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Title/Style of Cause: Juan Patricio Marileo Saravia, Florencio Jaime Marileo Saravia, Patricia Roxana Troncoso Robles, Jose Huenchunao Marinan and Juan Ciriaco Millacheo Lican v. Chile
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Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Second Vice-President: Victor Abramovich;
Commissioners: Sir Clare K. Roberts, Evelio Fernandez Arevalos, Freddy Gutierrez Trejo.
Dated: 23 April 2007
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I. SUMMARY

1. On April 13, 2005, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a complaint lodged by Juan Patricio Marileo Saravia, Florencio Jaime Marileo Saravia, Patricia Roxana Troncoso Robles, José Huenchunao Mariñan and Juan Ciriaco Millacheo Lican (“the alleged victims”), against the State of Chile (“the State” or “the Chilean state”), in which they allege the violation of Articles 8(1), 2 and 24 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) during their criminal trial, in which five of the petitioners were found guilty of the felony of terrorist arson.

2. Regarding admissibility, the petitioners contend that domestic remedies were exhausted by the judgment denying their motion to vacate, handed down on October 13, 2004, by the Court of Appeals of Temuco.

3. The State challenges the admissibility of the claim considering that, pursuant to Article 47(b) and (c) of the American Convention, the petition is groundless, given that it does not contain facts that establish a violation of the rights guaranteed by the American Convention. The State further argues that the filing of the petition was untimely and that the purpose of the petitioners is for the IACHR to act as a fourth instance. Consequently, it requests the Inter-American Commission to declare the petition inadmissible.

4. The IACHR, after analyzing the petition, and pursuant to Articles 46 and 47 of the American Convention, as well as to Articles 30, 37 and others of its Rules of Procedure, declares

the admissibility of the petition with respect to the alleged violations of Articles 8, 9, and 24, in connection with the general obligations established by Articles 1(1) and 2 of the American Convention. The Inter-American Commission also decides to notify the parties, publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BEFORE THE COMMISSION

5. The petition was submitted by Messrs. and Mme. Juan Patricio Marileo Saravia, Florencio Jaime Marileo Saravia, Patricia Roxana Troncoso Robles, José Huenchunao Mariñan y Juan Ciriaco Millacheo Lican, in an April 13, 2005 communication.[FN1] The processing of the complaint began on September 5, 2005 with the transmission of the petition to the State and the request for its observations to be submitted within the next two months.

[FN1] It is on the record that the communication was received through electronic mail by the Secretariat of the Commission on April 13, 2005, and stamped on April 14 of the same year.

6. The State of Chile, in OAS Note No. 417 of November 8, 2005, requested the IACHR to grant an extension in order to provide the required information to the Commission. On November 10, 2005, the IACHR granted an extension to the State until December 7, 2005 to present its observations.

7. On December 9, 2003, the State of Chile again requested an extension to submit its arguments on procedures and on the merits, and the Commission granted an additional one-month extension on December 14, 2005.

8. The State submitted its observations in a December 30, 2005 communication, received by the IACHR on January 5, 2006. On March 28, 2006, these observations were transmitted to the petitioners for them to submit, in turn, their own observations.

9. On May 8, 2006, the Commission informed the State of Chile that it had taken cognizance that the petitioners in the instant case were on a hunger strike begun on March 13, 2006, in protest against the application of Law 18.314 on terrorist conduct in the proceedings carried out against them. The IACHR also requested that the Government of Chile keep it informed regarding measures taken in response to this situation. To date, the IACHR has not received any information in this regard.

III. POSITIONS OF THE PARTIES

A. Background

10. The matter at issue is related to a criminal trial followed against Juan Marileo Saravia, Florencio Marileo Saravia, Patricia Roxana Troncoso Robles, José Huenchunao Mariñan and Juan Ciriaco Millacheo Lican. Before examining the positions of the parties, the Inter-American

Commission will provide a brief summary of the trial, in which the aforementioned individuals were found guilty of the crime of terrorist arson. At the time of publication of this report, Mr. Jaime Marileo Saravia and Ms. Patricia Troncoso are incarcerated, serving their sentence. There is a standing warrant for the arrest of Messrs. José Benicio Huenchunao Mariñan and Juan Ciriaco Millacheo Lican so that they will serve their aforementioned sentence.

11. Regarding the trial, it is clear from the background provided by the parties that on August 22, 2004, an oral trial was held against Messrs. and Mme. Juan Patricio Marileo Saravia, Florencio Jaime Marileo Saravia, Patricia Roxana Troncoso Robles, José Benicio Huenchunao Mariñan and Juan Ciriaco Millacheo Lican, for the crime of terrorist arson, perpetrated on December 19, 2001, on the Polunco Pidenco farm of the Ercilla municipality.

12. The petitioners lodged a motion to vacate the judgment before the Appeals Court of Temuco, which was denied on October 13, 2004, and the final judgment and sentence were affirmed.

13. According to the decision denying the motion to vacate, “each one of the appellants was sentenced to ten years and one day of longer imprisonment to the medium degree, to absolute and permanent disqualification from public office and employment, and from enjoying political rights, and absolute disqualification from licensed professions during the duration of the sentence handed down to them as perpetrators of the crime of terrorist arson, committed on December 19, 2001, on the Polunco Pidenco Farm in the Municipality of Ercilla. The appellants were also sentenced to jointly and severally indemnify the civil plaintiff Forestal Mininco S. A. for pecuniary damages in the sum of four hundred twenty-four million nine hundred and sixty-four thousand seven hundred ninety-eight pesos (\$424.964.798), plus interest and legal adjustments accrued from the date of the final judgment until the date of complete and final payment, with costs.”[FN2]

[FN2] Whereas clause No. 2 of the decision denying the motion to vacate, on the official webpage of the Judiciary of Chile <http://www.poderjudicial.cl>.

B. Position of the petitioners

14. The petitioners contend that they were subjected to a criminal trial for the crime of arson in a forested area owned by the company Forestal Mininco S. A. in the Province of Malleco, Municipality of Ercilla in the ninth region of Araucania, on December 19, 2001. According to the petitioners, charges were brought against them in that trial by the Office of the Attorney General, the Office of the Governor of Malleco, and by the Forestal Minico S.A. company.

15. The petitioners state that the trial took place on July 29 and August 17, 2004. They were sentenced to ten years and one day of longer imprisonment in medium degree, to absolute and permanent disqualification from holding public office, from exercising political rights, and from licensed professions during the duration of their sentence, for the crime of terrorist arson with

prejudice to Forestal Mininco S. A. They were also sentenced to jointly and severally indemnify the company in the amount of \$424.964.798 (Chilean pesos).

16. The petitioners maintain that the judgment and sentence against them is the outcome of multiple violations of their human rights, which occurred during the investigation and during the trial, both at the time when the judicial decision and sentencing were handed down, and in the review of the judgment before the higher court.

17. With respect to Article 8(2) paragraphs “c” and “f” of the American Convention, the petitioners argue that during the trial they were deprived of the right to adequate means to prepare their defense. They affirm that the violation of this right took place from the moment in which testimony provided by the prosecutor against them during the investigation turned out to be substantially different from the evidence provided in the trial.

18. The petitioners argue that their defense at all times was based on the background provided by the public prosecutor; it was on this basis that they articulated the arguments of their defense and prepared the cross-examination of the witnesses for the prosecution. They further point out that article 260 of the Code of Criminal Procedure provides that the background information gathered during an investigation must be placed at the disposal of the defendant in order that he or she may prepare his or her defense. According to the petitioners, the Office of the Attorney General handed over to them, for their preparation of their defense, the background information gathered during its investigation consisting of witness testimony, expert testimony, and documentary evidence. They affirm that there was a radical change in the testimony given in the trial itself: witnesses gave accounts of the facts different from those given in their depositions on the investigation’s record, and changing essential circumstances in the facts. The petitioners claim that they were all found guilty exclusively on the basis of evidence from witness testimony.

19. The petitioners state that, referring to the testimonial evidence with respect to which, since it was unknown to them, they had not prepared any questions, nor articulated arguments for their defense, the court stated:

The remaining arguments, such as that not all available evidence was presented, or that some witnesses had modified their initial testimony, or that the identifications carried out in the hearings had been forced by a prior review of photographs of the defendants, or that many witnesses met in a cabin in the city of Lautaro, where they were visited by officials of the Office of the Attorney General and by police officers, shall not be considered by this Court: the decision the Court must reach is based on all the information that judges receive during the hearings; this, in turn, is nothing but the clearest expression of the principle of immediacy.[FN3]

[FN3] Final paragraph of whereas clause No. 18 of the judgment of the Oral Trial Court of Angol. Cited by the petitioners in an April 13, 2005 communication.

20. With respect to Article 8(2)(f), the petitioners affirm that their right to introduce evidence was not formally denied: they had the opportunity to present witnesses, expert witnesses, and could introduce considerable documentary evidence. However, the petitioners consider that the court, in deciding the merits, did not weigh the evidence submitted by the defense.

21. The petitioners argue that Article 8(2)(h) was violated because the defense appealed the decision before the Court of Appeals of Temuco. However, the higher court abstained from considering several of their arguments, and performed only a partial review of the lower court's decision, arguing that to hear other arguments would entail the consideration of matters of fact, something not within the appeals court's scope of jurisdiction. For this reason, the petitioners contend, they were prevented from appealing the decision.

22. Regarding Article 8(1) of the American Convention, the petitioners argue that they were deprived of their right to be tried by an impartial court: this right was violated because the court copied into its decision a prior judgment handed down against other Mapuche residents of the same territorial zone. The context within which the copied judgment was issued, the petitioners contend, was the so-called "Mapuche conflict." They moreover state that the part of the decision referring to terrorist arson as the subject matter of the case is an exact, full copy of the judgment handed down by the same court, more than a year before, against Messrs. and Mme. Pascual Pichún, Aniceto Norin Catriman and Patricia Roxana Troncoso Robles. The petitioners argue that this shows that the judges had a preconceived opinion on the merits of the issue submitted for their decision.

23. The petitioners claim that the State of Chile violated Article 8(2) of the American Convention. They affirm that the judgment against them is rife with infractions of this right, holding them responsible for actions carried out by different individuals. The petitioners point out that the State's reasoning regarding their participation in the crime of arson and its terrorist character goes thus:

It is public knowledge that during the year 2001 some persons linked with or belonging to the Mapuche ethnic group, preferring the use of violent methods to satisfy their demands and territorial claims, attacked persons, property, facilities, vehicles, and machinery, belonging to individuals and businesses located in different geographic sectors of the province of Malleco, with negative consequences for public safety and peace, for the physical integrity of the citizens and for the progress and development of the zone. The fire on the Poluco Podenco farm falls within the dynamics of this conflict.[FN4]

[FN4] Whereas clause No. 4 of the judgment handed down by the Oral Trial Court of Angol. Cited by the petitioners in an April 13, 2005 communication.

24. According to the petitioners, the nineteenth whereas clause of the judgment[FN5] asserts that "the unlawful act established in these considerations is part of a wider process of the Mapuche people's recovery of land, which has taken place outside the law"... "these actions can be synthesized as the posing of excessive claims under the pressure of violent groups." [FN6] The

petitioners argue that a practical consequence of the application of this reasoning has been their sentencing to more than 5 years of imprisonment over what they would have received had common criminal law been applied to them, and not law applicable to terrorist conduct. The petitioners further argue that this violation of the principio de culpabilidad [judicial duty to establish guilt] is a recurrent theme in the trials of Mapuche indigenous people.

[FN5] Cited by the petitioners in an April 13, 2005 communication.

[FN6] Cited by the petitioners in an April 13, 2005 communication.

25. Regarding Articles 1(1) and 24 of the American Convention, the petitioners note that the principle of equal protection and non discrimination, which is also established by the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, both of which have been ratified by Chile, and in article 19, No. 2 of the Constitution of Chile.

26. In this respect, the petitioners contend that Article 1(1) and 24 of the American Convention have been violated because during the trial paid witnesses were used solely because the defendants were Mapuche indigenous people; and that the antiterrorist law (Law 18.314) was improperly used, as were diverse measures for protection of the witnesses, which in practice amounted to nothing but a spurious form of obtaining testimony against them. The petitioners assert that this violates the principle of equal protection, because “we all have the right to equal treatment on the part of the state, and if the situation was one of facing a criminal indictment we had the right to a trial under normal conditions and that these conditions not be altered bearing in mind our racial origin.”

C. Position of the State

27. The State contends in its response that the petition submitted is inadmissible pursuant to the provisions of Articles 46 and 47 of the American Convention, as well as those of Articles 28, 30, 31, 32, 33, and 34 of the Inter-American Commission’s Rules of Procedure. The State affirms that there are seven causes of inadmissibility, which should be examined by the Commission before it begins its analysis of the merits of the case submitted to it.[FN7] In its observations, the State argues that, of the aforementioned causes of inadmissibility, at least three are applicable to the complaint or report lodged by the petitioners. The State notes that, in addition, there is a fourth cause of inadmissibility which, although it is not provided for by the American Convention or the IACHR’s Rules of Procedure, it has been established by the jurisprudence Commission’s and the Inter-American Court’s: according to the State it is comprised of the fourth instance formula.

[FN7] According to the State, the following are causes for inadmissibility: (i) verification of formal requirements, (ii) exhaustion of domestic requirements, (iii) time period for submission of petitions, (iv) duplication of procedures, (v) verification of whether the facts put forward characterize a violation of protected rights ,(vi) Analysis of whether petitions are manifestly

groundless or out of order, according to statements of the petitioner or of the State, and (vii) whether or not subsequent information or evidence render the petition inadmissible or out of order.”

28. With respect to the first cause of inadmissibility, the State asserts that the petition was lodged in an untimely fashion, i.e., outside the peremptory six-month time period required by both the Convention and the Commission’s Rules of Procedure. According to the State, Article 46 of the Convention, for a petition or communication to be admitted by the Commission, requires “that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.”[FN8]

[FN8] Article 46(b) of the Inter-American Commission of Human Rights. Cited by the State in a January 16, 2006 communication.

29. According to the State of Chile, in the instant case the petitioners did not inform the IACHR in their initial petition about a basic item of background information that would have allowed the Commission to establish that the petition was not lodged within the six-month time period required by the Convention and the Commission’s Rules of Procedure: this item, the State asserts, is the date of the last court decision handed down within the sequence of domestic remedies accessed by the petitioners.

30. Within this framework, the State of Chile argues that, on September 1, 2004, the petitioners filed, before the Appeals Court of Temuco, a motion to vacate the judgment that found them guilty, handed down by the Tribunal de Juicio Oral [Oral Trial Court] of Angol. The date for the hearing of the case was set for September 23, 2004, and on this same date attorneys of the Office of the Public Defender made their arguments on behalf of the petitioners.

31. According to the State, the judgment hearing of the Appeals Court of Temuco denying the motion to vacate took place on October 13, 2004, and the judgment of the lower court finding the defendants guilty became final. “In other words, the six-month time period required by Article 46 of the Convention and Article 32 of the Commission’s Rules of Procedure expired on April 13, 2005; hence, the State asserts, the complaint, filed in September 2005, was clearly untimely.”[FN9]

[FN9] In a December 30, 2005 brief submitted by the State and received by the IACHR on January 5, 2006.

32. The State asserts that it is evident that the petition was lodged approximately one year after the decision was handed down regarding the complainants’ last appeal within the domestic jurisdiction, i.e., it was lodged after the time period had expired, and the Commission should declare it inadmissible.

33. The State contends that, moreover, the petitioners have not claimed to be under one of the exceptions provided for by Article 46(2), paragraphs a, b, and c of the Convention. It considers that in any event an allegation of this nature would be not only unacceptable, but also completely out of order. Indeed, it points out that the petitioners could not have claimed that the State of Chile's domestic legislation does not provide for due legal process, nor that they were prevented from gaining access to domestic remedies, nor that there were unwarranted delays in the decisions regarding these remedies.

34. In addition, the State affirms, the complaint does not include facts constitutive of a violation of protected rights, in accordance with Articles 47 and 34 of the Convention and of the Commission's Rules of Procedure, respectively. It argues that from the petition no facts can be gleaned that constitute a violation of the rights provided for by the Convention. The state further argues that not a single one of the violations alleged by the petitioners is backed by objective events that could lend them the least plausibility. To the contrary, they reveal the evident intention on the part of the petitioners to overturn adverse judicial decisions, handed down within the framework of the new criminal trial system adopted by the State of Chile.

35. According to the State, the defendants have not managed to explain who prevented them, and how, from disposing of sufficient time to prepare their defense in trial, or when their right to question their witnesses was restricted, or when their right to offer and present their own witnesses in their trials was violated. The State affirms that the petitioners acknowledge in their initial petition that they were not denied their right to submit evidence.

36. Another cause of inadmissibility, the State argues, is that the petition is manifestly groundless and out of order. According to the State, this cause entails dismissal of unsubstantiated petitions that only in appearance report alleged human rights violations. The State notes according to the background provided by the complainants, the alleged violations of the Convention took place during the oral trial and in the judgment that followed, which found them guilty of the crime of terrorist arson on December 19, 2001, with prejudice to the Polanco-Podenco farm, and which affected an area of 108 hectares of pine and eucalyptus trees, valued at 600,000 United States dollars, same judgment that sentenced them to 10 years and one day of longer imprisonment to the medium degree, expenses and costs.

37. Regarding the fourth instance formula, argued to be another cause of inadmissibility, the State notes that the petitioners have appealed to the Inter-American Commission as if it were a fourth judicial instance, competent to hear the facts and law applied to the instant case, without any reasonable background that would provide grounds for claiming a violation of a right guaranteed by the American Convention. According to the State, both the complementary nature of the Convention, and the requirement of prior exhaustion of domestic remedies assign an essentially subsidiary function to the organs for the protection of fundamental human rights in the inter-American system.

38. Taking the foregoing into account, the State contends, the Commission and the Inter-American Court are not competent to act as an appeals court or fourth instance and should restrict themselves to judge those cases in which there is a presumption of a violation of any

rights established by the American Convention. The State argues that the organs for the protection of human rights can only examine domestic judicial decisions of a State on the assumption that the petition is based on a decision handed down following a lack of due process, or that apparently violates any other rights provided for by the Convention. Finally, it is the opinion of the State that what the petitioners seek is a judgment amending the decision finding the defendants guilty made by the Oral Trial Court of Angol.

39. The State of Chile requests that the Inter-American Commission admit its arguments and declare the petition lodged by Messrs. and Mme. Juan Patricio Marileo Sanabria, Florencio Jaime Marileo Saravia, Patricia Roxana Troncoso Robles, José Benicio Huenchunao Mariñan and Juan Ciriaco Millacheo Lican inadmissible.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence *ratione personae*, *ratione materiae*, *ratione temporis*, *ratione loci*

40. In accordance with the provisions of Article 44 of the American Convention and Article 23 of the IACHR Rules of Procedure, the petitioners have standing to present a petition before the Commission regarding alleged violations of the rights provided for in said treaty. With respect to the State, Chile is a party to the American Convention, and therefore is internationally responsible for violations of said instrument. The alleged victims are individuals with respect to whom the State undertook to guarantee the rights provided for by the American Convention. Based on the foregoing, the Inter-American Commission has the competence *ratione personae* to examine the complaint.

41. The IACHR is competent *ratione materiae* because the petition contains complaints of violations of human rights protected by the American Convention. It also has jurisdiction *ratione temporis* because the obligation to respect and guarantee rights in said treaty was already in force for the State at the time in which the alleged facts in the petition occurred, since Chile ratified the American Convention on August 21, 1990. Finally, the Inter-American Commission is competent *ratione loci* to hear the petition, because it contains allegations of violations of human rights protected by the American Convention that took place within the territory of a State party to said instrument.

B. Requirements for admissibility of the petition

1. Exhaustion of domestic remedies

42. Article 46(1)(a) of the Convention provides that one of the requirements for the admission of a petition is “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

43. Based on the information submitted by the parties, the Commission notes that in the instant petition domestic resources have been exhausted. Indeed, on October 13, 2004, the Court of Appeals of Temuco denied the motion, filed by the defense of Messrs. and Mme. Juan Patricio Marileo Sanabria, Florencio Jaime Marileo Saravia, Patricia Roxana Troncoso Robles, José

Benicio Huenchunao Mariñan and Juan Ciriaco Millacheo Lican, to vacate the judgment finding them guilty, handed down on August 22, 2004.

44. Pursuant to article 387 of the Code of Criminal Procedure of Chile, the decision on a motion to vacate has no appeal, without prejudice to a review of the final judgment finding the defendant guilty. Should the motion to vacate have been granted, the judgment handed down in a new trial is not subject to appeal, either. However, the article states that should the new judgment convict the defendant, and the judgment quashed following the appeal had been for acquittal, then a motion to vacate in favor of the defendant shall be in order.

45. The Inter-American Commission has verified that the remedies provided for by Chilean legislation for these cases have been exhausted. It therefore finds that the petition examined meets the requirement of Article 46(1)(a) of the Convention.

2. Timeliness of the petition

46. Article 46(1)(b) of the American Convention provides that one of the requirements for the admission of a petition is that it must be “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.”

47. In this regard the State argues that the petition is inadmissible because it was submitted in September, 2005, i.e., after the time period established by Articles 46(1)(b) and 47(a) of the American Convention and Article 32(1) of the Commission’s Rules of Procedure had expired.

48. A fact undisputed by the parties is that on October 13, 2004, the Court of Appeals of Temuco decided the last appeal lodged by Messrs. and Mme. Juan Patricio Marileo Sanabria, Florencio Jaime Marileo Saravia, Patricia Roxana Troncoso Robles, José Benicio Huenchunao Mariñan and Juan Ciriaco Millacheo Lican in the trial against them. Pursuant to the provisions of Article 46(1)(b) of the Convention, the deadline to lodge a complaint before the IACHR expired on April 13, 2005. In the instant case, the petition or communication of the petitioners was received by the IACHR on April 13, 2005.

49. In view of the aforementioned, the IACHR rejects the argument of the State of Chile that the petition is inadmissible because it was submitted in untimely fashion. The six-month time period established by Article 46(1)(b) of the Convention begins to run from the date in which the alleged victim of a human rights violation was notified of the final judgment until the date on which the petition is filed with the IACHR, and not the date on which the petition is forwarded to the respective state.

50. Therefore, the IACHR concludes that the petition meets the requirement established by Article 46(1)(b) of the American Convention.

3. Duplication of proceedings and res judicata

51. The record of the petition does not contain any information leading to a determination that the complaint is pending in another international proceeding. There are no reasons, either, to

believe that this petition is substantially the same as one previously examined by the IACHR. Therefore, the IACHR concludes that the requirements established by Articles 46(1)(c) and 47(d) of the American Convention have been met.

4. Characterization of the facts

52. In the instant case, the State claimed that the facts described do not constitute violations of rights protected by the Convention, and hence requested, pursuant to Article 47(b) and (c) of the Convention, that the IACHR deny the petition.

53. It is the opinion of the Commission that it is not appropriate, at this stage of the proceeding, to decide whether the alleged violations of the right to a fair trial and to be free from the application of ex post facto laws did indeed occur. For the purposes of admissibility, the IACHR at this time must only decide, pursuant to Article 47(b) of the American Convention, whether facts have been put forward that, should they be proven, would constitute violations of same, and, pursuant to paragraph c of the same article, whether the petition is “manifestly groundless” or “obviously out of order.”

54. The criterion to analyze these points is different from the one required to decide on the merits of a complaint. The IACHR must make a prima facie evaluation and determine if the complaint provides grounds for an apparent or potential violation of a right guaranteed by the American Convention, although not whether the violation has in fact occurred.[FN10] At the current stage what is appropriate is to make a concise analysis that does not entail a prejudgment or the advance of an opinion on the merits. The Inter-American Commission’s Rules of Procedure themselves, in establishing stage of admissibility and another one for the merits, reflects this distinction between the evaluation that the Inter-American Commission must carry out to declare a petition admissible, and the one required to establish whether a violation, imputable to the State, has been committed.[FN11]

[FN10] See IACHR, Report N° 128/01, Case 12.367, Herrera and Vargas (La Nación), Costa Rica, December 3, 2001, paragraph 50. See IACHR, Report N° 4/04, Petition 12.324, Rubén Luis Godoy, Argentina, February 24, 2004, paragraph 43.

[FN11] See IACHR, Report N° 31/03, Case 12.195, Mario Alberto Jara Oñate et al., Chile, March 7, 2003, paragraph 41. See IACHR, Report N° 4/04, Petition 12.324, Rubén Luis Godoy, Argentina, February 24, 2004, paragraph 43.

55. The Inter-American Commission’s jurisprudence clear establishes that it is not competent to review judgments handed down by national courts that act within their jurisdiction and apply the appropriate judicial guarantees. The IACHR cannot assume the position of an appeals court to examine alleged errors in fact or in law that may have been committed by domestic courts acting within their sphere of competence. However, within the limits of its mandate to guarantee the observance of the rights provided for by the Convention, the Inter-American Commission is competent to declare a petition admissible and decide on its grounds when it refers to a national

judgment handed down absent due process, or if a violation of any other right guaranteed by the American Convention is put forward.[FN12]

[FN12] See IACHR, Report N° 1/03, Case 12.221, Jorge Omar Gutiérrez, Argentina, February 20, 2003, paragraph 46, citing Report N° 39/96, Case 11.673, Marzioni, Argentina, October 15 1996, paragraphs 50-51. See IACHR, Report N° 4/04, Petition 12.324, Rubén Luis Godoy, Argentina, February 24, 2004, paragraph 43.

56. Specifically regarding the proceedings followed against Messrs. and Mme. Juan Patricio Marileo Sanabria, Florencio Jaime Marileo Saravia, Patricia Roxana Troncoso Robles, José Benicio Huenchunao Mariñan and Juan Ciriaco Millacheo Lican, the Commission takes note that in the instant case the complainants contend that there has been a violation of Article 24, in connection with Article 1(1), of the American Convention. The petitioners also complain that in the instant case there has been a violation of Article 8(2) of the American Convention, on the right to a fair trial, in the degree to which they did not dispose of adequate means to prepare their defense, as provided for by paragraphs c and f of said article.

57. Based on the arguments and documentation submitted by the parties, as well as on inter-American jurisprudence, it is the opinion of the Commission that there is no indication of a lack of grounds for the petition, or that it is out of order. Although some of the allegations of the petitioners do not tend to establish human rights violations (e.g. the claim stating that the court, in handing down its decision, had copied paragraphs of another judgment), the IACHR will examine said allegations in its decision on the merits. It will do so within the context of the argument referring to a special criminal law regime applied to the alleged victims and the definition of the unlawful conduct, or the criminal type used, that could prima facie characterize a violation of human rights guaranteed by Articles 8 and 9, in connection with Article 1(1), of the American Convention, with prejudice to Juan Patricio Marileo Saravia, Florencio Jaime Marileo Saravia, Patricia Roxana Troncoso Robles, José Benicio Huenchunao Mariñan and Juan Ciriaco Millacheo Lican. In addition, given the claims on the part of the petitioners regarding the application of a criminal law regime more severe than common criminal law, because of their ethnic origin, the IACHR considers that the facts object of the complaint could characterize a violation of Article 24 of the American Convention, in connection with Article 1(1) of that international instrument.[FN13]

[FN13] IACHR, Report N° 89/06, Petition 619-03, Admissibility, Aniceto Norin Catriman and Pascual Pichún Paillalao, Chile, October 21, 2006, paragraph 65.

58. Therefore, it is the opinion of the Inter-American Commission that the requirements established by Article 47(b) and (c) of the American Convention have been met.

V. CONCLUSION

59. The IACHR concludes that it is competent to take cognizance of the instant case and that the petition meets the requirements of admissibility, pursuant to Articles 46 and 47 of the American Convention and to Articles 30, 37 and other related articles of its Rules of Procedure.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant case admissible with respect to the alleged violation of Articles 8, 9, and 24, in connection with Articles 1(1) and 2 of the American Convention on Human Rights.
2. To forward this report to the State and the petitioners.
3. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 23rd day of the month of April, 2007. (Signed): Florentín Meléndez, President; Paolo Carozza, First Vice-President; Víctor Abramovich, Second Vice-President, Sir Clare K. Roberts, Evelio Fernández Arévalos, and Freddy Gutiérrez Trejo, Commissioners.