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Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 15/08; Petition 1163-05  
Session: Hundred Thirty-First Regular Session (3 – 14 March 2008)  
Title/Style of Cause: Alex Solis Fallas v. Costa Rica  
Doc. Type: Decision  
Decided by: Chairman: Paolo Carozza;  
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;  
Second Vice-Chairman: Felipe Gonzalez;  
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich.  
Dated: 4 March 2008  
Citation: Solis Fallas v. Costa Rica, Petition 1163-05, Inter-Am. C.H.R., Report No. 15/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)  
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## I. SUMMARY

1. On October 18, 2005, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission" or the "IACHR") received a petition from Mr. Alex Solís Fallas (hereinafter "the petitioner") against the State of Costa Rica (hereinafter "the State," "the Costa Rican State," or "Costa Rica") in which is alleged violation of Article 1 (obligation to respect rights), Article 2 (domestic legal effects), Article 8 (right to a fair trial), Article 9 (freedom from ex post facto laws), Article 10 (right to compensation), Article 11 (right to privacy), Article 13(2)(a) (freedom of thought and expression), and Article 23 (right to participate in government), all of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

2. The petitioner alleges that he was removed from office as Comptroller General of the Republic without having committed any of the serious infractions that would constitute grounds therefore under Costa Rican law, and that he was removed in the context of a political trial, in violation of his right to a fair trial and to appeal the judgment to a higher court.

3. For its part, the Costa Rican State considers unfounded the allegations of the petitioner, as he did not meet the requirements to hold this office, since his conduct tended to constitute incompetence and impropriety, constitutional grounds for removal. It also indicates that the right to a fair trial was respected in the context of the investigation conducted by the Special Investigative Committee of the Legislative Assembly. The State also considers that the petition should be declared inadmissible since the petitioner did not exhaust domestic remedies and the facts he alleges do not constitute violations of articles of the American Convention.

4. Having analyzed the positions of the parties, the Commission concludes that it has competence to consider the complaint lodged by the petitioner, and that the case is inadmissible under Articles 46 and 47 of the American Convention. Therefore, the Commission decides to notify the parties of its decision, to publish this inadmissibility report, and to include it in its Annual Report.

## II. PROCESSING BY THE COMMISSION

5. On October 28, 2005, the Executive Secretariat of the Inter-American Commission received the initial petition, and assigned it No. 1163-05.

6. On April 7, 2006, a communication was received from the petitioner that contributed an *amicus curiae* brief in connection with the matter of reference.

7. On December 7, 2006, the Commission forwarded to the State of Costa Rica the relevant parts of the petition, setting a period of two months for it to provide its observations. In reply, on February 7, 2007, the Commission received the observations of the State regarding the initial petition, and on March 7, 2007, forwarded to the petitioner the information sent by the State, setting a period of one month for him to provide his considerations.

8. On April 11, 2007, the petitioner submitted his observations on the reply of the State, which were transmitted to it on May 23, 2007, setting a period of one month for it to provide its observations thereon.

9. In a communication of May 22, 2007, the petitioner requested a hearing at the 128th period of sessions of the Inter-American Commission; and on May 30, 2007, the Commission informed him that it would not be possible to agree to that request owing to the large number of hearings requested.

10. On June 25, 2007, the observations on the petitioner's reply were received from the State, and, on July 18, 2007, they were forwarded to the petitioner, setting a period of one month to submit such information as he considered appropriate. Also on July 18, 2007, the petitioner submitted observations on the earlier communications of the State, which were transmitted to the State on August 13, 2007, setting a period of one month for it to submit observations thereon.

11. On August 20, 2007, the Commission received the observations submitted by the petitioner regarding the State's reply of June 25, 2007, and on October 3, 2007, the State was advised thereof, setting a period of one month for it to submit appropriate observations.

12. On September 14, 2007, the State forwarded its reply to the observations submitted by the petitioner on July 18, 2007; and on October 3, the Commission forwarded to the petitioner said observations, setting a period of one month for him to submit his observations.

13. On October 20, 2007, the petitioner submitted his observations on the reply of the State, which were forwarded to the State on November 28, 2007.

14. On November 2, 2007, a communication was received from the State requesting the Commission to confirm the validity of the exception of failure to exhaust domestic remedies and to declare the instant petition inadmissible, and, on November 28, said communication was forwarded to the petitioner.

15. On December 10, 2007 and on January 10, 2008, the IACHR received observations of the petitioner on the reply of the State, which were forwarded to the State on January 14, 2008.

16. On January 24, 2008, the IACHR received a communication from petitioner, which was forwarded to the State on February 7, 2008.

17. On February 19, 2008, the IACHR received an additional communication from the State; and on February 21 and 25, 2008, the IACHR received additional communications from the petitioner.

### III. POSITIONS OF THE PARTIES

#### A. The petitioner

18. The petitioner states that on June 2, 2004, after a long and difficult administrative competition, the Legislative Assembly elected him Comptroller General of the Republic. He indicates that on June 3 of that year, Deputy Humberto Arce reported to the Assembly that his appointment was unlawful, since he was of questionable integrity. Despite such reports, on June 7, 2004, the petitioner was sworn in as Comptroller. However, negative reports about him continued, triggering strong reactions on the part of several deputies and in the media. The petitioner adds that, for political and electoral reasons and to harm his brother, Ottón Solís Fallas, a contender for the Presidency of the Republic, one segment of the press exerted heavy pressure on the deputies, to the petitioner's detriment. According to the petitioner, this led the Legislative Assembly, on June 15, 2004, to decide to establish a Special Investigative and Political Oversight Committee (which the petitioner characterizes as a political court), to investigate the aforesaid negative reports.

19. The petitioner indicates that on June 20, 2004, the Legislative Assembly, in violation of the principle of the presumption of innocence, and without having heard him, adopted a motion urging him to resign from office.

20. Continuing the chronological account of the facts, the petitioner notes that after six months, that is, on December 13, 2004, he was removed from office without due grounds having been established. In that connection, he states that the dismissal was not based on any of the grounds for removal of a Comptroller,[FN1] and that the facts on which his removal was based, i.e., falsification of signatures, which took place prior to 2000, was a private matter unrelated to the lawful grounds for removal, and for which he was never investigated, prosecuted, or punished.

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[FN1] The petitioners cite Article 183 of the Political Constitution of the Republic of Costa Rica, whose third paragraph provides that the Comptroller may be removed by the Assembly if the file created for that purpose contains evidence establishing incompetence or impropriety.

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21. In initiating processing in the IACHR framework, the petitioner alleges that the Legislative Assembly does not have the authority to cancel or reverse a Comptroller's appointment. However, in subsequent communications, he indicates that this body is competent to reverse his appointment, provided grounds exist and based on valid constitutional procedure.

22. According to the petitioner, the procedural motion through which he was removed from office was based on reports of deputies. However, the petitioner states that these were not read, discussed, or adopted by the Legislative Assembly in plenary. In that connection, he notes that the Legislative Assembly in plenary did not consider the reports or their respective files. The petitioner also indicates that the process by which he was removed from office violated his right to a fair trial, since his right to his natural judge, the principle of subjective impartiality, the presumption of innocence, ordinary proof, the right to a fair and appropriate judgment, the guarantee of an independent and impartial court, the right to object, and the right to appeal the judgment were not respected. Based on the foregoing, the petitioner alleges violation of Article 8 of the American Convention.

23. With regard to the alleged violation of the right to freedom from ex post facto laws, enshrined in Article 9 of the American Convention, the petitioner states that, in removing him from office as Comptroller General, the Legislative Assembly took that view that certain acts he had committed years earlier constituted infractions as a public official. Also in connection with the principle of lawfulness, the petitioner indicates that the Assembly decided to remove him from office by roll-call vote, in which the vote of the deputies was public, constituting a violation of the Rules of Procedure, which establish that when the Legislative Assembly exercises its sanctioning authority, the ballot must be secret.

24. With regard to Article 10 of the Convention, the petitioner requests that the State be ordered to make comprehensive and sufficient compensation for the damage and injury caused.

25. The petitioner indicates that the State violated Articles 11 and 13(2)(a) of the American Convention, since the Legislative Assembly brought charges alleging that the petitioner was not a person of integrity, and that the press has pursued him to the point of stating that he suffers from dementia and emotional instability, to the detriment of his professional and academic prestige.

26. With regard to Article 23(1), the petitioner indicates that his is a typical case of political persecution, and, in that connection, his opportunity to be elected to public office has been jeopardized since he was removed for political reasons.

27. The petitioner indicates that the Costa Rican legal system had not established any procedure for the implementation of Article 183.3 of the National Constitution. Accordingly, the State failed to fulfill its obligations contracted under Articles 1 and 2 of the American

Convention. In that connection, the petitioner alleges that a bill now exists, the “Law to govern the procedure for removal from the auxiliary bodies of the Legislative Assembly.”

28. With regard to exhaustion of domestic remedies, Mr. Solís Fallas indicates that these were exhausted by bringing seven amparo actions in the Constitutional Chamber, between June and December 2004, in which it was alleged that the Special Investigative Committee and the procedure used to remove him violated his fundamental rights. According to the petitioner, these remedies were denied ad portas, i.e., without further consideration. In that connection, the petitioner alleges that, these actions for amparo exhausted the highest specialized remedy of the Costa Rican legal system for the protection and defense of human rights, and that the motion of unconstitutionality, indicated by the State as the appropriate and effective remedy for this case, is a complex procedure of an incidental nature,[FN2] not constituting simple, adequate, or effective protection, as required by Article 25 of the Convention.

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[FN2] Article 75 of the Constitutional Jurisdiction Act:

To file for a motion of unconstitutionality, a matter, including habeas corpus and amparo, must be pending in the courts or in proceedings to exhaust administrative remedies in which unconstitutionality is invoked as a reasonable means to protect the right considered violated or interest considered injured.

A case need not be pending where, owing to the nature of the matter, there is no direct individual injury, or the matter involves the defense of diffuse Interests or collective interests of the group as a whole.

Neither need a case be pending in matters involving the Comptroller General of the Republic, the Attorney General of the Republic, the Prosecutor General of the Republic, and the Public Defender.

In the cases of the two preceding paragraphs, where such motion has been filed for, the procedures set forth in the articles below shall be followed, to the extent of their applicability.

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## B. The State

29. With regard to the allegations of fact, the State indicates that the Legislative Assembly, after swearing in the petitioner as Comptroller General, heard the reports made by Deputy Humberto Arce against the petitioner. These reports discussed acts that had been committed by the petitioner years earlier as Special Judicial Representative and in the exercise of his authorities as notary. The State indicates that said acts included 11 falsifications of signatures in connection with, inter alia, possible impropriety in obtaining an administrative document and in making available mortgage loans used to finance the unlawful relocation of persons to other countries.

30. The State indicates that the Legislative Assembly determined that the facts reported involved a failure to meet one of the essential requirements to hold the office of Comptroller contained in Article 39 of the Organic Law of the Office of the Comptroller General of the Republic.[FN3] As a result, such an appointment might be null and susceptible of revocation or cancellation by the Legislative Assembly in plenary.

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[FN3] The Costa Rican State notes that, under Article 39 of the Organic Law on the Office of the Comptroller General of the Republic, to serve as Comptroller or Assistant Comptroller, a candidate must: (a) be a Costa Rican national, by birth or naturalization, and resident for 10 years in the country subsequent to naturalization, and must exercise citizenship; (b) be at least 35 years of age; and (c) be of recognized integrity.

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31. Based on the foregoing, the Costa Rican State notes that on June 30, 2004, in a motion adopted by the Legislative Assembly in plenary and in the best national interests, the petitioner was urged to resign from office. The State adds that, since the petitioner did not comply, Parliament decided that it was necessary to establish a Special Investigative Committee<sup>[FN4]</sup> to examine the facts reported in the plenary and determine thereby whether Mr. Alex Solís met the requirement of suitability to hold the office, contained in Article 39 of the Organic Law of the Office of the Comptroller General of the Republic.

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[FN4] The State indicates that, under the provisions of Article 121, para. 23 of the Political Constitution of Costa Rica, one of the powers of the Legislative Assembly is to appoint its Committees to investigate any matter assigned to them by the Assembly, and to make the corresponding report.

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32. With regard to the Legislative Assembly's lack of competence to cancel or revoke the appointment, alleged by the petitioner, the Costa Rican State indicates that the authority of this body to appoint and remove the Comptroller General of the Republic cannot be questioned, since such authority constitutes an authority of the Legislative Assembly. In that regard, the State notes that, since the Office of the Comptroller is an auxiliary body of the Legislative Assembly,<sup>[FN5]</sup> it is accountable to Parliament.<sup>[FN6]</sup> Based on the legal and constitutional provisions, the State notes, the Legislative Assembly properly have the authority both to appoint and to rescind the appointment of the Comptroller General.

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[FN5] In that connection, Costa Rica mentions that Article 183 of the Constitution and Article 1 of the Organic Law of the Office of the Comptroller General of the Republic stipulate that this is an auxiliary body of the Legislative Assembly that has oversight of the Public Treasury.

[FN6] The State indicates that Article 2 of the Organic Law of the Office of the Comptroller General of the Republic provides that the Comptroller General is accountable to the Assembly in the performance of his functions.

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33. The Costa Rican State indicates that the procedure followed was not, as the petitioner alleges, punitive, but rather investigative, in nature, that would determine whether, through his failure to meet requirements, his appointment was flawed. Accordingly, the petitioner was not removed in connection with his functions. Therefore, this was a procedure to reverse a political appointment.

34. With regard to the alleged violation of Article 8 of the American Convention, the State indicates that the right to a fair trial was fully respected in the framework of the investigation conducted by the Special Investigative Committee of the Legislative Assembly. In that connection, the State indicates that on July 7, 2004, the date on which the mandate was assigned to the Special Investigative Committee, the petitioner was informed of the charges filed against him, and was informed of the legal basis for the operation of the Special Commission and of the procedural rights guaranteed by the Political Constitution.[FN7] With regard to the right to appeal the judgment, the State indicates that that the motion of unconstitutionality is available to review the action of the parliamentary body.

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[FN7] The State indicates that, according to said communication, the petitioner would have, inter alia, the right to be heard in person; the right to be accompanied by an attorney if he so wished; free access to the file and its contents; the right to submit any type of evidence he considered appropriate to his defense; and authorization at hearings to question and re-question witnesses and parties appearing.  
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35. With regard to the alleged violation of Article 9 of the American Convention, arising from the fact that the Legislative Assembly took as a basis for its decision acts he committed as a private individual, the State notes that, with regard to the limits on the investigative authority conferred on the Special Committee, the Constitutional Chamber has established that “certain actions by private individuals or private actions of public officials or the country’s political figures may potentially be subject to investigation by a Committee when such actions transcend the exclusively private sphere and acquire public relevance through their relationship to investigated acts since, in such circumstances, these would not be actions potentially subject to legal action.”[FN8] And, in this case, the State notes that the facts mentioned were not committed “by an ordinary citizen,” as the petitioner alleges, since some of them were committed while serving as a notary or special judicial representative. The State notes that such reports were never denied by Mr. Solís and that his argument was based on his assertion that they were facts from his private life.

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[FN8] Constitutional Chamber of Supreme Court of Justice, Vote 1956-97, April 8, 1997.  
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36. Regarding the alleged violation of Article 23, referring to the political persecution to which the petitioner allegedly was subjected, the Costa Rican State indicates that no such persecution occurred, especially if it is borne in mind that, days earlier, the petitioner had been elected Comptroller General of the Republic.

37. With regard to requirements of admissibility, the State acknowledges that the petitioner pursued the remedy of amparo. However, it states that this is not an appropriate or effective remedy for the review of parliamentary compliance with constitutional rules and regulatory provisions that must be followed in taking legislative decisions, or of the conduct of special

committees. The State alleges that the petitioner did not file for a motion of unconstitutionality, which involves a plenary review that examines in-depth the action of the parliamentary body. In that connection, the State mentions Article 73.c of the Constitutional Jurisdiction Act, which provides that a motion for unconstitutionality is appropriate when, in the establishment of laws or in taking legislative decisions, a requirement has not been met or significant procedure followed that is established in the Constitution or, if applicable, in the Rules of Order, Conduct, and Internal Discipline of the Legislative Assembly. In that connection, the State adds that, based on Articles 121 and 183 of the Constitution,[FN9] the then-Comptroller of the Republic was appointed and removed by legislative decision; and, therefore, the petitioner is lawfully and rightfully entitled to file for a motion of unconstitutionality in connection with a legislative decision that allegedly violated a requirement or significant procedure established in the Constitution. For these reasons, and under Article 46(a) of the American Convention, the State considers that the requirements of admissibility have not been met.

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[FN9] Article 121 of the Constitution of Costa Rica:

In addition to the other authorities conferred upon it by this Constitution, it is the exclusive authority of the Legislative Assembly:

[...]

12. To appoint the Comptroller and Assistant Comptroller of the Republic.

Article 183 of the Constitution of Costa Rica.

[...] The Comptroller and Assistant Comptroller are accountable to the Assembly in the performance of their functions and may be removed by it by a vote of no less than two thirds of its members if the file established for said purpose contains evidence establishing incompetence or impropriety.

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37. Lastly, the State argues that the petitioner is seeking review of the action of the Legislative Assembly, which is not possible, since the Inter-American Commission does not constitute an additional instance for the appeal of national decisions. To summarize, the State requests that the petition lodged by the petitioner be declared inadmissible because it does not meet the requirements of admissibility, and because the facts described do not constitute a violation of the human rights protected by the Convention.

#### IV. ADMISSIBILITY

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

38. Under Article 44 of the American Convention, the petitioner has the right to lodge petitions with the IACHR. For its part, Costa Rica has been a State Party to the American Convention since April 8, 1970, the date of deposit of its instrument of ratification. Therefore, the Commission has competence *ratione personae* to consider the petition.

39. The Commission also has competence *ratione loci* to consider the petition as in it are alleged violations of rights protected by the American Convention that took place under the

jurisdiction of the Costa Rican State. The Commission has competence *ratione temporis* to consider the complaint, since the obligation to respect and guarantee the rights protected by the American Convention was in force for the State on the date on which the facts alleged in the petition occurred.

40. Lastly, the Commission has competence *ratione materiae* in this matter since the petition denounces possible violations of human rights protected by the American Convention.

#### B. Other admissibility requirements

##### Exhaustion of domestic remedies

41. In view of the supplementary nature of human rights treaties, the rule of exhaustion of domestic remedies was established, set forth in Article 46(1)(a) of the American Convention. Such exhaustion enables the State to settle a petition in accordance with domestic law before being faced with an international proceeding for settlement.

42. It is a fundamental rule of the inter-American human rights system that it is incumbent upon the State alleging that domestic remedies were exhausted to indicate the domestic remedies that must be exhausted and their effectiveness.[FN10] In this case, the State cited the exception of failure to exhaust domestic remedies, basing this on the fact that the petitioner did not exhaust the motion for unconstitutionality, which, in this case, was the appropriate and effective remedy, since it involves a plenary review that examines in depth the action of the parliamentary body.

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[FN10] Cf. 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; Durand and 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; Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, para. 40; Castillo Páez Case. Preliminary Objections. Judgment of January 30, 1996. Series C No. 24, para. 40; Neira Alegría et al. Case. Preliminary Objections. Judgment of December 11, 1991. Series C No. 13, para. 30; Gangaram Panday Case. Preliminary Objections. Judgment of December 4, 1991. Series C No. 12, para. 38; Godínez Cruz Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 3, para. 90; Fairén Garbi and Solís Corrales Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 2, para. 87, and Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 88.

Cf. IACHR, Report N° 102/06 (Inadmissibility), Petition 97/04, Miguel Ricardo de Arriba Escolá, IACHR, Honduras, October 21, 2006, para. 28; Report N° 32/05 (Admissibility), Petition 642/03, Luis Rolando Cuscul Pivaral et al. (Persons Living with AIDS), Guatemala, March 7, 2005, paras. 33-35.  
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43. From the information provided by the petitioner, the Commission notes that seven amparo actions were brought, two of them by the petitioner and the other five by deputies of the

Legislative Assembly. Six of the seven amparo actions were denied by the State, which argued that it was not incumbent upon the Constitutional Chamber of the Supreme Court of Justice to determine whether or not the Legislative Assembly was competent to investigate acts allegedly committed by the Comptroller General in the private exercise of his profession or in private business.[FN11] The last amparo action was brought in connection with the fact that the decision whether to remove the Comptroller General was based on a roll-call rather than secret vote. However, this remedy was denied on the grounds that the allegation did not involve a dispute of constitutional relevance, since the contested decision did not have the effect of adversely affecting the sphere of vital interests.[FN12]

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[FN11] Constitutional Chamber of the Supreme Court of Justice of Costa Rica, Decision 2004-06597, June 15, 2004; Decision 2004-07358, July 7, 2004; Decision 2004-07360, July 7, 2004; Decision 2004-08691, August 11, 2004; Decision 2004-14717, December 22, 2004; Decision 2005-00811, January 28, 2005.

[FN12] Constitutional Chamber of the Supreme Court of Justice of Costa Rica, Decision 2004-13873 of December 3, 2004.

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44. The Costa Rican State agrees that amparo actions were brought to dispute the competence of the Legislative Assembly to investigate the facts denounced. However, it states that although in Costa Rican law the amparo is an accelerated procedure, it is not an appropriate or effective remedy for in-depth review of acts emanating from the Legislative Assembly.

45. The State also considers that the petitioner should have filed for a motion of unconstitutionality since, in accordance with the provisions of Article 73.c of the Constitutional Jurisdiction Act, such a motion is filed when in establishing laws or taking legislative decisions, violation is alleged of a requirement or significant procedure established in the Constitution or, if applicable, in the Rules of Order, Conduct, and Internal Discipline of the Legislative Assembly.[FN13] The State indicates, in that connection, that, based on Articles 121 and 183 of the Constitution,[FN14] the then-Comptroller of the Republic was appointed and removed by legislative decision; and that therefore, the petitioner is lawfully and rightfully entitled to file for a motion of unconstitutionality against a legislative decision that allegedly violated a requirement or significant procedure established in the Constitution.

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[FN13] In that connection, the Office of the Attorney General of the Republic has indicated that the Constitutional Court has competence to consider cases of violations of the fundamental rights of the Comptroller General of the Republic and violations of constitutional law, should they occur, by means of a motion for unconstitutionality. Legal Opinion of the Office of the Attorney General, O.J.-086-2004, July 6, 2004, p. 15.

[FN14] Article 121 of the Constitution of Costa Rica:

In addition to the other authorities conferred upon it by this Constitution, it is the exclusive authority of the Legislative Assembly:

[...]

12. To appoint the Comptroller and Assistant Comptroller of the Republic.

Article 183 of the Constitution of Costa Rica:

[...] The Comptroller and Assistant Comptroller are accountable to the Assembly in the performance of their functions and may be removed by it by a vote of no less than two thirds of its members if the file established for said purpose contains evidence establishing incompetence or impropriety.

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46. With regard to the evidence provided by the petitioner that, based on Article 75.1 of the Constitutional Jurisdiction Act, a motion for unconstitutionality is a procedure of an incidental nature, i.e., for it to be filed, a matter must be pending in the courts, the Commission notes that, under the third paragraph of said article, this requirement does not apply in the case of the Comptroller of the Republic.[FN15] In that connection, the Commission notes that the petitioner's appointment was reversed on December 13, 2004, and that, according to the information provided by the petitioner, six of the seven amparo actions were brought between June 14 and December 12, 2004, that is, prior to the date of said reversal, so that, in that period, when the petitioner continued to hold the office of Comptroller, he could have filed for such a motion of unconstitutionality. However, he did not.

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[FN15] Article 75 of the Constitutional Jurisdiction Act:

To file for a motion of unconstitutionality, a matter, including habeas corpus and amparo, must be pending in the courts or in proceedings to exhaust administrative remedies in which unconstitutionality is invoked as a reasonable means to protect the right considered violated or interest considered injured.

A case need not be pending where, owing to the nature of the matter, there is no direct individual injury, or the matter involves the defense of diffuse Interests or collective interests of the group as a whole.

Neither need a case be pending in matters involving the Comptroller General of the Republic, the Attorney General of the Republic, the Prosecutor General of the Republic, and the Public Defender.

In the cases of the two preceding paragraphs, where such motion has been filed, the procedures set forth in the articles below shall be followed, to the extent of their applicability.

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47. In that connection, the State has established the existence of domestic, apparently effective, remedies to resolve the petitioner's legal situation. The Inter-American Court has argued that if the State "alleges failure to exhaust and establishes the existence of specific domestic remedies that should have been pursued, it will be incumbent upon the opposing party to demonstrate that said remedies were exhausted or that the case constitutes any of the exceptions set forth in Article 46(2),"[FN16] that is, when the domestic legislation of the state concerned does not afford due process of law for the protection of the right in question; the party alleging violation of his rights has been denied access to the remedies; or there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. In this case, the petitioner acknowledges that he did not file for a motion of unconstitutionality, and from his account or the additional information provided; the failure of the petitioner to file for a

motion of unconstitutionality does not constitute one of the exceptions set forth in Article 46(2) of the American Convention.

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[FN16] I/A Court H.R., Fairén Garbi and Solís Corrales Case. Preliminary Objections, supra Note 10, para. 87; Godínez Cruz Case. Preliminary Objections, supra Note 10, para. 90; and Velásquez Rodríguez Case, supra Note 10, para. 88.

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48. Accordingly, the Commission considers that a motion for unconstitutionality constituted an available and effective remedy, which was not exhausted by the petitioner for reasons that cannot be attributed to the State. Therefore, the petitioner did not make due and appropriate use of the available domestic remedies, failing to meet the requirements that would enable the Commission to admit this petition under Articles 46(1)(a) and 47(a) of the American Convention and Article 31(1) of the Commission's Rules of Procedure.

## V. CONCLUSION

49. Based on the foregoing arguments of fact and law, the Commission concludes that the instant petition is inadmissible based on the requirements set forth in Article 47(a) of the American Convention on Human Rights.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To notify the petitioner and the State of this decision.
3. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 4th day of the month of March, 2008.  
(Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman, Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, Commissioners.