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Title/Style of Cause: Horacio Verbitsky, Julia Nelly Acher and Tomas Sanz v. Argentina
Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez, Florentin Melendez.
Dated: 24 February 2004
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I. SUMMARY

1. On January 25, 1999, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission", the "Commission" or "the IACHR") received a petition lodged by Mr. Horacio Verbitsky (hereinafter "the petitioner") against the Republic of Argentina (hereinafter "the State", "the Government", or "Argentina"). The petition concerns the prison sentences and/or civil damages imposed on the journalist and writer, Horacio Verbitsky; the actress and writer, Julia Nelly Acher; and the journalist and cartoonist, Tomás Sanz (hereinafter "the victims") for criticizing various public officials in their publications or television programs. The sentences were imposed in the framework of criminal suits for libel or civil damages suits brought by the alleged injured parties.

2. The petitioner holds that the State is responsible for violation of the rights to judicial guarantees and freedom of expression, in conjunction with the general obligations to respect and ensure rights, as well as to bring domestic laws into conformity, enshrined in Articles 8, 13, 1(1) and 2, respectively, of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"). He argues that the imposition of a prison sentence for the crime of slander or libel and the award of damages for injury to honor dissuade people from expressing their opinions about public figures and, consequently, curbs the public's access to important information about the performance of their authorities.

3. During the processing of this petition, in the framework of talks designed to reach a possible friendly settlement, the State provided information about the existence of initiatives to amend laws applicable to situations similar to those of the alleged victims. These initiatives have yet to be implemented.

4. In the instant report the Commission concludes, without prejudging the merits of the matter, 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 8, 13, 1(1) and 2 of said instrument. The Commission also decides to notify the parties of its decision, and to publish it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. The Commission informed the petitioner that processing had commenced, and sent the pertinent portions of the petition to the State by means of a communication of April 1, 1999, giving the Government 90 days to submit such information as it deemed relevant regarding the allegations contained in the petition and exhaustion of remedies under domestic law. On July 29, 1999 the State requested an initial extension of the deadline to present the appropriate information. In a note of July 30, 1999, the Commission granted the State a further 60 days, and it also notified the petitioner of that decision in a letter of the same date.

6. In a communication of August 3, 1999, the petitioner, acting in his own name and in representation of the Association for the Defense of Independent Journalism (Asociación para la Defensa del Periodismo Independiente) (which from that point forth became involved in the case as co-petitioner), requested the Commission to call a hearing to amplify the basis of the petition and to explore the possibility of reaching friendly settlement with the Government. The Commission confirmed its receipt of that communication in a note of August 13, 1999, and advised the petitioner that it would study his request.

7. On September 1, 1999, the State requested a further extension to comply with the request for information initially formulated by the IACHR. By means of a note of that same date it was given until the end of the month in progress. The petitioner was informed accordingly. That same day, the Commission, granting the request of the petitioner, invited the parties to a hearing scheduled for October 1, 1999 in the framework of the 104th session of the IACHR.

8. By means of an official letter of September 23, 1999 the State requested a third extension to submit its reply to the petition, on the basis that one of the stated purposes of the hearing convened for the 104th session was to explore the possibility of reaching a friendly settlement of the case.

9. In the course of the hearing, the petitioner and the Center for Justice and International Law (CEJIL) (which from that point forth became involved in the case as co-petitioner) proposed the initiation of talks with the State with a view to reaching a friendly settlement of the petition. They submitted several briefs containing the opinion of various jurists on the judgment issued on August 27, 1998 by the Supreme Court of Justice of Argentina in the case of Corach, Carlos Wladimiro v. Verbitsky Horacio. The Commission transmitted the pertinent portions of those briefs to the State via a note of October 14, 1999.

10. On October 29, 1999 the State informed the Commission that it accepted the proposal made by the petitioners at the hearing of October 1, 1999 in favor of initiating a friendly

settlement process on petition 12.128. Accordingly, it requested that the deadline for presenting its reply to the petition be suspended sine die.[FN1]

[FN1] It should be mentioned that when the friendly settlement process on this case was opened, the Centro de Estudios Legales y Sociales (CELS) joined in the talks as co-petitioner.

11. On December 6, 2000, the Commission received another petition lodged by the Centro de Estudios Legales y Sociales (CELS) and the Center for Justice and International Law (CEJIL) against the Argentine Republic concerning the suspended sentence of one year in prison and damages of 20,000 pesos imposed on the journalist and writer Eduardo Kimel, author of the book *La Masacre de San Patricio* (The San Patricio Massacre). After the appropriate review, the IACHR decided to join the new petition with petition 12.128, owing to the similarity of the alleged facts. This decision was communicated to the petitioners on February 2, 2001. On that same date the pertinent portions of the new petition were sent to the State as additional information related to petition 12.128, and it was given 30 days to submit observations and to provide an account of progress in the friendly settlement procedure underway in connection with the case under examination.

12. On July 30, 2001 the State sent the IACHR a copy of a draft bill presented by the Executive Branch to the Congress to reform the provisions on the crimes of libel and slander contained in Argentina's Civil and Criminal Codes, in order to make them compatible with the object and purpose of the American Convention as part of the prospective friendly settlement. This communication was transmitted to the petitioners on August 16, 2001, and they were given one month to submit observations.

13. On September 27, 2001 the petitioners conveyed their observations to the Executive Secretariat on the earlier submission of the State. The pertinent portions of that communication were brought to the attention of the Government on October 12, 2001, and it was given one month to present the information it deemed pertinent in that regard.

14. At the request of the petitioners, the Commission invited the parties to a working meeting held on November 15, 2001 in the framework of the 113th session of the IACHR. In the course of the meeting, the parties discussed the need for the State to define its position with respect to the possibility of addressing the Kimel case within the friendly settlement procedure in the *Verbitsky et al.* case. The issue of the draft bill was also raised at a meeting held during the working visit conducted by the country rapporteur in July 2002.

15. In a communication of August 15, 2002 the petitioners requested that the Commission ask the State to provide up-to-date information on the processing of the draft parliamentary bill to reform the Civil Code and the Criminal Code.

16. The Commission convened the parties for another working meeting held on October 18, 2002, in the framework of the 116th session of the IACHR. On this occasion the State provided information on the processing of the draft bill and said that, owing to the particular nature of the

petition concerning Mr. Kimel, it would not be feasible to resolve it completely in the friendly settlement procedure initiated in respect of petition 12.128.

17. The Commission invited the parties to another working meeting held on February 28, 2003 in the course of the 117th session of the IACHR. The object of the meeting was to review the status of the negotiations in the friendly settlement procedure and to determine the way forward in the processing of the case.

18. On April 16, 2003, the State submitted a brief in which it insisted that the deadline to present its reply to the petition was suspended sine die.

19. On May 27, 2003 the petitioners informed the Commission that, based on the lack of progress in processing the draft bill, the talks aimed at reaching a friendly settlement had been permanently suspended.

20. By means of a communication of November 26, 2003 the Commission formally separated the petition concerning Mr. Kimel from the processing of petition 12.128 ("Verbitsky et al."), and informed the parties that it would continue to process the former petition as case number P720/2000. In that same communication, the Commission informed the parties that it was concluding the friendly settlement procedure in light of its lack of results, and granted them one month to present additional observations on the admissibility both of petition 720/2000 and of petition 12.128.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

21. According to the petition, the journalist Horacio Verbitsky was prosecuted for the crime of libel based on a criminal complaint brought on February 18,[FN2] 1992 by the former Interior Minister, Carlos Corach. The complaint was based on a book published by the alleged victim in November 1991, titled Robo Para la Corona [Robbery for the Crown]. In that book, the author alludes to alleged acts of corruption purportedly committed by several government officials in the exercise of their duties, among them the complainant, whom he accused, inter alia, of bringing pressure to bear on judicial officials on behalf of the Executive Branch, in order to alter the outcome of certain cases.[FN3]

[FN2] Article 110 of the Argentine Criminal Code, which classifies the crime of libel says: Anyone who injures another person's honor or reputation shall be fined between 1,500 and 90,000 pesos or imprisoned from one month to one year.

[FN3] See, Horacio Verbitsky, Robo Para la Corona, Editorial Planeta Argentina S.A.I.C., 1991, pp.73-75.

22. At the request of the defense counsel of Mr. Verbitsky, on November 24, 1995 the court of first instance ruled that, under Article 62(2) of the Argentine Criminal Code, the statute of

limitations for criminal prosecution in *Corach, Carlos Wladimiro v. Verbitsky, Horacio* had expired.[FN4] This decision was confirmed in all its parts by the Second Court of the National Chamber of Appeals for Criminal and Correctional Matters. Both courts found that the statute of limitations for bringing proceedings, given that the penalty provided for the alleged crime was two years from the time it was supposedly committed, should be determined from when *Robo Para la Corona* first went into circulation, which is to say, November of 1991.

[FN4] The rule in question provides: The deadline for bringing criminal proceedings shall expire in the time determined as follows:

2 In the case of offences punished by imprisonment, when the maximum duration of the punishment provided for the offense has elapsed. In no case may the prescription deadline exceed 12 years or be less than two years.

23. By reason of a direct appeal for review (*recurso de hecho*) filed by the complainant, the matter was brought to the attention of the Supreme Court of Justice of Argentina. In a judgment of August 27, 1998 (almost seven years after the alleged offense was committed), the Supreme Court revoked the ruling issued by the court of first instance and ratified by the Chamber of Appeals to the effect that the statute of limitations had expired, with the argument that, because several successive editions of the book had been published with the consent of the author, the prescription deadline of two years should be determined from the last of those editions (at the time, the edition published in September 1995), the reiteration of the behavior had turned it into a continued infringement pursuant to Article 110 of the Argentine Criminal Code. In consequence, it ordered that the proceedings be returned to the first instance for a new ruling to be passed in keeping with its judgment. It is the understanding of the Commission, in the absence of any updated information in this respect, that the proceeding remains pending at this stage.

24. The petitioners also maintain that the actress and writer Julia Nelly Acher (known by the artistic name Gabriela Acher) was sentenced, together with the company ARTEAR S.A.I., to pay damages of 30,000 pesos to Mr. Omar Jesús Cancela in the civil suit entitled *Cancela, Omar Jesús v. Artear S.A. et al.* concerning civil damages. The complaint that gave rise that suit was brought by Omar Jesús Cancela, judge of the Seventh National Civil and Commercial Court in and for the Federal Capital, and was based on a comedy sketch included in the program *Hagamos el humor* broadcast on Wednesday, February 27, 1991 by the TV network Canal 13 de Televisión, Arte Radiotelevisivo Argentino S.A.I., ARTEAR. The sketch in question, written by the alleged victim, was a parody of the administration of family justice. It opened with a shot of the supposed office of a court clerk, on the door of which hung a sign saying “Family Court, Judge Cancela”. The scene continued with the arrival at the court of a poor-looking mother accompanied by five small children, who were rudely treated by the court clerk. The scene ends with the mother bursting into tears upon receiving a packet of potato chips as supposed maintenance.

25. The claim lodged by Mr. Cancela was admitted in first instance, which decision was ratified by Court L of the National Chamber of Appeals in Civil and Commercial Matters of the Federal Capital, and, finally, by the Supreme Court of Justice of Argentina, which, in a judgment

of September 29, 1998 rejected the direct appeal for review filed by the defendants because it considered that "to act with diligence and in good faith required, in the instant case, that they not use the names of real persons to satirize certain situations " and that "for the purposes of parody it was unnecessary to mention the surname of the judge."

26. The petitioners say that the use of the fictional name "juez Cancela" was chosen because of a declension of the verb cancelar (to cancel) understood as meaning to annul something or to render it ineffective, not to identify a particular individual. They therefore contend that, had the Supreme Court respected the right to freedom of expression guaranteed in the [Argentine] Constitution and the Convention, it would have applied the "real malice" doctrine in this case and dismissed the claims of the plaintiff.[FN5]

[FN5] This doctrine may be summarized as the excusing of journalists faced with criminal charges or a civil damages suit for reporting untruths, and placing the burden on the complainants or plaintiffs to prove that the untruths were used knowingly or with reckless or manifest disregard for their veracity. See in this respect, Decision of the Supreme Court of Justice of Argentina in the case "Morales Solá, Joaquín Miguel concerning libel", November 12, 1996.

27. The petition also mentions the suspended sentence of one year in prison imposed on the journalist and cartoonist Tomás Sáenz, director of Humor magazine published by Ediciones "La Urraca S.A.", based on a criminal action for slander and libel brought against him by the former congressman Eduardo Méнем.

28. An article titled Informe Especial - 2 años de corrupción [Special Report -Two Years of Corruption], which appeared in edition No. 294 of Humor magazine published in July 1991, cited 100 cases of public importance that it described as acts of corruption. The "Case" identified as number 32 reported that Brecha, a Uruguayan weekly, had in March 1991 published a receipt for a bank deposit in an account with the Banco Pan de Azucar, whose holders allegedly were the then-congressman Eduardo Méнем (brother of President Saúl Méнем) and his wife. The Humor article said that the average balance of the alleged bank account was US\$1.7 million, and that the origin of the funds was not known but presumably they were ill-gotten. With the text was a photograph of Mr. Méнем under the title, "Eduardo Méнем con el 'depósito' lleno".[FN6]

[FN6] The signed authors of the report were Pablo Alonso, Fernando García, Rosalía Iturbe, Sergio Núñez, Ricardo Parrota, and Fernando Sánchez.

29. Mr. Sanz was convicted at first instance and given a suspended sentence of one year in prison as the criminally responsible author of the crime of slander recognized in Articles 109 and 113 of the Argentine Criminal Code.[FN7] The complainant appealed the judgment, demanding a stiffer penalty for the alleged victim, who, for his part, requested his acquittal. The First Court of the National Chamber of Appeals in Criminal and Correctional Matters in and for the Federal

Capital changed the criminal classification from slander to libel and, consequently, amended the judgment issued by the court a quo, lowering the punishment to a suspended sentence of one month in prison.

[FN7] The provisions in question say:

Art. 109.- Slander or false imputation of a publicly actionable offense shall be punished with one to three years in prison.

Art. 113.- Anyone who reproduces, by any means, libel or slander proffered by another shall be punished as the author of the libel or slander in question.

30. On October 20, 1998, the Supreme Court of Justice of Argentina admitting an extraordinary appeal filed by the complainant, revoked the judgment issued by the Chamber of Appeals and confirmed the decision at first instance, finding that the publication authorized by Sanz as director of Humor magazine incorporated elements that were not included in the original version that appeared in the weekly Brecha, and which confirmed the existence of injurious intent.[FN8]

[FN8] To support this argument, the Supreme Court drew particular attention to the introductory note in the report published in Humor magazine, which said, "In this report you will find almost all the corruption detected between July 1989 and July 1991." It also referred to a general comment on the photographs that accompanied the article: "The owners of these faces have been connected (directly or indirectly) with acts of corruption."

31. The petitioners argue that the State has violated the right to freedom of expression contained in Article 13 of the Convention because the imposition of a prison sentence for the crime of slander or libel, as well as the award of damages dissuade citizens from expressing their opinions about public figures, who should be subject to greater criticism and supervision by society, curbs public access to important information about the performance of their authorities. The petitioners further state that the criminal punishment of journalists for supposed slander or libel has an intimidating effect that encourages self-censorship. The petitioners argue that protection of the honor of public officials where matters of general interest are concerned should be limited in accordance with international standards, and the measure chosen should be that which least restricts the right to freedom of expression.

32. The petitioners further argue that Argentina has violated the right to a fair trial of Verbitsky, Acher and Sanz because the courts that tried them lacked the element of impartiality required by the American Convention, as was made patently clear by the content of their decisions. They maintain that, in the particular case of Mr. Verbitsky, the excessive delay in the final decision on the criminal proceeding instituted against him violates the principle of reasonable time provided in Article 8 of the American Convention.

33. Finally, the petitioners allege that the State has breached its obligations under Article 2 of the American Convention, inasmuch as in this particular case it applied Articles 109, 110 and 113 of the Argentine Criminal Code, and Articles 1066, 1073, 1089, 1090, 1109 and related articles of the Civil Code, which hold persons liable to criminal prosecution and civil claims for damages for statements or expressions that criticize public officials in the exercise of their duties, in a manner similar to the *desacato* laws that were abolished in Argentina because they were incompatible with the Constitution and the American Convention.[FN9]

[FN9] Based on the friendly settlement reached in connection with a petition filed with the IACHR in May 1992 (Case 11.012), by Law 24.198 adopted on May 12, 1993, the Argentine Congress abolished Article 244 of the Argentine Criminal Code, which had recognized the crime of *desacato* (contempt of public officials).

B. The State

34. On October 29, 1999 the State agreed to enter into talks with a view to reaching a friendly settlement on the case, in accordance with the proposal put forward by the petitioners at the hearing held on October 1, 1999, in the framework of the 104th session of the IACHR.

35. Subsequently, the Government informed the Commission that since July 6, 2001 the Office of the President had been studying a bill prepared by the Ministries of Foreign Affairs and Justice to reform the provisions contained in the Criminal Code and the Civil Code on libel and slander against public officials in the exercise of their duties. However, according to information supplied on a variety of occasions, including at the working meetings, the bill was left on standby, without any firm progress having been made.

36. In its presentation of April 16, 2003, the State indicated that there was no silence on its part toward the petitions of Verbitsky and Kimel, since those petitions were the subject of a friendly settlement procedure that, strictly speaking, is devoid of any procedural deadlines. The State also insisted that the deadline to present its reply to the petition was suspended *sine die*. Accordingly, it considered that the arguments regarding its purported failure to reply should be rejected.

37. After the separation of petitions 720/2000 and 12.128 was made official and additional observations on the admissibility of the two petitions had been requested, the State issued no pronouncement on the claims of the petitioners or on the admissibility of the instant petition.

IV. Analysis

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

38. 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 *ratione personae* competence to examine the petition.

39. The Commission has *ratione loci* competence to hear 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

40. Article 46(1)(a) 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”.^[FN10] Both the Inter-American Court of Human Rights (hereinafter “the Court”) and the Commission have reiterated that “(...) under the generally recognized principles of international law and international practice, the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means.”^[FN11] Furthermore, the Court has held that, in order to be valid, the objection that domestic remedies have not been exhausted should be raised in a timely manner, that is, during the initial stages of the proceeding before the Commission, lest it be presumed that the interested State has tacitly waived its use.^[FN12]

[FN10] See Inter-Am. Ct. H.R., Exceptions to the Exhaustion of Domestic Remedies (Articles 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.

[FN11] See Inter-Am. Ct. H.R., Decision in the Matter of Viviana Gallardo et al., November 13, 1981, Ser. A N° G 101/81, paragraph 26.

[FN12] See, for example, Inter-Am. Ct. H.R., The Mayagna (Sumo) Awas Tingni Community Case, Preliminary Objections, Judgment of February 1, 2000, (Ser. C) N° 66, paras. 53 and 54.

41. In the instant case, the petitioners have argued that:

a) As regards the violations allegedly committed to the detriment of Ms. Julia Nelly Acher, the remedies under domestic law were exhausted with the judgment pronounced on September 29, 1998 by the Supreme Court of Justice of Argentina in "Cancela, Omar Jesús v. Artear S.A. et al. concerning damages."

b) As to the situation of Mr. Tomás Sanz, the remedies available under domestic law were exhausted by the judgment issued by the Supreme Court of Justice of Argentina on October 20, 1998, in "Menem, Eduardo concerning complaint for slander and libel. Accused: Tomás Sanz".

c) With respect to the action brought by Carlos Corach against Horacio Verbitsky, the petitioners note the date of August 27, 1998 as that on which the Supreme Court of Justice of Argentina accepted the appeal filed by the complainant against the ruling that the statute of limitations had expired issued by the Second Court of the National Chamber of Appeals for Criminal and Correctional Matters in and for the Federal Capital. The petitioners have argued that the case proper remains pending 12 years after it was opened and that, in their opinion, they have exhausted the remedies applicable to the case.

42. The State, for its part, has not presented any objection to the arguments of the petitioners that the remedies under domestic law have been exhausted as far as the situation of Messrs. Acher and Sanz is concerned. Nor has it offered any information as to the reasons why the criminal action against Mr. Verbitsky has yet to be disposed of.

43. Accordingly, the Commission considers that the suitable remedies as regards the alleged violations to the detriment of Julia Acher and Tomás Sanz were appropriately exhausted.

44. Furthermore, the Commission finds that the fact that 12 years have passed without a final decision in "Corach, Carlos Wladimiro v. Verbitsky, Horacio" permits the application, with respect to the alleged violations to the detriment of Horacio Verbitsky, of the exception to the rule of prior exhaustion of domestic remedies provided at Article 46(2)(c) of the American Convention. As it has on previous occasions, the Commission would like to point out that the application of the exceptions allowed under Article 46 of the Convention to determine the admissibility of a petition does not imply any prejudgment of the merits of the petition. The criterion used by the Commission to analyze the petition during the admissibility phase is preliminary in nature.

2. Deadline for lodging the petition

45. Article 46(1)(b) of the Convention states that for a petition to be found admissible, it 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 at the domestic level. This rule guarantees legal certainty and stability once a decision has been adopted.

46. In the instant case, the Commission notes that the petition was lodged before six months had passed since the judgments issued by the Supreme Court of Justice of Argentina in "Cancela, Omar Jesús v. Artear S.A. et al. concerning damages" (September 29, 1998); and "Menem, Eduardo concerning complaint for slander and libel. Accused: Tomás Sanz" (October 20, 1998). In consequence, the IACHR finds that the requirement established by Article 46(1)(b) of the American Convention has been met.

47. Additionally, with respect to the violations alleged concerning Horacio Verbitsky, the Commission considers that that the requirement established under Article 46(1)(b) of the Convention is not applicable, given that to date he remains subject to prosecution in the case of

“Corach, Carlos Wladimiro v. Verbitsky, Horacio.” The petitioners contend that this manifests the continuing effect on his rights. According to the settled jurisprudence of the Commission, the rule of timely filing “does not apply when it has been impossible to exhaust internal remedies due to a lack of due process, denial of access to remedies, or unwarranted delay in issuing a final decision (...) Nor does this rule apply where the allegations concern a continuing situation--where the rights of the victim are allegedly affected on an ongoing basis.”[FN13] In consequence, the Commission concludes that the petition was presented within a reasonable time as from the date on which the facts of the alleged human rights violations took place.

[FN13] See IACHR, Report N° 72/03, Case 12.159, Gabriel Egisto Santillán, Argentina, October 23, 2003, para. 61.

3. Duplication of proceedings and international res judicata

48. There is nothing in the record to suggest that the petition is pending before 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. Nature of the alleged violations

49. The Commission considers that, if proven, the petitioners’ allegations regarding the alleged violations of the victim’s rights to a fair trial and freedom of thought and expression could constitute violations of the rights enshrined in Articles 8 and 13 of the Convention, in conjunction with Articles 1(1) and 2 of said 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. Further, although the petitioners have not alleged it expressly, in accordance with the principle of *iura novit curia*, which obliges international mechanisms to apply all pertinent legal norms even when not invoked by the parties,[FN14] the Commission will, to the extent applicable, evaluate the facts alleged in the light of Article 25 of the American Convention, which establishes the right to judicial protection.

[FN14] PCIJ, Lotus Case, Judgment of September 7, 1927, Ser. A N° 10, p. 31.

V. CONCLUSION

51. 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.

52. 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 8 and 13, 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 the city of Washington, D.C., on the 24th day of February, 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice President; Susana Villarán, Second Vice President; Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez and Florentín Meléndez Commission Members.