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File Number(s):	Report No. 18/09; Petition 525-04
Session:	Hundred Thirty-Fourth Regular Session (16 – 27 March 2009)
Title/Style of Cause:	Carlos Fernandez Gadea v. Paraguay
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Paulo Sergio Pinheiro, Sir Clare K. Roberts, Florentin Melendez, Paolo Carozza.
Dated:	19 March 2009
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## I. SUMMARY

1. This report is on the admissibility of petition 525-04. Proceedings were started by the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “Commission,” or “IACHR”) upon receipt of a petition on June 7, 2004, submitted by Carlos Fernández Gadea (hereinafter “the petitioner”), and sponsored by Antonio Fernández Gadea and Nicolás Gaola Irun, regarding the impeachment trial which resulted in the petitioner’s removal from the post of Supreme Court Justice in the State of Paraguay (hereinafter “Paraguay” or “the State”).

2. The petitioner maintains that the impeachment trial which resulted in his removal from the post of Supreme Court Justice of Paraguay violated the principle of independence of the Judicial Branch because he and other Judges were tried based on their judicial rulings. He indicates that during the impeachment proceedings he did not enjoy the right to be tried by an independent and impartial tribunal, he was unable to recuse the trial judges, he was not given sufficient time to prepare or present his defense, the ruling against him was groundless, and he had no access to a simple and prompt recourse whereby he could have protected those rights. The petitioner also asserts that before his impeachment trial began a political agreement was made to remove him from office, and that other judges who had participated in the same judicial decisions that gave rise to his impeachment were not impeached, which constitutes a violation of his right to equal protection under the law.

3. The State, in turn, maintains that an impeachment trial is a Constitutional procedure established to pass judgment on members of the Supreme Court of Justice, and that it is conducted with full respect for procedural guarantees, including the right to present an adequate

defense. The State indicates that the petitioner had to be removed from the Court because his performance was called into question, and in order to be a member of the Supreme Court one must have indisputable conduct. The State adds that domestic remedies were not exhausted, since the petitioner did not exercise available remedies to determine the individual liability of the State agents.

4. Without pre-judging the merits of the petition, the Commission concludes that it has competence to examine the petition concerning the process whereby Carlos Fernández Gadea was removed as a Justice on the Supreme Court, examining it for the alleged violations of his right to a fair trial and to judicial protection, guaranteed under Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 thereof. It further decides that the present petition does not state facts that tend to establish violations of Articles 11, 23(1)(c) and 24 of the Convention. The Commission further determines to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States (OAS).

## II. PROCESSING BY THE IACHR

5. The petition is dated June 4, 2004 and was received in the IACHR on June 7, 2004. The petitioner submitted additional information on June 12, 2006 and February 7, 2007. He also hand-delivered additional information when the IACHR held its 129th period of sessions in Asunción from September 5-7, 2007. The relevant parts of the petition were transmitted to the State on December 11, 2007, with a two-month deadline for submitting its observations.

6. The State sent its observations to the Commission on April 16, 2008, after requesting an extension, which was granted through March 15, 2008. The observations of the State were duly forwarded to the petitioner on April 22, 2008.

7. The petitioner sent additional observations on May 22, 2008. These observations were transmitted to the State on May 28, 2008. On December 3, 2008 the petitioner requested a hearing before the Commission on this petition.

## III. POSITIONS OF THE PARTIES

### A. The petitioner

8. By way of background information, the petitioner notes that the 1992 Constitution established for the first time in Paraguay's history that Justices on the Supreme Court are unremovable (Article 261), indicating that Supreme Court Justices may only be removed through an impeachment trial, to thus ensure the independence and impartiality of the Judicial Branch. However, the petitioner affirms that ever since that Constitution was adopted the governing political class in Paraguay has tried to subdue the Judicial Branch and has obliged the judges to engage in a constant struggle to maintain their independence and the rule of law. He specifically points to the unconstitutionality of Laws N° 609 and N° 1,634 which were passed in 1995 and 2000, respectively, to organize the Supreme Court and to establish a procedure for the

confirmation of judges in the Judicial Branch. The petitioner indicates that the Judicial Branch declared the aforementioned laws inapplicable because they are against the Constitution.

9. The petitioner refers that Nicanor Duarte Frutos was elected as President of the Republic of Paraguay in April of 2003. Before his inauguration, the president-elect insinuated that in order to renew the system of justice the Justices on the Supreme Court would be replaced; however he did not specify how such changes would take place. Later, the president is alleged to have met with leaders of the parties to agree on six Justices to be replaced, considering an allotment for each political party. Later it was agreed that the way to replace the Supreme Court Justices was to ask for their resignations, under threat of an impeachment trial if they did not resign. According to the petitioner, once they agreed on the names of the six Justices to be removed, “the attacks on the Justices were violent, and once President Nicanor Duarte Frutos took office he said that he would pulverize the Judicial Branch.” The petitioner submitted several press reports regarding these allegations.

10. The petitioner alleges that the leaders of the political parties agreed to hold impeachment trials on six of the previously selected Supreme Court Justices, which resulted in the resignations of two of them on October 27, 2003. Since they had agreed to hold impeachment trials without knowing what the grounds for them were, an office was prepared in the House of Representatives for the public to file complaints. Thus, on November 18 it was determined that charges should be filed against Justices Bonifacio Ríos Ávalos, Luis Lezcano Claude, Felipe Santiago Paredes, and Carlos Fernández Gadea, such that an impeachment trial for their removal could be held on the basis of 20 counts. Later, several of the Justices resigned, leaving only Bonifacio Ríos Ávalos and Carlos Fernández Gadea to be removed from office through an impeachment trial.

11. On November 25, 2003 Resolution 122 was issued, establishing Rules of Procedure for the impeachment trial of the Justices. This Resolution is on file with the Commission. The petitioner reports that the Rules of Procedure establish that recusals will not be allowed; it grants a time limit of no more than two working days to prepare the defense and collect evidence; and allows a maximum time of three hours to present one’s defense against the charges, among other points.

12. The petitioner emphasizes that the Rules of Procedure adopted in Resolution 122 prevented him from recusing those passing judgment on him, including: a Senator against whom the petitioner had filed a criminal complaint for the crime of extortion; a Senator in a legal investigation whose client was disqualified by the Court as a bidder in a tender process—a matter referred to in the legal grounds for the impeachment proceedings (count 10); a Senator who served as an attorney in the aforementioned trial; and a Senator who is the mother of a Congressman who had filed complaints against him in the House of Representatives. In this regard, the petitioner stated that these Senators had shown manifest prejudice in the proceedings. Furthermore, the petitioner indicates that the impeachment trial in the Senate violated the criteria of subjective impartiality, since a majority of Congress had already formed opinions on the case.

13. On November 27, 2003 the petitioner filed an action challenging the constitutionality of that Resolution, because he found it to violate his procedural rights and his right to a defense.

The petitioner states that when he filed the constitutionality challenge, out of the nine Justices on the Supreme Court, two had resigned, four were being put on trial, and the remaining ones disqualified themselves from hearing the case. Thus, the Court did not rule on this action challenging the constitutionality of Resolution 122. The petitioner adds that in April of 2004, a Supreme Court Justice issued an interlocutory order to start the review of the constitutional appeal. However, as of the date of this report, the matter has not yet been decided. In the opinion of the petitioner, this constitutes an unwarranted delay and allows for the filing of this petition with the Commission before the matter has been resolved in the domestic system.

14. The petitioner itemizes each of the twenty articles of impeachment and attaches documents to refute the charges. To clarify the nature of the charges against the petitioner, it is advisable to look at each of the counts in light of the information submitted by the petitioner. Article of impeachment 1, or count 1, a supposed “statement declaring that Supreme Court appointments are for life,” concerns a decision by the Supreme Court upholding the suit that three justices on the Court brought challenging the constitutionality of a 2000 administrative decision whereby the Senate removed them from the bench. The Supreme Court, sitting en banc, ruled that removal of justices serving on the bench of the Supreme Court is governed by Article 261 of the Constitution. Article of impeachment 2, or count 2, a supposed “deviation from the constitutional procedure for confirming judicial magistrates,” concerns a decision in which the Court, sitting en banc, denied an action brought by magistrates challenging the constitutionality of the law establishing the procedure by which judicial magistrates are confirmed. Article of impeachment 3, an alleged “usurpation of legislative authority in tax-related matters,” refers to an administrative decision in which the Court, sitting en banc, reset the court fee in consultation with the Ministry of Finance. Article of impeachment 4, alleged “interference in the House of Representatives’ exercise of its constitutional functions,” concerns a ruling by the Constitutional Court in which an order from the House of Representatives summoning the Paraguayan Director General of the Yacyretá Binational Entity for questioning was suspended until the action filed was decided. Article of impeachment 5 alleged a “failure to meet procedural deadlines that was highly detrimental to the workings of government.” Its purpose was to charge the members of the Constitutional Chamber with nonobservance of court deadlines, given the backlog of cases in that chamber.

15. Article of impeachment 6 alleges an “attempt to thwart the authority of the legislative branch in order to keep Chamber 2 of the Court of Accounts functioning.” This charge concerns the Constitutional Chamber’s decision to suspend the effects of a law whose constitutionality was being challenged, until such time as the suit filed in the matter was decided. The suit concerned the National Congress’ decision to formally revoke the authority of the Court of Accounts, Chamber 2, to oversee the investment accounts in the General Budget of Expenditures of the Nation. The charge in article of impeachment 7 is a supposed “usurpation of constitutional authorities expressly reserved for the legislative branch of government, thereby seriously upsetting the balance of power and constituting a punishable offense against the constitutional system.” The charge asserts that the Supreme Court, sitting en banc, had upheld a constitutionality challenge with effects erga omnes, even though rulings of the Court are supposed to affect only the parties to the case. Article of impeachment 8 alleges a “reinterpretation of a principle of the code of criminal procedure.” This is in reference to the Criminal Chamber’s interpretation of a precept of the Criminal Code. Article of impeachment 9,

a supposed “unlawful appropriation of two aircraft confiscated from a drug trafficker,” concerns a decision in which the Supreme Court named itself as the depository of the confiscated aircraft.

16. Article of impeachment 10, titled the “bidding on the north tower of the Palace of Justice,” concerns a decision by the Court, sitting en banc, to declare the bidding deserted for failure to comply with the bidding specifications and conditions and the administrative standards in force on the subject of bidding. Article of impeachment 11, “egregious and widespread cases of nepotism,” alleges irresponsible and arbitrary management of human resources in the judicial branch. Article of impeachment 12, the “outrageous promotion of Judge Juan Carlos Paredes,” alleges that the judge in question had purportedly been involved in a drug trafficking case and that instead of being removed from the bench, he was allegedly rewarded with a promotion to the Court of Appeals. Article of impeachment 13, a supposed “self awarded salary increase,” alleges that the Supreme Court had given itself a salary increase.

17. Article 14, “Case of Mundy Recepciones v Itaipú Binational,” challenged the speed with which the case was decided, and the Constitutional Chamber’s decision to deny a constitutionality challenge brought by Itaipú Binational. Article 15, the “Case of District Attorney Alejandro Nissen,” concerned a decision in which the Court, sitting en banc, had decided, at the request of the Trial Jury for Magistrates, to suspend the Prosecutor for the duration of his trial. Article of impeachment 16, “complaints of administrative irregularities in the school of veterinary sciences,” refers to influence peddling in a case that the Supreme Court was not hearing but that involved the wife of the President of the Court, while practicing the legal profession. Article of impeachment 17, supposed “influence peddling in the case of Magu S.R.L.,” also concerns a criminal case in which the wife of the President of the Court again served as an attorney, even though the case was lost on appeal and his wife allegedly had no role in the case filed in the administrative-contentious jurisdiction. Article of impeachment 18, “influence peddling in the Municipality of San Lorenzo trial,” alleges that the petitioner used his influence or connections in a case against a municipal mayor. The petitioner argues that at the time the articles of impeachment were brought, the case against the mayor was still in the preliminary phase, so that the petitioner could hardly have brought any influence to bear either for or against the mayor’s case. Article of impeachment 19, “complaint from Judge Alfredo Romero,” alleges that a criminal court judge was being pressured to resign. Lastly, article of impeachment 20, supposed “unlawful enrichment,” alleged that the “ostentatious” residence of the President of the Court was significant evidence that he had engaged in unlawful enrichment, a charge allegedly disproved by sworn statements made before the Office of the Comptroller General of the Republic.

18. According to the petitioner, on November 26, 2003 his impeachment trial began with the charges lodged by the Senators, which can be found in the file before the Commission. On December 1, the Justices on trial in the impeachment proceeding presented their defense. A typed version of that is also in the Commission’s file. On December 3, 2003 the presentation of evidence was conducted, and the Senators serving as prosecutors withdrew 14 of the 20 original counts. In the case of the petitioner, Articles of impeachment 1, 2, and 4 remained regarding the following matters: statement allegedly declaring that Supreme Court appointments are for life (count 1); alleged deviation from the constitutional procedure for confirming judicial

magistrates, (count 2); alleged interference in the House of Representatives' exercise of its constitutional functions (count 4).

19. On December 12, 2003, through Resolution 134, the petitioner was found guilty of the charges against him and was therefore removed from the Court. The petitioner attached said Resolution to his petition before the Commission and states that he was removed from his post because the Senators did not agree with his judicial rulings. He points out that Resolution No. 134 which removed him from his post is completely without merit. It only refers to poor performance of his duties.

20. In light of the foregoing, on December 26, 2003 the petitioner filed an action challenging the constitutionality of Resolution 134. According to the petitioner, this constitutionality challenge, like the action challenging the constitutionality of Resolution 122, has yet to be resolved because the members of the Court disqualified themselves from ruling on it, and so far no Court has been established to hear these matters.

21. The petitioner reports that the same facts which were the subject of his impeachment trial and which led to his removal from office were the basis for a criminal complaint against him, filed by the President of the National Congress. In this regard, the petitioner made available to the IACHR a Resolution dated November 1, 2005 in which the criminal court judge dismissed those charges. The petitioner also asserts that once that complaint was dismissed, the Supreme Court asked the judge to turn over the case file. The Tribunal on Judges' Malfeasance at its own initiative then launched an investigation of the judge and the prosecutor for the purpose of intimidating them.

22. According to the petitioner, the sole purpose of the impeachment proceedings against the Supreme Court Justices was to violate the independence of the Judicial Branch, and show that the Senators were the highest authorities on the Constitution, not the Supreme Court.

23. The petitioner maintains that the impeached Justices were subjected to discrimination, because other Justices who had signed some of the decisions that were the basis for the charges in the trial were not impeached, and they continue to serve on the Supreme Court.

24. The petitioner concludes that the removal of the Supreme Court Justices disrupted the independence of the Judicial Branch, and constituted violations of the following Articles of the American Convention: 8(1), 8(2)(c), 8(2)(d), 8(2)(f), 11, 23(1)(c), 24, and 25, with regard to Articles 1(1) (obligation to respect rights) and 2 (obligation to adopt domestic legal measures) of that Convention. In his words, "this parody of an impeachment trial for poor performance, was really nothing more than a shady deal to create vacancies in a State body, and to illegally hand out these posts to the various political parties. This is how a disruption of the Judicial Branch was caused by the Executive Branch, with the complicity of the political parties represented in Congress."

B. The State

25. The State indicates that impeachment is a constitutional procedure established to adjudge Supreme Court Justices and that therefore it cannot be categorized as a special tribunal. The State indicates that the Justices are tried publicly and afforded all procedural guarantees, including the right to defend themselves.

26. The State explains that poor performance of one's duties must necessarily be investigated according to a procedure established in the Rules of Procedure issued for the aforementioned impeachment trial. The State affirms that it fulfilled its obligation to investigate and rule on the serious errors, omissions, acts of negligence, and misdemeanors of its agents.

27. The State also affirms that through its representatives in the respective legislative chamber, it acted on behalf of both sides in the impeachment trial by overseeing the defense of the Justices on trial and allowing them the opportunity to present their material defense. The State assures that the trial was conducted in compliance with the National Constitution, and indicates that this case required shorter time periods in the interest of the common good, and that it was not arbitrary, but rather very objective, in determining the veracity of the facts. The State emphasizes that in an impeachment trial guilt is not determined in the same way as in an oral, public trial, but rather one judges the degree of suspicion which may hinder the trustworthiness of the high-ranking official.

28. The State affirms that the removal of Justice Carlos Fernández Gadea was done on the grounds that a public official under investigation for poor performance cannot serve on the Supreme Court, a post which, as is stated in the Paraguayan Constitution, must be held by persons of impeccable and unquestionable conduct. The State asserts that "even the most minor questioning of his conduct, in any regard, renders him incapable of serving in that post." Therefore, since there was suspicion as to the petitioner's performance as a Supreme Court Justice, he had to be removed from the post.

29. The State reports that only the legislators, in their individual capacity, can state why certain judicial rulings served as grounds for removing the petitioner from his post. The State adds, "the State cannot be responsible for the actions or omissions of State agents. [...] If in the performance of his duties a public official acts with due diligence and causes harm to a third party, the States assumes liability. However, if a public official is intentionally negligent, exploiting his capacity as a State agent to harm others through the commission of punishable acts, then we cannot speak of State liability. In this case, the public official is personally liable." The State indicates that it cannot "answer these questions; only the protagonists in the impeachment trial can do that." Thus the State concludes that the Paraguayan Constitution establishes the principle of secondary liability of the State, which implies that "if there were any error on the part of the legislators conducting the impeachment trial, Mr. Carlos Fernández Gadea must direct his legal action against those individuals, and not the State, as he is seeking to do here."

30. The State alleges that the remedies available within domestic jurisdiction have not been exhausted, and that before filing a case against the State, the petitioner should have made use of remedies to determine the liability of the State agents. "If liability for an illegal act is not established, one cannot establish the right to receive compensation for damages which have not

been proven in court. If liability is not determined for any public officials, the State has no passive legal standing to respond to something that does not exist.” The State notes that liability of public officials sued by a private citizen must be determined according to laws for the purposes of determining secondary State liability. Only when a judgment determines the liability of an agent, and when this agent has been judicially declared insolvent, can judicial action be taken against the State.

31. The State adds that the Supreme Court Justices violated their duty to act according to the law, and that these violations are public acts because they were set forth in judicial decisions that are against the law. The State adds that the legal grounds put forward by the petitioner “are subjective, illogical, bordering on the absurd, and capricious.” The State believes that the petitioner is seeking to recover a political post, and that such an effort is inconsistent with the spirit of the American Convention.

32. The State concludes by indicating that the impeachment trial of the petitioner was conducted according to the Paraguayan Constitution, and that the Constitution has supremacy over the American Convention. The State explains that Law No. 1 of August 8, 1989, by which Paraguay integrated the Convention into its legal system, makes it subsidiary to the National Constitution.

#### IV. ANALYSIS

##### A. Competence of the Commission

33. The petitioner is entitled under Article 44 of the American Convention to lodge complaints before the Commission, and the alleged victim was subject to the jurisdiction of the Paraguayan State at the time of the alleged events. Paraguay is a State party to the American Convention, having deposited its instrument of ratification on August 24, 1989. Therefore, the Commission has competence *ratione personae* to review the petition. It also has competence *ratione materiae* because the petitioner alleges violations of rights protected by the American Convention.

34. The Commission has competence *ratione tempore* to review the petition because it is based on allegations of events that occurred starting on July 1, 2003, and therefore after the entry into force of the State’s obligations as a party to the American Convention. Furthermore, since the petition alleges that violations of rights protected by the American Convention took place within the territory of a State party, the Commission concludes that it has competence *ratione loci* to examine the case.

##### B. Other requirements for admissibility of the petition

###### 1. Exhaustion of domestic remedies

35. Article 46 of the American Convention establishes that in order for a case to be admitted, “the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.” The purpose of this requirement is to allow

the national authorities to become aware of the alleged violation of a protected right and, if appropriate, to resolve it before it is brought to an international entity.

36. The requirement for exhaustion of domestic remedies established in Article 46 of the American Convention refers to judicial remedies that are available, adequate, and effective to resolve a potential violation of human rights. In this regard, Article 46(2) specifies that this requirement does not apply when the domestic legislation does not afford due process of law for the protection of the right in question; if the alleged victim did not have access to domestic remedies; or if there is an unwarranted delay in reaching a decision on such remedies. As is indicated in Article 31 of the Rules of Procedure of the Commission, when a petitioner alleges one of these exceptions, the State must demonstrate that domestic remedies have not been exhausted, unless that is clearly evident from the record.

37. In the instant case, the petitioner filed actions challenging the constitutionality of Resolutions 122 and 134, the resolutions which respectively determined the procedure for the impeachment trial and that the Supreme Court Justice should be removed from his post. These constitutionality challenges were filed on November 27, and December 26, 2003, and as of the date of this report, they have not yet been resolved. Furthermore, according to the available information, it is not apparent that there has been any procedural activity in those matters all these years, as the Court to rule on the actions has not yet been established.

38. The petitioner maintains that he attempted to exhaust the applicable remedies by filing actions challenging the constitutionality of the proceedings against him, but that he has received no reply from the domestic legal system. The State affirms that the remedies under domestic law have not been exhausted because suit has not been filed against the senators who ran the impeachment trial to determine their individual liability. The State argues that any liability it may have is subsidiary, because it can only apply once the liability of a State agent is determined in court, and once that public official is judicially declared insolvent.

39. The Commission observes that the legally protected interests alleged to be involved include, among others, the independence of the Judicial Branch, the right to a defense, and due process during impeachment proceedings. These are issues related to the actions of the State as such and, therefore, a constitutionality challenge to be the suitable remedy. The remedies available to establish the individual liability of State agents who participated in the trial could not remediate the procedural or substantive issues brought before the Inter-American Commission, and the Paraguayan State has not demonstrated how these remedies may be suitable to address the situation in the reported complaint.

40. The requirement for the exhaustion of domestic remedies was conceived to favor the State, to allow it the opportunity to resolve matters of potential violations of human rights within its own legal framework. In the instant case, the State had the opportunity to act on the events described in this report when the petitioner filed constitutionality challenges against Resolutions 122 and 134.

41. The Commission notes that approximately five years have lapsed since the petitioner filed actions challenging the constitutionality Resolutions 122 and 134, but to date they have not

been resolved. Remedies for which there is an unwarranted delay in rendering a judgment cannot be considered to be either available or effective, and the Commission cannot demand that they be exhausted. Therefore, the Commission finds that the exception to the requirement of exhaustion of domestic remedies set forth in Article 46(2)(c) of the American Convention, on unwarranted delay in rendering a judgment, applies to the aforementioned remedies.

## 2. Time period for lodging a petition

42. According to Article 47(1)(b) of the Convention, a petition must be lodged within six months of the date on which the party alleging violation of his rights was notified of the final judgment in the domestic courts.

43. However, when exceptions to the requirement of prior exhaustion of domestic remedies apply, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case in order to determine whether the petition was filed within a reasonable time frame.

44. In the instant case, the exception to exhaustion of domestic remedies established in Article 46(2) of the Convention was applicable, and according to the petitioner's briefs, the events described in the petition started on July 1, 2003. The petition was brought before the Commission on June 7, 2004. Considering the circumstances of the case, including the fact that two constitutionality challenges were filed by the petitioner and are still pending, the IACHR finds that this petition was submitted within a reasonable time.

## 3. Duplication of proceedings and res judicata

45. Article 46(1)(c) of the Convention establishes that in order to be admissible, the subject of the petition "must not be pending in another international proceeding for settlement," and Article 47(d) stipulates that it must not be "substantially the same as one previously studied by the Commission or by another international organization." In the instant case, the parties do not allege, nor does it appear in the record, that either of these conditions of inadmissibility is present.

## 4. Characterization of the facts alleged

46. Article 47(b) of the Convention establishes that the Commission shall declare inadmissible any petition or communication that "does not state facts that tend to establish a violation of the rights guaranteed by this Convention." At this stage of the proceedings it is not appropriate for the Commission to state whether or not the alleged violations of the American Convention actually occurred. For the purposes of admissibility, the IACHR must determine whether the petition raises allegations that tend to establish a violation, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless or obviously out of order," as stipulated in subparagraph (c) of that Article.

47. The parameters for judgment on these grounds are different from the requirement for ruling on the merits of a case. The IACHR must conduct a prima facie evaluation to determine

whether the complaint provides grounds for an apparent or potential violation of a right guaranteed by the Convention, and not establish whether such violation actually occurred. This does not pre-judge or advance an opinion on the merits of the case. The distinction between the review to determine admissibility and the review required to determine a violation is reflected in the Rules of Procedure of the IACHR, which clearly establish different stages for admissibility and merits.

48. The Paraguayan State affirms that the Supreme Court Justices were tried according to a procedure established by the Constitution, that is, an impeachment trial held in public and with respect for all procedural guarantees, including the right to present a defense. The State adds that the decision to remove the petitioner from his post was in line with Paraguayan laws and that there were no violations of the American Convention. Additionally, the State asserts that the legal reasoning and claims set forth by the petitioner are absurd, and are inconsistent with the spirit of the American Convention.

49. The petitioner maintains that he did not have access to simple and prompt recourse to protect his rights, nor due process to guarantee the proper independence and impartiality of the bodies trying his case, in violation of Articles 25 and 8 of the Convention. He also alleges that there was unwarranted delay in rendering judgment on the constitutionality challenges which he had filed, because these have exceeded the time period established in Paraguayan law. He argues that these facts also constitute violations of Articles 23(1)(c) and 11 of the Convention, which protect the right to participate in government and the right to privacy. He asserts that Article 24 of the Convention, which guarantees the right to equal protection of the law, was also violated because only certain Supreme Court Justices were impeached on the basis of judicial decisions made by all nine of them.

50. The jurisprudence of the inter-American system of human rights indicates that the rights protected in Article 8 of the American Convention may be applied not only to criminal trials, but also to administrative or other kinds of proceedings. Thus, taking into consideration the relationship between judicial guarantees and the independence of the judicial power as one of the essential elements of the rule of law, the lack of application of certain guarantees to the process undertaken to remove the petitioner of his position as Supreme Court Justice could constitute a violation of Article 8 of the Convention. Furthermore, the lack of a ruling on the constitutionality challenges filed by the petitioner may tend to establish a violation of Article 25 of the Convention, regarding the availability of a remedy to challenge the legality of a proceeding to remove the Justice from his post.

51. Based on the previous considerations, the IACHR concludes that the reported facts may constitute violations of the right to a fair trial and the right to judicial protection established in Articles 8 and 25 of the American Convention, in connection with Articles 1(1) and 2 of that instrument. At the same time, the Commission does not find that the petitioner has presented evidence that would tend to establish a violation of his right to privacy, his political rights or his right to equal protection of the law, as established, respectively, in Articles 11, 23(1)(c) and 24 of the Convention.

52. In light of the foregoing facts, the IACHR does not find that the petition is “manifestly groundless or obviously out of order,” and finds that, prima facie, the petitioner has met all the requirements of Articles 47(b) and 47(c) of the American Convention on Human Rights.

## V. FINAL CONSIDERATIONS

53. Considering that the alleged facts of this petition are similar to those of petition 969-03 presented by Bonifacio Ríos Ávalos, who was removed from his post as Supreme Court Justice in Paraguay during the same impeachment trial and through the same Resolution, pursuant to Article 29(d) of its Rules of Procedure, the Commission has decided to join this case to petition 969-03 and process them together during the merits stage.

## VI. CONCLUSIONS

54. The commission concludes that it is competent to hear this case and that the petition is admissible according to Article 46 and 47 of the American Convention.

55. Based on the arguments of fact and law presented above, and without pre-judging as to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible with regard to the alleged violations of the rights recognized in Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 thereof.
2. To declare inadmissible the allegations regarding Articles 11, 23(1)(c) and 24 of the American Convention.
3. To notify the parties of this decision.
4. To join this case with petition 969-03 (Bonifacio Ríos Ávalos).
5. To proceed to review the merits of the case.
6. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on March 19, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Paulo Sérgio Pinheiro, Sir Clare K. Roberts, Florentín Meléndez, and Paolo Carozza, Members of the Commission.