

Institution: Inter-American Commission on Human Rights
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Session: Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause: Juan Jacobo Arbenz Guzman, Maria Cristina Vilanova de Arbenz, Juan Jacobo Arbenz Vilanova, Maria Leonora Arbenz Vilanova and Arabella Arbenz Vilanova v. Guatemala
Doc. Type: Decision
Decided by: President: Evelio Fernandez Arevalos;
First Vice-President: Paulo Sergio Pinheiro;
Second Vice-President: Florentin Melendez;
Commissioners: Clare K. Roberts, Freddy Gutierrez, Paolo G. Carozza, Victor E. Abramovich.
Dated: 14 March 2006
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I. SUMMARY

1. On December 27, 1999, the Inter-American Commission on Human Rights (hereinafter, “the Commission” or “the Inter-American Commission”) received a petition lodged by María Leonora Arbenz Vilanova,[FN1] with subsequent communications signed by María Cristina Vilanova Castro viuda de [widow of] Arbenz and Erick Arbenz (hereinafter “the petitioning party” or “the Petitioner”). The initial petition asserts that the State of Guatemala (hereinafter “the State,” “Guatemala,” or “the Guatemalan State”) violated Articles 21 (private property), 10 (right to compensation), and 24 (equal protection before the law) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) to the detriment of Juan Jacobo Arbenz Guzmán, María Cristina Vilanova de Arbenz and their children, Juan Jacobo, María Leonora, and Arabella (hereinafter, “the alleged victims”). Subsequently,[FN2] the Petitioner also claimed violations of Articles 7 (personal liberty), 14 (correction or reply), 25 (judicial protection), and 5 (personal integrity) all of the American Convention.

[FN1] The Commission was notified that Mrs. María Leonora Arbenz Vilanova had died.

[FN2] In a note from the Petitioner received on October 10, 2005.

2. The Petitioner asserts that the Inter-American Commission is competent to hear this complaint because it was presented within the appropriate period of time and because the petition is in compliance with Articles 46 and 47 of the American Convention.

3. The State argues that the petition is inadmissible because the Petitioner has failed to exhaust domestic remedies and because the alleged violations of rights are groundless: personal liberty, correction or reply due to inaccurate or offensive information, judicial protection, and personal integrity.

4. After analyzing the arguments presented by the parties, and in keeping with the admissibility requirements set forth in the Convention, the Commission has decided to declare the petition admissible with respect to the alleged violations of Articles 1.1, 2, 21, 8, and 25 of the American Convention. Finally, the Commission resolves to publish this report in the Annual Report of the OAS General Assembly and notify both parties of its decision.

II. PROCEDURE BEFORE THE COMMISSION

5. On December 27, 1999, the Petitioner lodged the petition before the Inter-American Commission. On April 23, 2003, the Commission requested that the Petitioner provide detailed information on the exhaustion of domestic remedies with respect to the decree of June 24, 1997, mentioned in the complaint. The Commission processed the complaint and sent the relevant portions of the petition to the State on August 16, 2005, granting it a two-month period in which to submit its observations.

6. On September 9, 2005, the State submitted its observations, which were forwarded to the Petitioners on September 13, 2005, so that, within a one month period from the date the communication was sent, they could submit such observations as they deemed pertinent.

7. On October 10, the Petitioners presented additional information, which was forwarded to the State on October 19, 2005.

8. On November 18, 2005, the State submitted its observations, which were forwarded to the Petitioners on November 23, 2005.

9. On December 27, 2005, the Petitioners submitted their observations, which were forwarded to the State on January 3, 2006.

III. POSITION OF THE PARTIES

A. Position of the Petitioners

10. The Petitioners claim in their petition that Jacobo Arbenz Guzmán was elected constitutional president of Guatemala in 1951 and remained in office until June 27, 1954, when he was overthrown by a military coup led by Col. Carlos Castillo Armas and directed from Honduras by the United States Central Intelligence Agency, CIA.

11. The Petitioners further state that Juan Jacobo Arbenz and his family, which at that time included his wife, María Cristina Vilanova de Arbenz, and their children Juan Jacobo, María Leonora, and Arabella, were expelled from the country.

12. The Petitioners assert that the de facto government led by Castillo Armas confiscated Juan Jacobo Arbenz Guzmán's property pursuant to Decree 2 of July 5, 1954, issued by the Government Junta and Decree 68 of August 6, 1954, issued by the de facto President at that time.

13. Article 1 of the aforementioned Decree 2 ordered the seizure of property and freezing of all deposits, creditor's claims, securities, and current accounts of the individuals on a list drawn up by the Ministry of the Treasury and Public Credit, including President Arbenz. Moreover, Article 1 of the aforementioned Decree 68 awarded to the State, in the form of compensation and damages, all securities, shares, claims, assets, and goods of any sort, with no exceptions, that were, in any form, under the control, possession, holding, or usufruct of the former officials and employees listed in Decree 2.

14. Among the assets confiscated from President Arbenz was El Cajón Farm, which at the time of its confiscation encompassed 64 caballerías.

15. The Petitioners also state that, while he was still alive, Juan Jacobo Arbenz Guzmán demanded the return of his property in domestic proceedings, but all of the judgments handed down were unfavorable to him. President Arbenz Guzmán died in exile on January 27, 1971.

16. After the death of President Arbenz, his relatives resumed their efforts to recover the illegally expropriated property.

17. The Petitioners report that on May 28, 1995, Mrs. María Cristina Vilanova Castro widow of Arbenz, through an authorized agent, filed suit arguing the unconstitutionality of Decrees 2 and 68, both of 1954, before the Constitutional Court of Guatemala. On September 26, 1996, the Court issued a ruling in the case, in which it declared the unconstitutionality of Article 1 of Decree 2 and Article 1 of Decree 68, and stated that they would remain null and void as of the day following the publication of the ruling in the Official Gazette [Diario Oficial]. The ruling was published on October 4, 1996.

18. The Petitioners report that the Office of the Attorney General of the Nation, in decision 8-96 of 1996, stated that, after conducting a legal review of the case seeking compensation for the relatives of President Jacobo Arbenz, the legislature should address the pertinent aspects of the claim by means of a decree.

19. On June 24, 1997, six deputies of the National Congress introduced a bill, based on decision 8-96 of the Office of the Attorney General, to recognize the liability of the Guatemalan State and to compensate the heirs of President Arbenz for damages incurred as a result of the adjudication to the State of his farm and other assets; the bill included the amount of compensation to be paid. The bill did not pass.

20. Moreover, the documents submitted by the Petitioners show that on April 19, 2002, Mrs. María Cristina Vilanova Castro viuda de Arbenz, in her capacity as her husband's widow and universal heir, requested that then president of the Republic Alfonso Portillo Cabrera, based on the provisions of the Guatemalan Constitution, open an administrative file, admit her request for

the administrative processing of compensatory payment, collect such opinions and reports that the President of the Republic deemed relevant, and arrive at a final, favorable resolution of her request for compensation for the damages incurred in the unconstitutional expropriation of Finca El Cajón, property of her husband, Jacobo Arbenz.

21. According to the information provided by the Petitioners, on July 5, 2002, the General Secretariat of the Presidency of the Republic of Guatemala, under instructions from the President of the Republic, referred the file to the Office of the Attorney General of the Nation with the request that it examine the case brought by Mrs. Maria Cristina Vilanova Castro de Arbenz and issue a decision concerning the procedure that should be applied to process the petition at the administrative level of government.

22. On January 31, 2003, in decision 29-2003, the Office of the Attorney General of the Nation stated that the 1996 ruling of the Constitutional Court “that declared unconstitutional and without effect the provisions that served as the basis for the expropriation, virtually creates a liability on the part of the State of Guatemala consisting of returning the property or else duly compensating the heirs; hence, the ruling is a decision of transcendental importance for making a determination concerning the ambiguous situation that gave rise to the file currently under examination.” The resolution of the Office of the Attorney General goes on to state that “Being, as found in the preceding numeral, virtually created a liability on the part of the State of Guatemala consistent with returning the property or else duly compensating the heirs through damages, the task at hand is to determine the most appropriate administrative procedure to establish to whom the payment of damages should be made and the most appropriate, logical, and fair way of establishing the amount of this payment. A commission should be established, and it is recommended that it be made up as follows: a representative of the Presidency of the Republic, the Attorney General of the Nation or his representative, the Minister of Public Finances or his representative, and any other official that the President of the Republic should deem necessary.”

23. On May 14, 2004, Mrs. María Cristina Vilanova viuda de Arbenz, submitted a written request to the Attorney General of the Republic of Guatemala to the effect that, in accordance with the provisions of decision 29-2003, the proposed commission be formed as soon as possible in order to make restitution to her as the sole and universal heir of the property illegally expropriated from her husband, Juan Jacobo Arbenz; the procedures put into place to make effective the State’s obligation to return the property or provide due compensation; and a special expert designated to evaluate a fair method for determining the amount of compensation to be paid. To date, she has received no response from the Attorney General’s Office.

24. On December 27, 2005, the Petitioner, in response to the observations submitted by the State, asserted that, “the representatives of the Guatemalan State tell us that the procedure initiated is not the appropriate means of obtaining compensation for damages, and cites three different procedures for this purpose: 1- A process to determine the civil liability of public officials and employees, 2- A petition through a legal proceeding, and 3- a process before the Congress of the Republic. But the respondent forgets to mention a fourth: establish a commission to determine the most appropriate administrative procedure to determine to whom such compensation should be paid and the most appropriate, logical, and fair method for establishing

the amount of payment to continue to process this administrative file (Conclusion based on the opinion set forth in Decision N° 29-2003 of the Advisory Section [Sección de Consultoría] of the Office of the Attorney General of the Guatemalan Nation).”

25. With regard to the State’s position that the request made to the General Secretariat of the Presidency to open an administrative proceeding on compensation for damages was not appropriate because it is not within the President of the Republic’s sphere of authority to grant compensation, the Petitioner states that the President of the Republic does indeed have the authority to resolve this situation, particularly by virtue of his powers and duties to fulfill and enforce the Constitution and the law, to submit draft legislation to the Congress of the Republic, and to administer the public treasury in conformity with the law. By virtue of these powers, and in view of the 1996 judgment issued by of the Constitutional Court declaring the unconstitutionality of Decrees 2 and 68 of 1954, and decision 8-96 issued by the Office of the Attorney General of the Republic, it is within the powers of the President of the Republic to resolve the situation formally brought before General Secretariat of the Presidency.

26. In relation to the State’s assertion that the Petitioner did not pursue the appropriate legal remedies following the aforementioned declaration of unconstitutionality, such as filing suit to determine the civil liability of public officials and employees with respect to whom the State has joint and several liability, and regarding the property claim, the Petitioner states that a suit against the administrative wrongdoers is unwarranted because they are no longer officials or employees; they were in 1954, but that is not the case now and, since so much time has transpired, they have since died. She further states that the legal proceeding initiated in 1960 was rejected, and the proceeding before the Congress, which in fact was initiated as a result of decision No 8-96 of the Office of the Attorney General, was rejected in 1997. Therefore, she continues, their only remaining recourse was to bring an action before the State in the administrative sphere, which was duly received, and the Office of the Attorney General accepted it, “establishing it as the legal forum to grant us the corresponding compensation for damages: within the administrative process instituted, to establish a commission that would determine how, to whom and how much compensation would be made.”

27. The Petitioner likewise asserts that the State, in its report, says that “I have the power to approach the Congress of the Republic with my request that it decree the return of the assets or grant the relevant compensation for damages, since the Political Constitution grants that organ the authority to decree, amend, or derogate laws. That being the case, states the Petitioner, “the State itself tells me that I acted properly when I approached the President of the Republic to safeguard my fundamental rights, since, as stated earlier, the President has the power to “submit draft legislation to the Congress of the Republic.”

28. The Petitioner adds that the failure of the Guatemalan State to fulfill its obligation, through omissions over several years, constitutes a denial of justice, with all of the attendant damages, whether material or moral, which must be covered and redressed by the competent authority.” She continues that in any event, the request contained in the decision to establish the conditions and implement the payment system is contingent upon the political decision of the President of the Republic who is under no obligation to comply with it within a reasonable time

period, so that our rights once again risk being ignored due to the inaction of the politicians in office or the efforts of those interested in making sure they are not respected.”

29. She further states that “in any event, since 1966 (Case 16902 of the Fourth Civil Court which culminated with a rejection by the Court of Cassation, our family has instituted all sorts of proceedings against the dispossession of our property. Moreover, the unconstitutionality suit was won in 1996 and the Attorney General at the time, recommended, in decision 8 – 96, that the Congress grant compensation for damages.”

30. The Petitioner asserts that “in light of the foregoing, and the evidence contained in the file and attached hereto, it has been clearly demonstrated that the actions undertaken by the undersigned to protect my rights are completely in keeping with the legal and administrative procedures and institutions in force in the Republic of Guatemala. Nonetheless, after all these years, I have been unsuccessful in securing effective protection of my rights. Time and again, the Guatemalan government has ridiculed, tarnished, and demeaned everything inherent to my being. They expelled my husband, me, and my entire family as vile criminals; they degraded us internationally and, now that I finally have achieved some acknowledgment that the acts perpetrated against us were completely illegal, the Guatemalan State persists in its attempts to deny me my rights at all costs.”

31. Finally, the Petitioner, in correspondence dated December 27, 2005, requests that the Commission declare that it is competent to examine this complaint since “we are lodging it within the proper and appropriate time frames, as the declaration of unconstitutionality of the decrees mentioned herein is from nineteen hundred ninety six and for nine years, effective protection of our rights has been denied in violation of the reparations, compensation for damages and individual liberties of our family. And that the petition is in compliance with Article 46 and 47 of the American Convention on Human Rights.”

B. Position of the State

32. The State, in its correspondence dated September 9, 2005, argued that the Inter-American Commission lacked competence *ratione temporis*, that there was no clear expression of violations of the human rights established in the American Convention, and that domestic remedies had not been exhausted.

33. In relation to the Commission’s alleged lack of competence *ratione temporis*, it asserted that, “With regard to the temporal scope of the Commission’s competence, when a violation of a right set forth in the Convention is alleged, the former must ensure that the petition or communication is based on rights that have occurred following the entry into force of the Convention with respect to the State against whom the complaint is lodged. The State of Guatemala has been party to the Convention since May 25, 1978 and accepted the adversarial competence of the Court on March 9, 1987.” The State adds that the confiscation of Colonel Jacobo Arbenz’s assets took place in the year 1954, a time when Guatemala was not party to the American Convention and had not accepted the competence of the Court in the adversarial sphere. It therefore requests that the petition be declared inadmissible pursuant to Article 47.c of the American Convention.

34. The State also asserts that in the complaint, “There is no clear expression of the violation of the rights set forth in the American Convention,” and argues that the provisions of Article 27 of the Commission’s Rules of Procedure have not been met, since the complaint does not include an explicit characterization of the human rights that were infringed, but rather is limited to allusions to the political events of 1954. It argues that the complaint claims violations of Articles 10, 21, and 24 of the American Convention. Nonetheless, there are no grounds to evaluate those norms before the Inter-American Commission since the scenarios set forth in those precepts are not found in the complaint.

35. The State adds its exception due to failure to exhaust domestic remedies, basing this affirmation on the fact that the Petitioners should have brought a civil suit as stipulated in Guatemalan law. It asserts, in this regard, that Article 156 (1) of the Constitution states as follows: “Liability for violation of the law. When a government dignitary, official, or employee, in the discharge of his duties, violates the law to the detriment of private individuals, the State, or the state institution he serves, will have joint and several liability for the damages incurred.” It adds that, according to Article 252 (2) of the Constitution, “the Attorney General of the Nation is the agent of the State and the head of the Office of the Attorney General of the Nation. He will be appointed by the President of the Republic, who may remove him for duly established just cause.” Continuing this line of reasoning, the State asserts that Article 1665 of the Civil Code stipulates that “The State and the municipalities are liable for damages caused by their officials or employees in the discharge of their duties. This liability is subsidiary and can only be enforced when the official or employee who is directly liable has no assets, or the assets are insufficient to satisfy the damage incurred.” And finally, it refers to Articles 96 and 246 of the Civil and Commercial Procedures Code which stipulate: Article 96. (ordinary proceeding). Disputes for which no special procedures are set forth in this Code, shall be handled through an ordinary court. Article 246. (Action for liability). The civil liability of public officials and employees is admissible in those cases expressly established by law; and shall be presented before a First Instance judge by the injured party or his successors.

36. In its note of November 18, 2005, the State argues that the Petitioner has established that the Constitutional Court declared the unconstitutionality of Decrees 2, issued by the Government Junta, and 68 issued by the de facto President at the time, both of 1954, thereby recognizing her property rights over the confiscated goods, but that due restitution of her rights as heir has not occurred. In this regard, the State argues that the declaratory judgment of unconstitutionality is constitutive in nature with respect to the decrees in question, but is declarative with regard to the right to property asserted; the State adds, however, that the Constitutional Court is not competent to fully restore the confiscated goods or grant compensation, as this corresponds to other State entities.

37. The State further claims that the Petitioner’s request to the General Secretariat of the Presidency to initiate an administrative proceeding for the payment of compensation is inappropriate because the President of the Republic is not vested with the authority to grant compensation for damages such as in the instant case, without an express mandate from the Constitutional Court, which is not the case in this matter. After enumerating the powers that the Political Constitution grants to the President of the Republic, the State asserts that based on the

declaratory ruling of the unconstitutionality of the aforementioned decrees, the Petitioner should have pursued the following legal proceedings:

- a. Initiate a process to determine the civil liability of the public officials and employees for whose actions the State has joint and several liability.
- b. File suit to reclaim the property in an ordinary proceeding, in accordance with Article 96 of the Guatemalan civil and commercial procedures code; such a claim can be brought before the Guatemalan State at the domestic level, with the Attorney General of the Nation acting as its agent, as stipulated in Article 252 of the Political Constitution.
- c. In the legal political venue, bring the respective petition before the Congress of the Republic so that the latter will decree the return of the assets or grant the relevant compensation, since the Political Constitution invests that body with the authority to “decree, amend, and derogate laws.”

38. The State adds that it indicates the procedures that the Petitioner should have pursued based on the jurisprudence of the Inter-American Court of Human Rights, in the sense that it is incumbent on the State alleging failure to exhaust domestic remedies to indicate which domestic remedies should have been exhausted.

39. The State asserts that based on the arguments employed, it is evident that the Petitioner has not made use of the appropriate mechanisms for the full restitution of her right to property, a situation that cannot be imputable to the State, since the law formally includes the necessary remedies to ensure the right to property cited. The State argues that the admissibility of the instant petition would result in a negation of the principle of subsidiarity that applies to the entities of the inter-American system for the protection of human rights.

40. The State continues that the Petitioner cites as an exception to the rule of exhaustion of domestic remedies the general fear in the community owing to the loss of documents related to her case in the Office of the Attorney General of the Nation, and the fact that her case is politically high profile. In this regard, the State asserts that such premises do not fit the Petitioner’s arguments. With respect to the Petitioner’s allegations concerning the violation of her right to personal liberty, to correction and reply for inaccurate or offensive information, the right to judicial protection, and to personal integrity, the State asserts that they are unfounded.

41. Finally, the State, in its note of November 18, 2005, makes the following request for the Commission:

- a. Declare the inadmissibility of the instant petition, on the grounds that the Petitioner has failed to exhaust domestic remedies to enforce the restitution of her property, in accordance with the principle of subsidiarity set forth in Articles 46.1.a and 47.a of the American Convention.
- b. Declare the petition inadmissible because the rights allegedly violated are groundless: personal liberty, correction or reply due to inaccurate or offensive statements, judicial protection, and personal integrity. The foregoing in accordance with Article 47.b.c of the American Convention, which obligates the Commission to declare the inadmissibility of cases in which the petition does not state facts that characterize a violation of the rights enshrined in the Convention

or the statements of the Petitioner or of the state indicate that the petition is manifestly groundless or obviously out of order.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission

42. The Commission has competence *ratione personae* to take up and examine the instant petition. The Petitioners, for their part, have *locus standi* to lodge complaints before the Commission in accordance with Article 44 of the Convention. The petition indicates as the alleged victims individual persons with respect to whom the Guatemalan State has undertaken to respect and ensure the rights enshrined in the Convention. The State of Guatemala, for its part, has been a State party to the Convention since its ratification on May 25, 1978.

43. The Commission has competence *ratione loci* to take up the instant petition inasmuch as it alleges violations of the rights enshrined in the Convention which allegedly occurred within the territory of a State party.

44. In relation to its competence *ratione temporis*, the Commission considers that the alleged events refer to the consequences of the confiscation of the property of Constitutional President Jacobo Arbenz Guzmán, which occurred pursuant to Decree 2 of the Government Junta of July 5, 1954, and Decree 68 of August 6, 1954, issued by the *de facto* president at that time. Also, the information presented by the parties shows that in 1996, the Guatemalan Constitutional Court issued, at the Petitioner's request, a ruling nullifying the aforementioned decrees.

45. To this respect, considering that the Convention was in force in Guatemala when the ruling of the Constitutional Court was issued in 1996, the Commission considers that it has competence over this petition in order to analyze such ruling as well as the actions and omissions of the State after the ruling.

46. The effects of the confiscation of President Arbenz's property have remained constant over time, despite the existence of a ruling from the Constitutional Court of Guatemala declaring the nullity of the decrees that gave rise to the aforementioned confiscation.

47. The Commission, lastly, has competence *ratione materiae*, given that the violations claimed in the petition are violations of human rights protected in the Convention.

B. Exhaustion of domestic remedies

48. The American Convention, in its Article 46.1.a states as follows:

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

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

49. Article 46.2 of the American Convention stipulates that the provision of Article 46.1.a 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, and c) there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies.

50. In the instant case, the Petitioner alleges that she has pursued the appropriate remedies to redress the alleged violations of rights before the courts of domestic jurisdiction stipulated in Guatemalan law and before the relevant administrative and legislative authorities. Nonetheless, they have been ineffective in upholding the rights violated by the State.

51. For its part, the State of Guatemala filed an exception under exhaustion of domestic remedies, arguing that the Petitioner has failed to exhaust domestic remedies to enforce the restitution of her property in accordance with the principle of subsidiarity enshrined in Articles 46.1.a and 47.a of the American Convention.

52. The Commission observes that the Petitioner approached the domestic judicial, administrative and legislative entities, pursuing remedies available under Guatemalan law to uphold the rights alleged to have been violated, to no avail. According to the information provided by the Petitioner, efforts at the domestic level commenced in the sixties and to date there has been no adequate resolution of the matter.

53. While the State identified the remedies that, in its view, the Petitioner should have previously exhausted in the domestic venue, it is the Commission's opinion that the State itself, in 1996, through the Constitutional Court, declared the unconstitutionality of the 1954 decrees that gave rise to the alleged human rights violations and, in doing so, initiated a partial reparations process. Nonetheless, the State, by declaring the unconstitutionality of the norm, should have adopted the measures necessary to prevent it from continuing to produce effects over time. In this regard, an entity of the State itself indicated how it should proceed (paragraph 22), and yet, to date, the Guatemalan authorities have failed to act.

54. Therefore, given the characteristics of the instant case, the Commission's view is that the exception set forth in Article 46.2.a of the American Convention is applicable, for which the requirements set forth in the American Convention concerning the exhaustion of domestic remedies are not applicable.

C. Time frame for lodging the complaint before the Commission

55. In accordance with Article 46.1.b of the American Convention, the general rule is that a petition must be lodged within six months from "the date on which the party alleging violation of his rights was notified of the final judgment." According to Article 32.2 of the Commission's Rules of Procedure, this time frame is not applicable in the case of exceptions to the rule of prior exhaustion of domestic remedies. In such a case, the Rules of Procedure stipulate that the

petition must be presented within a reasonable period of time, considering the date on which the alleged violation of rights occurred and the special circumstances of the case.

56. The Commission observes that, since the sixties, the Petitioner has taken steps for the recognition of her inherent rights, and to date, the remedies pursued have produced no results. Therefore, by applying the exception set forth in Article 46.1.b of the Convention, the IACHR considers that the petition was presented within the reasonable period of time established by the Convention.

D. Duplication of proceedings

57. Article 46.1.c of the Convention establishes that for the Commission to admit a petition or communication, the subject matter therein must not be pending settlement in another international proceeding. Likewise, Article 47.d of the Convention stipulates that the Commission shall declare inadmissible any petition or communication that is substantially the same as one previously studied by the Commission or by another international organization.

58. There is no indication in the presentations made by the parties or in the documents contained in the file that the instant petition is pending a decision in another international proceeding or settlement or that it duplicates a petition previously studied by the Commission or by another international organization. Therefore, the Commission considers that the instant case has fulfilled the requirements for admissibility set forth in Articles 46.1.c and 47.d of the American Convention on Human Rights.

E. Characterization of the alleged facts

59. The State requested that the Commission declare the petition inadmissible insofar as the rights alleged to have been violated are groundless.

60. In the Commission's view, this is not the stage to establish whether or not there has been a violation of the American Convention. For the purposes of admissibility, the Commission must decide whether the facts stated tend to characterize a violation, as stipulated in Article 47.b of the American Convention, and whether the petition is "manifestly groundless" or "obviously out of order," according to subparagraph (c) of that Article.

61. The standard for evaluating these thresholds is different than that required when deciding on the merits of a complaint. The Commission must conduct a *prima facie* evaluation to assess whether the complaint supports the apparent or potential violation of a right enshrined by the Convention, not to establish the existence of a violation. This examination is a summary analysis that does not imply a bias or advance opinion on the merits. The Commission's Rules of Procedure, by establishing two clear stages for admissibility and the merits, reflects this distinction between the evaluation that the Commission must undertake to declare a petition admissible and that required to establish a violation.

62. With respect to the instant petition, the Commission does not find that the petition is manifestly groundless or obviously out of order and it considers that, prima facie, the Petitioners have satisfied the thresholds set forth in Article 47.b and c.

63. The Commission is of the opinion that in the instant case it is competent to evaluate the alleged violations of the right to property and the rights to a fair trial and judicial protection and the right to equal protection before the law, all related to the obligations to respect and ensure rights and the duty to adapt domestic legislation in keeping with the international commitments assumed by the State, which could characterize violations of the rights of the alleged victims enshrined in Articles 21, 8, 25, 24 1.1 and 2, of the Convention.

64. At the same time, the Commission considers that the facts reported in the petition do not contain sufficient elements that tend to characterize violations of Articles 5, 7, 14, and 10 of the Convention.

V. CONCLUSIONS

65. The Commission considers that it has competence to take up this complaint and that the petition is admissible based on the admissibility requirements set forth in Articles 46 and 47 of the Convention and for the alleged violations of Articles 21, 8, 25, 24, 1.1, and 2 of the Convention.

66. Based on the foregoing arguments of fact and law, and without prejudging the merits of the case:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible with regard to the alleged violations of the rights enshrined in Articles 21, 8, 25 and 24 of the Convention, in relation to Articles 1.1 and 2 of that international instrument.
2. To declare the petition inadmissible with respect to the rights protected in Articles 5, 7, 14, and 10 of the Convention.
3. To notify the parties of this decision.
4. To continue its examination of the case, and
5. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 14th day of the month of March, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-Presidente; Clare K. Roberts, Freddy Gutiérrez, Paolo G. Carozza and Víctor E. Abramovich, Members of the Commission.