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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 64/08; Petition 11.691
Session: Hundred Thirty-Second Regular Session (17 – 25 July 2008)
Title/Style of Cause: Raghda Habal and son v. Argentina
Doc. Type: Decision
Decided by: Chairman: Paolo Carozza;
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;
Second Vice-Chairman: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez.
Commission member Victor E. Abramovich, an Argentine national, participated in neither the deliberations nor the decision in this case, pursuant to Article 17(2) of the Rules of Procedure of the Commission.
Dated: 25 July 2008
Citation: Habal v. Argentina, Petition 11.691, Inter-Am. C.H.R., Report No. 64/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by: APPLICANTS: Carlos Varela Alvarez and Diego Jorge Lavado
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I. SUMMARY

1. On May 24, 1996, Carlos Varela Álvarez and Diego Jorge Lavado (henceforth “the Petitioners”) lodged a complaint before the Inter-American Commission of Human Rights (henceforth “the Commission,” “the Inter-American Commission,” or “the IACHR”) against the Republic of Argentina (henceforth “the State,” “the Argentine State,” or “Argentina”) regarding the alleged violation of rights enshrined in Articles 8 (Right to a Fair Trial), 20 (Right to Nationality), 22 (Freedom of Movement and Residence), 24 (Right to Equal Protection), 25 (Right to Judicial Protection), and 28 (Federal Clause) of the American Convention on Human Rights (henceforth “the Convention” or the “American Convention”) to the detriment of Mrs. Raghda Habbal (henceforth “the victim”).

2. The Petitioners alleged that the Argentine State violated several of the rights established in the Convention, and that it did so to the detriment of Mrs. Raghda Habbal, depriving her arbitrarily of her nationality, by ordering her expulsion from the country at a time when she was an Argentine citizen, and depriving her of both a fair administrative process and a fair judicial process.

3. The State maintained that none of the acts alleged by the Petitioners are a violation of the Convention. According to the State, the annulment of Mrs. Habbal’s Argentine citizenship occurred because it had been proven that she had obtained citizenship fraudulently. The State

also argued that both the annulment decision and the order of expulsion were issued within a fair process and with due respect for judicial guarantees.

4. Without prejudice to the substance of the complaint, the IACHR concluded that the petition is admissible as regards to the alleged violation of rights established in Articles 8, 19, 20, 22, 24, and 25 of the American Convention, considered in connection with the General Obligation contained in Article 1.1 of the same convention. The petition is declared inadmissible in relation to Article 28. The Commission decided to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The complaint was presented before the inter-American Commission on May 24, 1996 and sent to the State on June 13, 1996. The State was given a period of 90 days to send in its observations. On September 17, 1996, the State requested an extension and on September 19, 1996, it was granted 30 more days. The State then sent a response to the petition through notes that were received by the IACHR on June 16 and 24, 1996, and these were sent to the Petitioners on October 24, 1996. In this last correspondence, the Petitioners were asked to send in their comments within 30 days.

6. On November 1, 1996, the Petitioners sent their comments on the State's response, and these comments were sent to the State on November 5, 1996. On November 14, 1996 the State sent the IACHR a letter informing the Commission that on November 6, 1996 the State and the Petitioners had agreed to begin conversations aimed at finding a consensus and that they had decided to meet within the next ten days to begin that process. On December 4, 1996, the State requested an extension in order to provide information about the case, and a 30 day extension was granted in a letter sent on December 9, 1996. In correspondence from January 9 and 21 of 1997, the State once again sent in information about the case.

7. On March 20, 1997, the IACHR offered both parties assistance in order to reach a friendly settlement. The Petitioners presented additional information through submissions on July 15, 1997 and then in another undated submission. The Petitioners subsequently responded to the comments of the Argentine State via correspondence dated July 10, 2001.

8. During the time that the petition was being processed, the Petitioners requested a hearing on a number of occasions since the State had not shown interest in continuing the meetings aimed at reaching a friendly settlement. In correspondence dated September 22, 2005, the Commission once again made itself available to both parties to try to reach a friendly settlement and at the same time, the Commission asked the Argentine government to indicate, within a period of one month, whether or not it was interested in such a process. Since the State did reply about the possibility of initiating a friendly dialogue, this process has not begun.

III. POSITION OF THE PARTIES

A. Position of the Petitioners

9. According to the Petitioners' account, Mrs. Raghda Habbal, originally from Syria, arrived in Argentina on June 21, 1990 from Spain, along with her husband Monzer Al Kassar and their children Haifa, Natasha, and Monawar. Mrs. Raghda Habbal immediately began the required migration procedures at the National Office of Population and Migration, an agency of the Ministry of the Interior, in order to obtain her Argentine residency.

10. By way of Resolution No. 241.547 dated July 4, 1990, the National Office of Population and Migration granted Mrs. Raghda Habbal "permanent" residency.

11. On December 23, 1991, the couple's last child, the boy RMAK, was born in Argentina.

12. In late December 1991, the Kassar-Habbal family began the procedures necessary for obtaining Argentine citizenship before the Second Civil Federal Court of the City of Mendoza headed by Judge Walter Gerardo Rodríguez. On April 3, 1992, Mrs. Raghda Habbal obtained the Letter of Citizenship from the Federal Judge of Mendoza and went on to process her documentation as an Argentine citizen.

13. In 1992, the media reported that Raghda Habbal's husband had a history of involvement in various kinds of crimes, including drug and weapons trafficking and terrorism.

14. The Petitioners maintain that, because of these reports, on May 11, 1992, the government issued Resolution No. 1088 of the National Office of Population and Migration, an agency of the Ministry of the Interior. This resolution stated that Monzer Al Kassar, his wife Raghda Habbal, and their children were in the country illegally and ordered their expulsion back to their country of origin. The Resolution also declared absolutely and unalterably null and void the documents that Mrs. Raghda Habbal presented in order to obtain her citizenship. On May 12, 1992, the Judicial Branch of the Nation issued arrest warrants for Monzer Al Kassar and Raghda Habbal.

15. The Petitioners state that, at the same time, two criminal proceedings related to the acquisition of identity documents were initiated against Monzer Al Kassar and Raghda Habbal: one in the city of Buenos Aires before Federal Court No. 2 Criminal Secretary No. 3, and another in the city of Mendoza in Federal Court No. 1 Criminal Secretary C. Both files were joined in Buenos Aires by a statement of jurisdiction.

16. Likewise, the Petitioners explain, a process to review and/or annul the citizenship of Monzer Al Kassar was opened, and in those proceedings, a civil federal judge ruled that Mr. Al Kassar would lose his citizenship. This decision was confirmed on appeal by the Federal Appeals Chamber of Mendoza. Subsequently, a complaint appeal (*recurso de queja*) was filed before the Supreme Court of Justice and was denied.

17. The Petitioners state that Civil Proceeding No. 7086/2 on Revocation and/or Annulment of Citizenship was opened against Raghda Habbal. In a ruling issued on October 27, 1994, Federal Court No. 2 of Mendoza, acting as first instance judge, ordered the cancellation of Mrs. Habbal's Argentine citizenship by naturalization. Mrs. Habbal's legal representatives lodged appeals and annulment requests before Court B of the Federal Appeals Chamber. After reviewing the substance of the matter, the Court denied the appeals in a June 30, 1995 ruling.

Subsequently, her attorneys lodged a complaint appeal before the Supreme Court of Justice of the Nation, which declared the appeal inadmissible without a review of the substance in a decision issued on February 27, 1996. This last ruling upheld the decision of the Federal Appeals Chamber cancelling the Argentine citizenship of Mrs. Habbal.

18. The Petitioners maintain that the Argentine State violated a number of rights established in the Convention since it expelled Mrs. Habbal from the country without due process in either administrative or judicial realms.

19. The Petitioners explain that the first irregularity occurred when Resolution No. 1088 was issued by the Office of Migration. They maintain that according to regulations on nationality and citizenship (Decree 3213 of 1984, Article 15), people who may have committed fraud in the process of obtaining their citizenship by naturalization should go through the judicial process described in that decree. At the time, Mrs. Habbal had already received the letter of naturalization making her an Argentine citizen. Therefore, the Petitioners argue, the pertinent procedure for expulsion was civil proceedings of judicial nature and not the administrative proceedings executed by the Office of Migration whose jurisdiction is in cases involving foreigners. In the opinion of the Petitioners, the process used violated the Petitioner's right to be judged by a competent authority in an appropriate proceeding.

20. The second irregularity alleged by the Petitioners is that, even if the administrative proceeding had been the appropriate one, those proceedings did not provide the guarantees required by procedural law. They maintain that Mrs. Habbal was never notified of Resolution 1088 and therefore was never able to place an appeal for reconsideration before the same authority of application, and therefore was also unable to pursue the contentious administrative solution due her in the event that her appeal had been turned down. In this sense, they state that the lack of notification violated her right to a fair trial established in Article 8 of the Convention.

21. According to the Petitioners, the third series of irregularities occurred in the civil judicial process of the annulment of citizenship. These irregularities include the fact that Article 15 of Decree 3213 establishes that "the summons shall be served at the last address where the party in question was registered in the National Elections Registry." However, the judge sent the notification to the first address registered by Mrs. Habbal which was in Mendoza and not to the updated address recorded in the National Elections Registry, which is located in the Federal Capital. The Petitioners also maintain that during that time it was public knowledge that Mrs. Habbal was not residing in the country.

22. The Petitioners maintain, furthermore, that the judge did not expedite court action, as required by Argentine law in order to establish the truth about controversial events and ensure the effective equality of the parties as well as the presence of the proof required by Decree 3213 in order to proceed to expulsion. In addition, the judge did not guarantee that the prior record could be certifiably proven, did not correctly notify the subject of the administrative procedure, and did not incorporate the court files on which he based his decision.

23. Finally, the Petitioners allege that Article 1101 of the Argentine Civil Code states that "if the criminal suit has preceded the civil suit, or if one has been filed and is pending, the defendant

cannot be found liable in the civil trial before being found criminally liable,” a rule commonly known as the concept of prejudicialidad. In this particular case, before the civil proceedings on the annulment of citizenship had been initiated, a criminal case was already underway regarding the use of false statements to obtain the letter of citizenship. The Petitioners maintain that, while it may be true that the Convention doesn’t explicitly recognize the rule of prejudicialidad, it is implicitly understood as a legal guarantee established by Argentine law.

24. In correspondence received on July 29, 1997, the Petitioners reported that the criminal case against Mrs. Habbal on charges that she had made false statements in order to show that she met the requirements for citizenship had been dismissed in a verdict rendered on July 3, 1997. The judge stated that, since Mrs. Habbal did not speak Spanish and the person who handled business in her family was her husband, she could not be accused of falsifying the police certification for residency or the purchase and sale agreement of a piece of property. The judge did rule, however, that the dismissal would be partial and provisional until information arrived from Spain pertaining to the how certain documents were obtained from that country.

25. According to the Petitioners, these irregularities in the civil case proceedings on the annulment of citizenship show that the process lacked the required judicial guarantees and that it only served to give a guise of legality to the administrative decision of expulsion, which had been made previously by the Office of Migrations in Resolution 1088.

B. Position of the State

26. In a statement sent on October 16, 1996, the State responded to the claims made by the Petitioners. The State alleged that the acts described in the petition are not violations of rights protected by the Convention and therefore asked the IACHR to throw out the complaint in accordance with Article 47.b and c of the American Convention.

27. In relationship to the exhaustion of internal remedies, the State accepts that appeals of internal jurisdiction had been lodged and exhausted in accordance with the principles of international law. The State says that on October 27, 1994, Federal Court No. 2 of Mendoza issued the first instance decision, based on which the various appeals were lodged (*recursos de nulidad y apelación*). Given this decision, a complaint appeal was also filed, which was dismissed on February 27, 1996 by the Supreme Court of Justice of the Nation.

28. In terms of the actions named in the complaint, the State says that on April 3, 1992, the Federal Judge of Mendoza ruled in favor of granting citizenship by naturalization to Mrs. Habbal, according to the terms established in Article 3, Paragraph 2, Section (c) of Decree 3213 of 1984.

29. The State maintains that the decision of the court of first instance issued on October 12, 1994 revoked the citizenship granted to Mrs. Habbal because of a number of situations that revealed fraudulent action. It mentions that the Police Certification from January 17, 1992 certified that Mrs. Habbal had resided in the province of Mendoza for two years, when, in reality, they had come into the country on June 21, 1990.

30. The State manifests in its correspondence that, since she was not able to certify the minimum legal residency of two years required in Article 3, Paragraph 1, Section (b) of Decree 3213 of 1984, Mrs. Habbal argued that she had “established in the country a new industry, introduced a useful invention, or accomplished another action that could signify moral or material advancement for the Republic” by showing a sales contract for a piece of property in her husband’s name. The State maintains, however, that it was established in the case file that the owner of the property had not planned to sell it.

31. The State argues that, for the above reasons, the rule applied was the rule defined in Article 15 of Decree 3214 of 1984, establishing which judge has the jurisdiction to take up cases in which citizenship may have been obtained through fraudulent means.

32. With regard to the Petitioner’s allegations that she was not guaranteed the right to a defense during the judicial process, the State argues that the Supreme Court decision was made after two other judicial rulings, which shows that there was a superior instance to which the decisions could be appealed.

33. The State says, furthermore, that the right to a defense was fully ensured in all of these instances. To support this claim, it explains that once the prosecuting attorney acquired the status of party in the records, the judge ordered that Mrs. Habbal be notified and gave her a period of 15 days to formulate her defense. Since the report of the official process server stated that the summons could not be served since Mrs. Habbal did not live at the address named in the complaint, the judge ordered a summons by publication. Later, the records were sent to a public defender who presented an argument that was denied by the judge. Finally, the defense attorney asked for an extension of the time necessary to prepare the defense and that was granted to him.

34. According to the statement presented by the State, these records demonstrate that the error related to the notification of Mrs. Habbal is not relevant since it was corrected with a legal remedy established for these cases. In fact, Article 145 of the Civil and Commercial Procedural Code of the Nation allows summons by publication in the official journal when it is not possible to notify a person at his or her address.

35. In addition, the court records show that the right to a defense was also ensured in the sense that a public defender was assigned to her and deadlines were extended for the preparation of the defense.

36. The State maintains that Numbers 5 and 6 of Article 22 of the Convention were not violated either. According to the State’s brief, the resolution issued by the administrative authority on May 11, 1992 cannot be understood as the expulsion of a citizen, since the court decision issued on April 2 of the same year granting her citizenship was invalid.

37. Finally, with regard to the Petitioner’s argument that the rule of prejudicialidad was not respected during the civil process of annulment of citizenship, the State maintains that this is not a right that is protected in the Inter-American system.

IV. ANALYSIS OF ADMISSIBILITY

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

38. The Commission has jurisdiction *ratione personae* to examine the petition. The Petitioners are authorized to present a petition before the Commission according to the provisions of Article 44 of the American Convention. The petition names as alleged victim a natural person who, whether a foreigner or a citizen, is entitled to the respect and guarantee of the rights recognized in the American Convention, and the State has taken on the commitment to ensure these rights. The Commission notes that Argentina has been a State party to the Convention since September 5, 1984, the date on which it deposited its instrument of ratification.

39. Given that violations of rights protected by the American Convention are alleged to have occurred within the territory of a State party to this convention, the Commission has jurisdiction *ratione loci* to consider the petition. In addition, the obligation to respect and guarantee the rights protected in the American Convention was in force for the State on the date in which the petition states that the alleged violations occurred. Therefore, the IACHR also has jurisdiction *ratione temporis* to analyze the case. Finally, the Commission has jurisdiction *ratione materiae* because the petition claims violations of human rights protected by the American Convention.

B. Admissibility Requirements of the Petition

1. Exhaustion of Internal Remedies

40. Article 46, Number 1, Section (a) of the Convention establishes that for a petition to be admitted by the Commission, the remedies of internal jurisdiction must have been sought and exhausted, according to generally recognized principles of International Law.[FN2] The objective of this rule is to allow the States to resolve controversies about possible violations of rights established in the Convention on the internal level before accessing international protection mechanisms.

[FN2] See I/A Court H.R., Exceptions to Exhaustion of Internal Remedies (Article 46 (1), 46 (2)(a). and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Ser. A. No 11, Paragraph 17.

41. In this case, the Petitioners and the State coincide in stating that the alleged victim has exhausted all of the internal remedies available in the Argentine State for resolving the situation.

42. In this sense, the Commission also notes that, according to the information found in the court file, internal remedies are indeed exhausted. In fact, within Civil Proceedings No. 786/2 of Annulment of Citizenship, Federal Judge No. 2 of Mendoza issued a first instance decision on October 27, 1994 through which Mrs. Habbal's Argentine citizenship via naturalization was cancelled. Various appeals (*recursos de nulidad y apelación*) were lodged against this decision, and these were rejected by Court B of the Federal Chamber of Mendoza on June 30, 1995. In

response to this rejection, the Petitioners lodged a complaint appeal. This appeal was dismissed by the Supreme Court of Justice of the Nation in a February 27, 1996 verdict, and the original decision of the Chamber was upheld on this date.

43. The Commission observes that there is no way to appeal a decision made by the Supreme Court of Justice of the Nation.

44. The Inter-American Commission, therefore, verifies that the remedies established by Argentine law for these cases have been exhausted and concludes that the petition analyzed does fulfill the requirements of Article 46.1 of the Convention.

2. Deadline for Presenting Petition

45. According to the provisions of Article 46.1 of the Convention, for a petition to be admitted, it must be lodged within six months of the date in which the complainant was notified of the definitive decision made on the national level.

46. With regard to this petition, the IACHR has established that in terms of the alleged irregularities and deficiencies in the course of the civil process that culminated in the cancelation of Mrs. Habbal's Argentine citizenship by naturalization, internal remedies were exhausted with the ruling of the Supreme Court of Justice of the Nation issued on February 27, 1996. While the Petitioners did not report on the date in which they were notified of the verdict, the Commission affirms that even if the notification happened on the same day in which the verdict was given, the petition would have been presented on time. In fact, the date the ruling was made was February 27, 1996 and the petition was presented to the IACHR on May 24, 1996, so less than three months passed between the first and the second date. The Commission therefore concludes that this requirement has been satisfied in this respect.

3. Duplication of Procedures and International Res Judicata

47. It does not appear from the court file that the subject of the petition is awaiting decision in any other international procedural arena, nor that it reproduces a petition that has already been examined by this or any other international organization. Therefore, the requirements established in Articles 46.1(c) and 47(d) of the Convention are considered to be met.

4. Description of the Facts Alleged

48. Article 47 (b) and (c) show that the Commission should declare inadmissible any petition that does not set forth actions that characterize a violation or which "turn out to be manifestly unfounded" or "clearly and totally inadmissible." The Commission believes, therefore, that at this stage in the proceedings, its task is not to decide whether or not the alleged violations occurred. For the purposes of admissibility, the IACHR must only resolve whether the actions presented—if proven to be true—characterize violations of the American Convention.

49. The criteria for evaluating the admissibility of a complaint are different from those required to reach a decision about the substantive merits of a case. The IACHR must carry out a

prima facie evaluation to determine whether or not the complaint makes a case for an apparent or potential violation of a right guaranteed by the American Convention, but not to establish whether this violation actually occurred. At this stage, its task is to carry out a summary analysis that does not imply a prejudgment a premature opinion about the substance of the case. The Rules and Regulations of the Inter-American Commission itself, upon establishing one phase for admissibility and another for substance, reflect this distinction between the evaluation that must be done by the Inter-American Commission in order to declare a petition admissible and that which is required to establish whether or not a violation imputable to the State has been established.

50. In this case, the IACHR has carried out a prima facie evaluation and concluded that the petition presents charges that, if proven, could characterize possible violations of the rights guaranteed by the Convention.

51. The primary complaint of the Petitioners is that the State of Argentina violated several of the rights established in the Convention when it ordered the expulsion of Mrs. Habbal without a fair process both in the administrative and judicial arenas. Among the various irregularities, they maintain that the expulsion happened through an administrative process that did not correspond to her status as a citizen, that she was not notified of the resolution of administrative expulsion nor of the civil proceedings that nullified her citizenship, and that throughout the course of the process, Argentine procedural rules were not followed.

52. For its part, the State argues that the resolution of administrative expulsion cannot be understood as the expulsion of a citizen since the court decision that granted her citizenship was invalid. It maintains, furthermore, that during the civil proceedings of annulment of citizenship all judicial guarantees were respected, that the notification error was corrected with the publishing of summons, and that the rule of prejudicialidad is not contained in the rights established in the Convention.

53. The Commission, for its part, recognizes that Article 8.1 of the American Convention guarantees to all people the right to have access to the court system, to be heard by the justice system within the framework of due process, and to obtain a decision from a court with jurisdiction in the matter.

54. In terms of the scope of the right to a fair trial, the Commission notes that this right has been interpreted broadly both for administrative procedures and for processes of expulsion of nationals or foreigners. The Inter-American Court has stated that “any action or omission of the State agencies within a process, whether relating to administrative sanctions or jurisdiction, should respect legal due process.”[FN3] At the same time, in the case of Loren Laroye Riebe Star vs. Mexico,[FN4] the Commission interpreted the guarantees of due process established in Article 8 of the Convention so as to apply also to the process of expulsion of citizens or foreigners.[FN5]

[FN3] I/A Court H.R., Case of Baena Ricardo et al. Judgment of February 2, 2001. Series C No. 72, Pars. 124 and 126.

[FN4] In the case of Loren Laroye Riebe Star, Jorge Baron Guttlein, and Rodolfo Izal Elorz presented against the State of Mexico, the Commission concluded that the Mexican State had violated the guarantees of due process in violation of Article 8 of the Convention. The Petitioners, foreign priests in the state of Chiapas, had been detained and expelled from the country after a brief administrative process where they were not permitted to prepare a defense, formulate arguments, or put forward evidence. IACHR No. 49, Case 11.610, Mexico, April 13, 1999, par. 71.

[FN5] The guarantee of due process in expulsion cases is in accordance with what is established in the European System of Human Rights. Article 1 of Protocol VII of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) prohibits the arbitrary expulsion of a foreigner who is residing legally in a particular state. Among other rights, it establishes that the foreigner has the right to present evidence to avoid his/her expulsion, to obtain a review of the case, and to be represented to that effect before the competent authority.

55. Of the information and arguments presented on alleged irregularities in the type of procedure use for the expulsion, the competent authority for dictating the apparent expulsion, the lack of notification in the administrative proceedings, and the alleged non-compliance with procedural rules of internal Argentine law, the Commission warns that, if proven, these acts could constitute violations of Article 8 of the Convention regarding the right to a fair trial, including the right to due process, the right to receive prior communication, and the right to appeal a decision before a superior judge or court. They could also be violations of Article 25 of the Convention in terms of the right to enjoy an effective appeal and the right to have a competent authority rule on the case.

56. With regard to the arguments about the alleged lack of notification in the judicial process, the Petitioners state that Mrs. Raghda Habbal was not in the country during the judicial process of annulment of citizenship which prevented—along with other circumstances—the appropriate notification of the court decisions. Nevertheless, neither the Petitioners nor the State contributed sufficient information to be able to determine the exact date, form, and circumstances under which Raghda Habbal left the country. Keeping in mind that the assessment made in the analysis of admissibility is *prima facie*, and that the evidence in the file indicates that Raghda Habbal left the country before the decision of the court of first instance was issued, the allegations presented by the Petitioners could describe a possible violation of Article 8 of the Convention, and they merit a closer and more complete review during the substantive phase.

57. In terms of the right to nationality established in Article 20 of the Convention, the Commission notes that, if the alleged irregularities in the process of the expulsion of Mrs. Habbal are proved, they could also imply a violation of the right to not be deprived arbitrarily of ones nationality.

58. At the same time, with regard to the right to the freedom of movement and residence, the Petitioners manifest that Mrs. Habbal was residing legally in Argentina according to Resolution No. 241.547 of the National Office Population and Migrations, by which she had been authorized “permanent” residence, and that in spite of this, she was expelled from the country

without respect for her right to a fair trial and right to legal protection. The Commission deems that if these acts are prove to have occurred, they could constitute a violation of the right of a foreigner residing legally within the territory of a State party to be expelled from this territory only in compliance with a decision made according to law, as established in Article 22 of the Convention.

59. In terms of the right to equality, the Petitioners state, in a very generic way, that the irregularities seen in the administrative and judicial processes are a violation of the right to equality since “any other citizen, nation, or even foreigner would have had better access to the justice system than the person we represent.” They state also that Mrs. Habbal received discriminatory treatment as compared to other Argentine citizens since her case did not follow the process that would have been appropriate to her as an Argentine citizen. In this respect, the Commission believes that, if it is proven that there was in fact unequal treatment and that this was due to an unjustifiable, disproportionate, or unreasonable motives, the conduct of the State could be considered a violation of Article 24 of the Convention.

60. On the other hand, the Commission notes that the petitioner alleges that Raghda Habbal had to leave Argentina with her children, including the boy RMAK who was born in Argentina, and taken into account the principle of *iura novit curia*, the Commission will then examine the alleged facts related to this child under article 19 of the American Convention, which addresses the rights of the child. The possible violation of this article by the Argentinean State would be interpreted in light of the provisions of the UN Convention on the Rights of the Child[FN6].

[FN6] This Convention was adopted on November 20, 1989 and entered into force on September 2, 1990. Argentina ratified this convention on December 5, 1990.

61. Finally, with regard to the alleged violation of Article 28 (Federal Clause), while the Petitioners invoked the violation of this right, the Commission observes that they did not offer the respective evidence, nor did they present additional arguments to support this request. The State did not make reference to this argument either. The Commission therefore concludes that it lacks the necessary elements to be able to carry out an analysis based on the violation of Article 28 of the Convention.

62. The Commission concludes that the Petitioners have formulated complaints which, if compatible with other requirements and proven to be true, could tend to prove the violation of rights that enjoy protection under the American Convention: more specifically, those established in Articles 8 (Right to a Fair Trial), 19 (Rights of the Child), 20 (Right to Nationality), 22 (Freedom of Movement and Residence), 24 (Right to Equal Protection), and 25 (Right to Judicial Protection) in relation to Article 1.1 (Obligation to Respect and Guarantee Rights). The Petitioners’ arguments regarding the violations of the right established in Article 28 of the Convention are declared inadmissible since they lack the necessary elements for conducting an analysis.

V. CONCLUSION

63. The IACHR concludes that it had jurisdiction to take up this petition and that the petition fulfills the requirements of admissibility according to Articles 46 and 47 of the American Convention and to Articles 30, 37, and in accordance with its Rules and Regulations.

64. By virtue of the preceding factual and juridical arguments, and without prejudging on the substance of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare admissible this case involving the alleged violations of Articles 8, 19, 20, 22, 24, and 25, as connected to Article 1.1 of the American Convention on Human Rights.
2. To declare inadmissible the petition in relation to the alleged violations of Article 28, as connected to Article 1.1 of the American Convention on Human Rights.
3. To remit this report to the State and to the Petitioners.
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 25th day of the month of July, 2008.
(Signed: Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Chairwoman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Florentín Meléndez, members of the Commission.