

Institution:	Inter-American Commission on Human Rights
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Title/Style of Cause:	Carlos Iparraguirre Blondet and Luz Amada Vasquez Vasquez de Iparraguirre v. Peru
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez. In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Susana Villaran, of Peruvian nationality, did not participate in the debate or the decision in this case.
Dated:	9 March 2005
Citation:	Iparraguirre Blondet v. Peru, Petition 792/01, Inter-Am. C.H.R., Report No. 39/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
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I. SUMMARY

1. By petition submitted to the Inter-American Commission on Human Rights (“the IACHR” or “the Commission”) on November 26, 2001, Carlos Iparraguirre Blondet and Luz Amada Vásquez Vásquez de Iparraguirre (hereinafter “the petitioners”) alleged that the State of Peru (hereinafter “Peru,” “the State,” or “the Peruvian State”) violated, the right to a fair trial, the right to private property, and the right to judicial protection enshrined in Articles 8, 21, and 25 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), respectively, to the detriment of the community property constituted pursuant to their union in marriage. The violations alleged are related to the unfavorable result of several judicial proceedings brought by the petitioners to recover a property acquired in 1971, property rights over which were granted to Messrs. Teodoro Waldir Vidal Herrera and Antonio Ketín Vidal Herrera as the result of a judicial proceeding claiming property rights through adverse possession (*prescripción adquisitiva de dominio*).

2. The State argues that in the judicial proceedings brought by the petitioners, due process guarantees were respected, and that the fact that the decisions handed down in those proceedings were contrary to their claims does not mean that there has been a violation of the American Convention.

3. In this report, the Commission analyzes the information available and concludes that the facts alleged do not tend to establish a violation of the American Convention. Accordingly, it

finds the petition inadmissible for failure to comply with the requirement in Article 47(b) of that Convention, and other requirements, and resolves to notify the parties of this decision, to publish this report, and to include it in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

4. The Commission received the complaint from Carlos Iparraguirre Blondet and Luz Amada Vásquez Vásquez de Iparraguirre on November 26, 2001, assigned it number 792/2001, and acknowledged receipt of it on February 6, 2002.

5. By note of March 8, 2003, the petitioners sent additional information. On July 14, 2003, the Commission transmitted the pertinent parts of the complaint to the Peruvian State, and gave it two months to submit its response, in keeping with Article 30(3) of the Commission's Rules of Procedure.

6. On October 3, 2003, the State sought additional time for sending the information requested by the IACHR. On October 8, 2003, the Commission informed the State that it had been granted a two-month extension.

7. The State sought a new extension on December 9, 2003, which was granted by the Commission for an additional two months by note of December 19, 2003.

8. On February 20, 2004, the State filed its response and attached Report No. 20-2004-JUS/CNDH-SE, prepared by the Executive Secretariat of the National Human Rights Council (Consejo Nacional de Derechos Humanos). On March 23, 2004, the Commission transmitted the pertinent parts of the State's report to the petitioners, giving them one month to submit their observations. The petitioners' response was received at the Commission on July 21, 2004.

9. On November 24, 2004, the Commission transmitted to the Peruvian State the pertinent parts of the additional information forwarded by the petitioners on July 21, 2004, asking it to submit any observations it considered pertinent within one month.

III. THE PARTIES' POSITIONS

A. The petitioners' position

10. The petitioners allege that the State, through the Judiciary and the Registry Office (Oficina Registral) of Lima and Callao, has unjustly dispossessed them of the property right lawfully acquired over lot No. 8, Square "A," located at Avenida La Mar, district of Pueblo Libre, province and department of Lima, in violation of the right to due process and the right to judicial protection. They adduce that the violation of the property right occurred as the result of an adverse possession proceeding (juicio de prescripción adquisitiva de dominio) conducted and resolved in violation of procedural and substantive laws, and other administrative and judicial proceedings by which the petitioners sought, to no avail, to overturn the outcome of the first one.

11. Based on what the petitioners have indicated, said property was acquired pursuant to a sales contract entered into with the company “Cueva S.A.” on June 30, 1971. On July 15, 1971, the notarial entry of sales contract was signed, and, on February 22, 1990, the official public document (escritura pública) was signed before notary Percy González Vigil. The petitioners state that on August 8, 1990, they requested that the deed be entered in the Property Registry, but that the request was rejected based on the argument that the seller, “Cueva S.A.,” had dissolved in 1983.

12. The petitioners adduce inequality in the criteria used by the Registry of Real Property, on denying their request for entry, and admitting instead the entry of the property by Antonio Ketín Vidal Herrera. They indicate that on August 10, 1992, i.e. two-and-a-half years after they signed the deed of transfer for lot 8-A, Mr. Antonio Ketín Vidal Herrera and the company Cueva S.A. signed the deed of transfer of the property identified as lot 7-A, which borders the land acquired by the petitioners. They adduce that on August 28, 1992, and October 15, 1992, Mr. Vidal Herrera submitted his request for the entry of that deed, and that the request was rejected by the Property Registry on those occasions for the same reason the entry submitted by the petitioners had been denied, i.e. because the seller Cueva S.A. had already dissolved. Nonetheless, after a third effort on November 5, 1992, the Property Registry not only did not observe Vidal Herrera’s title, but proceeded to enter it, in violation of the General Regulation of the Public Registries. The petitioners allege that the regulation was applied strictly to them, but not to Peruvian National Police General Antonio K. Vidal Herrera. They argue that in the case of Peruvian National Police General Antonio K. Vidal Herrera, the Property Registry proceeded to enter the deed without taking into account that the seller company had already dissolved and that the sales contract had been signed by only one of the spouses, who did not have the capacity to dispose of their collective property without the other’s signature. The petitioners mention that the entry of the title of Antonio K. Vidal Herrera, despite the flaws mentioned, shows that there was arbitrary and unequal treatment. They conclude by alleging that the Peruvian State acted in violation of the law on according to them treatment different from that given the other citizens who also sought to enter titles affected by identical problems.

13. In July 1992, as the petitioners note, when Carlos Iparraguirre went to the lot to clear it, he saw that a workshop was operating on his lot, owned by brothers Teodoro Waldir Vidal Herrera and Antonio Ketín Vidal Herrera. The petitioners contacted a man by the last name of Tamariz, who informed them that those persons were actually the owners of lot A-7; he acknowledged that the petitioners’ lot had been occupied by error, and he offered to solve the problem by swapping lots. That operation never took place.

14. The petitioners note that in response to the proposal to swap lots, made first by Mr. Tamariz and later by Mr. Teodoro Vidal Herrera, they went to the offices of Cueva S.A., where they were informed that Mr. Antonio Vidal Herrera had only purchased lot 21 of square “F,” and not lot 7 of square “A,” which had been sold to Luis Octavio Lecca Calderón and Cecilia Caridad Taber Santa.

15. The petitioners allege that, as their personal efforts were fruitless, they decided to turn to the authorities. They went first to the police station of Pueblo Libre in the first days of August 1992, but the complaint was rejected, as it was not the appropriate remedy. On August 7, 1992,

they turned to the local government (Municipalidad Distrital) of Pueblo Libre, alleging usurpation of property by Antonio Vidal Herrera and his brother, Waldir Vidal Herrera. The local government rendered a decision on October 23, 1992, determining that the Bureau of Revenue (Dirección de Rentas) should be in charge of inspecting to ensure that third persons not submit sworn statements of the property tax with respect to Lot 8, La Mar district, Pueblo Libre.

16. On August 7, 1992, Carlos Iparraguirre lodged a criminal complaint with the Office of the Attorney General against Antonio Vidal Herrera and Waldir Vidal Herrera for the crime of usurpation of property. On November 23, 1992, the Office of the Twelfth Prosecutor ruled not to formalize an indictment, and to archive the record, considering that the elements of the crime of usurpation were not shown, i.e., dispossession and intent. The petitioner brought a complaint against this resolution. The complaint was declared well-founded by resolution of August 6, 1993, which ordered that the steps necessary for clarifying the facts must first be exhausted. When the new steps had been taken, on February 22, 1994, the Office of the Twelfth Prosecutor resolved to archive the complaint with prejudice, based on the argument that the facts shown did not make out any of the conditions of Article 202 of the Criminal Code.[FN2]

[FN2] Article 202, Criminal Code of Peru – Usurpation. The following shall be repressed by deprivation of liberty for not less than one year nor more than three years:

1. One who, to appropriate for himself or herself all or part of a real property, destroys or alters the boundaries thereof.
 2. One who, by violence, threat, deceit, or abuse of trust, dispossesses another, in full or in part, of the possession or tenure of a real property, or of the exercise of a real property right.
 3. One who, by violence or threat, disturbs the possession of a real property.
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17. The petitioners note that on December 9, 1994, Antonio Ketín Vidal Herrera filed an action for compensation against them for the harm caused in the wake of the criminal complaint of usurpation. The complaint was declared unfounded by the Provisional Judge for Civil Matters of Lima, by resolution No. 27 of August 21, 1997. The decision was affirmed by the Civil Chamber of the Superior Court of Justice of Lima of June 25, 1998. Those rulings had recognized the good faith of the petitioners in the judicial actions brought to vindicate their right over the property.

18. The petitioners also note that on November 4, 1992, they initiated a process of regulating the chain of title before the Fourteenth Civil Judge of Lima as a result of the rejection of the entry in the Registry of Real Property of Lima, due to the seller Cueva S.A. having dissolved. That court, by resolution No. 13 of December 29, 1994, ruled that the action was admissible, and declared the petitioners to be the owners of the lot identified as lot 8 of square “A,” District of Pueblo Libre. This judgment was forwarded for consultation to the Superior Court of Lima, which, on September 15, 1996, issued a resolution approving the judgment of first instance. The petitioners allege that this judgment would not be entered in the Public Registries given that when they submitted their request, the judgment of prescription favoring Messrs. Vidal Herrera had already been entered. They state that the excessive delay in the procedure to clarify the chain of title caused them grave harm, on making way in the Registry for the entry of the judgment of

the civil court that declared that the title to the lot they owned had vested in Teodoro Waldir Vidal Herrera and Antonio K. Vidal Herrera by adverse possession.

19. On December 2, 1994, the petitioners also filed a claim before the Public Registries for the unlawful entry showing as the owners of lot 8-A Teodoro Vidal Herrera, ordered pending the final outcome in the adverse possession proceeding. As grounds for that claim, the petitioners invoked the fraud committed in the adverse possession proceeding, alleging that it was processed without them having knowledge, and knowing that they were the legitimate owners of the lot property rights in which were sought through adverse possession. The complaint was rejected by the Chief of the Registry Office of Lima and Callao on May 17, 1995. The petitioners appealed this resolution before the National Superintendency of Public Registries, which ruled on January 11, 1996, finding the appeal unfounded, and thereby exhausting administrative remedies.

20. The petitioners said that on August 26, 1992, Teodoro Waldir Vidal Herrera and Antonio K. Vidal Herrera went before the Fourth Civil Judge of the Superior Court of Justice of Lima requesting recognition of their property right, by reason of adverse possession, over lot 8, square "A," located at Avenida La Mar of the District of Pueblo Libre. The complainants allege that they set this proceeding in motion knowing full well that the petitioners were the owners of the property. In this respect, they indicate that, prior to the filing of that action, the petitioners had met personally with Teodoro Waldir Vidal Herrera to inform him of the problem with the property; had lodged a criminal complaint for usurpation of property before the Office of the Criminal Prosecutor, of which Messrs. Vidal Herrera were aware; and had lodged a complaint before the local government (Municipalidad Distrital) of Pueblo Libre.

21. The petitioners allege that this adverse possession proceeding went forward in violation of procedural and substantive laws. They adduce that the adverse possession claim filed by Messrs. Vidal Herrera did not meet the requirements provided for in the Code of Civil Procedure. In addition, they note the existence of a series of irregularities during the proceeding with the aim of preventing the adverse possession claim from becoming public knowledge. The petitioners mention, for example, that the claim was not made known to the person in whose name the right was entered in the Public Registries, i.e. Cueva S.A. In this respect, they state that Messrs. Vidal Herrera intentionally reported an incorrect address. They also indicate that the claim had to have been published for five days in "El Peruano" and in another large-circulation daily newspaper, but that the publication was for only three days, and only in "El Peruano." The petitioners allege that despite the flaws noted, on August 19, 1993, the Fourth Civil Judge of Lima handed down a judgment favorable to the action, and declared that Messrs. Teodoro Waldir Vidal Herrera and Antonio Ketín Vidal Herrera were the owners of lot 8, square "A," located in the La Mar sector of the District of Pueblo Libre.

22. The petitioners argue that with this judgment, that judge validated the arbitrary deprivation of their property right over the lot in question. They argue that the judgment declared Messrs. Vidal Herrera to be the owners, without them having proven the necessary time of possession, legitimate title, or good faith required by the Civil Code.

23. The record in the adverse possession action was forwarded for consultation to the Second Civil Chamber of the Superior Court of Lima, which on June 9, 1994, handed down a judgment

affirming the judgment of first instance. The petitioners allege that they learned of the adverse possession proceeding by accident in December 1994. On December 12, 1994, they went to the Fourth Civil Judge of Lima requesting that the notary office to which the record had been forwarded for formalization of the deed of transfer be notified, so that it could be returned to the Fourth Civil Judge. The petitioners also requested that the Public Registries be given notice, ordering the suspension of the entry in the name of Teodoro Waldir Vidal Herrera.

24. The Fourth Civil Judge of Lima ordered that Notary Public Jorge E. Orihuela Iberico be notified, ordered the return of the record in the adverse possession proceeding, and the forwarding to the complainants of the brief filed by the petitioners. The petitioners indicate that the judge merely requested that the notary return the record, but intentionally failed to give notice to the Public Registries ordering suspension of the entry of the deed of transfer. They argue that this omission favored Messrs. Vidal Herrera, who took advantage of this irregularity to obtain the entry in their name of the title to property over lot 8-A, notwithstanding the allegations of fraudulent actions brought by them in this and other administrative and judicial proceedings.

25. On January 3, 1995, the petitioners filed a new brief with the Fourth Civil Judge of Lima requesting that everything done be annulled, and arguing in the last part of their brief “that this whole confabulation carried out intentionally and deliberately behind the backs of the true owners, with no option for defense, had a single purpose, to dispossess and take away, through the courts, a property belonging to another, fully aware of who the real owners are.” On April 28, 1995, after the motion for nullity was forwarded to the complainants, that Judge issued a judgment declaring the nullity sought to be procedurally flawed, and safeguarding the appellants’ right to uphold their claims through an action before the appropriate forum. The Judge stated as grounds for the decision that one could not raise merits issues in a non-contentious proceeding processed in keeping with the procedural rules that governs its nature, as was the adverse possessions proceeding; that claim, he argued, could only be demanded through an action claiming title to real property (una acción de reivindicación de inmueble).

26. The petitioners note that on December 14, 1995, following the indications of the judge in the adverse possession proceeding for upholding their rights, they filed an action affirming their claim, seeking annulment of the transfer, annulment of the deed of title, and compensation against Teodoro Waldir Vidal Herrera. On January 12, 2000, the Twenty-Fifth Civil Judge of the Superior Court of Justice of Lima declared the action procedurally unfounded. The judgment was affirmed August 16, 2000, by the chamber known as the Sala de Procesos de Conocimiento y Abreviado, Sub-Chamber “A” of the Superior Court of Lima, which argued that, in keeping with Article 927 of the Civil Code[FN3], a claim cannot be filed against one who acquired a property by adverse possession. In addition, the judges noted that the nullity of the judgment that found in favor of adverse possession could only be obtained by a proceeding for nullity of fraudulent res judicata, as established in Article 178 of the Code of Civil Procedure.[FN4]

[FN3] Article 927, Civil Code of Peru – Action to obtain title

An action to obtain title shall not prescribe. It shall not lie against one who acquired the property through an adverse possession proceeding.

[FN4] Article 178, Code of Civil Procedure of Peru – Nullity of fraudulent res judicata

Up to six months from the date executed, or if it has become res judicata, if not executable, one may bring an action, through a proceeding to decide a legal issue, seeking the nullity of a judgment or of an agreement of the parties approved by the judge that puts an end to the proceeding, alleging that the proceeding has been pursued with fraud, or collusion, negative affecting the right to due process, committed by one or by both parties, or by the judge, or by the judge and the parties. An action for nullity may be brought by the party or a third person not party to the proceeding who is considered directly harmed by the judgment, in keeping with the principles demanded in this Title.

27. The petitioners brought a motion for cassation against the judgments that declared procedurally unfounded the action to obtain title (demanda de reivindicación). They argued that while Article 178 of the Code of Civil Procedure provides that a third person not party to the proceeding may sue for annulment of fraudulent res judicata, this provision must be applied in keeping with Article 123 of the same code[FN5], which establishes that res judicata only reaches the parties, and third persons who were given notice with the action, which did not occur in the case of the adverse possession proceeding. On May 23, 2001, the Permanent Civil Chamber of the Supreme Court of Justice declared the motion for cassation to be unfounded.

[FN5] Article 123, Code of Civil Procedure of Peru – Res Judicata

A ruling becomes res judicata when:

- 1- Other means of challenge than those already resolved do not lie against it; or
- 2- The parties expressly waive pursuing means of challenge, or let the time periods run without bringing them.

Res judicata only reaches the parties and those who derive their rights from them. Nonetheless, it can extend to third persons whose rights depend on those of the parties or third persons on whose rights the parties depend, if they were given notice with the action.

28. In the opinion of the petitioners, Article 178 invoked by the judges was not applicable to their case, insofar as they were not given notice in the adverse possession proceeding. They allege that in keeping with Article 123 of the Code of Civil Procedure, they are not reached by the effects of the res judicata of the judgment handed down in the adverse possession proceeding and that, therefore, they would not request annulment of the fraudulent res judicata, provided for in Article 178 of the Code of Civil Procedure.

29. The petitioners indicate that on April 7, 1994, when the adverse possession proceeding of which they had no notice was still under way, they initiated a proceeding for eviction based on precarious occupation against Waldir Vidal Herrera and Antonio Ketín Vidal. They allege that the complainants acted in bad faith by omitting throughout the eviction proceeding the existence of an adverse possession judgment by which they had acquired property rights in the property that is the subject of the litigation. The petitioners note that just days before the issuance of the judgment in the eviction proceeding, the respondents informed the judge of the existence of the adverse possession judgment in their favor. The eviction action was finally declared unfounded

by the Eighteenth Civil Judge of Lima on April 10, 1995, based on the argument that the eviction was not the appropriate procedure for determining the property rights over a property with respect to which there were two titles. That judge, however, preserved the petitioners' right to uphold their claims in a manner in keeping with the law.

30. The petitioners conclude by stating that since 1992 they have been litigating unsuccessfully against Messrs. Vidal Herrera, who, using the position and influence of General Antonio Ketín Vidal Herrera, have succeeded in having the property right that properly vested in them not be recognized in any of the judicial proceedings they have initiated. They argue that the negative judgments in all the proceedings they have attempted to pursue have been handed down in violation of the due process guarantees provided for in Article of the Convention as well as the right to effective judicial protection recognized in Article 25 of the same human rights instrument, notwithstanding the continuous warnings they sounded in the different proceedings and actions brought by them.

B. The State

31. The State, in its response, submitted the list and records of the judicial and administrative proceedings set in motion by the petitioners in Peru, and notes that it has guaranteed the petitioners due process and judicial protection. It argues that in those proceedings, the procedural guarantees established in the Peruvian Constitution, the rules of civil law, and international human rights provisions have been respected.

32. The State concludes its report by stating that in the judicial proceedings, one of the parties always loses, without that necessarily implying the violation of a right guaranteed in the Convention.

IV. ANALYSIS

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

33. The Commission is competent to examine the subject matter of this complaint, which refers to an alleged violation of a right enshrined in Article 25 of the American Convention.

34. The petitioners are authorized by Article 44 of the American Convention to file complaints before the IACHR. The petition indicates as the alleged victims individuals with respect to whom Peru undertook to respect and ensure the rights enshrined in the American Convention. Accordingly, the Commission is competent *ratione personae* to study the petition.

35. The Commission is competent *ratione loci* to take cognizance of this petition insofar as it alleges violations of rights protected in the American Convention in the territory of a state party to that treaty.

36. The IACHR is competent *ratione temporis* insofar as the facts alleged in the petition took place when the obligation to respect and ensure the rights established in the American

Convention had already entered into force for the Peruvian State. The Peruvian State ratified the Convention on July 28, 1978. The complaint in question refers to events after the date of ratification of the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

37. Article 46 of the American Convention indicates:

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;

...

2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:

a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

38. The Commission observes that the State has recognized that domestic remedies have been exhausted with the rejection of the motion for cassation filed by the petitioners against the judgments of first and second instance that declared unfounded the action to obtain title brought by them.[FN6]

[FN6] Official Note No. 52-2004-DDHH/PJ of February 11, 2004, accompanied as an attachment to Report No. 20-2004-JUS/CNDH-SE of February 16, 2004.

39. From an analysis of the record, it appears that in effect, domestic remedies were exhausted with the rulings handed down in the proceeding to obtain title brought by the petitioners, specifically, with the judgment of May 23, 2001, issued by the Permanent Civil Chamber of the Supreme Court, which declared unfounded the motion for cassation brought by the petitioners.

40. While in such judgments it is noted that the issues set forth in the action to obtain title should have been raised through a proceeding for annulment of fraudulent *res judicata*, in keeping with Article 178 of the Code of Civil Procedure[FN7], the Commission refrains from ruling on the suitability of that remedy for satisfying the petitioners' claims, and on the

consequent obligation to exhaust it, since a pronouncement on its procedural soundness would imply establishing whether the declaratory procedure on adverse possession, was or was not binding on the petitioners given the nature of that action, as was understood by the Permanent Civil Chamber of the Supreme Court, when it declared the motion for cassation to be unfounded, insofar as that would be tantamount to a fourth instance assessment, which this Commission cannot do.[FN8]

[FN7] Article 178, Code of Civil Procedure of Peru: Nullity of fraudulent res judicata. "Up to six months from the date executed, or if it has become res judicata, if not executable, one may bring an action, through a proceeding to decide a legal issue, seeking the nullity of a judgment or of an agreement of the parties approved by the judge that puts an end to the proceeding, alleging that the proceeding has been pursued with fraud, or collusion, negative affecting the right to due process, committed by one or by both parties, or by the judge, or by the judge and the parties. An action for nullity may be brought by the party or a third person not party to the proceeding who is considered directly harmed by the judgment, in keeping with the principles demanded in this Title.

[FN8] IACHR. Report N° 39/96, Case 11,673, (Marzioni- Argentina), October 15, 1996.

41. The Commission considers, accordingly, as proven and not controverted by the parties that the domestic remedies were exhausted, and it concludes, therefore, that the instant petition complies with the admissibility requirement contained in Article 46(1)(a) of the Convention.

2. Time period for submission

42. Article 46 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:

...

b. 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.

43. The petition was received at the IACHR on November 26, 2001, pursuant to the seal of receipt of the Executive Secretariat.

44. The notification of the last judgment handed down in the domestic courts, i.e. of the judgment of May 23, 2001, by the Permanent Civil Chamber of the Supreme Court of Lima that declared unfounded the motion for cassation filed by the petitioners, was made on July 13, 2001.

45. Therefore, considering the time transpired from the date of that notice to the date the petition was filed before the Commission, and mindful that the State has not controverted compliance with this requirement, the Commission concludes that the petition was submitted

within the six-month period. Accordingly, the admissibility requirement at Article 46(1)(b) of the Convention was met.

3. Duplication of procedures and res judicata

46. From the record it does not appear that there is any proceeding pending before another international organ with respect to the subject matter of the instant petition, nor that it substantially reproduces any petition examined already by the Commission. Accordingly, the Commission concludes that the requirements established by Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the facts alleged

47. Article 47(b) of the Convention establishes that the Commission will declare inadmissible a petition when it does not state facts that tend to establish a violation of the rights guaranteed in the Convention.

48. The petitioners allege that the Peruvian State violated, to the detriment of the community property constituted pursuant to their union in marriage, Articles 21, 8, and 25 of the American Convention, on depriving them, through an irregular adverse possession proceeding, their property right in a real property, and on rejecting the actions successively brought by them in order to remedy the irregularities committed in that process.

49. The Commission shall proceed, then, to analyze whether the facts alleged here constitute a violation of the articles of the Convention invoked by the petitioners.

50. In the instant case, Messrs. Teodoro Waldir Vidal Herrera and Antonio Ketín Vidal Herrera purchased the property rights in the real property title to which is invoked by the petitioners pursuant to a court judgment handed down in an adverse possession proceeding, i.e. in a case and in the manner established by the civil legislation in force in Peru.[FN9]

[FN9] Article 950, Civil Code of Peru – Adverse possession (Prescripción adquisitiva)
Real property is acquired by adverse possession by means of continuous, peaceful, and public possession as owner for ten years. It is acquired at five years when there is legitimate title and good faith.

51. The petitioners allege that said judgment constitutes a judicial dispossession because it was handed down as the result of an adverse possession proceeding in which the judicial guarantees enshrined in Article 8 of the Convention were not respected. They refer specifically to a series of alleged irregularities that occurred during that proceeding, in order to avoid the publicity of the request for a finding of adverse possession required by law, in particular, in order to keep the real owners of the property from learning of the adverse possession claim.

52. On this point, the Commission considers that it cannot get into an analysis of those irregularities, as such an analysis would entail an interpretation of the relevant procedural provisions for the purpose of determining whether they were or were not applied correctly by the domestic courts. A review of this nature would imply turning the Commission into a fourth instance, especially if one considers that the petitioners sought to cure those irregularities through domestic procedural remedies that were declared procedurally unfounded within the proceeding in which they were pursued, and through new proceedings pursued for the purpose of overturning the result of the first one. The national jurisdiction understood, then, that the petition had not elected the suitable judicial remedy for overturning the judgment in the adverse possession proceeding that declared that property rights in the real property allegedly their own to vest in the Vidal Herrera brothers.

53. The petitioners further allege that the judgment of the Fourth Civil Judge of Lima found the owners to be Teodoro Waldir Vidal Herrera and Antonio Ketín Vidal Herrera without there being evidence or a legal basis for doing so, i.e., without them proving the time they possessed the property, legitimate title, or good faith, all required by Peru's Civil Code.

54. The Commission considers equally applicable to this argument the fourth instance formula, under which it cannot review the judgments issued by national courts acting within their jurisdiction, and applying the proper judicial guarantees, unless it finds a violation of one of the rights protested by the American Convention.[FN10] In other words, the petitioners' mere disagreement with the interpretation by the Peruvian judicial organs of the relevant legal provisions and with the weighing of the facts proven in the case does not suffice to show violations of the Convention. The interpretation of the law, the relevant procedure, and the weighing of the evidence is, among others, a function to be exercised by the domestic jurisdiction, which cannot be replaced by the IACHR.

[FN10] IACHR, Report N° 8/98, Case 11,671, Carlos García Saccone (Argentina), March 2, 1998, para. 53.

55. The Commission has held repeatedly in this respect:

Under the preamble of the American Convention on Human Rights, the protection that the organs of the inter-American system for the protection of human rights offers is intended to complement the protection afforded by the local courts. The Commission cannot take upon itself the functions of an appeals court in order to examine alleged errors of fact or law that local courts may have committed while acting within the scope of their jurisdiction, unless there is unequivocal evidence that the guarantees of due process recognized in the American Convention have been violated.[FN11]

[FN11] IACHR, Report N° 122/01, Petition 0015/00, Wilma Rosa Posadas (Argentina), October 10, 2001, para. 10.

56. The petitioners also allege a violation of Article 25 of the Convention, arguing the lack of effective judicial protection from the alleged injustice committed in the adverse possession proceeding.

57. Therefore, the Commission should consider whether, in the instant case, the petitioners' right to an effective judicial remedy, established at Article 25 of the Convention, has been violated.

58. From the information in the record, it appears that the petitioners had free access to the different domestic remedies for recovering the property the right to which they believe they were unjustly deprived of. The mere fact that the decisions have been adverse to them cannot be considered a violation of the right to judicial protection. In this respect, the Commission has established in other cases that "[t]he State's obligation to administer justice is a guarantee of the means but not of the outcome, hence, its duty is not breached just because the outcome does not satisfy all the petitioner's claims." [FN12]

[FN12] Id., para. 9.

59. The Commission notes that the central point discussed throughout the different proceedings initiated by the petitioners in the domestic jurisdiction to recover their ownership and possession of the property, title to which was granted to Messrs. Vidal Herrera pursuant to the court judgment, has been the adequacy of the procedural paths chosen by the petitions to satisfy their claims.

60. In effect, the Commission observes that the remedies and actions pursued by the petitioners to recover their property rights in the real property were considered formally inadequate for achieving that aim. The annulment of the procedures, proposed by the petitioners in the adverse possession proceeding, was rejected on April 28, 1995, by the Fourth Civil Judge of Lima, based on the argument that said remedy was procedurally unfounded for debating merits issues in a non-contentious proceeding. The eviction action was also declared procedurally unfounded on April 10, 1995, by the 18th Civil Judge of Lima, who understood that, there being a contradiction with respect to the ownership of the property, it was not proper to dispute the petitioners' claims in a proceeding such as one for eviction, whose purpose is limiting to restoring possession to one who shows that he or she unquestionably has the property rights. The action to obtain title brought by the petitioners was also declared procedurally unfounded in the first instance, on appeal, and by the Supreme Court. The judges said the basis for this finding is Article 927 of the Civil Code, according to which an action to obtain title may not be brought against one who acquires property rights through an adverse possession proceeding. In the proceeding to obtain title, the judges also indicated that the nullity of the judgment in the adverse possession proceeding could only be obtained through a proceeding for annulment of fraudulent *res judicata*, in keeping with Article 178 of the Code of Civil Procedure.

61. In view of the foregoing, the Commission observes that the issues raised by the petitioners would require the IACHR to review the weighing of the facts proven in the domestic jurisdiction, and the consequent interpretation of the civil and procedural laws applicable to the case in order to determine the procedural adequacy of the remedies pursued by the petitioners to satisfy their claims, which, as indicated supra 54, is not within its mandate.

62. Finally, based on what the petitioners indicated, the violations of Articles 21, 8, and 25 of the Convention would also relate to the irregular action of the Registry of Real Property on rejecting the requests for entry of the petitioners' title and admitting the requests submitted by Messrs. Vidal Herrera. In the opinion of the petitioners, the Registry Office of Lima and Callao applied different criteria, even though the same right was in question.

63. Having analyzed the petitioners' allegations as well as the initiatives the parties took at the Public Registries, written evidence attached to the petition, the Commission considers that it is not up to this human rights body to review the criteria used by the Registry Office of Lima and Callao. The entry of lot 8-A in the name of Messrs. Vidal Herrera occurred as the result of the judgment in the adverse possession proceeding. The petitioners, as appears from the documentation submitted to the Commission, pressed their claims before the Public Registries, and they were declared procedurally unfounded on May 17, 1995, by the Chief of the Registry Office of Lima and Callao, and on January 11, 1996 by the National Superintendency of Public Registries. The Commission understands that it is not up to it to review, whatever the domestic organ, the grounds used by those registry offices to reject the petitioners' complaint, the two times they went to demand that their property right be entered in the registry.

64. In summary, the Commission concludes that this and all the other claims of the petitioners for recovery of the real property that they purchased pursuant to a sales contract in 1971, were brought before the domestic courts for their consideration and decision; the domestic courts did not rule favorably on their claims, based on a reasonable interpretation of the relevant provisions of law, even if this is onerous for the interests of the petitioners vis-à-vis the criteria of justice applied by the domestic courts. A new analysis of the merits of this petition would turn the Commission into a "fourth instance," because it would be reviewing decisions adopted in a reasoned manner by competent organs within the sphere of powers granted by the law of the respondent State. The Commission considers that these circumstances do not make out any violations of Article 8, 21, or 25 of the Convention.

65. In view of the foregoing, the Commission concludes that it is not competent to rule on the merits, and, therefore, it refrains from analyzing them.

V. CONCLUSION

66. The IACHR has established in this report that the facts described by the petitioner do not tend to establish a violation of the American Convention, and, accordingly, declare the petition inadmissible for failure to comply with one of the requirements provided for in that Convention, it not being necessary, to continue with the consideration of the merits. Based on the arguments of fact and law set forth above,

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS,

DECIDES,

1. To declare this petition inadmissible.
2. To notify the petitioners and the State of this decision.
3. To publish this decision and 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 March 9th, 2005. Signed: Clare K. Roberts, President; Paulo Sérgio Pinheiro, Second Vice-President; Commission Members: Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez.