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Title/Style of Cause:	Oscar Siri Zuniga v. Honduras
Doc. Type:	Decision
Decided by:	President: Jose Zalaquett; First Vice-President: Clare K. Roberts; Second Vice-President: Susana Villaran; Commissioners: Robert K. Goldman, Julio Prado Vallejo.
Dated:	22 October 2003
Citation:	Siri Zuniga v. Honduras, Petition 12.006, Inter-Am. C.H.R., Report No. 87/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by:	APPLICANT: the Committee for the Defense of Human Rights in Honduras
Editor's Note:	The text of footnotes 4, 6, 25 is missing in the original.
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I. SUMMARY

1. On March 3, 1997, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “Inter-American Commission”) received from the Committee for the Defense of Human Rights in Honduras–CODEH (hereinafter “the petitioners” or the “complainants”) a complaint against the Republic of Honduras (hereinafter the “Honduran State,” “Honduras,” or “the State) for the violation, to the detriment of Mr. Oscar Sirí Zúñiga (hereinafter “the alleged victim” or “Mr. Sirí Zúñiga”), of the rights to a Fair Trial (Article 8), Private Property (Article 21), and Judicial Protection (Article 25), with respect to Article 1(1), all of which are enshrined in the American Convention on Human Rights (hereinafter “the Convention” or the “American Convention”).

2. The complaint concerns the alleged occupation, by the United States Military Group in Honduras (hereinafter “United States Military Group” or “Military Group”), of a property that, according to the petitioners, belongs to Mr. Sirí Zúñiga. The petitioners allege that as a result of that occupation, the alleged victim filed an action for possession [juicio posesorio], which was resolved in his favor on October 18, 1994. On this basis, the Honduran judicial authorities undertook several actions to evict the Military Group, but the military personnel refused to leave the premises, a position that was supported by the Liaison Officer between the Group and the Honduran Armed Forces, Colonel José C. Castro.

3. The State asserts that Mr. Sirí Zúñiga acted with a flagrant lack of legal basis [falta de derecho] and that he failed to exhaust domestic remedies. It argues that his action was misdirected when it was brought against the Liaison Officer and the Military Group, neither of

which have juridical personality, rather than against the Honduran State, which is the legitimate owner and current possessor of the property in question.

4. According to Honduras, a judgment issued pursuant to an action for possession of title cannot give rise to eviction, which can only be ordered pursuant to a judgment issued in ordinary proceedings for recovery of title, for which the evictions ordered by the Court of First Instance [Juzgado de Primera Instancia] were illegal.

5. Based on an analysis of admissibility requirements, the Inter-American Commission concludes that the petition is inadmissible in accordance with Article 46(1)(a) of the American Convention.

II. PROCESSING BEFORE THE COMMISSION

6. On May 21, 1997, the Commission transmitted the petition to the Honduran State and requested information concerning the petitioners' allegations within 30 days. On June 27, 1997, the State requested a 60-day extension, which was granted.

7. On September 18, 1997, the State submitted its response, in which it argues the inadmissibility of the petition based on Mr. Sirí Zúñiga's lack of legal basis and the failure to exhaust domestic remedies. On that same day, the State's response was transmitted to the petitioners so that they could submit their observations to the Commission.

8. On January 12, 1998, the Commission received the petitioner's response, which was transmitted to the State on May 8, 1998, with the request to submit its observations. On November 30, 1998, and on November 16, 2000, the Commission reiterated its request to the State for information regarding the case.

9. On January 23, 2001, the State requested an extension for presenting to the Commission its final comments on the petitioners' observations of January 12, 1998. On January 31 of that same year, in view of the fact that more than three years had transpired since the petitioner's observations were transmitted to the State, the Commission granted a ten day extension for the submission of final observations, notwithstanding its continued processing of the case.

III. POSITIONS OF THE PARTIES

A. The Petitioners

10. The petitioners allege that Mr. Sirí Zúñiga is the owner of a property of approximately 15 manzanas in the Municipality of the Central District of Honduras, "where, by means of encroachment [usurpación] are located" the facilities of the military mission known as the United States Military Group.

11. The petitioners indicate that, as owner of the property, Mr. Sirí Zúñiga contacted representatives of the United States Military Group and the Audit Office of the Armed Forces of Honduras in an effort to reach an out-of-court agreement that would consist of purchasing,

leasing, or vacating of the land. They state that the response was that the lands were the legal property of the Honduran Armed Forces.[FN1]

[FN1] The petitioners submit as proof an April 27, 1994 letter, signed by the Chief of the Armed Forces, affirming that the facilities in question were occupied by the Armed Forces between 1970 and 1975 and that, in 1975, they were provided to the Military Group. They add that the owners preceding Mr. Sirí Zúñiga, the heirs of Mr. Luis Andrés Zúñiga, grandfather of the alleged victim, received the transfer of title of the property in question in 1967, three years prior to its appropriation by the Armed Forces. In the file before the IACHR, included among the other evidence submitted by the petitioner, is the legal instrument transferring the property title to Mr. Sirí Zúñiga, as payment in kind from the heirs of his grandfather, D. Luis Andrés Zúñiga, which was drawn up before the notary Moisés Nazar Valladares on June 25, 1993, Entry N° 7, Volume 1949, of the Property Registry.

12. The petitioners state that the Honduran Armed Forces forcibly occupied Mr. Sirí Zúñiga's property in 1970 and that, due to the situation in the country at that time, it was impossible to pursue a complaint through legal channels.

13. They further state that in light of the situation described, on May 6, 1994, Mr. Sirí Zúñiga wrote a letter the U.S. Ambassador, but received no response. As a result, on May 20, 1994, he filed an action for possession [juicio posesorio] against "the United States Military Group, and Honduran troops and personnel based in Comayagüela", through their commander, Colonel José C. Castro.[FN2] According to the petitioner, this military officer was passively legitimated in accordance with the Law Creating the Armed Forces and the 1954 Military Assistance Treaty between Honduras and the United States and its Additional Protocols.

[FN2] According to the petitioners, Colonel José C. Castro was passively legitimated by the Law Creating the Armed Forces [Ley Constitutiva de las Fuerzas Armadas] and by the Military Assistance Treaty between Honduras and the United States as accountable for the actions of the Armed Forces.

14. The complainants assert that on October 18, 1994, the Court of Second Instance for Civil Matters [Juzgado Segundo de Letras de los Civil] of Francisco Morazán Department issued a judgment concluding that Mr. Oscar Sirí Zúñiga had demonstrated possession and title of the property named in the complaint. This judgment also recognized the juridical personality of the respondent and his attorney[FN3] and prohibited the military institution from continuing to interfere with the complainant's possession[FN4], while reserving the respondent's right to take such action regarding title that it was entitled to under the law.[FN5].[FN6]

[FN3] With regard to the objection regarding the lack of juridical personality of the respondent or his attorney, the judge rejected this claim stating that: "it is known that the Commander of this military institution has the capacity to take positions by virtue of his functions and attributes."

[FN5] The judgment provided that if the respondent filed no appeal, the judgment would be final. (folios 161 to 164).

15. They report that subsequently, the Court of Third Instance for Civil Matters [Juzgado de Letras Tercero de lo Civil] of Francisco Morazán Department undertook the delimitation and demarcation of the boundaries of Mr. Sirí Zúñiga's property, and that the latter established a mortgage in the name of his daughter, Julia Margarita Sirí, on a delimited and demarcated portion of the general property. (Entry N° 56 of the Property Registry, Volume 1983). He also signed a contract for lease with option to buy in the name of a company called "Colonia Oscar Sirí Zúñiga S.R.L." (Entry N° 56, Volume 2045 of the Property Registry), actions that could not have taken place or been registered if the alleged victim had not been the "owner with full title to the property." In this regard they indicate that they are claiming a property right proven with firm judicial resolutions and registered public instruments with erga omnes protection.[FN7]

[FN7] Brief by the petitioners dated March 3, 1997. They further indicated that the right to private property is found in Article 103 of the Political Constitution of Honduras which states that:

The State recognizes, promotes, and guarantees the existence of private property in its highest concept of social function, and without limitations except for those that, for reasons of public necessity or public interest, are established by law.

16. They further assert that Mr. Sirí Zúñiga requested the removal of the personnel and facilities installed on his property and that, on March 9, 1995, the Court issued an eviction order that was executed on March 10, of the same year. The petitioners assert that Colonel Castro, Liaison Officer, told the writ-server from the Court [Receptora del Juzgado] that the order she was carrying "was worthless because he only obeyed orders from the Chief of the Armed Forces and not from the Courts and that it would be impossible to proceed with the removal." Subsequently, two U.S. colonels arrived who—according to the petitioners—told the writ-server that "they would only leave the facilities under orders from the Embassy of the United States of America." In view of this situation, Licenciada Rodríguez prepared a notarized affidavit recording the events that had transpired there.[FN8]

[FN8] See the affidavit registered by the Writ-server of the Court [Receptora del Juzgado], Mrs. Noemí Argentina Rodríguez, accompanying the original complaint presented by the petitioners on March 3, 1997.

17. On March 10, 1995, the legal representative of the High Command of the Armed Forces filed an appeal requesting the absolute nullity of the execution of the October 8, 1994 judgment

resolving the action for possession, alleging that the property in dispute was owned by the State[FN9] and that the judgment was therefore illegal.[FN10] On March 21, 1995, the Court of Second Instance for Civil Matters of Francisco Morazán issued a procedural decision [proveído] rejecting this request[FN11] and on March 29 of that year, the High Command of the Armed Forces filed motions for reinstatement and a supplementary appeal against this procedural decision[FN12], which were rejected by the Court in the case on April 4, 1995, by virtue of the fact that “the final judgment of October 18, 1994, is unappealable.”[FN13]

[FN9] Folio 196 of the file of the amparo petition. The State included a Certificate from the Property Registrar certifying that volume 379 of that registry contains entry N° 23 , which states that the State acquired a property for the Sociedad Inmobiliaria Las Torres for the Service of the Armed Forces of Honduras, with the characteristics described below. Folios 197 and 198 of the legal file.

[FN10] They add that Mr. Sirí filed charges against Colonels José Castro and Abraham Mendoza and against Lieutenant Sabillón for the offenses of encroachment [usurpación], stellionate, contempt of court [desacato], abuse of authority, and violation of the duties of public officials, before the Court of Second Instance for Criminal Matters [Juzgado Segundo de Letras de lo Criminal] of Francisco Morazán Department. The judge in these proceedings ruled that it was a civil matter, citing the accused as witnesses, according to a court decree [auto] of July 24, 1995; the alleged victim filed a remedy of appeal, which was dismissed in a judgment by the First Court of Appeals of the Judicial Section of Tegucigalpa on February 29, 1996. The alleged victim filed a remedy of amparo against this judgment before the Supreme Court of Justice, which the court dismissed in a June 12, 1996 judgment which found that no Constitutional guarantee had been violated. Mr. Sirí Zúñiga considers that these rulings violate his right to a fair trial.

[FN11] Folio 205 of the file containing amparo petition N° 3667.

[FN12] Ibid.

[FN13] Folio 206 of the file containing amparo petition N° 3667.

18. On July 6, 1995, the eviction orders dated July 5 and 27, 1995, were turned over to General Roberto Lazarus, Commander General of the Public Security Force, ordering him to carry out the latter on July 31, 1995. On August 1 of that same year, the aforementioned military officer arrived for the eviction, which could not be carried out because, according to the petitioners, a communication from the Supreme Court of Justice “appeared” ordering the suspension of the eviction process pursuant to a remedy of amparo filed by the High Command of the Armed Forces of Honduras.[FN14]

[FN14] See the document dated July 31, 1995, issued by the Clerk of the Court of Second Instance for Civil Matters in Francisco Morazán (folio 241) certifying that the eviction order against the United States Military Group and Honduran troops and personnel could not be carried out due to the amparo petition filed before the Supreme Court of Justice by the legal representative of the High Command of the Armed Forces of Honduras, according to the court document ordering the suspension of the act requested and remanding the record ad efectum

videndi. The petitioners consider that the aforementioned remedy of amparo is unconstitutional and constitutes a due process violation, since the Supreme Court failed to comply with the procedures outlined in the Law of Amparo. Brief by the petitioners dated March 3, 1997.

19. Subsequently, the petitioners state that Mr. Sirí Zúñiga requested successive eviction orders on November 28, and December 5 and 9, 1996. The Court consented to the petitions and on December 13, 1996, the Writ-server of the Court [Receptor del Despacho] arrived at the site, accompanied by Captain Alejandro Bustillo Núñez and other military personnel to carry out the eviction. According to the petitioners, U.S. military personnel ordered the entrance doors to be shut and one of them received the eviction order through a small window. Later the Press Attaché of the United States Embassy arrived and told them that the property was occupied by the Military Group which was part of the United States Diplomatic Mission in Honduras. Confronted with this argument, the Honduran authorities decided not to execute the order.[FN15]

[FN15] The petitioners submit as evidence notarized affidavits attached to their brief.

20. The petitioners assert that during 1997, Mr. Sirí Zúñiga petitioned for more eviction orders but that all of his efforts have been in vain.

21. Finally, the petitioners allege that they have exhausted all domestic remedies, in light of the final judgment of October 8, 1994 (First Instance), which ruled in favor of Mr. Sirí Zúñiga's action for possession; that of June 21, 1995 (Second Instance)[FN16] and the judgment of November 5, 1996, (extraordinary Amparo proceedings), dismissing the remedy of amparo filed by the High Command of the Armed Forces of Honduras by finding that the October 18, 1994 judgment was final and in the execution phase. Consequently, they request a declaration of violation of the rights to a fair trial, to due process, and to private property, the full restitution of Mr. Oscar Sirí Zúñiga's rights, and the sanction of those responsible for violating his rights.

[FN16] Judgment rejecting the formal appeal filed by the High Command of the Armed Forces against the March 21, 1995 ruling (folio 253 of the file of the amparo petition.)

B. The Honduran State

22. The State requests that the petition be declared inadmissible since it considers that the alleged victim acted with a flagrant lack of legal basis and failed to exhaust domestic remedies.

23. Honduras alleges that the amparo petition filed by Mr. Sirí Zúñiga was processed in an irregular manner before the Court of Second Instance for Civil Matters of Francisco Morazán since it was brought against Colonel José C. Castro. According to the State, at that time, Colonel Castro was the Liaison Officer between the Military Group and the Armed Forces, but he lacked juridical personality to represent the State. Honduras indicates that this action should have been

brought against the State, which has been the legitimate owner of the property since acquiring it through sale on February 5, 1980, and that it is, additionally the actual possessor and occupant of this property.[FN17] It further states that the property in reference was purchased by the State and assigned to the General Command of the Navy of Honduras which, in turn, since 1975 has provided an office for the temporary residence of the United States Military Group, since the State of Honduras, under the 1954 Military Assistance Treaty, agreed to provide certain facilities to the United States Army.[FN18]

[FN17] As evidence of its ownership of the disputed property, the State's September 18, 1997, brief in response was accompanied by a certification of Entry N° 23 of Volume 379 of the Book of Property, Mortgages, and Preventive Annotations for Francisco Morazán Department.

[FN18] See the report sent to the Ministry of Foreign Affairs of the Republic of Honduras by the Office of the Auditor General of the Armed Forces of Honduras, via Colonel of Artillery José Nuñez Bennet, Minister of National Defense, dated September 11, 1997, annexed to Official Letter N° 161-DDHN to the IACHR from the Ministry of Foreign Affairs of the Republic of Honduras, September 17, 1997.

24. In light of the above, the Honduran State asserts that the judgment of October 18, 1994, which ruled against the Military Group, is illegal. It further states that, in consequence, it filed a formal appeal of the judgment by the Court of First Instance for Civil Matters before the First Court of Appeals of Francisco Morazán Department, which dismissed the appeal in a June 21, 1995 judgment. In response, on July 17, 1995, the High Command of the Armed Forces filed a remedy of amparo before the Supreme Court of Justice, which likewise was dismissed on November 5, 1996, with a finding that the first instance judgment was final.

25. Honduras states that Mr. Sirí Zúñiga continued to request the eviction and removal from the property of the United States Military Group and of the facilities owned by the State, leading the State to file—through the Attorney General of the Republic—on December 13, 1996, a Notice of Appearance [escrito de personamiento] before the Court of Second Instance for Civil Matters, requesting a stay of procedures to execute the judgment, particularly with regard to the order issued by that court on December 11, 1996, ordering the removal of the Military Group. In the aforementioned notice, the State further requested a declaration of the absolute nullity of the eviction proceedings. [FN19] The Notice of Appearance submitted by the Attorney General was rejected by the Court of First Instance in a January 7, 1997 ruling leading the State to file an appeal before the First Court of Appeals.

[FN19] The Attorney General's petition was based on the following facts: 1) the State is the owner of the property pursuant to a sale, on February 5, 1980, to the Sociedad Inmobiliaria Las Torres, according to a Public Instrument certified by Notary Renán Pérez, consisting of approximately one manzana, two thousand ten square varas (Entry N° 23, Volume 379 of the Book of Property, Mortgages, and Preventive Annotations of Francisco Morazán Department; 2) Since the amparo petition was not brought against the State, the latter has not lost in any action, either for possession or of an ordinary nature, since the remedy of amparo was filed against third

parties who do not legally represent the State, such as is the case of the “United States military group and Honduran military personnel;” and 3) Under Honduran law, an action for possession cannot lead to removal since the remedy of amparo does not give rise to eviction. Only ordinary proceedings for recovery of title may give rise to an eviction or removal. Furthermore, the rulings issued in amparo petitions are eminently provisional and may be subject to modification if an action regarding title is filed.

26. On February 3, 1997, the State’s legal representative filed a Motion for Reinstatement [Recurso de Reposición] against the January 7, 1997 order and filed a supplementary appeal in case the motion was dismissed.[FN20] The motion for reinstatement was dismissed on February 5, 1997,[FN21] giving rise to the appeal.

[FN20] Folio 286-Ordinary Action [Demanda Ordinaria] 3667.

[FN21] Folio 287-Ordinary Action 3667.

27. On March 20, 1997, the First Court of Appeals issued an interlocutory judgment in favor of the Honduran State. In its judgment, the Court pointed out that the purpose of an action for possession is to make a provisional decision regarding actual or momentary possession, or regarding facts relating to possession, without prejudice to the right of the interested parties to suspend or avoid a detrimental act. The Court further stated that, while the amparo petition was resolved in favor of the complainant, this decision is provisional and subject to modification and that, in order to proceed with removal, eviction and other measures, the relevant ordinary proceeding must be pursued. Based on these considerations, the Court ruled in favor of the remedy of appeal filed by the State and revoked the court order issued by the Court of Second Instance for Civil Matters of Francisco Morazán on January 7, 1997, for which the State’s Notice of Appearance was dismissed.

28. The State adds that because Mr. Sirí Zúñiga holds neither ownership nor possession rights over the property, he has been unable to prove those rights to the Courts and therefore has turned to the Inter-American Commission on Human Rights. It therefore argues that the petition is inadmissible since at no time has the alleged victim been denied the right to petition before the Honduran courts and tribunals.

29 Finally, the State points out that the alleged victim has not exhausted remedies under domestic law since he did not file a remedy of amparo petition against the judgment issued by the First Court of Appeals of March 20, 1997.

IV. ANALYSIS

A. The Commission’s Competence *ratione materiae*, *ratione personae* y *ratione temporis*

30. The Commission has *ratione materiae* competence to take up this petition because it claims violations of rights enshrined in the American Convention to which Honduras is a State Party by virtue of having ratified it on September 8, 1977.

31. The Commission has *ratione personae* competence to take up this petition since the status of the alleged victim and respondent satisfies the requirements provided in Articles 1(2) and 44 of the Convention.

32. The IACHR has *ratione temporis* competence to take up this petition inasmuch as the obligation to respect and guarantee the rights enshrined in the American Convention were already in force for the Costa Rican [sic] State at the time that the alleged violations occurred.

33. Finally, the Commission has *ratione loci* competence to take up this petition inasmuch as the violations alleged therein occurred within the jurisdiction of the State against which the petition is brought.

B. Admissibility requirements for the petition

a. Exhaustion of domestic remedies

34. Article 46(1)(a) of the Convention provides that admission by the Commission of a petition shall be subject to the requirement “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” This rule allows the State the opportunity to resolve the issues under its internal law before being confronted with an international proceeding.

35. In the case at hand, the State argues that Mr. Sirí Zúñiga has not exhausted domestic remedies inasmuch as he did not file a remedy of amparo against the judgment issued by the First Court of Appeals of March 20, 1997 upholding the appeal filed by the State.

36. The complainants, for their part, claim that they completely exhausted their domestic remedies under Honduran law, since the October 18, 1994, judgment in favor of Mr. Sirí Zúñiga in the action for possession is final and unappealable, and that this was confirmed in the June 21, 1995, and November 5, 1996, judgments issued by the First Court of Appeals of Francisco Morazán and the Supreme Court of Justice respectively. They further argue that when judgments are final they are not subject to appeal, either of an ordinary or extraordinary nature, either because of their nature or by virtue of the consent of the parties (Article 188 of the Civil Procedures Code of Honduras), as was the case with the respondent which, in this case, consented to the judgment in the action for possession.

37. The petitioners also state that if Mr. Sirí Zúñiga failed to pursue an action for Recovery of Ownership [Reinvidicatoria de Dominio] it is because the title to the disputed property is registered in his name in entry N° 7 of Volume 1949 of the Property Registry of Francisco Morazán.

38. The petitioners argue that instead of accepting a new appeal, the judgment of October 18, 1994, should have been executed, under the remedy of amparo filed by Mr. Sirí Zúñiga. Nonetheless, instead of executing that judgment, the appeal filed by the State was accepted, giving rise to the March 20, 1997, judgment issued by the First Court of Appeals. They add that actions subsequent to a final judgment--which constitute double jeopardy [cosa juzgada formal]—constitute a clear denial of justice.

39. The Commission observes that, with respect to the issue of exhaustion of domestic remedies, Article 46(1)(a) of the Convention speaks of “generally recognized principles of international law.” Those principles refer not only to the formal existence of such remedies, but also to their adequacy and effectiveness, as shown by the exceptions set out in Article 46(2) of the American Convention.[FN22]

[FN22] The Inter-American Court of Human Rights has stipulated:

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable. Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 64.

40. In this case, the First Court of Appeals of Tegucigalpa issued, on March 2, 1997, a judgment dismissing the court order of January 7, 1997, issued by the First Court of Appeals of Francisco Morazán Department, which overturned the nullity of the eviction order against the United States Military Group, issued by the Court of Second Instance for Civil Matters of that Department on December 11, 1996. The aforementioned judgment establishes that, if within the period established by law no appeal is filed, that it be so recorded by the Clerk of the Court [Secretaría del Despacho].

41. The Inter-American Court previously has established that “the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective”[FN23] and that “if a State which alleges non-exhaustion proves the existence of specific domestic remedies that should have been utilized, the opposing party has the burden of showing that those remedies were exhausted or that the case comes within the exceptions of Article 46(2).”[FN24]

[FN23] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, para. 88.

[FN24] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 26, 1988, para. 60.

42. In the case at hand, the State has pointed out that a remedy of amparo is still available to the petitioners against the March 20, 1997, judgment by the Court of Appeals.

43. The Commission considers that, although the petitioners claim that there is a final judgment in favor of Mr. Sirí Zúñiga and that the appeal filed by the State should not have been processed, it is also true that the Court of Appeals accepted the petition and issued a judgment within its sphere of competence, in a ruling that includes a sufficiently well reasoned interpretation of Honduran law. The fact that this ruling was not favorable to Mr. Sirí Zúñiga's interests after several legal decisions that were favorable to him in the amparo petition does not mean that he is exempt from exhausting remedies of domestic law. The alleged victim has had free access to the courts, which have ruled in his favor in several instances. The fact that he fears an unfavorable judgment if he files the remedy of amparo that the State mentions, is not sufficient reason to abstain from contesting the ruling by the Court of Appeals or to constitute an exception to the rule of exhaustion of domestic remedies in this case. (Article 46(2) of the American Convention).

44. The Commission wishes to point out that if a remedy is not adequate in a specific case, it obviously need not be exhausted. This is indicated by the principle that a norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable. In this case it is not evident that, should such a remedy be lodged, it would not be suitable to address the legal right that has allegedly been infringed and produce a reasonable result. Consistent with the principle of the supplementary nature of the Inter-American system for the protection of human rights relative to a States internal legal system, the latter must be allowed the opportunity to resolve possible violations under its internal law and, therefore, the alleged victim must exhaust all domestic remedies available to him.

45. The Commission points out, in any case, that the national courts are responsible for interpreting internal procedural law, and that the IACHR lacks jurisdiction to determine the correct interpretation of local laws, unless the interpretation itself constitutes a violation of the Convention.”[FN25] In the case under examination, the Commission considers that, based on the facts presented by the petitioners, it cannot be deduced that the interpretation of procedural norms by the Honduran legal authorities constitutes a manifest violation of the American Convention.

46. With respect to the partiality of the Court of Appeals of Tegucigalpa alleged by the petitioners, the Commission recalls that this cannot be presumed, but rather must be proved, which the petitioner in this case has failed to do. With respect to the fear that the alleged victim may have that a remedy of amparo might be decided with a judgment that is unfavorable to him, it should be recalled that the decisive factor is not the petitioners' subjective fear with respect to the impartiality that should characterize the court that takes up the trial, but the fact that in the specific case it can be argued that their fears are justified objectively. In this regard, the Inter-American Court of Human Rights has stated that it must not be rashly presumed that a State Party to the Convention has failed to comply with its obligation to provide effective domestic remedies. In this sense, the European Court has said: “In principle, the personal impartiality of the members of a ‘tribunal’ must be presumed until there is proof to the contrary.”[FN26] The petitioners have not provided sufficient proof in this regard.

[FN26] European Court of Human Rights, *Albert and Le Compte v, Belgium*, February 10, 1983, Series A No 58, Application N° 7299/75 & 7496/76, (1983) 5 EHRR 533, & 32.

47. Therefore, the Commission considers that the remedy of amparo was not exhausted by the petitioners, for motives not imputable to the State, and that they did not present evidence or information that would enable the Commission to apply the exceptions to the exhaustion of domestic remedies established at Article 46(2)(a) and (b).

48. For the reasons set forth above, and considering that the petition under study did not meet the requirement of exhaustion of domestic remedies established in Article 46(1)(a) of the American Convention, the Commission concludes that the petition is inadmissible. In view of the foregoing, the IACHR refrains from examining the other admissibility requirements set forth in the Convention, as the matter has been found not to be ripe for consideration by the Commission.

V. CONCLUSIONS

49. The Commission has established that this petition does not meet the requirement provided in Article 46(1)(a) of the American Convention. Consequently, the Commission concludes that the petition is inadmissible in accordance with Article 47(a) of the American Convention.

50. Based on the factual and legal arguments given above

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To notify the parties of this decision.
3. To publish this decision and include 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 22nd day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.