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| Title/Style of Cause: | Carlos and Pablo Carlos Memoli v. Argentina |
| Doc. Type: | Decision |
| Decided by: | Chairman: Paolo Carozza; First Vice-Chairwoman: Luz Patricia Mejia Guerrero; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro. Commissioner Victor E. Abramovich, of Argentine nationality, did not take part in the consideration or decision of the instant case in accordance with the provisions of Article 17(2) of the Commission’s Rules of Procedure. |
| Dated: | 23 July 2008 |
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I. SUMMARY

1. On February 12, 1998, Mr. Carlos Mémoli and his son, Pablo Carlos Mémoli, (hereinafter "the petitioners" or "the alleged victims") lodged a petition on their own behalf with the Inter-American Commission on Human Rights (hereinafter "the Commission", "the Inter-American Commission" or "the IACHR") against the Republic of Argentina (hereinafter the "State," the "Argentine State" or "Argentina") for alleged violation of Article 8 (right to a fair trial) and Article 13 (right to freedom of thought and expression) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). The petitioners and alleged victims alleged that they were convicted for having reported to the officers of a mutual association in San Andrés de Giles the allegedly irregular sale by the Governing Committee of said association of niches in the local cemetery. They also allege that said criminal action, which culminated in their conviction, was decided without due process.

2. The State alleged that the alleged victims did not adequately exhaust domestic remedies and that the petition before the IACHR is limited to contesting the result of a judicial dispute over private issues between Messrs. Mémoli and the plaintiffs. It also alleged that the alleged victims had access to all judicial remedies available in Argentine law and that the criminal sanction imposed complies with the provision of Article 13(2) of the American Convention, since it is expressly and previously established in law and constitutes subsequent imposition of liability to protect the plaintiff’s right to honor and reputation.

3. Without prejudging the merits, the IACHR concluded in this report that the petition is admissible since it meets the requirements set forth in Article 46 of the American Convention.

The Commission decided to notify the parties of the decision and to continue its consideration of the merits of the alleged violation of the rights to freedom of thought and expression (Article 13) and to a fair trial (Article 8) enshrined in the American Convention, in conjunction with the general obligations enshrined in Articles 1(1) and (2) of said instrument. The Commission also decided to publish this decision and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

4. The petition was lodged with the Executive Secretariat of the Inter-American Commission on February 12, 1998, and forwarded to the State on December 21, 2001, setting a period of two months for reply, in accordance with Article 30(3) of the Rules of Procedure of the Inter-American Commission of Human Rights then in force.

5. On January 23, 2002, the State requested an extension in order to submit its reply, which was granted by the Executive Secretariat on February 6, 2002. In communications of February 21, March 26, and April 17, 2002, the State forwarded its reply to the petition, whose relevant parts were forwarded to the petitioners on June 27, 2002.

6. On August 6, 2002, the petitioners forwarded observations on the reply of the State, which were forwarded to it on January 9, 2003. On January 14, 2003, the State requested an extension in order to submit its reply to the observations sent by the petitioners, which was granted by the Commission on February 14, 2003. On March 13, 2003, the Commission received an additional submission from the State, and forwarded it to the petitioners on June 9, 2003.

7. On July 10, 2003, the Commission received observations sent by the petitioners on the additional submission from the State, which were forwarded to it on June 25, 2004.

8. On February 14, May 17, and October 17, 2000, the petitioners forwarded additional submissions; on March 16, 2004, forwarded to the State on June 25, 2004; on September 28, 2004, forwarded to the State on December 7, 2004; on August 21, 2006, forwarded to the State on August 24, 2006; November 2, 2006, forwarded to the State on December 4, 2006; on December 12, 2006, forwarded to the State on December 18, 2006, and the additional submission of February 21, 2007.

III. POSITIONS OF THE PARTIES

A. Background and brief summary of the main facts

9. Before referring to the positions of the parties, the Commission considers it is important to give details of some facts drawn from extracts of the case file annexed to the complaint.

10. In April 1989, Mr. Carlos Mémoli became Assistant Secretary of the Governing Committee of the Italian Mutual Assistance Society of San Andrés de Giles Municipality which, among other activities, organized Italian language courses for the local community.[FN1] In late 1989, the Governing Committee of the Italian Society refused to include Mr. Carlos Mémoli's

wife, Mrs. Daisy Sulich de Mémoli, as a teaching assistant on the language course.[FN2] On November 23, 1989, the Governing Committee decided to suspend Mr. and Mrs. Mémoli from the association for 24 months. On April 6, 1990, Mr. Carlos Mémoli sent documentary letters to the Governing Committee, alleging that the quarterly balance sheets on the Society's activities had not been published and accusing its members of irregular conduct regarding promises of sales of niches in the municipal cemetery.[FN3]

[FN1] Extraordinary Federal Appeal filed by the petitioners with the Supreme Court of Justice of the Nation, p. 4.

[FN2] Appeal judgment of the Second Chamber of the Criminal and Correctional Court of Mercedes Judicial Department, of December 28, 1995, p. 18.

[FN3] Judgment of the court of first instance upheld by Criminal and Correctional Judge No.7 of Mercedes Judicial Department, on December 29, 1994, p. 41.

11. The decision taken by the Governing Committee to suspend Mr. and Mrs. Mémoli from the association for 24 months was endorsed on May 11, 1990 by the regular meeting of the General Assembly of the Italian Society.[FN4] During that regular meeting of the General Assembly, the Mutual Assistance Society decided to include on the order of business for the next year's regular meeting consideration of the expulsion of Mr. Carlos Mémoli and Mrs. Daisy Sulich de Mémoli. Having been notified of said decision, Mr. and Mrs. Mémoli resigned as members. The directors of the Italian Society accepted the resignation of Mr. and Mrs. Mémoli and informed them that they would be prohibited from rejoining the Association.[FN5]

[FN4] Ibid.

[FN5] Ibid., p. 40.

12. On June 27, 1990, Mr. Carlos Mémoli filed a complaint with the National Mutual Action Institute [Instituto Nacional de Acción Mutual] (INAM), registered under No. 160/90, alleging that periodic balance sheets had not been submitted by the Treasurer of the Italian Mutual Assistance Society, Mr. Juan Bautista Piriz.[FN6]

[FN6] Appeal judgment of the Second Chamber of the Criminal and Correctional Court, op. cit., p. 19.

13. At the initiative of one of the members of the Governing Committee of the Italian Mutual Assistance Society, Mr. Antonio Guarracino, a plot of land in the municipal cemetery was granted by San Andrés de Giles Municipality (North Cemetery), to be charged to the Association to build niches in order to offer them to its members for purchase by installment.[FN7]

[FN7] Ibid., pp. 18-19.

14. Based on the negotiation of said municipal cemetery niches, Mr. Carlos Mémoli filed a report of alleged fraud with the Second Police Precinct of San Andrés de Giles against Messrs. Antonio Guarracino, Humberto Romanello, and Juan Bautista Ricardo Piriz, since, according to Mr. Carlos Mémoli, the niches had been sold with promises of notarized bills of sale, which were never provided. This report gave rise to Case No. 73679, assigned to the then Criminal Court No. 1 of the Mercedes Judicial Department. By resolution of June 6, 1990, that court deemed not established the perpetration of the reported offense and ordered the provisional dismissal of the investigation.[FN8] The judge decided that it did not constitute fraud, indicating that the accused had erred but not committed fraud.[FN9]

[FN8] Ibid., p. 41.

[FN9] Extraordinary Federal Appeal filed by the petitioners with the Supreme Court of Justice of the Nation, p. 5.

15. Messrs. Antonio Guarracino, Humberto Romanello, and Juan Bautista R. Piriz filed a criminal action for slander and libel against Carlos Mémoli and his son, Pablo Mémoli. Said action was based on the content of newspaper articles published in the daily “La Libertad,” of which Pablo Mémoli was the director in charge, as well as on the contents of statements made by the plaintiffs on the “Radio Vall” program on two different occasions.

16. The newspaper articles and radio statements related essentially to alleged mismanagement of the administration of the Italian Mutual Assistance Society and the alleged fraud arising from the irregular sale of niches to members of said society.

17. Based on the criminal action, on December 29, 1994, Criminal and Correctional Court No. 7 of Mercedes Judicial Department convicted Carlos Mémoli to one month of imprisonment, suspended, for the crime of slander, and Pablo Mémoli to five months of imprisonment, suspended, for the same offense, awarding costs to both.[FN10] The decision was appealed, and upheld by the Second Chamber of the Criminal and Correctional Court of Mercedes Judicial Department on December 28, 1995.[FN11]

[FN10] Judgment of the court of first instance upheld by Criminal and Correctional Judge No.7 of Mercedes Judicial Department, *op. cit.*, pp. 84-85.

[FN11] Appeal judgment of the Second Chamber of the Criminal and Correctional Court, *op. cit.*, pp. 53-57.

18. The judgment was based on remarks characterized as slanderous against the honor of the plaintiffs. Some of those made by Mr. Carlos Mémoli were: (a) on the radio program of May 10, 1990, that the plaintiffs had: “...defamed and lied, arousing terror in some, threatening others,

this will not do ...”[FN12]; this with regard to the case of irregularity in the sale of niches; and (b) in the context of the administrative proceeding with INAM, he characterized the plaintiffs as “three unscrupulous men”[FN13]; “with the intent to “whitewash” six years of abuse and corruption,”[FN14] “with clear intent of a take-over and arbitrary Fascist management endorsed by members of the Governing Committee,”[FN15] among others.

[FN12] Judgment of the court of first instance, (ll), p. 67.

[FN13] Judgment of the court of first instance, (c), p. 65.

[FN14] Judgment of the court of first instance, (b), p. 72.

[FN15] Judgment of the court of first instance, (c), p. 65.

19. Some of the remarks made by Mr. Pablo Mémoli were: (a) on the radio program of May 4, 1990, referring to the plaintiffs, that “these people get along by lying, deceit, and great deception”[FN16]; “we want to put an end to certain corrupt people ...two or three people need to be gotten rid of”[FN17]; “we consider them corrupt,”[FN18] “you open the paper and the next day the corrupt people appear”[FN19]; (b) on the radio program of May 10, 1990, in the same context of the facts, that: “...these people drafted the bill of sale perhaps in the knowledge that it was incorrect. That is why we clearly explained the fraud in our paper ...”[FN20]; “...we are certain, ..., we needn’t lie, or deceive in the slightest, absolutely not, ..., and they do, and they do and are doing so.”[FN21] Other remarks made in different newspaper articles characterized the plaintiffs, inter alia, as “potential criminals.”[FN22]

[FN16] Judgment of the court of first instance, (e), p. 59.

[FN17] Judgment of the court of first instance, (h), p. 61.

[FN18] Judgment of the court of first instance, (i), p. 61.

[FN19] Judgment of the court of first instance, (j), p. 62.

[FN20] Judgment of the court of first instance, (c), p. 65.

[FN21] Judgment of the court of first instance, (d), p. 65.

[FN22] Judgment of the court of first instance, (8), p. 8.

20. After a series of appeals filed and consecutively denied (see infra pars. 43, 44 and 45), the judgment in the criminal case became final.

B. Positions of the petitioners

21. The petitioners allege that, for five years, the Governing Committee of the Italian Mutual Assistance Society irregularly sold niches in the San Andrés de Giles municipal cemetery, promising notarized bills of sale that were never provided. They state that Mr. Carlos Mémoli reported these facts and that the investigating judge stated that the sale of municipal cemetery niches by the Italian Society relied on “an object of impossible transaction and invalid by nature.”[FN23]

[FN23] Extraordinary Federal Appeal filed by the petitioners before the Supreme Court of Justice of the Nation, p. 5.

22. The petitioners state that the newspaper “La Libertad,” of which Mr. Pablo Mémoli was the editor in charge, published articles denouncing alleged irregularity in the sale of municipal cemetery niches, as well as alleged mismanagement of the Italian Mutual Assistance Society. They add that on two occasions, they participated in “Radio Vall” broadcasts, in which they reported the same facts. They allege that, based on said reports, Messrs. Antonio Quarracino (President), Humberto Romanello (Secretary), and Juan B. Piriz (Treasurer) of the Italian Mutual Assistance Society, brought a criminal action against the alleged victims for the crimes of libel and slander established in Articles 109 and 110 of the Argentine Criminal Code [Código Penal – CP].

23. On December 29, 1994, the alleged victims were convicted by judgment of Criminal and Correctional Judge No. 7 of the Mercedes Judicial Department. Said judgment was upheld in the judgment of December 28, 1995 in the appeal case before the Second Chamber of the Criminal and Correctional Court of Mercedes Judicial Department.

24. The petitioners indicate that on December 30, 1997, a civil action was brought against them in connection with the same facts that were the subject of the criminal action, eight years after they occurred.[FN24] They indicate that, under Article 4037 of the Argentine Civil Code, civil claims are time-barred after two years. However, as of August 6, 2002, the judge hearing the civil action for damages had not ruled on the statute of limitations.[FN25]

[FN24] Complaint of February 12, 1998, p. 3.

[FN25] Submission of the petitioners of August 6, 2002, p. 4.

25. The alleged victims reiterate in additional submissions, especially on the last one from February 21, 2007, that the civil action for damages brought against them has not been resolved. Nevertheless, the petitioners state that Messrs. Humberto Romanello and Antonio Guarracino celebrated an “out of court agreement” with them, resigning from the civil action brought against Mr. Carlos and Pablo Mémoli. However, Mr. Juan Piriz did not participate on that agreement, staying as the only plaintiff on the civil action for damages.[FN26]

[FN26] Submission of the petitioners of August 6, 2002, pp.4-5 and “Out of Court Agreement” between Mr. Carlos and Pablo Memoli and Messrs. Humberto Romanello and Antonio Guarracino, annexed to the submission of August 6, 2002.

26. The petitioners allege that as a consequence of the criminal action filed against them an incident called “General Inhibition of Property” [“Inhibición General de Bienes”] was held

against them. This incident had as a result the decision to grant precautionary measures in favor of the complainants of the criminal action, in order to assure the satisfaction of a potential right to be repaired for damages as well as to assure the professional fees payment of the lawyers who participated in the criminal procedure. The decision of granting precautionary measures was dictated in March 1996 and after an appeal presented by the petitioners was reconfirmed on April 18, 1996. They assert that at the end of 1996 they submitted the professional fees payment derived from the case but despite of that, as of August 2002 and after more than 5 years, the order of inhibition of property was not withdrawn.[FN27]

[FN27] Submission of the petitioners of August 6, 2002, p. 3.

27. The petitioners assert that the judicial authorities who decided the criminal action did not take account of evidence of the veracity of the statements disseminated in the daily “La Libertad” and that, during the appeal proceeding, a series of irregularities was committed, which affected their right to defense. They allege that the Second Chamber of the Criminal and Correctional Court of Mercedes Judicial Department unexpectedly set a date for a hearing, which was held without their presence.[FN28] They state that said hearing constituted a second opportunity for the plaintiffs to make their arguments through the reading of a document.[FN29] They allege that these facts are in violation of the provision of Article 423.6, then in force, of the Code of Criminal Procedure of Buenos Aires Province.[FN30]

[FN28] Ibid., p. 3.

[FN29] Ibid., p. 2-3.

[FN30] The petitioner mentions the following extract: “...The parties and their attorneys may not take the stand for more than half an hour, and are prohibited from making written submissions.” Submission of the petitioners of July 10, 2003, p. 2.

28. The petitioners state that said alleged violations of their right to defense were upheld by the Supreme Court of the Buenos Aires Province and the Supreme Court of Justice of the Nation. They allege that Mr. Carlos Mémoli was convicted to one month of imprisonment, suspended, because his attorney used the word “unscrupulous” in an administrative file, referring to the members of the Governing Committee of the Italian Society. They indicate that, under the Argentine Code of Criminal Procedure slander made in a judicial file is not subject to sanction. They indicate that Mr. Pablo Mémoli was convicted to five months of imprisonment, suspended, for publishing newspaper articles denouncing alleged irregularity in the management of the Italian Mutual Assistance Society of San Andrés de Giles.[FN31]

[FN31] Complaint of February 12, 1998, pp. 1-2 and submission of the petitioners of August 6, 2002, p. 2.

29. Lastly, the petitioners allege that in April 2005, they were notified via the Federal Court to deposit, payable to the order of the Supreme Court of Justice of the Nation and subject to enforcement, the sum of 2000 Argentine pesos in connection with the denial of the extraordinary appeal [recurso extraordinario] by said court on October 5, 1997.[FN32]

[FN32] Submission of the petitioners of August 21, 2006.

C. Position of the State

30. The State asserts that they were notified of the petition four years after it was received by the Executive Secretariat of the Inter-American Commission. It indicates that the excessive delay in the “pre-admissibility” stage should constitute grounds for abstention by the Commission from considering the complaint, since it affects the rights and prospects of the State denounced, and makes it difficult to adopt early measures to resolve the dispute under domestic law or reach a friendly settlement.[FN33]

[FN33] Reply of the State to the petition of March 26, 2002, pp. 2-7.

31. It states that the complaint before the Commission amounts to a private dispute stemming from personal disputes between Mr. Carlos Mémoli and Messrs. Antonio Guarracino, Humberto Romanello, and Juan Bautista Ricardo Piriz. It indicates that the criminal action brought by the latter originated from a contentious relationship regarding an Italian course offered by the Italian Mutual Assistance Society. It adds that the dispute took on greater proportions with the criminal action brought for alleged fraud instituted by Mr. Carlos Mémoli,[FN34] the public importance accorded the matter through articles published in the daily “La Libertad,” and two radio interviews in which the alleged victims participated.

[FN34] See paragraph 12 of this report.

32. The State alleges that the alleged victims were prosecuted and convicted, in both the first and second instance, with the assistance of attorneys and the opportunity to produce evidence, all in full observation of due process guarantees. It asserts that Messrs. Carlos and Pablo Mémoli were convicted of only some of the charges in the criminal action and that the civil action brought by the plaintiffs in the context of the criminal proceeding was denied.[FN35]

[FN35] Reply of the State to the petition, op. cit., p. 8.

33. In connection with the allegation of the petitioners regarding the unexpected setting of a date for a hearing by the Second Chamber of the Criminal and Correctional Court of Mercedes Judicial Department, the State indicates that the court deemed an additional hearing necessary for balance in the defense of the parties. It indicates that at a first hearing, the defendants took the stand on two occasions, whereas the plaintiff only once, which was the reason for calling a second, complementary, hearing, for procedural balance in the criminal action and to hear arguments regarding the facts of the case.

34. The State states that both plaintiffs and defendants were notified of the hearing. It states that the attorney defending the alleged victims participated in the proceeding, so that the plaintiffs' absence cannot be a source of violation of the right to due process.[FN36] It alleges that both parties appealed the judgment of the court of first instance and that it was admissible to complement the first hearing, giving the plaintiff an opportunity to argue the points he had not alleged and were not part of his appeal, and those that the defendants and their attorneys had referred to at length at a first hearing convened by the court of second instance.

[FN36] Ibid., pp. 9-10.

35. The State alleges that the alleged victims enjoyed all due process guarantees, at two judicial instances. It indicates that, after the appeal judgment, the alleged victims filed appeals erroneously at both the provincial and the federal levels. It states that the alleged victims pursued an extraordinary appeal [recurso extraordinario] before the Supreme Court of Justice of Buenos Aires Province, citing grounds pertaining to an appeal for inapplicability of law [recurso de inaplicabilidad de la ley], which was the reason for its denial by the high court. It states that the alleged victims filed an extraordinary federal appeal [recurso extraordinario federal] against this decision, which was also denied.[FN37] It states that the defendants filed an appeal for reversal [recurso de revocatoria] against that decision, which was denied taking into account evidence that the resolution challenged was not susceptible to reversal.

[FN37] The Supreme Court of Justice of Buenos Aires Province gave the following grounds for denial: "...the lower court errors cited regarding the matter only reflect the appellant's personal disagreement with the interpretation of the sentencing court, so that they are not appropriate to that end, bearing in mind that the objection of arbitrariness regarding resolutions of this type is especially restrictive."

36. Regarding the petitioner's allegation that Mr. Carlos Mémoli was convicted because his attorney had used a particular word in an administrative file, the State asserts that this statement is inconsistent with the deliberations and decision of the courts that heard the case. It indicates that Mr. Carlos Mémoli was convicted for a variety of slanderous remarks made in different contexts and not merely for a word contained in an administrative file.[FN38]

[FN38] Additional submission of the State of March 13, 2003, pp.2-3.

37. The State alleges that the alleged victims made erroneous use of appellate procedural paths, so that domestic remedies were not properly exhausted.[FN39] It indicates that the petitioners' complaint is limited to contesting the resolution of the action by Argentine courts. In that connection, it states that the Commission cannot review judgments of national courts acting within the scope of their competence and applying the due judicial guarantees.[FN40]

[FN39] Reply of the State to the petition of March 26, 2002, p. 12.

[FN40] Ibid., p. 14.

38. Lastly, the State alleges that the right of the alleged victims to freedom of expression has not been violated, since the criminal punishment imposed thereon was expressly and previously established in law, and constitutes subsequent imposition of liability to protect the plaintiffs' right to honor and reputation. It states that such elements are in accordance with the requirements of Article 13(2) of the American Convention.

IV. ADMISSIBILITY AND COMPETENCE

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

39. Under Article 44 of the American Convention, the petitioners have the right to lodge petitions with the IACHR. The alleged victims are natural persons with regard to whom the Argentine State undertook to respect and guarantee the rights enshrined in the Convention. Argentina ratified the American Convention on Human Rights on September 5, 1984. Therefore, the IACHR has competence *ratione personae* to consider the instant petition.

40. The Commission has competence *ratione loci* to consider the petition as in it are alleged violations of rights protected by the American Convention, to the detriment of a natural person under the jurisdiction of a State that ratified said treaty.

41. The IACHR has competence *ratione temporis* since the alleged facts took place when the obligation to respect and guarantee the rights established in the Convention was in force for the State. Lastly, the IACHR has competence *ratione materiae* to consider the petition since in it are alleged possible violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

42. Article 46(1)(a) of the Convention establishes as a requirement for admission of a petition "that the remedies under domestic law have been pursued and exhausted in accordance

with generally recognized principles of international law.”[FN41] The objective of this requirement is to enable national authorities to consider the alleged violation of a protected right and, if appropriate, resolve it prior to its consideration by an international instance.

[FN41] See I/A Court H.R., Exceptions to exhaustion of domestic remedies (Articles 46(1), 46(2)(1), and 46(2)(b) of the American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No.11, par. 17.

43. According to copies of part of the case file forwarded by the petitioners, on December 29, 1994, Mr. Pablo Mémoli was convicted by the lower court to five months of imprisonment, suspended, for the crime of slander, as a result of remarks made in articles in the daily “La Libertad” and expressions pronounced in the radio program of “Radio Vall” on May 4 and 10, 1990.[FN42] On the same date, and in the same case, Mr. Carlos Mémoli was convicted to one month of imprisonment, suspended, for statements made on the “Radio Vall” program of May 10, 1990, and for written remarks made in a submission to the National Institute for Mutual Action (INAM). This decision was upheld at the second instance by the Second Chamber of the Criminal and Correctional Court of Mercedes Judicial Department on December 28, 1995.

[FN42] The articles that were the basis for the conviction are “Maneuvers of a Governing Committee,” of April 28, 1990; “Fraud in the Niches Case,” of April 28, 1990; the “Chusman” column of April 28, 1990; “Niches Case: the Judge Said that Bills of Sale Are in Fact Impossible and Invalid;” “All Buyers Without Exception Were Injured,” of June 16, 1990; and statements made on the Radio Vall program of May 4, 1990.

44. The alleged victims filed an appeal for clarification [recurso de aclaratoria] with the same court, which was denied in a decision of March 26, 1996. They also filed an appeal for annulment and inapplicability of law [recurso de nulidad e inaplicabilidad de ley]. On April 18, 1996, the Second Chamber of the Criminal and Correctional Court of Mercedes granted an extraordinary appeal for unconstitutionality [recurso extraordinario de inconstitucionalidad] and referred it to the Supreme Court of Justice of Buenos Aires Province, denying the appeal for inapplicability of law. On September 10, 1996, the Provincial Supreme Court decided that the extraordinary appeal did not fulfill the requirements set forth in Article 349.1 of the CPP, and declared it inadmissible.[FN43]

[FN43] According to the petitioners, the appeal decision was based on the following decisions: “the special appeal filed at pp.1079-1088 does not meet the requirements set forth in Article 349.1 of the CPP, since although it denounced violation of Article 168 of the Constitution of the province, it is not based on the normative content of said provisions, but rather seeks to bring before this court for review alleged errors of judgment as the violation of the right of defense at trial, alleged procedural errors prior to the judgment, its arbitrariness, and infraction of specific procedural rules, as well as the way in which the matter has been resolved, matters not pertaining

to the appeal itself and but rather pertaining to the inapplicability of the law (Article 350 of said Code, cf. agreements and judgments 92-I-209; Ac. 27,030, of 27-VI-78...”).

45. The alleged victims filed an appeal for reversal [recurso de revocatoria] before the same Provincial Court, which denied it on September 23, 1996. On October 8, 1996, they filed an extraordinary federal appeal [recurso extraordinario federal] before the Provincial Supreme Court, alleging arbitrariness in the earlier judgments and the invalidity of the second hearing convened by the Second Chamber of the Criminal and Correctional Court of Mercedes Judicial Department. On November 26, 1996, the Supreme Court of Buenos Aires Province denied the federal appeal.[FN44]

[FN44] The grounds given by the Provincial Supreme Court for its decision were: “That the decisions they cite regarding the admissibility of the appeals filed before the local courts do not justify, as a rule, invocation of the instance of Article 14 of Law 48, especially in cases such as this where the lower court errors regarding the matter cited only reflect the appellant’s personal disagreement with the interpretation of the sentencing court, so that they are not appropriate to that end, taking into account that the objection of arbitrariness regarding resolutions of this type is especially restrictive”.

46. On December 11, 1996, the alleged victims filed an appeal for reversal [recurso de revocatoria] before the court a quo, which was denied in a resolution of December 27, 1996. On December 11, 1996, they also filed an application to compel jurisdiction [recurso de queja] before the Supreme Court of Justice of the Nation, which denied it on October 3, 1997, on the following grounds: “the extraordinary appeal, whose denial [gave rise to the application to compel jurisdiction] is inadmissible (Article 280 of the Code of Civil and Commercial Procedure of the Nation).” The alleged victims were notified of this decision on October 7, 1997. On October 9, 1997, the alleged victims filed an appeal for reversal [recurso de revocatoria], which was denied by the Supreme Court of Justice of the Nation in a decision of which notification was given on December 16, 1997.

47. The Commission notes that, in the instant case, the alleged victims filed the ordinary appeals established in Argentine legislation, which are acquittal in the context of the criminal action and the appeal decided by the Second Chamber of the Criminal and Correctional Court of the Mercedes Judicial Department. The alleged victims also filed extraordinary appeals. With regard to the latter, the Commission notes that the application to compel jurisdiction filed before the Supreme Court of Justice of the Nation is the final procedural path available to the alleged victims to challenge the decision of the lower courts, therefore constituting a final decision of the criminal action brought by Messrs. Antonio Quarracino, Humberto Romanello, and Juan B. Piriz.

48. Based on the foregoing analysis, the Commission concludes that the instant petition meets the requirement set forth in Article 46(1)(a) of the American Convention.

2. Period for lodging the petition

49. In accordance with the provision of Article 46(1)(b) of the Convention, for a petition to be admitted, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment issued at the national level.

50. In the instant case, the Commission notes that the final decision at the national level was issued on October 3, 1997 by the Supreme Court of the Nation, which denied the application to compel jurisdiction [*recurso de queja*]. The alleged victims were notified of said decision on October 7 of that year, so that the period for lodging the complaint with the IACHR would expire six months later, i.e., April 7, 1998. As the petition was lodged on February 12, 1998, the Commission concludes that the instant petition meets the requirement set forth in Article 46(1)(b) of the American Convention.

3. International duplication of procedures and *res judicata*

51. Article 46(1)(c) provides that admission of petitions shall be subject to the requirement that the matter “is not pending in another international proceeding for settlement,” and Article 47(d) of the Convention stipulates that the Commission shall consider inadmissible any petition or communication that “is substantially the same as one previously studied by” the Commission or by another international organization. In the instant case, the parties have not adduced the existence of either of these two requirements of inadmissibility, nor may they be deduced from the proceedings.

4. Characterization of the facts alleged

52. The Commission considers that it is not incumbent upon it at this stage of the proceeding to establish whether there has been violation of the American Convention. For purposes of admissibility, the IACHR must decide whether the petition states facts that tend to establish a violation of the Convention, as stipulated in Article 47(b) of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” in accordance with Article 47(b).

53. The standard of evaluation of these two questions is different from that required to decide on the merits of a complaint. The IACHR must make a *prima facie* evaluation in order to consider whether the complaint is based on an apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. Such evaluation constitutes a summary review that does not prejudice the merits of the matter discussed. The Commission’s Rules of Procedure, in establishing two clear stages – admissibility and merits, reflects the distinction between the evaluation that the Commission must make in order to declare a petition admissible and that required to establish a violation of human rights.

54. Regarding the alleged violation of the right to freedom of thought and expression, the petitioners indicate that the Argentine courts imposed criminal punishment for the dissemination of statements and reports that might be related to matters of public interest. The Commission notes that, *prima facie*, the application of criminal law as subsequent imposition of liability for

the dissemination of information that might be of public interest tends to constitute a violation of the right to freedom of thought and expression.

55. Analysis of the contents of the remarks made by the alleged victims requires consideration of the merits of the specific case, which will be evaluated at the merits stage, in order to determine whether the application of criminal law and imposition of criminal punishment in this sphere, as well as the civil consequences emanating from the specific case, are incompatible with the provisions of Article 13 of the American Convention.

56. The Commission must also decide at the merits stage whether the criminal procedural path was appropriate and less detrimental to the right of freedom of expression, in accordance with the rights enshrined in the American Convention, to be capable of characterization as subsequent liability legitimately imposed by a State. To that end, it will analyze, in addition to being in the public interest, whether the information disseminated in articles published in the daily “La Libertad” and the remarks made on the “Radio Vall” program, the rights potentially affected by said dissemination, and the proportionality and necessity in a democratic society of utilizing criminal procedure as the most appropriate in the instant case.

57. In addition, the petitioners allege violation of the right to due process, owing to the fact that there were irregularities in the civil action for damages brought against them as well as in the incident of “general inhibition of property” arose from the criminal procedure in which the petitioners were convicted. The petitioners also assert that the judicial authorities did not take account of evidence of the veracity of the statements made in the daily “La Libertad” and in spite of the fact that they had paid in fully the professional fees of the lawyers who represented the plaintiffs, the order of general inhibition of property was not withdrawn. In that connection, the IACHR understands that these allegations if proven, may have constituted a violation of procedural guarantees enshrined in Article 8 of the Convention.

58. Based on the foregoing considerations, the IACHR concludes that the facts denounced tend to establish a violation of the Articles 8 (due process) and Article 13 (rights to freedom of expression) of the American Convention, in conjunction with Articles 1(1) and 2 of said instrument, and deems fulfilled the requirements set forth in Articles 46, 47(b) and (c) of the American Convention.

V. CONCLUSION

59. The IACHR concludes that it is competent to consider this petition and that it meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention and Articles 30, 37, and related provisions of its Rules of Procedure. Therefore, the Commission concludes that the petition is inadmissible under Article 47(a) of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible with regard to the alleged violation of rights protected in Articles 8 and 13 of the American Convention, in conjunction with the general obligations enshrined in Articles 1 and 2 of said instrument.
2. To notify the parties of this decision.
3. To continue its consideration of the merits, and
4. 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 23rd day of the month of July, 2007.
(Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Sir Clare K. Roberts, and Paulo Sérgio Pinheiro, members of the Commission.