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Title/Style of Cause:	Horacio Anibal Schillizzi Moreno v. Argentina
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Decided by:	President: Luz Patricia Mejia Guerrero; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Paolo Carozza. Commissioner Victor E. Abramovich, of Argentine nationality, did not participate in the deliberations or in the decision of this case as stipulated in Article 17(2)(a) of the Regulations of the Commission.
Dated:	6 August 2009
Citation:	Schillizzi v. Argentina, Case 11.732, Inter-Am. C.H.R., Report No. 83/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANTS: the Bar Association of the Federal Capital of Argentina, the Legal and Social Studies Center, and the Center for Justice and International Law
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I. SUMMARY

1. On February 20, 1997, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission", the "Commission" or "the IACHR") received a petition from the Bar Association of the Federal Capital of Argentina (Colegio Público de Abogados de la Capital Federal, hereinafter "Colegio Público"), the Legal and Social Studies Center (Centro de Estudios Legales y Sociales, CELS), and the Center for Justice and International Law, CEJIL (hereinafter "the petitioners"), against the Argentine Republic (hereinafter "the State" or "Argentina"), for the alleged violation of the rights to: humane treatment (Article 5), personal liberty (Article 7), judicial guarantee (Article 8), equality before the law (Article 24), and judicial protection (Article 25), established in the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"), to the detriment of Mr. Horacio Anibal Schillizzi Moreno.

2. The principal allegations submitted in the petition note that, upon a motion for recusation, on August 17, 1995, the judges of Chamber "F" of the National Court of Appeals in Civil Matters for the Federal Capital (hereinafter the "Court") sentenced Mr. Schillizzi to three days of detention for "maneuvers aimed at obstructing justice." The petitioners allege that the detention order was carried out without respect for judicial guarantee, arguing the court was not impartial, no grounds were given for the decision, the court did not allow the right of defense, and there was no judicial review of the sentence. The petitioners also argue that the detention was arbitrary and illegal, violating the right to personal liberty, and that the judicial authorities' rejection of the

request that the disciplinary measure be served under house arrest violated the right to humane treatment, and the right to equality before the law.

3. For its part, the State noted that the sanction imposed on Mr. Schillizzi was a punishment for the abusive exercise of the right of recusation and that, pursuant to legislation in force, the civil courts were competent to impose said sanction. The State alleges that Act 1285/58 provides that collegial courts and judges may punish lawyers obstructing justice to detention for up to 5 days. In addition, the State adds that Mr. Schillizzi Moreno did not effectively challenge the disciplinary measure imposed on him through the available domestic remedies.

4. In its Admissibility Report N° 22/00, the Commission decided that the petitioner's allegations of alleged violations of Articles 1, 7, 8, and 25 of the American Convention were admissible, as they met the requirements set forth in Articles 47(b) of the Convention as well as in Articles 31 and 41(b) of the Regulation of the Commission, as they describe incidents that could tend to establish a violation of rights protected by the Convention. In addition, the Commission decided to declare inadmissible the petitioner's allegations of violations to the rights set forth in Articles 5 and 24 of the Convention, as they do not characterize violations of the Convention, pursuant to the provisions of Article 47(b) of the Convention. In addition, the Commission decided to postpone a decision on compliance with the requirement set forth in Article 46(1)(a) of the Convention until there is a ruling on the alleged violations of Articles 8 and 25 of the Convention in the examination of the merits of the case.[FN2]

[FN2] IACHR, Report No. 22/00, Case 11.732. Horacio Aníbal Schillizzi Moreno. Argentina, March 7, 2000, paragraphs 3 and 40.

5. As regards the admitted claims, the petitioners argue that the State is responsible for imposing on Mr. Schillizzi an arbitrary punishment of deprivation of liberty, and for having ordered the sanction without affording him the guarantee of due process. The State maintains that its courts acted in keeping with the requirements of national and international law since the disciplinary measure imposed on Mr. Schillizzi was based on legislation in force and he had full access to the remedies of domestic jurisdiction.

6. In this Report, the Commission concludes the State is responsible for having violated Mr. Schillizzi's rights to protection and judicial guarantee under Articles 8 and 25 of the Convention and relating to Article 1(1) of this Convention. Finally, the IACHR establishes that there are not sufficient grounds within the submissions of the parties to find violations to the right to personal liberty under Article 7 of the American Convention.

II. PROCEEDINGS BEFORE THE COMMISSION AFTER THE ADMISSIBILITY REPORT

7. The Commission adopted its Admissibility Report N° 22/00 dated March 7, 2000. The report was forwarded to the parties via communication on March 8, 2000. In the fifth decision of the admissibility report, the Commission decided to make itself available to the parties for the

purpose of reaching a friendly settlement and to invite the parties to state their position with respect to such a possibility.

8. By note SG 320 of July 27, 2001, the State submitted its observations referring to Report N° 22/00, which was forwarded to the petitioners via communication on September 10, 2001, granting them two months to send their response.

9. In a communication dated October 23, 2001, the petitioners forwarded additional information relating to the case, including Mr. Schillizzi Moreno's refusal to receive any kind of monetary reparation "in order to facilitate a friendly settlement process." In this respect, the petitioners reported to the Commission that a meeting took place with the State to initiate a friendly settlement process. Said communication was forwarded to the State on November 16 of the same year. On the same date, the Commission granted the petitioners a one-month extension to present their observations on the merits of the case, which were received on December 17, 2001.

10. In a communication dated October 16, 2002, the Commission forwarded the observations submitted by the petitioners to the State. Via note SG 495 dated December 2, 2002, the State forwarded additional observations regarding the case to the Commission. Said information was forwarded to the petitioners via communication on February 24, 2003, and in turn they sent observations on May 9, 2003. It should be noted that, although the petitioners reported a meeting with the State, the State never sent information to the Commission indicating its disposition to begin a dialogue to search for a friendly settlement on the matter.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

11. Since their initial submissions, the petitioners have referred to the arbitrary nature of the decision by Chamber "F" of the National Court of Appeals in Civil Matters for the Federal Capital in the proceedings "Banco Credit Lyonnais Argentina S.A. v. La Escisión S.A. re: Recusation with cause" of August 17, 1995, in which the Court refused to admit the recusation pursued by Mr. Schillizzi –who, in his role as attorney, had defended one of the parties to the trial- declared it to be malicious, and sentenced him to three days of detention for "maneuvers aimed at obstructing justice."

12. The petitioners allege that the Court imposed the disciplinary measure on Mr. Schillizzi without respect for the guarantee of due process, and that when a measure imposed administratively is comparable in its gravity to a criminal sentence, the presumption of innocence and all other guarantees provided for criminal proceedings must be respected.[FN3] The petitioners allege that if there existed criminal conduct meriting a prison sentence, Mr. Schillizzi should have been referred to the competent authorities to pursue a criminal proceeding, following the due process guarantees to determine whether or not a punishment was necessary.

[FN3] The petitioners make reference to IACHR 1984-1985 Annual Report, Resolutions No. 10/85 and 11/85 of March 5, 1984, pages 34 and 37, respectively.

13. With respect to the arguments of the State, the petitioners note that the differentiation between crime and breach in no way contributes to determine the obligation of the State to respect the right of the accused to a hearing with due guarantees and within a reasonable time, by a competent, independent, and impartial judge or tribunal. The petitioners allege that, whether a crime or breach, the Civil Law Court should have made the corresponding complaint before the penal sphere or before the correctional justice system in order to ensure Mr. Schillizzi's right to due process, allowing him to defend himself and present evidence.

14. In the same regard, petitioners add that it is the content of the disciplinary measure, rather than its denomination, that imposes respect for guarantees. Additionally, for the purposes of Article 8 of the American Convention, the use of the term crime including breach must be understood to be validating the possibility of the State –under the pretext of applying administrative law and not criminal law- to deprive the liberty of an individual without the guarantees stipulated by the Convention. However, the petitioners add that it approaches the absurd to establish a principle stipulating that it is preferable to commit crimes rather than breaches in order to be protected by procedural guarantees.

15. Additionally, the petitioners allege that the Court did not duly substantiate its decision to punish Mr. Schillizzi for exercising the right of recusation and violated his right to defense when it took the view that the exercise of this right obstructed the civil proceedings in which he was defending one of the parties. The petitioners add that the judges lacked impartiality, as they were bothered, affected, or offended by the recusations presented by Mr. Schillizzi against three Chambers of the Court, and, consequently, had a personal interest in imposing the disciplinary measure.

16. The petitioners indicate that, even as such, they do not come before the Commission to debate the reasons and grounds the Court would have had to consider Mr. Schillizzi Moreno's procedural conduct abusive, rather "the authority of the courts is questioned insofar as imposing detention orders without respecting the guarantees of due process, including that of an impartial judge and defense in trial, and the guarantees of the exercise of the profession and disciplinary powers of the judges in the framework of those principles." [FN4]

[FN4] Observations presented by the petitioners by communication dated December 17, 2001.

17. The petitioners allege that the detention order is arbitrary, since a law was applied that is incompatible with respect for the right to liberty and that, in its place, the disciplinary provisions under Act 23.187 regarding the powers of Bar Association should have been applied. The petitioners also clarify that the arrest order of Mr. Schillizzi, which the court issued to the Chief of the Federal Police of Argentina, never would have been implemented due to the many challenges submitted by Mr. Schillizzi and the same Colegio Público de Abogados.

18. The petitioners allege that Chamber “F” of the National Court of Appeals in Civil Matters, using its discretion and without substantiation, described Mr. Schillizzi Moreno’s conduct by declaring him guilty of having obstructed justice. Additionally, the same Chamber established the detention order. In so doing, the petitioners argue the Court did not act with due impartiality. The petitioners argue that “courts can not be understood as impartial when they deem to be harmed by the conduct of the attorney, charge him with an offence, and without substantiation establish a disciplinary measure.”[FN5]

[FN5] Observations presented by the petitioners by communication dated December 17, 2001.

19. In their communications, the petitioners reiterated that many judicial proceedings were filed, against both the detention order and the judicial denial of the intervention by the Colegio Público. Additionally, the petitioners allege that the State has said nothing regarding what would have been suitable, adequate and effective judicial avenues to remedy the violation of the human rights of Mr. Schillizzi. The petitioners argued that the special motion filed by the Colegio Público favoring and representing Mr. Schillizzi was the suitable and effective remedy and, with its denial, the domestic instances had been exhausted.

20. In this respect, the petitioners add that intervention of the Colegio Público was not carried out as an interested third party, but in representation of Mr. Schillizzi, in accordance with the express license conferred by Articles 20(c) and 21(j) of Law 23.187.[FN6] The petitioners add that intervention by the Colegio Público in the case of Schillizzi Moreno to defend the registered attorney and his professional exercise is just one among many submissions made in similar situations previously. Additionally, the petitioners refer to Conclusion No. 9 in the IACHR report on cases 9777 and 9718, on March 30, 1988, in which it was said:

Article 21.j reaffirms the public nature of the activities of the bar association by indicating that it will see that the professional exercise is not violated in any area, "being invested for this purpose with procedural legitimacy to exercise public action," which would also appear to give that agency an inspection role in the framework of its competence before the National Courts, a status that certainly does not pertain to most associations or professional groups that can exist under the guarantee of Articles 14 and 14 bis of the Argentine constitution.

[FN6] Article 20°- Bar Association of the Federal Capital of Argentina will have the following general objectives: c) Defend the members of the Bar Association of the Federal Capital to ensure them the free exercise of the profession, in compliance with the law, ensure professional dignity and the right of attorneys, and reinforce the harmony among the same.

Article 21°- In order to achieve its objectives, it will adjust its functioning to the following functions, obligations, and powers: j) it will see that the professional exercise is not violated in any area, being invested for this purpose with procedural legitimacy to exercise public action [...].

21. In summary, the petitioners indicate that the detention order would have been imposed without respecting judicial guarantees; the Court would have been partial, it would not have given grounds for the decision, it would not have allowed the right to defense, and later there would not have been any judicial review of the sentence. Therefore, the petitioners consider the measure to be arbitrary, illegal, and in violation of the right to personal liberty.

22. Therefore, in their arguments at the merits stage, the petitioners argue that the reported facts are violations to Articles 7 (right to personal liberty), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention, to the detriment of Mr. Horacio Aníbal Schillizzi Moreno.

B. Position of the State

23. In its various communications, the State alleges that in the course of executing a mortgage that normally would have taken six months, Mr. Schillizzi submitted several recusations against different Chambers of the Court so the execution took three years. The State notes that the last recusation was presented against Chamber "A" and the case was removed to Chamber "F", which also rejected the recusation and ordered a three-day detention. The State alleges that the disciplinary measure was imposed, not to punish the exercise of the right of recusation, but the abuse of that right by Mr. Schillizzi in order to postpone the payment of a debt.

24. The State alleges that the measure was imposed based on a law in force –Act 1285/58 “Organization of the Justice System”–, and, although one may take issue with the type of measure imposed, this does not mean it should be considered a violation of human rights.

25. In its observations on the merits, the State submitted a comparative analysis on the criminal conduct and breaches. In this respect, in its communication dated July 27, 2001, the State indicated different doctrinal theories and concluded the disciplinary measure imposed on attorney Schillizzi Moreno did not allow the application of the rules of criminal law, as this did not concern a crime, rather a breach. Furthermore, the members of the Chamber were not obliged to forward the proceedings to the criminal judge for purposes of investigating the possible commission of crimes by Mr. Schillizzi.

26. The State adds that the direct consequence of attorney Schillizzi’s actions was the undue delay of the process of judicial execution, which is not classified in Argentine criminal code or in special laws, therefore the imposed arrest represented a disciplinary measure unrelated to criminal law and closely related to the so-called breaches. As a result, the State argues that at the time of the events the civil courts were authorized to apply said measure. The State stresses that Mr. Schillizzi was reproached not for the use of the right to recuse, rather for its abuse.

27. In this respect, the State noted that Article 1071 of the Civil Code indicates that “[t]he regular exercise of an individual right or the fulfillment of a legal obligation cannot constitute an unlawful act. The law does not protect abuse of rights. Any act that runs counter to the purposes which the law envisaged when recognizing the said rights or exceeds the limits imposed by good

faith, morality and decency shall be deemed abusive.” In this sense, the State argues that on several occasions Mr. Schillizzi utilized the mechanism of recusation, with no basis on any of the grounds established by the National Code of Civil and Commercial Procedure, confirming that what occurred constituted an abuse of the right, and fully justified the measure imposed.

28. The State indicates that Article 18 of Act 1285/58 regarding the organization of the courts, ratified by Law 14.467 and amended by Law 24.289, provides that collegial courts and judges may punish lawyers, prosecutors, and other persons obstructing the course of justice with prevention, warning, fine, and arrest of up to five days.

29. On the other hand, the State indicates that since Law 24.289 was sanctioned in 1993 and Law 23.187 in 1985, there is no doubt that in this case that the latter law repeals the former. In this regard, the State argues that none of the laws are of a general character, as the first specifically regulates the powers of the Magistrates as to their ability to punish, and second regulates the exercise of the legal profession.

30. The State indicates that, despite the foregoing, the same regulations for the Disciplinary Tribunal of the Bar Association, in its Article 15, indicate that “...when for the same acts a criminal case is processed or has been processed, the pronouncement by the Disciplinary Tribunal will be independent of that case, as in the cases in which the judges would have imposed punishments in the exercise of their own powers within the proceedings concerned...” In this respect, the State alleges that said provision leaves intact the power of the judges to impose disciplinary measures on lawyers in litigation.

31. With respect to the measure imposed, the State claims that the alleged victim filed the motion for reversal in front of the same Chamber that ordered his arrest, which also denied the remedy. The State notes that Mr. Schillizzi validated the imposed measure, as not only did he file the reversal before the same Chamber, instead of petitioning it before the totality of the Chambers, but he also neglected to file the special motion, the rejection of which would have allowed the Supreme Court of Justice to familiarize itself with the matter by way of the appeal for review of facts. Mr. Schillizzi limited himself to presenting an argument of unconstitutionality of the imposed measure, which was denied by the Supreme Court of Justice.

32. The State adds that arguing that the special motion may be rejected discretionally and with no grounds is no excuse for not exhausting the remedies of domestic jurisdiction, since the effectiveness of the judicial remedies may never be measured based on their results.

33. On the other hand, the State alleges that Mr. Schillizzi consented to the disciplinary measure imposed by Chamber “F”, provided that, in the submission of the motion for reversal, he clearly requested, in the case that he was denied, to be authorized to serve the detention in his home. Nevertheless, the State stresses that the Chamber in question never demanded the enforcement of the disciplinary measure, nor did it issue an arrest warrant.

34. As to the intervention of the Colegio Público, the State notes that it is a legal entity of public law and, as such, has the duty to defend the professional interests of its members. The State adds “it is evident that the participation of the Colegio Público in this kind of situation does

not find its justification in the personal defense of the person on whom the disciplinary measure is imposed, rather in the defense of the Bar as a profession.” The State also adds that it is evident that the “motivating interest” of the Colegio Público is to repeal the rule that grants judges the power to punish lawyers. The State adds that the fact that the Colegio Público has used the jurisdictional mechanisms at its reach does not modify, nor could it modify, the firmness it gave to the alleged victim of the disciplinary measure. In this regard, they note that the argument of the special motion, and that of the complaint concerning the rejection of the special motion, was carried out by the Colegio Público against the rejection made by the Chamber authorized in the case. It did not refer to the merits of the question raised, rather to the legitimacy of the Colegio Público to intervene as a party.

35. The State affirms that the detention order prescribed three days after the measure had, at this point, become final. Taking into consideration that the alleged victim never complied with the ordered arrest, the violation to the right to personal liberty does not exist. In addition, the detention order would not have been arbitrary, as it was based on laws in force.

36. In its last communication, the State noted that, if there had existed an apparent ambiguity in the regulation, it was clarified by the Constitution of the Autonomous City of Buenos Aires,[FN7].the 18^a transitory clause of which indicates that “[t]he control of membership and the exercise of the disciplinary power of the liberal professions will continue being exercised by the Associations and Councils created by national law until the City legislates on the matter.” The State ensures that, as regards the hierarchy of the regulatory text, the Head of the Disciplinary Tribunal of the Colegio Público retains exclusive disciplinary power over the registered attorneys.

[FN7] On August 12, 1994, the Argentine national constitution was reformed. The text included Article 129, which established a regime of autonomous government for the City of Buenos Aires. On October 1, 1996, the Constitution of the Autonomous City of Buenos Aires was sanctioned.

37. In summary, the State notes that it has complied with its internationally-contracted obligations, making available for the accused motions before competent judges or courts, as well as the suitable jurisdictional mechanisms to ensure respect of judicial guarantee. Nonetheless, the State is not responsible for how the accused chose to use the mechanisms available to them, nor is it obliged to guarantee that a petitioner achieves his objective. The State ensures that Mr. Schillizzi did not effectively challenge the imposed disciplinary measure and that the Colegio Público submitted in its own right, and not on behalf of or in representation of member Schillizzi Moreno.

38. In light of the above, the State notes that it has demonstrated the inexistence of the alleged violations to the guarantees recognized in the Convention, alleged by Mr. Horacio Aníbal Schillizzi Moreno. Consequently, it requests that the Commission so declare.

IV. MERITS

A. Initial considerations of the acts

39. The arguments and the documentation submitted before the Inter-American Commission indicate that Mr. Schillizzi Moreno legally represented one of the parties in a mortgage process before the National Court of Appeals in Civil Matters for the Federal Capital. During these proceedings, attorney Schillizzi submitted several recusations against different Chambers of the Court. In this respect, the present petitioner recused the judge of the first instance and his recusation was denied by Chamber "C". Then, he recused Chamber "C," and the motion was removed to Chamber "A," where it was also denied. Later, he filed an appeal against Chamber "A", which forwarded the case to Chamber "F", which on August 17, 1995, denied the recusation and ordered attorney Schillizzi to a three-day detention.[FN8]

[FN8] Copy of the judgment was sent as an appendix to the petition received on February 20, 1997, as well as by brief by the State SG 368 on October 1, 1999.

40. The Chamber imposed the disciplinary measure by virtue of the authority conferred by the Procedural Code and based on Article 18 of Act 1285/58 "Organization of the Justice System," which grants authority to the judges to punish employees and functionaries of the judicial power. As regards the information seen by the Commission, it is noted that said Act was issued during the last de facto government, repealed and later ratified by Law 14.467, which also granted it authority to punish attorneys. Later, in April 1993, the Act was amended by Law 24.289.

41. On August 17, 1995, Chamber "F" of the Court issued Mr. Schillizzi the detention order in accordance with the power to punish set forth in Article 18 of the said Act 1285/58.[FN9] The regulatory provision in question establishes that:

Art. 18 –Pursuant to Law 24.289-[FN10] The collegial courts and judges may punish with prevention, warning, fine, and arrest of up to five (5) days for attorneys, prosecutors, and other persons obstructing the course of justice or committing breaches in the hearings, briefs, or communications of any nature, against their authority, dignity, or decorum. The fine shall be determined by a percentage of the remuneration, up to a maximum of 33% of said compensation, that may be effectively perceived by the judge of first instance. The prison sentence will be served in a facility attached to the tribunal or court or in the home of the person punished.

[FN9] <http://infoleg.mecon.gov.ar/infolegInternet/anexos/35000-39999/37915/texact.htm>.

[FN10] <http://infoleg.mecon.gov.ar/infolegInternet/verNorma.do?id=686>.

42. In turn, Article 19 of said regulatory body notes that

Art. 19 – Pursuant to Law 24.050-[FN11] The disciplinary measures applied by the Supreme Court of Justice, by the National Chamber of Criminal Cassation, by the appellate courts, and by the oral courts, will only be susceptible to motions of reconsideration.

The measures applied by other national judges may be appealed before the respective appellate courts. The motions should be deduced within three days.

[FN11] <http://infoleg.mecon.gov.ar/infolegInternet/anexos/0-4999/449/norma.htm>.

43. On August 31, 1995, in compliance with Article 19, it appears that Mr. Schillizzi Moreno filed a motion for reversal or reconsideration before the same Chamber “F” which had ordered the disciplinary measure.[FN12] In said motion, he alleged that the measure ordered against him had been arbitrary and he requested its reversal. Among the allegations submitted, Mr. Schillizzi noted the existence of a Disciplinary Tribunal that regulated the rules of the professional exercise within the Colegio Público and, therefore, the lack of jurisdiction of the judges to file disciplinary measures. In this regard, he charged that the rule on which the measure was based was inapplicable. Additionally, he alleged that the detention order would be nothing more than a deprivation of personal liberty and that, prior to the issuance of the order, he had not had a hearing, denying his right to due process. Likewise, he alleged that the disciplinary measure imposed was disproportionate to the activities the judges had considered “obstructing the course of justice.” As a subsidiary to the same submission, Mr. Schillizzi requested the Court allow him to comply with the detention order at his home. His motion for reversal was denied by judgment on September 21, 1995, which indicated “the grounds invoked by Dr. Horacio Aníbal Schillizzi Moreno in the submission are insufficient –despite the demonstrated effort- to move the grounds of the Court to enforce the three-day detention.”[FN13]

[FN12] Document sent as an appendix to the petition.

[FN13] Copy of said judgment was sent as an appendix to the petition.

44. Additionally, the Commission notes that on August 30, 1995,[FN14] the Colegio Público submitted a brief to the Court requesting that it take part in the proceedings, based on the authority established in the previously mentioned Article 20(c) of Law 23.187. In this regard, it requested the Court revoke the imposed measure on Mr. Horacio Aníbal Schillizzi Moreno due to its arbitrary nature, and because the capacity to impose disciplinary measures upon registered attorneys lie with the Colegio Público and not with the jurisdictional authorities. On September 21, 1995, the Court determined that Law 23.187 did not confer upon the Colegio Público the legal representation of the registered attorneys, and therefore it did not grant their request.
[FN15]

[FN14] Document sent as an appendix to the petition.

[FN15] Copy of said judgment was sent as an appendix to the petition.

45. On October 5, 1995, the representatives of the Colegio Público filed a special motion before the Court against a judgment denying the Colegio Público from participating in the proceedings and requested that it be admitted as a legitimate party. This motion also requested that they be granted permission to determine the matter of merits; in this case relating to the disciplinary measure ordered against Mr. Schillizzi.[FN16] On March 12, the Court ruled on the appeal, indicating that the challenged decision had been duly grounded in law. Additionally, it indicated that “as the imposed disciplinary measure has become final ...Dr. Horacio Aníbal Schillizzi Moreno shall be informed that within 10 days he must present himself at the Alcaldía of the Palace of Justice for the purposes of the detention ordered in the proceedings. Let notice be given.” In opposition to this judgment, on October 23, 1995, the Colegio Público filed a complaint appeal before the Supreme Court of Justice challenging the denial of the special motion. On August 20, 1996, said appeal was also dismissed, as it was deemed that, among other factors, the appeal did not comply “even minimally” with the requirements of autonomous grounds. Additionally, the court found that the appeal did not challenge the Court’s jurisprudence cited by the judge regarding the Colegio de Abogados lacking the legal representation of its registered attorneys.[FN17]

[FN16] Document sent as an appendix of the petition.

[FN17] The referred submissions and judgments were sent by the petitioners as an appendix to the petition.

46. By way of submissions to the court on October 20 and November 1, 1995, Mr. Schillizzi requested to be allowed to comply with the imposed detention in the form of house arrest. These requests were denied on November 6, 1995.

47. On November 13, 1995, it appears that Mr. Schillizzi presented a brief before the Supreme Court of Justice, on the one hand arguing the unconstitutionality of Act 1285/58, as it contained a rule that allows depriving a person of his liberty, without due process. As a result, he noted that said Act is contrary to Article 19 of the National Constitution, which establishes “...defense of the person and his rights before the courts is inviolable...” Additionally, it indicated that the act would violate Articles 7 and 8 of the American Convention, which had constitutional status in Argentina. On the other hand, the attorney Schillizzi Moreno charged that he had been treated unequally before the law for having been denied the possibility of complying with the detention order at his home, which in his opinion would also constitute a constitutional violation. In this respect, Mr. Schillizzi, in the same submission, requested that the Supreme Court impose a fine on the Court for the delay in ruling on his submissions concerning house arrest on October 20 and November 1, 1995. On the same November 13, 1995, the Colegio Público submitted a brief before the Supreme Court, adhering to the submission, allegations, and petitions of Mr. Schillizzi.[FN18]

[FN18] Documents presented as an appendix to the petition.

48. With respect to the information and documents sent by the petitioner and the State, the Commission observes that, on May 7, 1996, the Supreme Court ruled only with regard to the delay of the Court on the requests for house arrest submitted by Mr. Schillizzi, to which the Supreme Court responded that “as inferred from what was reported by that organ, it has issued the pronouncement required prior to the submission under examination.” In this respect, it is noted that the Supreme Court said nothing concerning the claims of unconstitutionality put forth by Mr. Schillizzi.

B. Right to judicial guarantees and protection under Articles 25 and 8 of the American Convention, in conjunction with the duty of respecting and ensuring rights protected under Article 1(1) of the American Convention.

49. In Admissibility Report No. 22/00, the Commission carried out a preliminary analysis of Article 46(1)(a) of the American Convention, which establishes the requirement of exhausting the domestic remedies pursuant to generally accepted principles of international law. In said report, however, it was recorded that the Commission had decided to defer the decision on the fulfillment of said requirement until a ruling is made on the alleged violations to Articles 8 and 25 of the Convention and on the merits of the case.[FN19] Consequently, it will be analyzed throughout this section.

[FN19] IACHR, Report No. 22/00, Case 11.732. Horacio Aníbal Schillizzi Moreno. Argentine, March 7, 2000, paragraphs 3 and 40.

50. Article 25(1) of the American Convention establishes that: “[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties...” Article 25(1) incorporates the principle of effectiveness of the instruments or procedural means. It is not sufficient that the legal system of a State formally recognize the protection in question; rather the State must develop possibilities for an effective protection and that this is based on the laws of due process.

51. Article 8(1) establishes:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

52. As explained by the Court, Articles 25, 8, and 1(1), reinforce themselves mutually:

Article 25 in relation to Article 1.1 of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to a simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered... Article 25 “is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention. That article is closely linked to Article 8(1) of the American Convention, which provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal or judge for the determination of his rights, whatever the nature.”[FN20]

[FN20] I/A Court H.R., Case Loayza Tamayo, Reparations, Judgment of November 27, 1998, paragraph 169 (citations omitted). See also Cases Velásquez Rodríguez, Fairén Garbi and Solís Corrales, and Godínez Cruz. Preliminary Objections, paragraphs 91, 90, and 93, respectively.

53. The guiding provision of the guarantee set forth in Article 8(1) of the Convention stresses the applicability of any proceeding affecting the rights and obligations of persons. In this sense, the Court has emphasized the scope of Article 8 of the Convention:

Although Article 8 of the American Convention is entitled “Right to a Fair Trial,” its application is not limited to judicial remedies in a strict sense, “but [to] all the requirements that must be observed in the procedural stages,” in order for all persons to be able to defend their rights adequately vis-à-vis any type of State action that could affect them. That is to say that the due process of law must be respected in any act or omission on the part of the State bodies in a proceeding, whether of a punitive administrative, or of a judicial nature.

The Court makes the observation that the range of minimum guarantees established in section 2 of Article 8 of the Convention is applied to the realms to which reference is made in section 1 of the same Article, that is, “the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.” This reveals the broad scope of the due process; the individual has the right to the due process as construed under the terms of Articles 8(1) and 8(2) in both, penal matters, as in all of these other domains...[FN21]

[FN21] I/A Court H.R., Case Baena Ricardo, et al. Judgment of February 2, 2001. Series C No. 72, paragraphs 124 y 125.

54. Therefore, the Court emphasized that:

The right to obtain all the guarantees through which it may be possible to arrive at fair decisions is a human right... The minimum guarantees must be observed in the administrative process and in any other procedure whose decisions may affect the rights of persons.[FN22]

[FN22] I/A Court H.R., Case Baena Ricardo, et al. Judgment of February 2, 2001. Series C No. 72, paragraphs 124 y 125.

55. In this case, it is noted that the State alleged that the disciplinary measure imposed on attorney Schillizzi Moreno did not qualify the application of the provisions of criminal law, given that this did not concern a crime, rather a breach. Independent of the nature of the measure, as established by the Inter-American Commission and Court, the State was obligated to provide Mr. Schillizzi with his guaranteed due process,[FN23] especially when concerning a measure involving the deprivation of liberty.

[FN23] It should also be noted that in the case A.D. vs. Turkey the European Court of Human Rights deemed that the deprivation of liberty of a persons must always result from a judicial decision imposed by a competent court, which has the required authority to try the matter, sufficient independence from the executive power, and suitable judicial guarantees. As indicted, Article 5 of the European Convention (personal liberty) is applied to everyone “sentenced” a deprivation of liberty, even if domestic law qualifies it as criminal or disciplinary. See European Court of Human Rights, A.D. vs. Turkey, December 22, 2005, paragraph 21.

56. The Commission considered that whether Mr. Schillizzi should or should not have been punished does not need to be debated. However, it notes that the Court imposed the disciplinary measure without having listened to Mr. Schillizzi and without allowing him to present any evidence and defend himself; that is, without any procedures whatsoever.

57. In this respect, the Inter-American Court has indicated that:

Respect for human rights constitutes a limit to a State’s activity, and this is true for any organ or official in a situation of power, due to its official nature, with regard to other persons. Consequently, any form of exercising public power that violates the rights recognized in the Convention is unlawful. This is even more important when the State exercises its power to punish, because this not only presumes that the authorities act with total respect for the legal system, but it also involves granting the minimum guarantees of due process to all persons who are subject to its jurisdiction, as established in the Convention.[FN24]

[FN24] I/A Court H.R., Case of the Constitutional Tribunal. Judgment of January 31, 2001. Series C No. 71, paragraph 68.

58. It should be stressed that the Inter-American System of Human Rights has established that States have the obligation of designing and establishing effective normative remedies for the full protection of human rights, as well as of ensuring the due application of said remedies by its judicial authorities. The Court has stressed on many occasions that “remedies must be substantiated in accordance with the rules of due process of law.”[FN25] The corresponding

duties of the State are not complied with by the formal existence of legal mechanisms, rather by their effectiveness in the practice. This is why the protection offered by the State must be: "truly effective in establishing whether there has been a violation of human rights and in providing redress." [FN26]

[FN25] I/A Court H.R., Cases Velásquez Rodríguez, Fairén Garbi and Solís Corrales, and Godínez Cruz, Preliminary objections. Judgment of June 26, 1987, paragraphs 90, 90, and 92, respectively.

[FN26] I/A Court H.R., Advisory Opinion OC-9/87 of October 6, 1987, Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and (8) of the American Convention on Human Rights, Series A No. 9.

59. In this case, it appears that in challenging the judgment of Chamber "F" imposing the three-day detention order, Mr. Schillizzi Moreno filed –before the same Chamber- the motion for reversal or reconsideration contemplated in Act 1285/58, qualifying the deprivation of liberty issued against him as arbitrary and alleging the lack of a due process of law. Consequently, he requested the reversal of the ruling issued on August 17, 1995.

60. In this respect, Article 19 of Act 1285/58, amended by Law 24.289 of April 1993, stipulates that:

The disciplinary measures applied by the Supreme Court of Justice, by the National Chamber of Criminal Cassation, by the National Appellate Courts, and by the Criminal Courts, will only be susceptible to motions for reconsideration.

61. The Commission notes that although Mr. Schillizzi filed a motion for reconsideration, the only remedy that Act 1285/58 permitted him to file was in challenge to the disciplinary measures. Consequently, the Commission concludes that said motion for reversal or reconsideration was, prima facie, the suitable motion for Mr. Schillizzi to exhaust. However, the Commission observes that Mr. Schillizzi, as well as the Colegio Público, filed additional special motions challenging the detention order. As a result, it can be established that the State was fully aware of the measure imposed and of the claim relating to the lack of proceedings for its imposition.

62. In this sense, Mr. Schillizzi filed an extraordinary motion before the Supreme Court of Justice challenging the constitutionality of Act 1285/58, upon which the disciplinary measure was imposed. On prior occasions, the Commission has noted previously that in some cases extraordinary measures, such, as this motion alleging unconstitutionality, may constitute adequate and effective remedies for human rights violations.[FN27] In this sense, it is worth highlighting that due to its special and discretionary nature, the Commission may not necessarily require exhaustion of remedies. Nonetheless, the Commission considers that in invoking this remedy, Mr. Schillizzi exhausted internal domestic remedies, in accordance with Article 46(1) of the American Convention.

[FN27] IACHR, Report N° 104/99, Case 11400, Eolo Margaroli and Josefina Ghiringhelli de Margaroli, Argentina. Decision of September 27, 1999. Paragraph 54.

63. Article 25 of the American Convention concerns the right to a “simple and prompt recourse” and Article 8 concerns the right to a hearing “with due guarantees and within a reasonable period of time”, concerning the determination of a right or responsibility. On November 13, 1995, Mr. Schillizzi submitted the special motion before the Supreme Court of Justice, alleging delay by the Court in issuing a pronouncement on his request for house arrest. Additionally, Mr. Schillizzi requested that the Court issue a pronouncement on the unconstitutionality of Act 1285/58, upon which the disciplinary measure was issued. He noted the partiality of the judges ordering his arrest and the disproportionate nature of the measure. The Commission observes that the Supreme Court issued its judgment on May 7, 1996, almost six months later, but neglected to refer to Mr. Schillizzi’s arguments of unconstitutionality and other indications. It only issued a pronouncement on the alleged delay of the Court. Therefore, with complete absence of an analysis of the merits, the Supreme Court established:

Rulings and Approvals; considering:

That the moving party invokes the “delay in rendering the judgment”, as established in Article 167 of the National Code of Civil and Commercial Procedure, with respect to the matter filed with Chamber 'F' of the National Court of Appeals in Civil Matters.

That, as inferred from what was reported by said body, it has issued the pronouncement required prior to the submission under examination.

Therefore, the submission is dismissed. Be it known and closed.

64. With respect to these motions, the Commission observes that Mr. Schillizzi did not receive a decision based on the constitutional protections he had invoked, which would have reflected an analysis relating to the merits of the issue. In summary, the procedure by which the court imposed a three-day detention upon Mr. Schillizzi Moreno did not allow him a hearing before the disciplinary measure was imposed on him, and it also did not allow subsequent judicial review, capable of reverting the punishment.

65. Lastly, the Commission notes that Article 18 of Decree 1285/58, “Organization of the National Justice System,” was issued during a de facto government and later modified in April 1993 granting the National judges faculties to punish –even with detention of up to 5 days – lawyers whom obstruct the course of justice or commit breaches against their authority, dignity or decorum. As of the date this report was prepared, the decree in question is still in force, applicable to the entire national territory, at the Federal level. It should be noted that even the Supreme Court has issued resolutions regarding the judges’ faculties -under this decree- to punish lawyers. [FN28]

[FN28] In resolutions “Del Sel, Percu Ramón, s/sucesión”, D.134.XXV, of May 4th, 1995 and in “Lagomarsino, Marcos Ricardo y otros s/arts 109 y 110 del Código Penal –causa N° 46.766”, L.1372.XXXVIII, of November 16th, 2004, the Supreme Court stated that “the disciplinary faculties recognized to the judges by Article 35 of the National Civil and Commercial Code and Article 18 of the Decree 1285/58 to maintain order and decorum during a judicial process, do not overlap or confuse with the attributions of similar nature granted to the Bar Association’s disciplinary tribunal by law 23.187, since the latter have the wider objective to ensure the proper practice of law in all spectrums of the profession.”. Likewise, in resolution “Conductil S.A.C.I.F.I.A. c/Music House Jujuy S.R.L.”, C.1796.XXXVII, of March 20th, 2007, the Supreme Court concluded that “the rule contained in Article 18 of Decree 1285/58 regulates the disciplinary powers of the jurisdictional practice granted to the judges to maintain order and decorum during judicial process, corresponding in the faculty to repress breaches caused by acts that affect their dignity and authority or obstruct the proceeding’s normal development. Its implementation translates the logical consequence of the judges’ legal faculties to direct and judge the cases before them, since the concession of that power has the implied duty to utilize the necessary measures to achieve their effectiveness”.

66. The Commission concludes that the State did not comply with its obligation to respect and ensure the right of Mr. Horacio Aníbal Schillizzi Moreno to the protection and judicial guarantees established in Articles 25 and 8 of the American Convention. The result of the deficiencies in the response given by the State concerning the appeals submitted by Mr. Schillizzi with respect to the alleged arbitrary, partial, and disproportionate nature of the disciplinary measure imposed, as well as the unconstitutionality of the provision under which the measure was ordered, demonstrate that the Argentine courts did not observe the due process of law or the right to an effective recourse.

67. Based upon the foregoing analysis, the Commission also concludes that the Argentine State has not complied with its obligation relating to Article 1(1) of the American Convention to “respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights,” given that it violated the rights established in Article 8 and 25 of this treaty.

68. The first obligation of any State Party to the American Convention is to respect the rights and freedoms protected by those persons subject to its jurisdiction. As indicated by the Inter-American Court, “under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law.”[FN29] Additionally, it has established that “in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State.”

[FN29] I/A Court H.R., Velásquez Rodríguez Case, paragraph 170, 166.

69. The second obligation set forth in Article 1(1) is to ensure the free and full exercise of the rights and freedoms recognized in the Convention. In this sense, the State parties have the obligation “to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention...”[FN30] The violation of a protected right also gives rise to the obligation of adopting the necessary measures of reparation.

[FN30] Ibid, paragraph 166.

70. Moreover, the Inter-American Court has determined that the obligation to investigate and punish any violation of rights recognized by the Convention is based on Article 1(1) of the Convention, as a means of guaranteeing these rights.[FN31]

[FN31] I/A Court H.R., Case of the “Street Children” (Villagrán-Morales et al.). Judgment of November 19, 1999. Series C No. 63, paragraph 225.

71. The acts submitted and analyzed in this case demonstrate that the provisions and practices applied to the situation of Mr. Schillizzi Moreno did not offer him the due guarantees.

D. Right to personal liberty under Article 7 of the American Convention

72. Article 7 of the American Convention establishes the right to personal liberty. Said article establishes that:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this

remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

73. The Inter-American Court has indicated that sections 2 and 3 of Article 7 establish limits to the public power, expressly prohibiting illegal and arbitrary detentions. In this respect, the Court has argued that

[a]ccording to the first of these regulatory provisions, no one shall be deprived of his physical liberty, except for reasons, cases or circumstances specifically established by law (material aspect), but, also, under strict conditions established beforehand by law (formal aspect). In the second provision, we have a condition according to which no one shall be subject to arrest or imprisonment for causes or methods that - although qualified as legal - may be considered incompatible with respect for the fundamental rights of the individual because they are, among other matters, unreasonable, unforeseeable or out of proportion.[FN32]

[FN32] I/A Court H.R., Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, paragraph 78; I/A Court H.R., Case of the Gómez-Paquiyaury Brothers. Judgment of July 8, 2004. Series C No. 110, paragraph 83.
I/A Court H.R., Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, paragraph 78.

74. Along the same lines, the Commission has established that the analysis of a deprivation of liberty in sections 2 and 3 of Article 7 of the American Convention should be done in three phases.

The first consists of determining the legality of the detention from a material and formal standpoint. To do so, it must be determined whether this action is compatible with the domestic legislation of the State in question. The second step involves the analysis of these domestic provisions within the context of the guarantees established by the American Convention, in order to determine whether they are arbitrary. Finally, if the detention meets the requirements of a domestic legal provision that is compatible with the American Convention, it should be determined whether the application of this law in this specific case was arbitrary.[FN33]

[FN33] IACHR, Report No. 53/01, Case 11.565. Ana, Beatriz and Celia González Pérez. Mexico, April 4, 2001, paragraph 23.

75. Petitioners allege that the punishment of deprivation of liberty imposed on attorney Horacio Aníbal Schillizzi Moreno is arbitrary since it was imposed applying a law incompatible with the respect for the right of the individual to personal liberty and security. Moreover, they indicate that the disciplinary measure was not provided in accordance to the conditions and/or procedures set forth by the Argentine national constitution, given that according to the very constitution, “the defense in trial of the persons and rights is inviolable.”[FN34]

[FN34] Article 18 of the Argentine Constitution.- No inhabitant of the Nation may be punished without previous trial based on a law enacted before the act that gives rise to the process, nor tried by special committees, nor removed from the judges appointed by law before the act for which he is tried. Nobody may be compelled to testify against himself, nor be arrested except by virtue of a written warrant issued by a competent authority. The defense by trial of persons and rights may not be violated. The domicile may not be violated, as well as the written correspondence and private papers; and a law shall determine in which cases and for what reasons their search and occupation shall be allowed. Death penalty for political causes, any kind of tortures and whipping, are forever abolished. The prisons of the Nation shall be healthy and clean, for the security and not for the punishment of the prisoners confined therein; and any measure taken with the pretext of precaution which may lead to mortify them beyond the demands of security, shall render liable the judge who authorizes it.

76. On the other hand, petitioners have alleged that, since the constitutional reform in 1994, several human rights treaties were invested with constitutional status and, as such, presently constitute the supreme law of the Argentine State. In this sense, the petitioners argue that the American Convention of Human Rights is above Act 1285/58, as it broadly protects the right to defense in trial and in general the due process of law, especially when the personal liberty of an individual is being considered. Therefore, they affirm the deprivation of liberty is abusive, unnecessary, and unreasonable, when foreseen as a consequence of having incurred in a disciplinary breach without having previously listened to the punished person.

77. In the same sense, they note that other less prejudicial means exist to maintain the discipline of attorneys during litigation before the courts and, citing the Inter-American Court of Human Rights, the petitioners have indicated that “if there are various options to achieve this objective, that which least restricts the right protected must be selected.”[FN35]

[FN35] 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.

78. For its part, the State has repeatedly indicated that the disciplinary measure of deprivation of liberty was not imposed on Mr. Schillizzi as a punishment to the exercise of the right of recusation, rather as a punishment for the abuse of said right. Additionally, the State affirms that the actions of its judges was in accordance with due process of law, imposing the punishment as expressly prescribed in Argentine legislation in force at the time of the events. Likewise, the State notes that the disciplinary measure was never put into effect; therefore it did not violate Mr. Schillizzi’s right to personal liberty..

79. The Commission notes that Chamber “F” of the Court ordered the measure of deprivation of liberty of Mr. Schillizzi, without granting him due protection and judicial guarantees as

established. However, the Commission also notes that said measure was never executed and that it is currently proscribed; therefore a physical deprivation of Mr. Schillizzi did not exist and there is no risk that his personal liberty will be violated by the Argentine State, with respect to the disciplinary measure issued on August 17, 1995, by Chamber “F” of the Court. Given the circumstances of the case, the Commission considers that, as regards the submissions by the parties and the material submitted in the case file, sufficient elements do not exist to prove violations to the right to personal liberty under Article 7 of the American Convention.

V. CONCLUSIONS

80. The Commission, based on the foregoing considerations of fact and of law, concludes that the State is responsible for having violated the rights of Mr. Horacio Aníbal Schillizzi Moreno under Articles 25 and 8 of the American Convention in conjunction with the terms of Article 1(1), when he was not granted access to effective protection and judicial guarantees with respect to the disciplinary measure imposed on him.

81. The Commission notes that via communication on October 23, 2001, the petitioner expressed he did not wish to receive monetary reparation for the human rights violations he suffered. In this sense, the Commission indicates that this report is, per se, a form of reparation.

82. Additionally, the Commission concludes that it lacks sufficient grounds from the submissions by the parties to deem violations to the right to personal liberty under Article 7 of the American Convention.

VI. RECOMMENDATIONS

83. Based upon the foregoing analysis and conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ADVISES THE ARGENTINE STATE:

1. To publicly acknowledge international responsibility for the human rights violations determined by the Commission in this report. In particular, to conduct a public ceremony, with the participation of senior Government authorities and Mr. Horacio Aníbal Schillizzi Moreno, to acknowledge the State’s international responsibility for the events in the instant case.

2. To adopt -as a measure to prevent repetition- the necessary actions to guarantee that in the future, the disciplinary measures are imposed, following due process.

84. The Commission agrees to forward this report based upon the foregoing analysis and conclusions, to the Argentine State and grants it two months to comply with the recommendations established herein. This period starts from the date of transmission of this report to the State. The Commission also agrees to notify the petitioners of the approval of a report regarding Article 50 of the Convention.

VII. PROCEEDINGS FOLLOWING REPORT No. 25/08

85. On March 14, 2008, during the 131st regular session, pursuant to article 50 of the American Convention, the IACHR approved Report No. 25/08, of which the Commission notified the State of Argentina on March 19, 2008, granting it two months to comply with the recommendations set in paragraph 83 of this report.

86. On March 19, 2008, the IACHR informed the petitioners that it had approved Report No. 25/08, and requested them to provide information within one month's time on their position regarding the submission of the case before the Court: the position of the victim and, if relevant, the grounds that in their opinion existed to submit the case to the Court. In addition, they were requested to provide, within the same time period, information regarding the victim's personal details, the authorization for them to represent the victim, any available evidence additional to that submitted during the processing of the case before the Commission, witnesses' and expert witnesses personal details to be eventually offered to the Court, and claims regarding reparations and costs. On April 3, 2008, the IACHR transmitted to the parties the relevant parts of Report 25/08 in a confidential document.

87. In an April 16, 2008 communication, the petitioners requested an extension from the IACHR to submit the information requested on March 19, 2008; an extension through May 30, 2008 was granted by the IACHR in an April 23, 2008 communication. The State requested an extension in a May 2, 2008 communication, and the IACHR granted it a 15 day extension on May 5, 2008.

88. On May 23, 2008, the IACHR received a new request for an extension from the State. At this time the State indicated that it understood that, should the requested extension be granted, the three month time period to submit the case to the Court, established by article 51(1) of the American Convention, would be suspended. The State also expressly waived its right to file preliminary objections regarding the deadline provided for by article 51(1) of the aforementioned instrument. In a May 30, 2008 communication, the petitioners communicated their wish to submit the case before the Inter-American Court of Human Rights and informed the Commission that it had not been possible for them to contact the victim to inquire with respect to his position in this regard.

89. The IACHR informed the State on June 18, 2008 that it had decided to grant it a three month extension to comply with the recommendations made by the Commission in its Report No. 25/08, and that during this extension the time period provided for by article 51(1) of the American Convention to bring Case 11.732 before the Court would be suspended. In the same communication, the IACHR requested the State to provide a preliminary report on progress made within a month and a half, and a final report on September 5, 2008. On August 28, 2008, the State requested a new extension, and reported to the Commission that the Supreme Court of Justice of the Nation had prepared a draft Acordada [administrative decision] for compliance with point 2 of the recommendations made by the Commission in Report 25/08. The State also expressly waived its right to file preliminary objections regarding the deadline provided for by article 51(1) of the aforementioned instrument. The requested three month extension was granted by the IACHR in a September 18, 2008 communication.

90. On December 18, 2008, the Argentine State submitted a report to the IACHR stating that on October 21, 2008, the Supreme Court of the Nation had adopted Administrative Decision [Acordada] No. 26/08. On December 18, 2008, bearing in mind the decision adopted, and that it appeared that it would not be possible to gather any further information from the victim with a view to submitting the case to the Court, the IACHR decided not to submit the case to the Court, but to continue following up on its recommendations, pursuant to article 51 of the American Convention.

91. On January 22, 2009, the State of Argentina sent a communication to the IACHR requesting information regarding the processing of case 11.732 after the Argentine State had submitted its report regarding compliance with the recommendations. In a February 2, 2009 communication, the IACHR forwarded the State's December 18, 2008 communication to the petitioners for their information.

92. On March 20, 2009, the IACHR adopted Report No. 29/09, pursuant to Article 51 of the American Convention. On April 7, 2009, the Inter-American Commission transmitted the report to the State and to the petitioners, as stipulated in Article 51.2 of the American Convention, and granted the State one month to report on compliance with the recommendations of the Commission. On May 11, 2009, the State asked for an extension to present its observations. The extension was granted to the State, giving it until May 20, 2009 to respond. It is to be noted that to the date of the adoption of the present report, the Commission has not received additional information regarding the State's compliance with the recommendations.

VIII. ANALYSIS REGARDING COMPLIANCE WITH THE RECOMMENDATIONS

A. Regarding public acknowledgement of international responsibility for the human rights violations established by the Commission in this report. In particular, to carry out a public ceremony of acknowledgement of international responsibility with respect to the facts of the instant case, with the participation of high authorities of the State and Mr. Horacio Aníbal Schillizzi Moreno.

93. At the time of the writing of this report, the State has not provided information regarding the carrying out of a public ceremony of acknowledgement of international responsibility regarding the specific facts of the instant case. The petitioners informed the Commission in a May 30, 2008 communication that, after the last meeting they had with Mr. Schillizzi in the year of 2006, they had lost contact with him and, after the transmittal of IACHR's Report No. 25/08, all attempts to reach him had been unsuccessful. Thus, the Commission concludes that the State has not complied with its recommendation to publicly acknowledge the violations established by the Commission, with prejudice to Mr. Schillizzi, in its report on the merits.

B. With respect to the adoption, as a measure for non-repetition, of the necessary measures to ensure that disciplinary sanctions are applied through proceedings carried out with due process

94. The IACHR notes that on October 21, 2008, the Supreme Court of Justice of the Nation adopted Administrative Measure [Acordada] No. 26/08 in which it ordered that in those cases

where the exercise of disciplinary authority is appropriate, existing mechanisms for the application of Law 1285/58 be adjusted according to the requirements of article 8(1) of the American Convention, which establishes guarantees related to due process. Administrative Decision [Acordada] No. 26/08 also charged the National Chamber of Criminal Cassation and the National and Federal Chambers of Appeals, based on their supervisory authority as delegated by the Supreme Court, with adopting the necessary regulatory provisions in accordance with respect for due process, guaranteed by the National Constitution and the international human rights norms that have constitutional rank (article 75(2) of the National Constitution). On these grounds, the IACHR concludes that the State of Argentina has partially complied with this recommendation.

IX. CONCLUSIONS AND NOTIFICATION

95. The Commission concludes that the State is responsible for the violation of the rights of Mr. Schillizi to a fair trial and to judicial protection provided for by articles 8 and 25 of the Convention, in connection with article 1(1) of same.

96. The Commission notes with satisfaction the progress made by the State in its compliance with the second recommendation of Report No. 25/08. However, it also notes that the recommendation has only partially been complied with, since at the time of the issuance of this report, the State of Argentina has not provided information regarding the issuance, by the National Chamber of Criminal Cassation and the National and Federal Chambers of Appeals, of the necessary regulatory provisions, in accordance with the rights to a fair trial and to judicial protection, provided for by articles 8 and 25 of the American Convention.

97. In view of the foregoing considerations the IACHR considers that the State of Argentina has not fully complied with the recommendations made by this Commission in Report No. 25/08, and reiterates its findings regarding the violations established in said report.

98. Based on the conclusions in fact and in law contained in this report, the Commission decides to reiterate to the State of Argentina its recommendations, contained in paragraph 83(1) and (2). The Commission also decides to publish this report and include it in its Annual Report to the OAS General Assembly. Pursuant to its mandate, the Inter-American Commission on Human Rights will continue to evaluate measures adopted by the State of Argentina until the recommendations have been fully implemented.

Done and signed in the city of Washington, D.C., on the 6th day of the month of August, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Paolo Carozza, members of the Commission.