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File Number(s):	Report No. 104/99; Case 11.400
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Title/Style of Cause:	Eolo Margaroli and Josefina Ghiringhelli de Margaroli 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:	27 September 1999
Citation:	Margaroli v. Argentina, Case 11.400, Inter-Am. C.H.R., Report No. 104/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)

I. SUMMARY

1. On October 31, 1994, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") received a petition from Josefina Ghiringhelli de Margaroli and Eolo Margaroli (hereinafter "the petitioners") accusing the Argentine Republic (hereinafter "the State," "the Argentine State," or "Argentina") of having violated the following rights protected by the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"): the right to a fair trial (Article 8(1) and the right to property (Article 21).

2. The petitioners state that they are the owners of real property in Argentina's Federal Capital, on which they began the construction of an eight-story building for which the plans were approved by the municipal authorities. A street-widening ordinance issued in 1979 affected the front of the property, requiring the demolition of the unfinished building and making the sale of the planned commercial units impossible. In 1981 the owners began an "inverse or irregular" expropriation action against the Municipality of Buenos Aires and, in 1985, they obtained a final ruling in their favor. The petitioners also claim that once execution of the sentence began, they received the first payment in July 1985 and the municipality registered the law suit in order to protect the unembargoable and unavailable status of the land in question. After several formalities, a new ordinance in 1989 declared the property unencumbered; it also reserved, in the municipality's favor, the right to recuperate what it had previously paid. The petitioners challenged this measure in the courts, on the grounds of the economic harm caused by the unavailability of their property. They obtained a favorable ruling on appeal, which was then overturned by the Supreme Court of Justice on April 12, 1994, with the chief argument that the Appeals Court had violated the principle of reasonableness.

3. The State recognizes that in accordance with international law, the petitioners have pursued and exhausted the available domestic remedies. However, the State claims that in their submission, the petitioners argue "the unconstitutionality of Article 29 of Law Nº 21.499 (the Expropriation Law) and of Municipal Ordinance Nº 43.529/89 which unencumbered the property. This claim was not made before the domestic courts and, consequently, with regard to it the domestic remedies have not been exhausted." It also claims that to exhaust this through the domestic courts, the petitioners should have filed an extraordinary remedy before the Supreme Court challenging the validity of those laws. In addition, the State requests that this case be declared inadmissible because it believes that the substance of the petitioners' allegations undermines neither the right to property nor the judicial guarantees set forth in the Convention.

4. In examining the admissibility of this case, the Commission concluded that it is competent to hear it and that the petition is admissible, pursuant to Articles 46 and 47 of the American Convention.

II. PROCESSING BY THE COMMISSION

5. On October 31, 1994, the Commission received a petition from Eolo Margaroli and his wife, Josefina Ghiringhelli de Margaroli, accusing the Argentine State of violating Articles 8 and 21 of the American Convention on Human Rights, dealing with the right to a fair trial and the right to property, respectively.

6. The Argentine State replied on May 4, 1995, that the change in the principal element (from the declaration of eminent domain to its suppression) led to a change in the accessory element, which the petitioners do not accept. Consequently, there was no violation of the right to property. In that same communication, the State said that the petitioners have had access to every judicial instance for voicing their claims. The petitioners submitted several replies to this communication between June 28, 1995, and January 20, 1999.

7. On July 25, 1995, the petitioners submitted the amicus curiae opinion of Dr. Eugenio Raúl Zaffaroni, which maintains that the State violated Article 21 of the Convention. On August 7, 1995, the petitioners asked the Commission to begin friendly settlement proceedings. On September 7, 1995, a hearing was held during the Commission's 90th regular period of sessions. On September 13, 1995, the Commission made itself available to the parties with a view toward a friendly settlement, under Article 48(1) of the Convention and Articles 45(1) and 45(2) of its Regulations. After two consecutive 30-day extensions, on December 5, 1995, the State reported that it was unable to consider the friendly settlement proposal. On March 5, 1996, the petitioners asked the Commission to proceed with the formalities indicated in Article 50 of the Convention.

8. On November 2, 1997, the petitioners stated that after failing to obtain a response to the friendly settlement proposal, processing of the case in accordance with the Convention and the Regulations should continue. On November 30, 1997, the State sent a reply expressing its thanks for the offer of friendly settlement and noting that the Argentine Republic could not "analyze and consider the friendly settlement proposal." Finally, on December 3, 1997, the Commission

recorded the termination of the friendly settlement process. The parties later submitted additional information.

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The petitioners claim they are the owners of real property located at Calle Raulet Nº 113/115/117, in Buenos Aires, upon which they decided to build an eight-story building; the plans for this were approved by the Municipality of Buenos Aires in 1977. Construction work reached as far as the fourth floor of the building.

10. In early 1979, the city of Buenos Aires enacted Municipal Ordinance Nº 34.778/79, containing a general project for urban planning and traffic management that affected several streets by removing the fronts of property adjacent to them, including Calle Raulet. The petitioners' property located on that street was affected by the removal of a six-meter strip of its street front. This ordinance, in accordance with the Urban Planning Code, reduced the petitioners' surface available for construction to 157.06 m2, i.e., by 88.63 percent. It also reduced the value of their real estate, making it impossible for them to sell the units and apartments at the market price.

11. The petitioners allege that the removal of the strip led to a widening of the street, forcing them to demolish most of the completed construction because, since it was a single structure, it could not be modified without compromising the stability of the entire building. Therefore, in 1981, the petitioners filed a "total, inverse, or irregular expropriation" lawsuit against the Buenos Aires municipal government before Civil Court Nº 27 in the federal capital.

12. A ruling handed down on June 11, 1984, accepted part of the irregular expropriation sought and fixed amounts to be paid by the municipality as compensation for the expropriation and as direct damages. These payments were to be made within a period of 30 days.

13. Both parties appealed against this ruling and, on April 22, 1985, a ruling from Court D of the National Civil Appeals Chamber in the capital upheld the first-instance decision and increased the amounts to be paid as compensation. The appellate ruling also ordered: (1) restitution for the expropriated strip (partial expropriation); and (2) restitution of the direct damages caused; i.e., paying for the total clearance of the section of land not expropriated, with the demolition of the building and the removal of its foundations. To this end, the court granted the Municipality of Buenos Aires a period of 45 days to carry out this work or, alternatively, to pay the owners the necessary costs. Said payment was to be made 30 days after the ruling had become final. The municipality failed to make a correct appeal on time, and so the ruling became final. In late 1985, the municipality made payment for the strip of land affected by the expropriation ordinance and began to carry out the terms of the sentence.

14. The petitioners subsequently submitted the final bill for the delays that arose in the payment of the expropriated strip. The municipality deposited the corresponding check and

asked for possession of the expropriated land. The petitioners refused, since the demolition ordered in the sentence had not been carried out.

15. After a time, in order to secure possession, the Municipality of Buenos Aires began steps in accordance with the option of paying the cost of clearing the nonexpropriated land and asked the petitioners to submit the invoice for the demolition costs, in compliance with the obligation regarding paying for demolition costs set down in the Appeals Chamber's ruling. This invoice was finalized on March 14, 1989, with which, according to the petitioners, "implementation of the sentence was concluded." According to the ruling of the Civil Chamber, in order to clear the land, the municipality had to deposit the amount of the final invoice within 30 days--i.e., before April 28, 1989--or be in a state of legal default.

a. The alleged violation of the right to a fair trial (Article 8(1)

16. On April 20, 1989, the municipal executive and council enacted Ordinance Nº 43.529/89 in order to remove the encumbrance on Calle Raulet that had been imposed by Ordinance Nº 34.778/79, which had modified the frontage of several streets and which gave rise to the expropriation suit between the petitioners and the municipality. This new ordinance revoked the declaration of eminent domain and, consequently, the expropriation that had been ordered, by canceling the removal of frontage on Calle Raulet.

17. On April 28, 1989, the last day for the municipality to pay the demolition costs, the municipal authorities refused to cover the amount paid for clearing the land, arguing that the new ordinance constituted "an extinguishment of the obligation." It also argued that the expropriation had not been concluded because possession had not been surrendered. The petitioners claim that the municipality's attitude constitutes an application of the principle of estoppel, "in that by taking actions it places the agent under the obligation of taking steps actions toward performance of the actions required. This is then turned around when the same body carries out a contrary action (the ordinance) for noncompliance with the consequences of the first action."

18. The petitioners state that the new ordinance was published in the Municipal Bulletin on May 9, 1989. They hold that the rule did not exist when it was invoked by the municipality; it was therefore void of all legal effect since the period allotted for payment of the demolition costs expired on April 28, 1989. The rule that the municipality used to excuse itself from that payment was published 11 days later, on May 9, 1989, and began to have legal effect (juridical existence) on the eighth day following publication: May 17, 1989.[FN1]

[FN1] To show this, the petitioners cited Article 2 of the Civil Code: "Laws shall not be binding until after their publication, and as of the stated day. If no day is stated, they shall become binding eight days after their publication."

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19. They also claim that the ordinance was enacted with the sole purpose of avoiding compliance with the final judicial ruling requiring the municipality to pay the cost of demolishing the building, which had already become res judicata. On August 2, 1989, a first-

instance ruling was handed down, upholding the extinguishment--i.e., the new ordinance that revoked the declaration of eminent domain--and, consequently, canceling the expropriation. The petitioners filed an appeal against this decision and, on June 11, 1991, obtained a ruling from Court D of the National Civil Appeals Chamber upholding the principle of res judicata and thus overturning the first-instance ruling.

20. In light of this, the municipality filed a remedy of fact before the Supreme Court. Ruling on April 12, 1994, the Supreme Court upheld the municipality's appeal and thus overturned the final, res judicata ruling of April 22, 1985. It also validated the nonexistent ordinance and made it retroactive, when it did not meet the conditions needed for such an exception.[FN2] Moreover, it ordered the petitioners to pay the costs of the action, which they see as being a further violation of the terms of the law.[FN3]

[FN2] The petitioners cited Article 3 of Argentina's Civil Code: "After they have come into force, laws shall apply even to existing legal situations and relationships. They shall not have retroactive effects, regardless of whether or not they deal with public order, except if otherwise stipulated. Legally established retroactiveness may in no instance affect rights protected by constitutional guarantees. New supplementary laws shall not apply to contracts that are already being performed."

[FN3] The petitioners cited Law Nº 21.499 (Expropriation Law), Article 29 of which states: "The expropriator may withdraw from the action while the expropriation has not yet been finalized. The costs shall be met by him. An expropriation shall be considered finalized when transfer of ownership to the expropriator has taken place by means of a final ruling, the taking of possession, and the payment of compensation."

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21. They thus hold that the violation of Article 8(1) of the Convention arose from the ruling of the Argentine Supreme Court, which did not respect res judicata and left the petitioners in a clear situation of legal insecurity. They also hold that the right to a fair trial was undermined by the State's delay in reaching a legal solution, thereby violating their right to a hearing within a reasonable time.

22. They similarly maintain that the ruling of April 22, 1985, had the effect of res judicata and its implementation began not only with the 1985 payment for the expropriated strip but also with the municipality's request that the petitioners submit the invoice, the treatment given to it, and its status as final.

b. The alleged violation of the right to property (Article 21)

23. The petitioners hold that over the years the dispute has lasted, their rights have been curtailed, in that they have been unable to use and enjoy their property, as have their expectations for full compensation for the property they owned. When the judicial guarantee of res judicata was extinguished, their expectations vanished, as did their rights as landowners affected by an expropriation. Not only were they not given the amounts ordered in the inverse expropriation

ruling; they also run the risk of surrendering the amounts that were actually credited to them by the municipality.

24. They maintain that their ownership has been affected and they have been denied any claim over the expropriated strip. “The stoppage of building work proves they have been denied the use and enjoyment of the real property.” In addition, they claim that the declaration of eminent domain itself made a significant proportion of their property unsellable and prevented them from making use of the land.

25. Similarly, they maintain that they never received fair compensation for the denial of the use and enjoyment of their property. They claim that the State’s actions were confiscatory in nature and that their property “served neither the social interest nor eminent domain; they only affected the right to property” of the petitioners.[FN4] They hold that a declaration of eminent domain over a piece of real estate causes limitations in or the loss of the right of property, but in enforcing it the State must respect its own domestic rules and, particularly, the provisions of international law. In light of this, the petitioners believe that their right to property, as set forth in Article 21 of the American Convention, was violated, and they provide a breakdown of the damage, legal costs, and other expenses.

[FN4] The petitioners cited the jurisprudence of the European Court of Human Rights in the case of James and Others, February 21, 1986.

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26. They invoke the principle that “exceptions or limitations cannot surpass basic law” and add that the Argentine State has used exceptions as if they surpassed the basic law guaranteed in Article 21 of the Convention by stating that the declaration of eminent domain is the basic law and its suppression an accessory element thereto.[FN5] Moreover, they maintain that the State has interpreted in bad faith the rights that it is obliged to both respect and guarantee. They argue that general principles of law cannot be used to affect rights protected by Convention, because it is clear that the State has been unable to respect and guarantee them.[FN6]

[FN5] In connection with this, they cited the jurisprudence of the European Court in Sporrong and Lönnroth and in Ashingdane, Series A, Nº 93.

[FN6] The petitioners cited the doctrine laid down by the Inter-American Court of Human Rights in OC-5/85, page 39, paragraph 67.

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27. The petitioners state that they do not want to undermine the State’s discretionary right to conduct economic, social, and cultural policies, but rather to show that the principles followed in the case are unreasonable. A fair balance between the general interest and basic rights is missing. As regards the exhaustion of domestic remedies, the petitioners hold that the State’s claim regarding the unconstitutionality of Article 29 of Law 21.499 (the Expropriation Law) and Ordinance 43529/89 is untrue. They claim that the State has illegitimately changed the object of their complaint, which is based on the aforesaid legal elements, and they believe it was the

Supreme Court's ruling that violated their rights. In addition, they maintain that domestic remedies were exhausted.

28. As regards taking possession of the property, the petitioners state that the municipality was obliged to take possession and yet failed to do so, and so it cannot therefore benefit from its failure to act to the detriment of the petitioners, who claim to have met their obligations. Finally, the petitioners maintain that their right to a fair trial was undermined by the State's delays in reaching a legal solution and its violation of the right to a hearing within a reasonable time.

B. The State

29. In its first reply, the State asks for this case to be declared inadmissible because it believes that the substance of the petitioners' allegations affected neither the right to property nor the judicial guarantees set forth in the Convention.

30. It also points out that the ruling of the National Appeals Chamber on April 22, 1985, made amends to the petitioners, to wit: "The municipality would demolish the constructions in place on the land, removing the piles that had been installed to preserve the security of the building being erected in order to leave the land perfectly available and free of all obstacles, within a period of 45 days, or alternatively, credit the cost of that work, at the option of the Municipality of Buenos Aires." It thus maintains that said amends were "a part of and accessory to the compensation for the expropriation, as direct damage arising therefrom."

31. The State also notes that the municipality chose to pay the cost of demolishing the building "on account of a lack of the technical wherewithal to carry it out. In this connection, Ordinance Nº 43.529/89 was enacted, unencumbering the property." The State alleges that the municipality complained about this "extinguishment" at trial and the first-instance court, in its ruling of August 2, 1989, upheld the complaint made by the Municipality of Buenos Aires in accordance with the terms of Article 29 of the Expropriation Law, Nº 21.499. Thus, the State maintains that "the expropriation that had not been finalized was revoked."

32. In connection with the petitioners' request for demolition, the State notes that "Mr. Eolo Margaroli continued to implement the Chamber's ruling in the hope of receiving payment for demolition and pile-extraction tasks that should not have been carried out since there was no expropriation. "The petitioners submitted an invoice, which was challenged by the Municipality of Buenos Aires because there was no reason for it. In spite of these arguments, the first-instance judge admitted the claim and the Appeals Chamber upheld that decision, albeit ruling that "the existence or not of the reason for execution should not be discussed when challenging the invoice, but rather when the objections to implementation are made."

33. The municipality filed an objection alleging "false implementation" on the grounds that there was no reason for it since the process had terminated when the "extinguishment" had lifted the encumbrances from the property. The first-instance court and the National Civil Appeals Chamber overruled this objection, and so the municipality took the case to the Supreme Court. The Supreme Court overturned the Chamber's ruling because "it was not reasonably derived

from current law"; consequently, the Chamber handed down a second ruling rejecting the implementation sought by the petitioners.

34. The State accepts that the petitioners have pursued and exhausted the available domestic remedies in accordance with international law. However, the State notes that in their submission, the petitioners refer to "the unconstitutionality of Article 29 of Law Nº 21.499 (the Expropriation Law) and of Municipal Ordinance Nº 43.529/89 which unencumbered the property. This claim was not made before the domestic courts and, consequently, with regard to it the domestic remedies have not been exhausted." The State says that this question should have been addressed by filing an extraordinary remedy before the Supreme Court to challenge the validity of those provisions.

35. The State further notes that the petitioners began another suit against the Municipality of Buenos Aires, which was heard by the same court and through which they sought damages equal to the loss of the profits they would have earned by building and selling the apartments in question. The ruling in this case rejected these claims and turned down all and any claims for damages.

36. To support its position that the right to property was not violated, the State uses the same arguments as the Argentine Supreme Court's ruling of April 12, 1994. Thus, the State holds that "the change in the principal element--from the declaration of eminent domain to the suppression of that classification--led to a change in the accessory element that the petitioner seems reluctant to accept." And it concludes that no harm was done to the petitioners' right to property.

37. The State also holds that in no way was the right to a fair trial harmed. It claims that harm "has not occurred at any moment in the proceedings, since not only has there been no denial of access to any court of law, but also in each of them he--the petitioner--was able to make his claims and state his rights." In later submissions, the State maintains that no harm was done to the right to property or the right to a fair trial. Moreover, it states that the property on Calle Raulet "is not and never was subject to any declaration of public utility."

38. Regarding the petitioners' request for compensation, the State holds that both Ordinance Nº 43.529 of April 20, 1989, and the judge's ruling removed the encumbrance from the property. Consequently, the petitioners cannot "receive any compensation intended to make amends for the declaration of public utility, because the alleged declaration of public utility does not exist."

39. The State reports that there is no reason whatsoever to cancel the amount set for the demolition of the construction erected on the property, because no demolition is required since the property is under no encumbrance. On the contrary, it believes the petitioners should reimburse the compensation paid for the expropriated strip of land since, pursuant to Ordinance Nº 43.529, the reason for said compensation does not exist.

40. The petitioners' right to property, the State maintains, has been affected in no way at all; the property is under no encumbrance, and the owners enjoy full ownership of it. Moreover, the State holds that the owners "were at no time restricted in the use, enjoyment, and disposal of the property."

41. Based on these arguments, the Argentine State concludes that the complaint does not meet the requirements for generating international responsibility set forth in Article 47 of the Convention and in Article 41 of the Commission's Regulations.

IV. ANALYSIS OF ADMISSIBILITY

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

42. The Commission believes it is competent to hear this case. First, as regards its ratione temporis competence [by reason of time], the petitioners maintain that the Argentine State is internationally responsible on account of the ruling handed down by its Supreme Court of Justice on April 12, 1994, which took place after the State had placed its instrument ratifying the American Convention before the General Secretariat of the Organization of American States on September 5, 1984.

43. Secondly, as regards its ratione materiae competence [by reason of subject], the petition refers to alleged violations of rights enshrined in Articles 8(1) and 21 of the American Convention arising from the rulings handed down by the judicial authorities that heard the suit filed against the Argentine State.

44. Regarding its passive ratione personae competence [by reason of the person], the petitioners accuse Argentina, a member state, of committing these violations. As regards its active ratione personae competence, the petitioners allege that the violations committed caused them harm, thus identifying themselves as the direct victims of said violations.

B. Other requirements for admissibility

a. Exhaustion of domestic remedies

45. The Commission has, in the past, emphasized the "accessory and complementary" character of the inter-American human rights protection system. This character is expressed by provisions including Article 46(1)(a) of the Convention, which requires that "remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." This rule allows states to resolve disputes under their own legal systems before facing international proceedings.

46. In this case, the petitioners claim they exhausted the domestic remedies applicable to the alleged violations, and the State expressed its acceptance of that claim by stating that with the Supreme Court's ruling--which ruled on the validity of the new extinguishment alleged by the municipality--the remedies offered by domestic jurisdiction were exhausted.

47. However, the State notes that the petitioners also challenged the constitutionality of Ordinance Nº 43.529/89 and of Article 29 of Law Nº 21.499 (the Expropriation Law) before the Commission and that "this claim was not made before the domestic courts and, consequently, with regard to it the domestic remedies have not been exhausted" (Commission's emphasis). It

adds that the petitioners should have filed an extraordinary remedy before the Supreme Court of Justice to challenge the legality of those provisions.

48. The petitioners report that, "the claim made by the Argentine State in its reply that we challenged the constitutionality of Article 29 of Law 21.499 and of Ordinance 43.529/89 is untrue."[FN7] They also note that, "it was the ruling of the Argentine Supreme Court that upheld the eminent domain and the confiscation of the property and that affected the judicial guarantees." With this statement, the petitioners confirm that the domestic remedies were exhausted.

[FN7] Communication from the petitioners dated June 28, 1995.

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49. The Commission will now analyze, first, whether the remedies exhausted by the petitioners before the domestic courts were appropriate; and, second, whether the extraordinary unconstitutionality appeal was appropriate for resolving the violations. First of all, from its analysis of the case file, the Commission believes that the domestic remedies were exhausted in this case, noting that after a municipal act affected a strip of land belonging to them, the petitioners filed a total "inverse or irregular" expropriation action. This claim was admitted in the petitioners' favor and partially implemented by means of payment for the expropriated strip of land, and they later requested implementation of the provisions regarding "payment for the demolition and removal of the piles" by submitting the corresponding invoice.

50. However, after this request for implementation of the sentence was made, the municipality filed a "false implementation" objection, arguing that there was no reason for it since the process had terminated with the "extinguishment" of the obligation through the ordinance unencumbering the strip of land. The first-instance court ruled in the municipality's favor and the National Civil Appeals Chamber overturned that decision, rejecting the municipality's objection and ruling in the petitioners' favor.

51. The Commission believes that after obtaining a favorable ruling, the petitioners had no need to pursue any other remedy. It was the municipality, after its claims were rejected, that filed the "extraordinary" and "complaint or factual" remedies in order to obtain a favorable decision, which occurred when the Supreme Court upheld the latter. Thus, the Supreme Court of Justice of the Nation overturned the ruling handed down by the Chamber that was favorable to the petitioners.

52. In these circumstances, with the existence of a Supreme Court ruling on a complaint filed by the municipality, the Commission believes that this ruling is final and exhausts the domestic remedies as regards the petitioners' claims. In addition, it must be noted that the State has not claimed that the judicial remedies filed by the petitioners and exhausted by the Supreme Court's ruling were not appropriate for resolving its situation.

53. Secondly, regarding the exhaustion of the extraordinary unconstitutionality remedy referred to by the State, the Commission recognizes that in some cases unconstitutionality

remedies, which are in principle extraordinary, offer appropriate and effective remedies for human rights violations. In the case at hand, however, the State has neither claimed nor shown that a decision on the unconstitutionality of Article 29 of Law 21.499 and Ordinance 43.529/89 would have in any event resolved the alleged violations described by the petitioners.

54. Finally, considering that the substance of the petition does not address the unconstitutionality of the laws applied in this case, and that in any event the State has failed to show that the unconstitutionality resource was appropriate for remedying the violations described by the petitioners, the Commission concludes that in this case, the requirement of prior exhaustion of the domestic remedies set forth in Article 46(1)(a) of the American Convention has been met.

b. Filing period

55. 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." The Commission notes that the Supreme Court's decision was handed down on April 12, 1994, and the petitioners first appealed to the Commission on October 31, 1994. In turn, the State has made no statements in this regard. The Commission therefore believes that the petition was submitted within the six-month period stipulated by Article 46 of the American Convention.

c. Duplication of proceedings and res judicata

56. Article 46(1)(c) states that for a petition or communication to be admissible, it must not be pending in any other international settlement proceedings. Similarly, Article 47(d) of the Convention says that any petition that is substantially the same as one previously studied by the Commission or another international organization shall be declared inadmissible. The Commission understands that the subject of this petition is not pending any other international settlement and that it is not the same as any other petition that has already been examined either by itself or by another international agency. Thus, the requirements set forth in Articles 46(1)(c) and 47.d have been met.

d. Nature of the alleged violations

57. The Commission believes that, in principle, the petitioner's arguments describe facts that, if true, could possibly constitute violations of the right to a fair trial (Article 8(1) and the right to property (Article 21) set forth in the Convention. Consequently, the Commission holds that the requirement set in Article 47(b) of the American Convention has been met.

V. CONCLUSIONS

58. The Commission believes that it is competent to hear this case and that the petition is admissible, pursuant to Articles 46 and 47 of the American Convention.

59. Based on the factual and legal arguments given above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible.
2. To notify the parties of this decision.
3. To continue with its analysis of the merits of the case.
4. To make itself available to the parties with a view toward reaching a friendly settlement based on respect for the rights enshrined in the American Convention, and to invite the parties to make a statement regarding the possibility thereof.
5. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Given and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on September 27, 1999. Robert K. Goldman, Chairman; Helio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; Commissioners Carlos Ayala Corao, Jean Joseph Exumé and Alvaro Tirado Mejía.