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Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 6/98; Case 10.382  
Session: Ninety-Eighth Regular Session (17 February – 6 March 1998)  
Title/Style of Cause: Ernesto Maximo Rodriguez v. Argentina  
Doc. Type: Decision  
Decided by: Chairman: Carlos Ayala Corao;  
First Vice Chairman: Robert K. Goldman;  
Second Vice Chairman: Jean Joseph Exume.  
Dated: 21 February 1998  
Citation: Maximo Rodriguez v. Argentina, Case 10.382, Inter-Am. C.H.R., Report No. 6/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)

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1. On May 25, 1989, the Inter-American Commission on Human Rights (hereafter "the Commission") received a complaint submitted by Ernesto Máximo Rodríguez (hereafter "the petitioner") against the Republic of Argentina (hereafter "the State" or "Argentina"), alleging violation of the following rights protected by the American Convention on Human Rights (hereafter "the American Convention"): the right to a hearing, with due guarantees and within a reasonable time, by a competent tribunal, for the determination of his rights and obligations (Article 8(1)); the right to appeal a judgment to a higher court (Article 8(2)(h)); the right to judicial protection (Article 25); and, if the violation of the rights previously cited is substantiated, the right to have his honor respected and his dignity recognized (article 11); and the right to property (Article 21).

## I. FACTS ALLEGED

2. On June 22, 1987, the National Court of First Instance in Civil and Commercial Matters No. 2 (the Juzgado Nacional de Primera Instancia en lo Especial Civil y Comercial No. 2, hereafter "the court of first instance"), in the proceedings entitled "Banco Latinoamericano de Inversión S.A. vs ELCER S.A. re mortgage foreclosure", ordered that company, and its attorney, the petitioner, to pay a fine equal to ten per cent (10%) of the amount of final settlement of the debt involved in the proceedings, under terms of Articles 551 and 598[FN1] of the National Code of Civil and Commercial Procedures (the Código Procesal Civil y Comercial de la Nación). According to the complainant, this amount was equal to US\$ 10,000.

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[FN1] Article 551 of the Code of Civil and Commercial Procedure reads:

An auction order may only determine that execution should proceed, in whole or in part, or that it is rejected. In the first case, if the executed (the person whose property has been attached) has brought unreasonable litigation or has obstructed the normal course of justice with manifestly

improper arguments, or has unduly delayed proceedings in any manner, he shall be liable to a fine in favor of the executant (the person foreclosing), in an amount to be fixed between 5% and 30% of the size of the debt, depending on the degree to which his conduct has delayed proceedings.

Article 598 of the same Code provides:

If the executed has caused unnecessary delay in carrying out the auction order, the judge shall impose a fine, under the terms of Article 551, based on the amount of the settlement approved.

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3. That penalty was imposed, according to the judgment, because "the attitude taken by the executed has been aimed at delaying compliance with the (...) execution" and because "there is no doubt that attitudes such as that of the executed have caused unnecessary legal expenses and damages to the other party, by requiring the preparation of useless submissions and delaying the proceedings". The judge considered that such conduct should be discouraged and duly punished.

4. On August 5, 1987, the petitioner filed an appeal [recurso de apelación] against the ruling of the court of first instance, which was granted by the judge of first instance for hearing by the National Court of Appeals in Civil and Commercial Matters (the Cámara Nacional de Apelaciones Especial en lo Civil y Comercial, hereafter "the Court of Appeals").

5. On October 2, 1987, the Court of Appeals declared that the judgment could not be appealed, because the amount challenged did not support such a writ, according to the provisions of Article 242 of the Code of Civil and Commercial Procedure, in concordance with Resolution 130/87 of the Supreme Court of Justice (the Corte Suprema de Justicia de la Nación, hereafter "the Supreme Court").[FN2]

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[FN2] Article 22 of the Code of Civil and Commercial Procedure, valid at the time the recourse of appeal was sought by the petitioner, provides as follows:

(...) No appeal may be brought against judgments and other resolutions of any kind that are issued in proceedings in which the value in question does not exceed the sum of one million pesos (\$1,000,000). That amount shall be determined taking account only of the capital amount of the claim, adjusted as appropriate to the date of judgment, using the official index of changes in non-agricultural wholesale prices. That sum shall also be adjusted, using the indices for the month of June 1990, and the latest available at the time the appeal is brought. This provision shall not apply to proceedings that involve eviction from properties.

The Resolution in question adjusted the amount referred to in the preceding article.

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6. The petitioner filed a writ to have the previous ruling overturned (recurso de revocatoria), arguing that the Court of Appeals had erred in assessing the value challenged in the appeal. After performing some calculations, the petitioner claimed to show that either of the two amounts, the inflation-adjusted value of the claim or, alternatively, the amount of the penalty, was greater than the amount required under Article 242 cited above, and that the judgment could therefore be appealed.

7. On February 5, 1987, the Court of Appeals decided against the petitioner, declaring that the writ of revocation was inadmissible, because the judgment was a simple ruling, and stating that in any case the decision was issued consistent with the law. The petitioner filed an extraordinary writ (recurso extraordinario) before that tribunal, challenging the ruling of October 2, 1987. He based his claim on the argument that the amount of the penalty implied that it was appealable, pursuant to Article 242.

8. On February 8, 1987, the extraordinary writ was rejected. The essential argument of the Court of Appeals was that the judgment challenged, being a question of fact and common law and based on a simple algebraic calculation, was not susceptible to extraordinary jurisdiction, and that, moreover, the discrepancy was based on an interpretation of standards that were not federal in nature.

9. Subsequently, the petitioner appealed (recurso de queja) the denial of extraordinary writ to the Supreme Court. He argued, in general terms, that his right to defend himself in court had been violated, by denying him review of the penalty at the second instance.

10. On September 6, 1988, the Supreme Court rejected that appeal, on the grounds that it was untimely and premature, "... since the definitive judgment, as referred to in Article 14 of Law 48, is the one that denied reversal, and not the one against which the [extraordinary] federal appeal has been brought." [FN3]

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[FN3] Article 14 of Law 48 provides that only definitive judgments issued by superior provincial courts may be appealed to the Supreme Court, and sets the substantive parameters for such recourse.

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11. Subsequently, the petitioner submitted to the Supreme Court an appeal for revocation and clarification (recurso de revocatoria y aclaratoria) against the ruling of September 6, 1988, issued by that same court. On November 24, 1988, the Supreme Court declined to grant the revocation as contrary to law, considering that the grounds underlying the challenged decision had not been refuted, and it declared inadmissible the petition for clarification as not meeting the stipulations of Article 166 of the Code of Civil and Commercial Procedure, [FN4] and as being unrelated to the Court's previous decision.

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[FN4] Article 166 of the Code of Civil and Commercial Procedure provides, as a general rule, that once a judgement is issued, it exhausts the competence of that court. Nevertheless, there are some exceptions to this rule.

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12. The petitioner bases his complaint to the Commission on the grounds that he was denied his right to appeal a judgment before a higher court or tribunal. He claims that the refusal of the judge of second instance to recognize his appeal was due to an error in the calculation of the

amount of the fine being challenged, pursuant to Article 242 of the Code of Civil and Commercial Procedure.

## II. PROCEEDINGS BEFORE THE COMMISSION

13. The Commission sent the petition to the State on June 13, 1989. The State responded on September 12, 1989, asking that the complaint be rejected because internal remedies had not been exhausted.

14. The State's response was sent to the petitioner on September 20, 1989. He, in turn, responded on October 19, 1989, maintaining that he had indeed exhausted all internal remedies.

15. On November 1, 1989, the petitioner's observations were transmitted to the State. In its response of January 12, 1990, the State claimed that internal remedies had still not been exhausted.

16. On October 25, 1993, the Commission requested additional information from the petitioner, because the latter had not responded to the transmission of the State's response, and three years had elapsed since his last communication. On December 20, 1993, the petitioner replied, reiterating the contents of his original complaint.

17. In a communication of May 3, 1994, the State responded to the observations of the petitioner, and informed the Commission that internal remedies available under Argentine law had now been exhausted.

18. The petitioner responded to the Commission's request for information, in a letter dated June 28, 1994, once again setting forth the previous arguments.

19. The State responded on August 11, 1994, to the petitioner's observations, which had been transmitted to it by the Commission, asking that the complaint be declared inadmissible by virtue of Article 47.b of the American Convention.

20. On September 19, 1994, the Commission asked the petitioner to submit in writing his observations on the letter sent by the State on August 11, 1994. The Commission repeated this request on January 18, 1995.

21. On February 8, 1995, the petitioner submitted his final observations, insisting on the position he had earlier taken before the Commission.

## III. POSITION OF THE PARTIES

### A. The petitioner

22. In his first observations on the State's response, the petitioner indicated that the extraordinary writ referred to by the State was that submitted by the company he had formerly represented, ELCER S.A., against the fine in question. He argued that, even if the Supreme

Court were to rule in favor of the extraordinary writ brought by ELCER S.A., the fine against him remained in force. He insisted, moreover, on the need for preventive measures on the grounds that the authorities could at any time impose the fine.

23. The petitioner subsequently stated that the penalty imposed upon him had not yet been enforced, and he attributed this fact to the Commission's intervention, and to the suspension of the time limits in the ruling of the court of first instance. He added that the time that had elapsed without enforcement of the penalty against him implied, by itself, a violation of the minimum judicial guarantees.

24. In responding to the State's third communication, the petitioner repeated that he had already exhausted internal remedies when he submitted his first petition to the Commission. He insisted that he had been unable to appeal the penalty that had been imposed on him, and that no Court had ruled on the substance of his claim. He stated that he was not challenging the fine itself, but rather the impossibility of appealing it. He argued that it was not true that the remedies available to him were those contained in ordinary legislation, nor that those who denied him such remedies had acted on the basis of legal norms.

25. In his final observations to the Commission, the petitioner maintained that his rights could not be affected by an appeal to which he was not a party, an appeal that was supposedly now pending before the Court, and of which he had no knowledge. He insisted that adequate remedies should be made available.

#### B. The State

26. The State contested the complaint, and asked that it be declared inadmissible on the grounds that internal legal remedies had not been exhausted, since at that moment an extraordinary writ was being heard before the Supreme Court. It also maintained that all of the writs and actions brought by Mr. Ernesto Máximo Rodríguez were evidence that "there had been no injury to him in terms of preventing him access to the remedies available under internal jurisdiction".

27. In its second communication to the Commission, the State declared that the penalty had been imposed on both the petitioner and on the company he represented, thereby giving rise to a necessary or quasi-necessary *litisconsorcio* [joint litigation]. In the State's view, this implied that a decision affecting ELCER S.A. must also affect the complainant, and vice versa, for which reason, since an appeal was pending from the company represented by the complainant, it could not be said that internal remedies had been exhausted. Nonetheless, the State confirmed that, on October 31, 1989, the Supreme Court had declared out of order the appeal brought by ELCER S.A., which was the final remedy that, according to the State's first response to the Commission, was still pending decision.

28. In addition, the State claimed that the petitioner had failed to make timely use of the remedies available to him under Argentine law to appeal the decisions in question. After enumerating the writs and appeals brought by the petitioner and his client, it based its argument on the fact that the appeals brought by ELCER S.A., the petitioner's client, were premature and

concerned a decision that was not definitive, and that they were out of order because they had not articulated the respective remedy in due time. For these reasons, the State considered that there had been no violation of Article 8 of the American Convention.

29. With respect to the alleged violation of Article 25 of the American Convention, the State maintained that under Argentine legislation there are remedies that protect against the violation of fundamental rights, and that the petitioner had not sought such remedies in a timely and proper manner. It added that the right to access to judicial remedies must not be confused with any presumption of a favorable outcome. The State also insisted on the legality of the reasons that had led the judge of first instance to impose the penalty on the complainant and his client.

30. Subsequently, the State maintained that the judge of first instance had issued an interlocutory ruling, rather than a definitive decision, in imposing the fine on the defendant, ELCER S.A., and on its lawyer, the petitioner in the present case. It related the appeals brought by the petitioner, and reiterated that internal remedies had already been exhausted, consistent with the generally recognized principles of international law, and stated that the requirements of Article 46.1.a of the American Convention had thereby been fully satisfied.

31. The State pointed out that the remedies available to the petitioner were those provided under ordinary domestic legislation, that the negative rulings were based on legal norms, and that there had been no discrimination of any kind against the petitioner, but rather that it was he who, by his own actions on several occasions, had frustrated the chances of his appeals. It asked the Commission to declare his complaint inadmissible, pursuant to the provisions of Article 47 of the American Convention, and Article 41 of its Rules of Procedure.

32. In its final communication to the Commission in this case, the State noted that even if, for purposes of argument, it were accepted that the claim of pending appeal, decided by the judgment of October 31, 1989, as made by the State in its first submission, was out of order, since that appeal had been brought by ELCER S.A, and not by the petitioner, this would not invalidate the other appeals that had been brought. It argued that the decision of the Court was effective with respect to the entirety of the judgment that imposed the fine, and that it affected both the party and its lawyer. The State insisted on the existence of a necessary *litisconsorcio* between the client and its attorney.

33. The State added that the Supreme Court's decision on the extraordinary writ brought by ELCER S.A. was still pending, which meant that the judgment imposing the penalty on that company and on the petitioner was not yet confirmed. It stated that in order to be legally acceptable, the extraordinary writ should have been brought against the judgment of February 5, 1988, which denied the reversal sought, and not against the judgement of October 2, 1987, which declared the appeal out of order. Subsequently, it reiterated that the petitioner had indeed had access to internal remedies, and that he had been able to exhaust them. Finally, it reiterated its request that the Commission to declare the petition inadmissible, on the basis of Article 47 of the American Convention and Article 41 of its Rules of Procedure.

#### IV. ADMISSIBILITY

A. Requirements of Article 46

34. Article 46 of the American Convention sets out the requirements for admissibility of a complaint. The Commission deems it appropriate to refer, first, to the clearly contradictory arguments the State has made with respect to the exhaustion of internal remedies.

35. In its first observations submitted to the Commission on September 12, 1989, the State maintained that the petitioner had not exhausted the remedies of internal jurisdiction and in support of this argument noted the existence of an appeal pending before the Supreme Court. However, in its subsequent communication, submitted to the Commission on March 26, 1990, the State declared that appeal had already been decided, while arguing that the complainant had not made timely and proper use of the appeal remedies available to him under Argentine domestic law.

36. In a subsequent communication dated May 3, 1994, the State reiterated that the remedies available under internal jurisdiction had already been exhausted, and that they satisfied the requirements of Article 46.1.

37. Despite this, on August 11 1994 the State, in its final observations to the Commission, noted that the decision imposing the penalty against the petitioner and his client was not a firm judgment, i.e. that the extraordinary writ brought by ELCER S.A. was still pending before the Supreme Court.

38. The State maintained in that same submission that the petitioner had indeed had access to the remedies of internal jurisdiction, and had been able to exhaust them.

39. From the foregoing, it appears that the State ignored what it had already stated in previous submissions, including the last one, with reference to the petitioner's exhaustion of domestic remedies. The State cannot, by virtue of the principle of estoppel, argue first that the remedies of internal jurisdiction have been exhausted, and then maintain the contrary. According to the jurisprudence of the Inter-American Court of Human Rights, such conduct falls under the rule of non concedit venire contra factum proprium.[FN5]

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[FN5] In the case of Neira Alegría and Others, Preliminary Exceptions, Ruling of December 11, 1991, Series C No. 13, para. 29, the Inter-American Court of Human Rights referred in the following terms to a contradiction that the Government of Peru had committed:

(...) According to international practice, when one party to a dispute has adopted a determined position that redounds to its own benefit, or to the prejudice of the opposing party, it cannot then, by virtue of the principle of estoppel, assume another stance that is contradictory to the first. The second position is governed by the rule of non concedit venire contra factum proprium.

While the Court was referring to initial arguments in favor of the Government or to the disadvantage of the opposing party, the same principle applies when there are contradictory statements, in particular when a Government argues something in favor of the opposing party and then tries to deny it.

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40. Consequently, since the State finally renounced the exception provided for in Article 46(1)(a), the Commission finds that the petitioner did indeed exhaust the remedies available under domestic jurisdiction.[FN6] This finding is without prejudice to the Commission's subsequent ability to examine the adequacy of those remedies in connection with the petitioner's substantive claims alleging violations of Articles 8 and 25 of the American Convention.[FN7]

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[FN6] Although it may be understood, pursuant to Article 46.1, that the Commission, by sending the State a copy of the complaint, is seeking information on the elements of judgment that will allow it to assess by itself whether internal legal remedies have been exhausted, it is clear that a State is, in principle, in a better position than an international body to determine whether its own remedies have been exhausted.

[FN7] On repeated occasions, the Inter-American Court of Human Rights has declared that the rule of prior exhaustion of internal legal remedies is a requirement that works to the benefit of the State, which may decline to insist upon it, either tacitly or explicitly: *Fairén Garbí v. Solís Corrales*, Preliminary Exceptions, Judgment of June 26, 1987, Series D No.2, para 87) and *Gangaram Panday*, Preliminary Exceptions, Judgment of December 4, 1991, Series C No. 12, para. 38. Nonetheless, the Commission considers that the fact of no dispute over the matter of the exhaustion of internal remedies does not prevent it from examining whether such remedies, even if they have been exhausted, are adequate to guarantee other rights protected by the Convention and, in particular, the right to judicial guarantees enshrined in Article 8.1 thereof.

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41. The complaint thus meets the requirements of admissibility contemplated in Article 46 of the American Convention and in Article 32 of its Regulations:

- i. The petitioner has exhausted remedies under internal jurisdiction.
- ii. The petition was submitted within the time limits prescribed by Article 46(b) of the American Convention and Article 38 of the Commission's Regulations.
- iii. The subject of the petition is not pending before any other international proceedings.

B. Requirements of Article 47

42. Article 47 of the American Convention defines those cases in which the Commission must declare a petition inadmissible. Clause "b" ["2"] of that Article refers to cases where the petition fails to state facts that tend to establish a violation of the rights guaranteed by the Convention, even where the requirements of Article 46 are met.

43. On the basis of the information available to it in the present case, the Commission must proceed to examine the facts denounced, so as to establish whether they reveal or tend to establish a violation of the human rights protected by Articles 8(1) and 8(2).h, 11, 21 and 25 of the American Convention, as invoked by the petitioner.

V. ANALYSIS



A. The right to appeal a judgment to a higher court (Article 8(2)(h))

44. Article 8(2)(h) of the American Convention establishes the minimum guarantees that every person accused of a criminal offense is entitled to, as part of his right to be presumed innocent. To determine the applicability of Article 8(2)(h), the Commission must determine whether a monetary penalty, imposed by a court on a lawyer by reason of his professional conduct, is of a criminal nature.

45. As already noted, this penalty was included in the Code of Civil and Commercial Procedure of Argentina. Its scope of application is restricted exclusively to the conduct in an auction proceeding, as can be deduced from the arguments that the judge of first instance outlined when upholding the penalty.[FN8]

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[FN8] In upholding imposition of the penalty, the judge of first instance stated:

There is no doubt that attitudes such as that assumed by the defendant waste judicial resources unnecessarily and are prejudicial to the opposing party, because they require useless procedural submissions and delays, and they should therefore be discouraged and punished accordingly. From these proceedings, it can be deduced that the behavior of the defendant and its attorney is reckless indeed, of the kind that suggests that the attorney recognizes that his case has no substance or legal basis....

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46. On the other hand, the Commission considers that the amount of the fine is not a sufficient criterion to determine whether the penalty is of a criminal nature.[FN9] The amount of US\$ 10,000, which according to the petitioner was the fine imposed on him, was never established by a court, so it may not be considered as a reference.

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[FN9] In the Ravensborg case, the European Court of Human Rights declared that in order to measure the severity of a penalty, it is not enough to cite the amount of the fine: other criteria must also be considered, such as whether the penalty will give rise to a criminal record, which is not the case in the present affair.

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47. The Commission notes that the measure applied in this case has a characteristic which was not mentioned by either of the parties: the fine is imposed on the execute (the person whose property has been attached), and in favor of the executant (the person foreclosing), when the former has unduly delayed the proceedings. Additionally, the same norm provides that the fine to be imposed shall be "...based on the amount of the settlement approved", which means it is established in the final sentence of foreclosure.

48. The above mentioned elements lead to the conclusion that the measure applied to the petitioner is more analogous to a complementary indemnification for the executant, than a sanction. The law empowers the judge to apply this sort of measure as a compensation to the executant for the economic damage he may have suffered due to the other party's behavior in the

proceedings. The nature of the fine would be more similar to the costs of the trial, which are a juridical consequence imposed on the losing party, which certainly is not criminal.

49. Measures such as that imposed upon the petitioner are one more element that the State can use to ensure the proper administration of justice; such controls, and the preventive nature of procedural or disciplinary penalties, are part of the proper arsenal of the judicial system under a democratic system of government.

50. In view of the foregoing analysis, the Commission concludes that the measure imposed on the petitioner was not of a criminal nature. Consequently, Article 8(2) is not applicable to the case.

B. The right to a hearing with the due judicial guarantees (Article 8(1))

51. The petitioner alleges that he was not permitted access to the remedies available under internal jurisdiction that would have enabled a judicial review of the legality of the fine imposed on him by the court of first instance. In the case in question, the Commission must determine whether the refusal of the right of appeal implied a violation of the procedural guarantees established in Article 8(1).

52. It must be examined, first, whether the petitioner had the right to a hearing to determine the legality of the penalty imposed on him, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law.

53. In the imposition of the monetary penalty on the petitioner, the Commission finds no violation of Article 8(1) of the American Convention. The fine was imposed in the course of a civil trial for execution of a mortgage, which was heard before the National Court of First Instance in Civil and Commercial Matters No. 2. The petitioner has at no time questioned the impartiality or independence of the judge in those proceedings, or of the other magistrates that made rulings in the case.

54. In this particular case, the Commission does not deem it appropriate to go into the domestic law considerations that led the judge to impose a penalty of this procedural nature on the petitioner.

55. In principle, in democratic societies governed under the rule of law, where the courts function according to a constitutional separation of powers, it is those jurisdictional bodies, or the bar associations, and not any international body, that are the appropriate and competent authorities for assessing and defining the gravity of a lawyer's professional conduct and the propriety of imposing a given punishment, which of course must be previously defined by law, as in the present case.

56. It should be noted that Article 8(1) does not relate expressly to the right of appeal, nor does it contain any judicial writ as such, but rather refers to the guarantees that in general must be observed at the various procedural stages. This set of guarantees constitutes what is called due

process, which means those conditions that are necessary to ensure a proper defence for persons whose rights and obligations are under judicial consideration.[FN10]

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[FN10] Inter-American Court of Human Rights, “Judicial Guarantees under States of Emergency”, Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9 (1987), para. 27 and ff.

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57. From the record of the case, the Commission does not find a colorable claim of violation of the guarantees of due process enshrined in article 8(1) of the American Convention, in any of the instances the petitioner had access to in order to seek review, on the one hand, of the ruling of the judge who imposed a sanction; and, on the other hand, of the decision of the Court of Appeals which denied his appeal.

58. The Commission also does not find that the guarantees called for in Article 8(1) of the American Convention have been violated by the courts in their rulings on the various recourses brought by the petitioner. As may be concluded from the facts related in the first chapter of this report, those writs were decided expeditiously, by courts previously established under Argentine law, whose competence and impartiality were never challenged by the petitioner.

59. With respect to the right of appeal, upon reviewing the arguments made by the petitioner before the various courts, and the reasons for which those courts rejected them, it is clear that these reasons related to the interpretation of prevailing legal rules by the magistrates involved in the three instances.

60. In the present case, the Commission considers that the Argentine State, in applying Article 242 of the Code of Civil and Commercial Procedure to deny the writ of appeal brought by the petitioner, was exercising a legal faculty that is fully established by that Code. From a reading of that text, it is clear that the amount of money in the claim was the criterion used to determine whether the court judgment was susceptible to appeal.

61. The Commission considers that in this particular case, it is not its province to analyze whether the route selected by the petitioner was or was not appropriate to the purpose of obtaining his appeal, nor to assess the reasons that led the courts to deny his appeal. Whether or not the Court of Appeals was mistaken in its interpretation of Article 242 of the Code of Civil and Commercial Procedure because it erred in calculating the amount of the fine for purposes of granting the appeal, the petitioner had the possibility of remedying that situation. It must be noted that from the evidence submitted, it is clear that the petitioner not only had the opportunity to have the decision rejecting his appeal reviewed, but that he in fact brought various actions to that end.

62. The facts in the case indicate that the petitioner opted for a procedural route that, as the Supreme Court ruled, made a review of his case impossible. In this particular case, the Commission cannot question this judgment: if the highest court of the land has stated that an apparent lack of procedural expertise on the part of the petitioner made it impossible for him to

secure a review of the penalty imposed on him, it is not for the Commission to try to determine or assess whether the Court was mistaken. The rules that govern procedural law reflect methodological criteria intended to ensure the orderly use of judicial actions and to make the work of the courts more efficient and effective.

63. Moreover, on no occasion did the petitioner explain whether there was something legally abnormal in the reasons that led the courts to refuse to review the ruling that declared his appeal out of order.

64. In this particular case, not only did the petitioner not question the absence of judicial guarantees, but the record of the case contains no evidence that might lead the Commission to a conclusion in that respect. The Commission would be drawn to a different conclusion if it found that, in applying their procedural tools, the domestic courts had violated some right protected by the American Convention.

65. For the reasons stated, the Commission considers that the facts expressed in the present petition do not constitute a violation of Article 8(1) of the American Convention.

#### C. The right to judicial protection (Article 25)

66. Article 25 of the American Convention may only be deemed violated in the absence of a simple and prompt writ for remedying a possible violation of a fundamental right recognized in the Convention or in national legislation.

67. It has been established that the facts in the present case do not constitute a violation of Article 8(1) on the part of the State. The determination of a possible violation of Article 25 of the Convention is intimately linked with the determination of a violation of Article 8(1), since the basis of the petitioner's complaint is the lack of access to remedies under domestic jurisdiction. Nonetheless, in the interest of providing greater clarity to its analysis, the Commission shall address the question of access by the petitioner to domestic remedies.

68. The facts of the case and an analysis of the prevailing norms, in particular those of the Code of Civil and Commercial Procedure applicable to the case in question, lead the Commission to conclude that the petitioner made use of all the remedies that domestic jurisdiction provides to have the legality of the penalty imposed on him reviewed.

69. Domestic laws do not codify each and every case, nor the manner of seeking redress against the corresponding judgments, and this is normal in any legal system. The Commission notes that in the present case, despite the lack of legal precision about the applicable remedies, the petitioner was able to opt, as indeed he did, for a certain procedural route along which to proceed with his litigation strategy.

70. Although, from a review of the case, there was no express definition of which remedy was most appropriate for challenging the ruling issued by the Court of Appeals that declared his appeal out of order, it was clear that the petitioner had available to him various legal means for

attempting to remedy the fact that the Court of Appeals had not granted his appeal, and that he used these on more than one occasion.

71. The fact that the petitioner was not successful in seeking review of the penalty imposed on him by the judge of first instance is a matter for the domestic courts to settle. They are, in principle, in the best position to determine whether the complainant had erred in his use of the remedies available to him under Argentine law. In this respect, the Commission has established:

The judicial protection recognized by the Convention includes the right to fair, impartial and prompt procedures that offer the possibility, but certainly not the guarantee, of a favorable outcome. A negative outcome from a fair trial does not, by itself, constitute a violation of the Convention.[FN11]

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[FN11] Report 39/96 (Argentina). October 15, 1996, Annual Report of the IACHR 1996, page 89, para. 47.

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72. A possible error on the part of the Court of Appeals in interpreting Article 242 of the Code of Civil and Commercial Procedure, as invoked by the petitioner, does not constitute sufficient grounds, in the present case, for determining that a right protected by the American Convention has been violated. In the event that such an error was made--and this has not been proven--it could have been remedied. The petitioner, however, chose an inappropriate procedural route for achieving his objective, as the Supreme Court of Argentina itself decided.

73. As has already been established on the occasion of previous applications of the so-called "fourth instance formula":

...the Commission cannot review the judgments issued by the domestic courts acting within their competence and with judicial guarantees, unless it considers that a possible violation of the American Convention is involved.[FN12]

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[FN12] *Idem*, para. 50.

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74. In the present case, the petitioner came before the courts with the purpose of exercising the judicial remedies at his disposal to have the Court of Appeals's first ruling overturned. In addition to having free access to several remedies, he had the opportunity to exercise them. The Commission finds no evidence for concluding that the petitioner had no access to an effective remedy before the competent courts to seek review of the legality of the measure imposed on him by the Argentine jurisdictional bodies.

D. The right to protection of honor and dignity (Article 11) and the right to private property (Article 21)

75. The petitioner bases his complaint on the impossibility of seeking review of the penalty by a higher court, and the lack of access to remedies within the domestic jurisdiction of his country. He claims that, as a result of the alleged violations of Articles 8 and 25 of the American Convention, his right to the respect of his honor and dignity and his right to private property were also violated.

76. The Commission has found, in this case, no violation of any of the rules of due process protected by the American Convention invoked by the petitioner. Moreover, the petition contains no arguments to substantiate the alleged violations of Articles 11 and 21, for which reason the Commission considers that this aspect of the complaint lacks any legal foundation.

## V. CONCLUSION

77. The Commission concludes that the instant petition meets the requisites of admissibility set forth in Article 46 of the American Convention. Also, based on the preceding analysis, the Commission concludes that the petition does not raise a colorable claim of violation of the rights to judicial guarantees or of the right to judicial protection, as protected by Articles 8 and 25 of the American Convention. Article 47(b) of the American Convention therefore applies.

78. With respect to the alleged violations of the right to protection of his honor and dignity, and the right to private property, as protected in Articles 11 and 21 of the American Convention, the Commission concludes that the complaint is manifestly groundless, for which reason Article 47(c) of the Convention applies.

79. In light of the preceding considerations,

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS,

DECIDES:

A. To declare the present case inadmissible, pursuant to Article 47 of the American Convention.

B. To transmit this report to both parties; to make it public; and to include it in its Annual Report to the OAS General Assembly.