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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 69/08; Petition 681-00
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Title/Style of Cause: Guillermo Patricio Lynn 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.
Commissioner Victor E. Abramovich, of Argentine nationality, did not participate in the deliberations or the decision in this case, in accordance with Article 17(2)(a) of the Commission's Rules of Procedure.
Dated: 16 October 2008
Citation: Lynn v. Argentina, Petition 681-00, Inter-Am. C.H.R., Report No. 69/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by: APPLICANT: Eleonora Devoto
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I. SUMMARY

1. This report addresses the admissibility of petition 681-00. The Inter-American Commission on Human Rights (hereinafter "Inter-American Commission," "Commission" or "IACHR") initiated the process after receiving a petition, on December 29, 2000, lodged by Eleonora Devoto, in her capacity as coordinator of the Program for the Application of Human Rights Treaties of the Office of the General Defender of the Nation [Programa para la Aplicación de Tratados de Derechos Humanos de la Defensoría General de la Nación][FN2] (hereinafter, "the petitioner"), against the Argentine Republic (hereinafter, "the State"), concerning the procedure through which the temporary release benefit was revoked in the case of Mr. Guillermo Patricio Lynn (hereinafter, "the alleged victim"), an inmate at the Open Correctional Institute [Instituto Correccional Abierto] of Ezeiza.

[FN2] Subsequently, Stella Maris Martínez, Chief National Public Defender, in the framework of "Human Rights Treaties Application Program of the Public Defender's Office", continued as the petitioner in the case before the Commission.

2. The petitioner claims that the process leading to the revocation of the temporary release benefit for Mr. Lynn, who had been imprisoned since March 1990, serving a life sentence for the

crime of aggravated murder [homicidio calificado por alevosía], violated judicial guarantees applicable to administrative and legal proceedings and resulted in the violation of Articles 2, 7(2), 9, 8(1), 8(2)(d), 8(2)(e), 8(2)(f), 8(2)(h), 8(5) and 25 of the American Convention on Human Rights (hereinafter, “American Convention” or “Convention”) in relation to Article 1(1) of that instrument, to the detriment of Mr. Guillermo Patricio Lynn.

3. The State, for its part, argues that the case is inadmissible because Mr. Lynn had access to the courts of jurisdiction, had the opportunity to exercise his rights, appeal the administrative sanction and obtain a judicial ruling on his claim, and to make use of extraordinary remedies that were never pursued, either on his own initiative or for reasons of lack of procedural know-how [impericia procesal], all in the framework of absolute respect for due process. Expertise

4. Without prejudging the merits of the complaint, in this report, the Commission concludes that it is competent to study the petition in relation to alleged violations of the right of all persons to personal liberty, to judicial guarantees, to the principle of legality and to judicial protection, as set forth in Articles 7, 8, 9 and 25 of the American Convention, in relation to the general obligations enshrined in Articles 1(1) and 2 of that treaty. The Commission further decides to notify the parties of its decision, publish it and include it in its Annual Report to the General Assembly of the OAS.

II. PROCESS BEFORE THE COMMISSION

5. The petition dated December 12, 2000, was received by the IACHR on December 29, 2000. The relevant parts were forwarded to the State on April 18, 2002. The State submitted its response on July 31, 2002, the relevant parts of which were forwarded to the petitioner on October 10, 2002.

6. The petitioner submitted additional observations on November 12, 2002, April 7, 2004, and November 29, 2007. These observations were duly forwarded to the State on November 27, 2002, June 24 2004, and December 5, 2007, respectively.

7. The State submitted additional observations on March 13, 2007, September 7, 2005, and July 23, 2008. Those observations were duly forwarded to the petitioner on February 3, 2004, October 20, 2005, and August 26, 2008, respectively.

III. POSITION OF THE PARTIES

A. The Petitioner

8. The petitioner states, as background, that on December 17, 1998, Mr. Guillermo Patricio Lynn, who since March 1990 had been serving a life sentence for the crime of aggravated murder, was incorporated into the temporary release system pursuant to Law N° 24.660, the “Sentence Enforcement Law” [“Ley de Ejecución Penal”] (hereinafter, “Law 24.660”). On April 7, 1999, the enforcement judge ruled to extend the temporary release period from 12 to 24 hours a week. Moreover, beginning October 25, 1999, he was granted temporary releases based on an honor system. This meant that he no longer had to be accompanied by an agent of the Federal

Penitentiary Service. On February 25, 2000, the enforcement judge authorized him to take an introduction to journalism course at the University.

9. According to the petitioner, despite Mr. Lynn's positive social reinsertion process, on March 27, 2000, the director of the Open Correctional Institute of Ezeiza imposed a sanction consisting of five days of cell confinement for an alleged violation of the prohibition on returning from the outside world in a state of inebriation, a behavior defined as a mid-level infraction [infracción media] under Article 17 of the Disciplinary Regulations for Inmates [Reglamento de Disciplina para Internos]. The petitioner asserts that, at the time, Mr. Lynn expressed his desire to contest the sanction by writing the word "I appeal" at the bottom of the notification. The petitioner claims that, on March 28, 2000, the director of the Open Correctional Institute of Ezeiza also ordered Mr. Lynn excluded from the probationary period of the penitentiary system.

10. The petitioner states that on March 30, 2000, the enforcement judge ruled to revoke the temporary release benefit granted to Mr. Lynn, which entailed decreeing a step backward in the progression of treatment. According to the petitioner, this ruling was issued without ever having proven the conduct that gave rise to the imposition of the sanction, and in violation of Article 89 of Law 24.660.

11. The petitioner reports that two inter-dependent processes were instituted following that decision: the first was to obtain an annulment of the disciplinary sanction and the second, to challenge the revocation of the temporary release benefit.

12. In relation to the disciplinary sanction—with respect to which Mr. Lynn had indicated his desire to appeal on March 27, 2000—, the petitioner states that on April 6, 2000, Mr. Lynn appeared before the enforcement judge and reiterated his desire to appeal the sanction imposed by the Federal Penitentiary Service. On that occasion, Mr. Lynn denied having returned in a state of inebriation and argued that the sanction was imposed after he objected to an arbitrary and humiliating search. On May 4, 2000, the enforcement judge rejected the appeal of the sanction on grounds that it had not been lodged in a timely fashion. On May 15, 2000, Mr. Lynn was notified of this latest ruling and expressed his desire to appeal the rejection of his initial appeal.

13. On May 23, 2000, the official public defender filed a motion for cassation in relation to denied appeal. On May 25, 2000, Mr. Lynn also filed a motion for cassation on his own behalf. On May 29, 2000, the enforcement judge ruled to reject the cassation petitions brought by the official public defender and by Mr. Lynn, because the ruling in question did not allow "the attempted remedy, inasmuch as [...] it is not stipulated in Law 24.660 or in Art. 459 of the procedural code and, in addition, is not related to a firm and final judgment [...]". In response to this ruling, on June 7, 2000, the official public defender filed a complaint challenging the rejection of the cassation appeal [recurso de queja por casación denegada]. On June 22, 2000, the National Criminal Cassation Chamber ruled that the complaint was inadmissible, because "the review of rulings handed down by the enforcement judge with respect to disciplinary sanctions imposed by the penitentiary authority on inmates in detention facilities falls outside the jurisdiction of the National Criminal Cassation Chamber." [FN3]

[FN3] The rulings issued by the enforcement judge and the National Criminal Cassation Chamber in relation to the disciplinary sanction mentioned in this paragraph are in the Commission's file.

14. In relation to the temporary releases, following the enforcement judge's March 30, 2000, ruling to revoke Mr. Lynn's temporary release benefit at the request of director of the correctional institute, on April 6, 2000, the official public defender filed an appeal for reversal [recurso de revocatoria]. This appeal argued that the decision was adopted without having heard Mr. Lynn's position and without having accorded him the opportunity to present evidence or the benefit of professional counsel. On May 4, 2000, the enforcement judge rejected the appeal for reversal on the grounds that the temporary release benefit had been revoked because Mr. Lynn was not eligible for it. After receiving notification of this ruling, on May 23, 2000, the official public defender filed a motion for cassation. On May 29, 2000, the enforcement judge ruled against the motion for cassation on the grounds that it was not contemplated in Law 24.660 or in Article 459 of the procedural code. On June 7, 2000, the official public defender filed a complaint challenging the rejection of cassation. On June 22, 2000, the National Criminal Cassation Chamber ruled that the complaint was unfounded on the grounds that "rulings handed down by enforcement judges concerning temporary releases for inmates held in penitentiary units fall outside the jurisdiction of the National Criminal Cassation Chamber."

15. The petitioner asserts that the extraordinary remedy was not pursued because it would have been ineffectual and insufficient. The petitioner points out that in two similar cases (related to sentence enforcement), this remedy had been presented before the Supreme Court of Justice of the Nation and, two years later, the Supreme Court had still not handed down a ruling.

16. The petitioner asserts that the decision of the director of the Open Correctional Institute of Ezeiza, and the subsequent ruling by the enforcement judge revoking the temporary release benefit, had placed unlawful limitations on the alleged victim's right to a period of liberty outside the penitentiary facility and, therefore, constituted an infringement of Mr. Lynn's right to personal liberty. In this sense, she contends that temporary releases have a direct bearing on the right of convicted prisoners to personal liberty and to social reinsertion as a priority of sentence enforcement and, therefore, this benefit should not be granted in a discretionary manner but rather as an entitlement under the law.

17. She also claims an infringement of Article 7(2) of the Convention, which states that no one may be deprived of his liberty except pursuant to a law setting forth the reasons and conditions for the restriction, and Article 9 of that instrument, which provides that no one may be penalized for actions or omissions that did not constitute an offense at the time they were committed. In this regard, she explains that both decisions were adopted in violation of Article 89 of the Enforcement Law, which provides that an inmate's status may revert to the preceding phase or period only after he has been sanctioned for a serious or repeat offense. This does not apply to the instant case inasmuch as returning from the outside world in a state of inebriation is defined as only a mid-level infraction. In the petitioner's opinion, people who are deprived of

their liberty must not be subjected to arbitrary actions on the part of the penitentiary authorities, and the principle of legality extends to the conditions in which they serve their sentences.

18. The petitioner also points out that the enforcement process is a special proceeding that regulates sentence enforcement and, therefore, the measures adopted in this context could have a qualitative and quantitative impact on the conditions of confinement. In view of this, she argues that judicial guarantees must apply to proceedings relating to sentence enforcement. She claims that in the instant case, judicial guarantees were violated in the prison administration venue and in the proceedings before the enforcement judge. She asserts that due process was not observed in the proceedings before the prison authorities, inasmuch as Mr. Lynn was not guaranteed the right to present evidence, nor did he have access to professional counsel. She states that, even though the alleged victim denied having returned to prison inebriated, and despite his complaint that, upon his return to the prison, penitentiary staff had abusively requested to perform an anal search, the institution took no measures whatsoever to confirm his rebuttal. For their part, the prison authorities provided a virtually illegible medical certificate, but had not conducted any blood or urine tests to bear out their accusations. Moreover, in the proceedings before the criminal enforcement court, Mr. Lynn was denied the opportunity to participate in a public oral proceeding, to submit evidence and to refute the evidence submitted by the other party. He was also denied access to a broader remedy to contest, before another judicial body, the facts and evidence presented as grounds for the revocation of his temporary release benefit. She adds that the official public defender was unsuccessful in her request that the enforcement judge grant the alleged victim an audience so that, accompanied by professional counsel, he might offer his version of the facts and submit the evidence he considered relevant. The petitioner contends that the decisions through which the temporary release benefit for Mr. Lynn was revoked were never reviewed by a higher court, because they were deemed merely administrative matters.

19. The petitioner reports that on March 9, 2004, in a case unrelated to the instant petition, the Supreme Court handed down a benchmark ruling defining the rights of inmates in proceedings related to the imposition of disciplinary sanctions. According to the petitioner, in its ruling, the Court established that the principle of legality is applicable to the enforcement stage; that constitutional norms and international treaties, along with the principles of judicial oversight, are fully applicable to the enforcement stage; and that the Criminal Cassation Chamber is the tribunal that must undertake to review the decisions adopted by enforcement judges. The petitioner further states that the Supreme Court of Justice of the Nation recognized in its ruling that, although it had been presented with “arguments relating to the scope of various inmates’ rights, such as [...], judges should not automatically accept the prison authorities’ version of the inmate’s conduct [...]. In most such cases, the procedural route taken was deemed unsuitable or the penitentiary decision to resolve the matter was simply upheld.[FN4] The petitioner calls attention to this explicit recognition by Argentine judges of the inefficacy of the extraordinary remedy in these kinds of situations. The petitioner underscores that, despite this ruling, the proceedings currently in effect in the penitentiary venue do not effectively uphold judicial guarantees, and she attaches three cases by way of illustration.

[FN4] Romero Cacharane, Hugo Alberto case re/Sentence enforcement.

20. The petitioner asserts that the State has failed to promote legislative measures to put an end to these violations of the American Convention. In this regard, she claims that Law 24.660 contravenes the American Convention by neglecting to stipulate that penitentiary sanctions must be imposed by a judge in the context of due process of law and because it does ensure the binding nature of judicial guarantees in the sentence enforcement stage.

B. The State

21. The State claims that domestic remedies were not adequately exhausted in relation to the facts contained in the instant position and that none of the exceptions to the exhaustion of domestic remedies can be invoked. The State contends that since the petitioner is claiming violations of constitutional guarantees in the case in point, the extraordinary remedy would be suitable to challenge such decisions. According to the State, the fact that Mr. Lynn's defense voluntarily refrained from pursuing an extraordinary remedy serves to validate the decisions made by the courts in the previous venues and therefore, constitutes grounds for the inadmissibility of the instant petition.

22. The State points out that lack of due process for the protection of the right alleged to have been violated cannot be invoked in this case, since the ruling handed down in the administrative venue can be challenged before the competent judicial authority and the petitioner did, in fact, appeal the aforementioned sanction all the way to the National Criminal Cassation Chamber. In this sense, the State adds that it cannot be argued that Mr. Lynn has been refused access to domestic remedies or that he has been preventing from exhausting them, inasmuch as Mr. Lynn's professional counsel stated that the defense had chosen not to pursue the available remedy (extraordinary remedy), based on alleged delays in a ruling in a case the State does not consider to be analogous.

23. The State takes issue with the petitioner's claim that the disciplinary ruling against Mr. Lynn was never subject to material review. It contends that, in the case at hand, Mr. Lynn legally challenged the disciplinary sanction all the way to the cassation level and had refrained from pursuing further appeals. The State also refutes the alleged violation of due process and the right to a defense. In this regard, the State points out that the sanction in question was imposed by the competent administrative authority (the director of the prison facility) and that there had been an opportunity for judicial review (before the enforcement judge), a venue in which the penalized individual was able to exercise all such rights and guarantees.

24. The State adds that the penalty imposed on Mr. Lynn was not the product of a reprisal for having refused to submit to alleged demands to carry out unusual and degrading searches. To the contrary, Mr. Lynn was examined by the physician on call, who had then issued the respective certificate. According to the State, Mr. Lynn was able to mount a defense and had access to defense counsel at all times.

25. In relation to the petitioner's claim that the principles of legality and presumption of innocence had been violated inasmuch as the conduct attributed to Mr. Lynn would have been classified as a "mid-level infraction" that did not warrant a step backward within the Progressive

Sentence Regime (a measure which is reserved for serious infractions), it is the State's view that the petitioner is trying to use the Commission as a fourth level of jurisdiction, as if it were another level of appeal of the domestic jurisdiction. According to the State, the petitioner is endeavoring to have the Commission resolve her personal disagreement with the rulings issued by the domestic courts. The State adds that the alleged conduct constituted an infraction at the time it was committed and that the ruling issued by the magistrate of record was not merely a judicial rubber stamp on the proceedings in the administrative penitentiary venue. Rather, the enforcement judge had revoked the temporary release benefit because Mr. Lynn no longer met the requirements set forth under the law to enjoy such a benefit, while the regression in the socialization stage imposed by the director of the facility was based not on the infraction committed but rather on the inmate's low eligibility and an unfavorable opinion issued by the Correctional Council.

26. The State also contends that there is no basis for the allegation of unlawful deprivation of temporary liberty. Here, it points out that Mr. Lynn was convicted and sentenced to life in prison in a firm and final judgment and, as a result, can in no way argue an unlawful deprivation of liberty. The State adds that it is similarly impossible to claim the violation of his alleged right to enjoy temporary liberty, given that temporary release is a benefit that may be available to a convicted prisoner who has been shown to meet certain conditions established by law, subject to a process of evaluation and deliberation by the competent authority. In this sense, the decision to grant such benefits is discretionary and their revocation can not give rise to a claim unlawful deprivation of liberty.

27. With respect to the petitioner's claims citing the Argentine judges' express recognition (in a case not related to Mr. Lynn[FN5]) of the alleged inefficacy of the extraordinary remedy in cases concerning sentence enforcement, the State contends that in the case cited, the Supreme Court ruled to vacate the appealed judgment and return the matter to the National Criminal Cassation Chamber for a new judgment, which demonstrates that the federal extraordinary remedy is effective for resolving matters analogous to those being debated in the instant petition. The State asserts, that in the aforementioned case, the Court recognized that matters relating to procedures for applying disciplinary sanctions should be resolved by the enforcement judge and, in due course, by the Cassation Chamber. The State therefore contends that had the petitioner pursued an extraordinary remedy at the federal level, she could have achieved a favorable ruling, as occurred in this analogous case.

[FN5] Romero Cacharane, Hugo Alberto Case re. Sentence enforcement.

28. In relation to the petitioner's claims that Law 24.660 is inconsistent with the American Convention, the State points out that, as part of the Public Ministry, the petitioner is entitled to convey her opinion to the legislature as to the appropriateness of particular legislative reforms. According to the State, the petitioner had not made use of that faculty.

29. With respect to Mr. Lynn's situation, the State reports that, on October 23, 2002, the enforcement judge was asked to grant him the temporary release benefit and, on February 3,

2003, the enforcement judge ruled in favor of the request. The State therefore asks that this petition be shelved, given that the alleged victim's current status is inconsistent with a situation of unlawful deprivation of temporary liberty or the alleged deterioration of his conditions of confinement.

30. The State underscores that Mr. Lynn had access to the courts, had the ability to exercise his rights, to appeal the administrative penalty, to obtain a legal decision in his case, and even had recourse to extraordinary remedies, which were not pursued on his own initiative or as a result of procedural error, all of this in the framework of absolute respect for due process.

31. In relation to the processing of the petition, the State observes that the Commission's delay in forwarding the complaint after it was lodged by the petitioner undermines judicial certainty and stability, and deprives the State of the opportunity to mount an adequate defense and therefore, the Commission should desist from any further analysis of this petition and proceed to shelve it. The State adds that forwarding a petition more than two years after initiating the international procedure cannot be considered legally valid, inasmuch as the time that has elapsed is patently unreasonable.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission

32. The petitioner is entitled under Article 44 of the American Convention to lodge petitions before the Commission. The petition indicates that the alleged victim was subject to the jurisdiction of the Argentine State at the time of the alleged incidents. With respect to the State, the Commission notes that Argentina has been a State Party to the American Convention since it deposited its ratification instrument on September 5, 1984. The Commission, therefore, has competence *ratione personae* to examine the complaints presented therein. It also has competence *ratione materiae* because the petitioner claims violations of rights protected in the framework of the American Convention.

33. The Commission has temporal jurisdiction to examine the complaints. The petition is based on events that allegedly occurred beginning on March 27, 2000, on which date the director of the Open Correctional Institute of Ezeiza sanctioned the alleged victim for allegedly violating the prohibition on returning from the outside world in an inebriated state. The alleged incidents occurred, therefore, when the obligations as party to the American Convention were in effect for the State. Moreover, insofar as the petition claims violations of rights protected by the American Convention that allegedly occurred in the territory of a State Party, the Commission concludes that it has competence *ratione loci* to take up the petition.

34. The Commission wishes to clarify that, in accordance with the norms of the inter-American human rights system, the time that elapses between the Commission's receipt of a complaint and the date it is forwarded to the State is not, in and of itself, grounds for a decision to shelve the petition. As this Commission has pointed out, "in the processing of individual cases before the Commission, there is no concept of expiry of jurisdiction as an *ipso jure* measure merely because of the passage of time." [FN6]

[FN6] IACHR, Report 33/98, Case 10.545 Clemente Ayala Torres et al. (Mexico), May 15, 1998, para. 28.

B. Other admissibility requirements applicable to the petition

1. Exhaustion of domestic remedies

35. Article 46 of the American Convention stipulates as a requirement for admissibility, “that the remedies under domestic law have been pursued and exhausted, in accordance with generally recognized principles of international law.”

36. In the instant case, the petitioner claims that, prior to lodging the complaint before the inter-American system, all of the ordinary levels of jurisdiction and remedies available to rectify the violations of the alleged victim’s rights were exhausted: the disciplinary sanction was appealed before the criminal enforcement judge; a remedy of cassation was filed challenging the denial of that appeal and a complaint challenging the rejection of the cassation remedy was presented. In the matter of the criminal enforcement judge’s ruling to revoke the temporary release benefit, an appeal for reversal, a motion for cassation and a complaint challenging the rejection of the cassation remedy were pursued.

37. For its part, the State claims that the extraordinary remedy is the most suitable channel to challenge the events alleged in this petition and that in view of the decision not to pursue this remedy, domestic remedies have not been adequately exhausted. The State adds that none of the exceptions to the exhaustion of domestic remedies set forth in the American Convention can be invoked in relation to this petition.

38. In this regard, the petitioner points out that the federal extraordinary remedy in Argentina is an exceptional and restricted type of challenge and its admissibility is doubtful in light of prevailing practice. It is therefore not reasonable to require pursuit of this remedy to consider that domestic remedies have been exhausted. She also claims that it is erroneous to assert that the exception to the exhaustion of domestic remedies may only be invoked after determining the “materiality” of what might occur in a process.

39. In this analysis it is relevant to clarify which domestic remedies must be exhausted in a particular case. The Inter-American Court of Human Rights has stated that only those remedies that are adequate to rectify the alleged violations must be exhausted. “Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.”[FN7]

[FN7] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 63.

40. The Commission has also established that the requirement of exhaustion of domestic remedies does not mean that the alleged victims have the obligation to exhaust all of the remedies available to them. The Court and the Commission have maintained on numerous occasions that “the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it, before it has the opportunity to remedy them by internal means.”[FN8] Therefore, if the alleged victim raised the issue by any lawful and appropriate alternative under the domestic juridical system and the State had the opportunity to remedy the matter within its jurisdiction, then the purpose of the international rule has thus been served.[FN9]

[FN8] I/A Court H.R., Matter of Viviana Gallardo et al. Series A No.G 101/81, para. 26.

[FN9] IACHR Report 57/03, Petition 12.337, Marcela Andrea Valdés Díaz (Chile) October 10, 2003, para 40.

41. In relation to the State’s contention that the extraordinary remedy is the one that should have been exhausted, the Commission notes that in the Argentine legal system, the extraordinary remedy is exceptional in nature and limited to the federal jurisdiction. As such, it is not meant as an adjunct to all legal proceedings, but rather functions as a jurisdiction of restricted scope and access, which is limited to federal matters, to address arbitrary sentences. The federal extraordinary remedy in Argentina, therefore, is not designed to remedy any error, but rather to address issues of a specific nature.[FN10] Moreover, the Supreme Court, exercising its good judgment, is empowered to reject the extraordinary remedy based on lack of sufficient federal injury or when the matters raised lack substance or transcendence. In this sense, the IACHR has established that, while extraordinary remedies may be suitable for addressing human rights violations in some cases, as a general rule, the only remedies that need be exhausted are those whose function within the domestic legal system is appropriate for providing protection to remedy an infringement of a given legal right. In principle, these are ordinary rather than extraordinary remedies.[FN11]

[FN10] With regard to the suitability of the extraordinary remedy in Argentina, see: IACHR Report 55/97 Case 11.137 Juan Carlos Abella (Argentina), November 18, 1997, paras. 264-273.

[FN11] IACHR Report 51/03, Case 11.819, Christian Daniel Domínguez Domenchetti (Argentina), October 24, 2003, para. 45; IACHR Report 68/01 Case 12.117, Santos Soto Ramírez et al. (Mexico) June 14, 2001, para. 14; IACHR Report 83/01 Case 11.581, Zulema Tarazona Arriate et al. (Peru) October 10, 2001, para. 24.

42. In relation to the State's claim that, in a case unrelated to the instant petition (Romero Cacharane, Hugo Alberto case re/ Sentence enforcement), rulings related to sentence enforcement had been vacated by means of an extraordinary remedy and that this demonstrates its suitability to resolve the matters which have been brought to the attention of the Commission in the instant petition, the Commission observes that: first, the extraordinary remedy was decided on March 9, 2004, while the penitentiary ruling through which sanctions were imposed on Mr. Romero Cacharane dated back to 1997; and secondly, in that case, the Supreme Court of Justice itself pointed out that the appropriate remedy for reviewing the decisions of enforcement judges should be brought before the Cassation Chamber. The Commission observes that in the case of Mr. Lynn, the Criminal Cassation Chamber ruled that it was not competent to take up decisions adopted by an enforcement judge, while in the case of Mr. Cacharane, the Supreme Court ruled that the Criminal Cassation Chamber was the competent tribunal to take up such decisions, and at the same time, the State has indicated to the IACHR that the suitable remedy that should be exhausted is the extraordinary remedy before the Supreme Court of Justice. There appears, therefore, to be a lack of certainty over which remedy is suitable and which court has competence to protect those who believe their rights have been violated in the framework of sentence enforcement.

43. Taking into consideration that the extraordinary remedy is limited and restricted in scope, and considering also that in relation to the facts set forth in this petition, the available ordinary remedies were pursued, even to the cassation level, the IACHR concludes that suitable domestic remedies have been exhausted and, therefore, the requirement set forth in Article 46(1)(a) of the Convention has been met.

2. Time period for lodging the petition

44. In accordance with the provisions of Article 46(1)(b) of the Convention, in order to be admitted, a petition must be lodged within a particular time frame, specifically, six months from the date on which the petitioner was notified of a final judgment at the domestic level.

45. In the instant case, Mr. Lynn's defense counsel was notified on June 22, 2000, of the ruling from the National Chamber of Criminal Cassation declaring the complaint inadmissible. The petition is dated December 12, 2000, and was sent by through the postal system and received by the Commission on December 29, 2000.

46. Presuming the days that elapsed while the petition was in the postal service, the Commission considers that the petition was filed in a timely manner.

3. Duplication of proceedings

47. According to Article 46(1)(c), the admissibility of a petition is 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 may not admit a petition or communication that "is substantially the same as one previously examined by the Commission or by another international organization." In the case at hand, the parties have not raised either of these two scenarios for inadmissibility, nor is there any indication of them in the record.

4. Characterization of the facts alleged

48. For purposes of admissibility, the Commission must decide whether the facts alleged could characterize a violation of rights, according to the provisions of Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” pursuant to subparagraph c of that article. The criterion for evaluating these requirements is different from that used to pronounce on the merits of the petition. The Commission must conduct a prima facie evaluation to determine whether the petition establishes the legal grounds for a possible or potential violation of a right enshrined by the Convention, but not to establish the actual existence of a violation of rights. This determination constitutes a preliminary analysis that does not imply a prejudgment of the merits of the matter.

49. First, the Commission must examine the State’s argument that the instant petition should be shelved on the grounds that the circumstances that gave rise to the petition no longer exist since, on February 3, 2003, a judge ruled to restore the alleged victim’s temporary release benefit. In this regard, the Commission notes that, from 2000 to 2003, Mr. Lynn was not allowed to enjoy the temporary release benefit. This restriction was imposed pursuant to a proceeding which, should the petitioner’s claims be proven, failed to respect the guarantees set forth in Articles 8 and 25 of the Convention, and did not guarantee the application of the principles of legality and social reinsertion, all of which deprived Mr. Lynn of the ability to access a benefit contemplated under the law and consistent with a restricted liberty system. The 2003 decision restoring this benefit to Mr. Lynn based on his conduct, did not undo the actions of administrative and judicial authorities in 2000. Therefore, the Commission observes that the motives outlined by the petitioner in her claims concerning the instant case persist.

50. Secondly, in view of the facts contained in the instant petition, the Commission takes note that all jurisdictional organs have the obligation to adopt just decisions based on full respect for the guarantees of due process.[FN12] Therefore, should the facts concerning the absence of judicial guarantees in the process followed to revoke Mr. Lynn’s temporary release benefit be proven, they could characterize violations of the guarantees enshrined in Article 8 of the American Convention. Moreover, should the absence of legislation establishing the applicability of such guarantees to proceedings related to sentence enforcement be proven, they could characterize a violation of Article 2 of the American Convention.

[FN12] I/A Court H.R., Palamara Iribarne Case, Judgment of November 22, 2005, para. 164; Yátama Case, Judgment of June 23, 2005, para. 149; Ivcher Bronstein Case, Judgment of February 6, 2001, para. 104.

51. The Commission also observes that one essential aspect of due process is the right to have a higher court examine the legality of all judicial decisions that result in an irreparable harm or when that harm affects fundamental rights and liberties, such as personal liberty.[FN13] In this regard, should the alleged inefficacy of the legal remedies available to request legal review, by a higher court, of the judgments and other relevant proceedings in the framework of the

process that led to the revocation of Mr. Lynn's temporary release benefit be proven true, for the purpose of establishing whether the director of the correctional institute or the enforcement judge did indeed incur in violations of procedural guarantees or other rights, it could constitute a violation of Article 25 of the American Convention.

[FN13] IACHR, Report N° 55/97, Case 11.137, Juan Carlos Abella (Argentina) November 18, 1997, para. 252; IACHR, Report N° 119/99, Case 11.428, Susana Higuchi Miyagawa (Peru) October 6, 1999, para. 54.

52. Articles 8 and 25 of the Convention establish guarantees that must govern processes in order to safeguard fundamental rights. In the instant case, what was at stake was whether the alleged victim was entitled to continue to enjoy the temporary release benefit, in other words, to benefit from a restricted liberty system based on the principle of social reinsertion. Limitations imposed on this benefit could imply an exercise of State power vis-à-vis individuals who are deprived of their liberty, and therefore, the alleged irregularities in proceedings through which the alleged victim was kept from exercising his benefit to enjoy a period of liberty outside of the correctional center could have affected his right to personal liberty enshrined in Article 7 of the Convention. On this point, the Commission clarifies that it is not questioning the verdict through which Mr. Lynn was given a sentence involving the deprivation of his liberty, but rather the sanction through which his benefit to enjoy a partial-liberty system was restricted.

53. Likewise, should the claim that Mr. Lynn's temporary release benefit was revoked based on the alleged commission of a mid-level infraction, even though Article 19 of the Enforcement Law provides that the benefit shall only be revoked when the infraction is serious or repeated, be proven true, it could characterize a violation of Article 9 of the Convention, which prohibits the imposition of a harsher sentence than the one applicable at the time the crime was committed. With respect to this point, the Commission takes note that administrative sanctions, like penal sanctions, constitute an expression of the State's punitive power and that, on occasion, the nature of the former is similar to that of the latter.[FN14] The Court has already established that the principle of legality governs all punitive law as well as the actions of all bodies of the State in their respective fields of competence.[FN15]

[FN14] I/A Court H.R., Baena Ricardo et al. Case. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, para. 106.

[FN15] I/A Court H.R., Baena Ricardo et al. Case. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 106 and 107.

54. In light of these observations, the Commission notes that the facts alleged by the petitioner, should they be proven true, could characterize violations of the rights protected in Articles 7, 8, 9 and 25 of the American Convention, in relation to Articles 1(1) and 2 of that instrument.

V. CONCLUSIONS

55. The Commission concludes that it is competent to take up the case at hand and that the petition is admissible under Articles 46 and 47 of the American Convention.

56. In virtue of the aforementioned arguments of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

1. Declare the instant petition admissible in reference to alleged violations of the rights enshrined in Articles 7, 8, 9 and 25 of the American Convention, in relation to the general obligations envisaged in Articles 1(1) and 2 of that treaty.
2. Notify the parties of this decision.
3. Continue with its analysis on the merits of the matter.
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 16th day of the month of october, 2008.
(Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Florentín Meléndez, members of the Commission.