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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 22/00; Case 11.732
Session:	Hundred and Sixth Regular Session (22 February – 10 March 2000)
Title/Style of Cause:	Horacio Anibal Schillizzi Moreno v. Argentina
Doc. Type:	Decision
Decided by:	Chairman: Helio Bicudo; First Vice-Chairman: Claudio Grossman; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo The Second Vice-Chairman of the Commission, Juan Mendez, an Argentine national, did not participate in the debate or in the vote on this case, in accordance with Article 19(2)(a) of the Regulations of the Commission.
Dated:	7 March 2000
Citation:	Schillizzi Moreno v. Argentina, Case 11.732, Inter-Am. C.H.R., Report No. 22/00, OEA/Ser.L/V/II.106, doc. 3, rev. (1999).
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## I. SUMMARY

1. On February 20, 1997, the Bar Association of the Federal Capital of Argentina (Colegio Público de Abogados de la Capital Federal, hereinafter "Colegio Público"), the Legal and Social Studies Center (Centro de Estudios Legales y Sociales, CELS), and the Center for Justice and International Law, CEJIL (hereinafter "the petitioners"), submitted a petition to the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "Inter-American Commission"), alleging that the Argentine Republic (hereinafter "the State" or "Argentina") violated the rights established in the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"), to the detriment of Mr. Horacio Anibal Schillizzi Moreno.

2. The petition indicates that upon a motion for recusation, on August 17, 1995 the judges of Chamber "F" of the National Court of Appeals in Civil Matters for the Federal Capital (hereinafter the "Court") sanctioned Mr. Schillizzi, an attorney for one of the parties in a trial, to three days of detention for "maneuvers aimed at obstructing justice." The petitioners allege that the detention order was carried out without respecting judicial guarantees (Article 8), because the court was not impartial, no grounds were given for the decision, the court did not allow the right of defense, and there was no judicial review of the sentence. The petitioners also argue that the detention was arbitrary and illegal, violating the right to personal liberty (Article 7), and that the judicial authorities' rejection of the request that the sanction be served under house arrest violated the right to humane treatment (Article 5) and the right to equality before the law (Article 24). In

view of all the foregoing, it is argued, it also violated the duty to respect the rights established in the Convention (Article 1).

3. On examining the admissibility of this case, the Commission decides that it has jurisdiction to take cognizance of the petition and it declares the petitioners' claims regarding the alleged violations of Articles 1, 7, 8, and 25 of the Convention to be admissible, as they meet the requirements set forth in Articles 46 and 47 of the Convention. Nonetheless, it decides to postpone a decision on compliance with the requirement set forth in Article 46(1)(a) of the Convention until there is a ruling on the alleged violations of Articles 8 and 25 of the Convention in the examination of the merits of the case. The Commission declares inadmissible the petitioners' claims regarding the alleged violations of Articles 5 and 24, as they do not meet the requirement established in Article 47(b) of the Convention.

## II. PROCESSING BY THE COMMISSION

4. On February 20, 1997, the Commission received the petition, which was forwarded to the State on March 25, 1987, with a request that it present its observations within 90 days. The State requested extensions on June 23, 1997, and August 12, 1997, which were granted; the State's answer was received on September 24, 1997. The petitioners requested an extension of the time allowed to respond to it, and submitted their answer on December 23, 1997. On February 26, 1998, the Commission granted the parties a hearing during its 98th regular session. On February 14, 1998, the State requested an extension on two consecutive occasions, and submitted its observations on July 15, 1998. On May 28, 1998, the petitioners sent complementary information, which was answered by the State, and after being given an extension requested on September 18, 1998, the petitioners submitted their observations on December 29, 1998. At the request of the petitioners, a hearing was scheduled during the 102nd session, which was suspended. On August 27, 1999, Mr. Schillizzi submitted a brief, which was forwarded to the State. On September 30, 1999, the parties were given a hearing during the 104th session. On December 29, 1999, Mr. Schillizzi sent additional information, and on January 4, 2000, it was sent to the State, which was given 30 days to answer. On February 15, 2000, the State requested an extension, which was not granted. At the date of this report, no reply has been received from the State.

## III. POSITIONS OF THE PARTIES

### A. Position of the petitioners

5. The petitioners allege that the decision by Chamber "F" of the National Court of Appeals in Civil Matters for the Federal Capital (hereinafter the "Court") in the proceedings "Banco Credit Lyonnais Argentina S.A. v. La Escisión S.A. re: Recusation with cause" of August 17, 1995, in which it refused to admit the recusation pursued by Mr. Schillizzi--who, as attorney, defended one of the parties to the trial--declared it to be malicious, and sentenced him to three days of detention for maneuvers aimed at obstructing justice.

6. The petitioners allege that in the face of that sanction, both the Colegio Público and Mr. Schillizzi pursued and exhausted domestic remedies with the judgment of the Supreme Court of

Justice of Argentina (hereinafter "Supreme Court") of August 20, 1996, which rejected the appeal for a review of facts as well as law (recurso de hecho) filed by the Colegio Público. The petitioners alleged that the extraordinary writ was not effective procedure for reviewing the administrative sanction, because courts have full discretion to accept or reject it without having to state the grounds for their decision. The fact that a special motion (recurso extraordinario) has to be filed shows that Argentine legislation does not have a regular judicial mechanism to review the imposition of such administrative sanctions. Therefore, it does not meet the requirements of the Convention to ensure judicial review in this case. While the right to be represented by the Colegio Público does not derive from Article 8 of the Convention, the seriousness of the sanction imposed on one of its members, Mr. Schillizzi, was of import to the institution, triggering its intercession on his behalf, in an effort to remedy the situation alleged. The petitioners allege that this is not an isolated case, and they cite the case of another attorney who was sentenced to detention for similar reasons. In his case the appeal for reversal, the special motion, and the appeal for review of facts as well as law were all denied.[FN1]

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[FN1] Case of "Consortio Arenales 1560/62 v. Picard, Jorge Alberto, re: the collection of fees."  
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7. The petitioners stated that the Colegio Público may submit a petition to the Commission because it is a non-governmental organization subject to public law whose function is to defend and oversee the exercise of the legal profession; because it was established by a law of the Nation, and the State delegated to it the function of administering the registration and overseeing the conduct of attorneys by imposing disciplinary sanctions; and it is vested by law with the competency to sue and be sued that is needed to bring public actions. Its status as an entity governed by public law does not mean it acts on behalf of and in representation of the State, for it does not depend on nor is it controlled by any State agency--as is the case of other entities at public law, such as securities exchanges, stock markets, and some private universities; it elects its own authorities by vote of the member attorneys, supports itself through their contributions, and does not depend on nor it is subjected to State control.

8. The petitioners allege that the Court imposed the sanction in the exercise of its powers to establish order that the Code of Procedure confers on it, and under Article 18 of decree-law N° 1285/58, regarding the organization of the court, which gives the judges the authority to sanction the employees and officers of the judicial system. This decree was derogated and later ratified by Law N° 14.467, which extends the authority to sanction attorneys, and was later amended by Law N° 24.289 of 1993. The petitioners argue that the judges imposed a sanction on Mr. Schillizzi without respecting the due process guarantees that any accused enjoys in a criminal case,[FN2] citing decisions of the Commission in cases 8095 and 9269 to support the proposition that when a measure imposed administratively is comparable in its gravity to a criminal sentence, the presumption of innocence and all other guarantees provided for criminal proceedings must be respected.[FN3] If there was criminal conduct meriting a prison sentence, it should have been reported to the competent authorities to pursue a criminal proceeding. In any case, the court should have presented the complaint to the Bar Association, for it to initiate a disciplinary action, with due process guarantees, in order to determine if there were grounds for imposing a disciplinary sanction on Mr. Schillizzi.

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[FN2] The petitioners cite the cases of *Albert Le Compte v. Belgium* and *Obermeier v. Austria* from the European Court of Human Rights.

[FN3] Inter-American Commission on Human Rights, Annual Report 1984-1985, Resolution Nos. 10/85 and 11/85 of March 5, 1985, pp. 34 and 37 respectively.

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9. The petitioners argued that the Court did not substantiate its decision to punish Mr. Schillizzi for exercising the right of recusation and violated the right to defense when it took the view that the exercise of this right obstructed the civil proceeding in which he was defending one of the parties. This sanction did not ensure the order or viability of the proceedings, nor did it protect the rights of the other party. They also consider, based on Article 30 of the Convention, that this "open-ended" description of the conduct sanctioned, "obstruction of justice," is insufficient to make it possible to weigh the incriminatory evidence and that the gravity of the sanction imposed requires, to some extent, the proper determination of the actions sanctioned. The petitioners add that the judges were not impartial, as they were bothered, affected, or offended by the recusations presented by Mr. Schillizzi, and, consequently, had a personal interest in imposing the sanction.

10. As regards the right to personal liberty, the petitioners consider that the detention order is arbitrary, since a law was applied that is incompatible with respect for the right to liberty. They believe that the disciplinary provisions under Act 23.187 regarding the Bar Association should have been applied. The court should therefore have referred the corresponding complaint to the Bar Association, as the sole authority for making ethical judgments regarding the conduct of lawyers and applying the relevant sanctions. Even if not carried out, the threat of its enforcement subsists. In addition, the petitioners consider that the detention imposed on Mr. Schillizzi poses a danger to his physical, psychic, and moral integrity. Mr. Schillizzi is ill, is an older man, and is being sanctioned by deprivation of liberty in the same place and with the same treatment accorded persons who are criminally accused, or convicted, and subjected to degrading situations such as having his shoelaces and belt removed, and being handcuffed.

11. The petitioners also allege violation of the right to equality before the law, considering that the judges refused to apply Article 10 of the Criminal Code, which provides for house arrest for convicts over 60 years of age. The unequal treatment derives from depriving Mr. Schillizzi of the rights granted to a person accused of an offense, and because the requirement that the sentence effectively be carried out contrasts with the possibility of suspending sentences to imprisonment provided for under criminal law.

12. The petitioners allege that the detention of Mr. Schillizzi was not carried out due to the many challenges to this decision, even though the court issued the order to the Chief of the Federal Police of Argentina. In addition, they state that Mr. Schillizzi may be subjected to this sanction when he appears before the courts, and that he is outside the country because he is not willing to submit to enforcement of the detention, and that he requests compensation on this account. With respect to the relief requested from the Commission by Mr. Schillizzi, the petitioners do not join him in this part of the petition.

## B. The State

13. The state alleged that in the course of executing a mortgage that normally would have taken six months, Mr. Schillizzi presented several recusations against different Chambers of the Court, so that execution took three years. First, he recused the judge of first instance, and his recusation was denied by Chamber "C"; second, he recused Chamber "C," and the motion was removed to Chamber "A," where it was also denied; third, he recused Chamber "A" and the case was removed to Chamber "F", which also denied the recusation and ordered a three-day detention. The State alleged that the sanction did not punish the exercise of the right of recusation but the abuse of that right, in the form of malicious recusations designed to postpone payment of a debt.

14. In its first observations submitted to the Commission on September 24, 1997, the State noted, with respect to the exhaustion of domestic remedies, that Mr. Schillizzi "had access to suitable remedies, and was able to pursue them and exhaust them even though he did not succeed in having the punishment revoked." He sought annulment of the sanction before the same Chamber, which was rejected. On October 20 and November 1, 1995, he asked that Chamber to be allowed to serve the period of detention in his home. Later, on November 13, 1995, he went before the Supreme Court arguing delay in the administration of justice or the denial of justice addressed in Article 167 of the National Code of Civil and Commercial Procedure, because the Court had not answered, and he argued the unconstitutionality of Article 18, Decree 1285/58. The Supreme Court rejected the motion alleging delay, given that the Court had already addressed the matter on November 6, 1995, prior to the filing of this motion.

15. At the Commission hearing held on September 30, 1999, the State added to its position the argument that Mr. Schillizzi did not, himself, exhaust the special remedy, but that it had been filed by the Colegio Público, and, assuming that Mr. Schillizzi's rights had been violated, this was the appropriate remedy for addressing those violations. In addition, the State argued that Mr. Schillizzi, on filing his motions, did not object to the sanction itself, but to its enforcement in the judicial detention facility. The precedent cited is Case 998/90 before the Civil Law Court, concerning a superintendency investigation following irregularities in a series of judicial auctions. In this precedent, the attorney who has been sanctioned had sought reconsideration before the Court en banc, made up of more than 45 members; he later filed a special motion and the Court switched detention in the judicial detention facility to house arrest.

16. The State alleges that the Supreme Court has developed case-law on the special motion and that its ability to accept or reject it is not entirely discretionary. Specifically, it cites the Gioldi case, in which the Supreme Court decided that the special motion was not a remedy of appeal. However, in that specific case it admitted the motion and revised the criminal ruling. In other words, under certain circumstances, a special motion may serve as a remedy of appeal. While it is true that the Colegio Público filed the special motion and the appeal for review of facts as well as law, it is not a victim in this case. Therefore, the State does not accept the notion that the Supreme Court decision of August 20, 1996, which rejects the complaint appeal against the denial of the special motion, is the decision that exhausts domestic remedies in this case, in the terms of Article 46(1)(a) of the Convention.

17. The State asserts that the Colegio Público lacks standing to be a petitioner because it does not act in the capacity of "any person or group of persons, or any nongovernmental entity" as provided for in Article 44 of the Convention, which was evidently intended to qualify persons other than those who represent the authorities to lodge a petition. The Colegio Público meets the prerequisites and characteristics of a typical public law body in terms of legal status, and, in the exercise of the powers conferred on it by law, it performs functions delegated to it by public authority to oversee the legality of law practice in the capital of the Argentine Republic. In other words, the Bar Association is a policing entity that forms part of the political organization of the state, with the nature, rights, and obligations of juristic persons subject to public law, and which acts in the name of and in representation of the State.[FN4] The State accepts the standing of CELS and CEJIL to come forth as petitioners, and that of the representative of the Colegio Público, acting on his own behalf, but not in his capacity as representative of the Colegio Público.

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[FN4] Taken from Inter-American Commission on Human Rights, Annual Report 1987-1988, Case Nos. 9777 and 9718, Argentina, March 30, 1988, pp. 75-85.

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18. With respect to the right to defense, the State points out that Mr. Schillizzi was able to file the motion for reversal or reconsideration, and exhaust it, even though he did not achieve his objective, and never pursued the special motion. The courts did not accept the standing or representation of the Colegio Público in these proceedings. The sanction imposed was confirmed by the appeals court that served as an impartial judicial review body, as required by the Convention.

19. With respect to the impartiality of the Court, the State holds that it is a matter of opinion, and therefore proves nothing. The State argues hypothetically that perhaps the court would have been considered impartial if, instead of detention, it had imposed a sanction not entailing deprivation of liberty. This context explains the description, in the petition, of "the partiality of the judges who are hearing a case," based on the mere fact that they impose a sanction on an attorney.

20. The State alleges that the sanction was imposed based on a law in force, and that a procedure existed that made it possible to review that sanction, even had there been a violation of the right to due process. In addition, it notes that there is no provision in Law 23.187 or its regulations for the conduct for which Mr. Schillizzi was sanctioned. Therefore, the law referred to by the petitioners was not applicable. The State understands that even though one may take issue with the type of sanction imposed, this does not mean it should be considered a violation of human rights. The Court never demanded enforcement of the sanction, and it never issued any arrest warrant to the local or international police. Moreover, Mr. Schillizzi pointed out to the Court that he had not received any notification, when it came to the time decided for serving the period of detention in the judicial detention facility. The only authority capable of preventing the exercise of the legal profession is the Colegio Público, and this organ has posed no obstacles to Mr. Schillizzi's practice of the law. In view of the foregoing, Mr. Schillizzi was never kept from

exercising his profession following imposition of a disciplinary sanction, and consequently, no compensation is called for.

21. The State points out that there is no violation of Mr. Schillizzi's right to humane treatment or right to equality before the law, because, under the terms of Article 10 of the Criminal Code, house arrest is not a right of the interested party, but rather a power of the court, when imposing a sanction. These powers to apply sanctions cannot be limited by criteria that are binding for all, because, if that were the case, the courts would have to be forced to impose a given sanction. The State is of the view that these arguments are inadmissible because the sanction imposed has not been enforced, the case has been shelved, and the sanction has prescribed. The State considers that there have not been other cases identical to that of Mr. Schillizzi, and that the petitioners have failed to establish difference of treatment in any way.

#### IV. ANALYSIS OF ADMISSIBILITY

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

22. The Commission has jurisdiction *ratione materiae*, *ratione personae pasiva*, *ratione loci*, and *ratione temporis* to hear this case, as the alleged violations of Mr. Schillizzi's rights under Articles 1, 5, 7, 8, and 25 of the Convention are attributed to agents of Argentina, a State party to the Convention, and were allegedly committed in its territory after Argentina ratified the Convention.

23. With respect to jurisdiction *ratione personae* and the petitioners' right to bring a case, the Commission observes that the non-governmental organizations CELS and CEJIL enjoy such standing to lodge the petition in question, and that the Colegio Público submitted its arguments together with those NGOs. Therefore, the pronouncement on the standing of the Colegio Público is not a determining factor for establishing jurisdiction *ratione personae* in this case, and does not preclude the possibility of a subsequent decision thereon.

B. Other admissibility requirements

a. Exhaustion of domestic remedies

24. Article 46(1)(a) of the Convention establishes the requirement to exhaust domestic remedies, pursuant to generally accepted principles of international law. First, the Commission notes that in this case both the State and the petitioner agree that Mr. Schillizzi filed the motion for reversal or reconsideration of the sanction before the Court on August 31, 1995. Nonetheless, the State argues that Mr. Schillizzi did not object to the sanction itself, but to its being served in the judicial detention facilities. From the analysis of the evidence submitted by the petitioners, the Commission observes that the motion filed by Mr. Schillizzi presents substantially the same arguments made before the Commission. Mr. Schillizzi objected to the sanction itself, on the grounds that it was arbitrary in that it punished the right to recusation, it was imposed without due process of law, it constituted a violation of the right to liberty, and it was based on a

provision that is null and void. The request that Mr. Schillizzi made to the Court to be allowed to comply with the sanction at his home was subsidiary to the request that the sanction be revoked.

25. The Commission also notes that once the Court rejected the motion for reconsideration on September 21, 1995, and rejected the special motion presented by the Colegio Público on October 12, 1995, Mr. Schillizzi reiterated his petition to the Court to have the sanction imposed in the form of house arrest, on October 20 and November 1, 1995. Both motions were denied on November 6, 1995. On November 13, 1995, Mr. Schillizzi filed the action before the Supreme Court on grounds of delay by the Court in rendering a decision, pursuant to Article 167 of the National Code of Civil and Commercial Procedure, and argued that the sanction was unconstitutional. This motion was rejected on May 7, 1996, as it was deemed that the Court had issued a ruling at the appropriate time, prior to this submission, on November 6, 1995.[FN5]

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[FN5] The Supreme Court stated: "considering that moving party invokes the delay in rendering the judgment with respect to the matter filed with Division 'F' of the National Court of Appeals in Civil Matters for the Federal Capital, and that as inferred from what was reported by that organ, it has issued the pronouncement required prior to the submission under examination."

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26. Second, the State has alleged that Mr. Schillizzi failed to pursue the remedy of the special motion provided for in Argentine legislation. Consequently, the Commission believes that the State must indicate the adequacy and effectiveness of the extraordinary writ.[FN6] The State cites as precedent Case 998/90 of the Civil Law Court, and the Girolodi case, as grounds for defining the special motion as an adequate and effective remedy. The petitioners reject the State's argument and argue that the administrative sanction imposed by the Court cannot be reviewed via a special motion because it is a discretionary power of the courts to admit it or reject it, and Argentine legislation has no regular judicial mechanism to review the imposition of this type of administrative sanction.

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[FN6] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, para. 88.

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27. The exhaustion of domestic remedies should not be understood as the need to go through the mechanics of formal procedures; rather, in each case, the reasonable opportunity of obtaining redress should be examined.[FN7] The Commission has recognized on prior occasions that in some cases special remedies, such as the motion alleging unconstitutionality, may constitute adequate and effective remedies for human rights violations.[FN8] Here, the parties discuss, inter alia, the nature of the sanction imposed upon Mr. Schillizzi, specifically, whether it is disciplinary and corrective or punitive in nature. In Girolodi, which the State adduced to show that the extraordinary writ would be an effective remedy for the violations alleged by the petitioners, there is reference to criminal matters.[FN9] Having examined the facts and arguments presented by the parties, the Commission considers that the adequacy and effectiveness of the special motion poses complex questions in respect of issues arising under Articles 8 and 25 of the

Convention that justify looking at them together with the merits of the case. Consequently, the Commission is of the view that the case cannot be declared inadmissible for failure to exhaust domestic remedies.

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[FN7] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 72; Case of Fairén Garbi and Solís Corrales, Preliminary Objections, Judgment of March 15, 1989, para. 97; Case of Godínez Cruz, Judgment of January 20, 1989, para. 75.

[FN8] Inter-American Commission on Human Rights, Report N° 104/99, Case 11,400, Eolo Margaroli and Josefina Ghiringhelli de Margaroli, Argentina, Decision of September 27, 1999. Para. 54.

[FN9] In the report 55/97, case 11,137, Abella and others, par. 270, the Inter American Commission stated in relation with the sentence issued in the case Giroldi by the Supreme Court: "The April 7, 1995 judgment of the Supreme Court of Argentina in the case of Horacio David Giroldi (No. 32/93) --decided after it had rejected the special appeal in the Abella case-- is particularly relevant to issue under examination. At that trial, Mr. Giroldi had been convicted by a Criminal Court ("Tribunal Oral en lo Criminal") and given a one-month prison sentence, which was suspended, for the crime of attempted simple robbery. The defense brought a writ of cassation ("recurso de casación"), arguing that the decision violated the right of defense at trial, and that the procedural limitation on the exercise of the remedy, in view of the amount of the penalty, was unconstitutional. The National Chamber of Criminal Cassation ("Cámara Nacional de Casación Penal") rejected the argument of unconstitutionality and denied the motion for cassation. The defense brought a special appeal against that decision, the denial of which led to a complaint appeal before the Supreme Court of Justice of Argentina. The Supreme Court ruled favorably on the complaint appeal, and rendered without effect the judgment appealed, citing as the basis for its decision the guarantee at Article 8(2)(h) of the American Convention

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28. Third, while domestic remedies must be exhausted by the alleged victim in the particular circumstances of this case, the Commission considers that the special motion filed by the Colegio Público on October 5, 1995, against the decision of September 21, 1995, had the purpose of conferring standing on the Colegio Público to defend attorneys, and specifically to act in the case of Mr. Schillizzi. Nonetheless, the October 12, 1995 decision of the Court was not limited to reiterating the rejection of its standing; it also addressed enforcement of the sanction that had been imposed on Mr. Schillizzi. In this respect, the Court stated:

Taking account of the status of the proceedings, and as the sanction imposed at folios 59/61 has become final, and without prejudice to the indications contained in the last paragraph of folio 76/dorso, Dr. Horacio Aníbal Schillizzi Moreno shall be informed that within 10 days he must present himself at the Alcaldía of the Palace of Justice for the purposes of the detention ordered in the proceedings. Let notice be given.

Without prejudice to this, and said attorney having been notified, the above-ordered measure shall be reported to the Chief of the Federal Police so that, in the event of failure to comply, he may proceed immediately to enforce the sanction imposed.

29. From the text quoted above, the Commission notes that, in rejecting the special motion submitted by the Colegio Público, the Court decides to consider the sanction imposed final and orders its enforcement even though it did not review the grounds for it. Given this circumstance, the Commission considers that while this special motion does not exhaust domestic remedies in this case, Mr. Schillizzi had a legitimate and direct interest in this part of the Court's decision.

b. Period allowed for submitting a petition to the Commission

30. Article 46(1)(b) of the American Convention provides that a petition, to be admitted, 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." At no time during the processing of this case before the Commission did the State allege there was a failure to meet the deadline requirements for the remedies exhausted by Mr. Schillizzi.[FN10] Consequently, the State may be considered to have tacitly abandoned any objection based on failure to comply with this requirement. Consequently, the Commission concludes that the petition complies with the requirement established in Article 46(1)(b) of the Convention.

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[FN10] See: Inter-American Court of Human Rights, Case of Neira Alegría, Preliminary Objections, December 11, 1991, paras. 25-31; Inter-American Commission of Human Rights, Report N° 124/99, case 11.765, Grenada. September 27, 1999. Para. 28; Inter-American Commission of Human Rights, Report N° 104/99, Case 11.400, Eolo Margaroli and Josefina Ghiringhelli de Margaroli, Argentina, September 27, 1999. Para. 56; Inter-American Commission of Human Rights, Report N° 67/98, Case 11.738, Elba Clotilde Perrone and Juan José Preckel, Argentina. May 4, Para. 38.

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c. Duplication of procedures and res judicata

31. Articles 46(1)(c) and 47(d) of the Convention establish as admissibility requirements, respectively, that the subject matter of the petition must not be pending settlement in another international procedure, and that it must not substantially reproduce a prior petition already examined by the Commission or other international organ. The Commission considers that the subject matter does not reproduce a petition already examined by this or any other international body, nor is it the substantial reproduction of a prior petition. Therefore, the Commission concludes that the requirements established at Articles 46(1)(c) and 47(d) of the Convention have been met.

d. Characterization of alleged violations of the Convention

32. Article 47(b) of the Convention establishes that any petition that "does not state facts that tend to establish a violation of the rights guaranteed by this Convention" will be inadmissible. In this case, the petitioners alleged that Article 8 of the Convention was violated with respect to Mr. Schillizzi because: a) there were no jurisdictional control regarding the decision imposing the sanction upon him; b) the sanction was of a kind imposed for a criminal offense and therefore the guarantees under Article 8(2) were applicable; c) in any case, a disciplinary procedure,

incorporating the due guarantees under Article 8(1), should have been started; d) the sanction hampers the right to defense, since it delays the proceeding and this favors of one of the parties; e) the broad description of the conduct does not make it possible to weight the charges and, d) the Court that imposed the sanction was not impartial and provided no grounds for its decision.

33. On previous occasions, the Inter-American Commission considered various factors to determine the applicability of the guarantees established in Article 8(1) and 2 of the American Convention. These factors include the nature of the behavior, act, or omission described, the authorities that may impose sanctions, and the nature and gravity of the sanction imposed and its consequences.[FN11] These factors are not exclusive, and it may be necessary to consider other elements, depending on the unique nature of each case. However, the Commission wishes to state that it does not have the jurisdiction to determine which authority, the judges or the bar association, is responsible for sanctioning lawyers with respect to the exercise of their profession. That is a function of the State organs. The Commission has jurisdiction to determine if a state party has violated the Convention.

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[FN11] The Inter-American Commission on Human Rights on Report N° 6/98, Case 10.832, Maximo Rodríguez, Argentina, February 21, 1998, considered inter alia the nature of the behavior, act, or omission described (paragraphs 45, 47 and 48), the authorities that may impose sanctions (paragraph 45), and the nature and gravity of the sanction imposed and its consequences (paragraph 46).

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34. Regarding the allegations of the petitioners concerning the right to personal liberty under Article 7, the Commission considers that they are related to Article 8, which justifies their examination with the merits of the case. In addition, the allegations of the petitioners concerning judicial protection under Article 25 of the Convention call for an examination of the merits. The Commission concludes that the facts alleged by the petitioners are admissible pursuant to Article 47(b), because, if proven, they may be violations of Articles 7, 8, and 25 of the Convention.

35. As to the alleged violation of the right to humane treatment under Article 5 of the Convention, the petitioners alleged that this right was violated when the judicial authorities refused Mr. Schillizzi's request to serve the sentence under house arrest on account of his health and age. Moreover, serving the sentence in prison, along with other inmates, would subject him to situations in which he would be subject to indignities, such as the deprivation of his shoelaces, his belt, and being handcuffed. The State alleged that the sanction ordered had not been carried out. The Commission considers it necessary to point out that Mr. Schillizzi's personal circumstances, such as his age or the state of his health, do not per se render a detention a violation of Article 5 of the Convention.[FN12] In examining the arguments put forward by the parties and the minutes and documents in the file, the Commission notes that Mr. Schillizzi has not undergone the detention that was served on him. Therefore, there is no way of proving in abstracto whether or not he would have been deprived of the medical care required to protect his health and bodily integrity[FN13].

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[FN12] In this respect, the European Commission on Human Rights and the Council of Ministers of the European system agree that there is no violation of Article 3 of the European Convention on Human Rights in the case of a 74-year-old who is diabetic and has a cardiovascular condition. This person was detained for 35 months. *Jabobs, Francis G. and White, Robin C.A., in The European Convention of Human Rights, 2nd edition, Clarendon Paperbacks, p. 54.*

[FN13] See: *Case of Bonnechaux v. Switzerland*, application N° 8224/78, decision of December 5, 1978, (1979) 15DR 211, and December 5, 1979, (1980) 18DR 100; 1981 3 EHRR 259.

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36. Furthermore, the Commission considers that the petitioners have not adduced any reasonable evidence that tends to prove that Mr. Schillizi ran the risk of compromising his bodily integrity if he were to serve the prison sentence in the court detention center. What is more, based on the analysis of the case file, it appears that on September 21, 1995, Chamber "F" of the National Court of Appeals in Civil Matters for the Federal Capital, in rejecting the motion for reconsideration by Mr. Schillizzi, also ordered that "the authority should take steps to prevent the procedure from endangering the dignity or personal decorum of the person on whom the sanction is imposed." The Cámara's decision of October 12, 1995, ruled on the enforcement of the sanction that had been imposed on Mr. Schillizzi, without prejudice to the above. In view of the circumstances indicated, the Commission considers that since the sanction was not carried out, it cannot be proved in abstracto that it would have violated his bodily integrity. Consequently, the Commission concludes that the facts alleged by the petitioner do not characterize violations of Article 5, and, therefore, this part of the petition is declared inadmissible, under Article 47(b) of the Convention.

37. As regards the right to equal protection under Article 24 of the Convention, the petitioners argued that the Court did not treat Mr. Schillizi fairly. On the one hand, the judges refused to apply Article 10 of the Penal Code, [FN14] which provides for house arrest for convicts over 60 years of age and, on the other hand, a case was presented in which the Court allowed a lawyer to serve his sentence at home. The State noted that the Court may order house arrest, but is not legally required to do so. It also noted that the petitioners have not shown disparate treatment. Regarding the right to equal protection before the law, the Inter-American Court held that:

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[FN14] Article 10 states: When the time in prison not exceed 10 months, the honest women and persons older than 69 years old, or valetudinarias may be detained in theirs onw homes.

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It follows that there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review.[FN15]

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[FN15] Inter-American Court of Human Rights, Advisory Opinion OC-4/84, January 19, 1984, para. 57. Quoted in the Report No 39/96, pag 87.

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38. The Commission has on prior occasions said that “in order to determine that a ruling handed down by a court violates Article 24 of the Convention, it is necessary to find, at least, that the court ruled in a manner radically different from a previous ruling involving a legal situation with nearly identical factual terms.”[FN16] In *Consortio Arenales 1560/62 c. Picard, Jorge Alberto s/cobro de honorarios* (fee recovery), adduced by the petitioners, the Argentine courts converted a jail sentence to one to be served under house arrest. That case was similar in outcome to this one. In fact, in Mr. Picard’s case, the judicial authorities considered the petition in the context of the legal remedies sought, and refused the request to serve the sentence under house arrest. But the Court made a special concession, on its own initiative, subsequent to the decision of the Supreme Court turning down the appeal for review of facts as well as law. The Commission believes that the fact that Mr. Schillizzi was not granted the same gratuitous privilege as other attorneys is not per se discrimination.

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[FN16] Inter-American Commission on Human Rights, Report 8/98, case 11.671, *Carlos Gracia Saccone, Argentina*, of March 2, 1998, para. 40.

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39. Furthermore, the Commission wishes to note that the rule that was applied to Mr. Schillizzi also provides for the possibility of the person concerned to serve the sentence at his/her home, similar to Article 10 of the Penal Code which makes the same provision for convicted persons. In fact, Article 18 of the Act 1285/58 (the text of which is taken from Law 24.289, Article 2) states that the prison sentence will be served in a facility attached to the tribunal or court or in the home of the person sanctioned. The Commission considers it necessary to reiterate that the right to equality before the law cannot be considered tantamount to the right to an equal outcome in decisions referring to the same subject matter.[FN17] The Commission concludes that the facts alleged by the petitioners do not characterize violations of Article 24, and, therefore, this part of the petition is declared inadmissible, pursuant to Article 47(b) of the Convention.

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[FN17]. In Report N° 39/96, Case 11.673, *Santiago Marzioni, Argentina*, para. 43, the IACHR affirmed that the right to equal protection of the law cannot be assimilated to the right to equal outcome in judicial proceedings involving the same subject matter. If such were the case, the Argentine Supreme Court would have to grant extraordinary writs to every plaintiff who invokes the same rules, or who presents similar arguments by the same attorney, without regard to the particular circumstances of each case. Such a situation would be juridically absurd and unreasonable.

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## V. CONCLUSIONS

40. The Commission concludes that it has jurisdiction to hear this case and that the petition is admissible with respect to the alleged violations of Articles 1, 7, 8, and 25 of the Convention,

pursuant to Articles 46 and 47 of the Convention. However, it decides to defer the decision on fulfillment of the requirement under Article 46(1)(a) of the Convention until a ruling is made on the alleged violations of Articles 8 and 25 of the Convention and on the merits of the case. The petitioners' arguments regarding the alleged violations of the right to humane treatment and the right to equality before the law established in Articles 5 and 24 of the Convention are declared inadmissible, as they do not make out violations of the Convention, pursuant to the provisions of Article 47(b) of the Convention.

41. Based on the arguments of fact and law set forth above, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to the alleged violations of Articles 1, 7, 8, and 25 of the Convention.
2. To declare this case inadmissible with respect to the alleged violations of Articles 5 and 24 of the Convention.
3. To notify the parties of this decision.
4. To continue to analyze the merits.
5. To make itself available to the parties for the purpose of reaching a friendly settlement based on respect for the rights set forth in the Convention, and to invite the parties to state their position with respect to such a possibility;
6. To publish this decision and include it in its Annual Report for the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 7 day of March 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Commissioners Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.