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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 72/01; Case 11.804
Session:	Hundred and Thirteenth Regular Session (9 – 17 October and 12 – 16 November 2001)
Title/Style of Cause:	Juan Angel Greco v. Argentina
Doc. Type:	Decision
Decided by:	President: Claudio Grossman; Second Vice-President: Marta Altolaguirre; Commission members: Helio Bicudo, Peter Laurie, Julio Prado Vallejo, Robert K. Goldman. Pursuant to the terms of Article 17(2) of the Rules of Procedure of the Commission, its First Vice-President, Juan E. Mendez, a national of Argentina, did not participate in the discussion or decision on the present report.
Dated:	10 October 2001
Citation:	Greco v. Argentina, Case 11.804, Inter-Am. C.H.R., Report No. 72/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by:	APPLICANTS: Guillermo Jorge, Andrea Pochak and Pablo Ceriani
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## I. SUMMARY

1. The present report addresses the admissibility of petition 11.804, received by the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission, “Commission” or “IACHR”) on September 10, 1997. The petition was filed by Mrs. Zulma Bastianini de Greco, mother of alleged victim Juan Ángel Greco. As from January of 2000, she has been assisted by attorney Guillermo Jorge in the presentation of this matter, and as from April of 2001, by attorneys Andrea Pochak and Pablo Ceriani of the Centro de Estudios Legales y Sociales (“CELS”) (hereinafter the foregoing are referred to as “the petitioners”).

2. The petitioners allege that the Republic of Argentina (hereinafter “State” or “Argentina”) bears responsibility for violations of Articles 1(1), 4(1), 5, 7, 8 and 25 of the American Convention on Human Rights (hereinafter “American Convention” or “Convention”) as a result of the illegal detention, mistreatment and subsequent death in custody of Juan Ángel Greco. In summary, the petitioners contend that on June 25, 1990, Mr. Greco, an artisan then 24 years of age, was illegally detained and mistreated while trying to seek police assistance in denouncing an assault. They indicate that, while Mr. Greco was detained in the Comisaría of Puerto de Vilelas, Province of Chaco, a fire broke out in his cell under unexplained circumstances, causing the victim to sustain severe burns. The petitioners allege police responsibility in the setting of the fire, and in delaying the transfer of the victim to the hospital for a period of hours. Mr. Greco

remained hospitalized until his death on July 4, 1990. The petitioners further allege that the State failed to carry out an adequate investigation to clarify the facts alleged, thereby denying the family their right to justice and to seek compensation.

3. The State contends that Mr. Greco was lawfully taken into custody because he had been drunk, and subsequently resisted arrest injuring two police officers. The State maintains that its investigations established that Mr. Greco himself started the fire in his cell, and that he was then transferred immediately to the local hospital to receive treatment for the burns sustained. The State indicates that, among the judicial and administrative actions pursued in relation to these events, two criminal actions were initiated. A criminal process was opened in 1990, at the initiative of the State, to investigate responsibility for the fire, and a denunciation was filed in 1995, by the victim's mother, seeking an investigation of responsibility for what she alleges as the mistreatment and murder of her son. Both the criminal process and the denunciation were dismissed without further appeal. The State sustains that its authorities carried out a diligent investigation which demonstrated that its agents acted in full conformity with the law. The State indicates that the unfortunate death of Mr. Greco was the result of his own actions, and involves no violation of his rights or those of his family under the American Convention. The State contends that domestic remedies proved available and effective in establishing that state agents bore no responsibility, and that the petitioners failed to exercise their right to appeal the relevant judicial and administrative decisions, or to file an action seeking compensation from the province, thereby rendering the matter inadmissible before the Commission.

4. In accordance with its examination of the allegations of fact and law of both parties, and without prejudging the merits, the Commission concludes that the petition is admissible, and will proceed with its analysis of the merits of the case.

## II. PROCESSING BEFORE THE COMMISSION

5. Subsequent to the filing of the petition, on September 17, 1997, 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 Commission requested that the State 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. By note of December 17, 1997, the State requested an extension to file its response. By notes of January 14, 1998, the Commission granted the State an additional 30 days, and informed the petitioners that this had been done. On February 13, 1998, the State requested a further extension. By notes of February 19, 1998, the Commission granted the State 30 more days, and informed the petitioners accordingly.

6. The State submitted its response to the petition in a communication dated March 30, 1998. The Commission transmitted that response to the petitioners on April 1, 1998, with the presentation of observations thereon requested within 30 days. By note of May 4, 1998, the petitioners requested an extension to file their response. On May 19, 1998, the Commission granted the petitioners an additional 30 days, and informed the State accordingly.

7. The petitioners submitted their observations in a communication dated June 19, 1998, the pertinent parts of which were transmitted to the State on July 15, 1998, with the receipt of observations in response requested within 60 days. By note of September 10, 1998, the State asked for additional time to submit those observations. By notes of September 28, 1998, the Commission granted the State an additional 30 days, and informed the petitioners accordingly. On October 27, 1998, the State requested a further extension of time. By notes of November 5, 1998, the Commission granted the State an additional 30 days, and informed the petitioners that this had been done.

8. The State presented its observations in a communication dated November 18, 1998. The Commission transmitted this information to the petitioners by note of November 20, 1998, with any observations requested within 60 days. In a communication dated January 19, 1999, the petitioners requested additional time to respond. By notes of March 1, 1999, the Commission granted the petitioners an additional 60 days, and informed the State accordingly. The petitioners' observations were received on May 25, 1999, and transmitted to the State on May 27, 1999, with the presentation of any observations requested within 60 days. By note of July 27, 1999, the State requested additional time to submit its response. By notes of July 30, 1999, the Commission granted the State an additional 60 days, and informed the petitioners accordingly.

9. The State's observations were presented in a communication dated September 14, 1999. The Commission transmitted this information to the petitioners via a communication of September 29, 1999, with any observations requested within 60 days. The petitioners submitted their response via a communication received by the Commission on January 14, 2000. The Commission transmitted that response to the State on February 1, 2000, with the receipt of any observations requested within 60 days. By note of April 11, 2000, the State requested additional time to present its response. By notes of April 24, 2000, the Commission granted the State an extension until May 15, 2000, and informed the petitioners accordingly. In a note received May 18, 2000, the State requested another extension. By notes of May 19, 2000, the Commission granted the State an additional 60 days, and informed the petitioners accordingly. By note of July 20, 2000, the State requested a further extension. By notes of August 15, 2000, the Commission granted the State an additional 30 days, and informed the petitioners accordingly.

10. The petitioners presented additional observations via a communication received by the Commission on November 10, 2000. The Commission transmitted this information to the State by means of a note of November 17, 2000, and requested the presentation of information concerning the merits of the matter within a non-extendable period of 60 days. On February 28, 2001, the State submitted additional information, with supporting documentation provided in a subsequent note of March 7, 2001. This information was transmitted to the petitioners on March 26, 2001. On June 6, 2001, the petitioners submitted a brief presentation reiterating previously stated positions. This was transmitted to the State for its information on August 31, 2001.

### III. POSITION OF THE PARTIES

#### A. The Petitioners

11. The petitioners allege that the State of Argentina bears responsibility for having illegally detained Juan Ángel Greco, and for his death as the result of burns sustained during a fire in his cell. They maintain that the State failed to carry out an adequate investigation, thereby denying his family justice.

12. They indicate that, just after midnight on the night of June 25, 1990, Juan Ángel Greco approached the police station of the Barrio de las 500 Viviendas in Barranqueras, Province of Chaco, a dependency of the Comisaría of the Department of Puerto de Vilelas, seeking to denounce that he had been assaulted. They state that he had been drinking with a friend in a local commercial center, when a security guard asked them to leave, provoking a dispute. The guard then allegedly assaulted Mr. Greco, injuring his left arm.

13. The petitioners report that, instead of assisting Mr. Greco, the police detained him and transported him to the Comisaría of Puerto de Vilelas. They indicate that the police later reported that the justification for Mr. Greco's detention was that he had been drunk, and had tried to escape from the vehicle in which he was being transported and resisted the efforts of officers to restrain him, seriously injuring two of them. The petitioners dispute this version of events, and cite the injury to Mr. Greco's left arm and the characterization in the police report that he had been drunk to the point of having trouble speaking and walking as making it highly improbable that he had tried to escape or seriously injured two officers.

14. The petitioners allege that Mr. Greco was not informed of the reason for his detention, or of his rights. Further, they allege that the police failed to promptly inform the local judge on duty of the detention. The petitioners note that the police effectively refused to receive the denunciation which had prompted Mr. Greco to approach them in the first place.

15. Upon arrival at the Comisaría, Mr. Greco was allegedly forced from the vehicle and beaten by the police officers. He was searched, his belt, billfold and papers were confiscated, and he was placed in a small cell alone. They allege that he was then subjected to further mistreatment by police officers. At approximately 1:00 a.m., a fire started in his cell, as a result of which Mr. Greco sustained serious burns. The petitioners allege that the gravity of the burns and amount of smoke produced indicate that the police did not respond to the fire promptly. They further allege that, notwithstanding the gravity of the injuries sustained, Mr. Greco was not transported to the hospital for a period of hours. They indicate that he was first evaluated at approximately 7:40 a.m.

16. According to a statement sworn by Mr. Greco's then-partner, Bibiana M. D'Alfeo, on October 27, 1999, and submitted by the petitioners in support of their claims, a police officer arrived at her residence at approximately 8:00 a.m. the morning of the facts to inform her that Mr. Greco had been detained and was hospitalized with "light" burns on his back. When she arrived at the hospital, he was bandaged from the waist up, including his arms and head, and was handcuffed to the bed. She reports that he was held in intensive care for three days, during which time he was generally unconscious due to sedatives, but was nonetheless handcuffed to the bed and under the custody of two police officers at all times. (The petitioners allege that the agents assigned to stand guard at the door of the hospital room had been on duty at the time of

his detention and the fire.) During this time, she states that she heard him repeat the words “they burned me” [“me quemaron”].

17. Ms. D’Alfeo further indicates that, after several days in the hospital, Mr. Greco was able to describe what had happened. He told her that he had been drinking beer with a friend in a local commercial center when a security guard told them to leave, provoking an argument. The guard then struck Mr. Greco with his belt, cutting the latter’s left arm with the buckle. This prompted Mr. Greco to go to the police to denounce what had happened. Instead, he was detained and transported to the Comisaría, where he was dragged from the police vehicle by his hair, and beaten. Ms. D’Alfeo reports that he told her that, when they placed him in the cell, he protested and yelled that he was going to denounce the officers involved. She states that Mr. Greco told her that the police officers burned him in the cell.

18. Ms. D’Alfeo indicates that she remained at Mr. Greco’s side throughout the time he was hospitalized, except for two brief instances when she went home to bathe. She states that the medical attention was so deficient that she had to provide virtually all the basic personal care he required. After three days, she indicates that he was moved out of intensive care, but remained under police guard day and night. On July 4, with Mr. Greco reportedly feeling much improved, his companion left for an hour or two to bathe. When she returned, a nurse informed her that Mr. Greco had died. She states that she received confusing accounts of what had happened, with a nurse telling her that Mr. Greco himself had removed the oxygen mask being used to assist his breathing, and a doctor later saying that he had died of cardiac arrest. She states that, notwithstanding the family’s request that Mr. Greco’s body be held in the morgue until his father could be notified to return from another province, the body was buried the following day without notice to his family. The petitioners allege that no autopsy was performed.

19. Ms. D’Alfeo indicates that, during the days Mr. Greco was in the hospital, no judicial official ever appeared to take his declaration. She states that she consequently went to speak with the local judge, who received her but did not take a formal declaration. She notes that when she told this judge that the police had beaten Mr. Greco, the judge responded that this was the custom of the police. Finally, Ms. D’Alfeo states that she left the province of Chaco shortly after Mr. Greco’s death out of fear, because people told her that the police were going to kill her.

20. The petitioners allege that the facts denounced were not duly investigated. They indicate that a criminal process was opened against Mr. Greco in 1990 (file 1975/90) for allegedly having started the fire in the Comisaría. The charges against Mr. Greco and the process itself were dismissed in a sentence of May 9, 1992 due to the extinction of the claims. The petitioners report that, according to Article 319 of the provincial Code of Criminal Procedure, only the public prosecutor was competent to appeal that dismissal, and did not do so.

21. The petitioners contend that the investigation that served as the basis for the foregoing criminal process was carried out under the authority of the same Sub-Commissioner who had been in charge of the Comisaría at the time of the events at issue. They maintain that an investigation handled by those who could themselves be under suspicion is inherently flawed. The petitioners indicate that the proof relied on in that investigation was a report by experts of the fire department indicating that Mr. Greco had started the fire himself. They question this

conclusion, given that he had been searched and his personal effects confiscated, and given that the specific source of ignition for the fire was never established. They contend that given these facts and the nature and intensity of the burns to the head and upper body of the victim, the fire was more likely ignited by a source introduced from outside the cell.

22. Mr. Greco's mother, Mrs. Zulma Bastianini de Greco, filed a denunciation in 1995 seeking to establish responsibility for what she alleged to be the beating and murder of her son while in police custody. That denunciation was dismissed on the basis that the court seized of the criminal process initiated against Mr. Greco in 1990 had already reviewed the evidence and found no indication of responsibility by any third party. The petitioners contend that it was impossible to appeal this decision because the lack of investigation by the competent authorities left them unable to produce facts and evidence that remained under the exclusive control of the State. The petitioners allege that judicial authorities failed to take declarations from family members, including the partner of the victim and his father, both of whom had spoken with Mr. Greco while in the hospital. They also note that no effort was made to cite the friend with whom Mr. Greco had been drinking on the night in question.

23. The petitioners note that the State opened an administrative action in 1990, ostensibly aimed at determining if the police officers bore any responsibility in relation to the facts at issue. They allege that this process was also largely handled by the Sub-Commissioner who had been in charge of the Comisaría at the time of the facts, and relied on the inadequate information produced in the criminal process initiated against Mr. Greco.

24. The petitioners indicate that the mother of the victim fruitlessly attempted to seek clarification through denunciations before alternative instances, namely: the Dirección Nacional Técnica y de Prevención de la Subsecretaría de Derechos Humanos y Sociales del Ministerio del Interior in 1993; the Ministry of Justice, Unit of Legal Coordination and Assistance to the Community in 1993; the Human Rights Ombudsman of the Republic in 1994; the Superior Tribunal of Justice of the Province of Chaco in 1995; the Governor of the Province, and the provincial Ministers of Justice and Government in 1995; the Investigating Court N° 2 in 1995; the Prosecutor for Administrative Investigations of the province in 1996; and the 1996 reiteration of a denunciation filed previously before the Human Rights Commission of the provincial Chamber of Deputies. They submitted copies of various letters to the foregoing efforts.

25. The petitioners maintain that the petition meets all the requirements of admissibility under the American Convention and the Commission's Rules of Procedure. They indicate that the family was unable to obtain judicial clarification of the facts alleged because of the failure of the competent authorities to carry out an adequate investigation. They argue that the legislation then in effect in the province did not provide Mr. Greco's mother with due process sufficient to vindicate the rights of her son as a victim, or the rights of his family to clarification and compensation. They further note that the victim's mother sought but was unable to obtain legal representation in pursuing the matter, because of what they characterize as fear in the locality of challenging the police. While they do not elaborate on this point, they also indicate that she was subject to intimidation when she traveled to Chaco to pursue clarification.

## B. The State

26. The State maintains that the detention of Mr. Greco was fully justified, that his death was the result of burns sustained in a fire he himself ignited in his cell, and that the competent authorities carried out an effective investigation of the events in question. The State indicates that, according to its records, on the night of June 25, 1990, Mr. Greco intercepted two police officers. His left arm was bleeding, and he was drunk. He complained of an attack by unknown persons in the local commercial center. The officers accompanied him to that center, and searched for the presumed assailants without finding anyone. Given Mr. Greco's alleged state of drunkenness, the officers called for a patrol to transport him to the local police station to calm down. While in transit, he reportedly began to insult the officers, and tried to escape through a window. The officers were required to subdue Mr. Greco, who assaulted and injured them. The State notes that medical reports attest to the injuries sustained by the officers.

27. The State indicates that its investigations established that the burns sustained by Mr. Greco resulted from a fire that he himself ignited in his cell, and did not involve the responsibility of any state agent. The State denies any delay in the response of the authorities to either the fire or the injuries sustained by Mr. Greco as a result. The State reports that the period from the time Mr. Greco appeared at the police station in Barrio 500 Viviendas, to the request for a patrol to transfer him, to his arrival at the Comisaría of Puerto Vilelas, to the fire, and to his transfer to the Dr. Julio C. Perrando Hospital in Resistencia was less than 90 minutes in total. The State indicates that the fire started at approximately 1:30 a.m. It clarifies that, while the petitioners have relied on the report of a doctor attached to the judiciary (médico legista) who examined Mr. Greco at 7:40 a.m. as the basis for their contention that there was a delay in transferring him to the hospital, its records indicate that he was transferred immediately. He was already hospitalized when the médico legista—unconnected to the hospital—examined him at 7:40 a.m. in order to provide a judicial certification of his state of health.

28. The State disqualifies the version of the facts set forth in the statement of Ms. D'Alfeo presented by the petitioners on the basis that she was not an eye witness to the detention or fire. It further notes that the statement adds nothing new, given that she provided a declaration in the criminal investigation opened in 1990. The State indicates that if the petitioners considered that the friend with whom Mr. Greco had been drinking on the night in question should have been cited to declare, they should have provided contact information to facilitate his citation at the appropriate procedural opportunity. Further, the State argues that the investigation cannot be qualified as deficient for having failed to cite a person whose illness would have disqualified the testimony provided [the State does not identify to whom they refer; the Commission presumes it is Mr. Greco].

29. The State maintains that it complied fully with its duty to investigate, indicating that this is a duty of means rather than results. The State maintains that the investigation was not left in the hands of the officers involved, but was handled by the investigating judge and the hierarchical superiors of those officers as required by law. The State notes that, while it was not possible to establish the precise source that ignited the fire, its investigation found that Mr. Greco was alone in his cell at the time, thereby discounting the direct responsibility of any third party. The lack of any conviction, it maintains, is not the result of a deficient investigation but accurately reflects the absence of any state responsibility.

30. The State contends that the petition is inadmissible before the Commission on the basis that the petitioners invoked but failed to properly exhaust available and effective remedies, and failed to file an action to seek compensation from the province of Chaco. Two actions were initiated in the criminal justice system in relation to the facts, the first at the initiative of the State and the second at the initiative of Mrs. Zulma Bastianini de Greco.

31. The first was initiated to establish criminal responsibility for the events in the comisaría. The State recounts that, on June 25, 1990, Police Commissioner Héctor Osmar Ramón Escobar ordered the investigation of the source of the fire and the resulting injuries sustained by Mr. Greco. The police agents involved, the person who had been detained in the adjoining cell, and the partner and father of Mr. Greco provided statements. On June 26, 1990, the Commissioner presented the matter for the consideration of the Juez de Instrucción de la Tercera Nominación, Dr. Alejandro Parmetler. The State reports that the file of matter N° 1975/90, “Comisaría Puerto Vilelas s/ eleva actuaciones” contains principally: the declaration of Bibiana Marcela D’Alfeo; a medical exam of June 28, 1990; the elevation of the matter to the Juzgado de Instrucción de la 3a Nominación; the report of the Special Unit of the Fire Department; the medical report of the Director General of the Instituto Médico Forense del Superior Tribunal de Justicia; the declaration of Miguel Ángel Greco, father of the victim; oficio N° 643 concerning data provided by doctors Casabelia Ibáñez and De la Iglesia de Farías; and the May 8, 1992 sentence resolving the matter through the dismissal of the charges against Mr. Greco and the process itself. That sentence was not appealed.

32. The second criminal action was initiated in response to the 1995 denunciation filed by Mrs. Zulma Elena Bastianini de Greco concerning the beating and death of her son. Matter N° 1404/95, “Bastianini de Greco, Zulma Elena s/ denuncia” was initiated before the Juzgado de Instrucción N° 2 of Resistencia, Chaco. The prosecutor reportedly requested that the denunciation be dismissed on the basis that the sentence issued in criminal process 1975/90 referred to above was final. The State indicates that the denunciation was thereafter dismissed (“desestimada”) on the basis that it had already been established through the investigation carried out in the previous process that the death of Mr. Greco had not been caused by a third party.

33. In connection with the dismissal of her denunciation, Mrs. Bastianini sought the assistance of the Secretaría de Superintendencia del Superior Tribunal de Justicia of the province, which opened file N° 38.730/95, titled “Bastianini de Greco, Zulma Elena s/ solicita intervención Alto Tribunal a efectos esclarecer denegación de justicia en causa que fuera víctima su hijo.” This produced the September 25, 1996 issuance of resolution 922, archiving the matter for lack of merit. The resolution indicated that, a judicial decision having been issued in matter N° 1404/95, there was no basis to justify a review of the facts already analyzed, which had, moreover, been analyzed in the earlier decision to dismiss matter N° 1975/90.

34. There was also an administrative investigation, “Greco Juan Ángel s/ sup. desacato, resistencia y atentado contra la autoridad, lesiones y daños,” N° 130/91-1398-E-90, that the State indicates was opened to determine if the police officers on duty at the time of Mr. Greco’s detention bore any disciplinary responsibility. The investigator issued an opinion on July 11,

1990 that the officers in question had committed no disciplinary infraction, and the matter was later archived.

35. The State notes that Mrs. Bastianini de Greco also filed denunciations with the Dirección Nacional de Técnica y de Prevención de la Subsecretaría de Derechos Humanos y Sociales del Ministerio del Interior, processed under SDH N° 1570 (1993), and before the Ministry of Justice of the Nation.

36. The State maintains that the processing of the two criminal actions recounted above demonstrates that domestic remedies were available and effective. The fact that the petitioners never sought to appeal the decisions dismissing the actions means they failed to fully exhaust all possible remedies. Further, the petitioners could have interposed an action seeking compensation from the province of Chaco, but elected not to do so. Accordingly, the State contends that the petition is inadmissible for failing to meet the requirements of Article 46 of the American Convention concerning the exhaustion of domestic remedies.

37. Finally, the State maintains that, given the petitioners' attempt to justify their arguments simply by pointing to the absence of a decision establishing the criminal or administrative responsibility of the state agents involved, they have failed to state claims tending to demonstrate a violation of the Convention, thereby rendering the petition inadmissible under Article 47 of the Convention. The State adds that the violations alleged took place prior to the assumption of office of the current provincial administration, which has taken important steps to improve human rights training for police officers, and citizen oversight of the police, as well as to enact changes to the provincial Code of Criminal Procedure that will enter into force in 2003 to strengthen the protection and rights of victims and their representatives in criminal proceedings, and the State's obligation to assume the search for the truth in support of peace and dignity.

#### IV. ANALYSIS OF ADMISSIBILITY

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

38. 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, Juan Ángel Greco, is an individual whose rights were 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.

39. Insofar as the petitioners have invoked claims concerning Articles 1(1), 4(1), 5, 7, 8 and 25 of the American Convention, the petition falls within the subject matter jurisdiction of the Commission.

40. The Commission has temporal jurisdiction to review the claims. The petition is based on allegations that date to June of 1990, the time of Mr. Greco's detention and subsequent death. The facts alleged thus arose subsequent to the entry into force of the State's obligations as a Party to the American Convention.

41. 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 presumed facts, which are alleged to have taken place within that State's territory.

B. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

42. 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. However, the Convention provides that when domestic remedies are unavailable as a matter of fact or law, the requirement that they be exhausted is excused.[FN1] More specifically, Article 46(2) 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.

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[FN1] 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 No. 11, para. 17.

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43. The submissions of both the petitioners and the State indicate that domestic remedies relative to the facts alleged were invoked but not fully exhausted. The Commission notes that, pursuant to the terms of Article 46, the remedies relevant for the purposes of the present analysis are judicial remedies.

44. To summarize, the State maintains that the two criminal actions initiated relative to the situation under study – process 1975/90 opened at the initiative of the State and file 1404/95 opened pursuant to the denunciation of Mrs. Bastianini de Greco--demonstrate that domestic remedies were available and effective. It argues that because Mr. Greco's family failed to appeal the sentences dismissing those actions, and, moreover, failed to file an action seeking compensation from the province of Chaco, they failed to adequately exhaust those remedies. The State argues that the petition is consequently inadmissible.

45. The petitioners allege their inability to exhaust domestic remedies, essentially on the basis of the first two exceptions set forth under Article 46(2). In relation to the first of the two criminal actions initiated, process 1975/90 opened at the initiative of the State, the petitioners

indicate that the applicable procedural norms did not give them standing to appeal the sentence dismissing the charges against Mr. Greco and the process as a whole. In relation to the second of the actions, file 1404/95 opened at the initiative of Mrs. Bastianini de Greco, the petitioners indicate that they had no basis to appeal the decision dismissing the denunciation because the competent authorities had failed to carry out an adequate investigation, thereby denying them access to the facts and evidence in the control of the State. They contend that, absent the required investigation, further legal proceedings would have been a pointless formality with no possibility of success.

46. In terms of the burden of proof with respect to the requirements of Article 46, it should be noted that, when a petitioner alleges that he or she is unable to prove exhaustion, Article 31 of the Commission's Rules of Procedure establishes that the burden then shifts to the State to demonstrate which specific domestic remedies remain to be exhausted and offer effective relief for the harm alleged.[FN2] Where the State then makes a showing that a certain remedy should have been used, the burden shifts back to the petitioner to show that it was exhausted or that one of the exceptions under Article 46 applies.[FN3]

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[FN2] See also, e.g., Inter-Am. Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Ser. C N° 4, para. 64.

[FN3] See generally, *id.*, para. 60.

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47. With respect to the dismissal of the first of the criminal processes referred to by the parties, the Commission observes that the State has neither responded to the petitioners' assertion that they were precluded from filing an appeal nor clarified how such an appeal could have been interposed under the applicable law. Article 319 of the Code of Criminal Procedure of Chaco indicates in pertinent part that the public prosecutor has standing to appeal a sentence of dismissal within three days, or that the person accused or his or her attorney may do so when the bases established in Article 318 of that Code were not observed. Article 318 provides for dismissal when (1) the fact investigated was not committed or not committed by the accused; (2) the fact does not constitute a criminal offense; (3) there is a justification or other means of excusing criminal responsibility; or, (4) the criminal claim has been extinguished. Given that none of the grounds enumerated would have provided the family of Mr. Greco with standing to appeal the sentence of dismissal, the Commission concludes that the petitioners were procedurally precluded from pursuing this action any further. Nor, it may be noted, has the State ever indicated why it would have been in the petitioners' interest as a matter of domestic law to contest the sentence dismissing the criminal charges brought against the presumed victim.

48. The second of the criminal actions cited by the parties, process 1404/95, was opened at the initiative of Mrs. Bastianini de Greco for the purpose of investigating what she alleged to be the beating and murder of her son at the hands of the police. According to the submissions of both parties, this denunciation was dismissed on the basis that the investigation related to the criminal charges brought against Mr. Greco in 1990 had found no third party responsibility for the fire and subsequent death, and that the sentence dismissing those charges was final. The Commission's review of the applicable legislation indicates that, pursuant to Article 174 of the

Code of Criminal Procedure of Chaco, a denunciation filed before a judge may be dismissed when the facts in question do not refer to a criminal offense, or when it is not possible to proceed. The only provision related to further processing in such an instance indicates that, where a prosecutor requests that a denunciation be dismissed and the judge in question is not in agreement, the latter shall proceed according to Article 336 of the Code, which provides for the submission of the matter for the opinion of the prosecutor of the chamber. In the present instance, the record indicates that the prosecutor requested that the denunciation be dismissed and the presiding judge responded with a sentence dismissing it. The Commission is aware of no other basis through which the petitioners could have contested that decision, and the State has not identified one.

49. Given that process 1975/90 was principally directed at establishing the criminal responsibility of Mr. Greco for the fire, it is not clear to what extent that judicial investigation could have responded to the scope and nature of the petitioners' claims before this Commission. The petitioners indicate that they had virtually no possibility to vindicate their rights through the process directed against Mr. Greco, and that the lack of any independent measures of investigation in response to the denunciation subsequently filed by the victim's mother foreclosed their chances to pursue justice. In this regard, the petitioners submitted a letter of October 31, 1995 from Mrs. Bastianini de Greco to the prosecutor expressing concern about the absence of any investigation in response to her denunciation, and requesting that, in his exclusive capacity to bring an accusation in representation of the victims and the State, he inform her of any measures that had been taken. The State, for its part, reports that no measures of investigation were carried out at that time because the denunciation was dismissed on the basis of the investigation and sentence produced in relation to criminal process 1975/90. It may also be noted in this regard that the figure of the private prosecutor was not recognized in the Code of Criminal Procedure of Chaco at the time of the facts under study. Given the foregoing circumstances, it is not clear how an action seeking compensation from the province would have responded to or rectified the alleged deficiencies in the investigation carried out within the criminal justice system.[FN4]

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[FN4] It may further be noted in this regard that, pursuant to the burden of proof set forth in Article 37 of the Commission's Rules of Procedure and the applicable case law, the party alleging non-exhaustion must raise specific rather than generic allegations concerning the remedies available and report on their effectiveness. The allegations of the State with respect to the efficacy of an action seeking compensation in the present case have been generic at best. See Report N° 52/97, Case 11.218, Nicaragua, Arges Sequeira Mangas (merits), Annual Report of the IACHR 1997, para. 95.

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50. The Commission further observes that the State has provided no arguments or information to indicate that Mrs. Bastianini de Greco's claims that her son was beaten by police officers while in custody were subject to substantive investigation. The State's response and subsequent observations have referred to issues concerning Mr. Greco's detention and death, but have not referred to the allegations of mistreatment. The petitioners allege in this regard, and the State has not refuted, that Mr. Greco's partner, Bibiana D'Alfeo, went to a judge at the time of

the events denounced to state that he had been illegally detained, beaten, and burned by police officers. In the statement submitted by the petitioners, Ms. D'Alfeo indicates that she told the judge that Mr. Greco had been "hit a lot" by the police officers, and the judge merely responded that it was the practice of the police to beat detainees. These claims were again raised by Mrs. Bastianini de Greco before the judiciary in her 1995 denunciation, but the record before the Commission contains no indication of any measures of investigation. On the basis of that record, the Commission can only conclude that the competent authorities of the State was placed on notice of the petitioners' claims that Mr. Greco was beaten by State agents, but that these claims were not subject to judicial investigation.

51. While it is the responsibility of the petitioner in a given instance to ensure that the State is placed on proper notice of an alleged violation of the Convention, so as to have an adequate opportunity to resolve the complaint within its own legal system, it is the State that is obliged to advance the investigation of any crime which may be prosecuted de oficio.[FN5] In such cases, it can only be demanded that the petitioner exhaust domestic remedies where the State concerned investigates the facts alleged with due diligence and proceeds to punish any persons found responsible in accordance with its duties under both domestic law and the Convention.[FN6] In accordance with the totality of the foregoing analysis, the Commission concludes that in the present instance the requirement of exhaustion of domestic remedies is excused by reason of the exceptions set forth in Article 46(2)(a) and (b).

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[FN5] See e.g., id, paras. 96, 97.

[FN6] See e.g., Report N° 62/00, Case 11.727, Hernando Osorio Correa, Colombia (admissibility), published in Annual Report of the IACHR 2000, OEA/Ser.L/V/II.111, Doc. 20 rev., 16 April 2001, para. 24.

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52. It should be noted that the application of one of the exceptions provided for in Article 46 to determine the admissibility of a petition in no way involves a prejudgment of the merits of the complaint. The Commission's standard for review at the stage of admissibility is necessarily preliminary in nature, as it is applied prior to the analysis of the merits. Accordingly, while the Commission concludes that the record supports a finding of admissibility, the causes and consequences that impeded the exhaustion of domestic remedies will be analyzed, where pertinent, in the report to be adopted on the merits of this matter in order to determine whether they constitute violations of the Convention.

## 2. Time period for submission of the petition

53. 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.

54. 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. In such a case, Article 32 of the Commission's Rules of Procedure establishes that the deadline for presentation shall be "within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case." Nor does this rule apply where the allegations concern a continuing situation--where the rights of the victim are allegedly affected on an ongoing basis.[FN7]

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[FN7] See generally, Report N° 31/99 (admissibility), Case 11.763, Plan de Sánchez Massacre, Guatemala, published in Annual Report of the IACHR 1998, OEA/Ser.L/V/II.102, Doc. 6 rev., April 16, 1999, paras. 29, 30.  
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55. In the present matter, taking into account (1) the conclusion set forth in section 1, supra, that the petitioners were excused from exhausting domestic remedies by virtue of their lack of standing to appeal the dismissal of the criminal actions and the limitations in the scope of the investigation carried out by the State, which evidently excluded consideration of the claims of mistreatment, (2) that the victim's family continued to seek clarification through a series of official albeit non-judicial remedies, (3) the claims that this matter involve an alleged ongoing denial of justice, and (4) the absence of any express arguments concerning this requirement on the part of the State, the Commission concludes that the present petition was filed within a reasonable time from the date of the violations alleged.

### 3. Duplication of proceedings and res judicata

56. 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.

### 4. Characterization of the facts alleged

57. The Commission considers that the petitioners' allegations regarding the alleged violations of the right to personal liberty, humane treatment and life, as well as to judicial protection and due process, state facts that, if shown to be true, could establish violations of Articles 1(1), 4(1), 5, 7, 8 and 25 of the American Convention. The Commission accordingly finds that the requirements of Article 47 (b) and (c) have been met.

58. In its decision on the merits, the Commission will also determine, pursuant to the principle of *jura novit curia*, whether its analysis of the facts alleged and applicable law provides a basis to apply the provisions of the Inter-American Convention to Prevent and Punish Torture. Argentina deposited its instrument of ratification of this treaty on March 31, 1989.

## V. CONCLUSIONS

59. The Commission concludes that it is competent to take cognizance of the instant matter and that the petition is admissible, pursuant to Articles 46 and 47 of the American Convention insofar as the alleged violations of the rights of Juan Ángel Greco under Articles 1(1), 4(1), 5, 7, 8 and 25 of the Convention are concerned.

60. Based on the factual and legal analysis set forth above, and without prejudging the merits of the case,

#### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES:

1. To declare the present case admissible.
2. To notify the parties of this decision.
3. To continue with the analysis of the merits of the case.
4. To make this report public, and publish it in its Annual Report to 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 10th day of October in the year 2001. (Signed): Claudio Grossman, President; Marta Altolaguirre, Second Vice President; and Commission members Hélio Bicudo, Peter Laurie, Julio Prado Vallejo and Robert K. Goldman.