

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 3/05; Petition 12.289
Title/Style of Cause: Guillermo Santiago Zaldivar v. Argentina
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Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalo, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo, Florentin Melendez.
Dated: 22 February 2005
Citation: Zaldivar v. Argentina, Petition 12.289, Inter-Am. C.H.R., Report No. 3/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by: APPLICANT: Ricardo Nestor Wortman Varela
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I. SUMMARY

1. The present report addresses the admissibility of petition 12.289. The Inter-American Commission on Human Rights (hereinafter “Inter-American Commission,” “Commission” or “IACHR”) initiated processing of this matter pursuant to receipt of a petition on October 28, 1999, filed by Guillermo Santiago Zaldivar, with the legal representation of Ricardo Néstor Wortman Varela (hereinafter “the petitioners”), against the Republic of Argentina (hereinafter “Argentina” or “State”).

2. The petitioners filed the petition in relation Mr. Zaldivar’s due process rights under the American Convention on Human Rights (hereinafter “American Convention”). They indicate that Mr. Zaldivar was charged with negligent homicide in relation to what they characterize as an accidental shooting. The charges were dismissed at first instance on the basis that the statute of limitations had expired. On appeal, Mr. Zaldivar was found guilty of homicide with intent and sentenced to an eight-year prison term. His subsequent appeals in cassation and on constitutional grounds were rejected in limine. The petitioners contend that because Mr. Zaldivar was unable to obtain a substantive review of his appeal, he was denied his right to appeal the judgment against him to a higher court. The petitioners further allege that the criminal proceedings against Mr. Zaldivar, which were initiated in 1988 and concluded over ten years later, were unduly prolonged. They consequently consider the State responsible for having violated its obligations under Article 8 of the American Convention.

3. The State, for its part, indicates that the proceedings against Mr. Zaldivar were conducted with full respect for his rights under national and international law. The State reports that, during the proceedings in the instant case, the criminal process was reformed precisely to ensure greater

efficiency and efficacy. During this reform, persons charged under the “old system,” such as Mr. Zaldívar, were given the option to remain with that system or to continue under the “new system.” The State reports that Mr. Zaldívar, an attorney versed in criminal law, knowingly opted to remain with the old system. Subsequent to his conviction at second instance, he nonetheless attempted to invoke the remedy of cassation provided under the new system, which was not applicable in his case and was accordingly rejected. His defense was unsuccessful in obtaining further review because it invoked domestic remedies without sufficient foundation. The State maintains that the duration of the proceedings was attributable to Mr. Zaldívar’s efforts to delay the prosecution so that the statute of limitations would expire.

4. As set forth below, pursuant to its examination, the Commission concluded that it is competent to take cognizance of the petitioners’ complaints concerning alleged violations of the right to judicial guarantees and protection set forth under Articles 8 and 25 of the American Convention, in connection with Articles 1(1) and 2, and that the case is admissible pursuant to the terms of Articles 46 and 47 of the American Convention. The Commission decided to transmit this Report to the parties, continue with the analysis of the merits of the case, and publish the Report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BEFORE THE COMMISSION

5. The Commission acknowledged receipt of the petition on December 9, 1999. It initiated processing on June 7, 2000, with a note to the State requesting that it present its response within 90 days. The State requested an extension by a note of September 11, 2000. The State’s response was received on November 6, 2000. The petitioners presented observations on that response on December 13, 2000. By note of December 21, 2000, the State presented a copy of the judicial case file.

6. By means of a note dated February 5, 2001, the State presented observations in response to the petitioners’ communication of December 13, 2000. Additional observations from the petitioners were received on March 12, 2001. On May 8, 2001, the State presented brief additional observations. On June 5, 2001, the petitioners presented a brief reiteration of their position, and finally, by notes of January 10 and August 26, 2003, requested updates on the status of the petition.

III. POSITION OF THE PARTIES

A. The Petitioners

7. The petitioners present two principal claims. The first is that they were unable to obtain review of Mr. Zaldívar’s conviction by a superior court in accordance with the terms of Article 8(2)(h) of the American Convention. The second is that Mr. Zaldívar was not tried within a reasonable time in accordance with the terms of Article 8(1).

8. The petitioners allege that, on December 11, 1988, Mr. Zaldívar was sitting in his parked car with his friend Daniel Eduardo Ravarini, when the latter reached into the glove compartment

and removed a pistol stored there. The petitioners indicate that Mr. Zaldívar was authorized to have the pistol, which he had obtained because he had been threatened. They further indicate that Mr. Zaldívar had a blood alcohol level between 2.21 and 2.50 mgrs. at the time of the facts. They report that both men apparently pulled at the weapon, and a shot was fired into Mr. Ravarini's abdomen. Mr. Zaldívar took him to a hospital a few blocks away, where he died of his injuries.

9. The petitioners affirm that those involved in the initial prosecution pursued it as a possible negligent homicide under the terms of Article 84 of the Criminal Code, which carried a penalty ranging from 6 months to three years in prison. They note that, in 1993, the prosecutor requested that Mr. Zaldívar be convicted under that heading and sentenced to three years. The judge at first instance dismissed the charge of negligent homicide in a judgment of April 30, 1997, on the basis that the statute of limitations had expired. The private claimant appealed that decision; the prosecutor did not.

10. The court of second instance, the Fifth Chamber of the National Court of Appeals, revoked the dismissal in a decision of February 23, 1998, and found Mr. Zaldívar guilty of simple homicide under Article 79 of the Criminal Code. The Chamber sentenced him to an eight-year prison term, and disqualified him from ever bearing arms.

11. During the prosecution, there were two changes in the legal regime that Mr. Zaldívar cites as particularly relevant. In 1994, reforms to the Constitutions were adopted. Those reforms accorded the American Convention constitutional hierarchy over national laws. The second change was the adoption of a new criminal procedure system, which contemplated an oral trial process and the remedy of an appeal in cassation. Defendants under prosecution at the time of this change were given the option to continue under the "old system" (Law 2372) or switch to the "new system" (Law 23.984). The petitioners report that Mr. Zaldívar opted to remain under the old system.

12. The petitioners indicate that, under the old system, the only remedy provided in the case of a conviction at second instance was the filing of an extraordinary appeal. In Mr. Zaldívar's case, even though he had opted to continue under the old system, his defense interposed both the extraordinary appeal provided for under the old system and an appeal in cassation (only provided under the new system), on the basis that the reforms to the Constitution giving hierarchy to the terms of the American Convention necessarily incorporated the possibility of appealing the sentence against him. The extraordinary appeal was accepted for processing by the Fifth Chamber, but was deemed inadmissible by the Supreme Court of Justice of the Nation. Their appeal in cassation was rejected in limine by the Fifth Chamber of the National Chamber of Appeals, the National Chamber of Criminal Cassation, and the Supreme Court of Justice of the Nation. All instances found that such an appeal was not contemplated under the procedural rules applicable to the case.

13. The petitioners describe a series of evaluations of fact and testimony in the sentence of conviction that they characterize as arbitrary and having required review on appeal. They further emphasize that the sentence of conviction for simple homicide was issued absent a proper evaluation of the element of intent. They indicate that the sentence states that the death occurred

“with or without intent” (“con intención de matar o sin ella”), thereby discarding the necessary element of intent and constituting judicial error.

14. The petitioners emphasize that the procedural norms under which Mr. Zaldívar was tried were applied in such a way as to deny any review of his conviction. They cite domestic case law including the Giroldi and Gorriaran decisions, in which they indicate that the Supreme Court itself recognized that the old system, which provided limited possibilities for extraordinary appeal, was unconstitutional for failing to guarantee the right to review set forth in Article 8(2)(h) of the American Convention. They maintain that this demonstrates that the remedy of cassation should have been made available in the instant case.

15. With respect to the claims of undue delay in the process, the petitioners recount that the criminal investigation commenced immediately after the December 11, 1988 shooting. The sentence at first instance dismissing the charges was issued on April 30, 1997. The sentence at second instance, convicting and sentencing Mr. Zaldívar, was issued on February 23, 1998. The last sentence issued by the Supreme Court in relation to the case was notified to the petitioners on May 27, 1999. According to the petitioners, the process lasted for over ten years and five months. They affirm that the delay was not attributable to the defense, but to due process violations attributable to the State. Finally, the petitioners affirm that the inability to obtain judicial review and the undue delay set forth prejudiced Mr. Zaldívar, and merit measures of compensation.

B. The State

16. The State maintains that Mr. Zaldívar benefited from all due process guarantees applicable under national and international law. The State notes that, during the pendency of the proceedings in his case, both the criminal procedure norms and the Constitution were modified (in 1992 and 1994, respectively) to enhance those protections and reflect the constitutional primacy accorded to the American Convention in domestic law.

17. The State rejects the petitioners’ characterization that the charge of homicide with intent was only introduced with the sentence of conviction. The State indicates that, from the beginning of the investigation the element of intent was under investigation.

18. While Mr. Zaldívar contends that he should have had access to the remedy of an appeal in cassation, the State underlines that this remedy did not exist at the time his prosecution was initiated. The remedy of cassation was only provided with the adoption of new procedural system. The State emphasizes that, during the proceedings against him, Mr. Zaldívar was given the option to elect between continuing the process under the “old system” (Law 2372) or switching to the reformed procedures of the “new system” (Law 23.984), and that he as a lawyer specializing in criminal cases freely elected to continue under the old procedural system.

19. The State notes that the courts could not accept the appeal he nonetheless filed in cassation because that would have meant applying a remedy not provided under the applicable law, and would consequently have implied usurping the power of the legislature rather than administering justice. The State considers that, when Mr. Zaldívar elected to continue

proceedings under the old system, he excluded himself from access to the remedy of cassation. The State considers that he cannot complain about being denied access to a remedy that he himself declined.

20. The State indicates that the old system provided for a remedy, namely an extraordinary appeal, before the Supreme Court of Justice of the Nation to challenge convictions issued by the Chamber of Appeals. Had Mr. Zaldívar's defense filed a properly founded and self-sustaining appeal under this heading, they would have been able to obtain review of the substance of their claims.

21. The State notes that, while Mr. Zaldívar cites the Girolodi precedent of the Supreme Court of Argentina as supporting his contention that he should have had access to the remedy of cassation, the Girolodi case had been prosecuted under the new procedural system, so that the claimant in that case had been procedurally entitled to file an appeal in cassation. That was not the case for Mr. Zaldívar, pursuant to his own election under the law. The State further notes that, according to the jurisprudence applicable to the system under which Mr. Zaldívar was prosecuted (as stated by the Supreme Court in the Jáuregui case), the need for an instance of review ("doble instancia") under Article 8(2)(h) of the American Convention was satisfied by the possibility of filing an extraordinary appeal.

22. With respect to the duration of the proceedings, the State maintains that the competent authorities responded as required under the law. The investigation was initiated immediately, but the proceedings were interrupted by a series of motions and appeals by the defense. The State essentially indicates that the proceedings were prolonged because of delaying tactics attributable to the defense, which was seeking to extend the proceedings so that the statute of limitations would expire.

23. The State underlines that Mr. Zaldívar is a fugitive, having failed to present himself to comply with the sentence issued against him. It questions whether, having failed to meet his duties as a citizen to obey the law, as set forth under Article XXXIII of the American Declaration, Mr. Zaldívar retains the same right to petition under the American Convention.

24. The State maintains that the petition is inadmissible because it was filed outside the six-months time limit specified in Article 46(1)(b) of the American Convention. The State indicates in this regard that Mr. Zaldívar filed two sets of appeals – the extraordinary appeal provided under the old system applicable to his case, and the appeal in cassation provided under the new system, which was not applicable in his case. The State considers that the extraordinary appeal provided for under the old system was procedurally applicable in Mr. Zaldívar's case, and that proceedings to obtain it were completed in 1998. The State argues that the appeal seeking the remedy of cassation provided under the new system was procedurally inadmissible, and should not be taken into account for the purpose of calculating compliance with the time limit set forth in Article 46(1)(b) of the American Convention.

25. The State further maintains that, were the Commission to admit the petitioners' claims, it would be required to act as a fourth instance of review of decisions made by its national tribunals

acting within the sphere of their competence. For this reason as well, the State considers that the petition should be deemed inadmissible.

IV. ANALYSIS OF ADMISSIBILITY

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

26. In accordance with the terms of Article 44 of the American Convention, the petitioners have standing to present a petition before the Commission. The petition under study identifies as the alleged victim an individual with respect to whom the Argentina State had committed itself to respect and guarantee the rights protected in the American Convention. With respect to Mr. Zaldívar's status as a fugitive, as the State observed, the American Declaration of the Rights and Duties of Man does set forth in Article XXXIII that every person is under the duty to obey the law. Respect for the rule of law is a necessary cornerstone of any democratic system. At the same time, the American Convention and the Commission's Rules expressly provide that "any person" may file a petition before the IACHR, and the protections set forth in the Convention apply to "all persons." With respect to the State, the Commission observes that Argentina is a State Party to the American Convention, having duly deposited its instrument of ratification on September 5, 1984. Accordingly, the Commission has the competence *ratione personae* to examine the claimed presented.

27. The IACHR has jurisdiction *ratione loci* to consider the petition, because the alleged violation of rights protected in the American Convention occurred within the territory of Argentina, a State party to that treaty. The Inter-American Commission also has jurisdiction *ratione temporis* because the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State at the time the alleged events took place. Finally, the Commission has jurisdiction *ratione materiae* because the petition complains of violations of human rights protected by the American Convention.

B. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

28. Article 46 of the American Convention specifies that, in order for a case to be admitted, "remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement exists to ensure the state concerned the opportunity to resolve disputes within its own legal framework.

29. The submissions of the parties and the copy of the judicial file before the IACHR indicate that the remedies provided under law to challenge Mr. Zaldívar's conviction were invoked and processed through all instances of judicial review. The State has never alleged that there were additional or alternative remedies that should have been invoked. The State does indicate at one point in its pleadings that, had Mr. Zaldívar's defense presented a more meritorious case when filing their request for an extraordinary appeal, the substance of their claims would have been

reviewed. That contention raises questions about the scope and conditions for obtaining review of a sentence by a superior court, and, as such, is material for review at the merits stage.

30. The parties filed no arguments concerning the requirement of exhaustion of domestic remedies and the claims of undue delay also placed before the Commission in this case. The Commission thus considers that the State either has no objections in this regard, or waived its right to raise those at the correct procedural opportunity.

31. The parties disagree as to precisely when domestic remedies were exhausted for the purposes of determining compliance with the rule requiring timely filing before the IACHR. The copy of the judicial file before the IACHR confirms that the following procedural steps were taken during the prosecution of Mr. Zaldívar:

a. On April 30, 1997, the Juzgado Nacional en lo Criminal de Sentencia letra “Z” declared the criminal action initiated against Mr. Zaldívar to have been extinguished because the statute of limitations had expired, and definitively dismissed the charge against him for the crime of negligent homicide. In response to the appeal brought by the private claimant (Mr. Ravarini’s widow) against the dismissal of the charges, by decision of February 23, 1998, the Sala Vta de la Cámara Nacional de Apelaciones en lo Criminal y Correccional de la Capital Federal resolved to revoke the dismissal and convict Mr. Zaldívar for simple homicide.

b. On March 10, 1998, Mr. Zaldívar’s defense filed both an appeal in cassation, and an extraordinary constitutional appeal before the Fifth Chamber of the National Chamber of Appeals that had issued the sentence of condemnation. On March 12, 1998, the Fifth Chamber rejected the appeal in cassation, indicating that such an appeal was not provided for under the procedural system applicable to the case. The defense then filed a recurso de hecho before the National Chamber of Criminal Cassation, processed by the Fourth Chamber, which issued a judgment on May 11, 1998, affirming the rejection of the appeal in cassation on the same basis as that given by the Fifth Chamber of the National Chamber of Appeals.

c. In response to the recurso extraordinario filed by the defense, in a judgment of May 27, 1998, the Fifth Chamber of the National Chamber of Appeals decided that the appeal placed in question the impartiality of the administration of justice, and consequently accepted it and ordered that the proceedings be transmitted to the Supreme Court of Justice of the Nation for review. The Supreme Court rejected the appeal as inadmissible by means of a decision of October 20, 1998.

d. Parallel to this, the defense filed a constitutional challenge to the rejection of the appeal in cassation before the National Chamber of Criminal Cassation. In its decision of December 28, 1998, the National Chamber of Criminal Cassation determined that the sentence of conviction had been challenged via an extraordinary appeal that had been accepted by the tribunal a quo, but declared inadmissible by the Supreme Court. Accordingly, the Chamber decided that the sentence of conviction had become final as of the date of the Supreme Court’s dismissal, namely October 20, 1998, and was susceptible to no further appeals. Finally, the defense presented a direct challenge against the foregoing decision by filing an extraordinary appeal before the Supreme Court. This was rejected as inadmissible on May 27, 1999.

32. The Commission deems the requirement of exhaustion of domestic remedies in accordance with general principles of international law to have been met. The arguments with

respect to precisely when those remedies were exhausted for the purposes of calculating compliance with the requirement of timely filing will be analyzed in the following section.

2. Time period for submission of the petition

33. In accordance with Article 46(1)(b) of the Convention, a petition must be presented in a timely manner to be admitted, namely, within six months from the date on which the complaining party was notified of the final judgment at the domestic level. The six months rule ensures legal certainty and stability once a decision has been taken.

34. In the instant case, the State contends that the final judgment for purposes of calculating compliance with this requirement was the October 20, 1998 decision of the Supreme Court rejecting the extraordinary constitutional appeal filed against Mr. Zaldivar's conviction. The State argues that: for purposes of domestic law, the conviction became final on that date; domestic law recognized no further appeals at that point; and, further remedies were invoked only to bring the filing of the petition within the terms of compliance with Article 46(1)(b) of the Convention. The petitioners maintain that they properly invoked the remedy of an appeal in cassation as a further means to seek Mr. Zaldivar's right to review under Article 8(2)(h) of the American Convention. Their attempts to seek review in cassation concluded with the May 27, 1999, rejection of the Supreme Court, a decision notified to Mr. Zaldivar on May 31, 1999. They maintain that the petition was received by the Commission on October 28, 1999, prior to the expiration of six months.

35. The applicable rules and practice indicate that the six months limitation is calculated from the date of notification of the final judgment on the last effective or at least potentially effective remedy. In the present case, what the petitioners placed at issue before the domestic courts with their appeals was the contention that Mr. Zaldivar had the right to have his conviction reviewed by a superior instance. They sought to obtain review through two procedural tracks, extraordinary constitutional review and review in cassation.

36. At the time Mr. Zaldivar was prosecuted, the procedural system provided for a first instance followed by an instance of appeal. The appellate instance could be invoked either by a defendant convicted at first instance, or by a prosecutor or private claimant who had been unable to obtain a conviction. In cases such as Mr. Zaldivar's, in which a conviction was first issued on appeal, the procedural system provided only one possible avenue of further appeal, the extraordinary appeal under Article 14 of Law 48 of the National Code of Civil and Commercial Procedure. The nature of that appeal was limited to certain questions of law and subject to a request for leave. In the instant case, the request for leave was granted by the sentencing court, but the appeal was rejected as inadmissible by the superior court.

37. The petitioners then attempted to invoke the remedy of an appeal in cassation. Although that remedy was not provided for in the procedural system under which he was tried, the petitioners considered that, given Argentina's status as a party to the American Convention, and given that the Convention had been accorded primacy over domestic law in the Constitution of 1994, they were justified in invoking another procedural mechanism to seek access to review of Mr. Zaldivar's conviction.

38. The Commission recalls that, as it has noted in previous cases, the remedy of cassation was adopted in the Argentine penal system precisely in order to amplify the possibilities for review by a superior instance as required under the American Convention.[FN1] It may further be recalled that the Supreme Court of Argentina, in its judgment on the Giroldi Case, indicated that the extraordinary appeal provided for under Article 14 of Law 48 did not meet the conditions necessary to safeguard the right to appeal set forth in the American Convention. The Supreme Court further noted that, in its role as the guarantor of one of the branches of the federal government, it was charged with ensuring the application of the international treaties to which the country has committed itself.[FN2]

[FN1] See for example, IACHR, Report N° 55/97, Abella (“La Tablada”), Nov. 18, 1997, paras. 250-273; see also IACtHR, Maqueda Case, Resolution of Jan. 17, 1995, Ser. C No. 18.

[FN2] See La Tablada, supra, para. 271, citing the text of the Giroldi judgment, No. 32/93, judgment of April 7, 1995.

39. Given that access to review by a superior instance is precisely a principal claim at issue in this case, the Commission finds that it was not unreasonable for the petitioners to have attempted to invoke both the extraordinary appeal and the appeal in cassation in their efforts to obtain it. Although the appeal in cassation was rejected as inapplicable at all instances, the Commission notes that the Prosecutor for the Chamber of Cassation considered that it should have been accepted on the basis of the right to appeal a sentence set forth in the American Convention, and the fact that Mr. Zaldivar had been unable to obtain any review of the merits of his claims. The Commission also notes that, given the primacy accorded to obligations under the American Convention in the Constitution of 1994,[FN3] it was not unreasonable for the petitioners to invoke a remedy they considered to correspond to a right protected under that Convention. Further, given that the filing of a petition before the inter-American system is a complementary mechanism, it was not unreasonable for the petitioners to pursue these alternative procedural mechanisms to ensure that State had a full opportunity to address and resolve their claims prior to invoking international mechanisms of protection. Accordingly the Commission considers that the presentation of the petition, received on October 29, 1999, satisfies the requirement of filing within six months of the final judgment.

[FN3] The Constitution of Argentina that entered into force on August 23, 1994 gave constitutional status to the American Convention on Human Rights, Article 75, para. 22.

3. Duplication of proceedings and res judicata

40. Article 46(1)(c) sets forth that admission of a petition is subject to the requirement that the subject “is not pending in another international proceeding for settlement,” and Article 47(d) of the Convention stipulates that the Commission shall not admit a petition which “is substantially the same as one previously studied by” it “or by another international organization.”

In the present case, the parties have not claimed and the proceedings do not indicate the existence of either of these circumstances of inadmissibility.

4. Characterization of the facts alleged

41. Article 47(b) of the American Convention sets forth that allegations that do not state facts tending to establish a violation shall not be admitted. In this regard, the Commission finds in the present case that the petitioners have stated claims that, if consistent with other requirements and shown to be true, could tend to establish the violation of rights protected under the American Convention. The criterion for assessing this is different from that which must be followed in deciding the merits of a complaint. The Commission must conduct a *prima facie* assessment to determine whether the complaint demonstrates an apparent or potential violation of a right protected by the Convention. This is a summary analysis, and does not imply any prejudgment as to the merits of the dispute.

42. The State argues that review of this petition would require the Commission to act as a “fourth instance” beyond the sphere of its competence. In this sense, it is true that the IACHR is “not competent to review judgments handed down by national courts acting within the scope of their jurisdiction and observing due judicial guarantees.”[FN4] More specifically, the Commission “cannot serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction.”[FN5] However, within its mandate to ensure the observance of the rights set forth in the Convention, the Commission is necessarily “competent to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of the right to a fair trial,” or alleges other violations of rights protected thereunder.[FN6] The Commission finds in the present case that the petitioners have presented allegations concerning the right to judicial guarantees, more specifically the right to be tried within a reasonable time and to appeal a judgment to a higher court, which could tend to establish the violation of rights protected under Articles 8 and 1(1) of the American Convention.

[FN4] See generally, IACHR, Report N° 101/00, case 11.630 Arauz et al. (Nicaragua), Oct. 16, 2000, in Annual Report of the IACHR 2000, para. 56, citing IACHR, Report N° 39/96, case 11.673 Marzioni (Argentina), Oct. 15, 1996, in Annual Report of the IACHR 1996, paras. 50-51.

[FN5] IACHR, Report N° 7/01, case 11.716 Güelfi (Panama), Feb. 23, 2001, in Annual Report of the IACHR 2000, para. 20, quoting Marzioni, *supra*, para. 51.

[FN6] *Id.*

43. Bearing in mind the claims raised concerning the right to judicial protection, guarantees and review, and the principle of *jura novit curia*, in its decision on the merits the Commission will, to the extent relevant, also examine the potential application of Article 25 of the American Convention, concerning the right to judicial protection, and Article 2 of the American Convention, concerning the obligation to give domestic legal effect to the rights set forth therein.

V. CONCLUSIONS

44. The Commission concludes that it is competent to take cognizance of the instant case and that the petition is admissible, pursuant to Articles 46 and 47 of the American Convention.

45. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present case admissible with respect to the alleged violation of the rights recognized in Articles 8, 25, 1(1) and 2 of the American Convention.
2. To notify the parties of this decision.
3. To continue with the analysis of the merits of the case.
4. To make this report public, and publish 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 Washington, D.C., on the 22nd of February, 2005. (Signed): José Zalaquett, President; Clare Kamau Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioners Evelio Fernández Arévalo, Paulo Sérgio Pinheiro, Freddy Gutiérrez Trejo, and Florentín Meléndez.