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Represented by: APPLICANTS: the Center for Justice and International Law, Alejandro Encina Marin and Cesar Coll
Editor's Note: Names of the commissioners are missing in the original.
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I. SUMMARY

1. On June 27, 2006 the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition lodged by the Center for Justice and International Law (CEJIL), and Messrs. Alejandro Encina Marín and César Coll (hereinafter "the petitioners") on behalf of Mr. Aldo Zuccolillo Moscarda (hereinafter "the alleged victim" or "Mr. Zuccolillo"), that alleges the international responsibility of the State of Paraguay (hereinafter "the State" or "the Paraguayan State"), for having sentenced Mr. Zuccolillo Moscarda, editor of the "ABC Color" newspaper, to pay the maximum fine established in the Paraguayan criminal code as the author of the offenses of defamation, libel, or slander, and to pay an additional amount as settlement to the plaintiff, Senator Juan Carlos Galaverna, an influential politician in Paraguay, for failing to prove the truth of assertions about him in various newspaper articles.

2. The petitioners alleged in the petition that the State violated Articles 13 (freedom of thought and expression), 9 (freedom from ex post facto laws), 8.1 and 8.2) (right to a fair trial) and 25 (judicial protection), in connection with the general obligation to respect the rights established in Article 1 of the American Convention on Human Rights (hereinafter "the Convention"), and with the obligation to adopt domestic legal provisions (Article 2 of the Convention). The petitioners argue that under Paraguayan law there is no applicable recourse against the Supreme Court judgment of December 28, 2005, so domestic remedies have been exhausted.

3. The State, for its part, considers that Mr. Zuccolillo's right to freedom of thought and expression was not violated, because the case was filed by a private citizen exercising his

legitimate right to sue against facts that he considers damaging to his honor and reputation. The State also alleges that it has given the petitioner all legal and procedural means to obtain justice in Paraguay, but the petitioner did not exhaust all available domestic remedies. Moreover, the State holds that the alleged facts do not constitute violations of human rights protected in the American Convention, but on the contrary the petitioners are attempting to use the inter-American system as a fourth instance to obtain favorable financial settlements.

4. Upon examination of the information presented in the light of the admissibility requirements set forth in Articles 46 and 47 of the American Convention, the Inter-American Commission concludes that it is competent to consider the claim presented and that the petition is admissible for the alleged violation of the rights contained in Articles 8 (right to a fair trial), 9 (freedom from ex post fact laws), 13 (right to freedom of thought and expression) and 25 (right to judicial protection) of the American Convention, in connection with the general obligations established in Articles 1.1 and 2 of the American Convention. The Commission therefore decides to notify the parties, publish this report on admissibility, and include it in its annual report.

II. PROCESSING BY THE COMMISSION

5. The Commission received the petition on June 27, 2006, and transmitted it to the State on September 13, 2006.

6. On November 13, 2006, the State requested a one-month extension, which the Commission granted on November 15, 2006.

7. On December 15, 2006, the State sent its observations to the Commission, and the corresponding annexes were submitted on February 20, 2007. On March 2, 2007, the Commission transmitted the pertinent parts of both communications to the petitioners, giving them one month to submit any pertinent observations.

8. On March 20, 2007, the Commission received another communication from the State, which was forwarded to the petitioners on April 30, 2007.

9. On March 23 and May 28, 2007, the petitioners sent the Commission their observations on the State's communications, which were transmitted to the State on June 7, 2007. On July 6, 2007, the State sent a note to the Commission requesting a 15-day extension, which the Commission granted on July 10, 2007.

10. On July 25, 2007, the State submitted its observations, which were forwarded to the petitioners on August 27, 2007.

11. Finally, the petitioners presented observations on September 16, 2007, and January 14, 2008, which the Commission duly forwarded to the State on October 16, 2007 and February 20, 2008. The State submitted observations on November 26, 2007, which were transmitted to the petitioners on December 11, 2007.

III. POSITIONS OF THE PARTIES

A. The petitioners

12. The petitioners state that Mr. Aldo Zuccolillo Moscarda, founder of the newspaper ABC Color, held the position of editor of that paper at the time of the facts of this case. They say ABC Color is one of the most widely circulated papers in Paraguay.

13. The petitioners state that on December 24, 1998, Senator Juan Carlos Galaverna filed a criminal action in the Juzgado Penal de Liquidación y Sentencia N° 7 [Liquidation and Judgment Criminal Court No. 7] in Asunción against Mr. Zuccolillo Moscarda in his capacity as editor of the newspaper ABC Color, for the crimes of libel, defamation, and slander. The suit charged that between June 24, 1997, and December 1998 the newspaper published articles that were “manipulative, false, distorted, and tendentious” in an attempt to defame and ridicule him.[FN1] Specifically, the suit refers to an article published on October 26, 1998, which allegedly included his name on a list of deadbeats who were benefiting from certain financial operations. In the complaint, Senator Juan Carlos Galaverna said the information was false and had been invented by Mr. Aldo Zuccolillo to tarnish his image and reputation.

[FN1] Alleged by the petitioners in their original petition, page 2.

14. The petitioners state that after this first suit Senator Juan Carlos Galaverna filed charges against Mr. Zuccolillo for each article contrary to his interests. Thus, according to the petitioners, on December 29, 1998, and February 3, 1999, Senator Galaverna broadened the subject of his complaint.

15. The petitioners indicate that Mr. Zuccolillo Moscarda testified in the investigative phase of the case on April 17, 1999. They state that on April 30, 2001, the Juzgado Penal de Liquidación y Sentencia N° 7 convicted Mr. Zuccolillo Moscarda, in his capacity as editor of the newspaper ABC Color, of the crimes of defamation, libel, and slander,[FN2] and sentenced him to the maximum penalty that does not provide incarceration permitted by the Paraguayan Penal Code. The penalty was 360 days’ fine, calculated at four hundred seventy million eight hundred thousand guaraníes.[FN3]

[FN2] The petitioners state in their petition that the first instance judgment convicted Mr. Aldo Zuccolillo only of the following: “Briefly, and in keeping with the abovementioned expressions, the suit is based on these statements: 1) That Mr. Galaverna lived free of charge in the Hotel Guaraní, 2) That Mr. Galaverna was on a list of “high risk” debtors of the banking system, 3) That Mr. Galaverna sold favors and gave political protection to the president of the BNT [National Workers Bank], 4) That “from nothing” he started a ceramics industry in Ypacarai, known as Yoayu, 5) That the financing for said industry had “the appearance of a kickback” for protection given to Cataldi, Carmona, Alan Flores, Ronald Orrego, and other cronies.”

[FN3] In their initial petition, the petitioners said this fine was the equivalent of US\$86,400.

16. The petitioners state that they filed an appeal on May 16, 2001, and that on February 11, 2002, the Tribunal de Apelación en lo Penal, Primera Sala [First Chamber of the Criminal Appeals Court], ruled that the alleged facts did not constitute libel or slander, but did constitute defamation. They add that the court decided to increase the amount of the fine.[FN4]

[FN4] The petitioners state that the judgment of February 11, 2002, sentenced Mr. Zuccolillo to pay the equivalent of US\$99,360 according to the exchange rate of the Central Bank of Paraguay on May 24, 2006.

17. According to the petitioners, Senator Galaverna filed a special appeal [recurso de casación], asking that the ruling of the Appeals Court be set aside and Mr. Zuccolillo be sentenced to prison, to payment of the settlement penalty [pena de composición],[FN5] and be required to publish the court decision. The petitioners and Mr. Galaverna filed an unconstitutionality suit with the Supreme Court against the judgments of April 30, 2001, and February 11, 2002, alleging that the previous rulings “affected their legitimate rights by violating constitutional provisions, specifically (...) the right to defense, due process, the purpose of the penalty, freedom of the press, and the right to information,”[FN6] also violating the principle of public interest over private interest. The petitioners argued that the abovementioned rulings were not consistent with Articles 16,[FN7] 17.3,[FN8] 17.9,[FN9] 20,[FN10] 26,[FN11] 28,[FN12] 117,[FN13] and 256[FN14] of the Constitution. The petitioners stated that the Supreme Court rejected the motion on December 28, 2005, holding that the specific purpose of a constitutionality motion is to ensure effective application of constitutional provisions, and in its view said provisions were not compromised in the given case.

[FN5] The petitioners state that settlement [composición] is legally defined in Article 59 of the Penal Code: “Settlement: 1. As settlement, and in cases specifically provided by law, the victim shall be awarded payment a given sum of money from the author, when that would restore social peace. 2. The amount of the payment shall be set by the court, considering the consequences that the offense has caused for the victim and the author’s financial situation. 3 Award of a settlement shall not preclude action for damages.

[FN6] See unconstitutionality motion in the case: “Criminal Suit filed by Juan Carlos Galaverna v. Aldo Zuccolillo Moscarda on Libel and Other Offenses in this Capital” Year 2002- N° 243, Decision and Judgment One Thousand Two Hundred Forty-nine, page 1.

[FN7] Article 16 of the Constitution – Defense in Court: “Everyone has the inviolable right to defend himself and his rights in court. Everyone has the right to have his case heard by competent, independent, and impartial judges and courts.”

[FN8] Article 17.3 – Procedural Rights: “In a criminal proceeding or in any other proceeding which could result in punishment or sanction, everyone has the right: 3. To be sentenced only at the end of a trial based on a law that was already in force when the criminal offense was committed, and not to be tried by special tribunals;”

[FN9] Article 17.9 – Procedural Rights: “In a criminal proceeding or in any other proceeding which could result in punishment or sanction, everyone has the right: 9. Not to be charged with any evidence produced or proceedings carried out in violation of legal provisions;”

[FN10] Article 20 of the Constitution – Purpose of the penalties: “Prison sentences shall serve the purpose of readaption of convicted criminals and protection of society. Confiscation of assets and exile are proscribed as punishment.”

[FN11] Article 26 of the Constitution- Freedom of expression and press: “Free expression and the freedom of the press, as well as the dissemination of thoughts and opinions, without any type of censorship, and with no more limitations than the ones established by this Constitution, are hereby guaranteed. In consequence, no law shall be promulgated that restricts these rights or prevents their exercise. There shall be no press crimes; they shall be considered common crimes committed through the press. Everyone has the right to generate, process, or disseminate information and to use any appropriate legal instrument for such purposes.”

[FN12] Article 28 – Right to information: “The people’s right to receive true, responsible, and balanced information is hereby recognized. Everyone has free access to public sources of information. The corresponding procedures, deadlines, and sanctions shall be established by law to give effect to this right. Anyone affected by the dissemination of false, distorted, or ambiguous information has the right to demand that the offending media organization rectify or clarify the report under the same conditions in which it was originally conveyed, without any other compensatory rights being affected.”

[FN13] Article 117 – Political rights: Citizens of either sex have the right to participate in public matters, directly or through their representatives, in accordance with the provisions of the Constitution and the law. The access of women to public office shall be promoted.”

[FN14] Article 256 – Court Procedures: “Trials shall be orally and publicly held in the manner and to the extent established by law. Every court ruling must be based on this Constitution and the law. Court rulings may be freely criticized. Labor proceedings shall be oral and shall be based on the principles of expeditiousness, economy, and concentration.”

18. The petitioners state that on the same date, December 28, 2005, the Supreme Court considered the special appeal [recurso de casación] filed by the plaintiff. In its judgment, the Supreme Court declared that the facts attributed to Mr. Zuccolillo Moscarda were crimes of libel, defamation, and slander, so it increased the amount of the fine. Furthermore, the Court imposed payment of an additional sum for settlement [pena de composición], equal to the fine, to the plaintiff, Senator Juan Carlos Galaverna. The petitioners argue that at the time of the facts in the litigation the legal provision of settlement did not exist in Paraguay’s laws, because it only came into force on November 28, 1998. The petitioners state that the Court justified the imposition of this additional penalty because of the recurrence of punishable offenses, when it was only authorized to impose this sanction for the act that occurred after January 5, 1999. They argue that the settlement penalty in Paraguayan law, although a penal sanction, has no previously and precisely defined limits because the amount of the penalty is at the judge’s discretion. The petitioners therefore allege that its application violated the principle of freedom from ex post facto laws, guaranteed in Article 9 of the American Convention.

19. The petitioners also allege that the Supreme Court’s decision of December 28, 2005, violated the ex post facto principle because the statute of limitations for criminal action had

expired when the penalty was imposed. In this case, according to the authorized penalties for slander, libel, and defamation Mr. Zuccolillo could have been sentenced to a maximum of three years in prison. On this point, the petitioners state that according to Article 102 of the Penal Code of Paraguay acts may not be punished after three years when the maximum criminal penalty is incarceration for up to three years or payment of a fine. Since under Article 104.2 the statute of limitations runs regardless of interruptions when twice the period of time has elapsed, in the case of Mr. Zuccolillo the statute of limitations for the offenses of which he was convicted expired six years after the final action with which the petitioner was charged, i.e., from January 5, 1999.[FN15]

[FN15] The petitioners state that pursuant to Article 102.2 of the Penal Code the statute of limitations “shall start from the moment the punishable offense ends. If there is a subsequent result related to that offense, the statute shall begin at that time...” In this regard they say that the judgments against Mr. Zuccolillo considered that the final charged act occurred on January 5, 1999.

20. The petitioners state that the statute of limitations was not invoked at the domestic level because when the first and second instance judgments were issued the circumstances required by Articles 101[FN16] and 104.2 of the Penal Code were not yet present. These circumstances arose when the case came under the competence and jurisdiction of the Supreme Court, which should have invoked it on its own initiative based on Article 115 of the 1914 Penal Code, in force at the time, which provided that “The Judge shall declare that the statute of limitations has expired even when the defendant has not invoked it.”

[FN16] The petitioners state that Article 101 of the Penal Code stipulates that: “1. Expiration of the statute of limitations precludes penal sanctions. This shall not apply to the provisions of Article 96.”

21. The petitioners argue that the Supreme Court judgment of December 28, 2005, exhausted domestic remedies, because Paraguayan law offers no other recourse for challenging that decision.

22. The petitioners maintain that the offenses of libel, defamation, and slander, defined in Articles 150, 151, and 152 of the Penal Code,[FN17] respectively, constitute disproportionate and unnecessary restrictions on the right to freedom of expression and information in a democratic society. For the petitioners, criminal prosecution of an individual for the alleged commission of an offense against honor violates the Convention. In this regard, the petitioners state that Paraguayan legislation can make people afraid to disseminate information, which is a serious blow to the functioning of a democratic system, especially when matters of public interest are involved. The petitioners argue that the situation is exacerbated because Paraguayan law protects honor in imprecise terms. The petitioners say this case is an example of an attempt to use penal procedure as a mechanism for self-censorship.

[FN17] According to the petitioners, Articles 150, 151, and 152 of Chapter VIII “Punishable offenses against honor and reputation” of the Penal Code provide as follows:

Article 150.- Libel 1. Libel is committed when a person, contrary to the truth and with knowledge aforethought, affirms or imparts to a third party a matter concerning another person liable to damage his good name; the author of such action shall be subject to fine. 2. If the offense is committed publicly, by dissemination of publications as provided in Article 14.3, or repeatedly over a prolonged period, the penalty may be increased to up to two years’ imprisonment or fine. 3. In lieu of the indicated penalty, or in conjunction with it, the provisions of Article 59 shall be applied.

Article 151.- Defamation 1. Defamation is committed when a person affirms or imparts to a third party a matter liable to damage honor, and shall be subject to a fine equivalent to 180 days’ pay. 2. If the offending matter is published as provided in Article 14.3 or aired in public, or repeated over a prolonged period, the penalty may be raised to imprisonment of up to one year or a fine. 3. Affirmation and divulgation shall not be punished in the case of confidential divulgation to a close friend or when, because of its form and content, it does not go beyond acceptable criticism. 4. Affirmation and divulgation shall not be punished when it forms part of a defense of public or private interests, striking a balance between those interests and the duty to check incumbent on the author, according to the circumstances. 5. Justification of the truth of the affirmation or divulgation shall only be admissible when necessary for application of paragraphs 3 and 4. 6. In lieu of the indicated penalty, or in conjunction with it, the provisions of Article 59 shall be applied.

Article 152.- Slander 1. Slander is committed when a person (1) attributes to another a matter liable to damage honor or (2) expresses a negative value judgment to another or to a third party regarding the former; it shall be punished by a fine of the equivalent of up to 90 days’ pay. 2. When the slander is addressed to a third party or repeated over a prolonged time, the penalty may be raised a fine of the equivalent of up to 180 days’ pay. 3. In these cases the provisions of Article 151, paragraphs 3 to 5, shall apply. 4. In lieu of the indicated penalty, or in conjunction with it, the provisions of Article 59 shall be applied.

23. Furthermore, the petitioners assert that the Supreme Court’s sentencing of the petitioner to pay the equivalent of US\$276,697.98, an exorbitant penalty for a company in a precarious credit situation,[FN18] was done to muzzle freedom of expression.

[FN18] The petitioners state that when Mr. Zuccolillo testified in the investigative phase he said that the company that publishes ABC Color was named on the risk center list.

24. Based on these considerations, the petitioners allege the violation of Article 13, paragraphs 2 and 3, of the Convention in connection with Articles 1.1 and 2 of that instrument.

25. The petitioners hold that since the criminal proceeding against Mr. Zuccolillo lasted for seven years, the State violated the alleged victim’s right to be tried within a reasonable time, as

provided in Articles 8.1 and 25 of the American Convention. For the petitioners, authorities failed to act with due diligence because although the lower court ruled one year after the trial, and the higher court ruled nine months after the parties presented their appeals, it took the Supreme Court three years and ten months to rule on the special appeal [recurso de casación]. The petitioners therefore allege that from the overall analysis of the proceeding in a case that was uncomplicated, with no delaying actions by the defense, and given the lack of due diligence by judicial authorities, the seven-year period exceeded the bounds of what is reasonable.

26. In addition, the petitioners argue that when the State prosecuted and convicted Mr. Zuccolillo Moscarda without finding malice with regard to the falsity of information involving questions of public interest, it violated his right to freedom of expression and information and his right to be presumed innocent, recognized in Article 8.2 of the Convention, because it demanded that Mr. Zuccolillo prove the truth of his assertions and that he had no intent to slander or defame, although the law governing the offense required the plaintiff to prove the falsity of the assertions. In connection with the charges of slander and defamation, the petitioners say that although these do not require proof that they are true, the judicial authorities ordered Mr. Zuccolillo to prove his innocence. The petitioners state that although Mr. Zuccolillo submitted evidence of the veracity of the information published in his newspaper, the judicial authorities dogmatically refused to admit the evidence. The petitioners state that in this regard the complaint is based on a shift of the burden of proof, with an improper restriction of freedom of expression, by requiring Mr. Zuccolillo during his criminal trial to prove the truth of articles in his newspaper.

B. The State

27. The State argues that since the entry into force of Paraguay's Constitution of 1992, the right to freedom of expression and thought is expressly guaranteed in its Article 26.[FN19] Furthermore, the State notes that Article 11 of the American Convention protects the right to honor and dignity and in paragraph 3 gives states authority to safeguard this right, and to "use judicial actions (civil and criminal) to repel violations of and attacks against these legal rights." [FN20]

[FN19] The State says that according to Article 26 of the Constitution: "Free expression and the freedom of the press, as well as the dissemination of thoughts and opinions, without any type of censorship, and with no more limitations than the ones established by this Constitution, are hereby guaranteed. In consequence, no law shall be passed that restricts these rights or prevents the exercise thereof. There shall be no press crimes; they shall be considered common crimes committed through the press."

[FN20] Communication submitted by the State on December 15, 2006.

28. The State maintains that definition of offenses to protect people's honor and reputation, in the abstract, does not violate the Convention. The State says that in the instant case there was no violation of Mr. Zuccolillo's right to freedom of thought and opinion because the question was raised by a private citizen, exercising his legitimate right to take legal action against facts

that he considered detrimental to his honor and reputation.[FN21] According to the State the allegations affected a specific person with a distinguished career who was therefore known by all Paraguayan society.

[FN21] Communication submitted by the State of Paraguay on December 15, 2006.

29. The State affirms that on April 30, 2001, the Juzgado Penal de Liquidación y Sentencia No. 7 [Liquidation and Judgment Criminal Court No. 7] convicted Mr. Aldo Zuccolillo of the crimes of defamation, libel, and slander.[FN22] Since Mr. Zuccolillo filed an appeal on May 16, 2001, the Tribunal de Apelación en lo Criminal, Primera Sala [First Chamber of the Criminal Appeals Court] ruled that Mr. Zuccolillo's behavior was limited to the offense of defamation,[FN23] based on the evidence introduced, the role of the press in the society, and the admissibility and limits of criticism of public figures. The State initially argued that the Court found that the defendant had been unable to prove the truth of his defamatory assertions,[FN24] and later said that the plaintiff demonstrated the falsity of the affirmations in the petitioner's newspaper.[FN25]

[FN22] The State referred to Judgment No. 18, rendered on April 30, 2001 by the Juzgado de Liquidación y Sentencia No. 7 of Asunción. Annex to the State's communication submitted on February 20, 2007.

[FN23] The State referred to the Decision and Judgment No. 10 handed down on February 11, 2002 by the Tribunal de Apelación en lo Criminal, Primera Sala. Annex to the State's communication submitted on February 20, 2007.

[FN24] Communication submitted by the Government on March 20, 2007.

[FN25] Communication submitted by the State of Paraguay on July 25, 2007.

30. The State notes that on December 28, 2005 the Supreme Court accepted Senator Galaverna's special appeal [recurso de casación] because the appeals court had legally erred in not finding the demonstrated conduct to be libel and slander as well as defamation; it also considered the fine imposed to be appropriate; and it denied the possibility of imposing incarceration. As for the ordered settlement [pena de composición], the State argues that the Supreme Court analyzed the legal provisions to conclude that it was possible to jointly apply that penalty with the fine, based on the provisions of Articles 59 and 154[FN26] of the Penal Code. The State notes that the Supreme Court did not vary in the slightest in its calculation of the fine, which was always based on minimum wages as required for calculation of daily wage fines as established in Article 52 of the Penal Code. The State says the Supreme Court merely updated the amount based on changes in the minimum wage, which is set by the executive branch based on changes in minimum salaries. Finally, the State notes that the imposition of settlement is mandatory, not discretionary, for the judge.[FN27]

[FN26] Article 154 of the Penal Code: “Additional penalties to those prescribed. 1. The provisions of Article 59 shall be applied instead of the penalty or in conjunction with it in the cases of Articles 150 to 152. 2. When, in the cases of Articles 150 to 152, the act has taken place before a crowd or through publications as established in Article 14.3, the provisions of Article 62 shall be applied at the request of the victim or the Public Prosecutor’s Office.”

[FN27] Said by the State in its communication of March 20, 2007.

31. As regards the disproportionate nature of the penalty, alleged by the petitioners, the State reports that the penalty established for the offenses of defamation, libel, and slander is only a fine, except in aggravating circumstances that would warrant imprisonment if present in cases of libel and defamation. The State notes that “the general framework of the fine, without aggravating circumstances, has a maximum of 360 days’ wages of fine, but in cases of defamation, libel, and slander the maximum of 180 days’ fine, excluding consideration of aggravating circumstances and concurrent offenses.[FN28]

[FN28] Said by the State in its communication of March 20, 2007.

32. The State maintains that it has granted Mr. Zuccolillo all legal and procedural means for asserting his right in domestic courts. The State says regarding the alleged violation of a reasonable time that the speed of the proceeding depends solely and exclusively on the parties in the case of a private action for an offense, and that the procedural impetus by the judge does not preclude the impetus that should be given by the parties when their rights so dictate. The State argues that the petitioners could have filed a motion of complaint for delay of justice, as provided in Article 412 of the Procedural Code.[FN29] The State says that in this case the petitioners never used this recourse, so their complaint cannot be taken to the Inter-American Commission.

[FN29] The State referred to Article 412 of the Civil Procedure Code of Paraguay, which states: “Art. 412.- Prior injunction and duty to render timely decision. If a judge or court has not rendered a judgment within the prescribed period, it may be demanded by any party to the case.”

33. As for the allegation by the petitioners that the statute of limitations had expired, the State says the period was interrupted by a summary indictment, as provided in Article 104 of the Penal Code, which occurred in this case on February 16, 1999, so that after each interruption the statute of limitations begins again, as stipulated in the second paragraph of Article 104 of the Penal Code.[FN30] In addition, the State says that this argument was never proffered in the regular proceedings or the appeals for nullification and unconstitutionality.

[FN30] Article 154 of the Penal Code: “Interruption. 1. The statute of limitations shall be interrupted by: a summary indictment; a summons for the suspect during the investigation; a

summons for contempt of court; a committal warrant; a writ to refer a case to the plenary stage; a prosecutor's writ requesting an investigation; and a judicial request for acts of investigation abroad. 2. After each interruption, the statute of limitations shall commence again. Nevertheless, the statute of limitations shall expire regardless of interruptions after twice the period of the statute has elapsed."

34. The State argues that it is inappropriate to use the organs of the inter-American system as a fourth instance to seek financial compensation for rights defended in domestic jurisdiction, alleging that the petitioners have asked the Commission to declare the judgments cited in the petition "null and void."

35. Finally, the State requests that the petition be found inadmissible because the facts stated therein do not tend to establish violations of rights guaranteed by the American Convention.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence *ratione personae*, *ratione materiae*, *ratione temporis*, *ratione loci*

36. Under Article 44 of the American Convention and Article 23 of the IACHR Rules of Procedure the petitioner is eligible to submit a petition to the Commission regarding alleged violations of the rights established in that treaty. The alleged victim is an individual for whom the State has undertaken to guarantee the rights set forth in the American Convention. The Commission therefore has *ratione personae* competence to examine the petition.

37. The IACHR has *ratione materiae* competence because the petition alleges violations of rights protected by the American Convention. In addition, the Commission has *ratione temporis* competence because the obligation to respect and guarantee the rights protected in that treaty was in force for the State on the date that the facts alleged in the petition are said to have occurred, given that Paraguay has been a state party to the Convention since August 24, 1989.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

38. Article 46 of the American Convention stipulates that admission of a petition requires "that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement was established to ensure that states have the opportunity to solve disputes within their domestic legal framework. If a State alleges failure to exhaust domestic remedies, it must indicate the domestic remedies to be exhausted.

39. Concerning the petitioner's obligation to exhaust domestic remedies, the Commission recalls the jurisprudence of the Inter-American Court of Human Rights, which has stated that it is

only necessary to exhaust appropriate remedies for redress of the alleged violations. For the Court, appropriate remedies means:

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.[FN31]

[FN31] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 64.

40. The IACHR notes that Mr. Zuccolillo's defense filed a motion of unconstitutionality against the judgments of April 30, 2001, and February 11, 2002, in which it alleged the violation of the right to due process, the right to defense, and freedom of expression. On December 28, 2005, the Supreme Court rejected that motion. The Commission also notes that the judgment on special appeal [recurso de casación] No. 1251 of December 28, 2005, handed down by the Supreme Court,[FN32] was the last appropriate remedy to challenge the conviction for the offenses of defamation, libel, and slander.

[FN32] Special appeal for nullification. Decision and Judgment No. 1251, issued on December 28, 2005 by the Decision Chamber of the Supreme Court. Annex to the State's communication submitted on February 20, 2007.

41. The Commission notes that the State of Paraguay has made the preliminary objection of failure to exhaust domestic remedies in connection with the alleged violation of the right to trial within a reasonable time, established in Article 8.1 of the Convention. The State says the petitioner could have filed a complaint for unwarranted delay, as provided in Article 412 of the Civil Procedure Code,[FN33] and failed to do so. However, the State does not indicate how this remedy in the framework of the civil proceeding would be effective in the criminal proceeding against Mr. Aldo Zuccolillo. The Commission recalls that "the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective." [FN34]

[FN33] Article 412 of the Civil Procedure Code of Paraguay: "Prior injunction and duty to render timely decision. If a judge or court has not rendered a judgment within the prescribed period, it may be demanded by any party to the case."

[FN34] I/A Court H.R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, page 38, para. 88.

42. Based on the foregoing reasoning, the Commission considers that the petitioner exhausted appropriate domestic remedies for redress of the alleged violation of his rights. The Commission concludes that the requirement of Article 46.1.a of the Convention was satisfied from the date that Mr. Zuccolillo Moscarda was notified of the judgment on the special appeal for nullification issued by the Supreme Court on December 28, 2005.

2. Deadline for presentation of the petition

43. Article 46.1.b of the Convention requires that in order for a petition to be admissible 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.

44. The Commission has determined that domestic remedies were exhausted by the judgment of the Supreme Court of Paraguay on December 28, 2005. The petition was presented on June 27, 2006. The Commission therefore concludes that this requirement has been met.

3. Duplication of proceedings and international res judicata

45. Article 46.1.b of the Convention stipulates that admission of a petition shall be subject to the requirement that the subject “is not pending in another international proceeding for settlement,” and Article 47.d of the Convention states that the Commission shall consider inadmissible a petition that is substantially the same as one previously studied by the Commission or by another international organization. The parties in this case have not alleged either of these two grounds for inadmissibility, and they are not evident from the case file.

4. Nature of the allegations

46. Article 47.b of the American Convention states that a petition is inadmissible unless it states facts that tend to establish a violation of human rights. At this stage of the proceeding, the Commission must make a prima facie evaluation to determine if the petition states facts that tend to establish a violation of the rights guaranteed by the Convention, not establish the existence of a violation of rights. This determination is a preliminary analysis, without prejudging the merits of the case.[FN35]

[FN35] See IACHR, Report No. 128/01, Case No. 12.367, Herrera and Vargas (“La Nación”), Costa Rica, December 3, 2001, para. 50; Report No. 4/04, Petition 12.324, Rubén Luis Godoy, Argentina, February 24, 2004, para. 43; and Report N° 29/07, Petition 712-03, Elena Tellez Blanco, Costa Rica, April 26, 2007, para. 58.

47. The Commission notes that in the framework of its competence it is authorized to examine domestic proceedings to determine whether judgments were issued without regard for due process or in violation of any other right guaranteed by the norms of the American Convention. In this regard, the Inter-American Court has held that: “in order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, the Court may have to examine the respective domestic proceedings.”[FN36]

[FN36] I/A Court H.R., Case of the “Mapiripán Massacre”. Judgment of September 15, 2005. Series C No. 134, para. 198; Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 143; and Case of the Serrano Cruz Sisters, Judgment of March 1, 2005. Series C No. 120, para. 57.

48. In the instant case, the petitioners argue that the criminal proceeding against Mr. Aldo Zuccolillo and the penalty imposed on him constitute a disproportionate and indirect restriction on freedom of expression. They also state, regarding the legal definition of the offense of defamation, that Paraguayan legislation protects the right to honor in imprecise terms in Article 151.3 of the Penal Code, which provides that in order not to be punished the affirmation or divulgation must not “go beyond acceptable criticism.” The State argues that Mr. Zuccolillo’s right to freedom of thought and opinion was not violated in this case because the proceeding was initiated by a private citizen exercising his legitimate right to take legal action against acts that he considered damaging to his honor and reputation. The State also argues that definition of offenses to protect people’s honor and reputation in the abstract does not violate the Convention.

49. On this matter, the Commission notes that freedom of expression constitutes one of the essential pillars of democratic society[FN37] and therefore any formality, condition, restriction, or sanction imposed in that respect should be proportionate to the legitimate end sought.[FN38] In the light of these observations and the allegations of the State and the petitioners, the Commission considers it necessary to undertake a detailed analysis in the merits stage as to whether Mr. Zuccolillo’s conviction complied with the requirements of Article 13, paragraphs 2 and 3, of the American Convention that are “necessary in a democratic society”[FN39] in connection with the general obligation to respect human rights contained in Article 1.1 of that treaty. Moreover, the Commission considers that criminalization of dissemination of information of public interest could violate the duty to adopt domestic legislation as required by Article 2 of the Convention.[FN40]

[FN37] I/A Court H.R., Case of Herrera-Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 113; I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70.

[FN38] I/A Court H.R., Case of Herrera-Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 113; Ivcher Bronstein Case. Judgment of February 6, 2001. Series C No. 74, para. 152; and Case of “The Last Temptation of Christ” (Olmedo Bustos et al). Judgment of February 5, 2001. Series C No. 73, para. 69; Scharsach and News Verlagsgesellschaft v. Austria, No. 39394/98, § 29, ECHR 2003-XI; Perna v. Italy [GC], No.48898/98, § 39, ECHR 2003-V; Dichand and others v. Austria, No. 29271/95, § 37, ECHR 26 February 2002; Eur. Court H.R., Case of Lehideux and Isorni v. France, Judgment of 23 September, 1998, para. 55; Eur. Court H.R., Case of Otto-Preminger-Institut v. Austria, Judgment of 20 September, 1994, Series A No. 295-A, para. 49; Eur. Court H.R. Case of Castells v. Spain, Judgment of 23 April, 1992, Serie A. No. 236, para. 42; Eur. Court H.R. Case of Oberschlick v. Austria, Judgment of 25 April, 1991, para. 57; Eur.

Court H.R., Case of Müller and Others v. Switzerland, Judgment of 24 May, 1988, Series A No. 133, para. 33; Eur. Court H.R., Case of Lingens v. Austria, Judgment of 8 July, 1986, Series A No. 103, para. 41; Eur. Court H.R., Case of Barthold v. Germany, Judgment of 25 March, 1985, Series A No. 90, para. 58; Eur. Court H.R., Case of The Sunday Times v. United Kingdom, Judgment of 29 March, 1979, Series A No. 30, para. 65; and Eur. Court H.R., Case of Handyside v. United Kingdom, Judgment of 7 December, 1976, Series A No. 24, para. 49.

[FN39] I/A Court H.R., Ricardo Canese Case. Judgment of August 31, 2004. Series C No. 111, para. 96; and Case of Herrera-Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 120.

[FN40] IACHR, Report on Admissibility N° 50/07 of July 24, 2007, Carlos Baraona Bray, para. 40.

50. The petitioners also allege that the State violated Mr. Zuccolillo's right to presumed innocence by requiring that during the criminal proceeding he prove the truth of the statements in the published articles, shifting the burden of proof and as a result improperly restricting freedom of expression. On this point, the State says in regard to the judgment by the Criminal Appeals Court of February 11, 2002 that the defense "failed to prove the truth of the defamatory statements." [FN41] The State later said that it was the plaintiff who proved the falsity of the statements in the petitioner's newspaper. In view of these allegations, the Commission considers that if it can be proved that the criminal proceeding against Mr. Zuccolillo was carried out with malice, this would be a violation of Article 8.2 of the American Convention in connection with Article 1.1 of the same instrument.

[FN41] Communication submitted by the Government on March 20, 2007.

51. The petitioners also allege that since the criminal proceeding against Mr. Zuccolillo lasted seven years, the State violated the alleged victim's right to be tried in reasonable time, because this was not a complex case and there was no delaying action by the defense. The State, on the other hand, says that since the case involved a private suit, the procedural impetus was mainly up to the parties. In the light of these considerations, the Commission concludes that if the petitioners' allegations are proved, they would tend to establish a violation of Articles 8.1 and 25 of the American Convention in connection with Article 1.1 of the same instrument.

52. With respect to the alleged violations of the freedom from ex post facto laws, established in Article 9 of the American Convention, the petitioners state that the Supreme Court applied the settlement penalty [pena de composición] (Article 59 of the Penal Code), although that penalty entered into force on November 28, 1998, and therefore could only apply to the act that occurred on January 5, 1999. The State says that application of this penalty is mandatory and not discretionary for the judge. In the light of these considerations, the Commission concludes that if it is proved that a criminal law unfavorable to Mr. Zuccolillo [FN42] was applied retroactively, this would tend to establish a violation of Article 9 of the American Convention in connection with Article 1.1 of the same instrument.

[FN42] I/A Court H.R., Case of Ricardo Canese. Judgment of August 31, 2004. Series C No. 111, para. 175; Case of Baena-Ricardo et al. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, para. 106; and Case of Castillo-Petruzzi et al. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52 para. 120.

5. CONCLUSION

53. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case, the Inter-American Commission concludes that the instant case satisfies the admissibility requirements set forth in Articles 46 and 47 of the American Convention, and therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible as regards the alleged violation of rights established in Articles 8, 9, 13, and 25 of the American Convention, in connection with Articles 1.1 and 2 of the same treaty.
2. To transmit this report to the State and the petitioner.
3. To publish this decision and include it in its annual report.

Approved by the Inter-American Commission on Human Rights on December 20, 2008. (Signed: Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Chairwoman; Felipe González, Second Vice Chairman;