Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 35/06; Petition 1109-04
Session:	Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause:	Jorge, Jose and Dante Peirano Basso v. Uruguay
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 Trejo, Paolo Carozza, Victor E. Abramovich.
Dated:	14 March 2006
Citation:	Peirano Basso v. Uruguay, Petition 1109-04, Inter-Am. C.H.R., Report No. 35/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by:	APPLICANTS: Carlos Varela Alvarez and Carlos H. De Casas

I. SUMMARY

1. On October 18, 2004, and again on November 30, 2004, Messrs. Carlos Varela Alvarez and Carlos H. De Casas, presented a complaint and a request for precautionary measures on behalf of Messrs. Jorge, Dante and José Peirano, three brothers of Uruguayan nationality, before the Inter-American Commission on Human Rights (hereinafter, the "Commission") against the Republic of Uruguay (hereinafter, the "State") for the alleged violation of the right to be judged within a reasonable time, the right to liberty during a judicial proceeding, the right to be heard under conditions guaranteeing due process, the right to a fair and impartial trial and the right to equality before the law, in violation of Articles 5(1) and (2), 7(1) and (3), 8(1), 9, 24, 25 and 29 of the American Convention on Human Rights (hereinafter, the "American Convention") in conjunction with the violation of the obligation of the State to adopt measures set forth to assure and respect these rights, set forth in Article 1(1) of the same Convention. The petitioners further alleged violations of Articles II, XVIII, XXV and XXVI of the American Declaration on the Rights and Duties of Man, and Articles 1, 2, 6 and 8 of the Inter-American Convention on the Prevention and Punishment of Torture. In addition, the petitioners alleged violations of articles 9, 14 and 26 of the International Covenant on Civil and Political Rights, and Article 26 of the Vienna Convention on the Law of Treaties, and the United Nations Minimum Standards for the Treatment of Prisoners.

2. The complaint alleges that the three Peirano brothers have been in preventive detention since August 8, 2002 (at the time of the presentation of the complaint a period over two years) without having been formally charged. According to the petitioners, under the domestic law, the maximum punishment that may be imposed is five years in prison, and the requirements for

being released from prison will be met, according to the petitioners, in January 2005, when they will have completed two and a half years in prison. Despite the fact that they have not yet been formally charged, the State has imputed to them the violation of Law 2.230 law of 1893 that sanctions directors of companies in dissolution. According to the complaint, this crime does not contemplate preventive detention, but the Peirano brothers have been detained for the "social alarm" provoked by the collapse of the Uruguayan banking system and their alleged responsibility for this collapse. Their requests to be released from detention have repeatedly been rejected. The petitioners allege that the proceedings have been conducted in an irregular manner and in violation of the minimum due process guarantees owed them.

3. As regards the admissibility of the complaint, the petitioners allege that the petition complies with the requisites set forth in Article 46 of the American Convention and that domestic remedies were exhausted with the decision of the Uruguayan Supreme Court of October 6, 2004, "which determined that the case should be decided in the ordinary jurisdiction, even though Uruguayan law empowers the Court to grant releases from prison." The petitioners say that "the lawsuit remains ongoing and that the preliminary stage of the criminal proceeding, which should lead to indictment, presentation of evidence, defense, and judgment at first instance by the judge in charge of that stage, has still not concluded." The petitioners conclude that "bearing in mind that length of time, on the assumption accepts that the laws in place are effective, these persons have served more than the maximum sentence provided by law."

4. The State, for its part, argued that the petition was inadmissible because the petitioners had not exhausted domestic remedies. The State noted that in compliance with the request contained in the petition, "the Executive sent a communication to the Supreme Court of Justice on December 30, 2004, requesting its opinion. By communication Nº 64/2005 of February 3, 2005, the Supreme Court of Justice sent the Ministry of Foreign Affairs the record of the proceedings and a CD in a sealed envelope containing six parts as well as documentary evidence from the court file identified as S/163/2002, Exhorto 03, Fo. 108-Lo.5C. The Minister of Foreign Affairs informed the Commission in its forwarding letter that, as the Commission would be able to ascertain from the above-described enclosed materials, the case was "sub judice".

5. After analyzing the positions of the parties, the Commission concluded that it was competent to examine the petition and that the case was admissible under Article 46 of the American Convention. Accordingly, the Commission decided to notify the parties of its decision, to publish this decision, and include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

6. On October 18, 2004, the Commission received a request for precautionary measures (MC-1004/04) presented by the attorneys Carlos Varela Alvarez and Carlos H. De Casas. The request for precautionary measures was rejected on October 18, 2004. The petitioners then requested that the matter be considered as a petition and the case was registered as number P-1109/04.

7. On December 21, 2004, the Commission forwarded the pertinent portions of the petition to the State and requested its response within a period of two months. On February 10, 2005, the

Permanent Mission of Uruguay to the Organization of American States transmitted the response of the Minister of Foreign Affairs to the complaint of December 21, 2004. The response of the State included a Note from the Uruguayan Foreign Ministry and a CD containing six parts with a seventh containing documentation from the judicial file, identified as S/163/2002, Exhorto 03, Fo. 108-Lo.5C from the Supreme Court of Uruguay. On April 19, 2005, the Uruguayan lawyer in the case, Dr. Diego Camaño, submitted an amicus brief to the Commission prepared by Federico Andreu-Guzmán of the International Commission of Jurists in Geneva on behalf of the Peirano brothers, which determines that the preventive detention of the Peirano brothers violated international standards ratified by Uruguay. On April 19, 2005, the petitioners presented a new request for precautionary measures to the Commission (MC-78/05), which was rejected on April 20, 2005.

8. The response of the State to the complaint was transmitted to the petitioners on May 11, 2005. On June 3, 2005, the Commission received the observations of the petitioners to the State's response. A letter received from the petitioners, on July 27, 2005, requested a hearing before the Commission. On August 4, 2005 the Commission received a second amicus brief and the curriculum vitae of Dr. Ernesto Díaz-Bastien, in support of the complaint, which the Commission acknowledged receipt of on August 10, 2005. On August 9, 2005 the petitioners informed the Commission that on August 8, 2005 the Peirano brothers had completed three years in preventive detention. The petitioners again sought the release of the Peirano brothers, which was denied by the Uruguayan Court on August 16, 2005.

9. On August 22, 2005, the Commission received an e-mail from the petitioners informing it of the opinion of the Ministerio Público regarding the request of the petitioners for the release of the Peirano brothers following three years of preventive detention and the Judge's decision rejecting the request without justification. On September 16, 2005, Dr. Fernando Toller and Dr. Juan Cianciardo presented a third amicus brief and their curriculum vitae in support of the complaint, which the Commission acknowledged receipt of on September 21, 2005. Also on September 16, 2005, the Commission informed the parties that a hearing would be held on October 17, 2005, during the 123º period of sessions, to discuss questions pertaining to the Peirano brothers complaint. On September 21, 2005 the Commission transmitted to the State the observations of the petitioners on the State's response to the complaint. On September 21, 2005 the Commission also acknowledged receipt of the amicus brief on behalf of the Peirano brothers, filed by Dr. Hipolito Solari Yrigoyen, received in September 2005. On September 23, 2005, the Commission sent to the State, by courier, copies of the four amicus briefs received, in preparation for the hearing.

10. A hearing on the case was held on October 17, 2005, from 6:00 p.m. to 7:00 p.m., during the 123º period of sessions of the Commission, at its headquarters in Washington, D.C. The petitioners were represented by Messrs. Carlos Varela Álvarez and Carlos H. de Casas and the State was represented by Ambassador Juan E. Fischer, Cristina Carrión and Laura Dupuy, all of the Permanent Mission of Uruguay to the Organization of American States.

11. On December 7, 2005, the petitioners presented another request for precautionary measures. The petitioners say that the legal situation of the alleged victims has worsened and that the acts of discrimination continue. They say that the petitioners have been in detention for three

years and four months without charge. This request was analyzed as a follow-up to MC-78-05. The Commission considered the matter and on December 22, 2005 decided to request information from the State regarding the legal status of these three individuals, information that it requested be presented within 15 days. On January 5, 2006, the State responded to this request for information and the information was duly transmitted to the petitioners for their observations. On January 19, 2006, the petitioners presented their observations to the Commission on the State's response.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

12. According to the petitioners, on August 8, 2002, the Uruguayan courts ordered the imprisonment pending trial of Jorge, José, and Dante Peirano Basso as a result of the collapse of the Banco de Montevideo in the midst of the worst financial crisis in the history of Uruguay. The Banco de Montevideo was owned by members of the Peirano family, which has been involved in banking in Uruguay for more than 100 years. The Peirano brothers have spent more than three years in preventive detention without being formally charged.

13. The petitioners say that an economic and financial crisis in Argentina toward the end of 2001 prompted the government of that country to order a bank freeze known as a "corralito".[FN1] The freeze on withdrawal of deposits in Argentina led to a massive run in Uruguay, where 35% of bank deposits belong to non-residents, mostly Argentines. Every bank was affected. First, the Banco de Galicia, then the Banco Comercial, the state banks, and, finally, Banco de Montevideo. According to the petitioners, in April 2002, the Central Bank of Uruguay intervened the Banco de Montevideo, removing its officers and leaving the institution rudderless. The Central Bank instituted criminal proceedings against the Peirano brothers, which was followed by complaints filed by savers who were unable to withdraw their deposits.

[FN1] The popular Spanish name given to the decision of the Argentine government to prevent all withdrawals of bank deposits, in response to the massive run then taking place in the financial market.

---

14. On August 8, 2002, the judge of the Eighth Criminal Court, Dr. Pablo Eguren, ordered the imprisonment pending trial of the three bankers on the imputation that they had violated Article 76 of Law 2.230 (a law dating from 1893 that governs liability of directors and administrators of corporations). As a result, the Peirano brothers have been in custody since that date. The judge also accused them of conspiracy even though that charge was not sought by the Office of the Attorney General. In addition, three other persons were prosecuted who served on the Bank's Board of Directors.

15. The defense appealed the indictment, and on March 26, 2003, the Third Court of Appeals upheld only the charge of violation of Law 2.230, which is the imputation on which they are currently being prosecuted. In August 2003, Judge Eguren was requested to release Jorge

Peirano (the motion was applicable to all three brothers). The request was denied on August 27, 2003, and the decision was appealed before the Court of Appeals, which turned down the appeal on February 4, 2004. The second request for their release was made to the Supreme Court of Justice of Uruguay on October 6, 2004, during its visit to the prison; the defense argued for their pardon. The third request for the brothers' release was submitted to the Supreme Court of Justice on February 25, 2005. The Supreme Court denied the request on March 30, 2005. The fourth release request was filed with Judge Eguren on August 8, 2005, refused on August 16, 2005, and is currently under appeal (since September 14, 2005) before the Third Court of Appeals, which has yet to issue a ruling. The fifth request for release (by pardon), also to the Supreme Court, was made on December 6, 2005, and denied that same day. The defense based their case on international legal arguments, arguing the excessively long term of preventive detention and that the brothers had served two-thirds of the maximum possible sentence (five years). The Court, represented by Justices Rodríguez Caorsi and Parga, denied release without stating the grounds for their decision.[FN2]

[FN2] The petitioners say that the press (El País newspaper) misreported that the Supreme Court of Justice refused their release on the grounds of the "gravity of the offense and social alarm".

---

16. The petitioners say that on March 17, 2005, 15 days after taking office as President of the Republic, Dr. Tabaré Vásquez –in fulfillment of one of his election campaign promises- publicly announced that he had decided to transfer the Peirano brothers from the Central Prison to Santiago Vásquez Prison Complex (COMCAR in Spanish), one of the worst facilities in Uruguay, whose population of almost 3,000 inmates exceeds its holding capacity by more than 300%. He referred to them as "criminals who committed very serious offences against society that caused great suffering, especially in the most underprivileged sectors." The defense publicly denounced the interference of the President as a violation of the principle of separation of powers. They also charged that the transfer was illegal because it was only admissible as a punishment (Art. 50, DL 14.470).

17. The petitioners say that the words of the President were followed by others –in an even harsher tone- from the Interior Minister and the National Director of Prisons. The defense requested the Supreme Court to suspend execution of the presidential transfer order on the grounds that it was illegal and violated the separation of powers. However, the request was denied. Nonetheless, on March 22, 2005, the Peirano brothers were not transferred to COMCAR but to the Security and Discipline Annex of Libertad Prison (the only maximum security facility in Uruguay) located 54 kilometers from Montevideo. Since April 16, 2005, the Peirano brothers have been held in La Tablada, along with 180 other inmates.

18. According to the petitioners, they are made to wear orange overalls whenever they leave their cell (even when taken to see visitors) because the authorities imposed on them the same rules as those applied to the other inmates of the facility, all of whom are maximum security prisoners. They were exhibited in public each time they were taken to court. Reports of the Peirano brothers in bulletproof vests, orange overalls, handcuffs and shackles were broadcast by the press, radio and television. The petitioners sent the Commission photographs of the alleged

victims. The public exhibition was repeated toward the end of 2005 when they again went to testify.

19. According to the petitioners, it is impossible to say how long the preventive detention could last, since it has gone on indefinitely pending the conclusion of a proceeding in which no charge has been made and it is estimated that a judgment at first instance will be issued at least within the coming year. The upshot of the indefinite prolongation of their preventive custody has been to destroy the presumption of innocence and, in view of the time elapsed and the recent political pressures, a conviction seems imminent. The foregoing, the petitioners argue, paints a picture of denial of justice and persecution of the detained men, which clearly shows that the Uruguayan State is in no position to ensure the guarantees of impartiality, due process, and a fair trial, in violation of Articles 5(1) and (2); 7(1) and (3); 8(1), 9, 24, 25, and 29 of the American Convention.

20. The Peirano brothers stand accused of the alleged breach of Article 76 of the Law 2230 of 1893: "Directors and administrators of corporations who commit fraud, simulation, or breach of by-laws or any statute on public matters, shall be liable to the penalty applicable to fraudulent bankrupts contained in Articles 272 and 274 of the Criminal Code".

21. The petitioners argue that Article 76 of Law 2.230 runs contrary to Article 9 of the American Convention. According to the petitioners, it is incompatible with Article 9 of the American Convention to keep Article 76 of Law 2.230 on the statute books, and therefore, they argue, said article is unlawful under international law.

22. The petitioners allege that the Peirano brothers have still not been indicted despite the fact that as of August 8, 2005, they had spent three years in preventive custody. According to the petitioners, a secret system is imposed (during the preliminary investigation (presumario)), which can be very protracted (Article 112), as well as a series of stages: prima facie processing (procesamiento) (Article 125), preliminary hearing (Article 136), submission of evidence (Articles 164 and 165), indictment in the trial proper (Article 234), defense and arguments (Articles 240 to 242), and judgment (Article 90(A)). If the prescribed deadlines are met (without extensions) -which is to be expected in cases of persons in custody- judgment should be returned approximately one year after the person on trial is detained.

23. In their comments on the reply of the State of January 5, 2006, the petitioners argued that "[C]ontrary to what the Uruguayan State maintains, it has been shown (...) that the presiding Judge has acted with clear and manifest negligence in his conduct of the proceeding, in breach of the domestic laws that prescribe time limits for processing the different stages of the trial, which have been grossly disregarded.

24. The petitioners concluded that the proceeding had been under way for two and a half years and not one written communication or declaration had been drafted. This means that two-thirds of the time that the proceeding has taken as of January 2006 (40 months) has elapsed without the court having carried out a single procedural act designed to clarify the facts.

25. On September 8, 2005, the Uruguayan Parliament passed Law 17.897, also know as the "Prison System Humanization and Modernization Act" or the "Prison System Decongestion Act." The executive branch promulgated the Act on September 14, 2005.[FN3] The government announced a prison decongestion law (later adopted by parliament - Law 17.897) for inmates who had been in prison for a certain amount of time, which appeared to favor the alleged victims. According to the petitioners, the text of the adopted law excludes them through the device of a list of offences for which the benefits of the law do not apply. However, the only persons in detention in Uruguay who stand accused of those offences are the Peirano brothers and a manager on trial in the same proceeding.[FN4]

[FN3] The law is published on the following web site: http://www.presidencia.gub.uy/Web/leyes/2005/09/17897 90%202005 00002.PDF.

[FN4] Article 1 of Law 17.897 provides: "This law shall not apply to persons on trial for or convicted of the following crimes: a) Homicide involving the aggravating circumstances provided in Articles 311 and 312 of the Criminal Code; b) Very serious injury (Art. 318, CC); c) Rape and violent offences against sexual morality (Arts. 272 and 273, CC); d) Corruption (Art. 274, CC); e) Violent robbery specifically involving the use of firearms, or when it results in injuries to others (Arts. 344, 341(1), 317, and 318, CC); f) Violent robbery involving deprivation of liberty -occupation with armed violence- and extortion (Arts. 344 bis and 345, CC); g) Fraudulent and culpable bankruptcy and fraudulent insolvency (Arts. 253, 254, and 255, CC); h) The crime provided in Article 76 of Law 2.230 of June 2, 1893; i) The crimes provided in Law 8.080 of May 27, 1927, and its modifying provisions; j) The crimes provided in Law 14.095 of November 17, 1972, and its modifying provisions; k) Transnational bribery and corruption as provided in Article 29 of Law 17.060 of December 23, 1998, and money laundering as provided in Article 5 of Law 17.016 of October 22, 1998; l) The crimes provided in Articles 30 to 34 and 55 of Executive Order 14.294 of October 31, 1974 and modifying laws.

---

26. The petitioners allege discrimination on the part of the Legislature in adopting the "Prison System Humanization Act", to the extent that it expressly bars the Peirano brothers from the possibility of release. The petitioners say that this comes in addition to another instance of discrimination, inasmuch as the courts have freed two co-accused (Messrs. San Cristóbal and Ratti) in the same case, as well as the General Manager, Marcelo Guadalupe, who was released on bail toward the end of 2005.

27. Finally, say the petitioners, Uruguay's procedural laws, governed by a Code more than a century old, notwithstanding the most recent reform (1980) made by a de facto military government, provide for an inquisitorial and written system, in which the investigating judge also issues the verdict, and in practice, therefore, is the judge of his own actions. He sets out the hypothetical facts and collects evidence to bear out his assertions. Unlike the great majority of modern procedural laws, the Code does not provide systems of control to ensure guarantees; there is no habeas corpus procedure, and laws have not been made consistent with the standards contained in international treaties, such as the American Convention, which Uruguay incorporated in its domestic law without reservation, at least not in these respects.

B. Position of the State

28. The State, in its response to request for precautionary measures MC-78/05, submitted a brief of January 5, 2006, in which it asked the Commission to refuse any request for the adoption of precautionary measures in the case until a situation of extreme gravity and urgency had arisen or it was necessary to avoid irreparable damage to persons. Furthermore, the State described the Peirano brothers as "the persons responsible for criminal offences that prompted their indictment and imprisonment by the independent system of justice of the Uruguayan State". The State further alleges that the Peirano brothers have been "the perpetrators of the biggest bank fraud on record in Uruguay, as representatives, directors, managers, and administrators of financial intermediation companies". The State replied that the request for information concerned two basic issues: the legal situation of the Peirano brothers and information on the current stage of proceedings in the criminal action. Since the State's response on the issue of precautionary measures is more complete than the response on the petition, the Commission will consider the State's arguments in this context. The State's response to the petition (supra) requested the Commission to reject the petition since domestic remedies had not been exhausted.

29. The State says that the Peirano brothers are considered responsible for criminal offences that led to their indictment and detention, and therefore they have been incarcerated in a recognized prison facility, having been duly revoked the privileges granted to them by the previous government of Uruguay, which held them in special conditions at the Police Headquarters in the Department of Montevideo.

30. The State argues that the criminal proceeding initiated in 2002 has been extremely complex owing to the sheer magnitude and nature of the offences committed. The State encloses copies of the judicial proceedings as annexes. The most recent judicial proceedings concern the complaint appeal (recurso de queja) interposed against the refusal of the appeal lodged by the defense. In that connection, in August 2005, three accountants from the Forensic Technical Institute were instructed to provide expert testimony. The experts appointed were Messrs. Marcelo Arámbulo, Adrián Montan, and Enrique García Pini. In the interests of procedural economy and in order to expedite the proceeding and, therefore, the respective indictment, the Office of the Attorney General requested the Court to dispense with the new expert testimony. The court agreed to this request and the defense filed motions for reversal, appeal, and annulment on grounds of lack of defense against the decision. On September 19, 2005, the presiding judge upheld the appealed the decision and refused the motions presented because he found that under criminal procedural law the decision only warranted a motion for reversal. Accordingly, the reason the motions were rejected had to do with the suitability of the procedural mechanism employed by the defense. The defense opposed this decision and filed another complaint appeal for refusal of appeal. Finally, by ruling 707 of December 14, 2005, the Third Court of Appeals in Criminal Matters admitted the complaint for denial of appeal and sent the complaint back to the court of first instance in order to give leave for the appeal to be heard by the higher court.

31. In the criminal suit, the State explains, the court is conducting further enquiries at the preliminary investigation stage. In this stage the defense has exercised their right to file the pertinent motions and appeals. Under Uruguayan procedural law, the defense has two periods in

which to seek evidence: the first is proposed in accordance with Article 164 of the Code of Criminal Procedure. The Office of the Attorney General may do the same under the Article 165 of the Code.

32. The State added that this was the current stage of the proceedings and that all that remained was the expert testimony requested in order to quantify the injury caused by the imputed offense. The prosecution renounced the testimony to expedite the proceeding but the motions and appeals filed by the defense have prevented conclusion of the process.

33. The State argues that, according to the opinion of the Public Prosecutor and the Office of the Prosecutor General, the procedural behavior of the Peirano Basso brothers' defense is pivotal for understanding why so far there has been no indictment in the trial. Indeed, the record shows that, according to the State, the sustained procedural strategy of the defense has sought, by means of permanent delaying tactics, to hinder the criminal proceeding and prevent the indictment, which would then open the way for the preliminary proceeding.

34. The State maintains that its position corresponds exactly to the one held by the Commission in Report 17/89, case 10.037 (Firmenich v. Argentina), that parties to the Convention are under no obligation to establish a set time limit as a criterion to weigh the reasonable length of preventive detention independently of the circumstances of the case.

35. The State offers a number of reasons that allegedly justify why the Peirano brothers have been kept in preventive custody:

(1) Presumption that the accused has committed an offense: According to the State, there is no evidence that would make it possible to disprove the above presumption. The evidence in the court file leads to the conclusion that the accused have committed serious criminal offences that had most severe adverse effects on the national economy.
(2) Flight risk: According to the State, one of the co-accused, a brother of those detained, remains at large and part of the millions in proceeds from the fraud is in his possession.
(3) Risk that the accused will re-offend: According to the State, the accused are bankers with connections in high places in South America and Europe and the danger that they will re-offend seems greater in view of the deterioration caused to their financial position by the years in detention.
(5) Need to investigate and possibility of collusion: According to the State, the preventive detention is warranted by the complexity of the case, since it requires interrogations that are difficult to carry out, and expert accounts examinations that require particular insights and qualifications, in connection with which the accused have hindered, delayed or conspired to pervert the course of justice.
(6) Preservation of public order: According to the State, the Commission has recognized that in very exceptional circumstances the particular seriousness of a crime and the public reaction thereto may justify preventive detention for a certain length of time, due to the threat of public unrest that the release of the accused might occasion. In this case, the harm caused to thousands of small savers at the banks where the accused were engaged provides reason to believe that their release would cause acute public alarm, which the Uruguayan State, allegedly, is duty bound to avert.

36. The State concludes, saying it understands the importance of establishing reasonable time limits for processing, and it maintains that it has acted with diligence and accorded priority to the case. The State reiterates that the case of the Peirano brothers has been the most momentous and complicated case in the history of Uruguayan justice, as it concerns fraud committed by directors of companies that has caused irreversible damage to the Uruguayan financial market and economy. The nature and complexity of the crime and its multiple attendant problems necessitated a unique length of time for processing, where the main priority is to protect the rights of the victims and of the accused, which, therefore, justified keeping the accused in custody.

IV. ANALYSIS

A. The Commission's Competence Ratione Personae, Ratione Materiae, and Ratione Temporis and Ratione Loci

37. In accordance with the terms of Article 44 of the American Convention, the petitioners have standing to lodge petitions with the Commission. The petition names as alleged victims Messrs. Jorge, José, and Dante Peirano Basso, on whose behalf Uruguay undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Uruguay has been a party to the American Convention since April 19, 1985, when it deposited the respective instrument of ratification. The Commission therefore has ratione personae competence to examine the petition.

38. The Commission is competent ratione materiae because the petitioners allege infringement of rights protected by the American Convention which, if proven, could constitute violations of Articles 5(1) and (2), 7(1) and (3), 8(1), 9, 24, 25 and 29 of the American Convention on Human Rights in conjunction with the violation of the obligation of the State to adopt measures set forth to assure and respect these rights, set forth in Article 1(1) of the same Convention. The petitioners further alleged violations of Articles 2, 18, 25 and 26 of the American Declaration on the Rights and Duties of Man, and Articles 1, 2, 6 and 8 of the Inter American Convention on the Prevention and Punishment of Torture but failed to substantiate any of these alleged violations. In addition, the petitioners alleged violations of articles 9, 14 and 26 of the International Covenant on Civil and Political Rights. Since this instrument does not grant jurisdiction to the Inter-American Commission on Human Rights it will not be considered in this decision. In relation to the Vienna Convention on the Law of Treaties, and the United Nations Minimum Standards for the Treatment of Prisoners, these instruments could be used as an interpretive tool by the Commission.

39. The Commission is competent ratione temporis, because the facts alleged in the petition started to occur on August 8, 2002, and continue at present, during which time the obligation to respect and ensure the rights recognized in the American Convention was already in force for the Uruguayan State.

40. The Commission is competent ratione loci to consider the petition inasmuch as it alleges violations of rights protected under the American Convention which are said to have taken place within the territory of a state party to said treaty.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

41. Article 46(1)(a) of the American Convention provides that the admissibility of a petition submitted to the Inter-American Commission pursuant to Article 44 is subject to the requirement that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to enable national authorities to have the opportunity to address the alleged violation of a protected right, and where appropriate resolve it, prior to any submission before an international mechanism.

42. The requirement of prior exhaustion applies when domestic remedies are available in practice within the national system, and would be adequate and effective in providing a remedy for the alleged violation. In this sense, Article 46(2) specifies that the requirement is not applicable when the domestic legislation does not afford due process for the protection of the right in question; or if the alleged victim did not have access to domestic remedies; or if there was unwarranted delay in reaching a final judgment in response to the invocation of those remedies. As indicated by Article 31 of the Commission's Rules of Procedure, when a petitioner alleges one of these exceptions, it then falls to the State to demonstrate that domestic remedies have not been exhausted, unless that is clearly evident from the record.

43. According to the principles of international law as reflected in the precedents established by the Inter-American Commission and Court, it may first be noted that the State in question may expressly or tacitly waive the invocation of this rule.[FN5] Second, in order to be considered timely, the objection that domestic remedies have not been exhausted must be raised during the first stages of the proceeding; otherwise, it will be presumed that the interested State has tacitly waived its use.[FN6] Finally, the State that alleges non-exhaustion of domestic remedies must indicate which remedies should have been exhausted, as well as provide evidence of their effectiveness. [FN7] Consequently, if the State in question does not provide timely arguments with respect to this requirement, it will be understood to have waived its right to argue the non-exhaustion of domestic remedies and thereby discharge the burden of proof that would correspond to it.

[FN5] See, e.g., IACHR, Report Nº 69/05, petition 960/03, Admissibility, Iván Eladio Torres, Argentina, 13 October 2005, para. 42; I/A Court H.R., Ximenes Lopes Case. Preliminary Objections. Judgment of 30 November 2005. Ser. C No. 139, para. 5; I/ A Court H.R., Case of Moiwana Village v. Suriname. Judgment of June 15, 2005. Ser. C No. 124, para. 49; I/ A Court H.R., Case of the Serrano-Cruz sisters v. El Salvador. Preliminary Objections. Judgment of November 23, 2004. Ser. C No. 118, para. 135.

[FN6] See, e.g., I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, para. 53, I/A Court

H.R., Castillo Petruzzi Case. Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 56; and I/A Court H.R., Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, para. 40. The Commission and Court have established that "the first stages of the process" must be understood as the admissibility stage of the proceedings before the Commission, that is, "before any consideration of the merits." See, for example, IACHR, Report Nº 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, 13 October 2005, which cites, I/A Court H. R, Herrera Ulloa Case. Judgment of 2 July 2004. Series C No. 107, para. 81.
[FN7] See, e.g., IACHR, Report Nº 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, 7 March 2005, paras. 33-35; I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections, supra, para. 53; I/A Court H.R., Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33; and I/A Court H.R., Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.
---

44. Accordingly, the Commission considers that the Uruguayan State waived the right to invoke the objection of failure to exhaust domestic remedies by its failure to do so at the earliest procedural opportunity it had; that is, in its reply to the petition that initiated the proceeding.

2. Deadline for lodging the petition

45. 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.

46. The Commission notes that the initial petition was presented on October 18, 2004, by which time the petitioners had been in preventive detention for two years and two months. Consequently, the Inter-American Commission concludes that the petition sub lite was submitted within a reasonable time.

3. Duplication of proceedings and res judicata

47. There is nothing in the record to suggest that the subject matter of the petition is pending in another international proceeding for settlement, or is substantially the same as one previously studied by the Commission or by another international organization. Therefore, the Commission must conclude that the requirements established in Article 46(1)(c) are met.

4. Nature of the alleged violations

48. The Commission notes that the petition primarily raises questions regarding the interpretation of Article 7(5) of the American Convention, which guarantees the right to personal liberty and provides that "Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a

reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial."

49. The State argues, in its defense, that there are a significant number of reasons why it must maintain the Peirano brothers in detention. The Commission must evaluate these reasons and weigh them against the right to personal liberty of the presumed defendants. The petitioners argue that the American Convention ensures for all persons the right to personal liberty and access to justice to seek remedy for violations of rights. Therefore, the Commission concludes that the petition describes acts, which, if proven, could constitute violations of the rights protected by Articles 7, 9, 8, and 25 of the American Convention in conjunction with the obligations contained in Articles 1(1) and 2. Therefore, the requirements under Article 47(b) have been met. The foregoing is on the understanding that a connection exists between the allegations concerning Articles 8, 9, and 25 and the grounds for and duration of the preventive detention, the sole object of the instant petition.

V. CONCLUSION

50. Based on the factual and legal arguments given above, the Commission concludes that the case under review meets the admissibility requirements set forth in Article 46 of the American Convention and, therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant petition admissible in relation to Articles 7, 8, 9, and 25 of the American Convention in connection with Articles 1(1) and 2 of the same instrument.
2. To notify the State and the petitioners of this decision.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

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-President; Clare K. Roberts, Freddy Gutiérrez Trejo, Paolo Carozza and Víctor E. Abramovich, Members of the Commission.