

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 42/08; Petition 1271-04
Session: Hundred Thirty-Second Regular Session (17 – 25 July 2008)
Title/Style of Cause: Karen Atala and Daughters v. Chile
Doc. Type: Decision
Decided by: Chairman: Paolo Carozza;
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich.
Commissioner Felipe Gonzalez, a Chilean national, did not take part in the discussion or decision in the instant case, in accordance with Article 17(2) of the Commission’s Rules of Procedure.

Dated: 23 July 2008
Citation: Atala v. Chile, Petition 1271-04, Inter-Am. C.H.R., Report No. 42/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by: Veronica Undurraga Valdes, Claudio Moraga Klenner, Felipe Gonzalez Morales, Macarena Saez, Domingo Lovera Parmo, the Clinica de Acciones de Interes Publico from the Universidad Diego Portales, and the Fundacion Ideas

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I. SUMMARY

1. On November 24, 2004, the Inter-American Commission on Human Rights (hereinafter, the “Inter-American Commission” or the “IACHR”) received a petition alleging that the State of Chile is internationally responsible for violations committed by means of a Supreme Court of Justice ruling that revoked from Ms. Karen Atala custody of her three daughters (aged 5, 6, and 10 years). They claim the ruling was grounded exclusively on discriminatory prejudices based on Ms. Atala’s sexual orientation. The petition was lodged by Ms. Karen Atala, who is a Chilean lawyer and judge, and attorneys Verónica Undurraga Valdés, Claudio Moraga Klenner, Felipe González Morales, and Domingo Lovera Parmo, all representatives of the Asociación Gremial, Libertades Públicas [Public Liberties Association], the Clínica de Acciones de Interés Público from the Universidad Diego Portales [the Public Interest Clinic of Universidad Diego Portales], and the Fundación Ideas [Ideas Foundation] (hereinafter, “the petitioners”).[FN2]

[FN2] On January 24, 2005, Ms. Karen Atala sent a communication to the Commission in which she named the attorney Macarena Sáez as her representative in this proceeding.

2. The petitioners hold that the facts violate the following rights recognized by the American Convention on Human Rights (hereinafter, the “American Convention”) to the detriment of Ms. Karen Atala and her three daughters: the right to personal integrity (Article 5(1)); the right to a fair trial (Article 8); the right to protection of the honor and dignity (11(1)); the right to privacy (Article 11(2)); the rights to protection of the family (Article 17(1) and 17(4)); the rights of the child (Article 19); the right to equal protection (Article 24); and the right to judicial protection (Article 25), in conjunction with violation of the obligations to guarantee rights and to give domestic legal effect to rights set forth in Articles 1(1) and 2 of the American Convention; and Articles 2, 5, 9 (2) and (3), 12, and 16 of the United Nations Convention on the Rights of the Child (hereinafter, the “Convention on the Rights of the Child”). The petitioners argue that all domestic remedies were exhausted with the Judgment of the Supreme Court of Justice of Chile which, they allege, permanently, arbitrarily, and in a discriminatory manner revoked Ms. Atala custody of her three minor children because of her sexual orientation.

3. The State, for its part, requests that the petition be declared inadmissible, because the ruling was based on the best interest of the girls and, “according to evidence presented in the trial, on the conduct of the mother, who opted to cohabit with a partner of the same sex, with whom she proposed to raise her daughters, which was deemed inadvisable for the girls’ upbringing and a risk to their development in the current context of the Chilean society.”[FN3] The State also reiterates that domestic remedies have not been fully exhausted because under Chilean law Ms. Atala is able to file a new complaint to claim custody of her daughters.

[FN3] Response of the State of Chile, Ministry of Foreign Affairs, Department of Human Rights, June 15, 2005.

4. Without prejudging the merits of the matter, the IACHR concludes in this report that the petition is admissible under Articles 46 and 47 of the American Convention. Accordingly, the Inter-American Commission decides to inform the parties of its decision and to continue with its analysis of the merits in connection with the alleged violation of Articles 8(1), 11(2), 17(1), 24 and 25 of the American Convention, all in conjunction with the general obligation to respect and guarantee these rights provided in Articles 1(1) and 2 of that international instrument, to the detriment of Ms. Atala and her daughters; as well as with the alleged violation of the rights of the child protected by Articles 19 and 17(4), in connection with Article 1(1), in relation to the daughters of Ms. Karen Atala. Furthermore, the Commission decides to publish this report and to include it in its annual report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On November 24, 2004, the Commission received a petition lodged by Ms. Karen Atala represented by attorneys from the Public Liberties Association, the Public Interest Clinic of the Universidad Diego Portales, and the Ideas Foundation;[FN4] it acknowledged receipt of the petition on December 6, 2004. On January 24, 2005, the petitioner sent a communication to the Commission in which she named the attorney Macarena Sáez as her representative in this proceeding. On March 23, 2005, the Commission forwarded the petition to the Government and

gave it two months to respond. On June 15, 2005, the Government of Chile submitted its comments on the petition, which were transmitted to the petitioners on June 22, 2005.

[FN4] The petitioner specifies that the Ideas Foundation is represented by Francisco Estévez Valencia and names as her representatives before the IACHR the attorneys Verónica Undurraga Valdez, Claudia Moraga Klenner, Felipe González Morales, and Domingo Lovera Parmo.

6. On August 4, 2005, the Commission wrote to the parties communicating its decision to invoke article 37(3) of its Rules of Procedure in order to expedite the processing of the petition, bearing in mind the ages of Ms. Karen Atala's three minor daughters. In said communication, the Commission requested the petitioners, in accordance with the provisions of article 38(1) of its Rules of Procedure, to submit additional observations on the merits within one month. The petitioners responded that same day confirming that they had no further observations to add on the merits of the case. On August 5, 2005, the Commission forwarded the petitioner's observations to the State and requested it to present its additional observations on the merits within two months. On October 11, 2005, the State confirmed that it had no additional observations on the merits of the matter either.

7. On September 19, 2005, the Commission wrote to both parties, placed itself at their disposal, in accordance with Article 41(1) of its Rules of Procedure, with a view to reaching a friendly settlement, and requested them to reply within 15 days regarding their interest in initiating the procedure provided at Article 48(1)(f) of the American Convention. The State replied to the Commission on October 4, 2005, saying that it "reserve[d] the right under Article 41 of the IACHR Rules of Procedure to express its position in that respect at any time during the review of the instant petition." The aforesaid communication was relayed to the petitioners on October 12, 2005.

8. On March 7, 2006, a hearing on the case, attended by the petitioners and the State of Chile, was held at the headquarters of the IACHR in Washington, D.C., in the framework of its 124th Regular Period of Sessions. As a result of the hearing, the State of Chile expressed to the petitioners its intention to initiate negotiations with a view to reaching a friendly settlement of the case. The petitioners informed the IACHR on March 31, 2006, that a meeting had been held to discuss general aspects that would enable the parties to identify the foundations of a friendly settlement agreement and they requested the IACHR to appoint a representative to facilitate the process. That letter was conveyed to the State on April 11, 2006, together with the information that the IACHR had decided to place itself at the disposal of the parties in order to reach a friendly settlement of the matter. The petitioners, in a communication to the IACHR dated August 9, 2006, informed of the progress in the dialogue between the State of Chile and the petitioners aimed at reaching a friendly settlement favorable to both parties. In the communication, the petitioners also reiterated their request for the active involvement of the IACHR in the development of a friendly settlement.

9. On August 11, 2006, the IACHR transmitted the aforesaid communication to the State, placed itself at the disposal of the parties, and granted the State 10 days to indicate its interest in

proceeding with this option. In a communication dated August 22, 2006, the Chilean State replied and said communication was forwarded to the petitioners by the IACHR on September 6, 2006. The parties attended three meetings convened by the IACHR in the framework of its 126th (October 25, 2006), 128th (March 5, 2007), and 129th (July 19, 2007) Regular Periods of Sessions to discuss possible points of agreement for a potential friendly settlement. On October 11, 2006, October 25, 2006, and January 30, 2007, the petitioners provided the IACHR with information on progress in the discussions with the State.

10. The petitioners submitted additional observations to the IACHR on July 19, 2007. On October 11, 2007, the petitioners sent a communication to the IACHR in which they confirmed the conclusion of the negotiations for a friendly settlement, requested the IACHR to move forward with its examination of the petition, and requested that it approve the report on admissibility. Both communications were transmitted to the State on November 15, 2007, with the request that it reply within one month. On December 19, 2007, the State submitted its reply, which was forwarded to the petitioners on December 21, 2007, together with a request that they answer within one month.

11. On January 10, 2008, the Commission sent a communication to both parties to inform them that, in view of the conclusion of the friendly settlement process, it had decided to proceed with the admissibility stage. In accordance with Article 30(5) of its Rules of Procedure, the Commission requested the government of Chile to present additional observations on the admissibility of the case within one month. On February 4, 2008, the State requested a 30-day extension to submit its reply, and on the same day the Commission granted it an extension of 15 days. On March 31st and April 16th of 2008, the State presented additional observations to the Commission, which were forwarded to the petitioners on April 18, 2008.

12. During the processing of the case, the IACHR has received six amicus curiae briefs in support of the arguments of the petitioners. On September 27, 2005, the Asociación por los Derechos Civiles presented an amicus curiae brief, which was transmitted to both parties on October 12, 2005. On October 21, 2005, the Commission received an amicus curiae brief from the Red Iberoamericana de Jueces, which was forwarded to the parties on March 10, 2006. The Commission also received such a brief from the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) on January 19, 2006,[FN5] which was relayed to the parties on February 24, 2006. On March 1, 2006, the Commission received an amicus curiae brief presented by Corporación Opción, which was transmitted to the parties on March 20, 2006. The Commission received a fifth amicus curiae on October 26, 2006, from the Allard K. Lowenstein International Human Rights Clinic at Yale Law School in the United States, which was forwarded to the parties on November 9, 2006. Finally, the Commission received a sixth amicus curiae brief on April 28, 2008 from the International Lesbian and Gay Association (ILGA), which was forwarded to the parties on May 15, 2008.

[FN5] The amicus curiae brief from CLADEM was presented with the sponsorship of Maria Ysabel Cedano and Jeannette Llaja Villena.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

13. The petitioners argue that several rights of Ms. Karen Atala and her three daughters were arbitrarily and abusively abridged when the Supreme Court of Justice of Chile revoked from Ms. Atala custody of her three daughters based exclusively on discriminatory prejudices by reason of her sexual orientation. They claim that the judgment of the Supreme Court of Justice discriminatorily applied the substantive rules that govern custody matters in Chile, which are founded on the best interests of the child, by making an arbitrary and unwarranted distinction between the ability of heterosexual and homosexual parents to care adequately for their children. The petitioners also alleged due process violations because through the implementation of a disciplinary action (*recurso de queja*), which is a remedy of a purely disciplinary nature, the members of the Supreme Court adopted a final decision on the merits of the case without due regard to the arguments of the parties and without ordering new expert examinations that would provide them with a solid foundation to reconsider the custody decision of the two lower courts.

14. In 1993, Ms. Karen Atala, a Chilean lawyer and judge, contracted marriage in Santiago, Chile. Three daughters were born from the union: M. (10 years old), V. (6 years old) and R. (5 years old).[FN6] In March 2002, the couple decided to permanently separate and by mutual consent agreed that the mother should have custody of the girls; they also agreed on a weekly visitation schedule to the house of the father. After the separation, Ms. Atala began to receive psychiatric and psychological assistance to help her overcome the pain of her failed marriage and come to terms with her lesbianism, in order to be as well equipped as possible to manage her relationship with her daughters in these new circumstances.

[FN6] The Commission chooses not to disclose the names of the three daughters of Ms. Karen Atala because they are under 18 years old.

15. In June of 2002, Ms. Atala alleges she entered into a relationship with a person of the same sex, and in November of 2002, Ms. Atala's partner moved in to live with her and her daughters. The petitioner says that in the process of the girls' adaptation to the new situation, she and her partner exercised all the necessary care and discretion, and followed the advice of a psychiatrist and psychologist who was treating both the mother and the girls. Her partner's relationship with the girls was allegedly very positive from the outset.

16. On January 30, 2003, the father of the children filed suit for custody with the Juvenile Court in Villarrica, alleging that the mother's lack of care and neglect as a result of her alternative sexual preference was distancing the children and impairing their normal and proper development. He also drew attention to the risk that the girls might contract sexually transmitted diseases, such as herpes and AIDS. The custody suit prompted several sensationalist daily newspapers in Chile, such as *La Cuarta* and *Las Últimas Noticias*, to publish a series of articles about the case.[FN7]

[FN7] Abogado Exige Tuición de sus Hijas porque Esposa Jueza sería Lesbiana [Lawyer Demands Custody of Daughters Claiming Judge Wife is a Lesbian], La Cuarta, February 28, 2003; Abogado Exige Tuición de Hijas porque su ex Mujer es Lesbiana, [Lawyer Demands Custody of Daughters Because His Ex-Wife Is a Lesbian] Las Últimas Noticias, March 1, 2003. These articles were submitted by the petitioners in a communication of November 24, 2004.

17. On May 2, 2003, the Regular Judge of the Juvenile Court in Villarrica granted provisional custody of the girls to the father at the request of the latter and established a visitation schedule for the mother. The Judge reached this decision despite his express recognition that there was no evidence to presume grounds for legal incompetence of the mother that warranted a change in the existing custody arrangement. It later fell to the Acting Judge of the Court of First Instance in Villarrica to issue the final ruling. On October 29, 2003, that judge rejected the custody suit because she found that:

The sexual orientation of the mother does not constitute an impediment to develop a responsible motherhood The respondent suffers from no psychiatric pathology that would make her unfit to perform a mother's role..... no concrete evidence has been shown that the presence of the mother's partner in the home is harmful to the well-being of the girls having analyzed the evidence presented, there is no reason to presume the existence of bad or dangerous examples for the morality of the girls..... the court concludes that the girls have not suffered any discrimination to date and what the witnesses for and relatives of the plaintiff express is a fear of possible discrimination in the future. With respect to this point it should be mentioned that this court must base its decision on definite and proven facts in the case and not on mere assumptions or fears[FN8]

[FN8] Judgment of Viviana Cárdenas Beltrán, Acting Judge of the Court of First Instance in Villarrica, October 29, 2003, presented by the petitioners in a communication of November 24, 2004.

18. Accordingly, the Tribunal ordered the girls to return to the care of their mother on December 18, 2003. In the interim, however, on November 11, 2003, the father of the children appealed the judgment and sued for an injunction to prevent their removal (orden de no innovar), arguing that to implement the judgment would entail a radical and violent change in the current situation of the girls. On November 24, 2003, the Court of Appeals granted the injunction. On March 30, 2004, the Court of Appeals in Temuco unanimously upheld the appealed judgment and agreed with the reasoning of the judge of first instance.

19. On April 5, 2004, the father of the girls presented a disciplinary action (recurso de queja) against the judges of the Court of Appeals in Temuco before the Supreme Court. The appellant argued that with the appealed judgment the judges had committed a fault and a clear and serious abuse. The father of the girls specifically argued that the decision of the mother to make her sexual orientation public was harmful to the girls' development both mentally and overall, as

well as to their social relations. He, therefore, requested that the girls provisionally remain in his care. That request was granted by the Court, which issued an injunction to prevent their removal on April 7, 2004.

20. On May 31, 2004, the Fourth Chamber of the Supreme Court, in a split decision of three votes to two, admitted the disciplinary action and awarded permanent custody to the father. The petitioners say that the judgment of the Supreme Court determined that Ms. Atala had put her interests before those of her daughters when she made the decision to be open about her homosexuality and began to live with a same-sex partner, and that in its decision the Court gave consideration to testimonies that suggested that the girls could become confused about their sexual roles and become the object of social discrimination in the future. The petitioners claim that the judgment of the Court expresses that:

In the trial over the custody of the López Atala minors opinions were accepted from different psychologists and social workers indicating that the homosexuality of the mother would not violate the rights of her daughters, nor make her unfit to exercise her rights as their mother, since she is a normal person from a psychological and psychiatric perspective. On the other hand, no regard was given to the testimony in either the permanent custody proceeding or the provisional custody file with respect to the deterioration of the social, family and educational environment of the girls since the mother began to cohabit with her homosexual partner, or to the possibility that the girls could be the target of social discrimination arising from this fact, given that visits by their friends to the shared home have dwindled almost to nothing from one year to the next. For its part, the testimony of persons close to the girls, such as the house maids, refer to games and attitudes of the girls that reflect confusion about the sexuality of the mother, which they could have perceived in the new cohabitation scheme at their home.[FN9]

Apart from the effects that that cohabitation could have on the wellbeing and psychological and emotional development of the daughters, given their ages, the potential confusion over sexual roles that could be caused in them by the absence from the home of a male father and his replacement by another person of the female gender poses a risk to the integral development of the children from which they must be protected.[FN10]

[FN9] Judgment of the Supreme Court of Justice of Chile, May 31, 2004, par. 15, submitted by the petitioners in their communication of November 24, 2004.

[FN10] Judgment of the Supreme Court of Justice of Chile, May 31, 2004, par. 17, submitted by the petitioners in their communication of November 24, 2004.

21. The Court deemed the girls to be in a “situation of risk” that placed them in a “vulnerable position in their social environment, since clearly their unique family environment differs significantly from that of their school companions and acquaintances in the neighborhood where they live, exposing them to ostracism and discrimination, which would also affect their personal development”. [FN11] The minority dissenting judges of the Supreme Court determined, by contrast, that “the opinions contained in the record, both from psychologists and from social workers, infer that the mother’s homosexuality does not harm the rights of the girls.” [FN12]

[FN11] Judgment of the Supreme Court of Justice of Chile, May 31, 2004, par. 18, submitted by the petitioners in their communication of November 24, 2004.

[FN12] Judgment of the Supreme Court of Justice of Chile, May 31, 2004, par. 9, dissenting vote of judges José Benquis C. and Orlando Álvarez H. , submitted by the petitioners in their communication of November 24, 2004.

22. As regards due process, the petitioners alleged with respect to the disciplinary action (recurso de queja), a purely disciplinary remedy designed to correct serious faults or abuses committed in judicial decisions, that the Supreme Court applied it erroneously to settle factual and legal issues raised in the lawsuit. Thus, it opened a third judicial instance that does not exist in the Chilean procedural system. The petitioners also draw attention to the fact that the disciplinary action carries administrative penalties for judges, which affects their internal independence.

23. The petitioners also allege that while the custody suit was in progress, on March 7, 2003, the Plenary of the Court of Appeals in Temuco appointed Judge Lenin Lillo to conduct a special visit to the Criminal Court in Villarrica where Ms. Atala was serving as a judge,[FN13] in order to discreetly inquire about the facts concerning her private life that had become public knowledge. The petitioner claims that the report prepared by the judge and accepted by the Court of Appeals in Temuco, violated her right to privacy because it determined that the reputation of the legal profession and the sexual orientation of the victim were incompatible.[FN14] The Court of Temuco decided not to press disciplinary charges against Ms. Atala, in spite of the fact that the inspecting judge recommended that it did so.

[FN13] The Organic Code of the Courts provides that appellate court judges are responsible for the managerial, correctional and economic supervision of the tribunals under their jurisdiction, exercised through regular and special visits. Communication from the petitioners of November 24, 2004.

[FN14] Report prepared by Minister Lenin, Lillo Hunzinker, Appeals Court of Temuco, April 2, 2003.

24. The petitioners sustain that two judges who were ineligible to issue a ruling on her and were not impartial voted on the injunction granted by the Court of Appeals in Temuco on November 24, 2003. One was Judge Lenin Lillo, who had participated in the inquiry ordered by the Court of Appeals of Temuco into Ms. Atala's private life, and the other, Judge Loyola López, had previously urged Judge Atala to relinquish her children and expressed disagreement with Ms. Atala's personal and family decisions. Ms. Atala filed a disciplinary complaint against these two judges, which the Supreme Court of Justice decided on July 2, 2004, ruling by a majority vote that the judges had committed no fault or abuse.

25. The petitioner affirms that the custody regime for children of separated parents is governed in Chile by Articles 225, 226, and 227 of the Civil Code.[FN15] For its part, Article 225 stipulates that, “If the parents live separately, the mother shall see to the personal care of the children Be that as it may, when necessary to protect the interests of the child, whether because of mistreatment, neglect, or another just cause, the judge transfer the care of the child to the other parent...” Said article was reportedly the subject of an extensive parliamentary review whose purpose was to protect the best interests of the child, underscore the fact that the personal care of the children corresponds to the mother, and limit the grounds on which the mother may be deprived of custody.[FN16]

[FN15] These articles apply with respect to Articles 242 of the Code and 42 of Law 16.618. Communication from the petitioners of November 24, 2004.

[FN16] The petitioner also alleges that the need for small children to stay with their mother has been recognized by many countries in the Americas in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (Protocol of San Salvador), Article 16 of which provides, “Every child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially-recognized circumstances, a child of young age ought not to be separated from his mother...”. Communication from the petitioners of November 24, 2004.

26. According to the petitioners, the ruling of the Supreme Court is notable for the fact that it centered exclusively on Ms. Karen Atala's sexual orientation, and not on other grounds of legal incapacity to revoke custody of her children, which contravened the principle of equality before the law inasmuch as it constituted a discriminatory application of the substantive rules on custody. The petitioner argues that homosexuality cannot be considered a just cause for declaring her unfit as a mother unless it can be conclusively proven that it harms her daughters, which the Court has not done. According to the petitioners, the Supreme Court reduces the best interests of the girls to living in a traditional, heterosexual, "normally structured" environment.[FN17]

[FN17] In its judgment, the Supreme Court found, “The appealed judges, having determined that is not so (...) and having relegated the special right of the children to live and evolve in the bosom of a normally structured and socially appreciated family, in the proper, traditional mold, have committed a serious breach or abuse which must be corrected through the admission of the instant disciplinary action.” Judgment of the Supreme Court of Justice of Chile, May 31, 2004, par. 20.

27. The petitioners also hold that these arguments of the Chilean Supreme Court are similar to the arguments used by the Court of Appeals of Lisbon, which was challenged before the European Court of Human Rights in the case of *Salgueiro da Silva Mouta v. Portugal*. [FN18] In that connection they note that the European Court found against the State based on the fact that the homosexuality of the complainant was a decisive factor in the final ruling to revoke custody and it considered that there was a lack of proportionality between the means employed and the

aims pursued. Consequently, it found violations of Articles 8 (respect for private and family life) and 14 (non discrimination on any ground such as sex or other status).

[FN18] Salgueiro da Silva Mouta v. Portugal, n°33290/96, 21 December 1999. Communication from the petitioners of November 24, 2004.

28. The petitioners also allege that the State of Chile interfered arbitrarily and abusively in Ms. Atala's family and private life in view of the fact that there were less invasive measures, such as a very ample framework of communication with their father, which the Supreme Court did not consider but, rather, opted for the most restrictive measure, namely complete separation of the girls from their mother. They assert that the ruling of the Supreme Court interfered with her private life because it forced Ms. Atala unnecessarily and arbitrarily to choose between the exercise of her sexual orientation and keeping custody of her daughters.

29. The petitioners also allege that the decision of the Court violates the mental and moral integrity of Ms. Atala since based on an abstract and stereotypical conception of homosexuality, the Supreme Court excludes homosexual people from one of the most meaningful aspects of the human experience: raising their children. The stereotype with respect to homosexuality, which, according to the petition, is perpetuated by the Supreme Court, consists of the belief that homosexuals are against family values, reject traditional family lifestyles, live selfishly centered on the relationship with the partner, and are unable to develop other affective ties.

30. The petitioners allege that rather than to protect the best interests of the girls, the decision of the Supreme Court failed to give due consideration to their express desire to stay with their mother, based on their age and maturity. Instead, the decision encouraged the stigmatization and humiliation of the girls in the press. The petitioner provides a psychiatric report that confirms the effects of the girls' separation from their mother. The girls described the separation as "traumatic, abrupt, and unexpected... as they had expressed their desire to stay with the mother" and that they felt "anger at not having been heard in the lawsuit because they felt that the decision of the judges had made a mockery of them." [FN19]

[FN19] IACHR, Hearing, Case 12.502, Karen Atala and Daughters, 124th Regular Session, March 7, 2006.

31. The petitioners sustain that since the final judgment that separated Ms. Karen Atala from her daughters, the petitioner's family relationship has absolutely deteriorated. Ms. Atala is unable to comply with the biweekly visitation schedule because her job requires her to work on weekends and the father of the girls prevents them from having a private relationship with their mother. The father makes most decisions without consulting the mother and Ms. Atala is not informed about the progress of her daughters at school or about activities that require the presence of their parents, such as graduations and medical procedures.

32. In regards to the exhaustion of domestic remedies, the petitioners argue that the ruling of the Fourth Chamber of the Chilean Supreme Court exhausted all the domestic judicial remedies that could have been attempted in the suit over the custody of the girls. Ms. Atala alleges that if she sues for custody again she knows that no judge will rule in her favor due to the absence of domestic judicial independence in cases of this type before the Supreme Court of Justice.[FN20]

[FN20] IACHR, Hearing, Case 12.502, Karen Atala and Daughters, 124th Regular Session, March 7, 2006.

B. Position of the State

33. The State requests that the petition be declared inadmissible because the facts described therein do not tend to establish violations of the rights protected by the Convention and that the petitioners have turned to the inter-American system as if it were “a kind of fourth instance”, competent to review the decisions of the domestic tribunals issued within their jurisdiction and in accordance with due process guarantees.[FN21] The State holds that given the subsidiary nature of the organs of the inter-American system, both the Court and the Commission have adopted case law in which they indicate that said organs shall only review domestic judicial decisions when the petition is based on a judgment that violates due process guarantees or appears to violate any other right recognized in the Convention, which has not happened in this case.

[FN21] Response of the State of Chile, Ministry of Foreign Affairs, Department of Human Rights, June 15, 2005.

34. According to the State, the “lack of foundation in support of the varied allegations addressed in the complainant’s extensive petition ought to be clear from the mere reading of the judgment that supposedly perpetrated the violations described.”[FN22] Thus, the State alleges, it is understandable that a person who loses a lawsuit should not agree with a verdict unfavorable to them, but “it is surprising that [this person], when she is a Judge of the Republic vested with the power to hear and adjudicate the disputes of others, should dismiss in the terms contained in the aforementioned petition a judgment of the highest Tribunal of that Republic and resort to the Inter-American Commission on Human Rights to challenge said ruling.”[FN23]

[FN22] Response of the State of Chile, Ministry of Foreign Affairs, Department of Human Rights, June 15, 2005.

[FN23] Response of the State of Chile, Ministry of Foreign Affairs, Department of Human Rights, June 15, 2005.

35. The sentence of the Supreme Court, according to the State, does not violate the rights of the girls. To the contrary, the State alleges that the ruling was based on “the imperative need to

protect the best interests of the daughters, threatened, according to the evidence in the case, by the conduct of the mother, who opted to cohabit with a partner of the same sex, with whom she proposed to raise her daughters, which was deemed inadvisable for the girls' upbringing and a risk to their development given the current climate in Chilean society". [FN24] The State equally advances that "regarding personal care it is not the right of the parents that is relevant, but the right of the children affected." The State specifically argues that "in effect, this is how in this type of matters the best interests of the child are the priority, since this is the guiding principle of national and international law. This issue is not considered by the complainant in the petition, but it motivated the custody decision in favor of the father. The ruling was not based on the sexual orientation of the mother, even though she emphasizes this aspect as part of an overall context of discrimination and unequal treatment." [FN25]

[FN24] Response of the State of Chile, Ministry of Foreign Affairs, Department of Human Rights, June 15, 2005.

[FN25] Response of the State of Chile, Ministry of Foreign Affairs, Department of Human Rights, March 31, 2008.

36. Regarding the rights of the mother, the State expresses that there was no denial of justice for her since "even though one could think that the decision taken affects the rights of the mother, that is not real, since what exists is the defense of a good or superior right of protection. In these cases, the judge should prefer a right over the other, primarily resulting in the rights of the children over the rights of the mother." [FN26] The State alleges that the Supreme Court decision was based on a variety of elements including the circumstances of the girls, the merits of the evidence considered in the process, the social, family and educational deterioration that they experienced, and the discrimination that they suffered by their own friends. [FN27]

[FN26] Response of the State of Chile, Ministry of Foreign Affairs, Department of Human Rights, March 31, 2008.

[FN27] Response of the State of Chile, Ministry of Foreign Affairs, Department of Human Rights, March 31, 2008.

37. Furthermore, the State argues that the facts alleged do not amount to a violation of the right of the petitioner to live free from arbitrary and abusive interferences in her private and family life. According to the State, the ruling that allegedly violates her human rights was delivered in a custody suit brought by the former spouse of Ms. Atala and, therefore, the Chilean courts were compelled "to hear and decide it by reason of the principle of inexcusability recognized by the Political Charter and Organic Code of the Courts." [FN28] Therefore, when the courts of justice are required to intervene at the request of a party with standing to sue, in order to settle a family dispute generated by the inability of the individuals to settle it themselves, they are not committing any undue interference or abuse but, rather, performing their own duty to resolve conflicts for the good of social peace, in exercise of an inalienable prerogative of the State.

[FN28] Response of the State of Chile, Ministry of Foreign Affairs, Department of Human Rights, June 15, 2005.

38. By the same token, the State dismisses the allegations of failure to respect the psychological and mental integrity as well as the dignity and honor of Ms. Atala by virtue of the fact that the Supreme Court's decision took into consideration the petitioner's homosexuality and her cohabitation with a person of the same sex. According to the State, those circumstances were the basis of the complainant's suit and the object of the petitioner's defense and, therefore, were inevitably examined and weighed in the decision in the case.

39. The State also argues that the award of custody of the girls to their father was not the result of any discrimination prohibited by the American Convention. In the opinion of the State, the decision was not prompted by the homosexuality of Ms. Atala, but by the effect that her cohabitation with another person of the same sex could have on the wellbeing and psychological and emotional development of her daughters. Those were the overriding considerations in the disputed ruling, and not the decision of the petitioner to declare her homosexuality "whose legitimate exercise as a private right was expressly acknowledged by the judgment." [FN29] The State therefore alleges that was the situation of the girls, "which, at least in the current climate in Chilean society, may be considered peculiar and it deemed it just cause to award custody to the father because the best interests of the girls made it essential." [FN30]

[FN29] Response of the State of Chile, Ministry of Foreign Affairs, Department of Human Rights, June 15, 2005.

[FN30] Response of the State of Chile, Ministry of Foreign Affairs, Department of Human Rights, June 15, 2005.

40. In the hearing before the IACHR, the State also noted that "the judgment of the Supreme Court of Justice focuses on the best interests of the child. In one of its arguments, the Supreme Court mentions that Chile has a conservative cultural environment. For example, divorce only became possible two years ago. If to that one adds the public exposure of the mother's sexual preference, the difficulties that the case was creating for the girls were clear to the State". [FN31]

[FN31] IACHR, Hearing, Case 12.502, Karen Atala and Daughters, 124th Regular Session, March 7, 2006.

41. With these arguments, the State concludes that, given that none of the violations alleged by the petitioners have any substance, the Commission should declare the petition inadmissible because this organ is not competent to review a decision rendered by a domestic tribunal in exercise of its powers and in accordance with due process.

42. The State alleges that the girls are currently in “optimal affective and material conditions” to develop their capacities and that they shine in school.[FN32] The State adduces that during the years that have passed since the decision of the Supreme Court, the girls have had available all the conditions and emotional stability to develop fully, “even overcoming the attention deficit and other challenges that they must have confronted.” [FN33] The State sustains that the father of the girls has recently requested the increase of the alimony that he receives to support his daughters from Ms. Atala due to the variation in the needs of the girls and that the minors suffer “an attention deficit, a medical pathology that forces Mr. López to supply the medicine and medical needs of his daughters which influences the family budget.” [FN34] The State also informs that the working meetings about public policies and measures against discrimination initiated in this case have been restarted by the Human Rights Direction of the State and that in this context “interesting antecedents have been discussed about important changes that are happening in public institutions, which display a disposition to work in collaboration to overcome more traditional and prejudicial views.” [FN35]

[FN32] Note from the State received by the IACHR on April 16, 2008.

[FN33] Note from the State received by the IACHR on April 16, 2008.

[FN34] Note from the State received by the IACHR on April 16, 2008.

[FN35] Note from the State received by the IACHR on April 16, 2008.

43. In regards to the exhaustion of domestic remedies, the State specifically draws attention to the “rule of formal *res judicata* [*cosa juzgada formal*],”[FN36] which applies in proceedings on family matters and allows the review of judicial decisions when the factual circumstances on which a particular decision was based have changed. If Ms. Atala has to date not sued again for custody of her daughters, “the only explanation is factual circumstances, not because there is a legal impediment for her to do so.”[FN37] The State mentions that the mother can file a new custody suit if the psychoaffective circumstances of the girls have changed, based on a separate psychiatric report.[FN38] Its position is that the petitioners still have remedies available to challenge this decision at the domestic level.

[FN36] Notes from the State received by the IACHR on December 19, 2007 and March 31, 2008.

[FN37] Notes from the State received by the IACHR on December 19, 2007 and March 31, 2008.

[FN38] IACHR, Hearing, Case 12.502, Karen Atala and Daughters, 124th Regular Session, March 7, 2006.

IV. ANALYSIS

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

44. The petitioners are entitled, under Article 44 of the American Convention, to file complaints with the Commission. The petition names as alleged victims Ms. Karen Atala and her three daughters, M., V., and R., on whose behalf Chile undertook to respect and ensure the rights enshrined in the American Convention. Regarding the State, the Commission notes that Chile has been a party to the American Convention since August 21, 1990, when it deposited the respective instrument of ratification. The Commission, therefore, has *ratione personae* competence to examine the petition.

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

46. The IACHR is competent *ratione temporis*, because the obligation to respect and ensure the rights recognized in the American Convention was already in force for the State when the facts alleged in the petition are said to have occurred. Finally, the Commission is competent *ratione materiae* because the petition alleges violations of human rights protected by the American Convention.

B. Admissibility of the Petition

1. Exhaustion of domestic remedies

47. Article 46(1)(a) of the American Convention provides that for a petition to be admitted it is required “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” Article 46(2) of the Convention recognizes three circumstances in which the rule of prior exhaustion of domestic remedies does not apply: a) when the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) when the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and, c) when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

48. It should be noted that the rule of prior exhaustion of domestic remedies only applies to those that are adequate and effective to offer reparation to the violation alleged. The Inter-American Court of Human Rights has found that in accordance with generally recognized principles of international law, domestic remedies must be suitable to address the infringement of a legal right; and effective, in the sense of being capable of producing the result for which they were designed.[FN39] Although the legal system of every country contains a series of remedies, the rule on their exhaustion does not require invocation of those that are inadequate, ineffective, or offer no likelihood of success.[FN40] For purposes of admissibility, the standard of analysis used for the *prima facie* assessment of the adequacy and effectiveness of the remedies under domestic law is not as high as the one required to determine whether a violation of Convention-protected rights has been committed.[FN41]

[FN39] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, Series C No. 4, (1988), pars. 64-66.

[FN40] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, Series C No. 4, (1988), pars. 64, 66 and 68.

[FN41] Report 08/05, Petition 12.238, Miriam Larrea Pintado, Ecuador, February 23, 2005, par. 31.

49. In the instant case, the petitioners argue that the remedies provided under Chilean domestic law were exhausted by the ruling of the Chilean Supreme Court of May 31, 2004, which decided the disciplinary action and modified the judgments at first and second instance, awarding permanent custody of the girls to the father.

50. The State, for its part, argues that not all domestic remedies have been exhausted, since the “rule of formal *res judicata* [*cosa juzgada formal*],”[FN42] which applies to proceedings on family matters in Chile, permits the review of judicial decisions when the factual circumstances on which a particular decision was based have changed. Accordingly, the State holds that Ms. Atala has no legal impediment to file a new suit for custody of her daughters. In response, the petitioners contend that a new custody suit offers no possibilities of success in view of the precedent established in the judgment of the Supreme Court Justice of Chile in this case, as well as the lack of judicial independence with respect to the same court in the domestic jurisdiction in cases where the mother is homosexual.

[FN42] Note from the State received by the IACHR on December 19, 2007.

51. A State that alleges non-exhaustion must indicate which domestic remedies should be exhausted and provide evidence of their effectiveness. In such cases, the petitioners have the procedural burden of demonstrating that said remedies were exhausted, or that one of the exceptions contained in Article 46(2) of the American Convention applies.

52. In the instant matter, the Chilean State merely holds that domestic remedies have yet to be fully exhausted because Ms. Atala is not legally impeded from again seeking custody of her daughters should the factual circumstances of the case have changed. However, the State does not present specific information from which to conclude that a new custody suit would be suitable and effective, according to international human rights standards, to remedy the violations that Ms. Atala alleges. Nor does the State explain how a new custody suit could offer a different outcome or have a reasonable likelihood of success, given the precedent already set by the Supreme Court of Justice in Chile.[FN43]

[FN43] In its jurisprudence, the Commission has shared the opinion of the European Court of Human Rights that the petitioner may be exempted from the requirement to exhaust domestic remedies in respect of a petition when the record clearly shows that no action would have a reasonable likelihood of success in light of the case law of the highest judicial instance in the

State. See, for example, Petition 1490-05, *Jessica González v. United States* (Admissibility), Annual Report of the IACHR 2008, par. 50; Case 11.193, Report 51/00, *Gary Graham v. United States* (Admissibility), Annual Report of the IACHR 2000, par. 60, which cites European Court of Human Rights, *Cases of Wilde, Oomas and Versyp*, 10 June 1971, Publ. E.V.H.R. Ser. A, Vol.12, p. 34, pars. 37, 62; European Court of Human Rights, *Avan Oosterwijck v. Belgium*, Judgment (Preliminary Objections), 6 November 1980, Case N° 7654/76, par. 37. See, also, Case 11.753, Report 108/00, *Ramón Martínez Villareal v. United States* (Admissibility), Annual Report of the IACHR 2000, par. 70.

53. The Commission also notes that Ms. Atala challenges the proceeding and the decision issued in the custody suit, which she litigated for nearly two years. She claims that in said proceeding she and her daughters were the victims of a number of human rights violations with consequences that persist to this day. In that connection, Ms. Atala challenges before the Commission a proceeding that passed through all of its stages and a new trial would not offer the possibility to remedy the violations that she alleges.

54. The Commission also finds in its decision that the facts in this case have been the subject of a decision by the Supreme Court of Justice of Chile, which is the highest appellate court in that country, a fact undisputed by the State. Furthermore, the State has not suggested that Ms. Atala invoked the wrong remedies in pursuing her claims at the domestic level.

55. Based on the aforementioned factors, the Commission concludes that the petitioners duly exhausted all the remedies that were available to them in the legal system in Chile. Therefore, their complaints to the Commission are not barred from consideration by the rule of prior exhaustion of domestic remedies provided by Article 46(1)(a) of the American Convention.

2. Timeliness of the petition

56. Article 46(1)(b) of the American Convention provides that the petition must be filed within a period of six months from the date on which the petitioners were notified of the final judgment that exhausted domestic remedies. The instant petition was submitted on November 24, 2004, within six months after the Supreme Court ruling of May 31, 2004. Consequently, that requirement has been met.

3. Duplication

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

4. Colorable Claim

58. In the instant case, the petitioners allege that several rights protected by the American Convention were violated by the discriminatory ruling of the Chilean Supreme Court to the

detriment of Ms. Atala and her daughters. In particular, the petitioners allege violations of the right to a fair trial, the right to personal integrity, right to protection of the honor and the dignity, right to privacy, rights of the family, right to equal protection, and rights of the child. The State, for its part, argues that the petition should be declared inadmissible because it does not allege facts which constitute violations of human rights.

59. The State considers, more specifically, that the petition is inadmissible because the intention of the petitioners is for the Commission to act as a tribunal of “fourth instance,” for which it lacks competence, since the petitioners challenge a judicial decision issued within the framework of minimum due process guarantees. With respect to this argument, the Commission reiterates what it has established in its jurisprudence, which is that it is not competent to review judgments decided by national courts acting within their jurisdiction and with due process and judicial guarantees.[FN44] The Commission cannot serve as an appellate court to examine alleged errors of internal law or fact which may have been committed by the domestic courts acting within their jurisdiction. However, within its mandate to ensure the observance of the rights set forth in the American Convention, the Commission is necessarily competent to declare a petition admissible and rule on its merits when it refers to a domestic legal decision ruled in disregard to due process guarantees and in violation of any other right protected by the American Convention. [FN45]

[FN44] See IACHR, Report 52/02, Case 11.753, Merits, Ramon Martinez Villareal, United States, October 10, 2002, par. 53; Report 39/96, Santiago Marzioni v. Argentina, IACHR, Annual Report 1996, pars. 48 – 51.

[FN45] See IACHR, Report 52/02, Case 11.753, Merits, Ramon Martinez Villareal, United States, October 10, 2002, par. 53; Report 39/96, Santiago Marzioni v. Argentina, IACHR, Annual Report 1996, pars. 48 – 51.

60. According to this doctrine, the Commission notes that in admitting this petition it does not seek to encroach on the jurisdiction of the domestic judicial authorities to determine child custody matters or to examine any errors of fact and law possibly committed by the domestic courts. The Commission will not determine if the Chilean courts applied Chilean procedural law appropriately or on the assessment of evidence, since such matters are in principle reserved to the domestic courts. The only determination that the Commission will make in the merits stage is whether the decision of the Supreme Court Justice of Chile was issued without regard to due process guarantees and in violation of the rights protected by the American Convention.

61. In the admissibility stage the Commission considers that it is not appropriate to determine whether or not the alleged violations occurred. For the purposes of admissibility, the IACHR should determine whether the arguments advanced in the petition state facts that tend to establish violations of the American Convention, as required under Article 47(b) thereof. The standard of assessment is different from the one needed to decide the merits of a petition. At this stage the IACHR must perform a summary prima facie evaluation to examine whether the petition establishes grounds for the apparent or potential violation of a right guaranteed by the American Convention.[FN46] This determination involves a summary analysis which does not imply a

prejudgment or advance opinion on the merits of the matter. The distinction between the examination required for declaring admissibility and that required for determining a violation is reflected in the IACHR's own Rules of Procedure, which clearly differentiate the stages of admissibility and merits.[FN47]

[FN46] See IACHR, Report 128/01, Case 12.367, Herrera and Vargas (“La Nación”), Costa Rica, December 3, 2001, par. 50.

[FN47] See IACHR, Report 31/03, Case 12.195, Mario Alberto Jara Oñate et al., Chile, March 7, 2003.

62. The arguments of the petitioners refer to facts, which, if found to be true, could constitute violations of several rights protected by the American Convention at Articles 8(1), 11(2), 17(1), 24 and 25, in connection with articles 1(1) and 2, to the detriment of Ms. Karen Atala and her daughters; as well as an alleged violation of the rights of the child protected by Articles 19 and 17(4), in connection with Article 1(1), with regard to the daughters of Ms. Atala.

63. The Commission finds *prima facie* that the arguments raise questions related with the right to equal protection recognized in Article 24, which correspond to an analysis in the merits stage. The petitioners allege that the Supreme Court Justice of Chile accorded a different treatment to Ms. Atala and her former spouse in its ruling on the custody of their daughters, in which the sexual orientation of Ms. Atala was the decisive factor in granting permanent custody to the father. They claim that the distinction based on Ms. Atala’s homosexuality in the custody suit was neither objective nor reasonable and it did not have a legitimate purpose, in contravention of international human rights principles. [FN48] They also contend that the Court's ruling has a disproportionate and limiting impact on the exercise of rights by homosexual parents, by promoting that they never retain custody of their children due to stereotypical conceptions of their ability to care and create a healthy family environment for them.

[FN48] See European Court of Human Rights, *Salgueiro da Silva Mouta v. Portugal*, 33290/96, 21 December 1999 (in which the Court decided that a difference in treatment between parents in a custody trial based on the sexual orientation of one of them constituted a violation of Article 8 (right to respect for private and family life) in relation to article 14 (prohibition of discrimination) of the European Convention on Human Rights and Fundamental Freedoms; European Court of Human Rights, *E.B. v. France*, 43546/02, 22 January 2008 (in which the Court decided that a difference in treatment on the basis of sexual orientation in adoption cases violates Article 14 of the European Convention on Human Rights and Fundamental Freedoms in relation to Article 8 of said instrument).

64. The Commission also finds that the allegations could constitute violations of the right to privacy and the rights of the family of the victims protected, respectively, by Articles 11(2) and 17(1) of the American Convention. The petitioners claim that the State allegedly interfered in an arbitrary and abusive manner in the private and family life of Ms. Karen Atala and her daughters

when it revoked custody purely out of discriminatory prejudice based on Ms. Atala's sexual orientation. They also argue that the separation measure adopted by the Supreme Court was neither reasonable nor proportional because it could have adopted other measures that were less invasive on the victims' private and family life.

65. The Inter-American Commission will also examine arguments with respect to Articles 8(1) and 25 of the American Convention in connection with the claims of the petitioners regarding alleged violations of due-process guarantees during the custody trial. The petitioners allege, in particular, that the Supreme Court, through a disciplinary action (*recurso de queja*), which is a remedy of a purely disciplinary nature designed to correct faults or abuses committed in judicial decisions, opened a third judicial instance that does not exist in the Chilean criminal procedure. The petitioners argue that the Court issued an unjustified decision on the merits of the matter and unduly interfered in the principle of judicial independence.

66. The allegations of the petitioners, if found to be true, could also constitute violations of the rights of the girls protected by Articles 19 and 17(4) of the American Convention inasmuch as they sustain that the Supreme Court did not give consideration to the desire of the girls to stay with their mother, which the lower courts did. Additionally, pursuant to the rules on interpretation set forth in the American Convention on Human Rights,[FN49] as well as the criteria established by the Inter-American Court of Human Rights with respect to the tendency to integrate the regional and universal systems for the protection of human rights,[FN50] and as regards to the notion of *corpus juris* for the protection of the child,[FN51] the Commission decides that it will interpret the scope and content of the rights of the American Convention allegedly violated to the detriment of M., V. and R. in light of the provisions contained in the Convention on the Rights of the Child.[FN52]

[FN49] Article 29 (Restrictions regarding Interpretation) provides, "No provision of this Convention shall be interpreted as: (...) b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; (...)".

[FN50] I/A Court H.R., "Other Treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights). Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, para. 41.

[FN51] I/A Court H.R., The "Street Children" Case (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 194; I/A Court H.R., Case of the "Juvenile Reeducation Institute". Judgment of September 2, 2004. Series C No. 112., para. 148; I/A Court H.R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, par. 166; I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 24, 37 and 53.

[FN52] This Convention was adopted on November 20, 1989, and entered into force on September 2, 1990. Chile ratified the Convention on the Rights of the Child on September 12, 1990.

67. In response to the allegations of the petitioners, the State sustains that the facts alleged do not constitute violations of the American Convention and that the decision of the Supreme Court of Justice was based on the best interests of the children. The IACHR will review the allegations of the State and the petitioners in the merits stage and on their basis will determine whether the facts alleged constitute violations to the American Convention.

68. In the opinion of the Commission the allegations in the petition do not offer sufficient grounds from which to determine a violation of the rights protected by article 11(1) on the protection of the honor and dignity, and by Article 5(1) on personal integrity.

V. CONCLUSIONS

69. The Inter-American Commission concludes that it is competent to address the merits of this case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention. Based on the factual and legal arguments exposed above and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant petition admissible with regard to the alleged violation of the rights recognized by Articles 8(1), 11(2), 17(1), 24, and 25 of the American Convention, in connection with Articles 1(1) and 2 thereof, to the detriment of Ms. Karen Atala and her daughters; and the alleged violation of the rights of the child protected by Articles 19 and 17(4), in connection with Article 1(1), with regard to the daughters of Ms. Karen Atala.
2. To declare the instant petition inadmissible as regards to the alleged violation of Articles 5(1) and 11(1) of the American Convention.
3. To notify the parties of this decision
4. To continue with its analysis of merits in the matter; and
5. 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 23rd day of the month of July, 2007.
(Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.