1. The case discussed in the present report involves a presumed violation of the complainant's political rights (Art. 23 of the American Convention on Human Rights, hereinafter the Convention) and the rights of association and equality before the law (Arts. 16 and 24 of the Convention, respectively).

2. The violation of the aforementioned rights is alleged to have occurred based on the provisions of Argentine laws Nos. 22,627 (Organic Law of Political Parties)[FN1] and 19945 (National Electoral Code) because--according to the complainant--they "presuppose and complement the monopoly on nominations which is enjoyed by the parties."[FN2]

[FN1] Known as the "de facto" law, this was superseded by Law 23,298, B.O. of the State on October 25, 1985 (No. 25791).
[FN2] Superseded by Law 2135 (National Electoral Code), promulgated 18/8/83, with amendments introduced by laws 23.247 and 23.476 of 1987.

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3. The claim dated September 25, 1987, meets the requirements set forth in Article 32 of the Commission's Regulations and pertinent provisions of the Convention (Art. 46 d).

4. The contents of the claim are summarized below.

a. The complainant asked on September 20, 1983, to be registered as a candidate for the office of national deputy for the Corrientes Province Electoral District in the elections scheduled for October 30, 1983. The document he addressed to the Secretariat of the Candidates' Register also denounced the unconstitutionality of the abovementioned laws because of their violation of Articles 14 and 28 of the Argentine Constitution. All parts of his request were denied by the Corrientes Federal Judge, so that he was unable to run for the office of deputy.
b. On September 27, 1983, the complainant filed remedies of appeal and nullity against the judgment or decision of first instance with the National Electoral Chamber;
c. The aforementioned remedies were also rejected, thus upholding the judgment of first instance which denied the unconstitutionality of the laws impugned and the registry of the complainant as an independent candidate in the aforementioned elections;

d. On November 11, 1983, the complainant lodged a special complaint with the Supreme Court of Justice, appealing the verdict of the National Electoral Chamber. That remedy was rejected on April 23, 1987 in respect both to Law 23,298 (Organic Law of Political Parties--which gives those parties the exclusive right to nominate candidates) and to the alleged violation of the right of association (Arts. 14 and 28 of Argentina's Constitution);
e. The domestic remedies to resolve the situation addressed by the complaint were exhausted upon issue of the Supreme Court of Justice finding;
f. The complainant was notified of the Court's decision on April 22, 1987, so that his petition was presented within the term stipulated in Article 46, 1 b of the Convention (Art. 38, paragraph 1 of the IACHR Regulations; and
Consequently, given the infringement of the rights and guarantees set forth in the Convention--including the right or guarantee not to undergo compulsory association--he requests that the Commission adopt such measures as it may deem fitting in accordance with the facts.

5. In a note of October 21, 1987, the Commission transmitted the accusation to the Argentine Government, requesting the corresponding information (Art. 34 of the Regulations). The complainant was notified of that action on the same date.

6. The Argentine Government replied to the Commission's request in a note dated February 25, 1988 (Vs.14-7.2.17), which is summarized below.

a. In general the complainant's statement is neither precise nor specific as to the type of violation committed in his case, since the claim included a criticism of the electoral system for the selection of candidates, the party system and the entire political system of the democratic Argentine State;
b. The object of the complaint would appear to consist of denouncing the "refusal of Argentina's federal court system to authorize official status for his independent candidacy for election as a national deputy,"; accordingly, this would be the subject addressed by the Argentine Government's response;
c. In this context, and as the complainant himself acknowledges, there are no absolute rights: it is a question of those recognized by a constitution, as seen in Articles 14 and 28 of the Argentine Constitution, or those recognized by the Convention in accordance with its Articles 30 and 32, which foresee the enactment of laws restricting the enjoyment or exercise of the rights and freedoms recognized in the Convention (Art. 30) and state that the rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.
d. It is deduced from the foregoing that rights may be regulated in order to render their exercise effective. Hence the question posed in this case is not whether the juridical possibility of regulating rights is contemplated in the Convention, but whether the regulations imposed by the national law--in this case, Law 22,677 [FN1]--on the right to elect and be elected are or are not reasonable and consonant with the framework provided by the Convention (Arts. 30 and 32).

[FN1] Superseded by "de facto" Law 23,298; see note on page 1.
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e. The Argentine Government believes that the regulation ordered by Law 22,677 is reasonable for the following reasons: I) Art. 2 simply provides that "the nomination of candidates for elective public office is the exclusive purview of the political parties"; but it does not require that a potential candidate belong to a political party in order for that party to nominate him for elective public office. There are two distinct factors: one is that nominations can be made only by legally recognized political parties; but it is not true that affiliation with a given party "is an essential condition for nomination thereby. The latter requirement exists only in the imagination of the complainant;" ii) Since there is no legal provision on this point, "it is left up to the respective organic charters of the political parties to determine whether or not

they can require their prospective candidates to belong to the party." In practice this means that the statutes of the most important political parties in Argentina envisage the possibility of nominating candidates outside the party, i.e., individuals who are not members of the party that puts them up for election;

f. In this respect, for example, the charter of the Partido Justicialista establishes (Art. 34) the possibility of including non-party candidates on its own initiative or through alliances or fronts formed for electoral purposes, as does the Union Civica Radical in its charter (Arts. 48 and 100 bis). This practice was followed in the September 6, 1987, elections;

g. Consequently, the law in question does not infringe the right not to associate, and this part of the complaint merits no further comment, since juridical reality and political practice discredit that allegation of the complainant;

h. As to whether the regulations are congruent with the Convention, it should be noted that Law 22,627 and its successor, Law 23,298, meet the requirements of Art. 30 since: they are of a general and impersonal nature; they are objective and create no distinctions or different categories of persons or groups that might violate the principle of equality before the law; furthermore, they have been enacted for reasons of "general interest";

i. Insofar as Art. 32, paragraph 2 of the Convention is concerned, Laws 22,627 and 23,298 are designed to serve the "common good," since the lawmakers stipulate "the scope and characteristics of the right to elect and be elected set forth in the National Constitution and protected by the Convention as well." This is not an isolated juridical phenomenon: that same electoral system is currently in effect in Guatemala's electoral legislation (Decree 40-45 of 1985) and in Panama, not to mention other national systems of this type, such as Spain, the United Kingdom, Venezuela, and the United States (where federal elections and those of the states of New York, North Carolina, Arkansas, and Colorado observe the principle of having the political parties nominate candidates for elective office;

j. The systems cited are not designed to restrict or limit political rights, but to order and systematize the process and avoid problems in a broad field that is prone to controversy;

k. The Government of Argentina therefore requests that the IACHR declare Case 10109 inadmissible.

7. In a letter dated March 16, 1988, the Commission sent the complainant a copy of the government's reply and gave him 45 days to submit any observations or comments.

8. The complainant's letter of April 25, 1988, noted his comments on the Argentine Government's reply, which repeated the basic points of his original complaint.

9. The Commission transmitted the complainant's observations to the Argentine Government in a note of May 17, 1988, setting a 30-day period for presentation of any reply it might deem appropriate.

10. A note of July 2l, 1988, (Vs No. 36) contained the Argentine Government's reply to the complainant's remarks. It is summarized below.

a. The event on which the claim is based occurred "before the American Convention on Human Rights entered into effect for Argentina; accordingly, the Argentine Government could hardly be accused of failing to comply with a treaty or convention to which it was not a party."[FN1]

[FN1] Argentina ratified the Convention on 5/9/84, with one reservation and interpretative statements. See Basic Documents on Human Rights in the Inter-American System, 1988, OAS, pp.53-54.

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b. In order to "clarify the legal mechanisms that harmoniously regulate the electoral system,"

however, the Argentine Government is willing to explain the basis for the present legislation in this field, based on the following considerations:

i. The complaint is of a general nature, and in similarly general terms it impugns the entire Argentine political system, it being understood that, under such circumstances, this sort of situation would not fall within the jurisdiction of the international body.

i. Only in the event that a regulation involving political organization concretely and demonstrably violated an individual right could that particular regulation be discussed; to act otherwise "would be tantamount to accepting the possibility that a body outside the Argentine Republic might dictate the principles and norms on which the nation's organization should be predicated."

iii. Mr. Rios presented his candidacy for a position as national deputy for Corrientes Province on September 20, 1983, and his complaint was lodged with the Supreme Court of Justice in February 1984. Both dates preceded the entry into effect of the American Convention for Argentina, as noted above;

iv. The complainant admits in his observations[FN2] that it is indeed possible to run for national elective office without belonging to any political party, as the Argentine Government stated in its first reply; but he now appears to change his position, stating that "it cannot be argued that there is much chance that a party would accept a nonmember who offered to run as an independent candidate."[FN3]

[FN2] Letter of April 25, 1988, p.4.

[FN3] Ibid., p.5.

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v. Here again, political reality gives the lie to the petitioner's statements, for in 1972 a politician "offered" to run for the office of national president, and a party took him up on that offer and elected him as its candidate;

vi. It can be assumed from the foregoing remarks that the claim should be filed against the political parties that are an accepted factor in present-day democracies;

vii. It is moreover obvious that pursuant to current legislation (Law 23,298), any individual may establish his own party and become its candidate if he so desires, without affecting his right to elect or be elected; the only requirement is the support of a number of citizens,

which is obviously and necessarily the case for any candidate, not only to be nominated but also to succeed in the electoral race.

CONCLUSIONS

After examining the subject under review in this report, the Commission has reached the following prima facie conclusions:

1. The complaint meets the formal requirements for admissibility stipulated in Article 46, paragraph 1, subsections b, c, and d of the Convention, since it was submitted within a period of six (6) months from the date when the complainant was informed of the decision of the Supreme Court of Justice of the Nation (April 22, 1987), which constituted the first definitive domestic decision in his case; the subject of the complaint is not pending any other international settlement procedure; it contains the complainant's name, domicile, nationality, and profession; and it describes the events that are the subject of the complaint, although in somewhat disorganized fashion and without being quite precise as to the causa petendi.

2. As may be seen from the information concerning the complaint and the statements of the Argentine Government, the complainant has exhausted the remedies within the internal jurisdiction of the Argentine Republic, to wit:

a. He asked the Federal Electoral Judge for official recognition of his nomination as federal deputy

for Corrientes in the October 20, 1983, elections; the request was rejected by that judge in a writ dated September 27, 1983.

b. On October 19, 1983, the complainant lodged an appeal against that verdict; it was denied by the National Electoral Chamber, thus supporting the finding or judgment of the electoral judge to the effect that the complainant's nomination was inadmissible;

c. The complainant filed a special appeal against the verdict of second instance with the National Supreme Court of Justice on November 11, 1983. It was also rejected, and the previous finding was confirmed. The complainant's petition was therefore denied, thereby exhausting all internal redress available to him in defense of his allegedly violated political rights.

3. The Commission is competent to examine this case because it involves a presumed violation of a right stipulated in the Convention (Art. 23 and correlated Arts. 16 and 29, which protect the right of association and the standards for interpretation of the Convention, respectively), as set forth in Article 44 of the Convention pursuant to Article 46 of the Commission's regulations.

4. Without prejudice to rationae materiae competence, this case obviously involves a factor which, rationae tempori, affects the examination thereof: as noted by the Argentine Government,[FN1] "the event on which the petition is based occurred "before the American Convention on Human Rights entered into effect for Argentina; accordingly, the Argentine Government could hardly fail to comply with a treaty or convention to which it was not a party."

[FN1] Note of July 6, 1988 (Vs No.36), point 3, in the files.

The Commission finds this objection acceptable, particularly given the fact that when it ratified the American Convention, Argentina expressly stated that "The obligations contracted under the Convention shall apply only to events transpiring subsequent to ratification of that instrument."

Positive international law honors the principle of nonretroactivity of treaties (Vienna Convention, 1969, Article 28): "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party." As noted in the preceding paragraph,[FN2] no such intention was established.

[FN2] Vienna Convention on the Law of Treaties, 1969. OEA/Ser.A/II.11, CJI-18, p.14. See also report of the CIL, May 1966, OEA/Ser, A/II.11--CJI-18 (A), pp. 45-46.

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5. Notwithstanding this limitation, one could not fail to see, on the other hand, that three years and two months elapsed between the date on which the complainant filed an appeal with the Supreme Court of Justice (3 February l984) and the date when the remedy was vacated (22 April 1987). Furthermore, from the time the case was taken up by the national tribunals (September 1983) to the date of the petitioner's complaint to the IACHR (25 Sept 87), there was another four-year interval--during which numerous important changes took place in the laws applicable to human rights in the Argentine Republic. Those changes included the entry into effect of the American Convention for that country (5 Sept 84), and that of the Organic Law of Political Parties (No. 23,298), superseding de facto law No. 22,627. Mr. Jesus A. Rios claimed that Art. 2 of the new law perpetuated the principle of its predecessor by giving political parties the exclusive right to nominate candidates for elective public office. Given that time frame, the petition becomes a distinctly current event.

6. This situation alters the rationae tempori argument to some extent and calls for the Commission to express its views on the subject of the case so that it can follow the example set by the Argentine Government in helping to clarify the mechanisms that regulate Argentina's electoral system, although it must of course dissociate itself from all the global criticisms of Argentina's political system that pervade the petition since such matters are not within the IACHR's purview.

7. The complainant's view that membership in a political party is required in Argentina in order to become a candidate for elective public office is unfounded: that requirement does not appear in the Organic Law of Political Parties. Under the basic rule of juridical interpretation, there is no reason for making this distinction when the law itself does not do so. Neither is there is also any ground for stating that freedom of association is restrained by the text of Article 2 of Law 23,298. The Commission concurs with the opinion of the Argentine Government that Article 2 simply gives political parties the exclusive right to nominate candidates; but that does not entail the obligation to belong to a party. Furthermore, as noted in the body of this report, application of this law has in practice included instances in which the parties' nominees were not party members. This practice is moreover stipulated in the charters of the national parties themselves, as in Art. 34 of the Justicialista and Arts. 48 and 100-bis of the Union Civica Radical party charters. Therefore no concrete offense has been committed against the Constitution of Argentina or the Convention in this respect.

8. As to whether regulation of the right to elect and be elected is compatible with the American Convention [(Arts. 24, 29 (a) and 32 (2)], the Committee finds that the complainant's argument is unfounded, for it must be remembered that every electorate comprises thousands or millions of voters, i.e., each elector is a potential candidate with the same right as any other to be elected for public elective office. If democracy is to flourish, that potential makes it necessary the exercise of this right to be regulated by law. "Insofar as there are no unreasonable restrictions on the formation and growth of political parties, nor on participation and militancy therein, we are at a loss to understand how the right to elect and be elected is affected.[FN1] The system of open primaries could also be cited in this respect: they, too, do not exclude nomination by parties, or the presentation of candidates by a number of voters equal or similar to the number required to found a party that supports a candidate's action program.

[FN1] Note of Argentine Government, 7 June 88, p. 4, point 9, in files.

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9. The laws of other world democracies feature a system of electoral nomination similar or equal to that of Argentina, I. e., they regulate the right to elect and be elected through party nomination or the endorsement of candidates by a substantial group of voters. An example may be found in the law of New York State, which requires the support of at least 20,000 voters before a candidate can be included in the slate. In Spain,[FN2] every candidate must be presented by at least one tenth of the taxpayers in a given electoral district, and in other instances no less than 500 voters. In the United Kingdom,[FN3] the candidate must be sponsored by two electors as promotors and another eight as supporters of the candidacy. In Venezuela,[FN4] the process is even more complicated: candidates must be nominated by ten registered voters from the corresponding electoral district who represent 0.5% of the electorate but must consist of at least 200 registered voters. Mexico's 1987 Electoral Code gives political parties the right to nominate candidates in federal elections. Costa Rica's Electoral Code requires a membership of at least 3,000 registered voters before a national party can be officially recognized.[FN5]

[FN2] Royal Decree 20/1977 of March 18 on Electoral Standards.
[FN3] Law of Popular Representation, 1969.

[FN4] Organic Law of Suffrage, July 6, 1977.
[FN5] Legislacion Electoral Comparada, Inter-American Institute of Human Rights, 1986, p. 102.

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10. In the Commission's opinion, these regulations are consistent with the role played by parties in a representative democracy.

Art. 41 of the Mexican Constitution [FN6] states that "political parties are organs of public interest," and it empowers them to encourage people to take part in democratic life; help integrate national representation; and provide the population with access to exercise of the public power by means of universal, free, secret and direct suffrage.

[FN6] Published by Trillas, 3rd ed., 1987.

Art. 113 of Venezuela's Constitution gives the parties the right to monitor the electoral process, while Art. 114 recognizes the right of all Venezuelans to associate in parties "to help guide the nation's policies by means of democratic methods," so that it may be said to assign political parties a prominent place in the institutional order.

11. Parties are a necessary institution in democracy. The Commission shares the view that "modern democracy may be said to be predicated on political parties...At each election, parties select the candidates from whom the elector will choose the recipient of his vote; orderly procedure is thus imposed by public opinion, for if the citizens were to vote directly, without the preliminary screening performed by the parties, chaos and anarchy would reign at the urns, votes would be scattered in disarray, and those elected would not be representative because of the few votes received by each."[FN1]

[FN1] Linares Quintana, Segundo V: Derecho constitutional e instituciones politicas, 1981, pp. 211 and 235 in Appeal for Review of Facts and Law to the Supreme Court of Justice, Rios, Antonio Jesus, not officially recognized, , Corrientes District, pp.12-13. Annex submitted by petitioner, on file.

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12. The Commission also shares the view that Art. 2 of Law 23,298 does not violate Article 28 of the Constitution (by altering principles and rights recognized in earlier articles of the supreme law), nor does it violate Articles 16 (right of association); 23 (political rights); 24 (equality before the law); and 29 (restrictions on interpretation), because the law in question gives the complainant the option of joining whichever of Argentina's political parties he chooses and promoting his candidacy among them, plus that founding his own party and seeking election therein to any position he freely chooses.

13. Consequently, in the light of and based on the foregoing conclusions, and bearing in mind: that the case is not susceptible to friendly settlement (Art.45, 7 of the Commission's Regulations) by constituting an event or situation that has been remedied de jure and de facto,; that the statement of the petitioner himself shows the case to be manifestly groundless, and no facts have been presented that represent a violation of the rights protected in the Convention (Arts. 47 of the Convention and 41 of the Commission's Regulations), Case 10,109, the subject of this report, is declared inadmissible, and the Organic Law of Political Parties in the Argentine Republic (No. 23,298), which is involved in the controversy at issue, is found not to violate the American Convention on Human Rights.

14. It is agreed to transmit the present report to the interested Government and to the complainant.