

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report 68/99; Case 11.709
Title/Style of Cause: Luis Maria Gotelli Jr. 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, Henry Forde.
Dated: 14 May 1999
Citation: Maria Gotelli Jr. v. Argentina, Case 11.709, Inter-Am. C.H.R., Report No. 68/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)

Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On December 13, 1996, Mr. Luis María Gotelli, Jr. (hereinafter “the petitioner”) submitted a petition to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) against the Argentine Republic (hereinafter “the State,” “the Argentine State,” or “Argentina”), alleging that it violated rights set forth in the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) with respect to both himself and his family.

2. The petitioner alleges that during proceedings in the case “Complaint by Tulio Franzosi regarding irregularities at Banco de Italia y Río de La Plata,” brought against him and his family before National First-Instance Federal Criminal and Correctional Court N° 2, their right to a fair trial (Article 8(1)) was violated by the fact that the trial had lasted longer than 12 years and was still going on. He also claims that this delay negatively affected the rights of presumption of innocence (Article 8(2)), defense (Article 8(2)(d)), the nonextension of punishments to other persons (Article 5(3)), the family (Article 17), the aim of imprisonment being reform and social adaptation (Article 5(6)), respect for honor and recognition of dignity (Article 11(1)), equality before the law (Article 24), and simple and prompt recourse (Article 25(1)) enshrined in the American Convention.

3. Following the Commission’s offer to make itself available to the parties in order to reach a friendly settlement in this case, on the day of the hearing granted by the Commission during its 97th regular session, October 6, 1997, the parties signed an agreement which was filed with the Commission’s secretariat that same day. In this agreement, the State recognized that in the petitioner’s case and within the aforesaid context, “the right to be tried within a reasonable period (Article 8(1) of the Convention) was violated” and it promised to disassociate him from

the criminal proceedings. Subsequently, on September 15, 1998, in light of the State's noncompliance, the petitioner asked the Commission to continue with the steps set forth in its Regulations and issue a report under Article 50 of the Convention.

4. The Commission decided to first analyze the admissibility of the case prior to issuing a report under Article 50 of the Convention. It thus concluded that it was competent to examine the matter and that the petitioner's allegations regarding the violation of the right to due process caused by the delay in the criminal investigation (Article 8(1), of the right to the presumption of innocence (Article 8(2), and of the right of defense (Article 8(2)(d) were admissible under the terms of Articles 46 and 47 of the Convention.

5. However, the Commission ruled that under Article 47(b) of the Convention, the claims alleging violations of the right to humane treatment (Article 5(3), of the right of imprisonment being aimed at reform and social adaptation (Article 5(6)), and of the rights of the family (Article 17) were inadmissible. The Commission also ruled that the petitioner's allegations regarding violations of the right of honor (Article 11(1)), of equality before the law (Article 24), and to effective recourse (Article 25(1) were inadmissible under Article 47(c) of the Convention.

II. PROCESSING BY THE COMMISSION

6. On December 17, 1996, the Commission opened this case, sent the relevant parts of the complaint to the State, and asked it to supply information. After the Commission had granted several extensions, the State submitted its comments on June 17, 1997; these were sent to the petitioner on June 26, who was given a period of 30 days to formulate his reply. On July 24, 1997, the petitioner submitted his comments on the State's reply.

7. On July 29, 1997, the Commission sent the petitioner's reply to the State and granted it a 30-day period for submitting its comments. In the same note, the Commission made itself available to the parties with a view to reaching a friendly settlement under Article 48(1)(f) of the Convention and Articles 45(1) and 45(2) of its Regulations in light of the nature of this case and within a framework of full respect toward the objective and purpose of the Convention. On September 2, 1997, the State accepted the friendly settlement procedure and reserved the right to "consider and improve the legal arguments" already set forth in the initial document at a later date, specifically during the friendly settlement procedure. On September 15, 1997, this communication was transmitted to the petitioner.

8. At a hearing held on October 6, 1997, during the Commission's 97th regular session, the representatives of the petitioner and the State reported that their talks had led to an agreement, which was set down in writing that same day. This agreement's recitals show that the State's reply of June 17, 1997 recognized that "in the petitioner's case and within the aforesaid context, the right to be tried within a reasonable period (Article 8(1) of the Convention) was violated." In the agreement the parties stipulated that "the Government will take every step toward definitively disassociating the petitioner from the aforesaid proceedings within the briefest possible time," and that a report on compliance with this was to be given to the Commission within a maximum of 75 days.

9. On December 26, 1997, the State told the Commission that further to the parties' agreement, Mr. Gotelli's lawyers submitted a document requesting that the statute of limitations be applied to the proceedings against him. The basis for that request was a ruling handed down by the National Federal Criminal and Correctional Appeals Chamber in the Federal Capital in a similar case, which was at that time pending a decision from the office of the national attorney general. However, on September 15, 1998, the petitioner told the Commission that, "given the Argentine Government's obvious noncompliance with the commitment to reach a friendly settlement made before this honorable Commission after recognizing the justice of the claim, I am forced to request that this negotiating procedure be terminated." He also asked the Commission to continue "with the relevant procedure under Article 50 of the Convention." This communication was transmitted to the State on September 28, 1998, with a 60-day period for it to submit its comments. On December 2, 1998, the State requested an extension to the period allotted for its reply; consequently, a 45-day extension was granted on December 14, 1998.

10. On January 29, 1999, the State reported that it was taking the appropriate steps, which had been delayed on account of the summer recess. A request by the State for an additional extension on March 5, 1999, was granted on March 8, 1999, for a period of 30 days. On April 13, 1999, the State again requested an extension and was awarded a further 30 days.

III. POSITIONS OF THE PARTIES

A. The petitioner's position

11. The petitioner stated that on May 24, 1985, Mr. Tulio Franzosi filed a complaint with National First-Instance Investigating Criminal Court N° 20, accusing the petitioner's family of several crimes proscribed by Articles 173.7, 300, and 301 of the Criminal Code (hereinafter referred to by its Spanish abbreviation "CP"), because they held senior posts at the Banco de Italia y Río de la Plata (hereinafter "the BIRP"), and against senior managers, shareholders, and guarantors of corporations that received loans from that bank, including the petitioner. The issue brought before the court was the alleged asset stripping or bankruptcy suffered by the BIRP as a result of the policy adopted by its senior management in granting those companies enormous loans, in both pesos and dollars, which had never been repaid to the bank. The BIRP was liquidated by the Central Bank of the Argentine Republic (hereinafter "the BCRA").

12. The petitioner explained the different judicial rulings and decisions handed down since the start of the proceedings. With regard to the decision on admissibility, the most salient of these were the following: on August 23, 1985, the court ordered the start of investigatory proceedings, with the BCRA acting as complainant; on September 29, 1985, National First-Instance Federal Criminal and Correctional Court N° 2 was given exclusive competence over the matter; on March 12, 1986, that court ordered the petitioner and other persons to be brought to trial and, on February 23, 1987, it ordered an expert accounting audit to be conducted.

13. On April 8, 1987, the office of the national attorney general assigned an assistant prosecutor to the proceedings and, on June 16, 1987, the case prosecutors asked the accused to provide the investigation with statements. On September 22, 1987, the court ordered the expert accountants to begin the audit it had requested and, on November 12, 1987, the petitioner gave

his statement. On March 31, 1989, the expert accountants told the court that there had been delays and complications in conducting the audit and, on March 17, 1989, the court instructed the BCRA liquidator in charge of the BIRP to provide the expert accountants with the documents needed to finish the audit.

14. On May 9, 1989, the court ordered the preventive arrest of several individuals, including the petitioner, against which their attorneys filed dismissal motions and appeals. On June 30, 1989, the National Federal Criminal and Correctional Appeals Chamber summoned the parties to state their case, which took place at a hearing on September 12, 1989. On September 28, 1989, the chamber ordered the court to send it the main trial documents and, on October 12, 1989, it sent the documents to the prosecutor for him to offer an opinion on the remedies filed. On November 6, 1989, before the appeals chamber, the petitioner accused the first-instance and appeal prosecutors of obstructing the expert audit in contravention of the Code of Criminal Procedure (hereinafter “the CPMP”).

15. On December 12, 1989, the petitioner filed an objection with the chamber for having granted four consecutive extensions to the (expired) deadline imposed on the prosecutor for ruling on the preventive arrests. On December 14, 1989, the chamber granted a further extension to the prosecutor, who submitted his report on December 15, 1989. On March 26, 1991, in addition to upholding the preventive custody ordered by the court and dismissing its cancellation, the chamber modified the number of charges. On May 23, 1991, the court received the case and, on June 11, 1991, requested the evidence ordered by the chamber, including a fresh expert audit. On July 23, 1991, the court declared the petitioner in contempt and ordered his arrest; this was overturned on October 11, 1991, after the chamber admitted the extraordinary remedy filed by the petitioner against the decision to revoke the exemption from custody.

16. On February 17, 1992, the court recorded the conclusion of the second expert audit. On October 23, 1992, it sought the opinions of the complainants and the prosecutor regarding the points on which a dismissal should be given and where charges should be filed. On November 12, 1992, the BCRA objected to the closure of the investigatory proceedings and asked for elaboration of the statements given by the accused, including the petitioner, in light of a new hypothesis. On November 16, 1992, the court sent the prosecutor the documents dealing with the extraordinary remedy filed by the petitioner on October 11, 1991. On April 20, 1993, the prosecutor gave an opinion in which he stated that the phase of the investigatory proceedings into the allegations against the petitioner should be closed and that the other allegations made against other defendants should be dismissed. This opinion was sent to the court on April 23, 1993.

17. On July 22, 1993, the chamber asked the case to be referred to it to resolve a motion for the release from prison of one of the accused and the self-disqualification request by the judge in charge of Court N° 2. On September 28, 1993, the chamber accepted the judge’s disqualification and gave instructions that proceedings with the case would continue in Court N° 1, which received the case on October 18, 1993. The prosecutors reported to this court on November 22, 1993. On March 16, 1994, the court summoned the complainants and the prosecutor to give their opinions on a series of issues. On April 4, 1994, the BCRA expressed its opposition to the

dismissals and asked for an elaboration of the statements given by the accused, including the petitioner. On April 21, 1994, the prosecutor repeated his opinion regarding those dismissals.

18. On April 28, 1994, the prosecutors asked for new evidence and the complainants demanded that progress be made with the proceedings. On May 3, 1994, the prosecutors presented and requested evidence and, on May 18, the court dismissed the case against several individuals. On May 26, 1994, the prosecutor asked for a detailed, itemized list of the illicit loans that were allegedly extended. On May 30, 1994, the court sought the complainants' opinion regarding the legal situation of one of the accused; the prosecutor's reply was submitted on September 2, 1994. On September 14, 1994, the complainants asked for greater progress to be made with the case. On September 26, 1994, the court took a series of steps under which, on September 28, the case was sent to the prosecutor.

19. On April 7, 1995, the prosecutor filed charges against the petitioner and, on that same date, the chamber asked the court to refer the proceedings to it in order for it to rule on the appeals filed against the dismissals that had been handed down; this took place on April 12. On May 15, 1995, the court sent the BCRA all the case documents. On May 26, 1995, the chamber resolved to uphold the dismissals and to refer the case to the court on May 31. Between June 7, 1995, and June 15, 1996, the court summoned the complainants for them to formulate their accusations. On June 28, the court notified the petitioner of the accusations that had been made.

20. Regarding admissibility, the petitioner stated that he had not submitted this case to any other international body and that it was not pending any such settlement. The delays in the proceedings free him from complying with the requirement of exhausting domestic remedies, as set forth in Article 46(2), and the absence of a decision renders the deadline stipulated in Article 46(1)(b) of the Convention inapplicable. With regard to the alleged violations, the petitioner stated the following:

a. Right to a hearing within a reasonable time

21. The petitioner noted that the central issue in his complaint is the violation of the right to a hearing within a reasonable period of time as set forth in Article 8(1) of the Convention. He claims that the competent authorities have not been diligent in this regard in light of the following:

22. The trial has been ongoing for eleven and a half years, and there is no clear indication of when a final sentence could be expected. Between the start of the trial and the petitioner being summoned to give a statement for the investigation, ten months went by. Between the summons being issued and the actual rendering of the statement, one year, seven months, and twenty-nine days passed, which led the prosecutors to file a formal protest. Substantiating the expert audit took three years, ten months, and five days, due to the lack of cooperation from the official expert accountants, whose efforts were hindered by the prosecutors of the first-instance court and the appeals chamber. As a result of this, the petitioner filed a formal protest, which did not prosper.

23. Three years, eleven months, and fifteen days went by between the start of proceedings and the preventive arrest order. While the appeal against the preventive arrests was being processed, the chamber's prosecutor was granted five consecutive extensions, in violation of the terms of the law. From the filing of the appeal against the arrests to the ruling upholding the cautionary measure, one year, three months, and eleven days went by. In addition, the case was held without any progress being made, at the decision of the chamber itself, for a period of one year, nine months, and thirteen days. On June 24, 1987--one year and eleven months after the legal deadline--a motion was filed as provided for by Article 206 of the CPMP, which governs compliance with the timeframes allotted for investigatory proceedings. In that motion, the prosecutors referred to the total lack of diligence on the part of the investigating judge. With regard to the delay in receiving the investigatory statements, the prosecutors' document presented on July 1, 1987, states that the "failure to carry out this measure affronts [. . .] both the administration of justice and the legitimate right of defense," and again, on February 16, 1989, the prosecutors once more expressed their concern with how the case was advancing.

24. Finally, on September 21, 1989, in light of the extensive expert work and the number of new defendants, the prosecutors suggested restricting the proceedings to identifying the responsibilities of the 14 individuals who had been placed in preventive custody, whether a final sentence was to be sought, and what the existing jurisprudence covered. On September 16, 1987, and March 15, 1989, the chamber had made reference to the delay in the proceedings, which had already taken almost four years, during which the "reception of the defendants' statements for the investigation suffered an unwarranted delay," while not ignoring "the obvious complexity of the proceedings" in which "the large number of parties involved posed an obstacle to prompt resolution."

25. The petitioner claims that the prosecutors were guilty of delays as serious as or more serious than those with which they charge the judges. Substantiation of the Article 206 motion concluded on August 1, 1991. The petitioner claims that neither the complexity of the case nor his behavior at trial can be used as arguments to mitigate this pattern of negligence. First of all, no juridically complex issues were put forward or debated. Moreover, the petitioner alleged that the competent bodies in this trial never established a guiding principle for separating important matters from lesser issues and, through their lack of expertise and diligence, they kept adding accusations and individuals indiscriminately. The petitioner adds that, over the years the trial has lasted, there has been no exceptional circumstance that would indicate that the courts are facing an emergency situation or an abnormal workload. Secondly, as regards the behavior of Mr. Gotelli Jr., he believes his involvement has been minimal in light of Article 180 of the CPMP.

26. The petitioner maintained that no end to the uncertainty regarding his situation was in sight since, with an accusation that carries a punishment of 20 years in prison, the date on which the statute of limitations for criminal prosecution comes into effect is set back by new proceedings that constitute a "continuation of the trial" (CP, Article 67(4)). Hypothetically, the trial could legally continue, from the present date, for an additional 24 or 36 years, depending on whether the starting point is taken as being the date of the prosecutors' accusations or those of the BCRA.

b. Other alleged violations

27. The petitioner alleged that other rights protected by the Convention were violated as a direct consequence of the right to a hearing within a reasonable time being breached. Those rights are the following:

i. Right of defense (Article 8(2)(f))

28. The petitioner told the Commission that the undue prolongation of the trial undermined his right of defense by increasing the problems he faced in organizing his defense. As time goes by, the acceptable risks calculated in the accused's ability to present evidence and counter-arguments increase; similarly, the possibility of calling witnesses decreases and counter-arguments are weakened. The petitioner states that the events under investigation date back to 1979—that is, more than 17 years ago, when Law 21.526 was passed, establishing a new regime for financial institutions. Since then, that law has been amended by three later statutes; four de facto presidents and two democratic ones have come and gone; the name of the currency has changed on four occasions; and, in terms of the cost of living, price inflation reached a level of 252,729,924.0316 percent.

29. The witness and informational statements used to incriminate the petitioner were originally received more than nine years ago; it would therefore be difficult for him to assess those statements during the evidentiary phase of the proceedings, it now not even being certain whether the witnesses are still alive or not. Similarly, new witnesses would find it difficult to recall events that occurred over a decade ago with any degree of certainty.

30. As regards the documentary evidence, in performing the expert audit, which finished more than six years ago, the accountants gave a detailed report on the level of confusion and disorder in the documents used to prepare their opinion, and it is now impossible to know in what state they are. The petitioner states that these documents—which he would use in his defense and as evidence at trial—are, under orders from the court (page 13.610), being held by the BCRA, which is in turn the petitioner's accuser in this case. Given this situation, he believes that the chances of his conducting a real defense are nonexistent.

ii. Right to be presumed innocent and to due legal process (Article 8(2))

31. The petitioner alleged that on account of the burden it has placed on the accused, this endless trial genuinely constitutes punishment in advance, thus violating the principles of presumption of innocence and due legal process enshrined in Article 8(2) of the Convention. The conditions imposed in the order exempting him from imprisonment themselves constitute a restriction of his freedom of movement, since the accused must notify the court of all changes of address and refrain from leaving the vicinity of the court for longer than 24 hours without prior permission. Furthermore, a large sum of money belonging to a third party is being held to guarantee his appearance. The petitioner therefore believes that his freedom and feeling of personal security are affected by a probable judicial ruling that would annul the exemption from imprisonment and order his arrest, since this already happened when the chamber revoked bail and, two years later, the court upheld the extraordinary remedy filed against that decision.

iii. Right to humane treatment (Article 5(3)) and rights of the family (Article 17)

32. The petitioner claimed that the trial described above has been causing Mr. Gotelli Jr. psychological and moral harm. That harm also has a social dimension in that his family is enduring the uncertainty and anguish of this situation, in addition to the serious economic losses it entails. This implies a violation of Articles 5(3) and 17 of the Convention, which state that punishment cannot be extended to any person other than the criminal. In this regard, the petitioner explained that the criminal case has been surrounded by an intense publicity campaign, and so he has been unable to make any personal or social plans for either the medium or long term. This has also had an impact on his family, who must periodically brave the turmoil caused by this grave state of affairs.

iv. Rights of imprisonment being aimed at reform and social adaptation (Article 5(6)), of respect for honor and recognition of dignity (Article 11(1)), of equality before the law (Article 24), and of judicial protection (Article 25(1))

33. Finally, the petitioner also alleged violations of Article 5(6) of the Convention, which states that the essential aim of punishments shall be the reform and social readaptation of the prisoners, of Article 11(1), regarding respect for honor and the recognition of personal dignity, and of Article 25(1), which deals with judicial protection. In this regard, he noted that the punishment imposed on him by this trial is in no way aimed at social readaptation; instead, it marginalizes him from his social surroundings and undermines his good name and reputation. It also makes him unequal before the law by making him, for life, a defendant or a partial convict and denying him all rights of judicial protection.

34. With regard to the State's claim that the petitioner would not submit proof of the alleged violations of Articles 5, 17, 11, and 24, since that would be evidence of a negative fact, the petitioner maintains that evidence of a negative fact is not the issue; rather, it would be a matter of discussing or recognizing the repercussions of being involved in a trial of this nature, in which there is no certainty whatsoever regarding when it might end.

B. The State's position

35. As regards admissibility, the State noted that the requirement of exhausting domestic remedies set forth in Article 46(1).a of the American Convention is implicit in the alleged violation of Article 8(2), in that the undue delay in the trial undermines the principles of presumed innocence and guaranteed defense. It therefore held that a ruling on the matter must be analyzed in conjunction with the merits of the case at hand.

36. The State reported that the allegations occurred between 1984 and 1985 in the context of what was considered an "asset stripping" of the Banco Italia y Río de La Plata. Judicial proceedings began before National First-Instance Investigating Criminal Court of the Capital N° 20 on May 24, 1985, on account of the complaint, and before National First-Instance Federal Criminal and Correctional Court of the Federal Capital N° 2 on August 19, 1985, in the suit filed by the BCRA.

37. With regard to Mr. Gotelli Jr., it notes that he was indicted on March 12, 1986; on November 12, 1987, he gave his statement for the investigation; on May 9, 1989, his preventive arrest was ordered; on March 26, 1991, the federal appeals chamber upheld his preventive arrest; on July 23, 1991, the exemption from arrest was dismissed and an international arrest warrant was issued; on April 7, 1995, the prosecutors filed charges for administrative misconduct, with a request for a prison term of 20 years; and on June 25, 1996, charges from the complainant BCRA were filed.

38. With regard to the violations of Articles 8 and 25 of the Convention that the petitioner alleges, the State claimed that the CPMP applicable in this case contains provisions covering procedural delays, such as Articles 206 and 695. In the criminal case brought against Mr. Gotelli Jr., a motion as provided for in Article 206 of CPMP was filed, by means of which the First Circuit of the National Federal Criminal and Correctional Appeals Chamber of the Federal Capital summoned the judge to appear on four occasions: September 16, 1987; December 23, 1987; March 15, 1989; and June 29, 1989.

39. The State commented that, “irrespective of considering admissible, prima facie, the judge’s claim that the case was complex, and of the need to analyze the actions of the parties in this case and the way it has been presented, [and that] with his own actions he could have contributed to the alleged delay, there can be no doubt regarding the rulings of the appeal court.”

40. With regard to the rights enshrined in Articles 8(2) and 25(1) of the Convention, the State claimed that the Commission’s normal practice indicates that “Article 8(2) obliges states to gather together the evidence against the accused in a criminal case” in order to “establish his guilt.” Establishing guilt implies formulating an opinion of condemnation [juicio de reproche] in the final judgment. If the State fails to reach an opinion of condemnation within a reasonable period and justifies prolonging the accused’s imprisonment on the grounds of the suspicions against him, it is using preventive custody as a substitute for punishment.

41. On September 2, 1997, in accepting the friendly settlement procedure, the State reserved the right to “consider and improve the legal arguments” it had set forth in its initial response. Later, on October 6, 1997, in the recitals of the agreement entered into by the parties, the State noted that the reply given on June 17, 1997, acknowledged that, “in the petitioner’s case and within the aforesaid context, the right to be tried within a reasonable period (Article 8(1) of the Convention) was violated.”

42. Finally, in its initial reply the State claimed that the petition contained no indication of violations of the right to humane treatment (Article 5 of the Convention), the rights of the family (Article 17), the aim of imprisonment being reform and social adaptation (Article 5(6)), the right of respect for honor and recognition of dignity (Article 11(1)), and the right of equality before the law (Article 24). In this regard, the State holds that the accused has not been subjected to cruel, inhuman, or degrading treatment; he has not been convicted; his honor and dignity have not been affected; and it has certainly not been shown that in his situation, legal protection has been used in such a way as to violate the principle of equality. The State did not therefore concur with the allegations made in this respect, regarding which no evidence is required since it would be evidence of the non-existence of a fact.

IV. ANALYSIS OF ADMISSIBILITY

43. The Commission's rulings on the admissibility of the cases brought before it are intended not only to invest its decisions with juridical certainty and clarity, but also to focus the parties' attention on the key issues those cases entail.[FN1]

[FN1] See, *inter alia*, 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, paragraph 50, p. 8.

A. The Commission's competence *ratione materiae*, *ratione personae*, and *ratione temporis*

44. Under its mandate, the Commission has *ratione materiae* competence in the matter before it (i.e., it is competent *vis-à-vis* the substantive issues of the case), in that the petitioner alleged violations of human rights protected by Articles 8, 5, 11, 17, 24, and 25 of the American Convention.

45. Similarly, as regards its *ratione temporis* competence (i.e., its competence in terms of when the incidents occurred), Argentina has been a party to the Convention since depositing its ratification instrument on September 5, 1984; the criminal proceedings in which the petitioner alleges the violations of the Convention took place began after that date.

46. Regarding its passive *ratione personae* competence (i.e., competence *vis-à-vis* the person), the Commission notes, first, that the complaints were leveled at Argentina, a state party to the Convention. Regarding its active *ratione personae* competence, the Commission notes that in order to redress the violation of Article 8(1) of the Convention arising from the procedural delays, the State expressly acknowledged that there was a delay in the proceedings and agreed to interrupt the criminal trial. To this end, on December 26, 1997, the State informed the Commission that Mr. Gotelli Jr.'s lawyers had submitted a document requesting that the statute of limitations be applied to the case. However, on September 15, 1998, the petitioner told the Commission that the agreement had not been upheld and asked it to issue a report under the terms of Article 50 of the Convention. In turn, the State has not expressed its intent to interrupt the friendly settlement; instead, it has reported that it is taking the steps necessary to implement its terms.

47. Since the situation reported by the petitioner has not yet been resolved or remedied on account of the State's failure to observe the agreement, the Commission concluded that, in accordance with the terms of the Convention, the petitioner's alleged victim status has not changed.

48. The Commission would like to note that pursuant to Article 48(1)(f) of the Convention, the friendly settlement procedure aims at "reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in [the] Convention." Acceptance of the

procedure demonstrates the State's willingness to comply with the goals and objectives of the Convention according to the principle of *pacta sunt servanda*, by which states must comply with their treaty obligations in good faith. However, under Article 45(7) of the Commission's Regulations, at any stage in the friendly settlement procedure the Commission can terminate its involvement as the "organ of conciliation for a friendly settlement" and continue processing the case, should either of the parties "not consent to the application of this procedure" or "not evidence good will in reaching a friendly settlement."

49. In the case at hand, the petitioner stated his desire to abandon the friendly settlement procedure. In accordance with the above article, the Commission is competent to terminate *motu proprio* its function as the organ of conciliation and continue processing the case; however, there is nothing to stop the parties reaching an agreement regarding the matter at hand at a later stage in the proceedings before the Commission.

B. Additional requirements for the admissibility of the petition

a. Exhaustion of domestic remedies

50. Under Article 46(1)(a) of the Convention, for a petition to be admitted, the Commission requires that "remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." The purpose of this requirement is to allow states to first resolve matters within their own legal frameworks before having to face international proceedings under the inter-American human rights system, which "reinforces or complements" domestic jurisdiction.[FN2] However, when adequate and effective domestic remedies do not exist, the exception to the prior exhaustion rule set forth in Article 46(2) of the Convention comes into play; this happens if: (a) the legislation of the state concerned does not afford due process of law for the protection of the right that has allegedly been violated, (b) the party alleging violation of his rights has been denied access to the remedies under domestic law, or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. The Commission will now analyze the parties' allegations regarding the rule that requires the exhaustion of domestic remedies and the exceptions it admits.

[FN2] Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C, N° 4, paragraph 61.

51. In the case at hand, the petitioner alleged that the procedural delays release him from the requirement of exhausting domestic remedies, as stipulated by Article 46(2)(c) of the Convention. The State claimed that the requirement of exhausting domestic remedies set forth in Article 46(1)(a) of the Convention is implicit in the alleged violation of Article 8(2) and must be analyzed in conjunction with the merits of the case. The Commission believes it should analyze compliance with this requirement together with the substance of the case, in light of the close relationship between the exception invoked by the petitioner and the analysis of the merits.

b. Filing period

52. Article 46(1)(b) of the American Convention states that for a petition to be admitted it must 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.” This provision, the aim of which is to guarantee the parties certainty and security, does not apply when a final judgment has been impossible to obtain because of one of the exceptions to the rule requiring the exhaustion of domestic remedies set forth in Article 46(2) of the Convention, namely: (a) if the legislation of the state concerned does not afford due process of law for the protection of the right that has 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.

53. In the case at hand, the petitioner claimed that the absence of a judgment caused by the unjustifiable delays makes the limit stipulated in Article 46(1)(b) of the Convention inapplicable. The State did not question the petitioner’s allegations. The Commission concluded in the previous section that the exception to the domestic remedy exhaustion rule set forth in Article 46(2)(c) does apply. In light of the circumstances analyzed, the Commission holds that the six-month filing period established in the Convention is not applicable in the case at hand.

c. Duplication of proceedings and *res judicata*

54. The requirement for admissibility contained in Article 46(1)(c)) stipulates that the subject matter of the petition or communication must not be pending in another international proceeding for settlement. In addition, Article 47(d) of the Convention states that all petitions that are substantially the same as one previously studied by the Commission or by another international organization shall be inadmissible. In the case at hand, neither of these circumstances has been proven. The parties have neither alleged nor shown that the issue placed before the Commission’s consideration is pending another international settlement proceeding or has already been decided by another international body. Neither is it the same as a previously examined petition. The Commission therefore concludes that these requirements have been satisfied.

d. Nature of the allegations

55. Article 47(b) of the Convention stipulates that the Commission will dismiss all petitions or communications that do “not state facts that tend to establish a violation of the rights guaranteed by this Convention.” The Commission will now analyze whether incidents described in the petitioner’s allegations meet this rule.

i. Alleged violation of the right to a hearing within a reasonable time (Article 8(1))

56. Article 8(1) of the American Convention establishes the right of all individuals to be heard “within a reasonable time” in the substantiation of any accusation made against them. In connection with this, the Commission notes that in the agreement signed by the parties, the State recognized that “the right to be tried within a reasonable period (Article 8(1)) of the Convention)

was violated.” The Commission declares that the petitioner’s allegations about the procedural delays are admissible and, if they are true, they could constitute a violation of the Convention.

ii. Alleged violations of the right of defense (Article 8(2)(f)) and of the presumption of innocence (Article 8(2))

57. According to Article 8(2) of the Convention, “every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.” In addition, Article 8(2)(f) states that during the proceedings, all persons must have the right “to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts.” The Inter-American Court has stated that the principle of the presumption of innocence contains the goals of judicial guarantees by holding that all persons are innocent until their guilt is proven. The petitioner grounds this part of the petition on subsidiary arguments related to the alleged violation of Article 8(1) of the Convention and poses complex legal and factual issues. The Commission therefore concludes that the petitioner’s allegations are admissible in that they do tend to establish violations in accordance with the provisions of Article 47(b) of the Convention.

iii. Alleged violations of the right to humane treatment (Articles 5(3) and 5(6) and the rights of the family (Article 17)

58. Article 5(3) of the American Convention states that punishment cannot be extended to any person other than the criminal, and Article 5(6) states that the essential aim of punishments consisting of deprivation of liberty shall be the reform and social readaptation of the prisoners.

59. In a strictly formal sense, the word “punishment” (pena in the Spanish text of the Convention and peine in the French) refers to a penal sanction imposed by the competent authorities on a person who has been declared “responsible” or “guilty.” In the present case, no punishment has been imposed on Mr. Gotelli Jr., since the parties’ claims do not indicate that any sanction has been imposed on him under a ruling issued by the competent authorities in the criminal proceedings.

60. Although the Inter-American Court and the Commission have stated that excessively prolonged preventive custody or arrest can in certain circumstance constitute a punishment,[FN3] the parties’ allegations do not indicate that Mr. Gotelli’s preventive custody was enforced. Thus, given the characteristics of this case, the petitioner’s allegations do not tend to establish a violation of Article 5(6) of the Convention. In addition, considering that Articles 5(3) and 11(1) must be interpreted as set forth in Article 29 of the Convention, the evidence presented during these proceedings do not indicate the violations alleged by the petitioner.

[FN3] Inter-American Court of Human Rights, Suárez Rosero Case, Judgment of November 12, 1997, Series C, N° 35, paragraph 77; Inter-American Commission on Human Rights, Jorge A. Giménez, Argentina, Case 11.245, Report N° 12/96, paragraph 114.

61. The petitioner also alleges that together with Article 5(6), Article 17 of the Convention was violated, because his family is undergoing the uncertainty and anguish caused by this situation, in conjunction with the publicity campaign and severe financial losses. The Commission believes that after rejecting the petitioner's arguments regarding Article 5(6) of the Convention and in light of the specific circumstances of this case, the protection set forth in Article 17 cannot be applied to this situation.

62. The Commission concludes that in the case at hand, the petitioner's allegations do not tend to establish a violation of the right to humane treatment or the rights of the family as set forth in Articles 5(3), 5(6), and 17, and that those claims are therefore inadmissible under Article 47(b) of the Convention.

iv. Alleged violations of the right to honor (Article 11(1)), the right to equality before the law (Article 24), and the right to effective recourse (Article 25(1))

63. The petitioner claimed Articles 11(1), 24, and 25(1) were violated by the trial and the delays it entailed; however, the Commission notes that the petitioner did not provide sufficient evidence to substantiate these claims. The Commission therefore concludes that they are inadmissible by reason of being manifestly groundless, in accordance with Article 47(c) of the Convention.

V. CONCLUSIONS

64. The Commission concludes that it is competent to hear this case and that the petition is admissible as regards the alleged violations of Article 8 of the Convention. However, it believes that under Articles 46 and 47 of the Convention, the petitioner's allegations regarding violations of Articles 5(3), 5(6), 11(1), 17, 24, and 25(1) are inadmissible.

65. Based on the factual and legal considerations outlined above, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible as regards the alleged violations of Article 8 of the Convention, and to declare inadmissible the allegations regarding violations of Articles 5(3), 5(6), 11(1), 17, 24, and 25(1).
2. To notify the parties of this decision.
3. To proceed with the analysis of the merits of the case.
4. To make itself available to the parties in order to reach a friendly settlement based on respect for the rights enshrined in the American Convention, and to invite the parties to make a statement regarding said possibility.

5. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

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