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Decided by: Chairman: Professor Claudio Grossman;
First Vice Chairman: Ambassador John S. Donaldson;
Second Vice Chairman: Professor Carlos Ayala Corao;
Members: Professor Robert Kogod Goldman, Dr. Jean Joseph Exume,
Ambassador Alvaro Tirado Mejia.
[FN1] Commissioner Oscar Lujan Fappiano, national of Argentina, did not participate in the discussion and voting on this case, in accordance to Article 19 of the Regulations of the Commission.

Dated: 15 October 1996
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I. BACKGROUND

1. On November 7, 1994, Santiago Marzioni filed a petition with the Inter-American Commission on Human Rights (hereinafter "the Commission") against the State of Argentina for violation of his right to equal protection of the law (Article 24) and his right to property (Article 21), guaranteed under the American Convention on Human Rights (hereinafter "the Convention").

2. In 1990, Mr. Marzioni filed a lawsuit in the first instance labor court against his employer, Autolatina Argentina S.A., demanding full compensation for injuries suffered in a work related accident which left him 42.5% disabled. Mr. Marzioni sought damages and a declaration of unconstitutionality of the compensation limits index established under Resolution 7/89 of the National Minimum Wage Council.[FN2] On December 30, 1992, the labor court issued a favorable decision, but rejected the constitutional claim. The labor court applied the compensation limits index and awarded Mr. Marzioni 520 pesos.

[FN2] This resolution regulates the indemnity limits provided for in Law 9860. The National Minimum Wage Council (Consejo Nacional del Salario Mínimo, Vital y Móvil) is an administrative body under the Executive Branch of the Argentine Government.

3. The petitioner appealed the compensation index constitutional claim. The appellate labor court upheld the labor court decision on October 5, 1993.

4. On October 19, 1993, the petitioner filed an extraordinary writ before the appellate labor court, seeking review by the Argentine Supreme Court of his constitutional claim on the limits index. The writ was granted by the appellate court, bringing the case before the Supreme Court.[FN3] On August 8, 1994, the Supreme Court dismissed petitioner's case for "lack of autonomous grounds", essentially for failing to state a claim for which the court could grant relief.[FN4]

[FN3] Under Argentine procedural law, the *recurso extraordinario* (extraordinary writ) may be filed before a provincial appellate court to seek Supreme Court review of constitutional or federal matters (Article 14 of Law 48). If the appellate court does not grant the writ, there is another recourse, the *recurso de queja por denegación de recurso extraordinario*. This petition is filed directly before the Supreme Court (Article 285 of the National Code of Civil and Commercial Procedure).

[FN4] The "falta de fundamentación autónoma" (lack of autonomous grounds) is provided for in Article 15 of Law 48. The law requires that the grounds for relief be clearly perceived from the case, and be directly related to the constitutional or federal issue invoked. The Supreme Court can review decisions under the extraordinary writ only if this prerequisite is met.

Under Argentine law, the extraordinary writ allows access to the Court after a previous instance has been exhausted. The extraordinary nature of this writ arises from the fact that it is an exceptional recourse, restricted to federal matters, which is utilized as a means to have the Court nullify certain matters decided in a previous instance. The doctrine of that country considers that the exceptional writ

...does not operate as an instance added to those which correspond to each trial, but as a "new" instance, which is limited and partial (extraordinary), restricted to the federal matters covered in the previous sentence.

(Tratado Elemental de Derecho Constitucional Argentino, Tomo II: El Derecho Constitucional del Poder". Germán J. Bidart Campos, Editora EDIAR 1992, p. 455, par. 3).

5. In his petition, Mr. Marzioni cites two similar work related injury cases decided by the Supreme Court of Argentina. The Supreme Court declared the compensation limit index unconstitutional in those cases, resulting in higher awards. The disparity between the monetary damages awarded the petitioner and those awarded in the other cases form the basis of his claim before the Commission. The difference in monetary awards is significant: Mr. Marzioni was awarded 520 pesos for his work related claim. He contends that the award would have been 81,932 pesos had the Argentine Supreme Court followed its decisions in the two similar cases.

II. PROCEEDINGS BEFORE THE COMMISSION

6. The petition was forwarded to the Government of Argentina on April 7, 1995. The Government replied on December 12, 1995, addressing the grounds for dismissal.

7. The Government stated that there was no reasonable possibility of finding a violation of the right to equal protection by a simple comparison of different cases since the facts, decision and results are unique to each case.

8. Regarding the violation of the right to property, the Government responded that the petitioner's allegation alluded to a difference between monetary awards, and not a deprivation of the right to use and enjoy property guaranteed by the Convention.

9. The Government's reply was forwarded to the petitioner on December 18, 1995, and his observations thereto were received on February 21, 1996. In his response, the petitioner refers to other Argentine cases, stating that such claims are identical to his and that the respective rulings are contemporaneous to his case. The petitioner also alleges that the extraordinary writ presented in one of the cases is a literal transcription of the writ he filed. The petitioner points out further that the same lawyer drafted both writs. The petitioner also argues that while the Government notes the similarity of facts in the cases, it offers no proof to rebut his assertions. Finally, the petitioner claims that the monetary award is a consequence of the violation of his rights.

III. ADMISSIBILITY

10. The instant petition satisfies the formal requirements of admissibility established in Article 46 of the Convention:

- a. The petitioner has exhausted the domestic remedies available under Argentine law.
- b. The petition was lodged within the period established by Article 46 (b) of the Convention and Article 38 of the Regulations of the Commission (the petitioner was notified of the Supreme Court decision on August 8, 1994, and the petition was received by the Commission on November 7, 1994).
- c. The subject matter of the petition is not pending in another international proceeding.

11. Under Article 47(b) of the Convention, the Commission may find a petition inadmissible when it does not state facts that tend to establish a violation of the rights guaranteed by it.

12. The Commission must analyze whether the facts tend to state a violation of the human rights protected by Articles 21 and 24 of the Convention, as invoked by the petitioner.

IV. ANALYSIS

A. The alleged violation of the right to property

13. According to the facts in the file, the petitioner sued his employer in 1990 after a work accident left him with "serious health problems." He specifically refers to a medical report which shows that he is 42.5 percent disabled, a consequence of the work related accident. When the suit was filed, Law 9688 was in effect for the regulation of work accidents. Article 8 of this law established a formula limiting compensation awards, fixing the ceiling at "...the sum of money equivalent to 10 years of the minimum wage in force at the time of the accident..."

14. Argentina suffered three acute inflationary crises between 1988 and 1989. The petitioner argues that the economic changes "...not only devastated the country's economy, but pulverized the minimum wage..." The compensation for work related injuries similar to the one the petitioner suffered, applying the index, resulted in amounts that are "...completely far from reality, simply a few cents."

15. For this reason, the lawsuit filed in Argentina by the petitioner challenged the compensation limit on constitutional grounds, reserving his right to appeal before the Supreme Court of his country and ultimately before the Commission.

16. On March 2, 1993, the petitioner was notified of the labor court's decision (the court of first instance). The ruling was favorable on the damages claim, but the constitutional claim on the compensation award limits was dismissed. He appealed before the Labor Court of Appeals, which confirmed the decision of the lower court.

17. The petitioner then filed an extraordinary writ, which was granted by the Labor Court of Appeals. Consequently his case was submitted to the Argentine Supreme Court for a final decision. The Supreme Court dismissed the writ on August 8, 1994.

18. In his own words, the petitioner states that his right to property is "visibly affected", since ...the amount that ultimately is to be paid to me is nowhere near the one that would correspond to the percentage of disability that I effectively possess, ...and I should also be compensated in the amount that I am effectively entitled to and not in obviously lower sums, which result from the "blind" application of a law that is visibly contrary to elemental principles of justice.

19. The petitioner provided an explanation of the way the compensation limits index functions in his case by comparing the results using the compensation limit index to the results without applying the compensation index limits. The difference is approximately 75,000 (in pesos). The award, without applying the compensation limits index, would be the following amount (in pesos):[FN5]

-	First instance award:	26,762.977
-	Updated by the consumer price index from June 1990 until April, 1 1994	81,932.00

[FN5] Argentine peso is equivalent to one U.S. dollar.

20. To apply the formula, the awarded amount (26,762.977) is multiplied by the June 1990 inflation coefficient (3.0614 - corresponding to the month when the accident happened). Additionally the petitioner points out that the interest on the updated amount must also be added to arrive at the final amount of an award.

21. When the limit is applied to the amount awarded by the first instance court, the amount is reduced to 520 pesos. Following Article 8 of Law 9688 and multiplying the minimum wage in effect at the moment the illness was discovered (2 pesos), by 13 monthly salary payments (the total yearly salary plus the aguinaldo, or 13th salary), 26 pesos, then multiplied by 20 is 520 pesos.

22. The petitioner further explains that the large disparity in results reflects the effects of the so-called "hyperinflation" process in Argentina, when the unadjusted minimum wage of 2 pesos depreciated daily. The compensation awards depreciated because the respective awards were based on the "unrealistic" minimum wages.

23. The Government states that the petitioner's allegation is, in essence, a matter of monetary differences and not a deprivation of property. Therefore, the Government argues that

...it may not be assumed that the Commission is a national fourth instance before which it is possible to present and resolve differences in the amounts awarded by the Judiciary Branch in application of the law. In this sense, it may be recalled that it is not the function of the Inter-American Commission of Human Rights to act as a quasi-judicial fourth instance and review the holdings of the domestic courts of the OAS member States (Resolution 29/88, Case No. 9260, IACHR Annual Report 1987-1988, p. 161, par. 5.)

24. In his reply, the petitioner points out that the Government's assertion with respect to the monetary award differences ignores the fact that he was affected by a severe disability causing him to retire. He denies any intent to use the Commission as a "fourth instance", and says that he "believes firmly" that the present case arises from the violation of his rights, which he considers sufficiently proven. With respect to the alleged violation of his right to property, the petitioner affirms that "the amount (of the award) is a consequence of the violation of my rights".

25. The right to property is guaranteed by Article 21 of the Convention, which states:

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

3. Usury and any other form of exploitation of man by man shall be prohibited by law.

26. The common legal meaning of the word property denotes "the right to dispose of something in every legal way, to possess it, use it, and to exclude everyone else from interfering with it."[FN6] Property has also been defined as "that dominion or indefinite right of use, control, and disposition which one may lawfully exercise over particular things or objects."[FN7]

[FN6] Black's Law Dictionary, West Publishing Co., 1968. p. 1382.

[FN7] Ballentine's Law Dictionary, The Lawyers Co-operative Publishing Company, Rochester, N.Y. 1969, p. 1009.

27. Article 17 of the Argentine Constitution guarantees the right to property in these terms:

Property cannot be violated, and no inhabitant of the Nation may be deprived of it, except by virtue of a judicial sentence based on the law.

28. Summing up, the petition refers to the judicial application of a domestic law that regulates the amounts of compensation awards in labor accidents. The facts show that the possibility of seeking an additional award was precluded when the Argentine Supreme Court dismissed the petitioner's extraordinary writ.

29. The definitions quoted above give a few of the various connotations of property. The concept of property, however, cannot be extended to include a potential award, or to the mere possibility of obtaining a favorable decision in litigation that involves monetary awards. The information he supplied does not show that he was damaged in or dispossessed by the State of the use, enjoyment or interest in an object or thing to which he had acquired legal rights under domestic law.

30. The Commission accordingly concludes that a potential award of damages sought in the domestic courts does not constitute property within the meaning of Article 21 of the Convention.

B. The alleged violation of the right to equal protection of the law

31. The petitioner also alleges that his right to equal protection was violated when the Argentine Supreme Court dismissed his extraordinary writ for lack of autonomous grounds. The petitioner's claim is summarized in his own words as follows:

The Supreme Court of Argentina, when it dismissed the extraordinary writ filed, has violated my right to equal protection of the law, guaranteed by the American Convention on Human Rights in Article 24, since on recent decisions involving identical issues, it has taken the opposite view.

32. The petitioner refers to the case of "Vega, Humberto Atilio c/ Consorcio de propietarios del Edificio Loma Verde y otro s/accidente. Ley 9688" handed down by the Supreme Court on December 16, 1993. In its decision, the Supreme Court stated that the application of Resolution 7/89 of the National Minimum Wage Council resulted in

...the destruction of the real economic meaning of the compensation credit, affecting property as protected in article 17 of the Fundamental Law (the Constitution)...That in analogous cases this Court has decided to declare unconstitutional certain norms which may not be ostensibly incorrect at first, but become indefensible from a constitutional point of view, because the principle of reasonableness requires that legal precepts remain coherent with constitutional rules during the time they are in force...

33. In the same ruling, the Supreme Court concluded that Resolution 7/89 was unconstitutional. Consequently, it ordered the lower court to issue a new decision in the case of Mr. Vega.

34. The petitioner also cites the cases of Lorenzo Aguilar and Jacinto Alfonzo, who sued Autolatina Argentina (Marzioni's employer) for compensation for injuries in work accidents. In the final rulings, issued on February 22, 1994 and August 18, 1994 respectively, the Argentine Supreme Court followed the jurisprudence of "Vega."

35. The petitioner notes that, besides "the identical subject matter", all these rulings were contemporaneous to the decision in his case, issued in July 1994. To further support his claim, he mentions that the attorney who filed and litigated his case also handled the Aguilar and Alfonzo cases, and that "therefore, the steps followed in these three cases were the same." He concludes by saying that

...I am overcome by a profound sense of juridical insecurity, since the Judiciary Branch has incurred in an unequal treatment of rights, under the same conditions.

36. Autolatina Argentina, the employer, was ordered to pay work accident indemnities in all the cases cited, including the one filed by the petitioner. However, as a consequence of the declaration of unconstitutionality of Resolution 7/89 in the other two cases, the courts did not apply the compensation limits in arriving at the damages awarded, which, presumably, were much greater, according to the formula indicated by the petitioner, than the final amount awarded petitioner on his claim.

37. The petitioner, however, does not provide sufficient information to establish the alleged identity of the matters at issue in all three cases. To the contrary, the "lack of autonomous grounds" constitutes a substantial difference which is not explained or accounted for by the petitioner. He restricts this part of his claim to affirming that the only difference between his extraordinary writ and the one filed in the "Aguilar" case is that the latter was printed by a computer and the former was typed.

38. The Commission, in these circumstances, cannot review and compare the judicial rulings in the other cases in order to verify whether, in this case, the rejection of the extraordinary writ has been arbitrary.

39. It must be stressed, however, that if the facts in the file had shown evidence of irregularities in the judicial proceedings, or some evident form of discrimination, the Commission would be fully competent to review this case in order to determine whether the petitioner's human rights were violated.

40. The right to equal protection of the law set forth in Article 24 of the Convention, states:

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

41. With regard to the grounds on which discrimination can be claimed, the Inter-American Court of Human Rights has stated:[FN8]

It follows that there would be no discrimination in differences of treatment of individuals by a State when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review.

[FN8] Advisory Opinion OC-4/84 of 19 January 1984, par. 57.

42. The practice of the European Commission of Human Rights is consistent in this respect. It has stated in many decisions that not all differences in treatment are prohibited in the exercise of the rights and freedoms protected by the European Convention, and that equality of treatment is violated "...only where the difference in treatment has no objective and reasonable justification." [FN9]

[FN9] European Court of Human Rights, judgment of 9 February 1967, Series A No. 5, par. 38.

43. The petitioner has not been able to supply information to prove that there was no "objective and reasonable justification" for the different treatment. The fact that he was not awarded the same amount as the other plaintiffs, in itself, does not constitute discrimination. In effect, the right to equal protection of the law cannot be assimilated to the right to equal outcome in judicial proceedings involving the same subject matter. If such were the case, the Argentine Supreme Court would have to grant extraordinary writs to every plaintiff who invokes the same rules, or who presents similar arguments by the same attorney, without regard to the particular circumstances of each case. Such a situation would be juridically absurd and unreasonable.

44. In the absence of evidence that might support a claim of violation of the right to equal protection of the law, the Commission finds that the petitioner's claim is ill-founded with respect to Article 24 of the Convention.

C. The possible violation of the right to a fair trial and judicial protection

45. The analysis of the Commission leads to the conclusion that the violations alleged by the petitioner are not supported by the facts. However, since his claim makes frequent references to the judicial proceedings in his country that supposedly consolidated the violations, the Commission shall examine if the facts in the file could tend to portray a violation of Articles 8 (right to a fair trial) and 25 (right to judicial protection).

46. The petitioner does not contest the facts surrounding the judicial proceedings. The procedural history of the Argentine judicial treatment of the petitioner's claim does not evidence a due process violation. The petitioner had access to a labor court of first instance and received

full and prompt recourse resulting in an unfavorable decision. The petitioner appealed to the labor appeals court of second instance, received an unfavorable ruling which prompted the petitioner to file an extraordinary writ before the labor appeals court. The writ was granted and subsequently dismissed by the Supreme Court of Argentina. The facts do not support the allegation that a due process violation has occurred. The right to a hearing was respected and carried out in a reasonable period of time. The petitioner does not claim a lack of competence, independence or impartiality of the court in any instance.

47. The judicial protection afforded by the Convention includes the right to fair, impartial and prompt proceedings which give rise to the possibility, but never the guarantee, of a favorable outcome. A negative result in a fair adjudication in itself does not constitute a violation of the Convention. Accordingly, the Commission cannot find a violation of either Article 8 or Article 25.

D. Competence of the Commission: The "fourth instance formula"

48. The international protection provided by the supervisory bodies of the Convention is of a subsidiary nature. The Preamble to the Convention is clear in this respect, when it refers to the reinforcement or complementarity of the protection provided by the domestic law of the American states.

49. The rule of prior exhaustion of domestic remedies is based on the principle that a defendant state must be allowed to provide redress on its own and within the framework of its internal legal system. The effect of this rule is "to assign to the jurisdiction of the Commission an essentially subsidiary role." [FN10]

[FN10] Resolution No. 15/89, Case 10.208 (Dominican Republic), April 14, 1989. IACHR Annual Report 1988-1989, p. 100 par. 5.

50. The nature of that role also constitutes the basis for the so-called "fourth instance formula" applied by the Commission, consistent with the practice of the European human rights system. [FN11] The basic premise of this formula is that the Commission cannot review the judgments issued by the domestic courts acting within their competence and with due judicial guarantees, unless it considers that a possible violation of the Convention is involved.

[FN11] The European Convention on Human Rights, by Frede Castberg. A. W. Sijthoff-Leiden - Oceana Publications Inc. Dobbs Ferry, N.Y. 1974. pp.63-64.

51. The Commission is competent to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of the right to a fair trial, or if it appears to violate any other right guaranteed by the Convention. However, if it contains nothing but the allegation that the decision was wrong or unjust in itself, the petition must be

dismissed under this formula. The Commission's task is to ensure the observance of the obligations undertaken by the States parties to the Convention, but it cannot serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction. Such examination would be in order only insofar as the mistakes entailed a possible violation of any of the rights set forth in the Convention.

52. The "fourth instance formula" was developed by the Commission in the case of Clifton Wright, a Jamaican citizen who alleged that judicial error resulted in a death sentence against him. The domestic system had no process of appeal of judicial error, leaving Mr. Wright without a recourse. In that case, the Commission determined that it could not function as a "quasi-judicial fourth instance" with the power to review the holdings of the courts of OAS member states. However, the Commission found the facts in the petitioner's favor and determined that the petitioner could not have committed the crime. The Commission thus found that the Government of Jamaica had violated the petitioner's right to judicial protection, a violation of his fundamental rights, because the domestic legal process did not allow for a correction of judicial error.

53. The Commission issued Resolution No. 29/88 of September 14, 1988 in the Wright case. The following considerations, relevant to the instant case, were stated:

5. ...It is the function of the Inter-American Commission on Human Rights to act on petitions presented to it pursuant to Articles 44 to 51 of the American Convention as regards those States that have become parties to the Convention.

6. ..The Commission's role is to investigate whether a government action violated a right of the petitioner's which is protected by the Convention.[FN12]

[FN12] Case 9260 (Jamaica), IACHR Annual Report 1987-1988, p. 161.

54. Another precedent was established in Report No. 74/90 of April 4, 1990. The petitioner, Mr. Lopez-Aurelli, an Argentine worker, was arrested and unlawfully imprisoned on charges of committing politically motivated offenses in November 1975. He claimed that the trial was conducted without minimum legal safeguards. Further, Mr. Lopez-Aurelli claimed that the trial judges were not impartial and independent of the military dictatorship that ruled Argentina from 1976 to 1983.

55. In that case, the Commission determined that it was not competent to decide whether domestic law had been applied correctly by the domestic courts.[FN13]

However, the Commission found that the Argentine judiciary had failed to review the proceedings once a democratic government had been installed and had ratified the Convention. The Commission concluded that such a denial of due process constituted a violation of López Aurelli's rights under Articles 8.1 and 25.1 of the Convention.

[FN13] IACHR Annual Report 1990-1991, p. 75, par. 20.

56. These decisions offer examples of the scope of the Commission's competence with respect to the review of domestic decisions. The Wright and López Aurelli cases constitute exceptions to the "fourth instance" formula, and they may be used to illustrate the requisites a petition must meet in order to be reviewed by the Commission.

57. The jurisprudence of the European Commission of Human Rights is consistent with this rule, as stated in the admissibility decision in the case of Alvaro Baragiola v. Switzerland:

The Commission recalls that it is, in the first instance, for the national authorities, and in particular the courts, to interpret and apply domestic law.

The Commission recalls that what is decisive is not the subjective apprehensions of the subject concerning the impartiality required of the trial court, however understandable, but whether, in the particular circumstances of the case, his fears can be held to be objectively justified.[FN14]

[FN14] Application No. 17625/90, Yearbook of the European Convention on Human Rights 1992, p. 103, par. 1, and pp. 105-106, respectively.

58. The European Commission held a similar view when it rejected petitions based on alleged incorrect applications of domestic law, or improper evaluation of facts or evidence. The European Commission has repeatedly stated that it was not competent to review decisions of the domestic courts unless a violation of the European Convention is involved.[FN15]

[FN15]...whereas theretofore it (the Commission) cannot take cognizance, in examining the admissibility of an Application, of alleged errors of fact or of law committed by the domestic courts of such States save insofar as such errors would appear to have resulted in violation of the rights and freedoms specifically set forth in the Convention...

Application No. 458/59, Judgment of March 29 1960, Yearbook of the European Convention on Human Rights, Vol. 3, 1960, p. 236.

The Commission therefore finds that the regional Court based its judgment on the assessment of the evidence it had before it and drew its conclusions therefore. Whether these conclusions involved an error of fact or law is an issue which the Commission cannot determine, as it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention...

Application No. 23953/94, September 1995, Decisions and Reports, European Commission of Human Rights, 82-A, p. 254.

Insofar as the applicants complain of errors of fact and law committed by the Brussels Court of Appeal, the Commission recalls that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention.

In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts...

Application No. 10785/84, July 1986, European Commission of Human Rights, D.R., 48, Par. 150.

59. Especially relevant to the instant petition is the precedent set in the case of Gudmundur Gudmundsson. Mr. Gudmundsson, an Icelandic citizen, presented an application before the European Commission claiming that a special property tax imposed by law was a violation of his right to property and to equal protection of the law. In that case, the European Commission found that the text of the disputed law was consistent with the "permissible interferences" mentioned in Article 1 of the Protocol to the European Convention, and that the alleged discrimination was merely a differential treatment with respect to co-operative societies and joint stock companies. Finally, it concluded that the petition was manifestly ill-founded and restated the "fourth instance formula" in these terms:

...whereas errors of law or fact, including errors as to the question of the constitutionality of acts passed by a national parliament, committed by the domestic courts, accordingly concern the Commission during its examination of the admissibility of the application only insofar as they appear to involve the possible violation of any of the rights and freedoms limitatively listed in the Convention.

...an examination of the case as it has been submitted including an examination made ex officio does not disclose any apparent violation of the rights and freedoms set forth in the Convention.[FN16]

[FN16] Application No. 511/59, Decision of 20th December 1960. Yearbook of the European Convention on Human Rights 1960, p. 426.

60. In democratic societies, where the courts function according to a system of powers established by the Constitution and domestic legislation, it is for those courts to review the matters brought before them. Where it is clear that there has been a violation of one of the rights protected by the Convention, then the Commission is competent to review.

61. The Commission has full authority to adjudicate irregularities of domestic judicial proceedings which result in manifest violations of due process or of any of the rights protected by the Convention.

62. For example, if Mr. Marzioni presented information establishing that the trial was not impartial because the judges were corrupt, or were biased for racial, religious, or political reasons against him, the Commission would be competent to examine the case under Articles 8, 21 and 25 of the Convention.

63. With respect to certain matters of procedure relevant to this case, the Inter-American Court of Human Rights has stated:

The Convention sets out the prerequisites a petition or communication must meet in order to be found admissible by the Commission (Article 46); it also sets out the cases of inadmissibility (Article 47) which may be determined once the proceeding has been initiated (Article 48(1)(c)). Regarding the form in which the Commission should declare inadmissibility, the Court has already pointed out that this requires an express act, which is not required in a finding of admissibility.[FN17]

[FN17] Inter-American Court of Human Rights, Advisory Opinion OC-13/93 of July 16, 1993. Certain Attributes of the Inter-American Commission on Human Rights (Articles 41, 42, 46, 47, 50 and 51 of the American Convention on Human Rights). Requested by the Governments of the Republic of Argentina and the Oriental Republic of Uruguay. page 11, paragraph 40.

64. The practice of the Commission, consistent with the guidelines of OC-13/93, has been to make a preliminary analysis of the petitions brought before it in order to ascertain whether the formal and essential requisites of the Convention and the Regulations have been met.

65. The Inter-American Court of Human Rights has established that the finding of inadmissibility of a petition or communication by the Commission precludes a decision on the merits.[FN18] The Court has also stated that such "procedural impossibility"

...does not in any way detract from the Commission's exercise of other attributes which Article 41 confers upon it in extenso. In any case, the use of the latter attributions, for example, those contemplated in paragraphs (b), (c), and (g) of that norm, must be by means of acts and procedures other than the procedure governing the examination of individual petitions or denunciations based upon Articles 44 through 51 of the Convention...[FN19]

[FN18] Idem, paragraph 42.

[FN19] Idem, paragraph 44.

66. The Court determined in the same Advisory Opinion that a state accused of violating the Convention may exercise its right of defense before the Commission by arguing any of the provisions of Articles 46 and 47. If the Commission considers the argument to be successful, it may decide to interrupt the proceeding and close the file.[FN20]

[FN20] Idem, paragraph 41, page 11.

67. In the instant case, the Government asserted in its reply to the Commission's request for information that the requisites under Article 46(1)(a) have been met by the petitioner, which would make the case formally admissible. However, they have affirmed that the petition was ill-founded since the facts failed to establish a violation of the petitioner's right to equal protection of the law or his right to property.

68. It may be pointed out that European Commission has followed the practice of declaring petitions "inadmissible as being manifestly ill-founded only when an examination of the file does not disclose a prima facie violation" of the European human rights standards.[FN21]

[FN21] De Becker case, Application No. 214/56, Decision of 9th June, 1958. Yearbook of the European Convention on Human Rights 1958-59, p.254.

69. That practice has been explained in the following terms:

...However, when the Commission declares an application to be manifestly ill-founded, in actual fact it pronounces on the merits, on the ground of a prima facie opinion on the alleged facts and the legal grounds put forward. On the other hand, the drafters of the Convention have indeed intended to entrust the Commission with the task of acting as a screen for the great number of applications to be expected. The competence of the Commission to exclude manifestly ill-founded applications from the further procedure would seem to fit in with this aim of procedural economy.[FN22]

[FN22] Theory and Practice of the European Convention on Human Rights, P. Van Dijk, G.J. van Hoof, p.104.

70. With respect to the instant case, the violations alleged by the petitioner have been examined in light of the text of the Convention and other international human rights standards, as well as the practice followed and established by the Commission, the Inter-American Court, and the bodies of the European human rights system. The petitioner's claims were also scrutinized under Articles 8 and 25, to verify the possibility of a due process violation.

71. Ultimately, a review of the instant petition and a subsequent decision on the merits of the case by the Commission would effectively require it to act as a quasi-judicial fourth instance, or appellate court, with respect to the final decision handed down by the Argentine judiciary. The Commission lacks the competence required to carry out such a proceeding, as has been stated throughout this report.

V. CONCLUSION

72. The Commission concludes that this case meets the requisites for formal admissibility under Article 46 of the Convention.

73. However, an examination of the available information also leads the Commission to conclude that the petition does not disclose any apparent violation of the right to property (Article 21) or the right to equal protection of the law (article 24), invoked by the petitioner. The same can be said in respect of the right to a fair trial (Article 8) and judicial protection (Article 25).

74. Given the foregoing considerations, the Commission finds the case inadmissible under Article 47(b) of the Convention, and decides to immediately publish this report, and to include it in its Annual Report to the General Assembly of the OAS.