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Title/Style of Cause: Norma Dominga Carpi de Szukalo v. Argentina
Doc. Type: Decision
Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated: 4 May 1999
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I. SUMMARY

1. On April 26, 1996, Mrs. Norma Dominga Carpi de Szukalo, widowed, (hereinafter "the petitioner") approached the Inter-American Commission on Human Rights (hereinafter "the Commission") on her own behalf and that of her children to file a complaint against the Argentine Republic (hereinafter "the State," "the Argentine State," or "Argentina"). In the civil and criminal proceedings brought before the Argentine judicial authorities regarding the falsification of certified documents used to sell several real estate properties, thereby depriving the petitioner of her property, the petitioner considers that the following rights were violated to the detriment of Mr. Sergio Szukalo's heirs: the right to a fair trial (Article 8), the right to property (Article 21), and the right to judicial protection (Article 25). The petitioner further claims that the State failed to fulfill the obligation to respect (Article 1) and adopt (Article 2) the standards in the American Convention on Human Rights (hereinafter "the American Convention").

2. In its analysis of the admissibility of this case, the Commission concluded that the petitioner's allegation that there was an eleven-year delay by Argentine judicial authorities in delivering a final judgment in the civil proceedings, if true, could constitute a violation of the right to due process (Article 8(1)) and must be examined together with the allegation that the criminal proceedings to establish criminal liability in this case must be resolved before another court may hear the case (prejudicialidad).

3. Furthermore, the Commission found inadmissible the petitioner's allegation that the State is obligated to adopt the time periods set forth in the Code of Civil Procedure, pursuant to the provisions of Article 2 of the American Convention, because those time frames are neither

irrational nor arbitrary. Finally, the Commission found inadmissible the points related to the right to property (Article 21), because the petitioner stated that the Court's decision in the civil suit was satisfactory, since she recovered her property.

II. PROCESSING BY THE COMMISSION

4. On April 26, 1996, the Commission received the complaint, which was amplified on May 26, 1996. On June 10, 1996, the Commission requested information from the State, which replied on December 3, 1996. The petitioner submitted additional information on July 19, 1996 and then again on October 3, 1996.

5. The petitioner's observations were received on January 24, 1997 and the State's reply on February 11, 1997. The State was given a 30-day extension on April 14, 1997. On October 22, 1997, the petitioner submitted additional information, the relevant parts of which were forwarded to the State on November 4, 1997. In another communication received on November 25, 1997, the petitioner presented additional information. The State sent its observations on December 22, 1997. Subsequently, both the petitioner and the State continued to send communications clarifying their positions in this case.

III. POSITIONS OF THE PARTIES

A. Petitioner

6. The petitioner claims that certified documents were falsified in 1981, with the participation of two pseudo-attorneys and two notaries, and were used to sell several real estate properties belonging to Sergio Szukalo's heirs, which were then resold to third parties. This sale deprived Sergio Szukalo's heirs of the right to the use and enjoyment of the property.

7. On June 9, 1986, Mr. Sergio Szukalo's heirs and children, Pablo Sergio Humberto Szukalo, Patricia Virginia Szukalo, and Mariana Elizabeth Szukalo, filed a complaint with the Argentine judicial authorities, which Mrs. Norma Dominga Carpi, Szukalo's widow, later joined, to nullify the sale of the real estate, to recover the property, and to receive damages for the loss of their use and of the furniture therein on the day of the death of the devisor, profits from the saleable value, and emotional distress.

8. The full proceedings to declare the sale void were executed as "Szukalo Pablo et al. vs. Perricone Miguel et al. on the nullity of the sales" by the Court of the First Instance on Civil and Commercial Matters N° 14 of San Isidro in the Province of Buenos Aires. That suit was brought as incidental proceedings in the probate hearing *ab intestato* against nine joint defendants. The grounds of the complaint was the falsification of documents -- the preliminary sales contract and the irrevocable power of attorney -- the signatures on which were not the devisor's, as was proven in the proceedings through the testimony of a handwriting expert. Those documents were used to sell the property to three buyers who in turn resold it.

9. The sale in question was of three large properties located in northern greater Buenos Aires that belonged to the devisor, the petitioner's husband, Mr. Sergio Szukalo. At the time of

the sale, the claimants were minors, and judicial authorization was required to make the sale binding. That authorization was not granted. Although Mrs. Dominga Carpi, Szukalo's widow, signed the sales contracts, "the legal nullity being pursued through the complaint does not refer to the supposed incompetence of the co-claimant, Mrs. Carpi de Szukalo, when she entered into the legal acts being refuted." [FN1]

[FN1] October 9, 1997 judgment of the Second Chamber of the First Civil and Commercial Court of Appeals of the Judicial District of San Isidro.

10. Furthermore, the petitioner lodged written proof with the Court that the notary who signed the power of attorney document had been permanently removed from the roster as punishment for illicit acts. The petitioner also presented written proof that the former attorney who ran the probate hearings was punished and removed from the professional roster by the Bar Association in 1988.

11. With regard to procedural developments within the proceedings, the respondents requested that the August 24, 1987 decision of the Court of the First Instance be nullified. On June 10, 1988, the Court denied that request and authorized Mrs. Szukalo to participate as a complainant along with her children in the proceedings, in order to enforce her own right vis-à-vis the initiating parties.

12. On December 7, 1989, the Court ruled on the pleas raised by six of the co-respondents, three of whom later appealed. On August 3, 1990, the Court ruled on the pleas, including the complainants' lack of legal standing to claim emotional distress they personally did not experience; it recognized that the legal requirements for lodging a complaint were not fulfilled and ordered the Judge a quo to set a deadline to rectify this. In 1993, following the death of one of the co-respondents, the case was forwarded to Court N° 7 in San Isidro. The parties gave their arguments in that Court in February 1995. On March 14, 1995, the petitioner requested that the Court waive the right of one of the co-respondents to present his arguments and that they continue with the proceedings.

13. On February 29, 1996, the Court of the First Instance issued a judgment denying the request. The appeal lodged in March 1996 was forwarded to the Second Chamber of the First Civil and Commercial Court of Appeals of San Isidro in the Province of Buenos Aires, which returned the decision, twice in a row, to the Court of the First Instance. The first time was because a motion to "refute the falsification" had not been remitted with the main court records. The second time was because the lower court judge did not notify one of the co-respondents that he had been declared in contempt of court and as a result had to be notified of the decision at his principal place of residence. These procedural steps lasted 7 months, from February to September 1996.

14. The petitioner, before the court of appeals, objected to the lower court judge continuing to hear the case on the grounds he had executed his functions in a deficient manner, due to his partiality and aggravated prejudice, as shown by the fact that his decision did not consider the

decisions of the court of appeals, which specified the correct procedures to follow. The petitioner further requested a "jury de enjuiciamiento" on improper execution of functions, equivalent to an impeachment trial that could lead to his dismissal as a judge. On October 22, 1996, the Chamber upheld the denial of the motion for incidental proceedings on "new events" denounced in the Court of the First Instance and requested that the Supreme Court of the Province of Buenos Aires allow additional time for delivering a judgment. A 90-day extension was granted on May 27, 1997.

15. After more than eleven years, on October 9, 1997, the Second Chamber of the First Civil and Commercial Court of Appeals of the Judicial District of San Isidro totally repealed the judgment issued by the lower court judge in February 1996. That decision granted in part the request made by the complainants, in that it declared null and void the sale of the three properties due to the falsification of the signature on the irrevocable power used to represent Mr. Sergio Szukalo. It also ordered that the properties be repossessed and handed over to his heirs, and that their registration in the real estate registry be cancelled, "thereby showing the justice of the rights petitioned in 1986." The judgment also resolves other issues raised by the parties as secondary or subsidiary to the non-existence of the legal acts questioned in the complaint.

16. The petitioner indicated that the civil proceedings were delayed excessively, thus failing to comply with the procedural deadlines set in the Code of Civil Procedure of Argentina, in force in the jurisdiction where the proceedings were conducted, which are binding for both the parties and the judge. The procedural deadlines set forth in that Code are as follows:

- a. 15 days to answer the complaint (Article 337);
- b. Five days to hear or forward any petition (Article 150);
- c. Ten days to furnish evidence (Article 365);
- d. 40 days to produce the evidence offered in each file of proof for each party (Article 365);
- e. Six days for each party to give its arguments (Article 480);
- f. 40 working days to issue a judgment (Article 34, subparagraph c).

17. Due to the procedural delays, the petitioner also alleges the violation of Article 2 of the American Convention, because the State did not fulfill its obligation to adapt its procedural standards to the requirements set forth in the Convention. The non-existence of such laws deprived the judges of the pertinent legal and procedural tools to speed up and adapt the proceedings to the "reasonable time" called for in international law. It also makes the State liable for the failure to adopt domestic legislation in keeping with international law.

18. Furthermore, on May 15, 1986, the petitioner filed criminal charges for the falsification of the certified documents. That case was processed in the Second Criminal Court of San Isidro as "Szukalo Pablo and Malzof Fernando, for the falsification of documents, repeated fraud, and extortion." On May 18, 1993, the petitioner filed a document with the Supreme Court of Justice of Argentina denouncing the denial of justice caused by the procedural delays and requested that provincial judicial authorities be issued a warning setting a procedural term that expires automatically to activate the criminal case, since the civil trial to nullify the sale cannot be heard until the criminal case for repeated fraud by the same respondents for the same events is resolved.

19. The suit for repeated fraud --committed in 1981, the year of the death of the devisor-- was dismissed temporarily by Criminal Court N° 2 of San Isidro. The Criminal and Correctional Court of Appeals of San Isidro upheld that decision, due to a lack of evidence, making its continuity doubtful. The case therefore remains open, awaiting new evidence, without detriment to the complaint regarding extortion and conspiracy, which was not considered in that decision. The petitioner was notified of the ruling on April 20, 1994.

20. According to the petitioner, the case is straightforward as regards the evidence that the signature was falsified, since this was proven during the trial through handwriting tests on the signature of Mr. Sergio Szukalo's on the documents used. The complainants (the heirs) have been diligent throughout the suit; they have kept to the procedural deadlines and during the suit have had to put up with all sorts of dilatory defenses and obstructions unrelated to them, including:

a. The pleas or defenses raised by the co-respondents for purely dilatory purposes, which were rejected by the judge involved.

b. The competent Chamber took one year to decide on the motions to dismiss the case for lack of jurisdiction--between the original court and the one that later heard the case--because of the death of one co-respondent.

c. The delay in appointing a new judge to the Criminal Court hearing the criminal case on falsification and repeated fraud, which lasted approximately one year. This criminal case was being processed at the same time as the civil case, and due to the principle of "prejudicialidad," had to be resolved before a judgment could be delivered in the civil suit to declare the sale null, further delaying the process by a year. Nonetheless, in a later communication the petitioner indicated that the criminal case "was handled at almost the same time as the civil suit and therefore in no way necessarily influenced the procedural delay in the civil suit, although it had to be decided first."

d. The obstructions or delays of the civil court in certifying the existence of evidence pending presentation in the case and the fact that the parties could present arguments on the evidence contributed before the judgment.

e. The unjustified one-year delay in issuing a judgment, once the parties requested a clear decision on the "shared" status of the evidence produced in the suit to declare the sale null and that produced in an incidental proceeding.

f. Only one handwriting expert was appointed, and there was no testimonial evidence outside of the court's jurisdiction or any other proof outside of the country.

21. Furthermore, the petitioner considers that the judges have not fulfilled the obligation to ensure the probity and good faith of the litigants. The petitioners have not been informed of the obstructions imposed by the co-respondents, which the judges, as directors of the process, have allowed.

22. When the petitioner presented her petition to the Commission, she considered that the negligence in the proceedings affected the court's impartiality, which was clear in the decision of the lower court, thus violating the principle of congruence and making it clearly arbitrary. She further alleged the violation of Article 21 of the American Convention on the right to property as

a result of the denial of justice stemming from the delay by judicial authorities. Nonetheless, she subsequently informed the Commission that the Court of Appeals issued a judgment on October 9, 1997 that was "satisfactory," since she recovered her property.

23. Regarding admissibility, in the initial petition to the Commission, the petitioner claimed that the exceptions to the rule of prior exhaustion of the domestic remedies set forth in Article 46(2)(a) and (c) of the American Convention were applicable due to the delay in resolving the case, which was a denial of justice. Subsequently, as a result of the Court of Appeal's judgment, the petitioner indicated that the decision was final, thus making the State's allegations regarding the non-exhaustion of domestic remedies "without cause."

B. The State

24. The State, in its reply to the petitioner's initial complaint, claimed that domestic remedies had not been exhausted and therefore it was still possible to appeal to a higher court. However, with the final judgment of the Court of Appeals, it stated that domestic remedies had been exhausted.

25. Responsibility only falls to the State "because of [a] lack of due diligence to prevent the violation or to respond to it as required by the Convention." [FN2] The State argues that the petitioner only indicated that "the judicial delay was caused by the unwarranted delays requested by the other party. However, these claims are not accompanied by any indication proving that her own conduct sought to overcome the stumbling blocks placed by the other party. There is no way the State can adopt a position other than the one it did."

[FN2] The State cited the Inter-American Court of Human Rights, the Velásquez Rodríguez Case, paragraph 172.

26. In any event, it is clear that the case in question was not exempt from disputes among the parties and that the petitioner had had to question her own conduct in the case. Nor did she make full use of the legal remedies to disqualify the dilatory moves made by the other party. Therefore, the State cites the doctrine of "one's own acts," since the petitioner contributed to the delay. As a result, one cannot claim the violation of the rights enshrined in Articles 8 and 25 of the American Convention on Human Rights.

27. The State indicated that the characteristics of the civil suit do not exempt it from the obligation to exercise jurisdiction in a "reasonable period of time." However, the State cannot be reproached for this unless the delay is due entirely to the court, which is not the case here.

28. At the same time, the State provided the following explanations for the delay in this case:

a. A large number of respondents participated in the civil trial (nine in all), each of whom provided his/her own legal representation.

b. Incidental proceedings were opened in the trial, such as the refutation of the falsification by some of the co-respondents.

c. There was a criminal complaint, which had to be resolved first, thus delaying the civil proceedings.

29. The State indicates that estimating a set number of days, months, or years for proceedings does not tend to indicate the violation of protected rights, and that a reasonable length of time cannot be established in the abstract.[FN3]

[FN3] The State quoted the Inter-American Commission on Human Rights, Report 2/97, Argentina, Annual Report 1997, paragraph 18.

30. The State maintains that this was an action taken by individuals against individuals, regarding events and situations outside the purview of State intervention. It was also a question of ownership between individuals in which the possession and ownership of the property was not contingent upon an action or decision by public authorities.

31. With regard to the violation of the right to property, the State maintains that the petitioner's allegation is groundless. It also recalls that the Argentine State formulated the following exception to Article 21 of the American Convention:

The Argentine Government establishes that questions relating to the Government's economic policy shall not be subject to review by an international tribunal. Neither shall it consider reviewable anything the national courts may determine to be matters of "public utility" and "social interest", nor anything they may understand to be "fair compensation".

32. The State further indicated that the consequences of actions between individuals, outside of the purview of State intervention, are not included under the terms of Article 21 of the American Convention. In this case, this is a private situation, outside of the purview of direct State action.

33. Finally, the State requested that the Commission declare this case inadmissible on the grounds that the events presented by the petitioner do not show the violation of rights enshrined in the American Convention.

IV. ANALYSIS OF ADMISSIBILITY

34. The purpose of the Commission's decision on the admissibility of the cases brought before it is not only to produce more clarity and legal security in its procedures, but also to focus the parties on the central issues in the case.[FN4]

[FN4] See, among others, Inter-American Commission on Human Rights, Annual Report 1998, Report N° 49/97, Case 11.520, Tomás Porfirio Rondín et al., "Aguas Blancas" (Mexico), OEA/Ser/L/V/II.98, February 18, 1998, para. 50, page 8.

A. Competence *ratione materiae*, *ratione personae*, and *ratione temporis* of the Commission

35. In light of its mandate, the Commission is competent *ratione temporis* to examine this case, since the suit brought by the petitioner began on June 9, 1986 after Argentina, the State Party denounced, had deposited the instrument of ratification of the American Convention with the General Secretariat of the Organization of American States (September 5, 1984).

36. The Commission finds that it is competent *ratione materiae*, because the petition denounces alleged violations of rights enshrined in the American Convention.

37. With regard to active and passive competence *ratione personae*, the Commission concluded that it is competent, because the petitioner presents herself as the victim of the supposed violations of the Convention by a State Party, Argentina.

B. Other admissibility requirements for the petition

a. Exhaustion of domestic remedies

38. For a petition to be admissible, Article 46(1)(a) of the Convention requires "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." The Commission observes that the petitioner, in her initial complaint lodged with the Commission on April 26, 1996, invoked the exceptions established in Article 46(2)(a) and (c) of the American Convention with regard to the incidental proceedings brought before the Argentine judicial authorities to nullify the sale. Article 46(2) of the Convention stipulates that the rule of prior exhaustion of domestic remedies does not apply in the following circumstances: (a) if the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) if the party alleging violation of his rights has been denied access to the remedies under domestic law; or (c) if there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

39. However, during the Commission's processing of this case, a final decision was handed down by the Second Chamber of the First Civil and Commercial Court of Appeals of San Isidro in the Province of Buenos Aires on October 9, 1997. The parties in this case considered that this judgment exhausted domestic remedies, and the petitioner did not persist in invoking the exceptions to that rule. The Commission concludes that the requirement of prior exhaustion of domestic remedies set forth in Article 46(1)(a) of the Convention was met.

b. Deadline for lodging the petition

40. Article 46(1)(b) of the American Convention requires that the petition be "lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment." The Commission notes that the petitioner presented her petition before a final decision was issued. As a result it concludes that the six-month requirement set forth in Article 46(1)(b) of the American Convention was met.

c. Duplication of proceedings and res judicata

41. Article 46(1)(c) requires that the subject of the petition or communication not be pending in another international proceeding for settlement. Furthermore, Article 47 (d) of the Convention establishes that the Commission shall consider inadmissible any petition that is substantially the same as one previously studied by the Commission or by another international organization. In this case, the parties have not indicated any of the circumstances mentioned above. The Commission therefore finds that this requirement was met.

C. Characterization of the allegations

42. The Commission examined whether or not the events alleged by the petitioner tend to characterize possible violations of the American Convention, as provided for in Article 47(b).

a. Right to due process (Article 8(1))

43. On other occasions, the Commission has stated in this regard that "the right to a hearing within a reasonable time, as established by the American Convention, is based, inter alia, on the necessity of avoiding unwarranted delays which result in an abridgement or denial of justice injurious to persons alleging the violation of rights protected by said Convention." [FN5]

[FN5] Inter-American Commission on Human Rights. Annual Report 1996, Report N° 9/97, Case 11.509, Report on Admissibility of March 12, 1997, pages 635-636 in the Spanish edition, para. 35.

44. Article 8(1) of the American Convention reads:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

45. The guarantees in Article 8.1 of the Convention apply not only to proceedings invoking the violation of rights by the State, but also to rights and obligations of a civil or other nature between individuals. In this case, where the petitioner requested nullification of the sale of property, the Commission finds that these proceedings are aimed at determining the civil rights and obligations of persons, regardless of the origin or reason for the petition.

46. Regarding the delay cited by the petitioner, the Commission finds that the State did not dispute that there was a delay in the civil proceedings, but rather claims that it was justified based on the behavior of the claimants, the large number of respondents and the incidental proceedings they brought, and the fact that the criminal complaint had to be decided on first.

47. In this regard, the Commission observes that the proceedings before the Courts of the First Instance on Civil and Commercial Matters Nos. 14 and 7 took roughly ten years to reach a decision in this case. The Commission also notes that the parties in this case argued that the criminal case had to be resolved before the civil suit, which must be examined along with the merits of the case. The Commission therefore concludes *prima facie* that the events alleged by the petitioner regarding the procedural delays, if true, tend to characterize a violation of Article 8.1 of the American Convention.

b. Right to property (Article 21)

48. The Commission observes that in the original petition, the petitioner alleges the violation of Article 21 of the American Convention on the right to property as a result of the denial of justice stemming from the delay by judicial authorities. Subsequently, however, she informed the Commission that the Court of Appeals had issued a judgment on October 9, 1997 that was "satisfactory," since she recovered her property.

49. The petitioner did not allege other events that could serve as grounds for her allegation regarding violation of the right to property. The Commission therefore concludes that, at the time this report was issued, the events alleged by the petitioner regarding the right to property (Article 21) are no longer applicable and declares that part of the petition inadmissible.

c. Duty to adopt measures (Article 2)

50. The petitioner presented two arguments to support her allegation that the procedural delays violated Article 2 of the Convention. Firstly, she alleged that the procedural time frames called for in Articles 34 (c), 150, 337, 365, and 480 of the Code of Civil Procedure --applicable in the jurisdiction in which the case was heard-- violate Article 2 of the American Convention. Secondly, she argued that the State failed to adapt those standards or to issue domestic procedural and legal instruments to speed up the proceedings or adapt them to the reasonable time period called for in Article 8(1) of the Convention.

51. Article 2 reads:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

52. As the Inter-American Court has upheld, this Article reflects a basic rule of international law that a State Party to a treaty has a legal duty to take whatever legislative or other steps as may be necessary to enable it to comply with its treaty obligations.[FN6] Thus States must issue

the standards they committed to in Article 2 of the Convention (positive duty) and cannot issue provisions or measures that violate the rights and freedoms recognized therein (negative duty).[FN7]

[FN6] Inter-American Court of Human Rights, Enforceability of the Right to Reply or Correction (Articles 14(1), 1(1), and 2 of the American Convention on Human Rights), Advisory Opinion OC-7/86 of August 29, 1986, Series A, N° 7, para. 30).

[FN7] Inter-American Court of Human Rights, Certain Attributes of the Inter-American Commission on Human Rights (Articles 41, 42, 44, 46, 47, 50, and 51 of the American Convention on Human Rights) Advisory Opinion OC-13/93 of July 16, 1993, Series A, N° 13, paras. 26-31; and International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights) Advisory Opinion OC-14/94 of December 16, 1994. Series A, N° 14, para. 36.

53. The Commission examined the procedural deadlines set forth in the Code of Civil Procedure for the jurisdiction applicable in the petitioner's case. In this regard, it considers that 15 days to answer a complaint (Article 337); five days to hear or forward any petition (Article 150); ten days to furnish evidence (Article 365); 40 days to produce evidence offered in the file of proof of each party (Article 365); six days for each party to present its arguments (Article 480); and 40 working days to issue a judgment [Article 34 (c)] are not prima facie unreasonable or arbitrary and do not impede the exercise of the right to a hearing within a reasonable time frame.

54. The petitioner alleged that the State failed to adopt domestic legal and procedural tools to speed up and adapt the procedures to a reasonable time period. However, the Commission considers that the petitioner did not indicate what these shortcomings or loopholes in the domestic legal system are with regard to regulating the conditions for the exercise of the right to a hearing in a reasonable time. The petitioner also did not indicate to what extent these supposed loopholes or shortcomings affected that right. The Commission believes that, in this case, the petitioner had access to the courts and that the procedural standards governing the process, prima facie in and of themselves, fulfill the requirements in Article 8(1) of the Convention.

55. The Commission feels it is necessary to specify that the failure of judicial authorities to meet the procedural deadlines established in the Code of Civil Procedure indicated by the petitioner is different from those deadlines in and of themselves violating the guarantee established in Article 8 of the Convention. The Commission understands that the petitioner is protesting the behavior of the judicial authorities who enforced the deadlines and who have the duty to guarantee the exercise of the right to a hearing in a reasonable time. This point was already examined when the Commission addressed the characterization of the violations of Article 8 of the Convention (paragraphs 41 to 45).

56. Thus any argument regarding actions or omissions by judicial authorities that affect the right to due process within a reasonable time alludes to the general obligation established in Article 1.1 and not Article 2 of the Convention. The content and scope of Article 2 refers to

different assumptions and complements the provisions of Article 1(1) of the Convention, which stipulates the essential obligations to guarantee and respect rights. Otherwise there would be no reason for these Articles to be separate provisions.[FN8] Therefore, the obligation of the states under Article 1(1) of the Convention is much more immediate than that stemming from Article 2. As the Inter-American Court has indicated, the obligation to ensure the free and full exercise of human rights is not fulfilled by the existence of a legal system designed to make it possible to comply with this obligation --it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights.[FN9]

[FN8] The source of Article 2 of the American Convention is Article 2(2) of the United Nations International Covenant on Civil and Political Rights, which both because of its placement and content clearly complements the essential obligation to respect and guarantee rights stipulated in Article 2, subparagraph 1, which is equivalent to Article 1(1) of the American Convention. In contrast, the European Convention for the Protection of Human Rights and Fundamental Freedoms does not contain a provision similar to Article 2 of the American Convention or Article 2(2) of the International Covenant.

[FN9] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, N° 4, paras. 167-168; and Godínez Cruz Case, Judgment of January 20, 1989, Series C, N° 5, paras. 176-177.

57. Therefore, the duty to issue the necessary measures to fully guarantee the effectiveness of rights in the states' domestic systems, referred to in Article 2, cannot be understood, in the American Convention system, as a mere repetition of the provisions of Article 1(1), as this would strip the latter of all meaning. Furthermore, it cannot be considered equivalent to the simple generic duty to make the duty effective in the domestic system, which is inherent to all international obligations.

58. In consideration of the de facto and de jure arguments outlined above, the Commission concludes that the procedural deadlines contained in the standards cited by the petitioner do not characterize a violation of the right to a hearing within a reasonable time, as established in Article 8(1) of the American Convention. Furthermore, in examining the facts forwarded in these proceedings, the Commission does not find that the petitioner's allegations regarding the legislative or other measures needed to enforce that right correspond to the characterization made by the petitioner. As a result, the Commission concludes that the petitioner's allegations do not tend to characterize a violation of Article 2 and are inadmissible in keeping with the provisions of Article 47(b) of the Convention.

V. CONCLUSIONS

59. The Commission concludes that the petition meets the formal admissibility requirements established in Article 46 of the American Convention.

60. Based on the examination conducted, if the petitioner's allegations regarding the procedural delays in the civil suit are true, they would tend to constitute a violation of the right to a fair trial (Article 8).

61. Nonetheless, the Commission concludes that the petitioner's initial allegations regarding the violation of the right to property (Article 21) were satisfied by the State during the Commission's processing of the case. Therefore, at the time this report was issued, those allegations are inadmissible, in keeping with Article 47(c) of the American Convention. The Commission also concluded that the allegations regarding the State's duty to adapt its standards and issue measures in agreement with the rights (Article 2) do not constitute violations, in keeping with Article 47(b) of the American Convention.

62. Based on the de facto and de jure arguments listed above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

1. Declare the petition admissible with regard to Articles 8 and 25 of the Convention and to declare the allegations on the violation of Articles 2 and 21 inadmissible;
2. Notify the parties of this decision.
3. Continue to examine the merits of the case.
4. Place itself at the disposal of the parties, with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the American Convention. The Commission invites both parties to reply regarding the possibility of initiating such a settlement, and
5. Publish this decision and include it in the Commission's Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington, D.C. on May 4, 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; and Commissioners, Carlos Ayala Corao, Alvaro Tirado Mejía, and Jean Joseph Exumé.