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Decided by: First Vice President: Victor Abramovich;  
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo Carozza.  
Dated: 19 March 2009  
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## I. SUMMARY

1. The present report concerns the admissibility of petition 969-03. The Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” the “Commission” or the “IACHR”) began processing a petition that Bonifacio Ríos Ávalos (hereinafter “the petitioner”), then Chief Justice of the Supreme Court of the Republic of Paraguay, filed against the Republic of Paraguay (hereinafter “Paraguay,” the “Paraguayan State” or “the State”) on November 13, 2003, in connection with the impeachment proceedings conducted against him to remove him from the Supreme Court bench.

2. The petitioner contends that the impeachment trial that ousted him from the Supreme Court was a violation of the independence of the judicial branch of government since the justices were impeached for decisions they took in exercise of their judicial powers. He asserts that the impeachment trial did not afford him with the independence and impartiality of the judging bodies, that he was not given sufficient opportunity to prepare or present his defense, that the impeachment decision had no legal reasoning and that he did not have access to a simple and prompt recourse for protection of his rights, all of which, he alleges, were violations of the rights to a fair trial and to judicial protection. He further contends that even before the impeachment trial got underway, a political agreement had already been made to remove him, and that other justices who had voted as he had in the court rulings cited as grounds for his impeachment were not impeached, which he argues is a violation of his right to equal protection. The petitioner makes the point that these events were part of a campaign of harassment waged against him and that his dignity and honor and that of his family were violated “for the sake of ‘pulverizing’ the Supreme Court of Paraguay.”

3. The State argues that the procedure followed, the authorities that set the petitioner’s impeachment proceedings in motion, and the grounds invoked for his removal from the Supreme

Court bench were those that the Constitution prescribes for impeachment. It contends that the people were clamoring to have the corruption in the Supreme Court cleaned up. It also claims that the petition does not state facts that tend to establish a violation of the rights guaranteed by the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”). The State argues that the petitioner’s right to a fair trial and his right to have his honor respected and dignity recognized have been protected at all times, as have his right to have access, under general conditions of equality, to the public service of his country, his right to equal protection of the law and his right to judicial protection.

4. Without prejudging the merits of the complaint, in this report the Commission concludes that it is competent to examine the petition concerning the process whereby Bonifacio Ríos Ávalos 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 decides further to notify the parties of its decision, to make it public and to include it in its Annual Report to the General Assembly of the Organization of American States (OAS).

## II. PROCESSING WITH THE COMMISSION

5. The petition is dated November 13, 2003 and was received at the IACHR on November 14, 2003. The petitioner sent additional information on May 24, 2004, April 17, 2005, and May 5, 2005. The pertinent parts of the petition were forwarded to the State on June 24, 2005, which was given a two-month time period in which to present its observations.

6. The State sent its observations to the Commission on September 27, 2005, after having requested an extension which was granted by the Commission. The State’s observations were duly forwarded to the petitioner on November 30, 2005.

7. On February 9, 2006, the Inter-American Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter. In view of the responses received -from the State on March 17, 2006 and from the petitioner on March 15, 2006- on August 29, 2006 the Commission decided to continue processing the petition.

8. The petitioner forwarded additional observations on December 28, 2005, November 17, 2005, January 3, 2006, May 2, 2006, July 19, 2006, July 17, 2007, April 13, 2007, October 23, 2007, November 6, 2007, July 14, 2008 and January 22, 2009. These observations were duly forwarded to the State on February 9, 2006, January 10, 2006, August 29, 2006, August 9, 2007, October 30, 2007, November 19, 2007, August 22, 2008 and January 12, 2009. Furthermore, on numerous occasions throughout the processing of his petition, the petitioner contacted the Commission to ask about its status. On November 18, 2008, the petitioner requested a hearing with the Commission in connection with his case.

9. The State sent additional observations on September 10, 2007, September 24, 2007, December 18, 2007 and October 7, 2008. These observations were duly forwarded to the

petitioner on September 25, 2007, October 18, 2007, February 21, 2008, and January 8, 2009, respectively.

### III. THE PARTIES' POSITIONS

#### A. The petitioner

10. The petitioner asserts that in 2003 “the judicial branch was crushed into subjugation, the balance among the three branches of government was broken, judicial guarantees and guarantees of due process evaporated, and the independence and impartiality of the courts were lost; compounding the problem were personal and family harassment, political connivance and unlawful adjudication of seats on the bench, in violation of the independence of the judicial branch of government.”

11. The petitioner notes that the new officials in the Legislative Branch took office on July 1, 2003 and Nicanor Duarte Frutos was sworn in as President of the Republic on August 15, 2003. According to the petitioner, on the campaign trail and in the transition period leading up to his inauguration, Duarte Frutos had pledged to overhaul the judicial branch of government. The petitioner alleges that the newly elected congressmen and senators had brought pressure to bear on the President to live up to his election promise. The petitioner also states that after almost three months of negotiations, the political parties and the President allegedly agreed to remove six justices on the Supreme Court by means of impeachment. The petitioner contends that this constituted interference, since under the Constitution, neither the President nor the Vice President of the Republic can in any way intervene in an impeachment process; the articles of impeachment are prepared by the House of Representatives, and the impeachment trial is conducted by the Senate.

12. According to the petitioner, in the wake of this agreement, the political parties and the President had allegedly designated the Vice President, Luis Alberto Castiglioni, to serve as mediator and ask the justices of the Supreme Court to tender their respective resignations; if not the impeachment process would begin immediately. Confronted with this decision –one widely reported in the newspaper articles that are part of the Commission’s file on this case-, the Supreme Court en banc adopted a decision containing a public statement in which the justices declared that they would neither relinquish their right nor forswear their duty and obligation to continue administering justice. According to the petitioner, it was this declaration that allegedly triggered the process of impeaching the six justices on the Supreme Court.[FN1]

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[FN1] Justices Raúl Sapena Brugada, Jerónimo Irala Burgos, Felipe Santiago Paredes, Carlos Fernández Gadea, Luis Lezcano Claude and Bonifacio Ríos Ávalos.

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13. The petitioner adds that on September 6, 2003, the President of the Republic publicly stated that he would “pulverize the judicial branch.” His statement was reported by various media outlets, whose articles are part of this complaint. Thereafter, the petitioner states, the senators and political leaders allegedly began to look for grounds to impeach those justices that

they had already decided to remove from the bench. To that end, a letter box was established for collecting complaints against the justices on the Court. When no complaints were forthcoming, the petitioner alleges that they scoured through the Supreme Court rulings to put together the 20-point articles of impeachment as the basis for the decision to remove the justices from their seats on the bench and replace them with figures representing the parties in power.

14. The petitioner explains that there was no impeachment law setting out the rules of procedure for the impeachment process provided for in Article 225 of the Paraguayan Constitution. Therefore, on November 25, 2003 the Senate passed Resolution No. 122 -entered into the Commission's file on this case- in which it established a set of rules for an impeachment trial. The petitioner contends that those rules prohibit the exercise of any means of defense, appeal of the decisions adopted by the Senate, and recusal of the judges, who are the senators. That resolution further stipulates that the defense argument may last no more than three hours.

15. On November 27th 2003, the petitioner filed an action challenging the constitutionality of this resolution. According to the petitioner, his challenge was never decided because the Constitutional Court to rule on this action has not yet been established. He explained that the principal and alternate members of the Constitutional Court who should have heard the complaint recused themselves. This, the petitioner argues, constituted a violation of Article 25 of the Convention, which establishes the right to judicial protection.

16. The petitioner observes that the articles of impeachment were signed by the party leaders in the House of Representatives and listed twenty counts. The petitioner himself was indicted on sixteen counts. The petitioner contends that the twenty articles of impeachment were the subject of spirited debate in the House of Representatives, leaving no time for the Committee on Constitutional Affairs to analyze them. That Committee's role is to determine whether the conditions have been met to institute an impeachment trial. According to the petitioner, Supreme Court justices Jerónimo Irala Burgos and Raúl Sapena Brugada resigned their seats on the bench as the start of the trial –whose outcome was already a foregone conclusion- approached. Justices Felipe Santiago Paredes and Luis Lezcano Claude also eventually tendered their resignations, which meant that only Justices Carlos Fernández Gadea and Bonifacio Ríos Ávalos decided to face the impeachment trial.

17. The petitioner adds that when the articles of impeachment were handed down, the justices were given two days to submit their arguments or defense. However, they were allegedly not given a copy of the 20 articles of impeachment, making it materially impossible for them to prepare documents and evidence to disprove the charges. He explains further that the annex to the articles of impeachment consisted of some 900 pages. Even so, under the Rules, each Justice had only three hours to put on his defense before the full Senate. The petitioner contends that three hours was not sufficient to refute the charges.

18. 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.

19. 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.

20. 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. In the petitioner’s case, the charge was that six of his nephews were working in the judicial branch. The petitioner noted that his nephews were employed in the judicial branch prior to his appointment to the Supreme Court and stated further that the only requirement to enter public service is one’s qualifications. 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.

21. 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 Prosecutor 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,” accuses the petitioner of influence peddling in a case that the Supreme Court was not hearing but that involved the petitioner’s wife, who was acting as an attorney in the case. The petitioner observes that the charges in the case were disproved in court and alleges that the Senators had chosen to disregard the court’s findings. Article of impeachment 17, supposed “influence peddling in the case of Magu S.R.L,” also concerns a criminal case in which the petitioner’s wife 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 petitioner’s “ostentatious” residence 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.

22. According to the petitioner, the day after his defense arguments were made in the Senate Chamber, the prosecutors were forced to drop 14 of the 20 articles of impeachment charged in the impeachment trial (leaving articles 1, 2, 4, 5, 7 and 14). The petitioner states that four of the remaining six counts concerned rulings delivered by the Supreme Court, sitting en banc, or by the Supreme Court’s Constitutional Chamber. He argues that the justices were being impeached for rulings they delivered in exercise of their functions under the Constitution and the law, on cases submitted to the Court. He categorically asserts that this was an attack on the independence of the judicial branch of government.

23. The petitioner stresses the fact that even though his defense showed that all the charges in the indictment were false, the Senate chose to remove those justices who had thus far refused to resign. And so, on December 12, 2003, the Senate passed Resolution No. 134 –which is in this petition’s case file with the Commission- in which it resolved to find “Dr. Bonifacio Ríos Ávalos guilty of poor performance and to therefore remove him from his position of justice on the Supreme Court.” According to the petitioner, that resolution would have no force of law because, although it contains votes, it is without legal foundation or reasoning. He points out that the resolution does not explain what he did that constituted poor performance and does not list the charges of which he was convicted and for which he was removed from his seat on the bench. The petitioner claims that the impeachment proceeding was not a trial but a travesty.

24. The petitioner filed an action challenging the constitutionality of the Senate resolution on December 26, 2003. According to the petitioner, the constitutionality challenge against the Senate resolution met with the same fate as the action filed to challenge the constitutionality of the Resolution establishing the Rules of Procedure for the impeachment trial, which was that the Court to rule on this action has not yet been established. The petitioner is therefore alleging an unwarranted delay on the grounds that under Paraguay's procedural laws, when an action is filed challenging the constitutionality of a law or regulation established by any branch of government, the Attorney General of the Nation will have eighteen days to study the action filed and the Court will decide the matter within the next thirty days. Thus, the petitioner argues, the proceedings on his constitutionality challenge should have been completed within 48 working days. However, as of the date of this report, the Court has yet to issue any ruling on his challenge.

25. The petitioner adds that background information related to the charges filed to begin impeachment proceedings against him was sent to the criminal justice to launch the necessary investigations. As the case file shows, on November 1, 2005, the criminal court judge dismissed the complaint filed concerning the 20 counts against the justices on the Supreme Court. The petitioner explains that the investigation lasted almost two years, and concluded that the charges did not constitute punishable offenses or common crimes. According to the petitioner, this demonstrates that there were never any grounds or bases for the impeachment trial. The petitioner adds that when delivering the decision dismissing the complaint, the criminal court judge argued that: "the decisions for which the former justices of the Supreme Court were impeached were the product of their authority to interpret the law as judges hearing the cases submitted to them; their respective positions, embodied in their rulings, are the product of their juridical conviction, based on the facts and the law spelled out in their arguments."

26. The petitioner contends that both he and his family have been the target of constant harassment, threat, extortion, and blackmail attempts delivered via the press and on a face-to-face basis at his home. The petitioner names the Senators who allegedly visited him on November 5, 2003, to announce that the pact had already been made and to convince him to resign, even going so far as to offer him positions in the government or embassies, by mutual agreement. He adds that he received death threats repeatedly and his wife was harassed in the practice of her profession. He reports that following his impeachment trial, the threats to members of his family became worse, to the point that he had to report these episodes to the public prosecutor's office.

27. The petitioner contends that the removal of the justices on the Supreme Court destroyed the independence of the judicial branch and led to violation of articles 8(1), 8(2)(c), 8(2)(d) and 8(2)(f) (right to a fair trial), 23(1)(c) (right to participate in government), 11 (the right to have his honor protected and dignity recognized), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention, in relation to articles 1(1) (obligation to respect rights) and 2(domestic legal effects) thereof.

28. The petitioner argues that Article 24 of the Convention (right to equal protection) was violated because the articles of impeachment, the impeachment proceedings and the verdict

against him were arbitrary. He explains, for example, that only three justices were impeached for decisions, rulings and administrative orders signed by all nine justices on the Supreme Court, some of whom still have their seat on the bench. He goes on to explain that on June 8, 2007, the Supreme Court of Paraguay reached an agreement and delivered a ruling identical to agreements and judgments 222 and 223 of May 5, 2000, which were among the decisions cited as grounds for removing the petitioner from the bench. However, the 2007 ruling did not lead to the impeachment of the justices who delivered it.

29. The petitioner alleges that Article 8 of the Convention was violated by virtue of the following, *inter alia*: none of the charges against him constituted violations of pre-existing law; the principle of presumption of innocence was not observed; appeal of the Senate resolution was expressly prohibited, and the means and time periods essential for preparation and presentation of his defense were severely limited. The petitioner also argues that his right to be judged by an independent and impartial tribunal was violated by virtue of the fact that the senators who were to act as his judges could not recuse themselves and had already agreed on the names of the six justices to be removed and the names of the new members of the Court.

30. He argues that Article 25 was violated by virtue of the fact that the action he brought challenging the constitutionality of the rules of procedure of the impeachment trial was never heard. The petitioner also points out that the action he brought challenging the constitutionality of the resolution ordering his removal from the bench was never heard either. He contends that the Inter-American Commission should indicate to the Paraguayan State that conviction before trial is unacceptable even in cases of impeachment, and that due process must be observed, taking particular care to respect the basic principles of presumption of innocence, the right to a real defense, and the right not to be convicted without trial.

#### B. The State

31. The State contends that the petitioner has not yet exhausted the remedies under domestic law and that the petition does not state facts that tend to demonstrate a violation of rights protected under the American Convention. Accordingly, “the State rejects the assertion that the petitioner’s right to a fair trial, his right to his honor and dignity, his right to have access, under general conditions of equality, to public service, his right to equal protection and his right to judicial protection have not been respected.” The State argues that removal from high public office, even if alleged to be unlawful, cannot be regarded as a denial of a person’s basic human right. It reasons, therefore, that the petitioner’s case is untenable.

32. The State argues that the judicial branch of government in Paraguay was not crushed into subjugation, but instead is a normally functioning and fully independent institution. It observes that “each and every candidate that the various political parties, movements and groups nominated for the office of President pledged –both formally and to the national electorate- to launch a frontal attack on corruption in the region. And, as was to be expected, the legitimate winner in the presidential elections lived up to his word. With the other political leaders and candidates, representatives of all churches, religious sects and creeds, civil society, intermediate organizations, trade unions, organized labor and other elements of Paraguayan society, he undertook to clean up and restore ethics to the judicial branch, at all levels and ranks, starting



with the highest court in the land, as is only logical.” It adds that all the mass media supported or called for the replacement of the justices.

33. The State contends that never before in Paraguayan political history have the governed and the governing shared so much common cause. It goes on to say that “the situation was a combination of wheeling-and-dealing, unlawful enrichment, cronyism, sycophancy and habitual corruption that were characteristic of the members of the Supreme Court, who were impeached in strict accordance with the National Constitution.” The State writes that the fact that “political leaders had reached a consensus agreement to impeach even before the impeachment proceedings were brought against the justices on the Supreme Court [...] illustrates that the impeachment process was anything but arbitrary; instead, it was an act of justice responsive to the public outcry voiced in the elections held in the country at that time.” The State alleges that prior to the impeachment process, the consensus reached among political leaders was on the need to clean up the administration of justice, thus heeding the public’s demands and outcries.

34. The State makes the point that the egregious mistakes, omissions, negligence or failings of its agents cannot be overlooked. It notes that under the Paraguayan Constitution, impeachment is the proper procedure for removing a justice from the Supreme Court. The State adds that Article 190 of the Constitution authorizes each chamber to draft its own rules of procedure and that it was on the basis of that article that the rules of procedure for the impeachment trial were passed. It adds that the House of Representatives, which under the Constitution prepares the articles of impeachment, has sovereign authority to formulate the charges and put together the evidence. The State observes that the position of Supreme Court justice is a political office.

35. As for the supposed personal and family harassment, the State notes that given the post he once occupied, “it is implausible that so powerful a man could not avoid what he oddly labels harassment.” It adds that the allegation that the so-called harassment is traceable to government sources is false and unfounded.

36. According to the State, in his trial in the Senate chamber, the petitioner had an opportunity to have his defense arguments heard, with all the necessary guarantees; at no time was he without means of defense. He had an opportunity to introduce evidence to refute the charges against him, to argue the evidence and to present it to his judges within the time period that the Rules of Procedure in the impeachment chamber afforded him. The State further asserts that although under the Rules of Procedure the petitioner had a 48-hour period in which to review the articles of impeachment, the Impeachment Committee had forwarded the articles of impeachment to the defendants long before the Rules of Procedure were enacted. The State adds that although under the Rules of Procedure, the petitioner had only three hours to present his defense arguments, the Senate Chamber, acting as Court, never limited the time allowed to the defendants to make their case. It also asserts that the proceedings were conducted within a reasonable period of time. The State contends that the Judicial Branch has received, processed and substantiated each and every one of its presentations to the petitioner, thereby guaranteeing his right to an effective recourse.

37. The State observes that an impeachment trial is a special and eminently political proceeding established in the Constitution. Given its nature, the State argues, many of the

guarantees established for the common judicial proceeding do not apply in the case of an impeachment trial, since the purpose of impeachment is not to apply a penalty or issue a sentence; instead, its sole purpose is to remove a public official from office if found guilty of any of the charges that the law prescribes as grounds for impeachment. In its observations on the present petition, the State cites the arguments given by one of the senators during the Special Session of the National Congress held on December 12, 2003, during the impeachment trial against the justices of the Supreme Court, in which he stated the following: “What is an impeachment trial and what distinguishes it from a court proceeding? [...] The impeachment trial was developed as a parliamentary procedure to take away authority from an official who was deemed to be corrupt and incompetent. [...] Some of the rules that are essential in court proceedings do not apply in the case of an impeachment trial, such as the principle of the impartiality of the judges. [...] The rule prohibiting prejudgment does not apply either, because politics is waged on the field of confrontation and dispute.”

38. The State argues that the Constitution of Paraguay lists poor performance as one of the grounds for impeachment. Therefore, the petitioner was impeached on the grounds that the Law prescribes. According to the State, 14 of the 20 counts were dropped not for lack of grounds, but because presenting the evidence to prove those charges would have taken too much time and would have dragged out the proceedings and delayed the impeachment verdict.

39. The State also makes specific reference to the 6 counts considered to remove the petitioner from the bench. Concerning article of impeachment 1, the State observes that the ruling is a juridical outrage, riddled with irrational and unlawful interpretation. Concerning article of impeachment 2, the State alleges that the impeached justices did not interpret the case put to them; instead, they delivered a twisted interpretation that misrepresented the Constitution. As for article of impeachment 4, the State contends that the law was stretched in order to grant a measure that was in violation of the Constitution. Concerning article of impeachment 5, the State argues that the conduct of the impeached justices was one of complete indolence and negligence. As for article of impeachment 7, the State contends that the impeached justices delivered a ruling with erga omnes effects, in violation of the Constitution. Finally, in the case of article of impeachment 14, the State explains that “all good citizens in Paraguay regarded the suit that Mundy Recepciones brought against Itaipú Binational as treasonous.”

40. The Paraguayan State argues that the principle of nondiscrimination established in Article 24 of the Convention was not violated, because in an impeachment, the National Congress has exclusive authority to decide who will and who will not be tried. It adds that juridical treatment that is different is not necessarily discriminatory, because not every difference in treatment can, by itself, be regarded as offensive to human dignity. The State explains that “the impeachment trial was undertaken against those six ministers on the Supreme Court whose presence in the judicial branch was adversely affecting its ability to function fully, normally and properly and was damaging its image.”

41. The State reports that by Resolution 34/03 of November 19, 2003, the House of Representatives sent the articles of impeachment to the Senate Chamber, which served as the order setting the matter for criminal trial 1,697/04, prosecuted in the criminal jurisdiction. The petitioner was one of the defendants named.

42. As for the exhaustion of local remedies, the State observes that on November 27, 2003, the petitioner filed an action challenging the constitutionality of Senate Resolution 122, passed on November 25, 2003. The State explains that after a number of magistrates recused themselves, a hearing was held on April 20 and the prosecutor's office recommended that the two challenges brought by the petitioner be joined. According to the State, the claim that no justice wants to sit on the Constitutional Court is false. It asserts that once all the members of that chamber have been seated the decision and ruling required under the law will be delivered on the challenge that the petitioner brought. It argues that disqualifications and recusals cannot be used to delay or deny justice.

43. In a subsequent communication, the State elaborated further on the question of exhaustion of local remedies, asserting that the petitioner had failed "to name all the individuals involved and to take all the actions and exhaust all the remedies that Paraguayan law affords. If the petitioner has still not been able to obtain a favorable result once all these actions have been exhausted and provided there is convincing evidence to support his claims, then there may possibly have been a human rights violation attributable to the Paraguayan State; but that, too, would be debatable."

44. The State concludes that "the proceeding, the authorities that set it in motion and the grounds invoked for removing the petitioner were all prescribed in the Constitution."

#### IV. ANALYSIS OF ADMISSIBILITY

##### A. Competence of the Commission

45. Under Article 44 of the American Convention, the petitioner is authorized to file a petition with the Commission. The alleged victim was under the jurisdiction of the Paraguayan State at the time the facts alleged were said to have occurred. The State, for its part, is a State party to the American Convention, having deposited its instrument of ratification, in due and proper form, on August 24, 1989. The Commission therefore has competence *ratione personae* to examine the complaint lodged. It also has competence *ratione materiae* because the petitioner is alleging violation of rights protected by the American Convention.

46. The Commission has competence *ratione temporis* to examine the petition inasmuch as it is based on allegations that occurred starting on July 1, 2003. Thus, the obligation to respect and ensure the rights protected under the American Convention was already binding upon the Paraguayan State at the time the events alleged in the petition occurred. Furthermore, the Commission has competence *ratione loci* because the petition alleges violations of Convention-protected rights said to have occurred in the territory of a state party.

##### B. Other admissibility requirements

###### 1. Exhaustion of local remedies

47. Article 46 of the American Convention provides 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 afford national authorities the opportunity to address the alleged violation of a protected right, and where appropriate resolve it, before the matter is brought to the attention of an international body.

48. The requirement of prior exhaustion established in Article 46 of the Convention applies when the domestic remedies available in practice within the national system are adequate and effective in providing a remedy for the alleged violation. In this sense, Article 46(2) specifies that the requirement is not applicable when the domestic legislation does not afford due process for the protection of the right in question; or if the alleged victim did not have access to domestic remedies; or if there was unwarranted delay in rendering a final judgment under those remedies. As indicated by Article 31 of the Commission’s Rules of Procedure, when a petitioner alleges one of these exceptions, it then falls to the State to demonstrate that domestic remedies have not been exhausted, unless that is clearly evident from the record.

49. In the instant case, the petitioner filed actions to challenge the constitutionality of Senate resolutions 122 and 134: the first established the rules of procedure for the petitioner’s impeachment trial, while the second ordered his removal as a Supreme Court justice. As of the date of this report, no rulings have been delivered on those challenges, which were filed on November 27, 2003, and December 26, 2003, respectively. In fact, judging from the information available, in all these years there has been no procedural activity on these challenges because the Court that decides cases of this kind has not been established.

50. The petitioner maintains that he attempted to exhaust the applicable remedies by filing actions challenging the constitutionality of the impeachment proceeding conducted against him, but has yet to receive any response from the domestic system of justice. The State, for its part, contends that “given the consequence of a guilty verdict in an impeachment trial, which is simply to remove the accused, a high-ranking official of the State, from office, it has never been subject to appeal anywhere in the world because no penalty, damages or any other type of fine is involved.” The State also argues that the remedies of domestic law have not been exhausted because no actions have been filed to determine the individual liability of the senators who sat in judgment in the impeachment trial.

51. 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.

52. 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.

53. 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 the petition

54. Under Article 46(1)(b) of the American Convention, a petition must be lodged within six months from the date on which the party alleging violation of his rights was notified of the final judgment of the domestic courts.

55. However, whenever one of the exceptions to the prior exhaustion requirement has been applied, the Commission will consider the date on which the alleged violation of rights occurred and the circumstances of each case to determine whether the petition was lodged within a reasonable period of time.

56. The exception that Article 46(2) of the Convention provides to the rule requiring exhaustion of local remedies applies in the present case and, based on the allegations made by the petitioner, the facts that are at issue in this petition began on July 1, 2003. The petition was lodged with the Commission on November 13, 2003. Taking the circumstances of the case into account, inter alia, the fact that two constitutionality challenges brought by the petitioner have yet to be decided, the Commission finds that the time period in which the present petition was lodged was reasonable.

## 3. Duplication of proceedings

57. Under Article 46(1)(c) of the American Convention, in order for a petition to be admitted, its subject cannot "be pending in another international proceeding for settlement." Article 47(d) of the Convention stipulates that the Commission shall not admit a petition that is "substantially the same as one previously studied by the Commission or by another international organization." Neither of the parties to this case has alleged the presence of either of these two circumstances that would preclude admissibility, nor is there anything in the case file that would suggest this.

## 4. Characterization of the facts alleged

58. Article 47(b) of the Convention provides that the Commission shall declare any petition or communication to be inadmissible when it "does not state facts that tend to establish a violation of the rights guaranteed by this Convention." The Commission believes that this phase of the proceedings is not the appropriate one to establish whether a violation of the American

Convention is present. For admissibility purposes, the Commission must decide whether the petition states facts that tend to establish a violation of the Convention, as stipulated in Article 47(b) thereof, and whether the petition is “manifestly groundless” or “obviously out of order”, as provided in paragraph (c) of that article.

59. The standard for evaluating the factual requirements is different from the requirement for deciding the merits of a petition. The IACHR must conduct a *prima facie* evaluation to determine whether the petition establishes grounds for the apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation. Such an evaluation does not imply prejudgment or advance an opinion on the merits. By establishing two distinct phases –one on admissibility and the other on the merits–, the Commission’s Rules of Procedure reflect this distinction between the evaluation to be carried out by the Commission for the purpose of declaring a petition admissible and that required to establish whether a violation has taken place.

60. The Paraguayan State argued that the petition does not state any fact that tends to establish a violation of the rights guaranteed by the Convention and denied the charge that it had failed to respect the petitioner’s right to a fair trial, his right to have his honor respected and dignity recognized, or his rights to have access, under general conditions of equality, to the public service of his country, to equal protection and to judicial protection. The State’s contention is that the procedure, the authorities that set the impeachment trial in motion, and the grounds invoked to remove the petitioner as a Supreme Court justice were those prescribed by the Constitution.

61. The petitioner, for his part, argues that he did not have access to a simple and prompt recourse for protection of his right or to due process that would guarantee the independence and impartiality of the bodies that took up the case against him, all in violation of articles 25 and 8 of the American Convention. He also alleges an unwarranted delay in rendering a decision on the constitutionality challenges he brought, inasmuch as the delay exceeded the time period allowed under Paraguayan law. The petitioner alleges further that the removal of the justices from the Supreme Court violated the independence of the judicial branch of government and was part of a policy to harass the justices, constituting violations of articles 23(1)(c) and 11 of the Convention, which recognize the right to participate in government and the right to have one’s honor respected and dignity recognized. He also alleges violation of Article 24 of the Convention, which guarantees equal protection of the law, inasmuch as only certain justices were allegedly tried when the court decisions for which they were impeached were taken by all nine justices.

62. 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 guaranties 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.

63. 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.

64. 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. CONCLUSIONS

65. The Commission concludes that it is competent to take cognizance of this case and that the petition is admissible based on articles 46 and 47 of the American Convention.

66. Based on the arguments of fact and of law herein stated, and without prejudging 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 proceed with the analysis of the merits.
5. To make public this report and publish it in its Annual Report to the OAS General Assembly.

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