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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 70/00; Petition 12.055
Title/Style of Cause: Ernesto Galante v. Argentina
Doc. Type: Decision
Decided by: President: Claudio Grossman;
Second Vice-President: Marta Altolaguirre;
Commissioners: Robert Goldman, Julio Prado Vallejo, Peter Laurie, Helio Bicudo.
Pursuant to the terms of Article 17(2) of the Rules of Procedure of the Commission, its First Vice-President, Juan E. Méndez, a national of Argentina, did not participate in the discussion or decision on the present case.

Dated: 3 August 2001
Citation: Galante v. Argentina, Petition 12.055, Inter-Am. C.H.R., Report No. 70/00, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by: APPLICANTS: Ernesto Galante, Raul Zaffaroni and Alicia Oliveira
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I. SUMMARY

1. The present report addresses the admissibility of petition 12.055, received by the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission, “Commission” or “IACHR”) on May 21, 1998. The petition was filed by attorney Ernesto Galante, with the assistance of attorneys Raúl Zaffaroni and Alicia Oliveira (hereinafter “the petitioners”) against the Republic of Argentina (hereinafter “Argentina” or “State”). By note of July 12, 1999, the petitioners indicated that attorney Alicia Oliveira would no longer participate in the presentation of the matter due to having been named the Human Rights Ombudsman for the City of Buenos Aires. As from a June 23, 1999 communication, attorney Alberto Bovino has also assisted in the presentation of this matter as petitioner. By note of July 17, 2000, the petitioners indicated that attorney Zaffaroni would no longer be participating, due to having been named President of the National Institute against Discrimination, Xenophobia and Racism.

2. The petitioners allege that the State of Argentina bears responsibility for violations of Articles 8, 25 and 1(1) of the American Convention on Human Rights (hereinafter “American Convention” or “Convention”) as a result of illegal and arbitrary acts and omissions related to the processing of claims filed by Mr. Galante before the Argentine courts concerning an award of legal fees. They indicate that the violations alleged principally concern the failure of the Supreme Court of Argentina to repair due process violations committed by the courts below, as well as grave irregularities committed during the processing of the case before the superior tribunal itself.

3. In summary, they first allege that Mr. Galante was denied access to an independent and impartial tribunal. More specifically, they allege that the partiality of the Supreme Court of Argentina was demonstrated in attempts by two of its members to solicit bribes in exchange for decisions in Mr. Galante's favor, the improper handling of his requests to recuse (pedidos de recusación) three of the justices and two of the substitute justices (conjuceces) who participated in those proceedings, and the pressure that was brought to bear on the two substitute judges to decide against his claims. Second, the petitioners allege that Mr. Galante was denied his right to be heard fairly with due guarantees. In this regard, they maintain that the Supreme Court incorrectly applied the legal provision concerning certiorari, that the two judicial opinions joined to create the majority opinion rejecting the first of his appeals before that tribunal were joined improperly, that the tribunal arbitrarily departed from its own doctrinal practice, and that it made grave errors in its application of the substantive law. Third, they contend that the duration of the proceedings as a whole was unjustifiably prolonged in violation of the right to have access to a prompt remedy and to be fairly heard within a reasonable time. They indicate that the proceedings from first instance to final decision lasted approximately nine years.

4. The State, for its part, maintains that Mr. Galante enjoyed full access to effective judicial remedies, substantiated in accordance with due process. It contends that the petition is inadmissible for failing to state facts tending to show a violation of the Convention. In relation to the claims alleging corruption in the proceedings before the Supreme Court of Argentina, the State emphasizes that the petitioners failed to invoke the remedy of recusal during the procedural opportunity provided by law, and have, in any case, failed to offer any concrete proof in support of their accusations. With respect to the petitioners' arguments concerning the right to be fairly heard with due guarantees, the State affirms that the challenged decisions were arrived at through the proper application of domestic law, and that the petitioners have failed to support their arguments concerning arbitrariness. It maintains that the petitioners are essentially requesting the Commission to substitute its judgment on the interpretation and application of internal law for that of the Argentine courts acting within the sphere of their competence, a function beyond the Commission's jurisdictional mandate. With respect to the allegations concerning undue delay, the State argues that a review of the dates of the decisions issued discloses no such delay.

5. As set forth below, in accordance with its examination of the allegations of fact and law of both parties, the Commission concluded that petition 12.055 is inadmissible. The petitioners' first set of claims alleging partiality in the proceedings before the Supreme Court of Argentina are inadmissible because domestic remedies were either not invoked or not properly invoked. The second set of claims alleging manifest arbitrariness in the application of domestic law are inadmissible by reason of the fourth instance formula. Further, these and the third set of claims alleging undue delay are inadmissible for having been filed extemporaneously.

II. PROCESSING BEFORE THE COMMISSION

6. In response to the filing of the petition, on October 7, 1998 the Commission informed the petitioners that the processing of the matter had been initiated in accordance with its Regulations, and that the pertinent parts of the petition had been transmitted to the State in a note of that same

date. The State was requested to submit relevant information with respect to the facts alleged, as well as with respect to the requirement that domestic remedies be exhausted within 90 days.

7. On August 7 and October 7, 1998, the Commission received additional information from the petitioners, which was forwarded to the State on October 19, 1998, with the presentation of all relevant information requested by January 7, 1999. By note of January 6, 1999, the State requested an extension. By notes of January 8, 1999, the State was granted an additional 60 days, and the petitioners were notified accordingly. The State submitted its response on April 14, 1999. This was transmitted to the petitioners on April 21, 1999, with observations requested within 60 days. On April 29, 1999, the petitioners presented additional information, which was transmitted to the State on April 29, 1999, with a response requested within 60 days. On June 23, 1999, the petitioners requested a brief extension for their response, and on June 30, 1999, the State requested additional time for its response.

8. The petitioners submitted additional information on July 12, 1999. Further, they requested that the Commission grant a hearing on the matter during its next period of sessions. The information was transmitted to the State on July 20, 1999, with the presentation of a response requested within 30 days. The Commission informed the petitioners, by note of September 7, 1999, that it would not be possible to grant a hearing due to the high number of hearings scheduled.

9. The State submitted additional information on September 20, 1999. This was transmitted to the petitioners on September 29, 1999, with observations in response requested within 60 days. By note of November 30, 1999, the petitioners requested an extension of 60 days. By notes of December 7, 1999, the Commission informed the petitioners that they had been granted an additional 30 days, and the State was notified accordingly.

10. In a December 14, 1999 communication, the petitioners requested that the Commission grant a hearing on the matter during its next period of sessions. The petitioners' observations were received on December 29, 1999, and transmitted to the State on January 3, 2000, with the receipt of a response requested within 30 days. On February 2, 2000, the State requested an extension. By note of February 4, 2000, the Commission informed the petitioner that it would not be possible to grant the hearing requested. By notes of February 10, 2000, the Commission granted the State an additional 45 days to respond, and notified the petitioners accordingly. In the interim, the petitioners had submitted additional information on January 19, 2000, which was transmitted to the State on February 16, 2000, with a response requested within 30 days. On April 11, 2000, the State requested an additional extension. By notes of April 24, 2000, the Commission granted the State an extension of approximately one month, and notified the petitioners accordingly. On May 22, 2000, the State submitted additional information, which was transmitted to the petitioners on May 24, 2000, with the presentation of any response requested within 60 days.

11. On July 17, 2000, the Commission received two submissions from the petitioners, which were transmitted to the State on August 24, 2000, with any response requested within 60 days. The State provided additional information on October 24, 2000, which was transmitted to the petitioners on November 1, 2000, for observations within 60 days. The petitioners submitted an

additional presentation on December 29, 2000, which was transmitted to the State on January 3, 2001, with any observations requested within 60 days. On March 7, 2001, the State submitted additional observations, and the petitioners presented additional information on April 6, 2001. The respective submissions were transmitted to the other party on May 15, 2001.

III. POSITION OF THE PARTIES

A. Summary of Relevant Domestic Legal Proceedings

12. The present section provides a brief summary of the legal proceedings before the domestic courts that are relevant to the claims raised in the petition. This summary is based on the presentations of both parties, which are in agreement insofar as objective facts, such as the dates of decision of these recourses, are concerned. The sections that follow summarize the positions of each party with respect to the issues of law and fact raised in connection with these proceedings.

13. Mr. Galante provided legal representation to Celulosa Argentina between 1982 and 1988 in legal proceedings concerning the company's bankruptcy and the position of its creditors (el proceso concursal). In October of 1988, he filed a recourse before the court of first instance of Rosario, province of Santa Fe, requesting that the latter establish the amount of legal fees the company would be obliged to pay for legal services rendered by him between November of 1983 and February of 1988. (This recourse calls upon the court charged with handling the bankruptcy proceedings to issue an opinion declaring the amount of related professional fees for receivers, attorneys, etc.)

14. In its sentence of December 22, 1989, the court of first instance determined that the law applicable to the establishment of Mr. Galante's fees was federal rather than local law. In addressing what it identified as a lacuna, insofar as existing law did not expressly address the establishment of the amount of attorney's fees in bankruptcy proceedings, the court utilized the national legislation concerning fees for receivers in such proceedings. The fees established for Mr. Galante were consequently set according to the maximum limit set for the fees of receivers under the federal Law of Bankruptcy Proceedings (Law 19.551).

15. Mr. Galante appealed this sentence, arguing, inter alia, that, given the presumed lacuna and the principle that all power not expressly delegated to the federal government rests with the provinces, his claim properly fell within the rubric of provincial law. On February 8, 1991, the Second Court of the Chamber of Civil and Commercial Appeals of Rosario resolved, with a majority of two votes to one, to reject the appeal and affirm the sentence issued at first instance.

16. Mr. Galante then filed a challenge to the constitutionality of Law N° 7055 of the Province of Santa Fe before the Chamber of Appeals of Rosario, invoking violations of the guarantees of the right to property, equality, due process, defense and separation of powers. This appeal was denied on September 26, 1991, on the basis that it failed to present a constitutional claim.

17. Mr. Galante then filed a recurso de queja (a remedy to seek higher review once access to such review has been requested before and denied by the court whose decision is being

challenged) before the Supreme Court of Santa Fe. This recourse was rejected in a unanimous decision of November 4, 1992, on the essential basis that it did not present a constitutional question, but rather, a disagreement with the criteria applied by the court of first instance.

18. Mr. Galante then presented an extraordinary appeal (*recurso extraordinario*) seeking that the Supreme Court of Justice of Santa Fe review the foregoing sentence on the basis of arguments similar to those raised below, with the additional allegation that its previous sentence had been arbitrary. The Supreme Court of Santa Fe rejected this appeal on April 27, 1993 as lacking sufficient foundation and failing to raise a constitutional question.

19. Against the preceding decision, Mr. Galante filed a *recurso de queja* before the Supreme Court of Justice of the Nation on May 24, 1993. On August 24 and 29, 1995 and February 20, 1996, Justices Petrachi, Boggiano and Bossert, respectively, excused themselves from participating in the matter. On December 17, 1996, the Supreme Court, composed of six permanent Justices and three substitutes appointed to replace those who had excused themselves rejected the recourse by a vote of five to four.

20. On December 23, 1996, Mr. Galante filed an appeal before the Supreme Court seeking that it revoke and nullify its December 17, 1996 sentence (*recurso de revocatoria y nulidad*). This recourse was based on claims that the decision to reject the *recurso de queja* had not been based on a legitimately constituted majority opinion, that the articles permitting the Court to refuse to hear a matter had been applied improperly, and that one of the Justices had misapplied the jurisprudential citations contained in his opinion. He also filed a petition to recuse Justices Fayt, Belluscio and Moliné O'Connor, and subs from participating in this proceeding.

21. On the same date, Mr. Galante filed a denunciation before the National Chamber of Deputies seeking the impeachment (*juicio politico*, a constitutional requirement to remove a Justice of the Supreme Court from office) of Justices Fayt, Boggiano, Belluscio and Moliné O'Connor, and Substitute Justices Tyden de Skanata and Corchuelo de Huberman. This proceeding before the legislature remains pending.

22. On September 30, 1997, Mr. Galante filed a criminal denunciation before the Attorney General of Argentina alleging criminal irregularities in the proceedings concerning his case before the Supreme Court involving Justices Boggiano and Fayt and Substitute Justices Tyden de Skanata and Corchuelo de Huberman. This denunciation was transmitted to the National Court for Criminal and Correctional Matters N° 3 for processing. This matter remains pending in the investigation stage.

23. On October 3, 1997, the Supreme Court of Argentina rejected Mr. Galante's appeal seeking revocation and nullification. At the same time, the Court rejected his petition to recuse the three justices, on the basis that such a request was inadmissible once the Court had issued its decision on the *recurso de queja*--the decision effectively being challenged.

24. On October 13, 1997, Mr. Galante filed another appeal seeking the revocation and nullification of the decision issued on October 3, 1997, and reiterated his request to recuse Justices Fayt, Belluscio and Moliné O'Connor. At that time he also sought to recuse substitute

Justices Tyden de Skanata and Corchuelo de Huberman from participation in these proceedings. Both the appeal and request for recusal were rejected by the Court as inadmissible in a decision issued on November 25, 1997.

B. The Petitioners

25. The petitioners make three principal allegations with respect to the foregoing proceedings. First, they allege that Mr. Galante was denied access to an independent and impartial tribunal. In very general terms, they argue that the Supreme Court of Argentina ceased to be a neutral judicial body when the number of its members was elevated in 1990 from five to nine, as it thereafter became increasingly politicized. They argue that the proceedings in question before the Supreme Court of Argentina were subject to numerous and serious irregularities stemming from its lack of impartiality. They maintain that this lack of impartiality is demonstrated in: the attempts of two of the Court's members to solicit bribes in exchange for favorable opinions; the improper handling of Mr. Galante's requests to recuse three justices and two substitute justices; and the pressure brought to bear on two substitute judges to decide against his claims.

26. With respect to the allegations of attempted bribery, the petitioners sustain that in May of 1995, following the presentation of the *recurso de queja* before the Supreme Court of Argentina, Mr. Galante met with Justice Boggiano in the latter's chambers because he was concerned about the duration of the proceedings. The petitioners allege that Justice Boggiano referred to receiving pressure from Justice Belluscio to decide against Mr. Galante's claims. The petitioners indicate that Mr. Galante met with Justice Boggiano in his chambers two months later for the same reason, at which time the latter told him "look, since I decided in your favor, you are going to give me five million" ["mirá que te voté a favor; me vas a dar cinco millones"]. Mr. Galante reportedly asked the Justice if he were serious or crazy, and left the meeting. The petitioners report that Mr. Galante subsequently learned that Justice Boggiano thereafter changed his opinion, which had favored the admissibility of the recourse, to one in favor of rejecting it.

27. The petitioners indicate that a review of the internal circulation file of the Supreme Court of Argentina for this recourse demonstrates that Justice Boggiano did in fact change his opinion, having originally adhered to an opinion in favor of Mr. Galante's claims, and later adhered to the opinion of Justices Belluscio and Moliné O'Connor rejecting it. The petitioners contend that this change was due to Mr. Galante having refused to accede to Justice Boggiano's request for a bribe. Prior to the issuance of the sentence, Justice Boggiano excused himself from further participation on the basis of *razones de delicadeza*, a basis provided by law. The petitioners contend that, notwithstanding that Justice Boggiano did not participate in the final decision, through his participation to the point when he excused himself he may have had an informal influence on it.

28. The petitioners further contend that Justice Fayt attempted to seek a bribe in exchange for a favorable decision in a conversation with a lawyer from Mr. Galante's law firm. At some time in 1995, this attorney reported to Mr. Galante that Justice Fayt had decided in favor of the claims presented, and had indicated that once the sentence was issued, they would speak again to agree on a sum of money in return. The petitioners indicate that Mr. Galante told his colleague that

this request would not be acceded to. That colleague, attorney Durañona y Vedia, died subsequently, on September 2, 1995. Mr. Galante reportedly learned a few days later that Justice Fayt had changed his decision in favor of the claims to one against, as reflected in the Court's sentence. They allege that this was due to the loss of his interlocutor in the matter of the attempted bribe.

29. The petitioners note that Mr. Galante did not seek to recuse Justices Boggiano and Fayt during the proceedings on the *recurso de queja*. They assert, without further explanation, that Mr. Galante considered that he could not seek their recusal in relation to the attempted bribes, because to have done so would have meant instituting proceedings “against the very authors of the illicit acts, with the high probability of losing the only proof with which he could support [his] allegations.” Rather, they indicate, Mr. Galante opted to denounce these attempts through his December 23, 1996 filing before the legislature seeking impeachment proceedings, as well as the criminal denunciation he filed on September 30, 1997. The petitioners note that these alleged bribery attempts, by their nature, combined with the fact that there were no other witnesses, are very difficult to prove. They assert that the numerous changes of opinion reflected in the internal case file on the part of various justices, particularly Justices Fayt, Boggiano and Moliné O'Connor, support their allegations. They argue that, while the criminal file opened to investigate the alleged acts of corruption in this regard neither proves or disproves the allegations before the Commission, it tends to prove them.

30. The petitioners allege that, subsequent to the issuance of the December 17, 1996 decision rejecting the *recurso de queja*, on September 22, 1997 Mr. Galante received an anonymous communication in his office containing several pages of information describing corruption on the part of Justices of the Supreme Court. This included indications that Justice Fayt was angry that Mr. Galante had instituted proceedings to seek the impeachment of himself and other justices, and also referred to “complicity” between Ministers Belluscio and Moliné O'Connor to “share the benefits” [“para compartir los beneficios”] of Celulosa Argentina. The communication also included copies of the internal opinions of Justices Fayt, Moliné O'Connor and Belluscio concerning his claims for revocation and nullification.

31. Three days later, Mr. Galante filed a request to recuse Justices Fayt, Belluscio and Moliné O'Connor from participating in the recourse seeking nullification and revocation on the basis of partiality and enmity. The petitioners indicate that, on October 3, 1997, approximately a week after the filing of the motion for recusal, the Supreme Court rejected Mr. Galante's action seeking revocation and nullification, and also rejected his request for recusal, without having provided the processing that the latter request should have been accorded as a matter of law. As noted above, Mr. Galante's subsequent attempt to challenge both decisions was rejected via a sentence of November 25, 1997, on the basis of manifest inadmissibility. With respect to the request for recusal, specifically, the Court noted that it had been deemed manifestly inadmissible for having been filed subsequent to the issuance of the Court's decision on the underlying matter—namely the *recurso de queja*.

32. The petitioners argue that the fact that each request for recusal was decided concurrently with the related recourse seeking revocation and nullification, joined with the fact that they were rejected in limine, denied Mr. Galante the processing required and a review of the substance of

his claims. They maintain that, pursuant to the procedures provided for under applicable law, the challenged justices should have been required to provide a response to the charges, and the stage for gathering proof should have been opened. They emphasize that, while three of the justices whose recusal was sought did not participate in the first decision on that point, four of those whose recusal was sought participated in the second decision, in violation of law. The petitioners argue that the principal of impartiality has been transgressed because Mr. Galante was denied the possibility of raising relevant supervening circumstances requiring recusal subsequent to the issuance of the judgment on the *recurso de queja*.

33. The petitioners complain that the deficiencies that prejudiced Mr. Galante's right to a fair hearing before the Supreme Court of Justice of Argentina included the manner in which substitute Justices are designated to replace Justices who excuse themselves from acting on cases. In Mr. Galante's case, three members of the Supreme Court, Justices Petrachi, Bossert and Boggiano, excused themselves from participating in the decision, the first two on the basis of conflict of interest, and the third "por razones de delicadeza" (i.e., the possible appearance of conflict). The petitioners indicate that, pursuant to law, three substitute justices were then selected from among the presidents of the Federal Chambers of Appeal of the Capital and provinces. They maintain that this system for appointing substitutes is incompatible with the requirements of judicial independence and impartiality because the justices of the Supreme Court exercise disciplinary power over the inferior federal courts. More specifically, each justice has jurisdiction over the federal judicial system in a particular geographic region of the country.

34. The petitioners maintain the foregoing potential for abuse was realized in the legal proceedings before the Supreme Court when two of the substitutes, Tyden de Skanata and Corchuelo de Huberman, were pressured by Justices Boggiano, Belluscio and Fayt to vote against Mr. Galante's claims. The petitioners acknowledge that it is difficult to prove this pressure, but cite the hierarchical subordination of the substitutes to those justices and their joint opinion with Justice Fayt rejecting the *recurso de queja* as proof. The petitioners argue that Mr. Galante only became aware of the totality of these circumstances concerning the substitutes subsequent to the rejection of his *recurso de queja*, and was therefore unable to attempt to recuse them during those proceedings.

35. Second, the petitioners allege that Mr. Galante was denied his right to be heard with due guarantees because the interpretation and application of domestic law in his case was manifestly arbitrary. More specifically, the petitioners allege that the December 17, 1996 sentence of the Supreme Court was invalid because the opinions therein do not constitute a coherent majority decision to reject Mr. Galante's claims. They argue, moreover, that the two opinions joined to constitute the ostensible majority are based on incorrect interpretations of domestic law. They indicate that the first of the three opinions comprising the sentence, signed by Justice Fayt and substitute Justices Tyden de Skanata and Corchuelo de Huberman, rejected the matter as inadmissible for failing to present a justiciable federal question. They claim that this finding contradicts the settled jurisprudence of the Court in rulings issued both before and after the present case. The second vote, signed by Justices Belluscio and Moliné O'Connor, rejected the matter as inadmissible on the basis of the discretion granted to the Court through Articles 280 and 285 of the Code of Civil and Commercial Procedure to refuse to hear cases that do not present a sufficient federal question, or a sufficiently substantial or important question. They

argue that the law grants this discretion to “the Court” as a whole and not to individual justices. The third vote, signed by the four remaining members, opined in favor of the admissibility of the matter, indicating that the case should be sent back to the lower court for a new sentence applying local law. Given the divergent criteria invoked in the first and second opinions (the first finding no federal question and the second, they suggest, finding a federal question insufficient for review), the petitioners argue that the third opinion is the one that sets forth the decision of the simple majority of the Court.

36. The petitioners consider that the decision of the court of first instance, confirmed on multiple levels of appeal, was manifestly arbitrary because it applied the federal law applicable to professional fees in bankruptcy proceedings as opposed to the local law they maintain should have been applied. They sustain that the well-settled jurisprudence of the federal courts supports their contention. They assert that the Supreme Court has a long practice of admitting extraordinary appeals concerning the establishment of professional fees (broken only by this case), and that in cases of doubt with respect to a (federal-local) conflict of laws, the decision has generally favored the application of local law. They allege that just days after the Supreme Court of Argentina rejected Mr. Galante’s *recurso de queja*, it accepted an extraordinary appeal in a similar case concerning attorney’s fees. In support of their arguments, they cite a memo from the internal circulation file of the *recurso de queja* prepared by Justice López criticizing the draft opinion of Justice Fayt for, *inter alia*, failing to take into account the constitutional claims raised, failing to consider the patently arbitrary nature of the challenged sentence, and failing to adhere to consistent judicial doctrine. The petitioners also submitted opinions from several preeminent Argentine jurists supporting their contentions on this and related points.

37. Third, they sustain that the proceedings as a whole, instituted to achieve a simple straightforward objective—the setting of Mr. Galante’s legal fees—have been subject to undue delay in violation of the right to have access to a prompt remedy and to be fairly heard within a reasonable time. They indicate that the proceedings from first instance to final decision lasted nine years, four and a half of which were dedicated to proceedings before the Supreme Court of Argentina. They maintain that this was not a complex matter and that, as a moving party, Mr. Galante acted with diligence. They allege that the unjustified delay was attributable to the inactivity of judicial authorities.

38. As a result of the foregoing irregularities, the petitioners sustain that Argentina bears responsibility for having denied Mr. Galante the right to effective judicial protection by an independent and impartial court, substantiated in accordance with due guarantees, in violation of Articles 1(1), 8(1) and 25 of the American Convention.

39. In responding to the State’s arguments concerning admissibility, the petitioners indicate that the domestic remedies available were invoked and exhausted with respect to the claims raised, but that Mr. Galante was denied justice. With respect to their claims of partiality specifically, they indicate that, while they have referred to the ongoing criminal action and proceedings seeking the impeachment of certain justices as an important part of the context of their petition, the exhaustion of those remedies is not required to find those claims admissible, because these are not the remedies effective for addressing the violations alleged. They maintain

that recusal was the appropriate remedy, and that Mr. Galante's attempts to invoke it were improperly denied.

40. The petitioners emphasize that they are not requesting that the Commission substitute its judgment for that of the domestic tribunals in interpreting and applying domestic law, but are asking that it examine numerous and serious violations of due process. In relation to the problems of proof they acknowledge in respect of certain allegations, they argue that, even were the Commission to determine that the claims raised have not been unequivocally proven, the simple possibility that Mr. Galante's rights under the American Convention have been violated requires that the petition be admitted.

41. Finally, the petitioners affirm the existence of a friendly settlement agreement that they argue must be considered binding upon both parties. They submitted a copy of the presumed agreement on January 10, 2000. The instrument in question was signed on November 14, 1999 by Ernesto Galante and the then-Secretary for Consular and General Affairs of the Ministry of Foreign Affairs, International Commerce and Worship. The instrument was subsequently transmitted by the then-Minister of Foreign Affairs, International Commerce and Worship to the Legal and Technical Secretariat of the Presidency. Thereafter, on May 19, 2000, the Secretary of Worship issued Resolution N° 1300, declaring the instrument null and void by reason of illegitimacy. Mr. Galante appealed that decision to the superior instance, namely the Ministry of Foreign Affairs, International Commerce and Worship, which ultimately issued Ministerial Resolution N° 495, affirming the nullity of the instrument and rejecting the appeal. The petitioners maintain that the then-Secretary for Consular and General Affairs had apparent authority to sign the instrument, and bind the State to comply. They cite other instances of friendly settlement arrived at in proceedings before the Commission concerning Argentina as analogous.

C. The State

42. The State, for its part, is categorical in sustaining that the presentations of the petitioners fail to set forth facts demonstrating any violation of the American Convention. The State affirms that Mr. Galante enjoyed full access to prompt and effective judicial protection substantiated in accordance with due guarantees.

43. With respect to the petitioners' first set of arguments concerning the alleged partiality of the Supreme Court, the State indicates that they are generic in form and lack any substantiation. Moreover, they note, the petitioners themselves acknowledge that they lack any proof.

44. With regard to the issue of recusal, specifically, the State indicates that Mr. Galante failed to invoke this recourse during the processing of his *recurso de queja* by the Supreme Court of Argentina, notwithstanding that he was aware at that time of the facts he now alleges before the Commission. The State considers that the accusations of attempted bribery and pressure cannot be reviewed by the Commission given the absence of proof and the fact that Mr. Galante did not attempt to invoke the applicable domestic remedy of recusal during those proceedings. It notes that Mr. Galante only attempted to recuse members of the Supreme Court during proceedings subsequent to the rejection of the *recurso de queja*, and that he did so relying on allegations

provided by an anonymous source. The State argues that the use of such anonymous information is disqualified both nationally and in the international sphere. The State also indicates that the Supreme Court's practice of rejecting requests for recusal filed subsequent to the issuance of its decision on the underlying matter—in this case the *recurso de queja*--is long-established and consistent.

45. Further, with respect to the question of the substitute justices, the State indicates that Mr. Galante could have sought their recusal at the time of their incorporation if he had wished to do so. The State notes that the mere fact that two of the substitute justices decided against Mr. Galante in no way proves bias, and that the petitioners have produced no proof demonstrating that they were pressured in taking their decision. It qualifies the petitioners' attempts to challenge the system for appointing substitute justices before the Commission as abstract, given that Mr. Galante never attempted to question it before the competent judicial authorities. With respect to the petitioners' arguments that one member of the Court, Justice Boggiano, excused himself long after the process was initiated and might thereby have influenced it, the State indicates that, given his abstention at that point and consequent inability to participate in the decision issued, the petitioners have failed to show any indication of bias affecting the decision. Rather, the State argues, Justice Boggiano fully observed the applicable rules in excusing himself from the proceedings.

46. With respect to the petitioners' second set of claims alleging violations of due process, namely arbitrariness in the interpretation and application of domestic law within the judicial proceedings, the State indicates that what the presentations manifest is not arbitrariness but discontent with the decision. The State recounts that Mr. Galante obtained three sentences from the three local judicial instances. The highest of the local courts, the Supreme Court of the Province of Santa Fe, determined that the provincial law of the schedule of fees (*ley de aranceles*) did not apply in Mr. Galante's case. The State indicates that the Supreme Court of the Nation, for its part, does not interpret local law. Rather, it may disqualify the interpretation by a lower court where that is found to be unconstitutional. Consequently, because the highest local tribunal decided that the applicable law was federal rather than local, there was in fact no decision contrary to federal law and no basis to sustain an extraordinary appeal at the federal level. The State maintains that the decision of the Supreme Court to reject the *recurso de queja* was in full accordance with applicable law. The State notes that the decisions of all of the courts involved in the matter were consistent in rejecting Mr. Galante's contentions with respect to which law was applicable.

47. The State rejects the petitioners' argument that Mr. Galante was treated discriminatorily because federal law was applied to resolve his claims when, they allege, such questions have consistently been resolved through the application of local law. The State affirms that the federal legislation correctly applied in his case had been promulgated to replace prior legislation with the specific objective of avoiding abuses with respect to the professional fees charged in relation to bankruptcy proceedings. It also challenges the petitioners' assertion that matters concerning professional fees are routinely accepted by the Supreme Court through the remedy of an extraordinary appeal. Rather, the State affirms, such claims are accepted in exceptional circumstances raising questions of alleged arbitrariness, which were not demonstrated in Mr. Galante's case. They note that a showing of arbitrariness is not sustained simply by raising a

question that may be subject to diverse opinions; rather, a higher standard must be met. The State emphasizes that, in any event, the petitioners' arguments concerning the interpretation and application of national law and the construction of majority opinions by the Supreme Court of Argentina are matters properly pertaining to the domestic sphere, and as such are beyond the jurisdictional competence of the Commission.

48. With respect to the petitioners' third set of allegations concerning undue delay, the State indicates that a simple review of the dates of issuance of the various judicial decisions demonstrates that each was issued in a reasonable time in relation to the circumstances of the case. It emphasizes that such a review demonstrates that Mr. Galante had prompt, unimpeded access to multiple levels of appeal.

49. In summary, the State maintains that the essential question presented in the petition concerns the difference between the amount of legal fees awarded to Mr. Galante under the legal provisions applied, and those that he argues should have been applied. It emphasizes that the domestic judicial system provided Mr. Galante due opportunity to litigate his claims and to be effectively heard. Accordingly, the State considers that the petition presented would require the Commission to substitute its judgment for that of the domestic tribunals acting within their sphere of competence to interpret and apply Argentine law, a function beyond the scope of the Commission's mandate (the so-called "fourth instance formula").

50. Finally, with respect to the petitioners' position on the issue of friendly settlement, the State maintains that it has not entered into any agreement with the petitioners aimed at resolving the situation denounced through the procedure provided for in Article 48 of the American Convention. The State indicates that the instrument signed by the then-Secretary for Consular and General Affairs was declared null and void for reasons of illegitimacy. It argues, *inter alia*, that the instrument was signed absent the essential requirement for any decision of such a nature, namely the issuance of a prior opinion by the General Headquarters for Legal Affairs of the Legal and Technical Secretariat of the Presidency, and that, in any case, the Ministry in question lacked the legal competence to sign such an instrument. Further, the State maintains that the instances of friendly settlement cited by the petitioners in support of their contention that the presumed agreement should be deemed binding were, in contrast to the present situation, arrived at through full mutual agreement between the parties and pursuant to the application of the pertinent institutional procedures.

51. The State reports that the instrument was declared null and void by Resolution N° 1300 of the Secretary of Worship of May 19, 2000. Mr. Galante then interposed an appeal against this decision before the higher authority—namely the Ministry of Foreign Affairs, International Commerce and Worship—on July 7, 2000. Among the detailed administrative opinions issued on the question is that of the Procuración del Tesoro, of January 23, 2001, affirming the nullity of the instrument in question, and indicating that Resolution 1300 had been issued in full compliance with the applicable requirements. On February 26, 2001, the Ministry issued Resolution N° 495 affirming the absolute nullity of the instrument in question and rejecting Mr. Galante's appeal, thereby exhausting the applicable administrative remedies.

IV. ANALYSIS OF ADMISSIBILITY

Preliminary observations concerning the question of friendly settlement

52. The Commission notes as a general matter that the procedure of friendly settlement provided for in Article 48(1)(f) of the American Convention may be utilized at any point in proceedings before it, including the stage of admissibility. The procedure offers the parties the opportunity to settle the situation denounced through non-contentious means, on the basis of respect for the rights set forth in the American Convention. It has been utilized in many instances to the benefit of both parties.[FN1]

[FN1] See generally, Report N° 33/00 (friendly settlement), Case 11.308, Hagelin (Argentina), published in Annual Report of the IACHR 1999, OEA/Ser.L/II.106, Doc. 3 rev., 13 April 2000; IACHR Report No 90/99 (friendly settlement), Case 11.713, Indigenous Communities Enxet-Lamenxay and Kayleyphapopyet -Riachito (Paraguay), published in Annual Report of the IACHR 1999, *supra*.

53. In the present instance, having analyzed the contentions of both parties as to whether such a settlement was entered into, and having reviewed the supporting documents, the Commission makes the following observations. The instrument signed by Ernesto Galante and the then-Secretary for Consular and General Affairs on November 14, 2000 does in fact identify itself as a friendly settlement agreement insofar as it reflects the view of the then-Secretary that this procedure would be viable under the circumstances of the case, and sets forth a commitment in favor of the conclusion of a friendly settlement in accordance with the terms of Article 48(1)(f) of the American Convention. The instrument goes on to establish the basic framework of such a settlement. However, the instrument also expressly indicates that the “agreement” is subject to the acceptance of the State: “The National Executive,’ in the case that it accepts the present agreement, commits itself to issue the pertinent Decree ordering the execution of the same.” [Emphasis added.] (“El Poder Ejecutivo Nacional’ en el caso de aceptar el presente acuerdo, se compromete a dictar el pertinente Decreto ordenando la ejecución del mismo.”) Thus, what is required according to the terms of the instrument itself is to ascertain whether the State--through its executive branch--accepted the terms and committed itself to this procedure. The record indicates that the instrument and its terms were repeatedly rejected by the State, through its administrative channels, as null and void. Accordingly, there is no basis upon which the Commission can conclude that the petitioners and the State committed themselves to an agreement to settle the situation denounced.

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

54. The Commission is competent to examine the petition in question. In relation to the question of standing, the petitioners are individuals competent under the terms of Article 44 of the Convention and Article 23 of the Commission’s Rules of Procedure to complain about the violation of a protected right under the American Convention. The alleged victim, Ernesto Galante, is an individual whose rights are protected under the American Convention, the terms of

which the State has undertaken to uphold. Argentina has been subject to the Commission's jurisdiction under the terms of the Convention since the deposit of its instrument of ratification on September 5, 1984.

55. Insofar as the petitioners have invoked claims concerning Articles 8, 25 and 1(1) of the American Convention, the petition falls within the subject matter jurisdiction of the Commission. The petition alleges facts that, if shown to be true and in conformity with other requirements, could constitute violations of rights protected in the American Convention.

56. The Commission has temporal jurisdiction to review the claims. The petition is based on allegations that date back to 1988, the year Mr. Galante requested that the court of first instance establish the amount of attorney's fees owed to him. The facts alleged thus arose subsequent to the entry into force of the State's obligations as a Party to the American Convention.

57. Finally, the Commission has competence *ratione loci*, given that the petition indicates that the presumed victim was subject to the jurisdiction of the Argentine State at the time of the facts alleged to have taken place within that State's territory.

B. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

58. Article 46 of the American Convention specifies that, in order for a case to be admitted, "remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement exists to ensure the state concerned the opportunity to resolve disputes within its own legal framework. Article 46 recognizes exceptions to the requirement when domestic remedies are unavailable as a matter of fact or law.[FN2] Article 46(2) of the Convention specifies that this exception applies if the legislation of the state concerned fails to afford due process for the protection of the right allegedly violated; if the party alleging violation has been hindered in his or her access to domestic remedies; or if there has been unwarranted delay in the issuance of a final judgment.

[FN2] See IACtHR, *Exceptions to the Exhaustion of Domestic Remedies* (Art. 46.1, 46.2.a and 46.2.b American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Ser. A N° 11, para. 17.

59. Turning to the application of this requirement in the present matter, first, with respect to the allegations of partiality on the part of members of the Supreme Court of Argentina who participated in the legal proceedings instituted by Mr. Galante, the petitioners argue that recusal is the remedy appropriate to respond to the violations alleged. They acknowledge that Mr. Galante did not file a request for recusal following the alleged bribery attempts and pressure that the petitioners argue affected the processing of his *recurso de queja*. He then invoked this remedy twice, during the processing of his respective requests for revocation and nullification, but alleges having been denied justice. They expressly disavow the pending criminal

denunciation and request to initiate impeachment proceedings as offering an effective remedy for the violations denounced. The State, for its part, affirms that the two requests for recusal were clearly extemporaneous. It indicates that the Supreme Court rejected both as inadmissible, noting in the second of the opinions that this was due to their having been filed subsequent to the rejection of the underlying *recurso de queja*.

60. The petitioners thus essentially argue that the request for recusal is the appropriate remedy for the violations alleged, but that Mr. Galante should have been able to invoke it at the moment of his choosing. In this regard, the submissions of the petitioners indicate that Mr. Galante was aware of the most serious grounds he alleges before this Commission as having affected the independence and impartiality of the Supreme Court--namely the alleged attempts to solicit bribes and the system for appointing and alleged pressure brought to bear on the substitute justices--during the processing of his *recurso de queja*. He did not, however, attempt to recuse the justices or substitutes involved at that time.

61. The fact that Mr. Galante declined to invoke this remedy during the proceedings concerning the *recurso de queja*, particularly given the petitioners' admitted inability to offer concrete proof of their allegations concerning bribery and pressure, meant that the State was not opportunely and adequately placed on notice so as to have the possibility of addressing the claims through the normally applicable domestic remedies. The reason Mr. Galante indicated for having declined to exercise his right of recusal during the proceedings on the *recurso de queja* was his concern that accusing the authors of the alleged bribery attempts would imply the risk that the only existing proof would disappear. Given this circular reasoning, and that the concern cited would presumably have arisen in relation to the proceedings Mr. Galante subsequently instituted in the criminal and political spheres, this explanation is not sufficient to excuse his failure to opportunely exhaust internal remedies that were in principle available and effective.

62. Further, the claims presented before this Commission concerning the system for appointing substitute justices were never placed at issue before the domestic judiciary, nor have the petitioners offered a justification to excuse compliance with the requirement in this regard. The petitioners argue that it is the system of appointment which created the conditions for two substitutes to be pressured in the proceedings on the *recurso de queja*. The proof presented to sustain the allegations of pressure is the nature of that appointment system and the fact that the two substitutes decided against Mr. Galante's claims. Mr. Galante neither requested the recusal of the substitute judges at the time of their incorporation in the proceedings, nor attempted to challenge the constitutionality of the system for appointing them.

63. The Commission considers that allegations of corruption within the judiciary raise questions of the greatest seriousness. However, it is only competent to examine such allegations when the petition meets the requirements of the Convention and its Rules of Procedure, including insofar as the exhaustion of domestic remedies is concerned.[FN3] Pursuant to the foregoing analysis, the admissibility of the petitioners' first set of claims alleging partiality in the proceedings before the Supreme Court is barred by the terms of Article 46 of the Convention. With respect to the second and third sets of claims, concerning alleged violations of due process through the arbitrary application of domestic law and undue delay in the judicial proceedings,

respectively, the record demonstrates and the parties agree that Mr. Galante did invoke and exhaust the domestic remedies available to resolve the amount of legal fees he was owed.

[FN3] The petitioners assert that the petition should be admitted on the basis of the mere possibility that Mr. Galante's rights were violated, notwithstanding the lack of conclusive proof. As noted, such a possibility may only be examined when the elements necessary to establish jurisdiction are present, including a showing that domestic remedies have been exhausted. Further, while it is true that proof need not be conclusively established at the stage of admissibility, the petitioners do in principle bear the burden of adducing elements of fact and proof sufficient to characterize a potential violation, as required under Article 47(b) of the Convention (discussed further below). The speculation or subjective concerns expressed by the petitioners as the basis for a number of allegations do not, in and of themselves, provide a sufficient foundation for jurisdiction. See generally Report N° 9/98, Case 11.537, Correa and Payan (Mexico), published in Annual Report of the IACHR 1997, OEA/Ser.L/V/II.98, Doc. 7 rev., April 13, 1998, para. 47 (explaining in a case involving claimed partiality that such allegations must be founded with "specific elements applicable to the [] case" -- elements sufficient to constitute a colorable claim for the purposes of Article 47(b)).

2. Duplication of proceedings and res judicata

64. Article 46(1)(c) sets forth that the admission of a petition is subject to the requirement that the subject "is not pending in another international proceeding for settlement," and Article 47(d) of the Convention stipulates that the Commission shall not admit a petition which "is substantially the same as one previously studied by" it "or by another international organization." In the present case, the parties have not claimed and the proceedings do not suggest the existence of either of these circumstances of inadmissibility.

3. Characterization of the facts alleged

65. Article 47(b) of the American Convention sets forth that the Commission shall consider inadmissible any petition that "does not state facts that tend to establish a violation of the rights guaranteed by this Convention." With respect to the petitioners' second set of arguments concerning alleged arbitrariness in the interpretation and application of domestic law, pursuant to "the fourth instance formula" the Commission cannot in principle review judgments handed down by the national courts acting within their sphere of competence and with due judicial guarantees, unless it believes that a possible violation of the American Convention is involved.[FN4] "[I]t is, in the first instance, for the national authorities, and in particular the courts, to interpret and apply domestic law." [FN5]

[FN4] See e.g., Reports 87/98, Case 11.216, Vila-Masot (Venezuela), Annual Report of the IACHR 1998, para. 15; 4/97, Jimenez petition (Colombia), Annual Report of the IACHR 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., Mar.14, 1997, para. 25; 39/96, Case 11.673, Marzioni (Argentina), published in Annual Report of the IACHR 1996, supra, para. 50.

[FN5] Marzioni, *supra*, para. 57, quoting European Commission on Human Rights, *Alvaro Baragiola v. Switzerland*, App. No 17625/90, decision on admissibility, *Yearbook of the European Convention on Human Rights* 1992, pp. 103, 105-06.

66. The Commission has previously established that it has clear authority to examine claims alleging irregularities in domestic judicial proceedings that result in manifest violations of due process or of any of the rights protected by the Convention. However, if the claim simply alleges that the domestic judgment was mistaken or unjust, the petition must be rejected pursuant to the formula referred to above.[FN6] The Commission's task is to ensure the observance of the obligations assumed by the States Parties to the Convention. It cannot serve as a court of fourth instance to examine alleged errors of fact or internal law that may have been made by the national courts acting within the scope of their jurisdiction.[FN7]

[FN6] Marzioni, *supra*, para. 51; see also the references contained in paras. 52-56 of that report-- Res. N° 29/88, Case 9260, *Wright (Jamaica)*, published in *Annual Report of the IACHR 1987-88*, OEA/Ser.L/V/II.74, Doc. 10 rev. 1, 16 Sept. 1988, and Report N° 74/90, Case 9850, *López Aurelli (Argentina)*, published in *Annual Report of the IACHR 1990-91*, para., 20 – distinguishing claims found to violate the right to due process from those barred by the fourth instance formula.

[FN7] See e.g., *Vila-Masot, Jimenez petition*, Marzioni, *supra* n. 4, paras. 16, 26 and 51, respectively.

67. The petitioners' claims alleging arbitrariness raise some fairly intricate questions of internal law, on the one hand concerning federal-state conflicts of law, and on the other such points as how the Supreme Court of Argentina establishes its majority opinions, the conditions for denying certiorari and what constitutes a reviewable federal question. These are legal questions whose resolution is subject to debate, as demonstrated in the opinions of the parties and the expert and jurisprudential sources they cite, as well as the minority opinions issued at some levels of the domestic proceedings.

68. Having reviewed the record, the Commission finds that the petitioners' claims essentially pose questions of internal law which do not raise issues with respect to State compliance with Convention guarantees. (The Supreme Court of Argentina, for example, necessarily has jurisdiction to determine what constitutes a valid majority opinion.) The decisions of three levels of local courts, as well as those of the Supreme Court of Argentina are consistent in their overall approach to Mr. Galante's underlying claims. Multiple decisions at both the local and federal levels opined that the application of national law by the court of first instance had not been arbitrary. Moreover, the petitioners concentrated their arguments on alleged arbitrariness in the proceedings before the Supreme Court, linking their allegations of violations of substantive and procedural guarantees with those concerning partiality, without specifically addressing why and how the decisions of the local courts on appeal had themselves been arbitrary. Given the nature of the claims and proof in question, the Commission concludes that their admissibility is barred by Article 47(b) of the American Convention and the application of the fourth instance formula.

4. Time period for submission of the petition

69. In accordance with Article 46(1)(b) of the Convention, a petition must be presented in a timely manner to be admitted, namely, within six months from the date on which the complaining party was notified of the final judgment at the domestic level. The six months rule ensures legal certainty and stability once a decision has been taken. The rule does not apply when it has been impossible to exhaust internal remedies due to a lack of due process, denial of access to remedies, or unwarranted delay in issuing a final decision.

70. With respect to the remaining allegations, concerning undue delay, the calculation of the period for presentation before the Commission dates from the time that domestic remedies were effectively exhausted. As the submissions of the parties concur, the recurso de queja that Mr. Galante filed before the Supreme Court is a remedy provided by law. The presentations of the parties are also in agreement that, while Argentine law does not expressly set forth any further remedy to challenge the decision ultimately issued on that recourse, the Supreme Court of Argentina has, in very exceptional cases, admitted a further appeal of the type interposed by Mr. Galante. In the present case, the record indicates that Mr. Galante thereafter filed a second challenge on essentially the same legal and factual basis. This was rejected as patently inadmissible.

71. The time period for presentation is calculated on the basis of the final decision offering the possibility of an effective resolution of the situation denounced. The invocation of recourses that cannot reasonably be said to offer an effective resolution will not be taken into account in this calculation. The Commission has determined that the six month period in the present instance must be calculated from the October 3, 1997 denial of the first recourse seeking revocation and nullification of the Supreme Court's decision rejecting the recurso de queja. The petition was presented before the Commission and received on May 21, 1998, approximately seven and a half months after that decision, and thus, extemporaneously.

V. CONCLUSIONS

72. On the basis of the submissions of the parties, and the foregoing analysis of the requirements for admitting a petition, the Commission concludes that the present petition is inadmissible in accordance with Articles 46 and 47 of the American Convention. The petitioners' first set of claims alleging partiality in the proceedings before the Supreme Court of Argentina are inadmissible because domestic remedies were either not invoked or not properly invoked. The second set of claims alleging manifest arbitrariness in the application of domestic law are inadmissible by reason of the fourth instance formula. Further, these and the third set of allegations alleging undue delay are inadmissible for having been filed extemporaneously.

73. Based on the analysis and conclusions set forth in the instant report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition inadmissible.
2. To notify the parties of this decision.
3. To make this report public, and publish it in its Annual Report to the General Assembly of the OAS.

Done and approved at the headquarters of the Inter-American Commission on Human Rights, Washington, D.C., on the 3rd day of August, 2001: Claudio Grossman, President; Marta Altolaguirre, Second Vice-President; and Commissioners Robert Goldman, Julio Prado Vallejo, Peter Laurie and Hélio Bicudo.