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Session:	Hundred Twenty-First Regular Session (11 – 29 October 2004)
Title/Style of Cause:	Alejandro Junco de la Vega and Eugenio Herrera Terrazas v. Mexico
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 Trejo dissented from the decision of the majority.
Dated:	14 October 2004
Citation:	Junco de la Vega v. Mexico, Petition 938/03, Inter-Am. C.H.R., Report No. 67/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
Represented by:	APPLICANT: Eugenio Herrera Terrazas
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I. SUMMARY

1. On November 8, 2003, Eugenio Herrera Terrazas (hereinafter “the petitioner”), general counsel for the Mexican newspaper publisher Editora El Sol (which is part of the Mexican publishing group Grupo Reforma, hereinafter “Grupo Reforma”), submitted a petition on behalf of Alejandro Junco de la Vega, president and director of PALABRA Expresión de Coahuila (a Mexican newspaper published by Editora El Sol, hereinafter “Palabra”) and himself to the Inter-American Commission on Human Rights (hereinafter “The Commission”). The complaint alleges that the State of Mexico violated Article 13 (Freedom of Thought and Expression), Article 8 (Right to a Fair Trial), Article 24 (Right to Equal Protection), Article 25 (Right to Judicial Protection) and Article 26 (Right to Progressive Development) in relation to the overall obligations enshrined in Articles 1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) of the American Convention on Human Rights (hereinafter “the Convention”) to the detriment of Terrazas, Junco de la Vega and Grupo Reforma (hereinafter “the alleged victims”).

2. The petitioner alleges that the State of Mexico violated the right to freedom of expression through the censorship of electoral opinion polls by the Coahuila authorities. Coahuila’s Congress passed a law that prohibited the conduct and diffusion of opinion polls without prior authorization from the Coahuila electoral institute during the immediate run-up to elections. The law also authorized the electoral institute’s general council to study the methods of pollsters applying for authorization and to set a bond to guarantee that the approved methods would be

carried out and that the results of polls would not be divulged until after 8 p.m. on the day of elections.

3. The State of Mexico argues that the law in question does not contravene Article 13 because the law does not directly or indirectly prohibit the publishing of opinion polls altogether and only imposes sanctions after the publication of opinion polls, so it is therefore not a form of censorship. The State also contends that the petitioner failed to submit the petition within the Convention's time deadlines.

4. After reviewing the positions of the parties in light of the admissibility requirements set out in the Convention, the Commission decided to declare the petition admissible with respect to the alleged violations of Article 13 in relation to the general obligations enshrined in Articles 1 and 2 of the American Convention, to transmit this Report to the parties, to continue with the analysis of the merits of the case, and to publish this Report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

5. The petition was received by the Commission on November 8, 2003 and the Commission sent the petitioner a confirmation that the petition was received on November 13, 2003. On December 24, 2003, the Commission opened the case and sent the pertinent portions of the petition to the State of Mexico, granting it two months to submit its observations.

6. On March 31, 2004, the petitioner requested information about the status of the case.

7. On April 30, 2004, the Commission reiterated its request to the State of Mexico for its observations on the case.

8. On May 18, 2004, the State submitted its reply, arguing that the petition should be deemed inadmissible. On June 2, 2004, the State submitted additional materials related to the case, including the Supreme Court ruling on the constitutionality of the law in question.

9. On June 15, 2004, the Commission confirmed to the State that it had received its response from May 18, 2004 and additional materials on June 2, 2004. The Commission also sent the pertinent materials from the State to the petitioner, granting him 30 days to present his observations. The petitioner's response, received by the Commission on October 19, 2004 --after the adoption of the present report-- was transmitted to the State.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

10. On November 1, 2001, the Coahuila legislature approved a new law governing that state's political institutions and electoral procedures. Article 192 of this new law, which was published in the state's Periodico Oficial on November 16, 2001, regulates opinion polls and surveys taken during electoral periods in the following terms:

Article 192 — It is prohibited to carry out or disseminate the results of public opinion polls during the three days before an election day and on the day of the election without the prior authorization of the Institute. The General Council to authorize the carrying out of public opinion polls must study the proposed methodology of the applicant and set a bond not less than the equivalent of twenty-eight thousand times the state capital's current minimum wage. In the case of institutions of higher education officially recognized under the applicable provisions, the bond referred to in this article will not be less than the equivalent of nine thousand times the state capital's current minimum wage.

The bond will guarantee that the results of the poll will not be disseminated before 8 p.m. on the day of the election and that the approved methodology for the conduct of the poll is used.

In case of failure to comply the bond will become the property of the Institute, without prejudice to any other sanctions applicable to the transgressors.[FN1]

[FN1] The original text of this article states:

ARTICULO 192 – No podrán practicarse encuestas públicas ni difundir sus resultados desde tres días antes de la jornada electoral y el día en que se realice dicha jornada, sin previa autorización del Instituto. El Consejo General para otorgar la autorización de levantar encuestas deberá estudiar la metodología que proponga el solicitante y fijar una fianza no inferior a la cantidad equivalente de veintiocho mil salarios mínimos vigentes en la capital del estado. En el caso de instituciones de educación superior con reconocimiento oficial en los términos de las disposiciones aplicables, la fianza a que se refiere este artículo, no será inferior a la cantidad equivalente de nueve mil trescientos salarios mínimos vigentes en la capital del estado.

La fianza garantizará que los resultados de la encuesta no se difundan antes de las veinte horas del día de la elección y el cumplimiento de la metodología aprobada para la realización de la encuesta. En caso de incumplimiento la fianza se hará efectiva a favor del patrimonio del Instituto, sin perjuicio de las demás sanciones aplicables a los infractores.

11. One of Mexico's major political parties, the Partido Acción Nacional (hereinafter "the PAN") filed a complaint with Mexico's Supreme Court to challenge the constitutionality of various articles of the law under the federal Constitution. With respect to Article 192, the PAN claimed it violated the right of freedom of expression, which the Mexican Constitution provides for in Article 7. On February 19, 2002, the Supreme Court handed down its ruling on the PAN's complaint, declaring Article 192 to be constitutional. The Court noted that the Constitution provided for not only the right to freedom of expression, but also the right to objectivity, certainty, impartiality and independence in the electoral process, and Article 192 served to guarantee these electoral principles.

12. The petitioner noted that under Mexican law, the alleged victims had no domestic remedy to challenge the Supreme Court's decision on Article 192 until the election law was actually applied to a request or the publication of an opinion poll. The alleged victims, therefore, made a request to conduct an opinion poll,[FN2] and then they filed a demanda de amparo, a legal

measure that asks for the protection of the federal judiciary for alleged violations of individual rights by the authorities. The petitioner and Editora El Sol filed the amparo request in Coahuila district court on September 25, 2002, contending that the law, in its first application, constituted censorship and therefore violated Article 6 (Freedom of Ideas and State Guarantee of Right to Information) and Article 7 (Freedom to Write and Publish) of Mexico's Constitution, as well as Article 13 of the American Convention.

[FN2] The petitioners did not specifically lay out the process by which they made the request for an opinion poll. But according to the State, Editora El Sol made a request to conduct an exit poll in September 2002. The State notes that the general council of the electoral institute in Coahuila approved its methodology, but Editora El Sol refused to pay the bond required by Article 192 of the new election law and then filed the demanda de amparo.

13. A district judge in Saltillo, Coahuila ruled on November 19, 2002 that because the elections had already occurred, an amparo against the application of the law would have no material or legal effect, and it declared the request "untimely." Editora El Sol, as represented by the petitioner, appealed this decision through a recurso de revisión in an appeals court in the Eighth Circuit, located in Saltillo. The case was admitted for consideration on March 17, 2003 and the court published its decision on May 12, 2003 to revoke the lower court's decision but to deny the amparo, stating that there was no contradiction between freedom of expression and Article 192. The Court noted that because the Supreme Court had previously declared the law constitutional, the petitioner's claim of injury was ineffectual. The petitioner noted that this decision by the Eighth Circuit could not be appealed further.

1. Arguments regarding the characterization of a violation

14. The petitioner argues that Article 192 effectively censors the publication of opinion polls, contravening Article 13's ban on censorship and its provision that freedom of expression extends to information "of all kinds." The petitioner notes that by requiring the approval of the pollsters' methodology, the government is not allowing the disclosure of ideas to be complete and authentic. The petitioner also contends that the requirement of a bond constitutes censorship because the bond is a pre-requisite to publication, and thus limits expression before it is made. He argues that because of the bond, pollsters and publishers with adequate economic resources are able to publish surveys but those that are less solvent cannot, which constitutes an interference with the less-solvent pollsters' freedom of expression.

15. To support his position, the petitioner cites the Inter-American Court of Human Rights decision of February 5, 2001 in the Case of the Last Temptation of Christ (Olmedo Bustos et al. vs. Chile). In this case, the Court ruled that Article 13 did not allow prior censorship except in the case of public entertainments "for the sole purpose of regulating access to them for the moral protection of childhood and adolescence." The petitioner noted that the Court declared that censorship effectively guarantees that certain people, groups, ideas and means of expression are excluded a priori from public debate. The petitioner also cites the 1998 Annual Report of the Inter-American Commission on Human Rights, in which the Rapporteur for Freedom of

Expression noted that the required registration of opinion polls before publication in Panama could be considered censorship.

16. The petitioner acknowledges that freedom of expression does come into conflict with the Mexican constitutional principles on elections. Article 116 of Mexico's Constitution provides that the Constitution and state laws must guarantee that elections are carried out through a free, secret and direct vote. However, the petitioner argues that the harmonization of these conflicting principles cannot ignore the Mexican State's international obligations under the American Convention. Furthermore, he contends that in cases involving fundamental rights, the limitations taken by the State should be absolutely necessary to achieve the desired goal. To support this stance, the petitioner cites a decision by Spain's constitutional court, which noted that any measures limiting fundamental rights must be necessary to achieve the desired end. He also cites a decision by Colombia's constitutional court in a case involving a collision of basic rights. The Colombian court weighed three factors: whether the means chosen were adequate, whether they were necessary to achieve the goal and whether there was a strict correlation between the means and the goal.

17. Applying that principle to this case, the petitioner argues that the government's demand of a bond for public opinion polls is not necessary or indispensable to achieve free, secret and direct elections. He notes that instead of using censorship, which violates Article 13, the government has the option of imposing subsequent liability by sanctioning those who violate the law after the violation has occurred.

18. The petitioner also contends that freedom of expression holds a higher position in the hierarchy of fundamental rights than other freedoms. He notes that Peru's constitutional court ruled that freedom of expression holds a "privileged place in the pyramid of constitutional principles," while the United States' Supreme Court said the U.S. Constitution, which provides for freedom of speech in the First Amendment, puts this freedom in a "preferred position." This privileged status is another justification for extending the broadest protection possible to freedom of expression, says the petitioner.

19. The petitioner argues that in addition to the violations of Article 13 of the Convention, the Mexican judicial actions and the law violate Article 1 (Obligation to Respect Rights), Article 2 (Domestic Legal Effects), Article 8 (Right to a Fair Trial), Article 24 (Right to Equal Protection), Article 25 (Right to Judicial Protection) and Article 26 (Right to Progressive Development) of the American Convention. The petitioner did not provide any details, however, on these alleged violations.

2. Arguments regarding the exhaustion of domestic remedies

20. The petitioner contends that the request for a judicial amparo in Coahuila district court and the appeal of this decision through the *recurso de revisión* exhausts the domestic remedies as required by Article 46(1)(a) of the American Convention in order for the Commission to be able to admit the claim.

21. The petitioner claims the appeals court of the Eighth Circuit is the proper forum to hear appeals from the district court on issues regarding federal or local regulations under the Fifth Agreement (First Fraction) of the Supreme Court. He further argues that the Eighth Circuit is the court of final jurisdiction under the law, meaning that the denial of the recurso de revisión leaves the petitioner with no further domestic remedies.

3. Arguments regarding the deadline for the submission of the petition

22. Article 46(1)(b) of the Convention requires that a petition or communication must be lodged with the Commission within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

23. The petitioner notes that the decision of the appeals court of the Eighth Circuit was published in the court's lists of decisions on May 12, 2003. The petitioner filed the claim with the Commission on November 8, 2003, or less than six months from the day of the date the petitioner was notified of the final judgment.

B. Position of the State

24. The State notes at the outset that the law in question was not designed to inhibit opinion polls outright, but rather to regulate the information diffused by the opinion polls so that there would be no doubts with respect to this information's veracity. The law's broader purposes, the State argues, included the improvement of conditions under which votes are cast and the creation of an environment in which citizens and parties could seek candidacies without restrictions. The State also notes that a broad spectrum of society, including political groups, political parties, civil society groups and the three branches of government, was involved in the drafting of the law, which underscores its legitimacy.

1. Arguments regarding the characterization of a violation

25. The State argues that the petitioner's claim is inadmissible because Article 192 is not a form of censorship, and thus there is no violation of Article 13 of the Convention. The State contends that Article 192 only applies to cases in which the pollsters or media have failed to comply with the methods approved by the government, and this failure is demonstrated only after the survey in question is published. Therefore, the State argues, the law functions after publication, not before, as in the case of censorship. The State also contends that the posting of a bond does not directly or indirectly prevent the publication of surveys, but rather it applies only when the publisher or author of an opinion poll fails to follow the approved methods or publishes it during a forbidden period.

26. The State further argues that the restrictions imposed by Article 192 after publication of a survey fall within the realm of the acceptable limitations established by Convention and the Inter-American Court in the area of freedom of expression. To support this position, the State cites Article 13(2), which allows for the subsequent imposition of liability when it is necessary to ensure either respect for the rights or reputations of others, or the protection of national security, public order, or public health or morals.

27. The State also notes that the Inter-American Court, in its advisory opinion on Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, ruled that not all restrictions on the mass media or freedom of expression in general are necessarily a violation of the Convention. The Court declared that abuses of freedom of expression cannot be controlled by preventive measures, but they can be regulated through the subsequent imposition of sanctions on those who are guilty of the abuses. The State also notes that the Coahuila law aims to safeguard public order, which is a legitimate rationale for subsequent imposition of liability with respect to freedom of expression.

28. The State points out that the Inter-American Court, in the above-referenced advisory opinion, laid out a framework for justifiable restrictions on freedom of speech when it said Article 13(2) “is very precise in specifying that the restrictions on freedom of information must be established by law and only in order to achieve the ends that the Convention itself enumerates.”[FN3] The State argues that its law meets this heavy burden: Article 23(1)(a) of the American Convention (Right to Participate in Government) provides that citizens must be allowed to participate in public affairs, either directly or through an elected representative, while Article 23(1)(b) provides for the right to vote in universal elections of equal suffrage and by secret ballot.

[FN3] IACtHR, *Compulsory Membership in an Association Prescribed by La for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC 5/85 of November 13, 1985, para. 40.

29. The State further argues that the law satisfies the test that a restriction be “necessary” and required by a “compelling governmental interest.” It notes that the Court, in defining these standards, has looked to the European Court of Human Rights’ decision in *The Sunday Times Case*. The Inter-American Court said its European counterpart’s conclusion suggests that the ‘necessity,’ and hence, the legality of restrictions imposed under Article 13(2) on freedom of expression, depend upon a showing that the restrictions are required by a compelling governmental interest. . . . [T]he restriction must be proportionate and closely tailored to the accomplishment of the legitimate governmental objective necessitating it.[FN4]

[FN4] *Id.* at para. 46.

30. In light of this, the State argues that the Coahuila law does not contradict the Convention because the government has a compelling interest in guaranteeing the freedom to vote and the authenticity of elections, and the means taken are proportional to the interest at stake.

31. The State also contends that the regulations on opinion polls are necessary to preserve other fundamental freedoms guaranteed by the Mexican Constitution. The State notes that the Constitution imposes the duty to respect the freedom to write and publish on one hand, while on

the other it imposes the duty to guarantee objectivity, certainty and impartiality of elections and electoral processes. Ultimately, the State says, it should not heed one constitutional principle and ignore others, so it must find a way to balance these principles.

32. Additionally, the State refutes the petitioner's claim that pollsters and publishers must be solvent in order to fund the bond. The State notes that opinion polls are typically conducted by polling companies and on occasion, by universities. The State argues that polling companies, by their nature, utilize a large number of people when they conduct surveys, so they have the available economic resources to finance the bond payment. The State contends that universities, meanwhile, face a lesser burden than polling companies because Article 192 sets a lower bond requirement for educational institutions.

2. Arguments regarding the deadline for the submission of the petition

33. The State argues that the victims' petition is inadmissible because it was not submitted within six months of the final ruling from the appropriate court. The State contends that the Supreme Court was the suitable court to rule on the issue of the law's constitutionality, and because it declared the law valid, the petitioner's subsequent request for an amparo and recurso de revisión were not viable legal remedies. The State also argues that the petitioner's request for an amparo was out of order because the victims failed to follow through with the poll approval process; their methods were approved but they never paid the bond. The State argues, therefore, that the six month period established in Article 46 of the Convention began running with the February 19, 2002 ruling of the Supreme Court--not the May 12, 2003 ruling of the Appeals Court of the Eighth Circuit--so the victims' claim to the Commission of November 9, 2003 exceeds the Convention's six-month time limit by 15 months.

IV. ANALYSIS OF THE ISSUE OF ADMISSIBILITY

A. Competence of the Commission

34. Under Article 44 of the Convention, 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. Article 1(2) of the Convention defines "person" as "every human being."

35. The petitioner, as an individual human being, therefore has locus standi to submit petitions to the Commission. In the petition, the petitioner identifies two individual persons and Grupo Reforma as purported victims. While Grupo Reforma, in its status as a business, does not have standing under Article 44 to qualify as a purported victim, the individuals have locus standi as alleged victims. The Commission notes that Mexico is a State party to the American Convention, having ratified it March 2, 1981, so the Commission has competence *ratione personae* to study the petition. The Commission has competence *ratione loci* to take cognizance of this petition since it alleges violations of rights guaranteed by the American Convention that purportedly occurred in the territory of a State party.

36. The Commission has competence *ratione temporis*, since the events alleged in the petition occurred at a time when the duty to respect and ensure the rights enshrined in the Convention was in force for the State.

37. The Commission also has competence *ratione materiae* since the petition alleges violations of human rights protected by the American Convention.

B. Exhaustion of domestic remedies

38. Article 46(1)(a) of the American Convention states:

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.

39. The Commission and the Court have repeatedly insisted on their “reinforcing and complementary”[FN5] status within the Inter-American system of protection of human rights.[FN6] This status is reflected in Article 46(1)(a) of the Convention, which permits States parties to decide cases within their own legal framework, before there is need for recourse to an international proceeding.

[FN5] American Convention on Human Rights, in BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, OEA/Ser.L/V/I.4 rev. 9 (Jan. 31, 2003), preamble.

[FN6] See eg, I/A Ct. H.R. Velásquez Rodríguez Case (Honduras), Series C N° 4, Judgment of July 29, 1988, para. 61; IACHR, Resolution N° 15/89, Case 10.208 (Dominican Republic), April 14, 1989, Conclusions, para. 5.

40. The Commission notes that domestic remedies are defined as those that are adequate and effective.[FN7] Adequate domestic remedies are “those which are suitable to address an infringement of a legal right”[FN8] and “effectiveness” refers to the capability of a particular remedy to produce the result for which it was designed. [FN9]

[FN7] *Ibid.*, para. 59, 63.

[FN8] *Ibid.*, para. 64.

[FN9] *Ibid.*, para. 66.

41. The State asserts that the constitutional challenge was the effective and adequate legal remedy. The only recourse to challenge the constitutionality of an electoral law is described in Article 105(II)(F) of the Mexican Constitution. According to this same provision, this recourse

can only be pursued by political parties registered with the Instituto Federal Electoral or with a state registry office.[FN10] The alleged victims are the general counsel of a media company and the president and director of a newspaper; they are not representatives of a political party. Thus, the Commission understands that according to Article 105(II)(F) of the Mexican Constitution, they are barred from filing a constitutional challenge against the law in question. If the alleged victims do not have access to the specific recourse cited by the government, they are not required to exhaust it.

[FN10] The original text of this article states:

Artículo 105. La Suprema Corte de la Nación conocerá, en lo que señale la Ley Reglamentaria, de los asuntos siguiente:

II. De las acciones de inconstitucionalidad que tengan por objeto plantear posible contradicción entre una norma de carácter general y esta Constitución.

Las acciones de inconstitucionalidad podrán ejercitarse, dentro de los 30 días naturales siguientes a la fecha de publicación de la norma por:

F) Los Partidos Políticos con Registro ante el Instituto Federal Electoral conducto de sus dirigencias nacionales, en contra de leyes electorales o locales; y los partidos políticos con registro estatal, a través de sus dirigencias, exclusivamente en contra de leyes electorales expedidas por el órgano legislativo del estado que les otorgó el registro.

La única vía para plantear la no conformidad de las leyes electorales a la Constitución es la prevista en este artículo.

42. In this case, the petitioner alleges that the Eighth Circuit's denial of the appeal for an amparo exhausts the available domestic remedies because the challenge of the Coahuila election law, as applied to the victims' request to conduct an opinion poll, cannot be appealed further. The Commission takes the view that the petitioner's request for an amparo was the adequate legal measure for addressing the petitioner's legal claim as it was the measure through which they could have their individual claim studied. In addition, the Eighth Circuit appeals court admitted and issued judgment on the petitioner's request for an amparo, showing that it considered this to be a colorable claim. The petitioner thus exhausted the available domestic remedies under the requirements of Article 46(1)(a) of the Convention.

C. Deadline for submission of the petition to the Commission

43. Article 46(1)(b) of the American Convention stipulates that admission of a petition requires "that the petition or communication is 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."

44. In the present case, the petitioner lodged his petition on November 8, 2003, which was within six months of the May 12, 2003 ruling by the Eighth Circuit appeals' court. The State argues, however, that May 12, 2003 should not be used as the date of the final judgment because the petitioner's request for an amparo was not a valid judicial proceeding, given that the issue of the law's constitutionality had already been settled by the Supreme Court in February 2002. The

State contends, therefore, that the petitioner is 15 months beyond the deadline for filing a petition with the Commission.

45. As noted previously, the Commission considers the petitioner's good faith requests for an amparo and recurso de revision to be valid legal remedies, and therefore the petitioner was required to file with the Commission within six months of the Eighth Circuit ruling, which was delivered May 12, 2003. The petition would therefore meet the requirement with respect to the timeliness established in Article 46(1)(b) of the Convention.

D. Duplication of proceedings

46. Article 46(1)(c) of the Convention provides that a petition or communication cannot be pending in another international proceeding for settlement in order to be eligible for admissibility by the Commission. Article 47(d) of the Convention also stipulates that the Commission shall declare inadmissible any petition that is substantially the same as one previously studied by the Commission or by another international organization.

47. Based on the statements of the parties and the documents in the file, it does not appear that the petition is pending in any other international proceeding or forum, or that it is substantially the same as any previously studied by the Commission or by another international organization. The Commission therefore considers that in the instant case the requirements for admissibility in Articles 46(1)(c) and 47(d) of the Convention have been met.

E. Characterization of the facts alleged

48. With respect to the admissibility of petitions, the Commission has to determine whether the facts stated in the petition tend to establish a violation of rights set forth in the American Convention, as required under Article 47(b), or whether the petition must be dismissed as "manifestly groundless" or "obviously out of order" under Article 47(c).

49. The standard by which to analyze a petition at this phase is different from the standard used to decide the merits of a petition. During this first phase, the Commission must make a prima facie evaluation to establish not whether a violation exists, but whether the petition states facts that tend to establish a potential or apparent violation of a right guaranteed by the Convention. This examination is a summary analysis that does not imply any prejudgment of the merits of the case. By establishing two clear separate phases – one for admissibility and a second for the merits – the Commission's own Rules of Procedure reflect the distinction between the evaluation the Commission must make to declare a petition admissible, and the evaluation required to establish a violation.

50. Regarding the rights protected under Article 13, the petitioner alleges that Article 192 of the Coahuila election law censors pollsters and the publishers of opinion polls by requiring them to seek prior approval of their methodology from the electoral commission and to post a bond to guarantee they will follow this methodology, if approved. The State argues that the law is not censorship because sanctions only apply after a poll has been published and deemed to be in violation of the law, and that this type of subsequent imposition of liability falls within the

exceptions established in Article 13 of the Convention. The State also argues that the measures are necessary to uphold the right to participate in government found in Article 23 of the Convention. Article 13 provides that the right to freedom of thought and expression includes freedom to seek, receive, and impart information and ideas of all kinds, and the exercise of this right shall not be subject to prior censorship. In this case, the Commission must determine if Article 192 of the Coahuila election law does constitute censorship, and if it does not, whether the law in question falls within the exceptions allowing subsequent liability that are laid out in Article 13(2)(a) and 13(2)(b) of the Convention. Although these questions must be resolved in the merits phase of the case, the Commission considers that the arguments made by both parties show that the petition is not “manifestly groundless,” nor is it “obviously out of order.” The Commission considers that, *prima facie*, the petitioner has met the tests stipulated in Article 47(b) and (c) with respect to Article 13, in relation to the general obligations enshrined in Articles 1 and 2.

51. Regarding the rights protected under Articles 8 (Right to a Fair Trial), 24 (Right to Equal Protection), 25 (Right to Judicial Protection) and 26 (Right to Progressive Development), the petitioner did not provide legal arguments explaining how these rights were violated in the course of the events already detailed. The Commission notes, however, that there are factual elements in the case that would meet, *prima facie*, the tests stipulated in Article 47(b) and (c) with respect to Articles 8 and 25, which protect the right to a hearing with due guarantees and within a reasonable time and the right to a simple, prompt, and effective recourse against acts that violate an individual's fundamental rights, respectively. The Commission must determine whether the alleged victims' rights to a fair trial and to judicial protection were violated, given the fact that they were not eligible to file a constitutional challenge against the electoral law and the other remedies they filed were unsuccessful. With respect to the alleged violations of Articles 24 and 26, the Commission considers that the petitioners failed to establish *prima facie* that these rights were violated.

V. CONCLUSIONS

52. The Commission considers that it has competence to take cognizance of this petition with respect to the presumed violations of the rights of Eugenio Herrera Terrazas and Alejandro Junco de la Vega. The Commission further finds that the petition is admissible with respect to the requirements for admissibility contained in Articles 46 and 47 of the American Convention on Human Rights, and with respect to the alleged violations of Articles 8, 13 and 25 of the American Convention in relation to the general obligations enshrined in Articles 1 and 2.

53. Based on the foregoing considerations of fact and law, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant case admissible as regards the presumed violations of the rights of Eugenio Herrera Terrazas and Alejandro Junco de la Vega protected by Articles 8, 13, and 25 of the American Convention in relation to the general obligations enshrined in Articles 1 and 2.
2. To declare inadmissible the claims under Articles 24 and 26.
3. To notify the parties of this decision;
4. To continue with the examination of the case; and
5. To make public 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 14th day of the month of October, 2004. (Signed) José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioners Evelio Fernández Arévalos, Paulo Sérgio Pinheiro, and Florentín Meléndez. Commissioner Freddy Gutiérrez Trejo dissented from the decision of the majority.