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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 48/04; Petition 12.210
Session:	Hundred Twenty-First Regular Session (11 – 29 October 2004)
Title/Style of Cause:	Felix Roman Esparragoza Gonzalez and Nerio Molina Penaloza v. Venezuela
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, Florentin Melendez. Commissioner Freddy Gutierrez, Venezuelan, did not take part in the deliberations or the voting on the present report, in accordance with Article 17.2 of the Rules of Procedure of the Commission.
Dated:	13 October 2004
Citation:	Esparragoza Gonzalez v. Venezuela, Petition 12.210, Inter-Am. C.H.R., Report No. 48/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
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I. SUMMARY

1. On August 16, 1999, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received a petition lodged by Félix Román Esparragoza González and Nerio Molina Peñaloza (herinafter "the alleged victims") claiming the liability of the Bolivarian Republic of Venezuela (hereinafter "the State" or "the Venezuelan State") for the alleged violation of their rights to political participation and information during the elections for representatives to the Andean and Latin American Parliaments in 1998.

2. The petitioners allege that the State was responsible for the violation of their rights to political participation and to receive true information, to justice and equality as laid down in Articles 1(1), 13, 23, 24, and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), to their detriment and that of most of the Venezuelan citizens who voted in the elections held on Sunday, November 8, 1998.

3. The alleged victims claimed that they had exhausted all domestic remedies available in Venezuelan law. With regard to the exhaustion of all domestic remedies, the petitioners alleged they had attempted to present before the national electoral council (Consejo Nacional Electoral) an administrative appeal to invalidate [recurso administrativo de nulidad] the electoral process, as well as a judicial appeal for annulment against the State [recurso contencioso administrativo de nulidad] before the Political-Administrative Division [Sala Político Administrativa] of the Supreme Court of Justice.

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4. In response, the Venezuelan state argued that the petitioners had at their disposal domestic judicial remedies such as the electoral administrative appeal [recurso contencioso electoral] and the writ of Amparo [recurso de amparo or appeal for enforcement of constitutional rights], neither of which had been exhausted by the petitioners. Because of this, the State requested the Commission to declare the petition inadmissible because it had been lodged before all remedies available in the domestic jurisdiction had been exhausted. In a later response, the State claimed that it had called new, timely and well advertised elections. Consequently, the State requested that the petition should be declared inadmissible because no right was violated.

5. Having studied the arguments presented by both sides, the Commission concluded that it was competent to decide on the petition lodged by the alleged victims, and that the case was inadmissible according to Articles 46 and 47 of the American Convention. Consequently, the Commission decided to notify the parties and to publish the present Inadmissibility Report and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

6. On August 16, 1999, the Commission received a petition lodged by Félix Román Esparragoza González and Nerio Molina Peñaloza on their own behalf and representing the great majority of Venezuelan citizens who took part in the elections on Sunday, November 8, 1998, claiming that their rights to participate in public affairs and to receive information were violated during the elections for representatives for the Andean and Latin America Parliaments in 1998.

7. On September 17, 1999, the Commission acknowledged receipt of the petition, which was recorded as number 12,210. On the same date, the IACHR transmitted to the Venezuelan State the notification of the relevant petition and requested the State to respond accordingly.

8. On October 4, 1999, the Commission received additional information from the petitioners. On October 15, 1999, the Commission requested the petitioners to re-send a copy of the communication received on October 5 because it had been illegible. On December 13, 1999, the IACHR received a legible copy of the communication sent on October 5.

9. By note on January 26, 2000, the Venezuelan State presented its observations to the IACHR. On March 15, 2000, the Commission transmitted this information to the petitioners granting a period of 45 days for them to present their comments accordingly.

10. On April 28, 2000, the IACHR received a note from the petitioners responding to the observations of the State. On the same date, the IACHR notified the State of the contents of this note and granted it a period of 30 days in which to present its observations.

11. On June 9, 2000, the alleged victims lodged complementary information in which they contested the observations of the State regarding the call for new elections. On June 19, 2000, IACHR transmitted said note to the State.

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12. On June 23, 2000, the IACHR received a note from the Venezuelan State in which it again requested that the petition be declared inadmissible because of failure to exhaust domestic remedies had been exhausted and because it was manifestly unfounded.

13. On July 27, 2000, the petitioners presented their observations on the note from the State on June 23. The IACHR transmitted to the State the contents of this note from the petitioners.

14. On January 13, 2001, the IACHR received a note from the petitioners in which they enquired as to the procedural situation of the petition. The Commission responded to this note on January 19, 2001, stating that it had repeated its request for information presented to the Venezuelan State on June 27, 2000.

15. On June 7, 2001, the IACHR once more repeated its request to the Venezuelan State for information concerning the case, granting a period of 30 days for the State to respond.

16. On July 5, 2001, the IACHR acknowledged receipt of the final report from the State. In this communication, the State repeated its objections to the admissibility of the petition because it was groundless and had not complied with the prerequisite to exhaust all domestic remedies.

17. On August 21, 2001, the alleged victims lodged their comments stating that they had previously already refuted the State's responses. In said note the alleged victims reaffirmed their position of July 27, 2000.

III. POSITIONS OF THE PARTIES

A. Petitioners

18. In 1997, the Venezuelan State signed an international agreement under which it undertook to elect its representatives to the Andean and Latin American Parliaments by means of direct and secret, universal suffrage. Under the terms of this agreement, any competent person may elect or be elected to these posts.

19. The petitioners claimed that on Sunday, November 8, 1998, voting took place in Venezuela in elections for governors and deputies for the Legislative Assemblies in each of the Venezuelan states and for senators and deputies of Congress. As part of this process, the National Electoral Council provided "sufficient and opportune" information for voters regarding the voting system, the counting of votes, the totaling and adjudication, as well as the names of all those who contributed to "holding a valid vote." The National Electoral Council also held campaigns so that the electoral processes overall, as well as the specific details, would be widely understood, all of which helped to guarantee the public aspects of the vote "respecting the rights of citizens".

20. The petition states that on November 8, 1998, it transpired that the voting lists used by electors to vote for candidates for deputies to Congress were used by the National Electoral Council for purposes not specified on the electoral ticket. These votes were counted towards the irregular election of Venezuelan representatives to the Andean and Latin American Parliaments.

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21. They allege that during the process of preparing and educating about the elections, the National Electoral Council at no time informed the electorate "reliably" that on November 8, 1998, elections would be held for Venezuela's representatives on the Andean and Latin American Parliaments. Nor, according to the alleged victims, was information provided regarding what the posts represented, the number of places, the number of principals and alternates, or the identities of those aspiring to the posts. The alleged victims claim that in spite of this, the National Electoral Council counted the votes cast for the election of Deputies according to political party and assigned them to the lists of candidates for the Latin American and Andean Parliaments presented by said parties.

22. The petitioners alleged that irregularities were committed by the National Electoral Council in the election for representatives to the Andean and Latin American Parliaments because the Council did not: call legally, publicly and officially for the election; inform members of the electoral panels of the details; name the supposed candidates on voting papers or where electors could register their decision; include information about the election in the Official Review of the National Electoral Council; give any press conferences about the election; or give an account of the results of the election in any press conferences.

23. On November 30, 1998, the alleged victims presented a higher appeal [recurso jerárquico] to the National Electoral Council requesting that the elections to the Andean and Latin American Parliaments held on November 8, 1998 be invalidated. On February 24, 1999, the National Electoral Council declared the remedy inadmissible on the grounds that administrative remedies had already been exhausted. Consequently, the Council declared itself incompetent to hear the appeal and indicated that any disagreement should be tried in judicial proceedings.

24. On March 3, 1999, the alleged victims presented a judicial appeal for annulment against the State in the Supreme Court of Justice regarding the elections of November 8. The Political-Administrative Division of the Supreme Court of Justice rejected the appeal on June 9, 1999, and declared it inadmissible because it had been presented extemporaneously. According to the Court's findings, the appeal had been presented later than the 15 days allowed by Article 231 of the Basic Law of Suffrage and Political Participation.

25. The alleged victims in their communications with the IACHR argued that they had exhausted domestic remedies with the higher appeal [recurso jerárquico] before the National Electoral Council and the judicial appeal for annulment of the elections filed with the Supreme Court of Justice. The petitioners did not refer to the need to exhaust other remedies, nor to the impossibility of exhausting them.

26. On June 6, 2000, the alleged victims informed the Commission of the suspension by the Supreme Court of Justice of the elections called "Megaelections" [megaelecciones], in which elections were to be held also for representatives to the Andean and Latin American Parliaments. These elections were due to be held on May 28, 2000. By means of a writ of Amparo [recurso de amparo] brought by several citizens, the elections were suspended because it was feared that rights to suffrage and information might be infringed. In this communication, the alleged victims

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said that the State had "to a large extent made good many of the defects and irregularities" denounced in 1998. However, the alleged victims claimed that the flawed election for members of the Latin American and Andean Parliaments had infringed their rights and that the Commission should therefore continue to follow the case.

27. Therefore the alleged victims concluded that the Venezuelan State failed to comply with the constitution, international laws and treaties, damaging and infringing the rights of its citizens. And in spite of the action taken before national bodies to resolve the situation, these rights had been neither recognized nor made good.

B. STATE

28. The State requested the immediate inadmissibility of the petition arguing that it had been lodged before all remedies available in the domestic jurisdiction had been exhausted. The State pointed out that the petitioners had the opportunity to apply to the National Electoral Council and to the Supreme Court of Justice to present their appeal concerning the elections held on November 8, 1998.

29. According to the State, the resolution from the National Electoral Council clearly indicated to the petitioners the remedy that should be used where disagreement existed. Therefore, according to Articles 237[FN2] and 240[FN3] of the Basic Law of Suffrage and Political Participation, the remedy to which the petitioners should have resorted was the judicial complaint against government action [recurso contencioso administrativo] lodged with the Supreme Court of Justice.

[FN2] Article 237 states:
The maximum period during which an electoral administrative appeal [recurso contencioso electoral], referred to in the preceding Article, may be brought, against acts or conduct of the National Electoral Council, is fifteen (15) days counted as from:
1. The carrying out of the act;
2. The occurrence of the events, material conduct [actuaciones materiales] or de facto course of action [vías de hecho];
3. The moment when the decision should have been made, if it is a case of abstentions or omissions; or,
4. The moment of tacit denial, as defined by Article 231.

[FN3] Article 240 of the Basic Law of Suffrage and Political Participation states:
electoral administrative appeal [recurso contencioso electoral] will only be recognized by:
[…]
2. The Political Administration Court of the Supreme Court of Justice when dealing with acts, conduct and omissions connected with the constitution, operation and cancellation of political organizations, with the designation of members of electoral organizations, with the Electoral Register, with the presentation and election of candidates for the Presidency of the Republic, the Senate, and the Chamber of Deputies, and with other matters relating to the electoral process and referenda which are not expressly covered by the previous numbered paragraph.

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30. The State argued that the judicial appeal for annulment of the elections that the petitioners argued they had filed with the Supreme Court, and which was declared inadmissible because it had been presented extemporaneously, "was not the remedy to which Resolution No. 990224-40 issued by the National Electoral Council [on February 24, 1999] referred." According to the State, the rejection as inadmissible of the remedy presented by the alleged victims reflected "the perfect application of jurisprudential criteria" by the Supreme Court of Justice. Therefore, the alleged victims should have used the electoral administrative appeal against Resolution No 990224-40 issued by the National Electoral Council on February 24, 1999. The alleged victims did not do so and the State therefore concludes, "they consequently accepted the claim made by the National Electoral Council in its resolution, that the elections were held in strict compliance with the legal formalities required."

31. The State also argued that the petitioners had not brought before any Venezuelan court a writ of constitutional Amparo [acción de amparo constitucional] in which they alleged that these elections had infringed their constitutional rights enshrined in the Venezuelan constitution. According to the State, the constitutional protection action (amparo) is a suitable and effective remedy in the domestic jurisdiction with which to address the rights violations alleged by the petitioners.

32. On the other hand, the State argued that the alleged victims had supplied no proof that the present case came within any of the exceptions to the exhaustion of domestic remedies rule. Consequently, the State repeated its request for the petition to be declared inadmissible.

33. In a later communication the State repeated its request for inadmissibility on the basis of the non-exhaustion of domestic remedies and requested that the petition should be declared inadmissible because it was manifestly baseless and unfounded. The State based this new request on the argument that the National Constituent Assembly had removed from office the members of Parliament who had been elected on November 8, 1998, and the State was preparing for a new public election to elect representatives.

34. The National Constituent Assembly was elected by public referendum on December 15, 1999, and recognized as supraconstitutional by the Court of Supreme Justice. On December 22, 1999, the National Constituent Assembly published a decree establishing the "Regime for the Transition of Public Power", Article 10 of which states that:

Members of the Venezuelan Parliament, who at present are part of the Latin American or Andean Parliaments respectively, are hereby removed from office. The National Legislative Commission will provisionally name Venezuelan representatives to the Latin American and Andean Parliaments until such time as new elections can be held.

35. The State argues that the National Constituent Assembly, in representation of the original power, removed from their posts the officials considered by the petition to have been illegitimately elected. Consequently, the petitioners' denunciation was meaningless because the

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Venezuelan electorate was about to take part on May 28, 2000 in the "Megaelections" electoral process, to elect Venezuelan representatives to the Andean and Latin American Parliaments.

36. The "Megaelections" were held on July 30, 2000. The State claims that through this election it complied with its international obligation to ensure the election of its representatives to the Andean and Latin American Parliaments with universal, direct, and secret suffrage. Consequently, the State claims that the denunciation, which is the subject of this petition, is manifestly unfounded and requests the Commission to file it.

IV. ANALYSIS

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

1. Ratione loci

37. The Commission has competence ratione loci because the petition, which is the object of this claim, indicates that the alleged victims were subject to the jurisdiction of the Venezuelan State at the time of the events in question. Venezuela has been a member state of the Organization of American States since 1948 when it ratified the Charter of the OAS, and has been subject to the competence of the Commission by virtue of the stipulations of the American Convention since August 9, 1977, at which date it deposited the instrument of its respective ratification.

2. Ratione temporis

38. The preceding information is also pertinent to the claim that the Commission has competence ratione temporis because the events that are the subject of this petition happened after the American Convention had come into force with regard to Venezuela.

3. Ratione persona

39. In relation to the legitimacy of the electoral process, the Commission maintains that its competence in individual cases generally refers to events that involve the rights of one or specific persons. The petition identifies the alleged victims in this case as individual persons whose rights Venezuela is committed to respect and guarantee under the terms of the American Convention. Therefore, the Commission has competence ratione personae to examine the petition concerning Felix Roman Esparragoza González and Nerio Molina Peñaloza.

40. The IACHR finds the petition inadmissible where it claims the infringement of the rights of "the great majority of Venezuelan citizens who voted in the elections on Sunday, November 8, 1998." Said petition should be declared inadmissible, in accordance with Article 47 of the American Convention, because the petition constitutes an actio popularis presented in the name of an indeterminate group of persons.

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41. Article 44 of the American Convention concerning the competence of the Commission, states that "any person, or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party."

42. Unlike other systems for the protection of human rights, the Inter-American System enables different types of petitioners to lodge petitions as victims. In fact, the terminology of Article 44 is very open, allowing any person or group of persons, or nongovernmental entity legally recognized in one or more member states, to lodge with the Commission petitions that contain denunciations or complaints of violation of this Convention by a State Party, without demanding, as does the European system or the United Nations Committee on Human Rights, that they themselves are victims as such, and therefore have a personal interest, either directly or indirectly in the adjudication of a petition. Nor does the Inter-American System demand the victim's authorization or that petitioners should present powers of attorney for the alleged victims.[FN4]

[FN4] IACHR, Report Nº 92/03, Petition 0453/01, Inadmissibility, Elías Santana and others, Venezuela, October 23, 2003. Paragraph 45 and subs.

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43. However, it should not be interpreted that the openness of the inter-American system in this respect would allow an action in abstracto to be brought before the Commission.[FN5]The jurisprudence of this Commission is in line with Article 44 of the American Convention, which establishes that for a petition to be admissible there must be specific victims, individual and specific, and does not admit petitions carried out as "actio popularis"[FN6] i.e. on behalf of the population of a country, a criterion which would be applicable in this case.

[FN5] See IACHR, Case 11.553, Report No 48/96 (Costa Rica), Annual Report of the IACHR, October 1996,
paragraph. 28.
[FN6] See IACHR, Case 11.553, Report No 48/96 (Costa Rica), Annual Report of the IACHR, October 1996,
paragraph 28.

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44. An analysis of the jurisprudence in the Commission concerning the application of Article 44 of the Convention reveals that the norm was interpreted in the sense that competence ratione personae in processing individual petitions refers to actions that infringe the rights of a specific person or persons. In petition No. 12,404 (Peru), the Commission considered a claim in which the Office of the Ombudsman [Defensoría del Pueblo] claimed to be acting as a representative, in abstract, on behalf of the group of potential women voters, as an actio popularis. It should be emphasized that the petition was admitted by this Commission only with regard to those victims duly named, identified, and specified, in line with the jurisprudence of the inter-American system[FN7].

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[FN7] See IACHR, Case 11.553, Report No 48/96 (Costa Rica), Annual Report of the IACHR, October, 1996,
paragraph. 35.

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45. The Commission has found along similar lines in the report of the case of María Eugenia Morales de Sierra, from Guatemala, stating the following:

(…) In order to start the proceedings defined in Articles 48 and 50 of the American Convention, the Commission requires a petition, which contains a denunciation of a concrete violation concerning a determined person.[FN8]

[FN8] See IACHR, Case 11.625, Report No 28/98 (Guatemala), Annual Report of the IACHR 1997, paragraphs 30-32

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46. The fact that petitions presented as public interest actions are inadmissible does not imply that the petitioner should always name each victim in whose name the petition is presented. In fact, it should be noted that the Commission has admitted petitions on behalf of groups of victims when the group was specific and defined and the individuals comprising it could be determined, as in, for example, the case of members of a specific community.[FN9]

[FN9] See IACHR, Case 12.250, Report Nº 34/01, Massacre of Mapiripan (Colombia), Annual Report of the IACHR, 2000, paragraph. 27.

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47. A study of the petition reveals that it is lodged, partly, on behalf of "the great majority of Venezuelan citizens who voted in the elections held on November 8, 1998," and alleges that their political rights have been infringed. Therefore, the IACHR must declare inadmissible this part of the complaint referring to "the great majority of Venezuelan citizens who voted in the elections held on November 8, 1998," because it concerns a representation in the abstract, similar to an "actio popularis," and does not identify specific victims, named and definite, revealing that by the nature of the events described in the complaint nor is it possible to identify a defined group of victims as the petitioners refer to "the great majority of Venezuelan citizens who voted in the elections held on November 8, 1998."

4. Ratione materiae

48. The Commission has competence ratione materiae to examine the claims that are not excluded ratione personae because the alleged claims made in connection with the petition lodged by Felix Roman Esparragoza Gonzalez and Nerio Molina Peñaloza denounce violations of rights protected under the terms of the American Convention.

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B. Other requirements for admissibility

1. Exhaustion of remedies under domestic law

49. Article 46 of the American Convention states that the admissibility of a case is 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 requirement guarantees the State an opportunity to resolve any differences within its own legal framework.

50. The petitioners alleged that according to Venezuelan law they had completely exhausted the remedies under domestic law. In their communications with the Commission, the alleged victims claimed that they had an administrative appeal to invalidate [recurso administrativo de nulidad] the electoral process before the National Electoral Council, a judicial appeal for annulment against the State [recurso contencioso administrativo de nulidad] before the Political-Administrative Division [Sala Político Administrativa] of the Supreme Court of Justice, and a claim before the President, Vice-President, and other members of the National Constituent Assembly.

51. The State, on the other hand, claimed that adequate and effective remedies exist under domestic law with which to handle the alleged violation of the legal rights of the alleged victims. The State claims that these remedies include a judicial appeal for annulment against resolution No. 990224-40 issued by the National Electoral Council, and the Writ of Amparo for Constitutional Rights and Guarantees [acción de amparo de derechos y garantías constitucionales].

52. In this context, the Commission states that with regard to spreading the burden of proof so as to determine how far the requirement to exhaust all remedies available under domestic law has been met, if the State claims that they have not all been exhausted, the State must identify the remedies that should be exhausted and their effectiveness. If the State claims that all remedies have not been exhausted under domestic law and proves that specific remedies under domestic law exist and should have been used, it is for the petitioners to show that those remedies were exhausted or comes within one of the exceptions defined in Article 46(2) of the Convention.

53. The petitioners claimed that they had exhausted an administrative appeal to invalidate the electoral process before the National Electoral Council. They stated that at the date of presentation of this remedy it was impossible for them to bring a judicial appeal for annulment against Resolution No. 990224-40 because said resolution was published on March 17, 1999, 14 days after the petitioners had taken the judicial appeal to the Supreme Court of Justice.

54. It is for the IACHR to establish the appropriateness, relevance, and availability of the remedies invoked by both parties. The IACHR states that the judicial complaint for annulment of an administrative decision [recurso contencioso administrativo de nulidad] filed by the petitioners on March 3, 1999 called directly for the electoral process of November 8, 1998 to be declared invalid with regard to the election of Venezuelan representatives to the Andean and Latin American Parliaments. On June 9, 1999, the Supreme Court of Justice reasoned that the

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action presented by the petitioners did not meet one of the requirements specified for the exercise of that remedy, namely the deadline for presentation. Therefore, the Supreme Court of Justice declared the remedy extemporaneous on the basis of the Basic Law of Suffrage and Political Participation and according to relevant jurisprudence.

55. In the present case, the Commission finds that although the petitioners did try to bring the action, it was brought without observing the necessary legal requirements. The Inter-American Court of Human Rights has ruled that:

The mere fact that a domestic remedy does not produce a result favorable to the petitioner does not in and of itself demonstrate the inexistence or exhaustion of all effective domestic remedies. For example, the petitioner may not have invoked the appropriate remedy in a timely fashion.[FN10]

[FN10] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment July 29, 1988, Series C,
Nº 4. paragraphs 67.

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56. The Commission reiterates that, as has been done by other international organizations, the petitioner should exhaust all remedies available under domestic law in accordance with domestic legal procedure. The Commission is unable to take the view that the petitioner has duly complied with the requirement of prior exhaustion of the remedies available under domestic law if these remedies have been rejected on the basis of reasonable, objective proceedings, such as when the writ of Amparo [recurso de amparo] was brought without having first having previously exhausted the relevant procedures, and the contentious administrative action was brought outside the time period appropriate for domestic law courts.[FN11]

[FN11] IACHR, Report Nº 90/03, Petition 0581/1999, Inadmissibility, Gustavo Trujillo González, v. Peru, October 22, 2003, paragraph 32.

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57. Consequently, the Commission finds that bringing the action outside the legal time limit does not exempt the petitioners from demonstrating that remedies available under domestic law have been filed that the State claims have not been exhausted. As previously indicated, the State claimed that two remedies existed: the judicial appeal in administrative matters [recurso contencioso administrativo electoral] against resolution No. 990224-40 issued by the National Electoral Council; and the writ of Amparo for constitutional rights and guarantees [acción de amparo de derechos y garantías constitucionales]. The petitioners did not reveal to the Commission their reasons for considering that the remedies described by the State were neither appropriate nor effective. Nor did they claim that the case comes within the exceptions to the exhaustion of domestic remedies set out in Article 46(2) (a) and (b) for other circumstances.

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58. The petitioners stated that on the date that resolution No. 990224-40 was published in the Electoral Gazette No. 19, they had already filed the judicial appeal for annulment, which had been declared extemporaneous on June 9, 1999. The petitioners did not question the appropriateness of the electoral appeal remedy indicated by the State and nor did they allege that other reasons might have prevented the remedy from being exercised.

59. At the same time, the petitioners made no comment regarding the action for constitutional protection, which the State had indicated as the appropriate and effective remedy to reverse the alleged violation of the law. And this was in spite of the fact that in their communication of June 9, 2000, the petitioners refer to the Amparo [fallo de amparo] awarded by the Supreme Court of Justice, which suspended the elections due to be held on Sunday May 28, 2000 because of the threatened violation of the rights to suffrage and information. At that time, the alleged victims claimed that:

It is also important to indicate that those who brought the writ of Amparo [amparo] before the Supreme Court of Justice of the Republic, did so directly, which demonstrates that it was (or is) not essential first to go through other courts when making a claim and/or seeking action against acts or activities to do with national elections that affect the people as a whole (el colectivo), although we did find previous instances (legally valid ones) as we indicated in our previous communication with the Honorable Commission.

60. Therefore, the Commission considers that neither the judicial electoral remedy nor the protection remedy were exhausted by the petitioners for reasons which are not attributable to the State, and that the petitioners did not present convincing arguments which would allow the Commission to apply the exceptions for the exhaustion of the remedies available under domestic law defined in Articles 46(2) (a) and (b). By virtue of the above, the IACHR, due to removal of substance, abstains from examining the other requirements for admissibility addressed in the Convention.

V. CONCLUSIONS

61. The Commission has established that it is partly incompetent ratione personae to study the present petition. The IACHR has also found that the present petition does not meet the requirement defined in Article 46(1) of the American Convention. Consequently, the Commission concludes that the petition is inadmissible, in accordance with Article 47(a) of the American Convention.

62. Based on the foregoing considerations of fact and law

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To give notice of this decision to the petitioner and to the State

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3. To publish this decision and to 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 13 day of October, 2004. (Signed): José Zalaquett, President; Clare K Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commission members Evelio Fernández Arévalos, Paulo Sergio Pinheiro, and Florentín Meléndez.