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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 77/01; Case 11.571
Session:	Hundred and Thirteenth Regular Session (9 – 17 October and 12 – 16 November 2001)
Title/Style of Cause:	Humberto Antonio Palamara Iribarne v. Chile
Doc. Type:	Decision
Decided by:	First Vice-President: Juan E. Mendez; Second Vice-President: Marta Altolaguirre; Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, Helio Bicudo. Commissioner Claudio Grossman, a Chilean national, did not participate in the consideration of or vote on this case, in keeping with Article 17(2) of the IACHR's Rules of Procedure.
Dated:	10 October 2001
Citation:	Palamara Iribarne v. Chile, Case 11.571, Inter-Am. C.H.R., Report No. 77/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
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## I. SUMMARY

1. On January 16, 1996, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a complaint submitted by Humberto Palamara Iribarne, represented by the Center for Justice and International Law (CEJIL) and Human Rights Watch/Americas (together, “the petitioners”), which alleged the international responsibility of the Republic of Chile (“the State”) for having prohibited the publication of the book “Ética y Servicios de Inteligencia” (“Ethics and Intelligence Services”) by Mr. Palamara Iribarne, and for having convicted him of contempt of a public authority (desacato) in a trial without due process guarantees.

2. The petitioners argue that the facts alleged constitute violations of the following provisions of the American Convention on Human Rights (the “American Convention”): the right to a fair trial (Article 8), the right to freedom of expression (Article 13), and the right to property (Article 21). They also argue that the case meets all the admissibility requirements set forth in the American Convention. The State argues that the human rights of Mr. Palamara Iribarne have not been violated, as he was judged in keeping with Chilean legislation, which is compatible with the due process standards of the American Convention; and that domestic remedies in Chile were not exhausted.

3. Without prejudging on the merits, the IACHR concludes in this report that the case is admissible, as it meets the requirements set forth in Articles 46 and 47 of the American Convention. By virtue of the foregoing, the Inter-American Commission decides to notify the parties of this decision and to continue with the analysis of the merits regarding the alleged violations of Articles 8, 13, and 21 of the American Convention.

## II. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION

4. Mr. Palamara's petition was registered under number 11.571 and forwarded to the Chilean State on January 26, 1996. The State presented its observations on July 3, 1996. The petitioners responded to these observations on September 13, 1996, and later submitted further observations and additional information on April 15, 1997 and March 24, 1998. The State presented observations on February 13, 1997, July 30, 1997, and August 4, 1998. The IACHR held hearings on the matter on October 7, 1997, and October 6, 1998, during its 97th and 100th sessions, respectively. The petitioners and Mr. Palamara Iribarne filed briefs on May 11, 1999 and December 22, 2000, urging that there be a decision in the case. On March 1, 2001, during the Inter-American Commission's 110th regular session, a working meeting was held with the parties at Commission headquarters.

## III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

### A. The petitioners

5. The complaint indicates that Mr. Palamara Iribarne wrote and tried to publish a book called "Ética y Servicios de Inteligencia" ("Ethics and Intelligence Services") in which he addressed issues related to military intelligence and the need to bring it into line with certain ethical standards. Mr. Palamara Iribarne, a retired Chilean Navy officer, was at the time of the events a civil servant hired as a contractor by the Chilean Navy in the city of Punta Arenas. The petitioners allege that the text cited could be considered a press article, and that it did not contain confidential information. Despite this, in February 1993 Mr. Palamara Iribarne delivered four copies of the book to the commander-in-chief of the Third Naval Zone of Chile.[FN1]

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[FN1] The Ordinance of the Chilean Navy establishes at Article 89 that in order for a member of the Navy or a person providing services to the Navy to be able to publish an article that affects the interests of the institution, or that contains secret or classified information, one must have the prior authorization of the competent naval authority.

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6. On March 1, 1993, the aforementioned naval commander notified Mr. Palamara Iribarne by phone that the publication of his book had been prohibited by the Navy, out of consideration that its contents constituted an attack on national security and national defense, and that accordingly all the existing copies had to be collected. Mr. Palamara Iribarne agreed to meet with Navy officers that same day at 3:00 p.m. at the printing press where the book was to be published; nonetheless, he later changed his mind and did not show up.

7. In response to his failure to show, also on March 1, 1993, the naval authority filed charges before the Naval Court of Magallanes, giving rise to criminal proceeding No. 464 for disobedience of military duties.[FN2] In the context of that proceeding, the Naval Tribunal convened in the offices of the “Ateli Limitada” press, and seized the copies of the book, as well as the originals, a diskette containing the full text, and the galleys of the publication. The Tribunal also went to Mr. Palamara Iribarne’s home, where it proceeded to seize the copies of the book found there, and to erase the complete text of the book in question from the hard disk of his personal computer.

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[FN2] The petitioners stated:

In this criminal proceeding, Palamara was accused of the crimes of disobedience of military duties, provided for at Article 299(3) of the Code of Military Justice, and the crime of disobedience, provided for at Article 337(3) of the Code of Military Justice. The first of these crimes was for the fact of not having requested the authorization required for publication of the book, and the second for having refused to deliver the book once so ordered by his superior. Communication from the petitioners, January 12, 1996, p. 2.

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8. The petitioners also state that the naval authorities ordered the author of the book to refrain from making any “critical comments, public or private, written or spoken, that might be to the detriment of or that might harm the image of the Institution, any naval authority, or those carrying out the judicial case and administrative investigations against him.” The Chilean Navy performed two expert examinations to determine whether the contents of the book constituted an attack on national security. The result in both cases was that neither the confidentiality nor security of the Navy was violated.

9. Humberto Palamara Iribarne called a press conference at his residence, during which he criticized the action of the Office of the Naval Prosecutor in the proceedings against him. In response, criminal charges were instituted for contempt of authority (desacato); a guilty verdict was returned, which was affirmed by the Supreme Court of Chile.

10. The petitioners note that even though Mr. Palamara Iribarne was a civilian, the criminal proceeding against him took place in the military courts. They note that the courts were not impartial, as they are presided over not by civilian judges, but by judges who are themselves members of the military. The petitioners also allege that the hierarchical structure of the Chilean military institutions, as well as the fact that the judges who sit on those courts are active-duty members of the armed forces, make it impossible to have a trial with respect for due process. To the extent that the trial was not public, they argue that Mr. Palamara Iribarne was not given adequate time and means to prepare his defense. Accordingly, the petitioners argue that Mr. Palamara Iribarne’s right to be heard by an independent and impartial judge or court for the determination of his rights was violated.

11. The petitioners argue that the domestic remedies relating to the facts described as violative of his rights were exhausted by the Supreme Court of Chile’s judgment of July 20,

1995, which denied the complaint appeal (recurso de queja) of the Military Court's verdict against Mr. Palamara Iribarne finding him guilty of desacato.

A. The State

12. In its response, the State argues that domestic remedies were not exhausted with respect to the facts alleged. As for case No. 464 for disobedience of military duties, it asserts that the ruling of the Naval Judge of Magallanes is still pending, and that accordingly the facts addressed therein cannot be admissible before the IACHR. And as for case No. 471 for desacato, the State asserts that Mr. Palamara Iribarne's defense had available to it the remedies of inapplicability and cassation, as to procedural issues and the merits. It indicates that those remedies are effective and suitable for remedying the situation that is the subject of the complaint, but that Mr. Palamara Iribarne's defense counsel did not pursue them. In contrast, it argues that the complaint appeal (recurso de queja), which was filed, is merely disciplinary and so is not effective or suitable.

13. The Chilean State argues, with regard to the merits issues in the complaint, that there was no violation of the freedom of expression to the detriment of Mr. Palamara Iribarne. It alleges in this regard that the right to freedom of expression is limited by respect for the rights or reputation of others, thus it argues that Mr. Palamara Iribarne violated the right of persons to respect for their honor and to recognition of their dignity.[FN3]

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[FN3] The Chilean State makes reference to the "Report on the Compatibility of Desacato Laws with the American Convention on Human Rights," published by the IACHR in Chapter V of its Annual Report for 1994. In this regard, the Chilean State states as follows:

The authority in respect of which the contempt was displayed--the Naval Prosecutor of Magallanes--was slandered regarding the performance of his judicial duties and by reason of his position, as he was accused of supposed falsification, and of disrespect for the truth in a judicial proceeding before him. Accordingly, the legal grounds and reasoning set forth in the above-noted Report by the Commission are not applicable, since Mr. Palamara engaged in the criminal conduct defined at Article 264 of the Criminal Code.

Communication from the State of July 3, 1996. In the same communication, the State argues that the desacato provision in the Chilean Criminal Code "has as its purpose the protection of public employees when their reputation is gravely affected," as in the case of Mr. Palamara and his accusations with respect to the Office of the Naval Prosecutor. The Chilean State explains that the situation would be different if Mr. Palamara "had limited himself to formulating critical assessments ... in the framework of due respect."

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14. The State further argues that, pursuant to the provisions of the Ordinance of the Chilean Navy, one must have prior authorization granted by the competent naval authority. Even though that authorization was denied, Mr. Palamara Iribarne sought to continue with the publication of his book. The Chilean State asserts that Mr. Palamara Iribarne was under the system for providing services to the Navy as part of the "civilian contract personnel," which gave him military status, and that he was subject to the discipline and duties and obligations particular to

the Navy. The State notes that in the judgment of August 5, 1997, which decided the motion for cassation on the merits (case No. 471 for disobedience of military duties), the Supreme Court of Chile established that Mr. Palamara Iribarne had military status as a “contract employee” of the Navy.

15. The State argues that Mr. Palamara Iribarne exercised his right to defense, as the indictment against him was communicated to him previously and in detail, and he was assisted by defense counsel of his own choosing. According to the State, this impedes him from arguing impartiality of the courts based on the argument that the trial was not public. The State further notes in this regard that the Supreme Court may include a member of the military to hear matters that come to it from the military jurisdiction, and that this does not constitute a violation of the guarantee of equality before the law.

16. In summary, the State argues that it did not violate any of Mr. Palamara Iribarne’s human rights, and that, in any event, domestic remedies were not exhausted. In view of all of the foregoing, the State asks that the Inter-American Commission reject the petition.

#### IV. ANALYSIS

##### A. Competence *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci* of the Inter-American Commission

17. The petitioners are authorized by Article 44 of the American Convention to present complaints to the IACHR. The petition in this matter indicates as alleged victims individual persons with respect to whom Chile undertook to respect and ensure the rights enshrined in the American Convention.[FN4] As regards the State, the Commission notes that Chile has been a party to the American Convention since August 21, 1990, when it deposited the instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

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[FN4] The Chilean State ratified the American Convention on August 21, 1990.  
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18. The Commission is competent *ratione loci* to hear the petition, as it alleges violations of rights protected in the American Convention alleged to have occurred in the territory of a State party to that treaty. In addition, the IACHR is competent *ratione temporis* as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State as of the date of the events alleged in the petition. Finally, the Commission is competent *ratione materiae*, since the petition alleges violations of human rights protected by the American Convention.

##### B. Other admissibility requirements of the petition

###### a. Exhaustion of domestic remedies

19. As arises from the positions summarized above, there is disagreement between the parties on the issue of exhaustion of domestic remedies, requiring the Commission to rule as to whether that requirement has been met.

20. It has been seen that the Chilean naval authorities began two proceedings against Mr. Palamara Iribarne: Case No. 464 for disobedience of military duties, and case No. 471 for desacato. The original complaint submitted to the Inter-American Commission referred exclusively to the facts related to the proceeding on desacato, although it mentioned the other proceeding--then pending--as part of the context of harassment against Mr. Palamara Iribarne. On March 24, 1998, the petitioners filed a supplementary brief to include the facts related to the conviction of Mr. Palamara Iribarne, once the judgment of the Supreme Court in case No. 464 was final.

21. Furthermore, the representatives of Mr. Palamara Iribarne recurred to the Chilean courts to seek protection of his constitutional guarantees. The petitioners allege in that connection:

Together with the development of the proceeding and while Palamara was held in preventive detention, he and his family were notified that they had to leave the subsidized housing that they were using within one week. At the same time, Mr. Palamara's wife, Anne Ellen Stewart Orlandini, in early March filed a constitutional motion for protection (recurso de protección) (roll number 10-93) for the purpose of securing the return of the books seized and to put an end to the disturbances of her psychological integrity, and that of her family, stemming from the proceedings in the case brought against her husband; said motion was dismissed March 24, 1993.[FN5]

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[FN5] Communication from petitioners of January 12, 1996, p. 4.  
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22. The petition refers, in essence, to Mr. Palamara Iribarne's right to publish a book on ethics and military intelligence, and to the judicial guarantees that should be observed to make a determination, before Chilean judicial organs, as to the alleged violation of that right. The petitioners' initial allusion to case No. 464 for disobedience of military duties is made for the evident purpose of explaining the factual context.[FN6] Therefore, the IACHR shall proceed to analyze the judicial proceedings in case No. 471 for desacato against Mr. Palamara Iribarne in Chile in order to evaluate whether the requirement provided for in Article 46(1)(a) of the American Convention has been met. To do so, a determination must be made as to whether domestic remedies in Chile were exhausted when the Supreme Court of Chile dismissed the complaint appeal (recurso de queja) filed by the petitioners in that case, or whether, to the contrary, they should have pursued the remedies of inapplicability and cassation, as indicated by the Chilean State.

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[FN6] The complaint of January 12, 1996 contains a title "Context in which the events giving rise to the present complaint took place," under which is found information on the proceeding

initiated by the Naval Court of Magallanes as case 464. The following title is “Events giving rise to this complaint,” and it begins with the description of case 471 for desacato.

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23. The above-mentioned case No. 471 was initiated in the wake of statements made by Mr. Palamara Iribarne in a press conference, when he criticized the performance of the Office of the Naval Prosecutor in case No. 464, in which he was accused of disobedience of military duties.[FN7] On May 25, 1993, the Commander of the Third Naval Zone, who also served as Naval Judge of Magallanes, filed a complaint for desacato against Mr. Palamara Iribarne before the Court of Appeals of Punta Arenas, based on Articles 264 and 266 of Chile’s Criminal Code. On June 14, 1993, said Court of Appeals declared that it did not have jurisdiction to hear the case, and removed it to the military jurisdiction--the same Naval Judge of Magallanes—where it was assigned case No. 471.

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[FN7] The petitioners report that the daily “La Prensa Austral” of Punta Arenas, in its edition of May 7, 1993, reproduced the following statements made by Mr. Palamara Iribarne at the press conference:

There are reasons to believe that the Office of the Naval Prosecutor adulterated legal documents and lied to the Court of Appeals when asked who made the complaint that began the preliminary criminal proceedings and as to the roll number of the criminal proceeding with which the investigation was begun, all to avoid an unfavorable judgment.

Communication from the petitioners of January 12, 1996, p. 4.

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24. On September 7, 1994, the Naval Court of Magallanes handed down a judgment absolving Mr. Palamara Iribarne, considering that the essential element of desacato was not present, as its declarations were directed against the Office of the Naval Prosecutor, not against the person of the Naval Prosecutor nor against any other particular person. Although that judgment was not appealed, the Military Court of Valparaíso asserted jurisdiction over the case through the mechanism of consultation, and in its judgment of January 3, 1995, it decided to reverse the judgment of first instance, and to find Mr. Palamara guilty of desacato. The penalty consisted of 61 days of “minor prison sentence, in its minimal degree, fine of 11 basic salaries (sueldos vitales), and suspension from any public post or office during the time of the sentence.”

25. On January 9, 1995, Mr. Palamara Iribarne’s defense counsel went before the Supreme Court of Chile to file a complaint appeal (recurso de queja) against the judges of the military court that convicted him. The Supreme Court dismissed the complaint appeal on July 20, 1995, with which the conviction by the Military Court of Valparaíso became a final judgment. The petitioners allege that the judgment that rejected the complaint appeal was not appealable; the Chilean State did not controvert this.

26. Referring to the remedy of inapplicability of the law, the petitioners state that “it has not been capable, historically, of producing the results for [which] it was conceived, i.e. protection of the rights of persons vis-à-vis the unconstitutionality of legal rules,” and they support this assertion with official statistics.[FN8] They also allege that the motion of cassation on procedural

grounds is not suitable or effective for the case of Mr. Palamara Iribarne, as it only gave the Supreme Court competence to rule on procedural irregularities; they also provided official statistics in support of their argument.[FN9] As for the remedy of cassation on the merits, they argue similarly that it was not necessary to pursue it, since the complaint appeal filed gave the Supreme Court the broadest powers to resolve the conflict in keeping with the standards of the American Convention.

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[FN8] Communication from the petitioners of September 13, 1996, p. 5. Therein, the petitioners cite official statistics according to which from 1985 to 1989 “of a total of 90 motions filed, only six were ruled favorably upon by the Supreme Court, while 48 were rejected, 12 were declared inadmissible, and another 24 were terminated by abandonment or archived.”

[FN9] The petitioners state that “of a total of 1,779 motions [of cassation on procedural grounds] filed from 1985 to 1989 (in civil and criminal cases), only 110 were met with favorable rulings, 938 were declared inadmissible, and another 310 were abandoned, archived, or declared lapsed.” They explain that “approximately 6% of the total number of cassation motions heard by the Supreme Court are ruled upon favorably, while approximately 53% are declared inadmissible for failure to meet formal requirements and 23% are rejected for failing to comply with substantive requirements.” *Id.*, p. 7.

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27. In contrast with the foregoing, the petitioners argue that the complaint appeal (*recurso de queja*) had the necessary characteristics of being effective and suitable when pursued by Mr. Palamara Iribarne:

This mechanism constituted the main form of challenging the resolutions handed down on appeal, and, at the same time, the most suitable mechanism for obtaining a pronouncement in a reasonable time from the Supreme Court. In fact, the complaint appeal had become a veritable third instance in the legislation and according to the prevailing practices in the Chilean legal system.

This situation can be better depicted by reference to the number of complaints resolved by the Supreme Court from 1985 to 1989, i.e. 10,490, of which 2,561 refer to criminal cases.... The practice of attorneys in Chile is to use the complaint appeal, because it is definitely the one that allows them to obtain final and timely pronouncements by the Supreme Court.[FN10]

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[FN10] *Id.*, p. 9.

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28. The Chilean State, from its first response to the IACHR, argued that domestic remedies had not been exhausted for failure to pursue the three procedural mechanisms already mentioned. As for the first of these, the State indicates:

As per Article 80 of the Constitution of Chile, the inapplicability remedy (*recurso de inaplicabilidad*) is heard by the Supreme Court, *sua sponte*, or at the request of a party, in matters before it or which were submitted to it in a motion filed in any type of proceeding before another

court; it may declare any legal provision that is contrary to the Constitution to be inapplicable to those particular cases.

That remedy may be invoked at any stage of the proceeding, and the Supreme Court may order it suspended.

Accordingly, the claimant had guarantees for all the rights now the subject of an international complaint under the Chilean constitutional order, which gave him this judicial remedy to effectively uphold those rights. Nonetheless, he did not pursue such a remedy at any point in the trial.

29. As regards the procedural remedy of cassation, the State argues that pursuing it “would have enabled the claimant to go before the Supreme Court to oppose the judgment of the Military Court of the Navy to annul the guilty verdict,” and it cites the possible grounds for pursuing such a remedy according to Article 541 of the Chilean Code of Criminal Procedure.[FN11]

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[FN11] Communication from the State of July 3, 1996, p. 3. Article 541 cited by the Chilean State establishes 12 grounds on which the procedural cassation remedy may be based, which include: (a) Failure to summons one of the parties; (b) the evidence in question not having been received, or not having allowed one of the parties to present its own or to undertake evidentiary procedures important for resolving the matter....; (c) not having attached the pleadings presented by the parties; (d) not having given notice to the parties of any evidentiary procedure; (e) not having scheduled the case for hearing in the collegial courts in the manner established in Article 1163 of the Code of Criminal Procedure; etc.

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30. The Chilean State adds that the complaint appeal “does not, technically speaking, constitute a judicial remedy directed against a ruling or judgment that one seeks to challenge or correct.” It argues that to the contrary, it is a “mere disciplinary action against one or more particular judges, that does not subject to review by the Superior Courts of Justice the constitutionality of the ruling, but a possible error or abuse by the judges in the performance of their functions.”[FN12]

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[FN12] Communication from the Chilean State, February 3, 1997, p. 4.

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31. Furthermore, the State dismisses the petitioners’ allegations as to the ineffectiveness and unsuitability of the remedies of inapplicability and cassation, on procedural grounds and on the merits. It argues in this regard that “legally, procedural efficacy is not measured by the number of remedies pursued, denied, or accepted, but by how they have been conceived by the law.”[FN13] The State notes that the inapplicability remedy may be pursued at any time before the Supreme Court and that it is a “special remedy of the utmost usefulness and procedural and judicial efficacy.”

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[FN13] Id., p. 3.

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32. The Inter-American Commission notes that the requirement established in Article 46(1)(a) of the American Convention refers to the exhaustion of available judicial remedies that are adequate and effective for solving the alleged violation of human rights. As the Inter-American Court has reiterated on several occasions, if in a specific case the remedy is not suitable for restoring the legal interest infringed and capable of producing the result for which it was designed, it is obvious that one need not exhaust it.[FN14]

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[FN14] See, e.g., Inter-American Court of Human Rights, *Exceptions to the Exhaustion of Domestic Remedies* (Arts. 46(1), 46(2)(a), and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, para. 36.

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33. In the matter submitted to the IACHR, even though he alleged the lack of impartiality of the military courts, Mr. Palamara Iribarne's representative recurred to the available fora and pursued, to its conclusion, the desacato proceeding instituted by the naval authorities. The complaint appeal with which that proceeding culminated, according to the information in the record, considered the possibility of the Supreme Court of Chile overturning the guilty verdict against Mr. Palamara Iribarne, and of a declaration sua sponte as to the inapplicability of the criminal provision on desacato that the petitioners argue violates the alleged victim's human rights. The possibility that the highest judicial organ in Chile might take up the issue of inapplicability sua sponte is mentioned expressly by the Chilean State when it describes that remedy (supra 26). Furthermore, it has been seen above that the petitioners provided ample statistical information to support their arguments.

34. The Inter-American Commission observes that the Chilean State did not dispute the official documentation or the doctrine invoked by the petitioners, but that it repeated its position regarding the suitability of the other remedies not pursued in Mr. Palamara Iribarne's case, based on its legal view.

35. The IACHR believes that the complaint appeal--in its legal conception and in its interpretation and application by the Chilean courts--was suitable to solve the situation alleged by the petitioners, who pursued it in the time and manner provided for in Chilean domestic law. In addition, the petitioners allege that the Supreme Court had full and broad powers to declare the inapplicability of the law questioned in the context of the complaint appeal. In effect, Article 80 of the Chilean Constitution provides:

The Supreme Court, sua sponte or upon request by a party, in the matters that come before it, or that are submitted to it in a motion filed in any proceeding before any other court, may declare inapplicable for those particular cases any law contrary to the Constitution. This remedy may be invoked at any stage of the proceeding, and the Court may order the proceeding suspended.

36. The Chilean State had several opportunities to cure the alleged violation of the fundamental rights of Mr. Palamara Iribarne in the procedure identified as case No. 471 on desacato, in particular when the issue was raised before the highest court through the complaint appeal. In view of the foregoing, it would not be reasonable to impose on the petitioners in this matter the burden of exhausting the additional remedies that the Chilean State identified. The IACHR concludes that the judgment handed down by the Supreme Court of Chile on July 20, 1995, exhausted remedies in the Chilean domestic jurisdiction in the case of Humberto Palamara Iribarne.

37. In addition, both parties agreed that domestic remedies had not been exhausted with respect to the facts alleged in case No. 464 when the processing of this matter began before the IACHR. In its supplemental filing submitted March 18, 1998, the petitioners argue that the judgment of the Supreme Court denying the motion of cassation on the merits, handed down August 5, 1997, exhausted domestic remedies with respect to those facts. After said supplemental filing, the State did not raise any objection with respect to the requirement set forth in Article 46(1)(a) of the American Convention. Accordingly, the IACHR declares that domestic remedies were also exhausted with respect to the arguments on the facts that gave rise to case No. 464 against Mr. Palamara Iribarne for disobedience of military duties.

38. The Inter-American Commission concludes that it has been fully shown that the requirement provided for at Article 46(1)(a) of the American Convention has been met with respect to all the facts alleged in this matter.

b. Time period for submission

39. The petition was received January 16, 1996, within six months counted from notification of the judgment of July 20, 1995, which exhausted domestic remedies in Chile. Therefore, the requirement set forth at Article 46(1)(b) of the American Convention has been met.

c. Duplication of procedures and res judicata

40. The record in this case contains no information whatsoever that might lead to a determination that this matter is pending before another international organization or that it has been previously decided by the Inter-American Commission. In view of the foregoing, it is concluded that the exceptions provided for at Article 46(1)(d) and Article 47(d) of the American Convention do not apply.

d. Characterization of the facts alleged

41. The complaint sets forth facts that the petitioners consider violate Articles 8, 13, and 21 of the American Convention, and that have not been controverted by the State. The Inter-American Commission considers that the arguments on the facts must be examined in the merits phase, to determine whether they constitute violations of the American Convention. Accordingly, the IACHR concludes that the requirements of Article 47(b) and (c) of the American Convention have been met.

## V. CONCLUSIONS

42. In keeping with Articles 46 and 47 of the American Convention, the Inter-American Commission concludes that it is competent to declare this case admissible and to examine the merits. This conclusion is based on the arguments of fact and law set forth above, and is reached without prejudging the merits.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible as regards the alleged violations of the rights protected at Articles 8, 13, and 21 of the American Convention.
2. To notify the parties of this decision.
3. To continue to analyze the merits issues.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., October 10, 2001. (Signed): Juan E. Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, Hélio Bicudo, Commissioners.