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First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalo, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo, Florentin Melendez.
Dated: 24 February 2004
Citation: Correa Belisle v. Argentina, Petition 11.758, Inter-Am. C.H.R., Report No. 2/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
Represented by: APPLICANTS: Alicia Oliveira, Raul Zaffaroni, Alberto Bovino, the Center for Justice and International Law
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I. SUMMARY

1. On May 28, 1997 the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition lodged by Alicia Oliveira, Raúl Zaffaroni and Alberto Bovino, with the joint representation of the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”), alleging the responsibility of the Republic of Argentina (hereinafter, “the State” or “the Argentine State”) for the arbitrary detention of Rodolfo Correa Belisle, as well as various violations of the right to a fair trial and of due process guarantees in the trial of Mr. Correa Belisle, then a captain in the Argentine Army by the military criminal justice system of said State for the offense of disrespect. Mr. Correa Belisle affirms that the aforesaid trial was a punishment by the leadership of the armed forces motivated by his testimony as a witness in a criminal proceeding to investigate the death of a young soldier at the barracks where he was serving as an Army officer.

2. The petitioners argued that the State is responsible for the violation of the rights to liberty and personal security, to equality before the law, to a fair trial, of protection from arbitrary arrest, and to due process of law, enshrined in Articles I, II, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration” or “the Declaration”). The petitioners further claimed that the State is responsible for the violation of the rights to personal liberty, a fair trial, equal protection, and judicial protection enshrined in Articles 7, 8, 24, and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) to the detriment of Rodolfo Correa Belisle, as well

as the general obligation under Article 1(1) of the Convention to respect and ensure the rights protected therein.

3. The State indicates that Correa Belisle was not put on trial for what he said in his testimony, but the manner in which he did so, which threatened military discipline, fundamental in a hierarchical organization such as the Army. The State also affirms that his judicial guarantees were observed during the military proceeding. As to the admissibility of the matter, the State argued that the remedies under domestic law had not been exhausted since there was an adequate and effective remedy available in the domestic legal order that had not been invoked by the petitioners. The latter, for their part, argued that the case qualified for the exception to the rule of exhaustion of domestic remedies enshrined in Article 46(2)(a), to the extent that the domestic legislation does not afford due process of law for the protection of the rights allegedly violated.

4. In the instant report the Commission concludes, without prejudging the merits of the case, that the petition is admissible in accordance with Articles 46 and 47 of the Convention, and that it will proceed with its analysis of the alleged violations of Articles 7, 8, 13, 24, 25, 1(1) and 2 of that instrument. It also decides to notify the parties of its decision and to publish it in its annual report.

II. PROCESSING BY THE COMMISSION

5. On June 16, 1997 the IACHR initiated processing of the case, registered as petition No. 11.758, and transmitted the pertinent portions of the complaint to the State, with a deadline of 90 days to submit its observations. On September 16, 1997, the State requested a first extension of the deadline to submit the appropriate information. Accordingly, by note of September 22, 1997, the Commission granted the State an additional period of 30 days, and notified the petitioners of said decision. Subsequently, through a communication dated October 22, 1997, the State requested another extension to meet the request for information. The State was granted a further 30 days by means of a note of October 28, 1997, and the petitioners were informed accordingly.

6. The Government presented its reply to the petition in a communication of November 26, 1997, the pertinent portions of which were conveyed to the petitioners on December 3, 1997, with the request that they submit such observations as they deemed appropriate to the reply of the State within 30 days.

7. On January 15, 1998 the petitioners submitted to the IACHR a request for a hearing at its 98th Session. That hearing was granted and set for February 26, 1998, as the petitioners were informed by a note of January 28, 1998. In a note of January 8, 1998, the petitioners requested an extension to reply to the observations formulated by the State. The extension was granted to them on February 9 that year; the deadline set to submit the reply was February 26, 1998, the date of the hearing granted to the petitioners.

8. On February 26, 1998, the petitioners presented their observations to the State's reply. Those observations were transmitted to the Government in a communication dated March 5,

1998, and the State was given 30 days to send additional information or to formulate observations to the petitioners' brief.

9. The State submitted its comments to the brief containing the petitioners' observations on May 20, 1998. The contents of this second brief from the State were transmitted to the petitioners via a communication dated May 22, 1998, with a deadline of 30 days to submit comments in that respect or to furnish additional information. In a note of November 2, 1998 the petitioners submitted their observations to the new brief of the Government. The contents of that note were brought to the attention of the State by means of a note of November 13, 1998, with a deadline of 30 days to present its reply.

10. On December 30, 1998 the State requested an extension to present its reply to the last brief sent by the petitioners. It was granted that extension in a note of January 11, 1999, which gave it an additional period of 30 days. Subsequently, on February 25, 1999, the State again requested an extension to present its reply. Via a note of March 2, 1999 it was given a further 30 days, and this was communicated to the petitioners on the same date. The State sent the Commission a third brief containing its observations in a communication of April 21, 1999, which was forwarded to the petitioners on May 5, 1999, with a deadline of 60 days to formulate their observations.

11. The petitioners replied to the above submission of the State in a note of July 5, 1999. The pertinent portions of that communication were transmitted to the Government on July 12, 1999, with 30 days to present observations. On July 6, 1999 the petitioners submitted additional information on the case. This information was transmitted to the State on August 3 of that year, with a deadline of 15 days to submit such observations as it deemed appropriate.

12. On August 12, 1999 the Argentine State requested an extension to present its observations, as well as unification of the deadlines to provide the documents concerning the case. In a communication of August 16, 1999, the IACHR informed it that the deadlines to which its previous communication referred would expire on August 18 of that same year. On that date, the State again requested an extension, which the IACHR granted on September 7, 1999, for a period of 15 days. On September 22, 1999 the State submitted its observations, which were transmitted to the petitioners on that same date, with a deadline of 60 days to present their reply.

13. The petitioners, in a communication of November 11, 1999 requested an extension to submit their observations to those presented by the State. By a note of November 15 of the same year they were granted an extension of 30 days. On December 15, 1999 the petitioners sent their observations, which were transmitted to the State on March 7, 2000, with a deadline of 60 days to submit comments. The State, in turn, forwarded its comments to said observations on May 8, 2000. Those observations were transmitted to the petitioners on May 11 of that same year, in order that they might formulate such observations as they deemed appropriate within 60 days.

14. On July 11, 2000 the petitioners submitted a short reiteration of their position and requested the IACHR to adopt a report on admissibility. This request was reiterated on August 20, 2003. Said communications were transmitted to the State on February 5, 2004.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

15. The petitioners argue that Rodolfo Correa Belisle was arbitrarily detained under the penalty of arrest issued by the Argentine military justice system, in violation of Article 7 of the American Convention, in a proceeding that also flagrantly violated his right of defense, the principle of impartiality of the judicial authorities, and his right to equal protection, respectively indicated in Articles 8, 24 and 25 of the Convention.

16. They say that in 1994, when military service was still compulsory in Argentina, the youth Omar Carrasco joined the Zapala Regiment (Neuquén Province) and was the victim of a homicide inside the barracks. As a result of this incident criminal proceedings were instituted before the ordinary courts, which gave rise to the prosecution of one officer, two non-commissioned officers and two private soldiers. The petitioners report that in the aforesaid proceeding, several officers, non-commissioned officers and private soldiers who served with the regiment to which Carrasco belonged were summonsed to testify; among them their client, Artillery Captain Rodolfo Correa Belisle.

17. The petitioners indicate that in his testimony in the aforesaid criminal trial, Captain Correa said he had knowledge of activities carried out by army intelligence personnel in connection with the Carrasco case, as well as of tampering with evidence to cover up the incident. Furthermore, when he was advised that the Chief of Staff, General Martín Balza, had denied intelligence activities, Correa Belisle testified, "... but I've heard even General Balza lie about the Carrasco case [so] from the top down I'd expect anything (...) I've heard and recorded the general giving his opinion on the Carrasco case in a report done on him at the beach in Mar del Plata, and he was lying..." The petitioners affirm that the Chief of Staff was offended by that testimony and initiated a criminal proceeding before the military criminal courts against their client. The proceeding was heard by Military Examining Judge No. 9 on the charge of "disrespect".[FN1]

[FN1] This conduct is described in the Code of Military Justice as follows: "ARTICLE 663. - Any military personnel who, while on military service or on the occasion thereof, or in the presence of assembled troops, injures, threatens, insults or in any other way behaves with disrespect toward a superior, verbally, in writing, with drawings or with conduct unbecoming, shall be punished by imprisonment. Should this occur in time of war in the face of the enemy the punishment shall be death or imprisonment."

18. The petitioners go on to explain that several facts led to the institution of this military proceeding. On April 6, 1994, their client initiated a search of the Zapala Regiment on the orders of his superior, Lieutenant Colonel With, and that as a result of said operation he discovered the body of Private Carrasco. Furthermore, they indicate that in May of that year he was taken on the plane of General Balza to Staff Headquarters where he was questioned by members of its secretariat about facts connected with the patrol, in order to determine what risk he posed to the

institution and his superiors. The petitioners also affirm that the judgment of the oral trial court constitutes proof of the veracity of what Correa said, since it sets down for the record the parallel tasks performed by military and intelligence groups in the investigation of the Carrasco homicide. The petitioners also mention that both the Carrasco case and the testimony of Correa Belisle before the oral trial court had a tremendous public impact.

19. The petitioners indicate that on October 21, 1996, the military examining judge remanded Correa in custody because he considered that he had committed the offense of disrespect with the declarations regarding General Balza that he made to the ordinary courts and some media outlets. They also report that on November 14, 1996, they presented a motion for dismissal for lack of jurisdiction with the Federal Court of Neuquén, alleging infringement of the right to a competent judge previously established by law because they considered that this case pertained to the jurisdiction of the ordinary courts, since the only criminal conduct in which Correa might possibly have engaged when he made the declarations in question was defamation,[FN2] an offense over which the federal civilian courts have jurisdiction. The petitioners also observed that their client's actions did not amount to the military offense of disrespect because he had merely performed his civil duty to testify in court, and it would be illogical for the judicial system to impose civil duties that could subsequently be regarded as a breach or an offense under military law.

[FN2] Defamation is categorized at Article 110 of the Criminal Code, which provides, "Anyone who injures another person's honor or reputation shall be punished with a fine or imprisonment from one month to one year."

20. The motion for dismissal was denied by the Federal Court for Neuquén on December 18, 1996, which found that disrespect was an essentially military offense in light of the military nature both of the author and of the legally protected interest, namely, military discipline; accordingly, only military tribunals have competence to pass judgment on it. The case was subsequently referred to the Permanent War Council for a decision at trial, which sentenced Correa to three months imprisonment for the military offense of disrespect, recognized at Article 665 of the Code of Military Justice[FN3] (hereinafter "CJM" by its initials in Spanish).

[FN3] This article provides: " Any military personnel who commits the acts mentioned in Article 663, while not on active duty, shall be punished, in all cases, with short-term imprisonment, discharge, or another disciplinary punishment."

21. Furthermore, the petitioners indicate that during the military proceeding Correa's right of defense recognized in Article 8 of the American Convention was violated on several counts. Thus, inter alia, they mention his presentation at the inquiry without legal counsel, which they say is due to the fact that the CJM prohibits it; the impossibility of appointing trusted legal counsel because the military tribunal only allows the presence of military defense attorneys; and the unfounded refusal by the tribunals of several requests for the examination of evidence that

would have tended to demonstrate the innocence of the accused.[FN4] Furthermore, the petitioners consider that the procedure established by the Code of Military Justice contains numerous provisions that violate the right of defense, since they unlawfully curb the possibility to exercise it in an effective manner.

[FN4] The petitioners attach a motion presented by Correa Belisle on December 20, 1996 to replace his court-appointed military defense attorney with legal counsel he trusted, which they say was denied by the Permanent War Council because they were civilian attorneys. (Appendix 5 provided by the petitioners)

22. By the same token, the petitioners hold that military courts in Argentina, in particular in the instant case, lack the guarantees of impartiality and independence required by Article 8 of the Convention. They indicate that the judges who heard their client's case were hierarchically subordinate to the injured party, that is, the Chief of Staff, General Martín Balza, which seriously undermined those principles, particularly since the latter was able to intervene directly in the proceeding, as he indeed did when he addressed a note to the examining judge concerning the place where Correa should be detained, and also in the issuance of a summons by the prosecutor's office.

23. As to exhaustion of domestic remedies, the original petition argued that the situation qualified for the exceptions to that rule (Article 46(2)(a) of the Convention), since the domestic legislation did not afford due process of law for the protection of the rights allegedly violated because Mr. Correa Belisle was prevented access to a court that might review the decision of the military tribunal which sentenced him to three months imprisonment, which also constitutes a violation of Article 25 of the American Convention.

24. The petitioners also affirm in the petition that the only mechanism provided under domestic law against the lack of judicial review was the writ of habeas corpus, which was invoked in a timely manner on January 16, 1997 by his civilian legal counsel before the competent judge. That remedy was refused on the same day it was invoked because the court deemed that it was not the suitable remedy nor appropriate to challenge the validity of a disciplinary punishment ordered by a competent organ in accordance with the law; this decision was confirmed at second instance on January 17 that same year.

25. In their ensuing submissions the petitioners held that the refusals of the writs of habeas corpus implied the effective exhaustion of domestic remedies since, under the Argentine laws in force at the time of the events, this was the only legal mechanism that Correa Belisle was permitted in order to protect his rights. As regards the recourse of appeal to the federal courts mentioned by the State as the appropriate and effective remedy, the petitioners consider that it was not possible to challenge the resolution of the military tribunal that imposed the punishment of detention through that procedure because section 1 of Article 445 bis of the CJM refers expressly to "essentially military offenses".[FN5] According to the petitioners, this expression does not cover all military infractions//which include crimes as well as misdemeanors. They affirm that in order to constitute a military crime, it is not sufficient for a person to be tried for

conduct codified as such; rather, it is also necessary that the decision contain an express reference to this type of conduct. In consequence, the petitioners affirm that in the present case, the fact that Mr. Correa was sentenced to the punishment of detention, a punishment that refers to a disciplinary crime, prevented him from utilizing an appeal before the federal justice system.

[FN5] This norm sets forth: "In time of peace, an appeal may be filed before the Federal Chamber of Appeals with competence in the locality of the fact that gave rise to the proceeding, against the final decisions of military tribunals that refer to essentially military crimes."

B. Position of the State

26. The State, for its part, holds that Captain Correa Belisle was sentenced to imprisonment in a proceeding that observed all the judicial guarantees required by the Convention and that at no time, therefore, was it in breach of its international obligations. Indeed, in the opinion of the State, Mr. Correa committed the military offense of disrespect upon telling the ordinary court and the media that General Balza was a "liar"[FN6], since, in an institution such as the military, a subordinate cannot refer to a superior in discrediting terms without committing an offense under the rules of military discipline, which is a cornerstone of that institution. It may be noted, however, that the file before the IACHR does not demonstrate that Mr. Correa called General Balza a "liar."

[FN6] Brief submitted by the State on November 26, 1997, p.1.

27. Regarding the competence of the military courts, the State indicates that since the conduct in which Correa Belisle engaged constitutes an essentially military offense, he should be tried by the military justice system, which is intended for application in a special framework, and, therefore, has special characteristics. Furthermore, the State adds that the motive that warrants a proceeding before the military courts and classifies the offense as a military one, is precisely the manner in which the testimony was presented to the ordinary courts, which constituted serious disrespect toward a superior. The State holds that the foregoing does not conflict with the duty to testify before the ordinary courts because Correa could have made statements that contradicted those of General Balza without the necessity to do so in discrediting terms. Therefore, the State considers that, rather than being in conflict, the civil obligation to testify and military discipline act together in harmony.

28. Furthermore, the State argues that there was no violation of Mr. Correa's right of defense in his military trial. Thus, the State holds that the CJM is compatible with the Convention, and it mentions several standards of the CJM. As to evidence, the State says that it is not true that the judge may reject the evidence put forward by the accused without justification, but must base his decision on its reasonableness and relevance. Concerning the affirmation of the petitioners that the accused did not have the possibility to appoint trusted legal counsel, the State indicates that the fact that said legal counsel has to be a member of the military does not mean that a violation

exists, since the accused may freely choose any legal professional who is a member of the Cuerpo de Auditores. As to the impossibility of having legal counsel present at the enquiry as alleged by the petitioners, the State indicates that the CJM does not preclude the appointment of counsel before this procedural stage and mentions that in the instant case, before taking Mr. Correa's signed declaration, the examining judge informed him that he had the possibility of appointing legal counsel, to which the latter replied, "I will appoint one when I am required to do so." [FN7]

[FN7] Brief submitted by the State on May 20, 1998, p.5.

29. With respect to the alleged lack of impartiality and independence of the military courts, the State points out that it was not General Martín Balza who instituted proceedings for disrespect against Correa Belisle, but the head of the Fifth Army Corps, who is the competent authority to do so. The State further adds that there is no evidence that General Balza intervened in the proceeding in question, since neither the note addressed to the examining judge, nor the summons from the prosecutor's office imply any irregularity because as Chief of Staff it was his responsibility to adopt such measures, and since they were mere formalities they had no impact on the proceeding. As for the issue of independence, the State holds that military superiority only exists in the exercise of command, not in the exercise of justice; therefore all military judges enjoy complete independence even though from a purely military point of view they are part of a hierarchical institution.

30. As regards exhaustion of domestic remedies, the State considers that the Commission should declare the petition inadmissible because the petitioners have not exhausted the remedies available under domestic jurisdiction, since the CJM provides a suitable and effective remedy for the protection of the rights considered violated, which they failed to invoke, namely an appeal to the federal courts. The State holds that this appeal is admissible against judicial decisions on "essentially military" offenses, as in the case of disrespect, the breach for which Correa Belisle was prosecuted. The State also says that said remedy is broad in scope since it allows examination of matters both of fact and of law.

31. Concerning the writ of habeas corpus invoked by the petitioners, the State holds that, as the federal courts ruled in rejecting said remedy, the latter was not the suitable and admissible legal mechanism to challenge the validity of the punishment imposed on Correa, since the latter had another effective and adequate recourse available to him; namely, the remedy recognized in Article 445 bis of the CJM.

IV. ANALYSIS

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

32. The petitioners are entitled, in principle, under Article 44 of the American Convention to lodge petitions with the Commission. The petition names as alleged victims individuals in

respect of whom the State undertook to respect and ensure the rights enshrined in the American Convention. As to the State, the Commission notes that Argentina has been a state party to the Convention since September 5, 1984, the date on which it deposited its instrument of ratification. Therefore, the Commission has the *ratione personae* competence to examine the petition.

33. The Commission has *ratione loci* competence to consider the petition, since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto. The IACHR has *ratione temporis* competence inasmuch as the duty to respect and ensure the rights protected in the American Convention was in force for the State at the time the violations alleged in the petition are said to have occurred. Finally the Commission has *ratione materiae* competence because the petition alleges violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

34. Article 46 of the American Convention provides that admission 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”[FN8]. This requirement exists to ensure that the State has the possibility to resolve disputes within its own legal framework. However, the same Convention provides that this provision will not apply when local remedies are not available, for reasons of fact or law. More specifically, Article 46(2) provides exceptions to the general principle of exhaustion of local remedies when the domestic law of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; when the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

[FN8] See Inter-Am. Ct. H.R., 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, (Ser. A) No. 11 (1990), para. 17.

35. The analysis as to which remedy or remedies must be exhausted in a given case to satisfy the terms of Article 46 necessarily depends on the nature of the allegations presented. The central issue that has been placed before the Commission in this petition is whether the State acted in violation of its obligations under the American Convention when it subjected Captain Correa Belisle to criminal proceedings before a military court in relation to statements made during his testimony in the Carrasco homicide case.[FN9]

[FN9] In this regard, it may be noted that while proceedings under the Military Justice Code were initiated against Correa Belisle both in relation to the statements made during his testimony

and statements he allegedly made to the press after testifying, it was never demonstrated that he had made statements to the press. Accordingly, in his accusation the Fiscal indicated that these charges had not been substantiated, and this was reflected in the sentence of the military court.

36. The petitioners' principal contention before both this Commission and the domestic courts has been that the conduct attributed to Captain Correa Belisle in relation to his testimony did not constitute a military crime, and that the military justice system did not possess the competence and impartiality required to validly try him. The petitioners argue that, because Correa Belisle testified in the Carrasco case to the effect that military intelligence had participated in the investigation of the death and that General Balza had lied in denying such participation, he was subjected to military justice proceedings as a sanction for breaking the code of silence and affirming that military intelligence had attempted to obstruct justice. The petitioners don't challenge whether Captain Correa Belisle made the statements attributed to him; rather, they argue that subjecting him to military proceedings in response to his testimony constituted a violation of his right to judicial protection and guarantees under the American Convention.

37. The State affirms that Correa Belisle was not tried for the substance of his statements but for the form in which they were made. It maintains that the preservation of military discipline was the valid basis for his prosecution under the Code of Military Justice, and that the military proceedings were duly carried out in accordance with that purpose, as well as the prescribed law and procedure.

38. The parties' principal dispute as to whether domestic remedies were properly invoked and exhausted has been whether Correa Belisle had the possibility to appeal the judgment of the military court before the federal civilian court system. The State indicates that Correa Belisle was charged and convicted of irrespetuosidad, which is typified as a delito militar in Article 665 of the Military Justice Code, and that the recurso ante la jurisdicción federal provided in Article 445 bis of that same Code was enacted to ensure federal review of all sentences concerning military crimes issued by military courts. The State indicates that, while this remedy provides for ample review of both questions of law and fact, and would have provided an effective remedy against any irregularities alleged in the military process, Correa Belisle's representatives failed to invoke it.

39. The petitioners, for their part, argue that because Correa Belisle was punished with the sanction of arresto, which is qualified as an administrative sanction, he did not have standing to invoke the recurso ante la jurisdicción federal. They maintain that the only remedy consequently available to Correa Belisle following his condemnation was that of habeas corpus, which was invoked and denied. The parties presented extensive conflicting positions on the interpretation of the relevant norms in national jurisprudence.

40. From its review, the Commission observes that Correa Belisle was tried and sentenced for "irrespetuosidad" under Article 665 of the Military Justice Code, which falls within capítulo II ("irrespetuosidad"), of título III ("delitos contra la disciplina"), of libro II ("infracciones militares en particular") of the Code. Under the Code, irrespetuosidad is a crime that may be

punished by penalties ranging from criminal to disciplinary in nature. In the case of Correa Belisle, he was tried for a crime and punished for it with a disciplinary sanction. Article 445 bis of the Military Justice Code provides for the *recurso ante la jurisdicción federal* against any final military court judgment referring to a crime of an essentially military nature (“delitos esencialmente militares”), and allows for review of questions of law and certain questions of fact. While other dispositions of the Military Justice Code require that a given punishment meet a certain threshold of severity in order to be eligible for appeal, the text of Article 445 bis indicates that it applies to all military crimes. This suggests, notwithstanding the existence of divergent jurisprudence at the national level, that the sentence in the case of Correa Belisle would in principle have been subject to the *recurso ante la jurisdicción federal*.

41. In the Commission’s view, however, the claims raised in the present petition extend beyond questions of law and fact within the military process brought against Correa Belisle. Correa Belisle maintains that he was tried for conduct that did not constitute a military crime, and that the military court was not a competent forum. Accordingly, he filed a *recurso inhibitorio* pursuant to the terms of the *Código Procesal Penal de la Nación* to challenge the military court’s jurisdiction. In that *recurso*, filed before the *Tribunal Oral Federal de Neuquén*, Correa Belisle argued that it was necessary that the Tribunal seize competence over the process being pursued by the *Juzgado de Instrucción Militar N° 9* in order to prevent the violation of his rights to judicial protection and guarantees.[FN10] He asserted that his act of testifying was a duty not a crime, and argued that any theoretical damages to the honor or reputation of another would be a matter for civilian jurisdiction. He indicated that all the officials involved in his prosecution were members of the military, and that the military justice system was part of the executive, and depended hierarchically on the *Jefe de Estado Mayor General, General Balza*, so that the process could not be considered impartial. He based his request for relief on his right to be tried by the *juez natural* pursuant to Article 18 of the Argentine Constitution, and Article 8 of the American Convention on Human Rights. That *recurso* was denied on December 18, 1996, primarily on the basis of the typification of the crime with which he had been charged, and on his status (and that of the “*sujeto pasivo*”) as a member of the military.

[FN10] According to the Code of Criminal Procedure, jurisdictional challenges may be filed either before the authority that has already seized competence, requesting that it decline competence in favor of an alternative authority, or directly before the alternative authority requesting that it seize competence. While either possibility may be invoked, they may not be exercised simultaneously.

42. Given the petitioners’ central claim that the military justice system should never have exercised jurisdiction over Captain Correa Belisle, the Commission considers that the remedies that would in principle directly correspond included those of a jurisdictional nature.[FN11] The *recurso inhibitorio* filed by Correa Belisle’s representatives placed this claim before the federal judiciary, which declined to seize competence. The Commission notes that this claim was then reasserted before the federal judiciary through a *recurso de habeas corpus* filed after the *Juzgado N° 9* had issued its sentence. The latter remedy had the objective of asserting that the proceedings

before the military justice system had violated and were continuing to violate Correa Belisle's rights under the Constitution and American Convention.

[FN11] See, for example, IACHR, Report N° 14/02, admissibility, Case 12.352, Bruce Campbell Harris Lloyd, Guatemala, Annual Report of the IACHR 2002, paras. 39, 43 (finding in a case where the petitioners claimed the illegitimacy of criminal proceedings ab initio that the final decision on an action seeking to have criminal defamation proceedings transferred to civil jurisdiction was sufficient for purposes of exhaustion, notwithstanding that the challenged criminal proceedings remained ongoing); IACHR, Report N° 71/02, admissibility, Case 12.360, Santander Tristán Donoso, Panama, Annual Report supra, paras. 18-22 (finding in a case where the petitioners claimed the illegitimacy of criminal desacato proceedings ab initio that the exhaustion of a constitutional challenge against the criminal desacato laws was decisive with respect to the requirement of exhaustion of remedies, notwithstanding that the criminal proceedings remained pending).

43. The two remedies invoked by Correa Belisle had the purpose and effect of placing the State on notice of the petitioners' challenge against military jurisdiction, and provided an opportunity to resolve it. While the State maintains that the present petition is inadmissible because the petitioners failed to invoke the recurso ante la jurisdicción federal, which offered federal protection to review and correct errors of law or fact, the purpose of that remedy was not to resolve jurisdictional issues or replace the military proceedings, but to correct irregularities within the framework of those proceedings.[FN12] Given the essence of the petitioners' complaint, that the military jurisdiction and process lacked legitimacy from start to finish, the remedies invoked were intended first to prevent the process from being carried out, and subsequently, to nullify its effects.

[FN12] Moreover, as a practical matter, given that Correa Belisle had sought to prevent the exercise of the military court's jurisdiction through the recurso inhibitorio filed before the Tribunal Oral Federal de Neuquén, and been denied, it is particularly unlikely that the very same federal court would have granted some remedy equivalent to jurisdictional relief or nullification for reasons of incompetence through the recurso ante la jurisdicción federal.

44. The Government presented no arguments as to the recurso inhibitorio in the present case. It did, however, question the filing of the recurso de habeas corpus, arguing that it was an invalid mechanism to obtain review of the military court's sentence. The Commission observes in this regard that what Correa Belisle presented in the recurso de habeas corpus was not a request for review of the sentence below, but a broader petition for relief from acts alleged to be unconstitutional and incompatible with international law.

45. Law 23.098 provides for the remedy of habeas corpus. It applies to two situations, the first involving a limitation or threat to liberty absent the written order of a competent authority.[FN13] Correa Belisle's representatives invoked this ground, arguing that the order that

would be issued by the military court requiring him to complete the sentence of arrest would emanate from an authority that did not possess the competence required under national and international law to deprive him of his right to liberty.[FN14] The recurso was dismissed at first instance by order of January 16, 1997, indicating that this remedy did not apply to seek the review of a sentence apparently issued by a competent authority and in accordance with the law, and therefore did not fall within the terms of Law 23.098.[FN15] As per the procedure set forth in Law 23.098, this order was transmitted by the Tribunal Oral Federal to the Cámara de Apelaciones en lo Criminal y Correccional for review. The Cámara confirmed the order rejecting the recurso on January 17, 1997, on the basis that it was not admissible to obtain the review of a sentence issued by a competent court.

[FN13] The second applies to an ongoing deprivation of liberty, and was not applicable to Correa Belisle's situation at the time the recurso was filed.

[FN14] Article 6 of Law 23.098 specifies that judges may, de oficio in a concrete case, declare a situation of unconstitutionality where the deprivation of liberty in question arises from a written order of an authority acting on the basis of a legal disposition contrary to the National Constitution.

[FN15] The federal judge noted as well that the order to execute the sentence anticipated by the claimants had yet to be issued, and consequently was abstract at that time.

46. Apart from the recurso ante la jurisdicción federal, the Government has not alleged alternative or additional remedies that should have been invoked and exhausted with respect to aspects of the petition challenging the competence of the military courts and validity of the military process as a whole. While federal review of military proceedings may constitute an important guarantee to examine questions of law and fact in a given case, it does not appear to have offered the possibility to effectively remedy the breadth of the claims raised in the present petition. The Commission finds that the proceedings before it disclose that the State was placed on notice of and had the possibility to respond to the claims now pending before the Commission, that applicable remedies were invoked and exhausted on behalf of Captain Correa Belisle, and that the requirements of Article 46(1) of the American Convention have been met.

2. Timeliness of the presentation

47. Article 46(1)(b) of the Convention states that the petition must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. The instant petition was lodged on May 28, 1997, within six months from the decision of January 17, 1997, which ruled at second instance on the writ of habeas corpus invoked to remove the Correa Belisle case from the jurisdiction of the military courts. Accordingly that requirement may be regarded as met.

3. Duplication of proceedings and res judicata

48. There is at the international level nothing in the record to suggest that the petition is pending in another international proceeding for settlement or that it is substantially the same as

one previously studied by the Commission or by another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the facts

49. The Commission considers that, if proven, the petitioners' claims regarding the alleged violations of the rights of Rodolfo Correa Belisle to personal liberty, a fair trial, equal protection and judicial protection, could constitute violations of the rights enshrined in Articles 7, 8, 24, and 25 of the Convention, in conjunction with Article 1(1) of that instrument. Furthermore, there is nothing to indicate that the petition is manifestly groundless or out of order. The Commission, therefore, considers that the requirements established in Article 47(b) and (c) of the American Convention have been met.

50. Furthermore, in accordance with the principle of *iura novit curia*, in its analysis of the merits, the Commission will examine to the extent appropriate the potential application of Article 13 of the Convention, regarding freedom of expression, as well as of Article 2, regarding the duty to give effect to the rights enshrined in the Convention.

51. The Commission notes that the conclusions set forth in the present report correspond to the admissibility stage of the proceedings, which is necessarily preliminary to and independent of the Commission's review on the merits. In this next stage, the Commission will analyze the extent to which the exercise of military jurisdiction was compatible with the terms of the Convention, and if the procedural guarantees applied in the case of Correa Belisle respected his right to be heard in accordance with those terms.

V. CONCLUSION

52. The Commission concludes that it is competent to hear this case and that the petition is admissible under the provisions of Articles 46 and 47 of the American Convention.

53. Based on the foregoing arguments of fact and of law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible with respect to the alleged violations of Articles 7, 8, 13, 24 and 25, in conjunction with Articles 1(1) and 2 of the American Convention on Human Rights.
2. To notify the State and the petitioners of this decision.
3. To proceed with its analysis of the merits of the case.
4. To publish this decision and include it in the Annual Report of the IACHR to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 24th of February, 2004. (Signed): José Zalaquett, President; Clare Kamau Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioners Evelio Fernández Arévalo, Paulo Sérgio Pinheiro, Freddy Gutiérrez Trejo, and Florentín Meléndez.