

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 61/04; Petition 971/03
Session:	Hundred Twenty-First Regular Session (11 – 29 October 2004)
Title/Style of Cause:	Ricardo Israel Zipper v. Chile
Doc. Type:	Decision
Decided by:	First Vice-President: Clare K. Roberts; Second Vice-President: Susana Villaran; Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo, Florentin Melendez. Commissioner Jose Zalaquett, a Chilean national, did not participate in the consideration of or vote on the case, in keeping with Article 17(2) of the Commission's Rules of Procedure.
Dated:	13 October 2004
Citation:	Israel v. Chile, Petition 971/03, Inter-Am. C.H.R., Report No. 61/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
Represented by:	APPLICANT: Hector Faundez Ledesma
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I. SUMMARY

1. On November 17, 2003, Dr. Ricardo Jacob Israel Zipper, a Chilean national, with the assistance of his lawyer, Dr. Héctor Faúndez Ledesma, (hereinafter “the petitioners”), submitted a petition to the Inter-American Commission on Human Rights (hereinafter “the Commission”) against the Republic of Chile (hereinafter “the State”) in which they allege violation of the right to humane treatment (Article 5), the right to a fair trial (Article 8), the right to freedom of expression (Article 13), the right to property (Article 21), the right to equal protection before the law (Article 24) and the right to judicial protection (Article 25), protected by the American Convention on Human Rights (hereinafter “the American Convention”) in violation of the obligations set forth in Article 1(1) “to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion or other opinion, national or social origin, economic status, birth, or any other social condition.”

2. After a 20-year career in academics, in 2002—the year the new authorities of University of Chile’s Institute of Public Affairs were appointed—a campaign of harassment and threats was launched against Dr. Israel that disrupted his routine academic activities. The Institute’s new Director asked Professor Israel to voluntarily resign his tenure, threatening him with the existence of a supposed “summary proceeding” against him. Professor Israel refused to resign, confident that he had done nothing wrong. However, a sequence of harassing episodes followed, culminating with his dismissal or removal.

3. In this report, given the failure of the State to reply within the time period specified in its Rules of Procedure, the Commission concludes that the petition complies with the requirements for admissibility set forth in Article 46 of the American Convention. Consequently, the Commission decides to declare the case admissible, to notify the parties of this decision, and to continue with the analysis of the merits relative to the alleged violations of Articles 1(1), 8, 13, 21, 24, and 25 of the American Convention. Also, the Commission decides to publish the present report in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BEFORE THE COMMISSION

4. On December 11, 2003, the Commission transmitted the complaint of Dr. Héctor Faúndez Ledesma on behalf of Dr. Ricardo Jacob Israel Zipper to the Government of Chile and requested that the State provide information on the complaint within a period of two months, pursuant to Article 30 of the Commission's Rules of Procedure. The State did not reply nor request an extension of time in order to respond, pursuant to Article 30(3) of the Commission's Rules of Procedure.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

5. Dr. Ricardo Israel Zipper had been a tenured professor of political science at the University of Chile since 1985. Dr. Israel's association with the University of Chile dated back to 1968, when he enrolled as a student in the Law School, and 1972, when he was a teaching assistant in the Department of Public Law. After completing postgraduate studies abroad (a Masters degree and a PhD in Political Science from the University of Essex, England), he became a fulltime professor with the University of Chile's Institute of Political Science. In 1985, he was given tenure at the University of Chile, thus reaching the highest level in the academic world. Under Article 8 of the General Rules Governing an Academic Career at the University of Chile, tenure "is the highest teaching level at the University. To achieve tenure a professor must enjoy a national and international reputation and have created a body of exceptional academic work that is innovative in concept, content or procedure. That body of academic work must advance the frontiers of learning and be influential in the training of academics and in university education and research. He or she must be recognized as an authoritative source in his or her area of knowledge. A tenured professor must play an active role in the University's growth as an institution."

6. For six and a half years, Dr. Israel served as Director of the University of Chile's Institute of Political Science. He resigned the Directorship in 2000, after receiving an anonymous message that threatened him and his family. The police regarded the message as a serious threat.

7. In 1998, Dr. Israel was a candidate for Rector of the University of Chile. In 2002 he was elected to the University Senate. That year he was invited to deliver the University Chair's course in Political Science in that department.

8. The Institute of Political Science, which Dr. Israel had headed, was later merged with another center of learning to form the Institute of Public Affairs, part of the University of Chile, a State university.[FN2] The petitioner states that when the new authorities of the Institute of Public Affairs were appointed in 2002, Dr. Israel became the target of a campaign of harassment and threat. The petitioner noted, for example, that the Institute did not take Dr. Israel's name into consideration to teach courses, although invitations to teach came from the University, not from the Institute.

[FN2] The University of Chile is a State university. Under Article 53 of its Statute, "Regardless of the function they perform, teachers and staff of the University of Chile are government employees whose service shall be governed by the Regulations that the University issues for them."

9. The petitioner contends that this prevented him from teaching his knowledge and ideas from his position as a tenured professor.

10. The petition states further that Dr. Israel was excluded from directing graduate theses and dissertations, from participating in forums and lectures, and from any academic activity at the Institute. It states further that the Institute's Director asked Dr. Israel to resign his tenured position with the threat that a supposed administrative proceeding was pending against him, which turned out to be false. The petitioner states plainly that no summary proceeding was ever instituted against Dr. Israel.

11. The petitioner then goes on to list a series of episodes which he regards as harassment and which culminated in Dr. Israel Zipper's dismissal:

- 1.- Returning from a trip, Dr. Israel found all his furnishings had been removed from his office; they were later returned without explanation;
- 2.- Dr. Israel was required to return funds to a Swedish foundation; a portion of those funds had gone toward financing activities of Chilean students abroad; a 15% deduction was made under the heading of administration, which upset the donors;
- 3.- They replaced his secretary repeatedly, without his consent;
- 4.- They left him without office supplies for long periods;
- 5.- They ceased to take his name into consideration for thesis or dissertation direction, a function he had customarily performed;
- 6.- They did not permit him to deliver a course on the subject of his dissertation, opting instead for an outside professor;
- 7.- During his final year, he was not invited to any departmental meetings;
- 8.- His name was excluded from the Political Science Masters Degree Program;
- 9.- On May 31, 2003, persons unknown painted the word "Jihad" on the door of his house, an allusion to his Jewish faith;
- 10.- A meeting of the Board of the Institute of Public Affairs held on January 7, 2003, during the academic recess, discussed Professor Israel Zipper's lack of academic activities in 2002 and elimination of his post was recommended. At the meeting, an administrative (non-academic)

official asked the Board “to eliminate the post” held by Professor Ricardo Israel. Without giving Professor Israel a hearing, the Board decided to proceed with the elimination of three posts, including that of Professor Ricardo Israel. Three days later, the acting rector of the University issued Order 435, eliminating Dr. Israel’s fulltime tenured position. Professor Israel Zipper was notified of this order on November 13, 2003, when classes resumed.

12. The petitioner points out that the Rector, who had been on vacation at the time the order was issued, refused to carry out the decision taken by the Board of the Institute, which had requested him to eliminate Professor Israel’s post and to take the necessary measures to relocate him, inasmuch as he was a member of the University Senate Elect.

13. The resolution that eliminated Professor Israel’s post was based on three orders issued during the regime of General Pinochet, alleging a need for the Institute’s “reorganization.”[FN3] The petitioner makes the point that Professor Israel Zipper was not given advance notice of the meeting of the Institute’s Board and was not advised of its decision to eliminate his post until March 13, 2003. The petitioner further notes that during that period (the interim between the decision and notification), they even continued to pay the Professor’s salary. He further notes that in the first half of 2003, six new academic positions were added to the teaching staff.

[FN3] Decree Law N° 3,541 from 1980, Decree with Force of Law N° 1 from 1981, and Decree with Force of Law N° 153, also dating from 1981.

14. The petitioner observes that in theory at least, there was nothing personal against Professor Israel. No one alleged any complaint about the academic performance of Professor Israel, who had risen to the highest teaching rank within the University of Chile. No one insinuated that the ideas that Professor Israel professed were either dangerous or odious nor was there any objection to the ideas expressed by Professor Israel on the radio and television programs on which he routinely appeared. His removal was simply a function of a “reorganization.” The petitioner also cites Order No. 02903, which the Office of the Comptroller General adopted on September 14, 1995, to the effect that no post can be eliminated because of the person who holds it; the sole consideration must be the necessity of eliminating the post itself.[FN4]

[FN4] It is important to note that according to the procedural handbook published by the Office of the Comptroller General in 2002, that policy is still in full force.

15. On March 28, 2003, Professor Israel filed an appeal seeking the Court’s protection. The Santiago Appellate Court ruled in his favor on July 15, 2003. However, the Supreme Court granted the appeal filed by the University of Chile, and on August 27, 2003, reversed the July 15 Appellate Court decision, without hearing the parties’ arguments. It also denied the petition for a writ of protection.

16. The petition contends that the events therein described constitute violations of the right to humane treatment (Article 5 of the American Convention on Human Rights), the right to a fair trial (Article 8 of the American Convention), the right to freedom of thought and expression (Article 13 of the American Convention), the right to property (Article 21 of the Convention), the right to equal protection (Article 24 of the Convention), and the right to judicial protection (Article 25 of the Convention), to the detriment of Dr. Ricardo Jacob Israel Zipper.

B. Position of the State

17. As mentioned above (at paragraph 4), the State did not reply within the prescribed time period, nor did it request an extension of time, pursuant to Article 30(3) of the Commission's Rules of Procedure.

IV. ANALYSIS OF ADMISSIBILITY

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

18. The Commission has competence *ratione materiae*, in that the petitioner alleges violations of Articles 5, 8, 13, 21, 24 and 25 of the American Convention.

19. Under Article 44 of the American Convention, the petitioner is authorized to lodge a complaint with the Commission. In the instant case, the alleged victim is an individual whose rights Chile has undertaken to guarantee and respect. As regards the State, the Commission notes that Chile has been a party to the American Convention since August 21, 1990, the date on which the instrument of ratification was deposited. The Commission, therefore, has competence *ratione personae* to examine the complaint.

20. The Commission is also competent *ratione temporis* since the obligation to respect and ensure the rights protected by the American Convention was already binding upon the State at the time the events alleged in the petition occurred.

21. The parties have no doubts or disagreements about the fact that the incidents described in the petition took place in Chilean territory. Thus, the Commission's competence *ratione loci* is clear.

B. Other requirements for admissibility

1. Exhaustion of domestic remedies

22. Article 46(1) of the American Convention specifies that, in order to decide on the admissibility of a matter, the Commission must verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with generally recognized principles of international law. Article 46(2) of the American Convention specifies that this requirement does not apply if the domestic legislation of the state concerned does not afford due

process of law for protection of the right allegedly violated, if the party alleging the violation has been denied access to domestic remedies or prevented from exhausting them, or if there has been an unwarranted delay in reaching a final judgment under the domestic remedies.

23. The petitioner filed a writ of protection on March 28, 2003 before the Court of Appeals in Santiago, Chile. On July 15, 2003, the Court found in his favor. The Chilean Supreme Court, however, in response to the appeal filed by the University of Chile, on August 27, 2003, revoked the decision, without hearing the arguments of the parties, and rejected the writ of protection that had been granted by the Court of Appeals.

24. The argument that domestic remedies have not been exhausted must be raised by the State in a timely objection, in which it claims non-exhaustion, and the State has an obligation to prove that domestic remedies remain to be exhausted and that they are effective.[FN5] In the instant case, the State did not claim non-exhaustion of domestic remedies; in fact, it did not respond at all to the petition and the Commission considers that it waived this exception.

[FN5] Velasquez Rodriguez Case, Preliminary Objections, Judgment of July 26, 1987, par. 88.

2. Timeliness of the petition

25. Article 46(1)(b) of the Convention states that a petition must be lodged within a period of six months from the date on which the petitioner is notified of the final judgment exhausting domestic remedies. In the petition under study, the Commission has established that the Chilean State tacitly waived its right to file an objection alleging failure to exhaust local remedies, which means that the requirement set forth in Article 46(1)(b) of the American Convention does not apply. However, the Convention's requirements a propos exhaustion of local remedies and presentation of the complaint within six months from the date on which the party alleging violation of his rights was notified of the final judgment are independent of each other. Hence, the Inter-American Commission must determine whether the petition under study was filed within a reasonable time period. The Commission notes in this regard that the original petition was received on November 17, 2003. The Supreme Court's decision was handed down on August 27, 2003. Therefore, the Commission considers that the petition was filed within a reasonable period of time.

3. Duplication of proceedings and international res judicata

26. The Commission understands that the substance of the petition is not pending in any other international proceeding for settlement, and that it is not substantially the same as any petition previously studied by the Commission or other international body. Hence, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have also been met.

4. Characterization of the alleged facts

27. Article 47(b) of the American Convention requires that the Commission consider a petition to be inadmissible if “the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention.”

28. The petitioners allege that the State has violated Dr. Israel’s rights under Articles 5, 8, 13, 21, 24 and 25 of the American Convention, whereas the State provided no observations concerning the petition. The petitioners have provided specific factual contentions, particularized in Part III.A of this Report, that, if true, tend in the Commission’s view to establish possible violations of certain provisions of the Convention, namely Articles 8, 13, 21, 24 and 25 in connection with the State’s obligations under Article 1(1). At the same time, the Commission is not satisfied that the petitioners have substantiated their claims that, if true, would tend to establish a violation of Article 5 (torture and cruel, inhuman or degrading treatment) of the Convention, but rather a possible violation of Article 11, regarding damage to his reputation.[FN6]

[FN6] See Report N° 20/99, Case 11.317, Rodolfo Robles (Peru), February 23, 1999.

29. What is at issue in this case is whether the procedure set forth in legislation adopted during the Pinochet regime, in particular Decree with Force of Law No. 153, from 1981, inter alia, by which University authorities were authorized to eliminate permanent posts, conforms to the due process requirements set forth in Article 8(1) of the American Convention, or must be considered “arbitrary” and incompatible with the requirements of the Convention. In its interpretation of Article 12 of Decree with Force of Law No. 153, the Supreme Court’s decision points out that Article 2 of Law No. 18,663 provides that no prior notice is or has been required to eliminate posts.

30. In addition, the Commission considers that the facts alleged by the petitioners, if true, may also disclose a violation of Articles 2 and 11 (supra) of the Convention, to the extent that the alleged absence in Chile of an effective remedy for violations of the human rights protected under Chilean domestic law and the American Convention may establish a violation of the State’s obligation to give domestic legal effect to the rights and freedoms under the Convention. Although the petitioners have not alleged a violation of Articles 2 and 11 in their petition, the Commission may on its own motion identify a potential infringement of this provision for the purposes of the proceeding before it, based upon the well-established principle *iura novit curia*.

31. Whether the situation denounced characterizes a violation of Dr. Israel’s rights under the American Convention is a question for the merits stage of review. With respect to the question of characterization, however, the Commission wishes to reiterate that the existence of legislation that includes distinctions based on personal status may in and of itself characterize a potential violation. In this regard, the Commission finds in the present case that the petitioners have stated claims which, if consistent with other requirements and shown to be true, could tend to establish the violation of rights protected under Articles 1(1), 2, 8, 11, 13, 21, 24 and 25 of the American Convention.

V. CONCLUSION

32. Based on the above legal and factual considerations, the Commission concludes that the case at hand satisfies the admissibility requirements set forth in Article 46 of the American Convention and, without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to Articles 1(1), 2, 8, 11, 13 21, 24 and 25 of the American Convention.
2. To transmit this report to the petitioner and to the State.
3. To continue with its analysis of the merits of the case.
4. To publish this report and to include it in the Commission's 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 13th of October, 2004. (Signed): Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice -President; Commissioners Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez Trejo and Florentín Meléndez.