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Session: Hundred Thirty-Seventh Regular Session (28 October – 13 November 2009)
Title/Style of Cause: Steven Edward Hendrix v. Guatemala
Doc. Type: Decision
Decided by: President: Luz Patricia Mejia Guerrero;
First Vice President: Victor Abramovich;
Second Vice President: Felipe Gonzalez;
Commissioners: Paulo Sergio Pinheiro, Paolo G. Carozza.
Dated: 29 October 2009
Citation: Edward Hendrix v. Guatemala, Petition 1184-04, Inter-Am. C.H.R., Report No. 101/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
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I. SUMMARY

1. On November 5, 2004, Steven Edward Hendrix, a United States citizen (hereinafter "the petitioner" and/or "the alleged victim"), lodged a petition on his own behalf with the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission" or "the IACHR") against the Republic of Guatemala (hereinafter "the State" or "the Guatemalan State") for having prevented him from exercising the profession of notary, even though he held the corresponding degree from a Guatemalan university, because he was not a Guatemalan citizen.

2. The petitioner claims that the Guatemalan State incurred international responsibility by violating the rights established in Articles 26 (progressive development of economic, social, and cultural rights) as they relate to Articles 6 and 7 of the Protocol of San Salvador and the right to work; 20 (right to a nationality), and 24 (equal protection of the law); all taken in conjunction with Articles 1.1 and 2 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). Regarding the grounds for admissibility, he states that he has exhausted the remedies available under domestic law.

3. The State asks the Commission not to admit the instant case on the ground that there was no intent on the part of the State to infringe the rights of Steven Edward Hendrix but only to safeguard the exercise of a government prerogative arising from the sovereignty of the State. In that regard, the State points out that it is willing to grant Mr. Hendrix full recognition as a notary if he will comply with the terms of the Court of Constitutionality and provide proof of acquisition of Guatemalan citizenship.

4. In this report, without prejudging the merits of the case, the Commission finds the petition admissible in accordance with Articles 46 and 47 of the American Convention. The Inter-American Commission therefore decides to notify the parties of the decision and to proceed with the analysis of the merits of the alleged violation of Article 24 of the American Convention, in keeping with the obligation to respect and ensure the rights and to adopt the national legislative measures stipulated in Articles 1.1 and 2 of said international instrument. The Commission also decides to declare inadmissible the claims of alleged infringement of the rights recognized in Articles 20 and 26 of the American Convention and, finally, to publish the instant decision and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. On November 5, 2004, the Commission received a petition dated October 26, 2004, filed by Steven Edward Hendrix on his own behalf, and it assigned the petition case number 1184-04. On April 13, 2005, the IACHR transmitted the relevant portions of said petition to the State, requesting it to submit its response within two months as provided in Article 30.3 of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter "the Rules of Procedure"). The State's response was received in the communication dated June 13, 2005.

6. In addition, the IACHR received information submitted by the petitioner on the following dates: August 23, 2005, February 21, 2006, May 23, 2006, June 20, 2006, October 11, 2006, February 16, 2007, April 25, 2007, September 20, 2007, January 30, 2008, and May 19, 2009. These communications were duly forwarded to the State as appropriate for its information and comment.

7. The IACHR also received comments from the State on the following dates: January 5, 2007, April 2, 2007, November 9, 2007, May 21, 2008, and July 2, 2009. These communications were duly forwarded to the petitioner.

III. positions of the parties

A. Petitioner

8. Steven Edward Hendrix states that he received the degree of Doctor of Laws of the University of Wisconsin, United States, in 1987, as well as the degrees of Doctor of Laws and Lawyer of the Universidad Mayor de San Andrés, Bolivia. He further states that on March 30, 1998, he was awarded the academic degree of Doctor of Judicial and Social Sciences of the Universidad de San Carlos de Guatemala (USAC). He states that he subsequently passed the two parts of the professional examination, on April 25 and August 3, 2000, respectively, and had previously taken the steps required to establish his good conduct and record, with favorable results. Consequently, the petitioner indicates that as is said in the official minute No. 36-2000, the governing board of the USAC School of Law, conferred on him the degrees of Lawyer and Notary at its September 18, 2000 meeting, making him a Doctor of Laws, Lawyer, and Notary of the Universidad de San Carlos de Guatemala as from that date.

9. The alleged victim claims that he has not been authorized to exercise the profession of public notary despite having fulfilled all of the legal requirements, except the condition that he give up his United States citizenship and become a Guatemalan citizen. He states that the Association of Lawyers and Notaries of Guatemala (Colegio de Abogados y Notarios de Guatemala, hereinafter "the CANG") rejected his application for admission as a notary and that its decision was subsequently confirmed by the governing board of said professional association and later by the Assembly of Presidents of the Professional Associations of Guatemala (Asamblea de Presidentes de los Colegios Profesionales de Guatemala).

10. He argues that the Commission has jurisdiction over an act of the CANG because, in consultative opinion OC-5, the Inter-American Court of Human Rights (hereinafter "the Inter-American Court") established a precedent of a violation of human rights arising from a ruling by a professional association. He maintains that the State delegates government powers to the professional associations to control, organize, and supervise the exercise of certain professions and that this is an instance of international responsibility for the acts of individuals, because the State has allowed a professional association to restrict rights by delegation.

11. With respect to national legislation, he states that the Constitution of Guatemala does not establish Guatemalan citizenship as a prerequisite for the exercise of the profession of notary; this requirement is established in Article 2 of the Code of the Notarial Profession of Guatemala.[FN1] The CANG's ruling, he says, reflects the application of Article 13 of the Judiciary Act, which establishes that specific provisions of law take precedence over general provisions, leading to the conclusion that the norm contained in the Code of the Notarial Profession should govern in this case and exclude the admission of a United States citizen as a notary.

[FN1] The petitioner adds that Article 175 of the Political Constitution "provides that no law may contradict the provisions of the Constitution" and that any law that violates or distorts the constitutional requirements is null and void ipso jure.

12. He further indicates that the CANG's ruling ignores Article 36(e) of the Judiciary Act, which provides that "any real right acquired under a law and in accordance therewith shall subsist where this law is superseded by another; but the provisions of the new law shall take precedence with respect to its exercise and duties, as well as to its extinction." Therefore, he says, the obligations acquired by Guatemala with the adoption of its new Constitution in 1986 take precedence over prior law contained in the Code of the Notarial Profession of 1946.

13. He maintains that the State may not require him to change his citizenship in order to exercise the profession for which he was educated, trained, and sworn in the country.

14. He also claims that the State is mistaken in its contention that because a public notary is a civil functionary, the profession should be reserved for Guatemalans, given that regional doctrine distinguishes between civil service (funciones públicas) and civil functionaries (funcionarios públicos). He points out that there are jurisdictions, such as Bolivia and Venezuela, where the

office of notary is a government job (with a government salary) and the government has the power to appoint notaries selectively; in such jurisdictions a citizenship requirement might be considered reasonable. In contrast, in systems such as those adopted in Puerto Rico and Guatemala, notaries are not public employees. They are not paid by the government, and citizens may choose among various notaries as service providers. In such circumstances, according to the alleged victim, imposing a citizenship requirement represents discrimination with no rational basis.[FN2]

[FN2] The petitioner cites several examples. In Germany, while all future lawyers must graduate from a national institution, noncitizen lawyers are allowed to practice. In Canada and Mexico there are also restrictions on noncitizens, but he states that they have been abandoned for reasons of human rights and the absence of a rational justification for maintaining them. The Mexican case is particularly interesting. Although current law maintains the Mexican citizenship requirement, he states that many noncitizens have had a legal career in Mexico for which they have had to bring an amparo action, because in practice there is a lengthy precedent of favorable outcomes in these actions. He adds that in the country of which he is a citizen, the United States, it is illegal to discriminate on the basis of citizenship in the specific case of notaries and that there are therefore Guatemalans who fully exercise their profession of notary in that country.

15. As regards the exhaustion of domestic remedies, he claims that he has exhausted the applicable remedies. Specifically, he states that, initially, he filed an application for admission to the CANG as a notary, which was rejected. Next, he lodged an appeal with the governing board of the CANG, which also produced negative results. He therefore appealed to the Assembly of Presidents of the Professional Associations of Guatemala, which issued a ruling reaffirming the decision adopted by the CANG. In view of this situation, the petitioner states that he filed an amparo action with the Third Division of the Court of Appeals, which confirmed the decision of the Assembly of Presidents of the Professional Associations of Guatemala.

16. He states that he then filed an amparo appeal of this decision with the Court of Constitutionality. On June 14, 2004, he received notice of the said court's final judgment, to the effect that the amparo action "had been allowed" but that nevertheless his immediate admission as a "notary" had not been ordered and that he was being required to apply for Guatemalan citizenship before he could be admitted. He indicates that this would force him to give up his current citizenship. He states that with this decision, all remedies have been exhausted, since the Court of Constitutionality is the highest court of Guatemala, and its decisions cannot be appealed.

17. The petitioner requests that the State of Guatemala be held responsible for infringement of the rights enshrined in Articles 26 (as they relate to Articles 6 and 7 of the Protocol of San Salvador); 20, and 24 of the American Convention; all in conjunction with Articles 1.1 and 2 of said international instrument. Regarding the alleged violation of Article 2 of the American Convention, he states that it is necessary to amend the provisions of the national code restricting the exercise of the notarial profession to Guatemalans and that they should be declared

inapplicable. Therefore, he requests that the State of Guatemala be ordered to authorize his qualification as a public notary, as well as the payment of appropriate compensation.

18. He contends that it is the duty of States to ensure the protection of this principle for all persons under their jurisdiction, regardless of nationality, race, or ethnicity. This is an essential concept because it is based on the premise that human rights protections derive from the attributes of the individual person and not from his or her citizenship in a particular State.

19. He states that this principle has also been firmly recognized in the American Declaration and the American Convention, as well as other international treaties, which guarantee the rights enshrined in them to all persons without discrimination as to sex, language, religion, national or social origin, or any other condition. He therefore maintains that human rights commitments require equal treatment and stand in the way of unreasonable protectionist restrictions, which means the CANG must accept eligible applicants as "notaries" even if they are not Guatemalan citizens.

20. He indicates that in the case of notaries in Guatemala, there is no legitimate distinction or reasonable justification for a citizenship requirement. Moreover, Guatemala even accepts notaries from other countries under international treaty, by virtue of its May 1925 ratification of the Regional Convention on the Recognition of Studies. He states that there is no justification nowadays for maintaining discriminatory practices, in view of the constitutional obligation of nondiscrimination.

21. He states that Article 9 of the Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, adopted by the General Assembly in its resolution 40/144 of December 13, 1985, establishes that "no alien shall be arbitrarily deprived of his or her lawfully acquired assets." The Universidad de San Carlos de Guatemala awarded him the degree of notary, and he maintains that refusing to admit the degree is a discriminatory and arbitrary act based on nationality and that the CANG therefore must respect the award by the Universidad de San Carlos and not deprive him of his degree of Notary.

22. Regarding his labor rights, he states that in the inter-American system, these rights, like human rights, are protected by the principles of equal protection of the law and nondiscrimination. Guatemalan labor law requires interpretation in favor of the worker, in this case regardless of his or her nationality, so that it is still interpreted in favor of the worker. Article 6 of the Labor Code reads, "An individual's right to work may be limited only by decision of the competent authority, which decision must be based on the law and dictated by reasons of public order or national interest. Consequently, no one may prevent another from engaging in the lawful trade or activity of his or her choosing."

23. Lastly, he states that it is an infringement to require him to change his citizenship, since this restricts his right to a nationality recognized in Article 20 of the American Convention. A change in citizenship should be the voluntary choice of the individual.

B. State

24. The State reports that on September 18, 2000, Steven Edward Hendrix was awarded the degrees of Lawyer and Notary. It states that Mr. Hendrix applied for admission to the CANG as a lawyer and a notary, but that during review of the documentation attached by the interested party, he was discovered to be a United States citizen. For this reason, it was decided that the Association could not authorize him to practice as a notary, but only as a lawyer, pursuant to Article 2, paragraph 1, of the Code of the Notarial Profession. Said code requires an applicant "to be Guatemalan by birth in order to practice the profession of notary in the State of Guatemala." This decision was recorded in document 3-2001 of February 6, 2001 and communicated to Mr. Hendrix on February 20, 2001. Consequently, the latter agreed to be admitted only as a lawyer and to be qualified on February 27, 2001, but in the end he did not appear on that date. Mr. Hendrix was subsequently admitted as a lawyer on December 17, 2001.

25. The State indicates that in January 2002 Mr. Hendrix lodged an appeal of the decision to qualify him only as a lawyer, and the case was therefore transferred to the Assembly of Presidents of the Professional Associations of Guatemala, which issued a decision denying the appeal on April 22, 2002.

26. The State reports that in May 2002 Mr. Hendrix filed an amparo appeal of the decision of the Assembly of Presidents of the Professional Associations of Guatemala with the Third Division of the Court of Appeals, which denied the requested amparo. He appealed to the Court of Constitutionality, which issued a judgment on April 21, 2004 vacating this ruling, granting amparo to Mr. Hendrix, and suspending the decision of the Assembly of Presidents of the Professional Associations. The Court ordered the Assembly to pronounce a decision on its behalf directing the CANG to issue a decision authorizing Mr. Hendrix to exercise the profession of notary on condition that the latter submit proof to the CANG of having acquired the citizenship mentioned in Article 146 of the Constitution. The State indicates that the Third Division of the Court of Appeals was given a period of five days to comply with the terms of the judgment.

27. In connection with the foregoing account, the State indicates that the Court of Constitutionality judgment of April 21, 2004 deciding the instant case was based on Article 146 of the Constitution, which provides as follows:

Naturalization. Those who obtain naturalization in accordance with the law shall be considered Guatemalan.

Naturalized Guatemalans shall have the same rights as native Guatemalans, except for the limitations established in this Constitution.

28. Article 144 also establishes the following:

Nationality of origin. Those born in the territory of the Republic of Guatemala or in Guatemalan vessels or aircraft, and the children of a Guatemalan father or mother born abroad, shall be considered Guatemalan. The offspring of diplomatic officials and those who perform legally comparable duties shall be excepted. No native Guatemalan may be deprived of his or her citizenship.

29. The State points out that the Inter-American Court has interpreted Article 24 of the Convention to mean that states may differentiate between different situations in a fair and reasonable manner and may categorize specific groups of individuals, provided they do so for a legitimate purpose and the classification is reasonably related to the intent of the law. In this connection, the State points out that Articles 140 and 141 of the Constitution provide as follows:

State of Guatemala. Guatemala is a free, independent, and sovereign state, organized to guarantee to its inhabitants the enjoyment of their rights and freedoms. Its system of government is republican, democratic, and representative.

Sovereignty. Sovereignty arises from the people, who delegate it, for the exercise thereof, to the legislative, executive, and judicial branches of government. None of these may be subordinate to another.

30. The State indicates that, under Article 1 of the General Provisions of the Penal Code of Guatemala, a notary is considered a civil functionary (*funcionario público*), which is why this profession is reserved for Guatemalans. However, it makes clear that in Guatemala notaries are not members of the civil service, so that there is no relationship of job-related dependency with the State.

31. It indicates that in Guatemala the power to certify public documents with which notaries are vested is delegated by the State in exercise of its aforementioned sovereignty. This justifies the creation of a "notary" category of individuals in order to safeguard Guatemalan sovereignty.

32. It adds that, for this reason, Guatemalan law considers documents certified by notaries to be authentic and fully evidentiary, a presumption that is invalidated only when they are contested for nullity and fraud/forgery (*falsedad*), which can occur only through ordinary judicial proceedings for such purpose. The State points out that documents issued by other professionals in their fields of expertise are presumed authentic but do not have the authenticity of public documents with public faith.

33. It indicates that unlike the United States, which has adopted the common law notary system, Guatemala has adopted the civil law notary system in which a notary must be a lawyer or hold a law degree. The civil law notary writes the document, and this makes it authentic, veracious, and in some cases formal. Documents are presumed true. Admission to a professional legal association is mandatory, and the juristic act acquires formal validity by notarial act. In contrast, the State points out, in the other system no professional qualification is required, and there is no obstacle to exercising other professions. Veracity applies to signatures, not content, even if the contract is private. Documents are not presumed true. Admission to a professional legal association does not exist for notaries, and formal validity is conferred by judicial act. According to the State, the profession of notary in Guatemala is not comparable to other professions, whose practitioners may certify within their field of competence but who cannot therefore be considered to have been vested with public faith.

34. For its parts, the state indicates that notaries are not engaged in commerce and that, for this reason, they are not subject to legislation applicable to persons engaged in commerce, such

as the most favored nation provision, which requires persons engaged in commerce in the countries members of the World trade Organization (WTO) to receive equal treatment.

35. The State therefore claims that Articles 6 and 7 of the Protocol of San Salvador have not been infringed. There is no violation of the right to work under just, equitable, and satisfactory conditions, since Mr. Hendrix can exercise the profession of lawyer without restriction. With respect to the profession of notary, it maintains that there is no injury to the exercise of his labor rights, since the remedy of naturalization is available.

36. Responding to the petitioner's arguments, the State asserts that the status of "active member notary is not an asset" of which a person can be deprived; it is the recognition awarded by the competent body, in this case the CANG, for the purpose of authorizing a person to exercise said profession. It also maintains that the CANG never deprived Mr. Hendrix of his degree of Notary; rather, because of national legislation, it did not proceed with his qualification as a notary.

37. It states that the alleged victim was not deprived of the degrees conferred on him. As regards his qualification as a notary, the petitioner was informed that, owing to the special solemnity vested in the exercise of this profession in Guatemala, election of Guatemalan citizenship is a prerequisite and that upon meeting this requirement, he would be granted qualified notary status.

38. With respect to the right to a nationality, the State asserts that no violation has occurred, since he has not been arbitrarily deprived of his nationality, nor denied the right to change it. It states that the petitioner must comply with the requirement contained in Article 2 of the Code of the Notarial Profession if he wishes to exercise the profession of notary in Guatemala.

39. The State concludes by requesting that the instant case not be declared admissible, because there was no desire on the part of officers of the State to violate the rights of Steven Edward Hendrix. It reiterates its willingness to grant Mr. Hendrix full recognition as a notary on condition that he comply with the terms of the Court of Constitutionality and provide proof of acquisition of Guatemalan citizenship.

III. ANALYSIS OF ADMISSIBILITY

A. Commission's competence *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci*

40. The petitioner is eligible to submit a petition to the Commission under Article 44 of the American Convention. In the instant case, the alleged victim is a person whose rights Guatemala has undertaken to ensure and respect. Therefore, the Commission has *ratione personae* competence to examine the complaint.

41. The Commission has *ratione loci* competence to consider the petition because it alleges that violations of rights protected by the American Convention took place under the jurisdiction of the State. The Commission has *ratione temporis* competence inasmuch as, at the time of the

alleged violations, the obligation to respect and ensure the rights recognized in the American Convention was in force for the State of Guatemala, which ratified the American Convention on May 25, 1978.

42. The Commission has *ratione materiae* competence to consider the instant case because the petition alleges violations of human rights protected by the American Convention on Human Rights. It should be added that the IACHR does not have *ratione materiae* competence—in an autonomous manner—to establish violations of Articles 6 and 7 of the Protocol of San Salvador through the system of individual petitions. However, the Inter-American Commission may use said Protocol in interpreting other applicable provisions, in accordance with Articles 26 and 29 of the American Convention.[FN3]

[FN3] IACHR, Admissibility Report No. 29/01 of March 7, 2001, para. 36.

B. Other requirements for admissibility

1. Exhaustion of domestic remedies

43. Article 46(1)(a) of the American Convention provides that, for a complaint lodged with the Inter-American Commission pursuant to Article 44 of said treaty to be admissible, all remedies under domestic law must have been pursued and exhausted in accordance with the generally recognized principles of international law. The purpose of this requirement is to allow national authorities to be seized of the alleged violation of a protected right and to have the opportunity to resolve it if appropriate before it is considered at the international level.

44. The petitioner states that he has exhausted the remedies under domestic law. The State has not made any specific representations as to whether this treaty requirement has been met. With respect to said treaty requirement, the IACHR will proceed to analyze the information provided by the parties in order to determine whether this requirement has been met.

45. The information provided by the parties indicates that Steven Hendrix filed an amparo action after obtaining an unfavorable ruling from the Assembly of Presidents of the Professional Associations of Guatemala.

46. The documentation accompanying the petition to the IACHR shows that, on May 9, 2002, the petitioner filed an amparo action for the protection of constitutional rights with the Third Division of the Court of Appeals, contesting the CANG's decision to not authorize him to exercise the profession of notary in Guatemala on the ground that he was not a Guatemalan citizen. This action also challenged the decision by the Assembly of Presidents of the Professional Associations of Guatemala to let stand the CANG's decision by denying his appeal of it. The appeals court ruled against Mr. Hendrix, and he applied to the Court of Constitutionality.

47. The Court of Constitutionality ruled on the appeal in its judgment of April 21, 2005, of which the relevant portion is as follows:

(...) it considers that the fact that a professional degree has been validly conferred on a person who, because of his nationality, in accordance with the provisions of statutory law, would not be able to exercise the profession to which this degree admits him gives rise to a constitutional conflict between one constitutional norm (Article 81 of the Political Constitution of the Republic), which provides that "the acquired rights of professional practice of holders of said degrees (which include university degrees) must be respected, and no provisions of any kind may be promulgated that limit or restrict them" and another, contained in Article 2(1) of the Code of Notarial Practice, which states that, to obtain authorization to exercise the profession of notary, it is necessary to "be a native Guatemalan, of age, of secular status, and domiciled in the Republic."

(...)

In the opinion of the Court, the aforementioned conflict may be resolved by applying Article 146 of the Political Constitution of the Republic, which provides that "naturalized Guatemalans shall have the same rights as native Guatemalans, except for the limitations established in this Constitution," none of which concern the exercise of the profession of notary.

48. In view of the above, the Court decided (1) to vacate the judgment for which the amparo action was brought; (2) to grant Steven Edward Hendrix amparo, and, therefore, (a) to restore his affected legal rights; (b) to annul the decision of the Assembly of Presidents of Professional Associations of Guatemala; and (c) for the purposes of granting amparo, to order the Assembly of Presidents of Professional Associations of Guatemala to pronounce a decision on its behalf directing the CANG to issue a ruling authorizing the applicant to exercise the profession of notary on condition that Mr. Hendrix submit proof to the CANG of having acquired Guatemalan citizenship.

49. In this connection, the IACHR considers it important to point out that, in Guatemalan law, the amparo action is a broad action to protect rights that are thought to have been injured. Thus "there is no area in which amparo may not apply, and it shall be in order wherever the acts, decisions, provisions, or laws of the government implicitly threaten, restrict, or infringe rights guaranteed by the Constitution and the laws." The law considers an action for amparo to be an action for the protection of constitutional guarantees, as it may be brought by an individual "in order to maintain or restore his or her enjoyment of the rights and guarantees established in the Constitution or in any other law." [FN4]

[FN4] Amparo, Habeas Corpus, and Constitutionality Act, Decree 1-86, Articles 8 and 10.

50. In this connection, the Commission notes that the alleged victim in the amparo action took judicial action with regard to his belief that the CANG's refusal to authorize him to exercise the profession of notary was a violation of his right to equal treatment and pursued his claim to

the right to exercise this profession while maintaining his citizenship in the local courts. Thus, the matter at issue in the petition under its consideration has been brought before the national courts, and one of these remedies might have proved appropriate and effective for resolving this type of situation at the domestic level. However, although the alleged victim was granted amparo, his claim to the right to exercise the profession of notary while maintaining his citizenship was not accepted, in view of the terms of the Court of Constitutionality judgment.

51. The Commission considers that, in this case, the domestic remedies have been exhausted pursuant to the requirements set forth in Article 46(1)(a) of the American Convention.

2. Filing period for the petition

52. Article 46(1)(b) of the Convention provides that, to be admissible, a petition must be filed within a period of six months from the date on which the filing party was notified of the final national judgment.

53. With regard to the instant petition, the IACHR has established that the domestic remedies were exhausted with the April 21, 2004 judgment of the Court of Constitutionality. According to the record accompanying the application to the IACHR, notification of this judgment was given on June 14, 2004, and the petition was filed with the IACHR on November 5, 2004. The Commission therefore concludes that this requirement has been met.

3. Duplication of proceedings and international res judicata

54. The Commission understands that the subject of the petition is not pending in another international venue and that it is not essentially the same as one previously studied by the Commission or by another international organization. Therefore, the requirements of Articles 46(1)(c) and 47(d) of the Convention have also been met.

4. Characterization of the alleged facts

55. As the Commission has indicated before in other cases, it is not appropriate at this stage to determine whether or not there has been violation of the American Convention. For the purposes of admissibility, the IACHR need only decide if the allegations state facts that tend to establish a violation of the American Convention, as provided in Article 47(b) of same, and if the petition is "manifestly groundless" or "obviously out of order," in accordance with paragraph (c) of this article. The standard for identifying these extremes is different from the one used to judge the merits of a complaint. At this stage, the IACHR must make a prima facie evaluation, which does not imply a preliminary judgment or the issuance of an opinion on the substance. Its own Rules of Procedure reflect this distinction between the evaluation it must carry out to declare a petition admissible and the one required to determine if there is indeed State responsibility, by establishing clearly differentiated stages for assessment of admissibility and assessment of the merits.

56. On the basis of the facts stated by the petitioner, the Commission considers that the allegations made are neither "manifestly groundless" nor "obviously out of order" and that, if

proven correct, they could constitute an infringement of the right to equal protection of the law recognized in Article 24 of the American Convention, in conjunction with Articles 1.1 and 2 of said international instrument.

57. The IACHR considers that the circumstances described by the petitioner do not tend to establish an alleged violation of the right to a nationality enshrined in Article 20 of the American Convention because he has not been forced to change his citizenship and because this citizenship has not been affected by any public or government act. The IACHR also considers that the facts described by the petitioner do not tend to establish violations of Article 26 of the Convention. The situation described in this particular case, *prima facie*, can not be considered as a regression measure adopted by the State with respect the rights invoked by the petitioner.

58. Inasmuch as these aspects of the complaint are not obviously groundless or out of order, the Commission considers the requirements established in Article 47(b) and (c) of the American Convention to have been met with regard to the aforementioned aspect of the complaint, given that the situation described could constitute an infringement of Article 24 of the American Convention in conjunction with Articles 1.1 and 2 of said international instrument.

IV. CONCLUSION

59. On the basis of the above legal and factual considerations, the Commission concludes that, with respect to the alleged violation of Article 24 of the American Convention, the case under consideration meets the admissibility requirements established in Article 46 of the American Convention, in conjunction with Articles 1.1 and 2 of said international instrument.

60. It further concludes that it is inadmissible with respect to the alleged violation of Articles 20 and 26 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible with respect to Article 24 of the American Convention, in conjunction with Articles 1.1 and 2 of said international instrument.
2. To declare the petition inadmissible with respect to the alleged violation of Articles 20 and 26 of the American Convention.
3. To transmit this report to the petitioner and the State.
4. To proceed with its analysis of the merits of the case.
5. To publish this report and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 29th day of the month of October, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-President; Felipe González, Second Vice-President; Paulo Sérgio Pinheiro, and Paolo G. Carozza, members of the Commission.