Law 23,187.
e. In connection with the previous conduct of the petitioner, the Government points out the following:
The petitioner's previous behavior has been taken into consideration in these observations. He contends that, since he is registered with a number of associations other than the one we are now discussing, circumstantes in the national context did not allow him to raise this question previously.
The Government of the Argentine Republic only wishes to go into two aspects of this topic. First, it should be recalled that since 1954, when the petitioner graduated from the university with a law degree, the Argentine Republic went through two separate and of course unfortunately brief periods of the jure governments. The presidency of Dr. Arturo Frondizi (12/10/58 to 27/3/62), the presidency of Dr. Arturo Humberto Illía (12/10/63 to 28/6/66), the presidencies of Dr. Héctor J. Cámpora, Dr. Raúl Lastiri, General Juan Domingo Perón and Mrs. María Estela Martínez de Perón (25/5/73 to 24/3/76). In none of these constitutional intervals did the petitioner initiate any action to defend a right that he now considers to be violated.
Secondly, and not less important for being obvious, it should be borne in mind that this government took power on December 10, 1983, and the American Convention on Human Rights entered into force for the country on September 5, 1984, and thereby provided the legal authority to set in motion its system of control. In other words, if it had been desired, a procedure could have been initiated--at the domestic level first, and if necessary, at the international level later, to give satisfaction to the petitioner whose freedom of association would have been limited professionally by his membership in the Official Bar Association of the Province of Buenos Aires. However, it is only after entry into force of Law 23,187, that the petitioner found a reason to take action.
Attorney Alejandro M. Ferrari recognizes (point 6) that in 1955, he voluntarily joined the Bar Association of the city of La Plata, Province of Buenos Aires, and that that professional association has the same characteristics as the association established by Law 23,187.
In this regard, there are several references relating to our historic past on which this government will refrain, for reasons already given, from making comment.
It regrets, however, that the complainant has not stated categorically what motives caused him to join voluntarily an organization similar to that established by Law 23,187.
If the system that he joined voluntarily was responsible, as he states, for the "profound imbalances that dragged the Argentina community, which was previously prosperous and proud, put down into a continuous slide toward backwardness and poverty" (see p. 14), what reasons impelled attorney Ferrari to join voluntarily the Bar Association of the city of La Plata, when he could practice his profession without that requirement in the district of his domicile, that is in the Federal Capital?
The petitioner unfortunately does not state whether this was due to necessity, error, violent emotion, alienation, compulsion, ignorance or other justifying grounds. His silence is tantamount to admitting that he joined voluntarily the system that he now attacks so severely and inappropriately.
f. As for the appropriateness of the IACHR referring the case to the Court for settlement, the Government states:
8. As a final point in his observations, the petitioner speaks of what he calls the procedural situation. Mentioning Case Advisory Opinion OC-5/85, the petitioner contends that it is clear that in a case where controversial legal problems arise and their domestic legal proceedings result in conflicting judicial decisions, the Commission remits the case to the Inter-American Court of Human Rights.
The Government of the Argentine Republic considers that the statement is incomplete. In fact, in the advisory opinion cited, four different kinds of factors were differentiated in concluding that the case should be remitted to the Court. Only two of those were mentioned, namely:
1) a case that raises controversial legal issues and

2) conflicting court decisions. The petitioner, therefore, omits
3) that the case could not be amicably settled before the Commission and
4) that the Inter-American Court has not ruled on the subject.

It is precisely these two omitted factors that are of the greatest importance in this case. In fact, this case has not even been admissible by the Commission. Therefore, there is no reason to speculate about a possible failure of a friendly solution. In addition, regarding the fourth factor, the Inter-American Court has ruled on the compulsory membership of journalists in OC-5/85, and especially has devoted a paragraph to the Bar Association (OC-5/85 paragraph 73).

For the above reasons and since the communication does not present any facts that constitute a violation of the rights protected by the Pact of San José, Costa Rica, and the petition is clearly unfounded, the Argentine Government requests that, pursuant to Article 47, subparagraphs b) and c) of the American Convention on Human Rights and Article 35, subparagraph c) of the Commission's Regulations, the petition be declared inadmissible and that the case be dismissed.

15. The petitioner, in a letter dated October 23, 1987, submitted additional information on the case which, in short, sought specifically to develop further his points of view on the opposing court decisions handed down regarding the constitutionality of Law 23,187 and to repeat his request that the IACHR refer the case to the Court on the basis of the existence of opposing rulings on the same matter. In particular, the following is mentioned:[FN1]

[FN11] In the files of the Commission.

Added now to the opposing decisions of the Argentine courts is a ruling handed down last August 27 in the request for declaration of unconstitutionality submitted by the attorney, Dr. Boffi Carri Perez. The federal judge who heard the case allowed the action and declared Law 23,187 unconstitutional in that it establishes compulsory membership in the Colegio Público de Abogados. We attach a copy of that ruling which, as you can see, differs expressly and categorically from that of the Supreme Court of Justice of Argentina in our case, which opened the way to seek remedy, as was done, from the Inter-American Commission on Human Rights.

It is clarified that the tardy ruling in the case of Dr. Boffi Carri Perez was owed to the fact that the aforementioned person chose the ordinary procedural route instead of the summary ruling of protection used by we professionals who contest Law 23,187 before the Commission.

III. PETITION OF MR. HORACIO GARCIA BELSULCE

16. Mr. Horacio García Belsulce submitted in his own behalf a letter dated October 28, 1986, containing a petition in connection with violation of the freedom of association (articles 14 and 14 bis of the Argentine Constitution) provided for in Article 16 of the Constitution, and ratified and approved by Argentine Law No. 23,054. The petitioner points out, after giving his identification, profession, domicile, and basic grounds for the petition (Article 32 of the Regulations of the Commission), that he joins "without modification or reserve" in the petition of his colleague, Dr. Alejandro Melitón Ferrari, and agrees with his arguments, claims and causa pretendi.[FN13]

[FN1] In the files of the Commission.

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17. The Commission, in a letter dated November 4, 1986, transmitted to the government the pertinent parts of this petition (Article 34 of the Regulations). A copy of that note was remitted to the Argentine

mission to the OAS on the same date.

18. Furthermore, the Commission transmitted, in a letter dated April 13, 1987, to Mr. García Belsulce a copy of the letter from the Argentine government, dated March 26, 1987, which replied to the petition submitted by Messrs. Bomchil and Ferrari since it dealt, in substance, with the same question, and requested him to forward his observations and comments.

19. Mr. García Belsulce, on June 24, 1987, formulated his observations and comments[FN2] to the reply from the government in which, in short, he sets out the following:

[FN2] See Annex V.

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a. That the Argentine government bases its arguments on two points, namely: i) that the obligatory enrollment of attorneys in the Colegio Público de Abogados is nothing but the exercise of police power over professions delegated to a legal person under nonstate public law, which is what the Colegio Público would be; ii) that the Colegio is not an association and, therefore, its existence does not infringe the freedom of association of Article 14 of the Constitution and Article 16 of the Convention.
b. That to sustain the foregoing, the Argentine government also invokes the consultative opinion of the Court (OC-5/85) in the case of Stephen Schmidt, citing the opinion of Judge Rafael Nieto Navia, in which that judge specifically states the opposite of what the government seeks to maintain, that is, that association with the Colegio Público de Abogados is valid "when such bar associations perform strictly public purposes," which is not the case here in that the Colegio Público de Abogados "performs purposes that are those of private associations which it is replacing in a coercive way."
c. That the freedom of association of Articles 14 of the Constitution and 16 of the Convention can be limited, under the terms of paragraph 2 of the latter article, but not when the associations depart from their purposes and they come to function as private agencies or carry out the purposes of private agencies.
d. That proof of this is the arbitrary way that this bar association has set membership and support dues for the attorneys as well as the way in which it issues opinions on matters of domestic policy such as the April 21, 1987, declaration on events in Argentina on or about that date, a point that is foreign to the purposes of the bar association and, furthermore, because it undertakes a representation not consistent with its status as public law entity.
e. That the case should be submitted by the IACHR to the Court, since the procedures of Article 51 of the Convention have been exhausted.

20. That the Commission, in a letter dated July 9, 1987, transmitted to the Argentine government the text of the observations of Mr. García Belsulce, so that it might reply to them.

21. The Argentine government, in a letter dated September 2, 1987 (No. 317), replied to the observations of Mr. García Belsulce. The principal points of this letter appear below. In essence, these ought to be considered an expansion of the aforementioned government's opinion already set out in a letter dated March 26, 1986, in which it replied to the (principal) petition of Messrs. Bomchil and Alejandro M. Ferrari.

a. With respect to the nature and functions of the Colegio Público de Abogados de la Capital Federal, the government says the following:
2. Of all the functions that national Law 23,187 confers to the Colegio Público, it is necessary to differentiate between those that unquestionably qualify it as a public law person and those having features similar to those performed by other associations that are not of this same type.
2.1. It is obvious that the governing of the enrollment--which the petitioner does not question--the

exercise of disciplinary power and supervision, and the application of rules of professional ethics are powers delegated by the National State which no civil or professional association under common law could legitimately exercise.

It is with respect to these powers that the attorney is subject ope legis to the bar association and cannot ignore legitimate and valid acts carried out in this context. Nevertheless, the member is legally entitled to challenge such acts--if such were necessary--through the mechanisms, procedures, and appeals provided for under positive law, one of which is judicial review. This is true with respect to acts of the administrative power and in this sense the law ensures adequate protection of the petitioner.

b. Regarding other functions of the bar association, the government states:

2.3. Other functions that the bar association exercises actually have features like those of civil or professional associations but these neither affect nor disqualify it in terms of its status as a person under public law.

In this context are several of the functions that the petitioner mentions, for example, those pertaining to social benefits, social security, culture, sports, recreation, and others. Fully consistent with the framework that surrounds them, they do not bind the attorney but require his consent, that is, he has the choice of participating, a position that can be gained only in other associations.

Accordingly, the functions in question which the bar association is empowered by law to exercise do not displace similar functions of other associations but coexist with them.

c. Regarding certain conducts of the bar association, the government expresses the following:

5. With respect to the statement made by the bar association on April 21, 1987,--the inspiration of which is in question, according to the petitioner, but which he terms as truly beyond the boundaries of the purposes of the bar association--it is important to clarify several points.

First, it is useful to recreate its context: After almost eight years of distressing subjection to a de facto military regime which undertook atrocious and aberrant acts which to our sadness made us well known throughout the world, Argentina is regaining democracy, and restoring the state of law. During Holy Week, the postures taken by certain members of the armed forces profoundly upset the public--sensitive in the extreme to traumatic situations--and the Argentine government. For the first time in many years, the public exercised an involvement prohibited to it in recent years and gave unqualified support to the government and its democratic institutions. This action, forsaking partisan interests, took the shape of a document signed by representatives of political parties and all social forces.

In this context, it should be brought out that the bar association did not sign either acts or documents of political parties or groups having a specific political alignment.

To the contrary, the bar association made a public statement calling for maintenance of the state of law in an absolutely individual declaration.

The informing petitioner states in paragraph 3 that the publication of the Colegio Público de Abogados de la Capital Federal on April 21, 1987, repudiating what it termed a military uprising, "has truly meant a stretching of the limits of the purposes of the Colegio Público de Abogados, as they have been limited by the Supreme Court of Justice of the Nation."

This paragraph entails three gross errors of focus:

a) In its letter dated April 21, the association stated, in exercise of an undeniable moral obligation, that, "the Colegio Público de Abogados de la Capital Federal, made up of the people of the Argentine nation, stands ready to defend the national constitution and the order created by it, which all--the governors and the governed--have the duty to observe faithfully."

In other words, it came out publicly in support of one of the basic assumptions of respect for human rights which is "effective exercise of representative democracy" (OAS Charter, Article 3.d).

For its part, the preamble itself of the constitution reaffirms the intention "to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man" (paragraph 1).

a. In a letter dated September 9, 1987, the Commission transmitted to Mr. García Belsulce the reply from the Argentine government of September 2, 1987, and gave him 45 days to formulate his observations or comments.

b. Mr. García Belsulce, in a letter received at the Secretariat of the Commission on December 9, 1987, provided additional information on the case which, in general, repeated the points made in his initial observation and emphasized the fact that the bar association--by requiring dues from members to meet the expenses of other promotional activities--is assuming functions normally performed by private bodies. On this point he stated that he is opposed to the way in which the bar association is used to impose mandatorily, by the state, the obligation to finance tasks not directly linked to the purposes of the association which ought to be only tasks of public order that justify its existence.[FN1]

[FN1] In the files of the Commission.

IV. PETITION OF MR. ALBERTO ALBARRACIN AND OTHERS

c. Mr. Alberto Robredo Albarracin, in his own behalf and for other attorneys, submitted a petition in a letter received at the Secretariat of the Commission on April 13, 1987, alleging violation of the Convention by "the Argentine Republic through Law 23,187 (hereinafter called the law) passed by the Congress on June 5, 1985, and promulgated by the executive branch of the nation on the 25th day of the same month and same year."

d. The foregoing petition, signed in a lengthy letter that had 17 attachments (for the judicial actions taken by the petitioner in his request for unconstitutionality of Law 23,187), meets the requirements of form of Article 32 of the IACHR regulations and expressly joins with the petition submitted by Messrs. Bomchil, Ferrari, and García Belsulce.[FN2]

[FN2] In the files of the Commission.

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a) That the petitioner challenged Law 23,187 in a protection suit (case 186/85) in the National First Instance Court System, in Federal Contentious-Administrative Court No. 3 of the Federal Capital, on November 1, 1985, and that court handed down a sentence that led to the complaint;

b) That the state appealed the sentence to Court I of the National Appeals Chamber of the Federal Contentious-Administrative Court which upheld the first instance ruling on December 20, 1985, with reservations;

c) That this ruling led to an appeal of inapplicability filed by the state and similar appeals by the parties before the Supreme Court of Justice which issued its ruling on September 16, 1986, overturning the ruling of the Chamber. That was notified to the claimant party on
October 3, 1986;

d) That all the foregoing makes it possible to find that the claimant has exhausted internal remedies and submitted in due time and form his case to the IACHR (Articles 46.a and b of the Convention).

e. In summary, the petition further states the following:

a. That through Law 23,187 the Argentine Republic has violated Article 1 of the Convention and corresponding provisions of the American Declaration;

f. That the law also violates Article XII of the aforementioned Declaration and Article 20.2 of the Universal Declaration which holds that no person may be obligated to join an association;

g. That it likewise violates Article 16 of the Convention "by conditioning the exercise of law practice in the federal capital city ... to registration on the roll kept by the Colegio Público de Abogados," which inscription produces effects that go beyond the simply entry;

h. That the enrolled person may not practice law (Article 3.2.b of the law) if he is sanctioned by a provincial bar association, meaning that a single act would give rise to two sanctions;

i. That the enrollment confers to the bar association, under the terms of Article 5.2 of the law, the

right to intervene in the judicial activities of the members;

j. That as a consequence of enrollment, an attorney is obligated to accept and exercise pro bono appointments made by drawing of lots conducted by the authorities of the association to advise, defend, and provide other services to those lacking financial means (Article 6.b of the law), which situation constitutes an obligation to perform forced labor, thereby violating Article 12.1 of the Convention;

k. That the funds collected by the association are used to carry out purposes that are properly those of private agencies, a fact which violates freedom of association in that it makes it obligatory to belong to a public agency and make pecuniary contributions to maintain those activities, in accordance with Article 20 of Law 23,187;

l. That since law practice is an eminently private exercise, the limitation of Article 16.2 of the Convention is not applicable to the case;

m. That the aforementioned statements show that the law effectively violates rights recognized by Articles 6, 11, 12 and 16 of the Convention. This conclusion would be reached by a mere contrasting and comparison of the rules of the law against those of the aforementioned articles of the Convention and, even more so, if one takes into account the rules of interpretation set out in Article 29 of the Convention, especially the rule on the scope of restrictions established in Article 30;

n. That it does not share the opinion set out in the Supreme Court ruling to the effect that "it is sufficient that the law-maker attributes to an organization the character of public law agency to remove it automatically from the area of freedom of association," since the essential point is freedom of association and the accessory matter is the nature of the agency;

o. That regarding the matter of being subject ope legis to the public authority that the bar association exercises, this is what is questioned as the determining fact of the violation of the freedom of association since it has been seen that the association truly performs the same functions as free associations. It is noted that the attorneys are required to join the association and obligated to vote in its meetings, to provide free services, to make pecuniary contributions, to abide by the provisions cited by the organs of the association, to submit to a discipline tribunal and to accept the protection of the association;

p. That the nature of the matter submitted to the Commission does not give rise to a "friendly settlement" of the matter since the problem rests on the fact that a law has been issued by the Argentine Congress and the executive branch of government does not have the power to amend it. Consequently, the IACHR should omit this procedure.

• In a letter dated April 13, 1987, the Commission acknowledged receipt and reported to the petitioners that it was already processing a case on the same matter and transmitted to them the text of the note from the Argentine government dated March 26, 1986, and requested their observations.

• The petitioner, in a letter dated July 30, 1987, formulated observations which, in substance, reiterated the points made in the original presentation with the exception of the request that the Commission process separately his letter to the Argentine government.[FN1]

[FN1] In the files of the Commission.

• The Commission, in a letter dated August 5, 1987, transmitted the pertinent parts to the government so that it could submit a reply to them.

• The Argentine government, in a letter dated January 8, 1988, transmitted the reply to the observations of Mr. Albarracin and others.[FN2] The following is a transcription of the most important points of that reply:

[FN2] In the files of the Commission.

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a) Regarding the substance of the matter, the government states the following:

The basic argument set out by the petitioners consists of their belief that the mandatory registration of attorneys listed with the Office of the Assistant Secretary of Enrollment of the Supreme Court of Justice of the Nation on the registry kept by the bar association amounts to a violation of Article 16.1 of the Convention because it entails an illegitimate restriction. In effect, they sustain that since this is a "eminently private profession," this private character bars the valid motive set out in Article 16.2 of the Convention to restrict freedom of association.

In other words, in their opinion, "the restrictions provided by the law are necessary in a democratic society, in the interest of national security, security or public order or to protect public health or morals or the rights and freedoms of others" (page 2) are not pertinent to this matter.

b) As relates to the exercise of legal sponsorship, the government states the following:

It is obvious that there is a substantial misunderstanding of the role of the professional attorney, as this government perceives it, and how the petitioners see it.

In effect, it is beyond all question that the practice of law falls within the framework of "free exercise of professions." However, this does not rule out any relevant restrictions in the interest of public order and the common democratic good.

Thus, in opinion OC-5/85, the Inter-American Court of Human Rights has held "that the allegation... (transcribe 3.5, reply Ferrari case to ... "may not be invoked in the case of journalism...",) meaning that the mandatory registration is structurally the way of organizing the exercise of professions in general ... [which] implies that such association is based on public order." In this connection, it has considered that "one possible acceptance of public order within the framework of the Convention makes reference to the conditions that ensure harmonious and normal operation of the institutions on the foundation of a coherent system of values and principles. In this sense, restrictions on the exercise of certain rights and freedoms could be justified to ensure public order" (C. f. OC-5/85, paragraph 64).

In the same context, the Court stated, "It is valid to sustain in general that the exercise of the rights guaranteed by the Convention ought to be in harmony with the common good," understanding as such "a concept referring to the conditions of social life that enable the members of society to achieve a higher degree of personal fulfillment and maximum effectiveness of democratic values," and for this reason, "the allegations that place mandatory association as a means of ensuring professional RESPONSIBILITY and ethics...ought to be considered as founded on the idea that such association represents a requirement of the common good (Cf. OC-5/85), paragraphs 65, 66).

However, the notions of "public order" and "common good" are not sufficient by themselves to legitimize the restrictions on the rights protected except to the extent that such restrictions "are necessary in a democratic society." This is a matter, then, of the democratic public order and the democratic common good that are implied in a restriction imposed by democratic law.

The Colegio Público de Abogados, in its short life, has been collaborating with the Argentine state in this sense. Thus, as relates to registration of corporations, thanks to a participation agreement signed by the Colegio de Escribanos de la Capital Federal, the Consejo de Profesionales de Ciencias Economicas de la Capital Federal, and our bar association, with the Office of Inspector General of Justice, a system of professional pre qualification has been established by which the process of registration of a corporation that used to take 10 (ten) months now takes 5 (five) days. Thus, our association has also implemented a collaborative system with the National Registry of Repeat Offenders which has put into operation a data processing system capable of preparing reports on the court records of persons in a much shorter time, thereby making it easier for the professional and the accused person to exercise the right of defense in court.

In short, Law 23,187 meets a vital need of the Argentine "common good" and particularly that of those who practice law.

We see, then, that Law 23,187 which established the Colegio Público de Abogados meets the opinion expressed by Judge Rafael Nieto Navia who stated: "The imperative rule of public law which obligates

individuals to join professional bodies is valid and cannot be considered, per se, a violation of the freedom of association when such bodies work for strictly public purposes. In other words, when these bodies receive from the state a delegation of authority that the state could perform directly but which it delegates because it believes that that is the most suitable way to carry out the proposed purpose."

It is not said, as the litigants here contend, that such delegation is not possible "since the freedom of association is a much higher value than elimination of bureaucracy implicit in this delegation of authority." This is not merely a matter of "eliminating bureaucracy." Freedom of association is a right that eventually, as has been said, can give way, in particular its pre-eminent status, when attempting to serve the general common good, to improve auxiliary parts of the justice system and attend, in short, to the needs of the registered persons since, among the objectives of the bar association is attending to the social welfare needs of that great "professional proletariat," who today have meager resources for retirement and nonexistent social services. This aspect, for instance, is fully covered by certain bar associations in interior parts of the country, one being the Province of Buenos Aires Bar.

In this order of ideas, the Court has recognized that the organization of professions in general into professional associations is not per se contrary to the Convention and it can be concluded that such organization is implied in the (democratic) public order (C.F. OC-5/85 paragraph 68).

In the case mentioned in the consultative opinion, the mandatory association of journalists involved another right protected by the Convention, freedom of expression (Article 13, American Convention), long considered the keystone of all democratic systems. It is, then, the difference between an association of journalists and associations of other professionals which leads the Inter-American Court to express the following:

This does not apply, for example, to the practice of law or medicine; unlike journalism, the practice of law or medicine--that is, that which lawyers and doctors do--is not an activity specifically guaranteed by the Convention. It is true that the imposition of certain restrictions to the practice of law could be incompatible with the enjoyment of various rights guaranteed by the Convention. For example, a law that prevented attorneys from acting as defenders in cases involving activities against the state could be considered a violation of the rights of defense of the accused, pursuant to Article 8 of the Convention, and, therefore, could be incompatible with it. But there is no one right guaranteed by the Convention that encompasses exhaustively or defines by itself the practice of law, as does Article 13 when it refers to the exercise of a freedom that coincides with journalistic activity. The same is applicable to medicine.

The Court concludes, as a consequence, that the reasons of public order that are valid to justify mandatory association of other professions cannot be invoked in the case of journalism...

c) About the characteristics of the Colegio Público de Abogados that do not make it an association, the government says:

4.1 It should be kept especially in mind that Law 23,187 creates the Colegio Público de Abogados de la Capital Federal as "a public law juridical person," to which it confers the handling of professional registration and disciplinary records and sanctions of attorneys, in clear delegation of the state police power.

4.2 But, the fundamental point to appreciate whether or not "freedom of association" is being violated here is that delegation of the exercise of police power and the status as a "public law person," that the law confers to the bar association and gives it its institutional essence: this is not a matter of an "association," in the sense regulated by Article 14 of the National Constitution which attorneys may freely decide to form or not. It is a public law person to which the attorney is bound by the fact of registration: No associational bond is created with the other registered persons.

By the fact of registration and by the requirements of law, attorneys are subject to the disciplinary power of the bar association which is public in nature and to the obligations with respect to the body, among them, those of contributing to its maintenance--dues and a set fee--which the law imposes without there being any associational tie, having the features of spontaneous freedom of the member.

d) Concerning the point that Law 23,187 violates freedom of association, the government states:

4.5 EVEN MORE SO ASSUMING THAT THE COLEGIO IS AN ASSOCIATION, LAW 23,187 DOES NOT VIOLATE THE FREEDOM TO NOT ASSOCIATE. Even if one agreed with the argument

that the Colegio Público de Abogados de la Capital Federal created by Law 23,187 is an "association," it would still constitute a reasonable regulation of the freedom to associate or not associate for useful purposes, as set out in Article 14 of the National Constitution of Argentina. This rule provides that the rights that it confers are granted in accordance "with laws regulating their exercise," provided that such regulation does not "alter"--Article 28, National Constitution of Argentina--or vitiate that same right.

The Argentine National Constitution does not have individual absolute rights: their regulation must involve a delicate balance between the right of the individual and the social interest with which their absolute exercise may clash.

Then, assuming that our Colegio was an association, does Law 23,187 meet the requirements of Article 28 of the National Constitution that its regulation does not vitiate the freedom to associate or not for useful purposes of Article 14 of the National Constitution?

Perhaps the best authorized answer to this question is the conclusion reached by the members and the Supreme Court of Justice of the Nation, Drs. Sagarna and Casares, whose words Dr. Augusto Cesar Belluscio transcribes in his vote in re: Ferrari cited above: "The attorney is not simply a professional certified by his university degree to expound on law, teach it, and make it felt in carrying forward matters of justice, that is, as a jurisperitus and jurisconsultus, in accordance with the expression and the Roman concept. He is also an assistant in the justice system, a collaborator in that system, and a potential member of its courts in cases of impediment, challenge or exception of its members...; and as a logical consequence, the laws that organize the judicial system--in the country as a whole and in the provinces, according to the words of the preamble and Article 5 of the National Constitution--can require of attorneys that they have a certain organization and discipline as part of the regulatory power provided for in Article 14 of that fundamental law.

e) With respect to the right to associate or not associate, the government observes the following:

The right to associate or not associate for useful purposes refers to "corporate bodies whose existence is not required for the good order and well being of the greater collective body--nation, province, municipality--within which they are constituted." The attorney "has the duty to enter into social structures whose legal establishment is required for reasons of order and common good for as long as they exist without infringement of the rights that pertain essentially to the individual for whose good the community that is to be improved by means of such structures exists. The system of association that is being considered does not infringe the right of association and the related freedom to do so because it deals precisely with the legal statute of the social structure pre constituted by the nature of things."

f) With respect to providing free legal services (Article 6 of Law 23,187), the government states:

4.9. They believe that providing free legal service is forced labor under the terms of Article 6.1 of the Convention; this is to take a rather optimistic view of forced labor. The existence and provision of free legal service puts into practical form the principle of equality, one of the most basic principles of all normative systems of human rights, and makes it possible to put justice within the reach of all and to ensure adequate defense in court.

Furthermore, in the Argentine Republic it is possible, and in fact it occurs, for an individual to enter into a profession absolutely free of cost, that is, the state finances his education. This being the case, it does not appear an exaggeration that the law would provide for such an eventuality since it will not always be the case that the professional will render a service free of charge, depending on a drawing of lots, since this is nothing but a small transfer of a minimal payment for no fewer than five years of studies.

If this were not the case, that is, if the professional had paid out of his own pocket for his studies at a private university, this would be a minimal request of social solidarity in order to bring about the universal right of justice.

On this specific aspect the European Court of Human Rights has had the occasion to rule in re: "Van der Mussele C. - Belgian." The petitioner, a Belgian attorney, took offense at her designation by the Antwerp Bar Association as court-appointed defender of an accused person lacking resources because her refusal exposed her to disciplinary sanctions and her acceptance did not confer to her the right to receive fees. The argument of Van der Mussele described the situation legally as a "forced or obligatory work" under the terms of Article 4.2 of the Rome Convention and as treatment contrary to Article 1 of Additional

Protocol No. 1 (right of respect for her assets).
In its ruling of November 23, 1983, the Court of Strasbourg decided that there was no violation of Article 4 and that Article 1 of Additional Protocol No. 1 did not apply to the case. In its findings, the court ignored the treatment of Article 4.3.d of the Rome Convention which, like Article 6.3.d of the Pact of San José, did not consider forced or obligatory work "every work or service that is part of normal civic obligations."
The European Court held:
The services to be provided are not outside the framework of the normal activities of an attorney; they are not different from the usual tasks of a professional occupation either on the basis of their nature or because they presuppose a restriction on the liberty of conduct of the case.
Second, they have their counterpart in the inherent advantages of the profession, among which are the professional monopoly of representation and information before the courts, as enjoyed in Belgium as in other countries..." (paragraph 39).
And, in connection with Article 1 of Additional Protocol No. 1, it stated:
The argument by Van der Mussele does not stand up to a serious examination to the extent that it refers to lack of remuneration. The aforementioned text of Article 1 of Protocol 1 confines itself to protecting the right of each person to have "their" assets respected and consequently does not refer to assets other than those present... (paragraph 48).
g) Concerning the registration, the government points out the following:
5.3. Throughout the statement made by the petitioners, a statement is reiterated which should be changed because it is inaccurate: from the provisions of Articles 14, 16, and 53 of Law 23,187 they conclude that the governing of the enrollment is still being done by the Supreme Court of Justice of the Nation as under the system of the facto Law 22,192.
Articles 14, 16, and 53 of Law 23,187 establish a communication system to the court regarding the status of the registration but the "governing" of the registration is performed by the bar association. What does the "governing" of the registration consist of? It is simply to determine on an ongoing basis who are the attorneys who will act not only because they are registered but because they meet the conditions of law and are not under any disciplinary sanction that would disqualify them as of the date for professional practice.
The point is that governing the registration and exercising professional disciplinary power are intimately linked: both are exercised by the association.
It should be asked, however, why does Law 23,187 maintain the information system to the court regarding the status of the registration? This is precisely because the Colegio Público de Abogados de la Capital Federal is a "public law person" which performs--among other public functions--that of governing the registration and the law keeps the Supreme Court of Justice informed as the highest body in the system of justice that could intervene in the case of a manifest irregularity in the functioning of the bar association.
g) Finally, the government expresses the following:

THE CLAIM, THE FACTS AND THE LAW

The GOVERNMENT WISHES TO MAKE CLEAR THAT NONE OF THE ASPECTS OF LAW 23,187 raised here by the petitioners has been verified in actual facts. That is to say, the petitioners seek to attribute responsibility to the ARGENTINE STATE without showing the damage done to them by the effective violation of a binding legal obligation to the country. Even in the most advanced arguments in the area of international responsibility of the state--the responsibility for damaging consequences of an activity exercised in accordance with law--the subject who puts the mechanism into march ought to take credit for the damage. That is not the case here.
Internationally in general, and in particular under international human rights law, it is presumed that a claim is described by allegations of facts and not by mere reasons or arguments of law invoked (Cf. European Court of Human Rights, in re Schiesser vs. Switzerland, December 4, 1979, par. 41; LE-

COMPTE, VAN LEUVEN and DE MEYERE vs. BELGIUM, June 23, 1981, par. 38, CAMEL and COUSINS vs. UNITED KINGDOM, February 25, 1982, par. 40). In the case that concerns us here, the criterion appears to be that of stating legal rules and not facts.

6. Judging by all the foregoing, the GOVERNMENT OF THE ARGENTINE REPUBLIC requests the INTER-AMERICAN COMMISSION ON HUMAN RIGHTS to declare INADMISSIBLE this petition in accordance with Article 47 of the AMERICAN CONVENTION ON HUMAN RIGHTS and Article 41 of its REGULATIONS.

V. CONCLUSIONS

From a review of the material subject of this report, the Commission has reached prima facie, the following conclusions:

1. The petitions under which cases 9777 and 9718 are brought meet the formal requirements of admissibility as set out in Article 46.1, clauses b, c, and d, of the Convention. The charges have been presented within the term of six months as from the date on which the plaintiffs were notified of the final domestic decision; the subject of the petitions is not pending proceedings in any other international forum and they contain the names, nationality, profession, domiciles and signatures of the petitioners, the requirements set out in Article 32 of the Regulations of the Commission.

2. The petitioners have filed and exhausted all resources of domestic jurisdiction, in accordance with the principles of generally recognized international law, a prerequisite set out in Article 46.1. a of the Convention and Article 37.1 of the Regulations of the Commission. In this respect, and as is noted in the body of this report, the following judicial proceedings occurred under the exercise of each of the claimants:

i. Protection proceedings, requesting declaration of unconstitutionality of Law 23,187 of June 25, 1985, which creates the Colegio Público de Abogados de la Capital Federal of the Argentine Republic and issues rules on exercising the practice of law in that jurisdiction. These appeals to the National First Instance Court for Federal Contentious - Administrative Matters No. 3 of the Federal Capital were substantiated, giving rise to the claims of the petitioners.

ii. The national state appealed that ruling to the National Chamber of Appeals for Federal Contentious - Administrative Matters which handed down its ruling overturning the first instance ruling and rejecting, therefore, the requested ruling of unconstitutionality of Law 23,187 of 1985.

iii. Once the special appeal had been filed with the Supreme Court of Justice of the Nation, the latter upheld the denial ruling of the second instance (by the Federal Chamber) and left valid, therefore, the constitutionality of the law in question.

Consequently, in the opinion of the Commission, the aforementioned proceedings have exhausted all remedies that the petitioners could exercise in the domestic area.

iv. The Inter-American Commission on Human Rights is competent to review the material petitions of the combined cases and to adopt the decision that it deems pertinent in conformity with the Convention (Article 44) and its Regulations (Article 46).

v. The petition action is not admissible in the sense of limiting its claim to determined provisions of Law 23,187, that is, to Title III of that law pertaining to association of attorneys.

The Commission believes that for reasons of generally recognized legal hermeneutics, a law may not be examined in separate parts to establish its nature and scope. Laws have to be considered in their entirety and as they were promulgated, as this relates to their interpretation or application.

vi. The Commission finds acceptable the point of view of the claimants that the case can not be resolved by friendly settlement, bearing in mind that the alleged violation would come about as a result of the effectiveness of "a law issued by the Argentine Congress and the Executive Branch of Government has no authority to amend its provisions, and thus any compromise agreement is a material impossibility."

Therefore, the Commission believes that Article 45.7 of its Regulations is applicable here.

vii. Not acceptable is the argument of the petitioners to interpret as incorporated into the Convention "all rights embodied in the American Declaration of Rights and Duties of Man by way of Article 1.2 of the Statute of the Inter-American Commission on Human Rights, whether or not they are a part of it," since this is not in agreement with the rules on interpretation of treaties set out in Article 31.2 of the Vienna Convention on Treaty Law (1969), of which the Argentine Republic is a state party, because there is no formulated or concerted agreement or instrument between the states parties in the American Convention for purposes of making the American Declaration of Rights and Duties of Man (1948) an integral part of the Convention or a supplement to it for the states parties.

It can also be noted that the above interpretation is not consistent with the provisions of the IACHR statute itself which, in Articles 19 and 20, distributes the competence of this organ among the member states of the OAS, depending on whether or not they are parties to the Convention, without which to this time the practice of the Commission in application of the aforementioned provisions of its statute could be the point of reference for the opinion of the petitioners. It is generally recognized as a rule of interpretation of treaties that, "when the normal meaning of the words is clear and logical in the context in question, there is no reason to resort to other means of interpretation" and that, furthermore, it is a rule of interpretation to establish that "it must be presumed that the text of the treaty is an authentic expression of the intention of the parties," as the International Rights Commission pointed out in its review of the draft convention on this matter.[FN1] The fact is that the text of the Convention is clear on what rights it protects and, therefore, it is more than enough reason to not accept the aforementioned interpretation by the petitioners. In consequence, it is concluded that as it relates to the states parties of the Convention and to the case that concerns us here, Argentina, the IACHR can only, in accordance with its own Regulations (Article 31), take into consideration the petitions on presumed violations of human rights defined in the American Convention on Human Rights. The right to work is still not incorporated into the Convention which does not include economic, social, and cultural rights.

[FN1] Treaty Law - CDI report, 1966, OAS/Ser. Q/II (a) CJI-18A, p. 56.

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viii. From neither the background information nor the allegations submitted to the Commission, or the context itself of Law 23,187 of June 25, 1985, which created the Colegio Público de Abogados de la Capital Federal of the Argentine Republic, can it be drawn that the law per se violates Article 16 of the Convention and, therefore, the freedom of association. The purpose of the law is eminently public in nature, that is, "protection of freedom and dignity of the profession of attorney," and it is pointed out that "none of its provisions could be understood in a sense that undermines or restricts them" (Article 1)).

To achieve that purpose, the law proceeded to create (Article 17) the Colegio Público de Abogados de la Capital Federal which meets the prerequisites and characteristics of a typical public law body which by its legal nature and the powers conferred to it by the law performs functions delegated to it by public authority to control the legality of law practice in the capital of the Argentine Republic. In other words, this is a matter of a police power that is part of the political organization of the state and of public order, compatible with the state of law and the organization of a democratic society.

ix. The central point of the cases under review (which challenge Law 23,187 and in particular, Article 17 and following), consists of the petitioners' charge that the obligatory registration with this bar association would be violating the principle that no one may be obligated to join an association, a point they believe is implicit in Article 16 of the Convention and, that, therefore, according to the petitioners, those registered with this bar association would be forcibly entering into an "associational bond" or affection societatis, a situation contrary to the Convention.

The Commission believes that registration with the bar association is a public function and that, because of this condition, the function ought to be and has to be obligatory in nature since otherwise the state would be--by way of the association--establishing a requirement for some professionals that it is not

requiring for others and, therefore, it would thus violate the right of equality before law and it could also not exert any control over the professional practice of law. This is a matter, then, of the proper activity of a public body with the character, rights and obligations of legal persons under public law which is acting in the name and on behalf of the state.

The mandatory registration had been exercised by the Office of the Assistant Secretary for Registration of the Supreme Court of Justice of Argentina, and thus no appreciable difference can be seen between the enrollment exercised by the court and that which Law 23,187 now calls for through the bar association which, furthermore, performs this public function on an exclusive basis, in accordance with the final paragraph of Article 16 of the law in question.

x. The public nature of the registration and, therefore, its obligatory nature are drawn also from the text and the scope of other provisions of Law 23,187, namely:

a) Article 20.a confers to the bar association "the governing of the registration of attorneys to exercise their profession in the Federal Capital" ...

b) Article 20.b confers to the bar association the exercise of disciplinary power over those registered.

c) Article 20.d confers to the bar association the promotion and organization of legal assistance and defense of destitute persons.

d) Article 21.b confers to the bar association supervision and control of legal practice to prevent it from being exercised by persons lacking degrees or those who are not registered.

e) Article 21.c determines that the bar association shall enforce rules of professional ethics and others.

f) Article 21.j reaffirms the public nature of the activities of the bar association by indicating that it will see that the professional exercise is not violated in any area, "being invested for this purpose with procedural legitimacy to exercise public action," which would also appear to give that agency an inspection role in the framework of its competence before the National Courts, a status that certainly does not pertain to most associations or professional groups that can exist under the guarantee of Articles 14 and 14 bis of the Argentine constitution.

xi. Finally, it can be deduced that it is not properly grounded to sustain that the mandatory registration requirement (Article 18 of Law 23,187) establishes or forms a corporate type working bond among those registered. Actually, it should be deduced that the relationship is circumscribed, pursuant to the terms of Article 19 of Law 23,187, to the "disciplinary power over the registered person and this person's respect for compliance with the duties and obligations set by the law." The Commission shares the opinion that the position of the registered person, in the light of the aforementioned Article 19 and other related articles, is ope legis to the public authority without connection to the other persons registered as with an association, strictly speaking. It must be recalled that the fundamental characteristic of associations and trade unions in a democratic society is that they are born out of the initiative of private persons to defend common interests which do not have a public nature or function.

xii. The Commission recognizes that Law 23,187 contains rules having traits similar to those than can be found in other constitutional instruments of private associations or groups professionals or trade unions or of other types such as those pertaining to social security, sports, culture and so forth, but in this respect it should be observed that these do not vitiate the eminently public function of the bar association but actually, to the contrary, supplement or add to it since the participation of registered persons in such activities is optional and the rules do not constrain the basic purpose of the bar association which is regulating the practice of law in the national capital.

xiii. Judging by the characteristics of Law 23,187 it can be concluded that the purposes of the Colegio Público de Abogados de la Capital Federal cannot be carried out by private lawyer's groups or associations, in particular, as regards the governmental power to license (Article 17), the disciplinary power (Article 23.e) and the control of professional practice.

xiv. The matter of compulsory membership in a professional association was examined by the Commission in Case No. 9178 (Costa Rica), in relation to Mr. Stephen Schmith, in whose case, as a result of and as a subsidiary question to his complaint, the nature and scope of the right of association of

professionals was considered. In that regard the Commission reaffirms that in light of Article 16 of the Convention, not all instances of compulsory professional membership are per se violations of the right of full association, and consistently following that view in the case in question, it expressed the following:[FN1]

[FN1] Resolution 17/84, October 2, 1984, - OEA/Ser.L/V/II.63.15, p.9. See also Annual Report of the IACHR 1984-85 (p. 60).

There is nothing against having the exercise of professions monitored and controlled either directly by official agencies or indirectly thorough authorization or association under the state's supervision and control, because it must always be subject to the law in carrying out its mission.
In the same sense and scope the Inter-American Court of Human Rights, in its Advisory Opinion on Case No. 9178, clearly established, on the basis of sound arguments that not every membership law is necessarily violative of the Convention. In that instance the Court stated:[FN2]
The Court observes that the organization of professions in general, by means of professional "colegios", is not per se contrary to the Convention, but that it is a method for regulation and control to ensure that they act in good faith and in accordance with the ethical demands of the profession. If the notion of public order, therefore, is thought of in that sense, that is to say, as the conditions that assure the normal and harmonious functioning of the institutions on the basis of a coherent system of values and principles, it is possible to conclude that the organization of the practice of professions is included in that order.

[FN2] Advisory Opinion OC-5/85 (Series A: Judgments and Opinions No. 5). November 9, 1985, p. 122.

In addition, it is worth underlining that Court Opinion very clearly set out the difference between the compulsory memberships of journalist. The exercise of their profession and its relation to the right of free expression and free thought (Art. 13 of the Convention). The Court said:[FN1]

Within this context, journalism is the primary and principal manifestation of freedom of expression of thought. For that reason, because it is inherent right of each individual, journalism cannot be adequate to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional "colegio."
The argument that a law on the compulsory licensing of journalists does not differ from similar legislation applicable to other professions does not take into account the basic problem that is presented with respect to the compatibility between such a law and the Convention. The problem results from the fact that Article 13 expressly protects freedom "to seek, receive, and impart information and ideas of all kinds ... either orally, in writing, in print ..." The profession of journalism--the thing journalists do--involves, precisely, the seeking, receiving, and imparting of information. The practice of journalism consequently requires a person to engage in activities that define or embrace the freedom of expression which the Convention guarantees.

[FN1] OC-5 cit. pp. 123-24.

But immediately thereafter the Court went on to establish its judgment on the compulsory membership of certain professions, which, in cases such as law or medicine, require norms of a public character to regulate such fields within the constitutional order and the letter of Article 32.2 of the Convention. With

that in mind the Court noted:[FN2]

This is not true of the practice of law or medicine, for example. Unlike journalism, the practice of law and medicine--that is to say, the things that lawyers or physicians do--is not an activity specifically guaranteed by the Convention. It is true that the imposition of certain restrictions on the practice of law would be incompatible with the enjoyment of various rights that the Convention guarantees. For example, a law that prohibited all lawyers from acting as defense counsel in cases involving anti-state activities might be deemed to violate the accused's rights to counsel under Article 8 of the Convention and, hence, be incompatible with it. But no one right guaranteed in the Convention exhaustively embraces or defines the practice of law as does Article 13 when it refers to the exercise of a freedom that encompasses the activity of journalism. The same is true of medicine.

[FN2] OC-5 cit. p. 42.

From the above it can be concluded that the Commission as well as the Court share the same view with respect to Article 16 of the Convention insofar as the issue of compulsory membership of professionals is concerned, a view that is compatible with the notion of the common good in a democratic society.

xv. In the Argentine Republic, bar associations operate in 19 provinces under terms analogous to those of Law 23,187 and neither the constitutionality of those laws nor their condition as presumed violations of Article 16 of the Convention has been challenged. The province of Buenos Aires has in effect Law 5177 of November 15, 1947, which also makes membership in the bar association obligatory. Although the foregoing cannot be considered as a fully probatory factor of the soundness of the legislation that protects the association and its compatibility with the Convention, especially its Article 16, the existence of such laws helps establish on abundantly solid bases that the laws themselves are not violations of human rights or contradict the opinion that certain rights protected in the Convention can be limited by the demands of the common good in a democratic society. In the terms expressed by the Commission in its resolution on the Schmidt case:[FN24]..."professional associations perform a social function, have disciplinary powers over improper ethics and seek to improve the profession in question as well as the social security of the members."

[FN1] Doc. OEA/Ser.L/V/II.63, 15, cited, p. 10.

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xvi. The Commission believes that the right to join or found trade unions is not at stake since, as the Supreme Court of Justice states in the case of Ferrari, Meliton vs. National State, mentioned above, "the Colegio Público is obviously not a trade organization" and, therefore, Article 14 (bis) of the Constitution is fully in effect.

xvii. As concerns Article 18 of Law 23,187 which would be imposing "compulsory representation of all attorneys and forcibly these are compelled to have a common opinion by means of that association," the Commission believes that this presumption is founded on the individual interpretation of the law by the claimants and that compulsory representation is not provided for either expressly or tacitly in the aforementioned article or in other provisions of the law.

xviii. As for the argument by the petitioners that Law 23,187 would be violating the right to private property in that it would affect the degrees (certifying) awarded by Argentine universities to practice law, by way of the obligatory registration, the Commission does not see the scope of a violation of the Convention here. It would be good at this time to recall that in almost all countries of the western world, obligatory membership in bar associations has not been considered a violation of the right of property. However, the Commission abstains from going further into this point in that the claimants have not

charged that they have suffered any loss or concrete damage as a consequence of application of Law 23,187 with respect to private property of the individual petitioners.

xix. In light of the foregoing conclusions and, in particular, in light of the fact that the case cannot be settled amicably and, furthermore, in application of the provisions of Articles 50.3 and 51.2 of the Convention and 45.7, 46, and 47.1 of its Regulations, the Commission

resolves to declare that on the basis of the information submitted to it, Law 23,187 of June 5, 1985, creating the Public Bar Association of Attorneys of the Federal Capital of the Argentine Republic does not violate Article 16 of the Convention.

xx. To transmit this report to the Government concerned and to the petitioners.

(*) This report was approved by an affirmative vote by Messrs. Marco Tulio Bruni Celli, Chairman; John Stevenson, Vice-Chairman; Gilda M.C.M. Russomano; Leo Valladares; and, Patrick Robinson. Mr. Oliver Jackman voted against and Mrs. Elsa Kelly abstained under Article 18 of the Regulations.