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Title/Style of Cause: Adriana Gallo, Ana Maria Careaga and Silvia Maluf de Christin v. Argentina
Doc. Type: Decision
Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Commissioners: Sir Clare Roberts, Evelio Fernandez Arevalos, Freddy Gutierrez Trejo.
Commissioner Victor E. Abramovich, an Argentine citizen, did not participate in the deliberation or decision of this case, in accordance with Article 17.2.a of the Commission’s Rules of Procedure.

Dated: 27 July 2007
Citation: Gallo v. Argentina, Petition 415-03, Inter-Am. C.H.R., Report No. 65/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by: APPLICANTS: the law firm of Wortman Jofre – Isola Attorneys, the Center for Legal and Social Studies and the Center for Justice and International Law

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I. SUMMARY

1. On June 11, 2003, the law firm of Wortman Jofré – Isola Attorneys, the Center for Legal and Social Studies (CELS) and the Center for Justice and International Law (CEJIL) (hereinafter "the petitioners") lodged a petition with the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission." or "the IACHR") against the Republic of Argentina (hereinafter "the State," "the Argentine State," or "Argentina") for the alleged violation of the rights guaranteed in Articles 9 (freedom from ex post facto laws), 8 (right to a fair trial), 25 (judicial protection), and 13 (freedom of thought and expression) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") to the detriment of Ms. Adriana Gallo,[FN1] Ms. Ana María Careaga, and Ms. Silvia Maluf de Christin[FN2] (hereinafter "the alleged victims").

[FN1] In the case of Ms. Adriana Gallo the petitioners did not allege violation of the right set forth in Article 13 of the American Convention.

[FN2] The petitioners inconsistently used the names "Silvia Maluf de Christin" and "Silvia Christin de Maluf" in their complaint.

2. The petitioners argued that legislative amendments in the Province of San Luis reduced the alleged victims' remuneration, in violation of guarantees of the provincial and federal constitutions. They also asserted that the alleged victims were deprived of their judgeships after endorsing a press release that criticized the local executive branch pressure on the courts of San Luis Province. Finally, they stated that the dismissal was ordered by biased courts with disregard for due process of law and that domestic remedies have thus far failed to effectively protect their rights.

3. The State held that the alleged victims did not exhaust domestic remedies and that the petitioner's pleadings do not demonstrate any partiality by the San Luis Province courts.

4. Without prejudging the merits of the case, the IACHR decided that the petition is admissible as regards the alleged violation of the rights set forth in Articles 9 (freedom from ex post facto laws), 8 (right to a fair trial), 25 (judicial protection), and 13 (freedom of thought and expression) of the American Convention, in connection with the general obligation established in Article 1(1) of the same treaty to the detriment of Ms. Adriana Gallo, Ms. Ana María Careaga, and Ms. Silvia Maluf de Christin. The Commission decided to 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 complaint was lodged with the Inter-American Commission on June 11, 2003, and submitted to the State on January 26, 2005, giving it a period of two months to present its observations. The State sent its response to the petition in notes received by the IACHR on May 31 and July 25, 2005, which were forwarded to the petitioners on August 31, 2005.

6. On September 14, 2005, the petitioners sent their observations on the State's response, which were forwarded to it on April 3, 2006. On August 14, 2006, the State sent the IACHR a report prepared by the Province of San Luis, whose pertinent parts were transmitted to the petitioners on August 23, 2006, giving them a period of 30 days to submit observations. On September 21, 2006 the petitioners requested a 15-day extension, which was granted by the IACHR on September 28, 2006. On October 16, 2006, the petitioners sent their observations to the IACHR, which forwarded them to the State on October 31 of the same year.

7. On December 13, 2006, the State requested a one-month extension for submitting its observations on the latest submission of the petitioners, which the IACHR granted on December 22, 2006.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

Background

8. The petitioners state that between 1995 and 1997 the executive branch of San Luis Province undertook a legislative reform process that compromised the independence of the local

judicial branch. They say that this reform began with the enactment of Law 5.062 in December 1995, which reduced the pay of the judges in San Luis. The petitioners allege that this pay cut violated the guarantee of the integrity of their remuneration as set forth in Article 192 of the provincial constitution.[FN3] They add that Law 5.062 was challenged by a large number of judges through motions for protection by precautionary measures, which were favorably received by judges in the lower courts.[FN4]

[FN3] “Article 192: Integrity of remuneration.

Judges shall receive a monthly salary that shall not be reduced except for temporary deductions of a general nature for as long as they remain on the bench. The salary is fixed by law and in no case shall a member of the Supreme Court receive lower remuneration than that of the highest paid official of the provincial government, except for the head of the executive branch.”

[FN4] Petition lodged with the IACHR on June 11, 2003, page 5.

9. The petitioners state that owing to the challenge (recusación) invoked by the prosecutor’s office, and the exclusion (excusación) invoked by the judges themselves, most of the suits for protection (acciones de amparo) filed to challenge the salary cut were heard by cojudges. They affirm that in the context of the local executive branch’s policy of publicly discrediting the judicial branch in San Luis Province the provincial legislature enacted 17 laws that, inter alia, changed the titles of magistrates and cojudges and reduced their pay.

10. The petitioners allege that prior to the adoption of Law 5.070 in February 1996, the cojudges were appointed by lottery conducted by the Superior Court of San Luis among all lawyers registered with the provincial bar association who met the constitutional and legal requirements to replace judges who are recused (by the parties) or excused (by themselves) from consideration of a case. They say that since the entry into force of Law 5.070 cojudges have been nominated by the Magistrates Council and appointed by the executive branch with the consent of the senate.[FN5]

[FN5] Idem, page 7.

11. The petitioners state that since the adoption of Law 5.054, the filing of appeals by the prosecutor’s office has nullified the injunctive relief of the precautionary measures approved by the lower court in suits for protection.[FN6] In this regard, they say that the suits for protection filed by the judges of San Luis to challenge the salary cut imposed by Law 5.062 ceased to provide temporary relief because of the appeals filed by the public prosecutor’s office.

[FN6] Idem, page 6.

12. The petitioners say that Laws 5.102 and 5.124 changed the rules of the Jurado de Enjuiciamiento [Jury for Judgment of Judges] in San Luis, which is the organ responsible for hearing charges of improper official conduct by judges and members of the public prosecutor's office. They allege that the executive branch attempted to use this amendment to control the composition of the Jurado de Enjuiciamiento, in violation of the provisions of Article 224 of the provincial constitution.[FN7] They add that Law 5.071 suspended the execution of all rulings and motions requiring the provincial government to pay a sum of money, and quashed the cases against the State, which represented a denial of justice that caused damage to several judges.

[FN7] Article 224 of the Constitution of San Luis Province states:

“Judges and members of the public prosecutor's office may be brought before the Jurado de Enjuiciamiento for improper official conduct, continuing physical or mental incapacity, felonies, or misdemeanors. The proceeding is public and can be initiated by any individual, by the Superior Court, the public prosecutor's office, and the provincial bar association. The Jury is presided by the President of the Superior Court and composed of nine members, three deputies, attorneys if there are any, three licensed lawyers who are qualified to sit on the Superior Court, and three judges including the President of the Superior Court. The members of the Jury and their alternates are appointed annually by lot in a public act, as follows: the deputies by the respective chamber, the judges from among the members of the Superior Court and the chambers, and the lawyers from a list of 20 attorneys prepared by the provincial bar association in December of each year.”

13. The petitioners state that Ms. Adriana Gallo, Ms. Ana María Careaga, and Ms. Silvia Maluf filed a suit for protection (acción de amparo) in Civil, Commercial, and Mining Court N° 4 of the First District of San Luis challenging the salary cuts ordered by Law 5.062. They say that the three suits were joined in the proceedings of the case “Bianchi Oscar Alberto et al on suits for protection.” They say that the alleged victims won a favorable verdict in the lower court, which was upheld by the First Appeals Court. However, they say that owing to the various legislative changes[FN8] the injunctive relief obtained at the lower court was lost and the suits for protection they had filed began to be heard by biased and incompetent authorities.

[FN8] See paragraphs 9, 10 and 11 of this report.

14. They state that in view of the favorable ruling by the Appeals Court, the public prosecutor's office filed a special motion to be heard by the Superior Court in San Luis Province. They say that although it has been nearly seven years since the case reached the highest provincial court, the suit for protection has not received a final judgment.

Facts relating to the petition

15. The petitioners state that on February 4, 1997, the Bar Association of Villa Mercedes adopted a seven-page resolution made into a press release, which denounced the interference of

the executive branch of San Luis Province in the judicial branch and appealed for intervention by the federal government. The pertinent parts of the resolution of the Bar Association of Villa Mercedes are as follows:

RESOLUTION OF A COMPLAINT

THE BAR ASSOCIATION OF VILLA MERCEDES SEEKS THE INTERVENTION OF THE THREE BRANCHES OF GOVERNMENT IN SAN LUIS PROVINCE

[...]

IN SAN LUIS, THE EXECUTIVE BRANCH IS CONSTANTLY UNDERMINING THE REPUBLICAN GOVERNMENT AND THE DEMOCRATIC ORDER

That it is of public and notorious (sic) that for some time in the province of San Luis the republican government and democratic order have been undermined.

That from the highest levels of the provincial executive branch there is a continuous, cruel, and unwarranted assault on the rule of law, destroying the constitutional foundation of separation of powers.

That it can be unequivocally stated the San Luis Province is run by the personal and capricious whim of the governor, Dr. Adolfo Rodríguez Saa, flouting the principle of division of powers and the validity of the laws.

[...]

THE PROVINCIAL EXECUTIVE BRANCH IMPEDES PROPER ADMINISTRATION OF JUSTICE

That the judges' and lawyers' associations have repeatedly denounced the interference of the provincial executive branch in the judicial area, to obstruct the proper administration of justice.

That this whole situation is aggravated by the deterioration of public ethics, and the existence of lawsuits for illicit enrichment against the provincial governor, which appear to be handled in a biased manner.

[...]

16. The petitioners state that judges Adriana Beatriz Gallo, Ana María Careaga, and Silvia Maluf de Christin endorsed the considerations of the press release, and were subsequently disbarred by order of the Jurado de Enjuiciamiento in the context of allegations of judicial error. The petitioners' allegations regarding the firing of each of the alleged victims are presented below.

Adriana Beatriz Gallo

17. Ms. Gallo was the judge in charge of Civil, Commercial, and Mining Court N° 3 of the Second Circuit in the city of Villa Mercedes, San Luis Province. The petitioners state that on April 23, 1996, Edgar Segundo del Corro, an attorney and official of the provincial executive branch, filed a complaint against her, alleging that she had acted irregularly in two cases. The petitioners affirm that the complainant never specified the nature of said irregularities. They add that on December 3, 1996, attorney Carlos Alberto Aguilera also filed a complaint against Ms. Gallo for delay in delivery of a check in the framework of a trial.

18. The petitioners state that the Jurado de Enjuiciamiento decided to reject in limine both complaints because it considered that the facts did not constitute any of the grounds for dismissal contemplated in the constitution of San Luis.[FN9] They say that after the change in the makeup of the Jurado de Enjuiciamiento introduced by Laws 5.102 and 5.124, the prior decision was declared null and void.[FN10]

[FN9] Petition lodged with the IACHR on June 11, 2003, page 18.

[FN10] See paragraph 11 of this report.

19. The petitioners state that on May 12, 1998, the Jurado de Enjuiciamiento with its new members declared the opening and joinder of the two complaints against Ms. Gallo. They say that in this new proceeding 70% of the evidence offered by the defendant was rejected as “out of order” with no explanation. They add that on November 6, 1998 the Jurado de Enjuiciamiento decided to dismiss Ms. Adriana Gallo and barred her from holding any public office for eight years.

20. On November 13, 1998, the alleged victim filed a special provincial appeal, which was denied by the Jurado de Enjuiciamiento on November 24 of the same year. On December 3, 1998, she filed an appeal of complaint to the Superior Court, which was rejected on August 22, 2000. On September 11, 2000, she filed a special federal appeal, which was rejected by the Superior Court of San Luis on August 15, 2001. On August 30, 2001, she filed an appeal of complaint to the federal Supreme Court, which was accepted on August 8, 2006. That decision remanded the case to the provincial Superior Court, without rendering a decision on the merits.[FN11]

[FN11] Resolution of the federal Supreme Court of August 8 2006, G. 588.XXXVII, page 3.

Ana María Careaga

21. Ms. Careaga was the judge in charge of Criminal Court N° 1 of the Second Circuit of San Luis, in the city of Villa Mercedes, San Luis Province.[FN12]. The petitioners state that on November 26, 1997, the mayor of the city of Villa Mercedes, Jorge Alberto Cangiano, filed a

complaint with the Jurado de Enjuiciamiento alleging that the judge had improperly summoned him to testify in a corruption investigation.

[FN12] Petition lodged with the IACHR on June 11, 2003, page 21.

22. They state that on February 27, 1998, Ms. Ana María Careaga was notified of the formation of the Jurado de Enjuiciamiento to consider the complaint. They say that on March 14 of the same year Ms. Careaga filed a motion challenging the constitutionality of the act, alleging that the lawyers on the Jurado de Enjuiciamiento had not been appointed in accordance with Article 224 of the provincial constitution, but rather selected from a list of cojudges compiled by the executive branch. The alleged victim also requested recusal of the members of the Jury on grounds of bias.

23. The petitioners state that on May 12, 1998, the Jurado de Enjuiciamiento rejected the motions of unconstitutionality and recusal, and that on August 24, 1998 the federal prosecutor filed charges against Ms. Careaga for: a) irregularities in the summons of plaintiff Jorge Alberto Cangiano; b) ignoring the plaintiff's immunity by virtue of his position as mayor; and c) endorsing the press release of the Bar Association in the city of Villa Mercedes issued in February 1997, interpreted as a political act against the judges under Article 193 of the constitution of San Luis Province.[FN13]

[FN13] Idem, page 23.

24. The petitioners state that much of the evidence submitted by Ms. Careaga's defense was rejected as "out of order." They say that on December 17, 1998 the Jurado de Enjuiciamiento decided the case and ruled her dismissal, banning her from holding any public office for 15 years.

25. On December 24, 1998 the alleged victim filed a special provincial appeal, which was denied by the Jurado de Enjuiciamiento on December 29, 1998. On February 2, 1999 she filed an appeal of complaint, which was rejected by the Superior Court of San Luis on September 11, 2001. The alleged victim also filed a special federal appeal in September 2001, which was rejected on April 23, 2002. She then filed an appeal of complaint with the federal Supreme Court, which accepted it on August 8, 2006. That decision remanded the case to the provincial Superior Court, without rendering a decision on the merits.[FN14]

[FN14] Resolution of the Supreme Court of August 8, 2006, C. 1678.XXXVIII, page 3.

Silvia Maluf de Christin

26. Ms. Silvia Maluf de Christin was the judge in charge of Civil, Criminal, and Mining Court N° 2 of the Second Circuit, in the city of Villa Mercedes, San Luis Province. The petitioners state that on March 2, 1999, the acting prosecutor general of San Luis Province, Ms. Diana María Bernal, filed a complaint against the alleged victim, among other things for having endorsed the press release of the Bar Association of Villa Mercedes, and described her conduct as follows:

The reproachable conduct of Dr. SILVIA SUSANA MALUF DE CHRISTIN falls under the grounds for dismissal set forth in article 24°, paragraph I.-e) Violation of the duties of a public official; paragraph II. – section D) Inexcusable and flagrant disregard for the law; section E) Failure to carry out the duties of the office; section J) Public or covert involvement in politics, or engaging in acts of this nature [...]

27. The petitioners state that on August 15, 2002, counsel for Ms. Maluf replied to the accusation and interposed constitutional objections, which were rejected in an oral process held on October 28 and 29, 2002. They say that during that proceeding, the defense was not allowed to speak[FN15] and that on November 1, 2002, the Jurado de Enjuiciamiento of San Luis handed down a sentence against Ms. Silvia Maluf de Christin, ordering her removal from office.

[FN15] Petition lodged with the IACHR on June 11, 2003, paragraph 116..

28. On November 11, 2002 she filed a special provincial appeal with the Superior Court of San Luis, which was rejected on November 18 of the same year. She then filed an appeal of complaint, which was rejected on August 4, 2004. On August 18, 2004 she filed a special federal appeal, which was accepted, according to the petitioners, in February 2006 and remains awaiting a decision by the federal Supreme Court.

Common allegations regarding the three alleged victims

29. The petitioners allege that the Argentine State violated the principle of freedom from ex post facto laws established in Article 9 of the American Convention to the detriment of the alleged victims. They say the charges and sentence in the dismissal proceedings against them were based on laws that were not in force at the time they committed the acts for which they were dismissed.[FN16]

[FN16] Petition lodged with the IACHR on June 11, 2003, page 28.

30. They argue that the judicial proceeding that culminated with the dismissal of the alleged victims was conducted by biased judges, who had arbitrarily rejected proper opportunities for the defense. They state that Ms. Adriana Gallo and Ms. Ana María Careaga did not receive prior notice and details of the charges. They say that the legal process in San Luis Province provides that verdicts of the Jurado de Enjuiciamiento[FN17] may not be appealed, in violation of Article

8(2)(h) of the American Convention. They also state that the members of that Jury had not been appointed in accordance with the provisions of law, violating the principle of the natural judge.[FN18] The petitioners say that the act of which Ms. Silvia Maluf was accused took place on February 7, 1997, and the verdict of dismissal was handed down on November 1, 2002, five years and eight months later. They state that this action does not constitute the reasonable time prescribed by Article 8(1) of the American Convention. Based on these arguments, they allege that the State is responsible for the violation of the right to a fair trial established in Article 8 of the American Convention.

[FN17] *Idem*, pages 29-31.

[FN18] *Idem*, page 32.

31. The petitioners state that the suit for protection filed for the alleged victims in view of their pay cut have not received a final judgment to this date, despite the fact that several years have passed since they were filed. In this regard, they allege that the Argentine State is responsible for the violation of the rights to a fair trial and judicial protection, guaranteed by Articles 8 and 25 of the American Convention.

32. Finally, they allege that the State is responsible for violating the right established in Article 13 of the American Convention to the detriment of Ms. Ana María Careaga and Ms. Silvia Maluf de Christin, because both were dismissed for expressing an opinion on the situation of the judiciary branch in San Luis Province by endorsing the considerations of the press release of the Bar Association of Villa Mercedes. They state that although Article 193 of the provincial constitution bars judges from engaging in political acts, an interpretation consistent with Article 13(2) of the American Convention must limit the scope of the constitutional restriction to institutional involvement in political parties.[FN19]

[FN19] *Idem*, pages 33-34.

B. Position of the State

33. The State alleges that domestic remedies have not been exhausted in any of the cases. The State said initially that in the cases of Ms. Gallo and Ms. Careaga recursos de queja are being considered by the federal Supreme Court (CSJN) and that Ms. Maluf de Christin's case is pending judgment of an appeal of complaint in the Superior Court of San Luis Province.[FN20]

[FN20] Response of the State of July 25, 2005.

34. The State argues that according to the jurisprudence of the federal Supreme Court, decisions of provincial supreme courts may be appealed if there is a violation of basic rights or

guarantees. In this regard, it notes that although Law 5.124 precludes the possibility of appealing decisions of the Jurado de Enjuiciamiento of San Luis Province, the alleged victims had the right to contest the constitutionality of that rule in the CSJN, thereby challenging the decisions of the San Luis courts that they considered to be violating their rights.

35. The State holds that in the case of Ms. Ana María Careaga, the Supreme Court's only involvement was through a writ of "Habeas Habeas" that it processed in case 26/1999.[FN21] As for Ms. Adriana Gallo, it alleges that her appeal of complaint in the Supreme Court received exhaustive treatment. It adds that on February 16, 2006, Ms. Silvia Maluf de Christin filed a special appeal with the CSJN, and until that remedy is resolved, the domestic remedies in the case cannot be considered exhausted.

[FN21] Communication of the State of August 14, 2006, page 2.

36. The State also alleges that the petitioners have failed to prove denial of a fair trial or unwarranted delay. Finally, it argues that the special federal appeal is an appropriate remedy for amending or totally revoking a judicial resolution that is not final,[FN22] and is therefore the appropriate remedy for the ends sought by the alleged victims.

[FN22] Idem, pages 3 and 22.

IV. ANALYSIS OF ADMISSIBILITY AND COMPETENCE

A. The Commission's competence *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

37. The petitioners are eligible to submit petitions to the IACHR under Article 44 of the American Convention. The alleged victims are persons for whom the State of Argentina has undertaken to respect and guarantee the rights recognized in the Convention. Therefore, the IACHR has *ratione personae* competence to examine the petition.

38. The IACHR has *ratione loci* competence to consider the petition, because it alleges that violations of rights guaranteed in the American Convention took place in Argentina, a state party to that treaty.

39. The IACHR has *ratione temporis* competence, because the facts alleged in the petition took place when the duty to respect and guarantee the rights recognized in the Convention was in force for the State, since Argentina ratified the Convention on September 5, 1984. Finally, the IACHR has *ratione materiae* competence because the petition alleges violations of rights protected in the American Convention.

B. Requirements for admissibility of the petition

1. Exhaustion of domestic remedies

40. Article 46(1)(a) of the Convention stipulates that in order for a petition to be admitted “the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”[FN23] This requirement is intended to give national authorities an opportunity to become aware of the alleged violation of a protected right and, if appropriate, resolve it before it is considered at the international level.

[FN23] See I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies* (Articles. 46.1, 46.2.a and 46.2.b American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 17.

41. The requirement for prior exhaustion of domestic remedies is applicable where the domestic system offers adequate and effective remedies for the alleged violation. In this regard, Article 46(2) states that the requirement shall not be applicable when the domestic legislation does not afford due process of law for the protection of the right in question; or if the alleged victim has been denied access to the remedies under domestic law, or if there has been unwarranted delay in rendering a final judgment on the remedies. As Article 31 of the Commission’s Rules of Procedure establishes, when the petitioner alleges one of these exceptions, it shall be up to the State to demonstrate that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record. Furthermore, according to the burden of proof in the matter, it is incumbent upon a state that argues nonexhaustion of domestic remedies to identify which domestic remedies are to be used and demonstrate evidence of their effectiveness.[FN24]

[FN24] IACHR, Report N° 32/05, petition 642-03, *Admissibility, Luis Rolando Cuscul Pivaral et al. (Persons living with HIV/AIDS), Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, note 3, para. 53; Durand y Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33; and Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.*

42. In the instant case the petitioners argue that Law 5.124 of San Luis Province bars appeals of the decisions of the Jurado de Enjuiciamiento and adduce applicability of the exceptions to the rule for prior exhaustion of domestic remedies set forth in Article 46(2) of the Convention. They further allege that there was unwarranted delay in the final judgment on the remedies pursued. The State simply argued that the remedies pursued by the alleged victims are pending final judgment and did not present any specific arguments concerning the petitioners’ allegations of unwarranted delay.

43. As already noted in paragraphs 20, 25, and 28 *supra*, the alleged victims entered appeals of complaint against refusal to accept appeal in the matter heard by the Jurado de Enjuiciamiento of San Luis Province and filed various special appeals in an effort to challenge that organ's ruling that fired them. As of the date of approval of this report the Argentine courts have not resolved the appeals filed.

44. The Commission notes that there are no specific regulations or conventions defining what constitutes "unwarranted delay" and it evaluates each case to consider whether that has occurred. In this case, the time that has elapsed since dismissal has been eight years and eight months for Ms. Adriana Gallo, eight years and nine months for Ms. Ana María Careaga, and four years and eight months for Ms. Silvia Maluf, without any decision on the merits of their suits. The Commission stresses that although in August 2006 the CSJN accepted an appeal of complaint filed by Ms. Adriana Gallo and Ana María Careaga and in February of the same year the Superior Court of San Luis admitted an extraordinary appeal filed by Ms. Silvia Maluf, none of these rulings implies a final decision on the suits of the alleged victims.

45. In the case of judges Adriana Gallo and Ana María Careaga, the Commission notes that since they filed their appeals of complaint, the Supreme Court took four years and 11 months for Ms. Gallo and four years and three months in the case of Ms. Careaga to remand the cases to the provincial Superior Court for a new verdict. This same court had rejected the appeal of complaint submitted by both judges at the end of 1998, and considered that the Jurado de Enjuiciamiento's judgment that dismissed them could not be appealed according to Law 5.124 of San Luis.[FN25] In the case of judge Silvia Maluf, a judgment on her special federal appeal to the CSJN has been pending since February 2006. It is to be noted that following the decision of the Jurado de Enjuiciamiento that removed the alleged victims from the bench, the Superior Court of San Luis and the federal Supreme Court have taken several years to rule on purely procedural and legal questions, and there is no information that would justify the delay that has occurred.

[FN25] Annex 3 of the petition lodged with the IACHR on June 11, 2003 (Background of the Adriana Gallo case – file n° 2). Decision on the appeal of complaint against refusal to accept appeal of the special provincial appeal denied, handed down by the Superior Court of San Luis Province on August 22, 2000, STJSL-S.J. N° 248/00, page 4; and Annex 4 of the petition lodged with the IACHR on June 11, 2003 (Background of the Ana María Careaga case – file n° 2). Decision on admissibility of the special federal appeal adopted on April 23, 2002, by the Superior Court of San Luis Province, STJSL-S.J. N° 84/02, page 2.

46. In the Commission's opinion, given the circumstances of the instant case, the time elapsed since the firing of the alleged victims without a final judgment on the merits of their suits constitutes unwarranted delay, so this petition falls under the exception envisioned in Article 46(2)(c) of the American Convention.

47. The Commission reiterates that application of exceptions to the rule of prior exhaustion of domestic remedies set forth in Article 46(2) of the Convention is closely lined to the finding of possible violations of certain rights contained therein, such as the guarantees to a fair trial.

However, Article 46(2) of the American Convention Americana, by its nature and purpose, is an autonomous rule vis à vis the substantive norms of the Convention. Therefore, a determination of whether exceptions to the rule of prior exhaustion of domestic remedies are applicable to the case in question should be made prior to and apart from the analysis of the merits of the case, because the criteria for determining its applicability are different from those used to consider a violation of Articles 8 and 25 of the Convention. It should be noted that the causes and effects that have prevented the exhaustion of domestic remedies in this case will be analyzed as applicable in the report adopted by the Commission on the merits of the matter, in order to determine whether they in fact constitute violations of the American Convention. Based on the foregoing arguments, the Commission considers that there are sufficient grounds to exempt the petitioners from the requirement for prior exhaustion of domestic remedies in application of Article 46(2) of the American Convention.[FN26]

[FN26] IACHR, Report N° 39/06, petition N° 73-03, Admissibility. Carlos Rafael Alfonso Martínez, Venezuela, March 15, 2006, para. 59.

48. Finally, the petitioners adduce applicability of the exception set forth in Article 46.2.a of the American Convention given the alleged partiality of the Jurado de Enjuiciamiento and the Superior Court of San Luis Province, the alleged legal restriction on appealing judgments of the lower court, and the lack of effectiveness of the federal special appeal to overturn the decision of the Jurado de Enjuiciamiento. Since the exception envisioned in Article 46(2)(c) of the American Convention has been applied, the Commission will refrain from commenting on these issues and will examine them in the framework of the alleged violations of Articles 8 and 25 of the Convention in the consideration of the merits of the case.[FN27]

[FN27] IACHR, Report N° 3/03, petition 12.257, Admissibility, Carlos Saúl Menem (Jr.), Argentina, February 20, 2003, para. 36.

49. Based on these considerations, the Commission concludes that the exception set forth in Article 46(2)(c) of the American Convention is applicable in this case.

2. Deadline for lodging the petition

50. As provided in Article 46(1)(b) of the Convention, in order for a petition to be admitted 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. This rule is not applied when the Commission determines that one of the exceptions to exhaustion of domestic remedies set forth in Article 46(2) of the Convention is applicable. For these cases, Article 32(2) of the Commission's Rules of Procedure provides that the petition shall be presented within a reasonable period of time, as determined by the Commission, considering the date on which the alleged violation of rights occurred and the circumstances of each case.

51. In this case the alleged victims filed various special appeals in the expectation that the proceedings would correct the alleged violation of their rights. As of the date the petition was lodged with the IACHR the appeals filed had not been resolved by the Argentine courts, despite the active and constant involvement of the judges in the various proceedings. Therefore the lack of legal response by the State to guarantee the rights allegedly violated to the detriment of Ms. Adriana Gallo, Ms. Ana María Careaga, and Ms. Silvia Maluf apparently continued up to the time their petition was lodged on June 11, 2003. The Commission considers that these facts are sufficient to conclude that the petition was presented within a reasonable period of time.

3. Duplication of proceedings and international res judicata

52. Article 46(1)(c) establishes that in order for a petition to be admitted its subject “is not pending in another international proceeding for settlement,” and Article 47(d) de la Convention provides that the Commission shall not admit a petition that “is substantially the same as one previously studied by the Commission or by another international organization.” In the instant case, the parties have not raised the existence of either of these two grounds for inadmissibility, and they cannot be deduced from the proceedings.

4. Nature of the allegations

53. The Commission considers that at this stage of the proceeding it is not appropriate to decide whether or not there has been a violation of the American Convention. For the purposes of admissibility, the IACHR must decide whether the facts set forth tend to establish a violation, as provided in Article 47(b) of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order” as provided in section “c” of the same article.

54. The criteria for determining this differ from the criteria for deciding on the merits of a petition. The IACHR must make a prima facie evaluation to consider whether the petition documents the apparent or potential violation of a right guaranteed in the Convention, and not to establish the existence of a violation. This examination is a summary analysis and does not prejudice or give an advance opinion on the merits of the matter discussed.

55. As regards the freedom from ex post facto laws, the Commission considers that the reported dismissal of the alleged victims based on laws enacted after the facts that gave rise to the case could be a violation of the right established in Article 9 of the American Convention. Therefore, the Commission declares it admissible under the grounds that the range of the freedom from ex post facto laws may encompass the administrative sanctions as well as criminal realm.[FN28]

[FN28] I/A Court H. R., Case of Ricardo Canese. Judgment of August 31, 2004. Series C No. 111, par. 176 and Baena Ricardo et al. Case. Judgment of February 2, 2001. Series C No. 72, par. 106.

56. The Commission also considers that if it is proved that one reason for firing the alleged victims was their endorsement of the press release circulated by the bar association of the city of Villa Mercedes,[FN29] there could be a violation of the right established in Article 13 of the American Convention. In this respect, although the petitioners do not allege the possible violation of the right to freedom of thought and expression regarding Ms. Adriana Gallo, the Commission considers that if it is proven that her dismissal was related to the endorsement of the aforementioned communiqué, there could be a violation of the right enshrined in Article 13 of the Convention to her detriment.

[FN29] See paragraph 15 of this report.

57. As regards the alleged bias of the Jurado de Enjuiciamiento in San Luis Province, the non-appealable nature of its decisions, the arbitrary rejection of the means for defense experienced by the alleged victims, and the alleged unwarranted delay in rendering a final judgment on their appeals to the provincial courts and the CSJN, the Commission considers that these could constitute violations of the rights established in Articles 8 and 25 of the American Convention to the detriment of the alleged victims.

58. Finally, the Commission considers that the requirements set forth in Article 47(b) and c of the American Convention have been satisfied in that the arguments presented by the petitioners concerning the possible violation of rights guaranteed in Articles 9, 13, 8, and 25 of the American Convention to the detriment of Ms. Adriana Gallo, Ms. Ana María Careaga, and Ms. Silvia Maluf de Christin are not manifestly groundless.

V. CONCLUSION

59. The IACHR concludes that it is competent to consider this petition and that it satisfies the requirements for admissibility set forth in Articles 46 and 47 of the American Convention and Articles 30, 37 and related ones in its Rules of Procedure.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible as regards the alleged violation of rights protected in Articles 9, 13, 8, and 25 of the American Convention in connection with the general obligation established in Articles 1(1) of the same instrument to the detriment of Ms. Ana María Careaga, Ms. Adriana Gallo and Ms. Silvia Maluf de Christin.
2. To transmit this decision to the parties.
3. To proceed with the analysis of the merits of the petition.
4. 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 27th day of the month of July, 2007.
(Signed): Florentín Meléndez, President; Paolo Carozza, First Vice-President; Sir Clare Roberts,
Evelio Fernández Arévalos, and Freddy Gutiérrez Trejo, Commissioners.