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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 110/09; Case 12.470
Session:	Hundred Thirty-Seventh Regular Session (28 October – 13 November 2009)
Title/Style of Cause:	Ricardo Jacob Israel Zipper v. Chile
Doc. Type:	Report
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo Carozza. In keeping with Article 17(2)(a) of the Rules of Procedure of the IACHR, Commissioner Felipe Gonzalez, a Chilean national, did not participate in the discussion or decision in the present case.
Dated:	10 November 2009
Citation:	Israel Zipper v. Chile, Case 12.470, Inter-Am. C.H.R., Report No. 110/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANT: Hector Faundez Ledesma
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I. SUMMARY

1. On November 17, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by Héctor Faúndez Ledesma (hereinafter “the petitioner”) against the State of Chile (hereinafter “Chile” or “the State”) for alleged violation of the rights guaranteed by Articles 5 (humane treatment), 8 (fair trial), 13 (freedom of thought and expression), 21 (property), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), to the detriment of Ricardo Jacob Israel Zipper (hereinafter “the alleged victim”).

2. The petitioner says that on January 10, 2003, the University of Chile, a legal person under public law, adopted Order No. 435/2003 by which, citing reorganization needs, it abolished the full-time tenured professorship held by the alleged victim at the Institute of Public Affairs of the University of Chile. The petition claimed that the aforesaid order violated the alleged victim’s rights to humane treatment, a fair trial, privacy, property, equal protection, and judicial protection.

3. On October 13, 2004, the IACHR adopted Report No. 61/04 in which it decided that the petition met the admissibility requirements contained in Article 46 of the American Convention and declared the case admissible. Under the *iura novit curia* principle, it decided to examine the

facts claimed by the petitioner as alleged violations of Article 5 of the American Convention in the light of Articles 11 and 2 of that corpus.

4. The State argued that Order No. 435/2003 was issued in accordance to law and in observance of the alleged victim's human rights. It explained that the abolition of the position had nothing to do with the opinions and ideas expressed by the alleged victim as a professor, but stemmed from the need to reorganize the University. It also noted that the petitioner offered no grounds to base his assertion that the alleged victim had been the object of discrimination by the University of Chile. Finally, the State holds that the alleged victim had access to the necessary domestic remedies to protect his rights.

5. Based on its analysis of the submissions and evidence put forward by the parties, the IACHR concludes that the State is not responsible for violation of the rights to privacy, freedom of expression, property, and equal protection enshrined in Articles 11, 13, 21, and 24 of the American Convention, in conjunction with Article 1(1) thereof, or of the rights to a fair trial and judicial protection recognized in Articles 8 and 25 of the American Convention, in connection with Articles 1(1) and 2 of said instrument, to the detriment of Ricardo Israel Zipper. The IACHR has decided to notify the State and the petitioner of this decision and to publish the instant report in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION AFTER THE REPORT ON ADMISSIBILITY

6. The Commission adopted Report on Admissibility No. 61/04[FN2] on October 13, 2004, and decided to proceed with its analysis of merits relative to the alleged violations of Articles 1(1), 8, 13, 21, 24, and 25 of the American Convention. It should be noted that in that report, the Commission said that it was "not satisfied that the petitioners ha[d] substantiated their claims that, if true, would tend to establish a violation of Article 5 (torture and cruel, inhuman or degrading treatment) of the Convention, but rather a possible violation of Article 11, regarding damage to his reputation."

[FN2] IACHR. Report No. 61/04 (Admissibility). Case 12.470: Ricardo Israel Zipper (Chile).
October 13, 2004. Available at:
<http://www.cidh.oas.org/annualrep/2004eng/Chile.971.03eng.htm>.

7. The report was transmitted to the parties in a communication dated November 2, 2004. In said communication, the parties were given two months in which to submit their observations on merits. Furthermore, in accordance with Article 38(4) of its Rules of Procedure, the Commission placed itself at the disposal of the parties in order to facilitate a friendly settlement pursuant to Article 48(1)(f) of the American Convention.

8. On June 22, 2005, the State sent the IACHR additional information on the case although it did not express its position on the merits of the matter. On August 4, 2005, the petitioner submitted additional information on the petition. The State submitted its observations on the merits of the case on November 9, 2005.

9. On March 7, 2006, the IACHR held a public hearing on the case with the parties, in the framework of its 124th Regular Session.

III. POSITIONS OF THE PARTIES

A. The Petitioner

10. According to the petition, the University of Chile is a state institution. Under Article 53 of its Statutes, its faculty and staff are “government employees”.

11. The petitioner says that in 1982, after completing postgraduate studies abroad, Ricardo Israel Zipper became a fulltime professor at the University of Chile’s Institute of Political Science. The petitioner also states that in 1985 the alleged victim was made a tenured professor at this center of learning, thus reaching the “highest level in the academic world.” The petitioner says that for six and a half years the alleged victim served as director of the University of Chile’s Institute of Political Science. He resigned the position in 2000 after receiving an anonymous note which contained death threats against him and his family. He says that in 2002, Ricardo Israel Zipper was elected to the University Senate and also invited to deliver the political science lecture course at University of Chile Law School.

12. The petitioner mentions that the Institute of Public Affairs was created as a result of the merger of three departments of the University of Chile: the Institute of Political Science, the Government School, and the Public Policy Analysis Center. According to the petitioner, in 2002, the alleged victim became the target of a harassment campaign which coincided with the appointment of a new leadership at the Institute of Public Affairs. For example, the petitioner mentions that from that year forward the alleged victim was no longer taken into consideration by the Institute of Public Affairs to teach courses, and that this was only possible thanks to a special invitation from the Law School authorities. The petitioner contends that this prevented him from properly imparting his knowledge and ideas “from his position as a tenured professor”. The petitioner also states that the alleged victim was excluded from directing graduate theses and dissertations, from participating in forums and conferences, and from any academic activity at the Institute of Public Affairs. He also records that said agency’s new director asked the alleged victim to voluntarily resign his tenure, threatening him with a supposed “summary proceeding” instituted against him.

13. The petitioner says that in the wake of the request for his voluntary resignation, which the alleged victim refused, there came a series of acts of harassment[FN3] against him, “which culminated in his dismissal or removal from his position and all academic and teaching activities.”

[FN3] The acts described in the petition were as follows: (1) Returning from a trip, he found that all the furniture had been removed from his office; they were later returned without an explanation offered; (2) he was ordered to return funds to a foreign foundation, a portion of which had gone toward financing activities of Chilean students abroad; however, first the

University of Chile made a 15% deduction for administrative expenses, which upset the donor; (3) his secretary was replaced repeatedly without his consent; (4) he was kept without office supplies for long periods; (5) his name was no longer taken into consideration for thesis or dissertation direction, a task he had habitually performed; (6) he was not permitted to deliver a course that concerned an area that he was researching, an outside professor being chosen in his place; (7) during his final year, he was not invited to any meetings of the Institute of Public Affairs; (8) his name was excluded from the Political Science Masters Degree Program; and, (9) on May 31, 2003, persons unknown painted the word “Jihad” on the door of his house.

14. The petitioner says that a meeting of the Board of the Institute of Public Affairs was held on January 7, 2003, which reviewed the activities of a number of faculty members, including those of Ricardo Israel Zipper in 2002. The minutes of the Board meeting allegedly record that in the course of the meeting an administrative official accused the alleged victim of not carrying out any teaching or research activities during that period. As a result, the Board of the Institute of Public Affairs decided to eliminate three academic posts, including that of Ricardo Israel Zipper.

15. The petitioner says that on January 10, 2003, the Acting Rector and the Acting Pro Rector of the University of Chile, “citing the need to reorganize the Institute of Public Affairs,” issued Order No. 435/2003 “which abolished the position of full-time tenured professor held by Ricardo Jacob Israel Zipper.” The alleged victim was reportedly notified of Order No. 435/2003 on March 13, 2003, when classes resumed.

16. The petitioner further notes that in the interval between the adoption of the order and the alleged victim’s notification, the latter continued to receive his salary, and that in the first half of 2003, six new faculty members were added.

17. The petitioner mentioned that “there was nothing personal against Professor Israel” and that “no one suggested that the ideas that [he] professed were either dangerous or odious, nor was there any objection to the ideas [he] expressed [...] on the radio and television programs on which he routinely appeared. In sum, he was not accused of any act incompatible with the performance of the academic functions with which he was entrusted. His position was simply eliminated.” He claims, however, that the alleged victim was “dismissed [...] purely out of animosity toward him and without having the opportunity to defend himself, because he was never accused of anything.”

18. The petitioner also holds that Order No. 435/2003 was adopted in direct contravention of Order No. 02903 adopted by the Office of the Comptroller General on September 14, 1995, which provides that, “should the person affected provide reliable information which clearly shows that the reason for the elimination is to get rid of certain personnel, the oversight agency shall be required to request and examine other documents in that regard and would only be able to approve the order if they are convinced thereby that the underlying cause of that measure is the need to do away with the positions concerned and not the individuals who occupy them.”

19. The petitioner points out that after the position was abolished the alleged victim was hired on a “fee-basis appointment” in order to continue to lecture at University of Chile Law

School. He added that under this mechanism this center of learning “was entitled to terminate [the contract] unilaterally without stating its reasons.”

20. The petitioner says that on March 28, 2003, the alleged victim filed for a writ of protection with the Santiago Appellate Court, which ruled in his favor on July 15, 2003. He says that the University of Chile then appealed to the Supreme Court of Chile, which on August 27, 2003, overturned the judgment of the Santiago Appellate Court and rejected Ricardo Israel Zipper’s petition “without hearing [the] arguments of the parties.”

21. The petitioner claims that in view of the contents of the minutes of the meeting of the Board of the Institute of Public Affairs on January 7, 2003, the authorities of the University of Chile could have instituted a disciplinary proceeding against the alleged victim. The petitioner says that “the use of that power would have enabled [Professor] Israel to defend himself and challenge the arguments of the university authorities,” on account of the fact that the University Board was the body that adopted decisions “at final instance on disciplinary measures for the dismissal and expulsion of faculty members.”

22. The petitioner adds that the University of Chile based the measure on Decree Law No. 3.541 of 1981, Decree with Force of Law No. 1 of 1981, and Decree with Force of Law No. 153 of 1981, all of which originated “during the Pinochet dictatorship.” The petitioner said that those laws “made it possible to dismiss [Professor] Israel without explanation and without having to submit him to an adversary proceeding in which [...] he could defend himself.”

23. The petitioner said that the “measure [...] adopted by the University of Chile authorities had the effect of silencing [the alleged victim] and interfering with the exercise of his freedom of expression.” He also said that “[t]he University cannot invoke [its] autonomy in order to freely and arbitrarily decide what ideas and information should be imparted at the university, in violation of the freedom to impart knowledge of the faculty members of that university.

24. The petitioner holds that the “status of tenured professor [...] along with everything that goes with it, including full-time pay and the number of hours of work per week, [...] became part of Professor Israel’s assets.” The petitioner also claims that “Order No. 435 [...] sought to expropriate that right [...], [and that] the State [...] is depriving him of the remuneration that comes with that position, [...] and divesting him of other intangible benefits accruing to [his] status of tenured professor.” According to the petitioner, there are no grounds of public utility, social interest, or any other legally recognized reasons that warrant the alleged victim “being deprived of the possession of his position.”

25. The petitioner says that Ricardo Israel Zipper was the victim of discriminatory treatment given that “while his position was abolished, other lecturers were hired in the same department where he worked.” He adds, that even though “it was never made explicit that the discrimination was based on reasons of race, religion, nationality, or his political or other opinions, [...] there was a clear discrepancy between the way [in] which [the alleged victim] was treated and the way in which other professors were treated.”

B. The State

26. The State argued that in the instant case particular attention should be given to the concept of “university autonomy” by which the University of Chile “[governs] its institutional doings and interests, according to its own standards and organs of government.” In this connection it mentioned that the legal acts of said center of learning are university acts and not acts of the State per se. The State adds that, under the foregoing concept, the University of Chile “has the power to change its staff and to create and, therefore, abolish positions in accordance with the academic management decisions that [...] it adopts.”

27. The State notes that “public officials are terminated, inter alia, through dismissal and abolition of the post.” The State draws a distinction between dismissal and abolition of posts, pointing out that dismissal is a disciplinary measure which, “having been ordered in an summary proceeding, terminates the services of a staff member by decision of the appointing authority;” and that abolition of a post “is a legal way of putting an end to a position, irrespective of the person who holds it, when so ordered by that authority in exercise of their administrative powers under the bylaws, which empower them to organize the operations of the corporation in the manner that best serves its interests, in particular when a department is in process of reorganization, as occurred in this instance.” Accordingly, abolition does not constitute a penalty, nor does it leave the person potentially affected defenseless since “it is possible to challenge the administrative act that orders it via administrative or judicial channels.”

28. In addition, the State notes that what “the petitioner present[ed] as [...] an unwarranted mistreatment to his detriment [was], on the contrary, when viewed in an appropriate and reasonable context, a normal act in the University, which was driven to it by the permanent adjustments required in study programs and the workings of its departments and schools, and in its faculty and staff, in order to meet the objective of adapting to the reality of a changing and competitive educational world.” Therefore, the State explained that “reasons of internal reorganization of the Institute of Public Affairs” led to “the need to abolish a number of posts, including that held by [...] Ricardo Israel Zipper.”

29. To illustrate the foregoing, the State mentions that in 2003, which was when the alleged victim’s position was abolished, 172 other posts were eliminated; 204 more were done away with in 2004, and a further 119 from January to October 2005. The State says that “[a]ll or the foregoing stem[med] from the fluidity that inevitably [...] exist[s] in the management of the university’s personnel, a fact that has been accepted and settled accordingly, by the oversight organ for administrative acts, the Office of the Comptroller General, and the courts of justice.” Based on the foregoing, the State points out that “Mr. Israel Zipper was not the only one affected by these [reorganization] measures and, therefore, there was never any unilateral discrimination against him” that violated Article 24 of the Convention.

30. The State holds that the alleged victim was notified of Order No. 435/2003 “after the procedures to ensure its lawfulness by the Office of the University Comptroller and the Office of the Comptroller General had been completed,” and that said process “met all the requirements as to both substance and form contained in the university’s rules of procedure and in general.” The State says that on January 15, 2003, the Office of the Comptroller of the University of Chile

countersigned the order and that on February 3, 2003, the Office of the Comptroller General approved it “and its complete legality was thus established.”

31. In the same vein, the State also notes that “the fact that [the Supreme Court of Justice] did not agree to hear arguments from the parties in no sense constitutes an infringement of procedural law,” since “the procedure provided for processing writs of protection [...] is of a written nature” and “in processing [such writs], if the court in question deems it necessary, [...] it hears the oral arguments of the attorneys, which are ancillary to the submissions already made in writing.”

32. The State also informs that it was by Order No. 775 of March 15, 1983, under the aegis of Decree with Force of Law No. 153 of 1981, that the alleged victim joined the staff of the University of Chile and that under that same law (DFL 153) he received his last appointment. In the opinion of the State, “the petitioner commenced his formal employment relationship with the University of Chile in 1983, when the military regime was in full sway, at which time the position to which he was appointed was created under the self same laws that he now pejoratively [...] challenges as legislation of the military dictatorship.” The State says that those laws “are now applied democratically.”

33. The State considers that “the remedies available under domestic law were not exhausted” with respect to the supposed “harassment campaign” claimed by the alleged victim and that this “could not be attributed either to the University of Chile or the Chilean state.”

34. The State says that the post was not abolished with the intention of preventing Ricardo Israel Zipper from disseminating his “educational teachings.” In the opinion of the State, that “accusation is what is most surprising about the case” precisely because the petitioner has not established a clear link between the abolition measure and his right to freedom of expression.

35. The State mentions that “[p]ublic officials undoubtedly enjoy tenure, [...] but [...] to go as far as to argue that this right [is on a par with the] right to property [...] is [...] a [...] legal error [...], [since] [n]o public official can sell or donate their job or bequeath it to their heirs at their death.” The State adds that the term possession (propiedad) is used in Chilean law to refer to the status or condition of “incumbent” by which a public official occupies a particular post or job, as opposed to one who holds it as an “alternate” or on a “temporary” or “acting” basis.

36. Finally the State argues that “the petitioner had access to all the possibilities of defense that the legislation in force makes available to him, which he used.” Accordingly, the State argued that “Mr. Ricardo Israel Zipper had recourse [...] to the Santiago Appellate Court and his claim was finally rejected by the [...] Supreme Court.” In addition, “the petitioner filed a complaint with the Office of the Comptroller General, challenging the legality of Order No. 435” and, “in an open letter, presented another complaint to the President of the Republic, as patron of the University of Chile.” Finally, “the situation came to the attention of the University Senate [...] which set up a commission of inquiry, which reviewed the decisions in his regard and offered no objections as to either form or substance in the matter.

IV. MERITS

A. Established Facts

37. Based on the documents contained in the record, as well as information put forward by the parties, the IACHR takes the following facts as proven:

Background

38. The University of Chile is a higher-education institution under public law with academic, financial, and administrative autonomy. Its central authority resides in the University Council and in the superior central and departmental officers, who are the Rector, the Pro Rector, and the Deans.

39. On March 15, 1983, the University of Chile adopted Order No. 775/1983, which created the post of Full-Time Faculty Member in the Institute of Political Science of that university and appointed Ricardo Israel Zipper to occupy said post.[FN4]

[FN4] Order No. 775. Office of the Rector of the University of Chile. March 15, 1983. Communication of the State, November 29, 2005.

40. On July 21, 1987, the University of Chile adopted Order No. 3327/1987, which ratified the appointment made under the aforementioned Order No. 775/1983.[FN5]

[FN5] Order No. 3327. Office of the Rector of the University of Chile. July 21, 1987. Communication of the State, November 29, 2005.

41. On September 30, 1998, the University of Chile adopted Order No. 2853/1998, which confirmed the appointment of Ricardo Israel Zipper as Director of the Institute of Political Science.[FN6]

[FN6] Order No. 2853. Office of the Rector of the University of Chile. September 30, 1998. Communication of the State, November 29, 2005. Annex D. From the documents in the record it is not possible to determine the date on which Ricardo Israel Zipper was originally appointed to said post.

42. Ricardo Israel Zipper resigned as Director of the Institute of Political Science of the University of Chile in 2000, and in 2002 was elected to the University Senate .[FN7]

[FN7] Petitioner's communication of November 17, 2003, pp. 2-3.

43. On January 21 2002, the 2001 Higher Academic Rating Committee found that Ricardo Israel Zipper met the academic rating standards for both his rank as a faculty member and his workload.[FN8].

On January 7, 2003, the Board of the Institute of Public Affairs of the University of Chile held its Fifth Regular Meeting. The discussions on item 2 on the agenda concerned the activities of the faculty members of the Institute of Public Affairs and a decision was adopted. According to the copy of the minutes of that meeting contained in the record, the decision consisted of requesting the departmental directors for information on professors who had not lectured or engaged in research, publication and/or extension activities as approved by each Department over the last year; and, that as a result of the information collected, three cases were detected in the Department of Government and Public Administration and four cases in the Department of Political Science, one of whom was Professor Israel Zipper. Finally said meeting adopted, inter alia, the following decision:

DECISION No. 2: To abolish the posts mentioned and instruct the Director of the INAP to adopt the necessary measures to that end[FN9].

[FN8] Decision of the Appeals Committee: Notice University of Chile. January 21, 2002. Petitioner's communication of November 17, 2003. Annex I.

[FN9] Minutes No. 6 of the Sixth Regular Meeting of the Board of the Institute of Public Affairs of the University of Chile. January 7, 2003. Petitioner's communication of November 17, 2003. Annex J.

Approval of Order of the Office of the Rector No. 435/2003

44. On January 10, 2003, the University of Chile adopted Order No. 435/2003, which abolished the full-time tenured professorship occupied by Ricardo Jacob Israel Zipper.[FN10]

[FN10] Order No. 435/2003, University of Chile. January 10, 2003. Petitioner's communication of November 17, 2003. Annex A.

45. Ricardo Israel Zipper was notified of Order No. 435/2003 on March 13, 2003, at the start of the academic year. Up to that date he had received his pay as normal.[FN11]

[FN11] Notice of University Order No. 435 of 2003, Institute of Public Affairs, University of Chile. March 13, 2003. Petitioner's communication of November 17, 2003, Annex B.

46. In the wake of these events, Ricardo Israel Zipper continued to lecture at the University of Chile Law School, although now under a “fee-basis appointment”.^[FN12]

[FN12] Complaint of violation of human rights of Ricardo Jacob Israel Zipper. Petitioner’s communication of November 17, 2003, pp. 8-9; Communication of the State of Chile. March 7, 2006. Minutes of Hearing No. 27, 124th Regular Session. Inter-American Commission on Human Rights, p. 4

47. The Department of Political Science of the Institute of Public Affairs of the University of Chile began to hire new faculty members in March 2003.^[FN13]

[FN13] Publication on the Official Website of the Institute of Public Affairs of the University of Chile. Petitioner’s communication of November 17, 2003. Annex C.

The Petition for Protection and the Decision at First Instance of July 15, 2003

48. On March 28, 2003, Ricardo Israel Zipper filed a petition for protection with the Santiago Appellate Court in which he alleged “an arbitrary and illegal measure that violate[d] the guarantees contained in Article 19, subparagraphs 1, 2, 3, and 24 of the Constitution of [Chile], that is, the right to respect for psychological integrity, equality before the law, a fair trial, and the right to property.” ^[FN14]

[FN14] Petition 1897/2003, Decision 87056. July 15, 2003. Appellate Court, Chile. Petitioner’s communication of November 17, 2003. Annex (unnumbered). Emphasis added The claims as regards the rights to respect for psychological integrity, equality before the law, and a fair trial were rejected by the tribunal for lack of evidence.

49. The relevant parts the writ of protection, which was granted on July 15, 2003, read as follows:

5. Article 62(2) of the Constitution excludes the possibility of creating and abolishing public posts and remunerated positions of employment, “be they governmental, semigovernmental, autonomous, in state-owned enterprises or municipalities,” except by a law initiated by the president. [...];

6. Therefore, a mere order by the rector of the University of Chile abolishing a staff position therein is illegal, since under the Constitution that can only be done by a law exclusively initiated by the President; moreover, furthermore, by law it violates the right of tenure of public officials; [...]

13. As regards arbitrariness, the aforementioned order is founded on the fact that the University’s Institute of Public Affairs (INAP) was undergoing reorganization. In this regard, the

report [...] is sparing in detail, simply stating that a reorganization process is underway with a new program of activities and operations [...];

14. In spite of the foregoing, there is nothing in the record to support these assertions and since the changes were organizational relevant documentary proof should clearly have been provided in order to persuade [the court] of their veracity;

15. Therefore, we come to a situation in which, ultimately, nothing has reasonably justified the treatment given to Professor Israel and it could not be presumed that the university authority can adopt arbitrary measures at its discretion [...], since that would not only mean that that representative had absolute and extraordinary power to act without justification, that is, without founding his actions on plausible and sufficient factual reasons that would make them acceptable, but, what is worse, would entail recognizing in him the authority to do what not even a private citizen can do to their dependents under private law which, as mentioned, offers less protection in such matters than public law.

16. Consequently, the behavior of the acting rector in issuing Order No. 435 is also shown to be arbitrary, a fact which [...] would engage the protection invoked as a direct and immediate deprivation, disruption, or threat to the legitimate exercise of any of the constitutional rights asserted; [...]

17. “[...] the submissions alleging violation of the right to respect for psychological integrity required stronger evidence, the certificate issued by Dr. Peña Lillo not being sufficient to that effect. That is not proof of injury. And even if it were, it would not serve to demonstrate that it was the direct and immediate result of the changes made at the university complained of before this court.”

18°. Article 19 (2) of the Constitution prohibits arbitrary discrimination. Arbitrary discrimination is committed by anyone who without any reason treats someone differently from their equals to the extent of causing them harm or injury, as would be the case, for example, if there were another public servant in an identical situation to that of the complainant whose position was deliberately not eliminated. Since there has been no mention in the instant case of another person in identical circumstances [...] in comparison to whom the complainant has suffered discrimination, the equality guaranteed by the Constitution cannot be deemed violated.

20°. [...] Mr. Ricardo Israel Zipper undoubtedly enjoys possession [propiedad] of the position of which he would be deprived, which equates to tenure therein, precisely so that he might continue to repose in it, with all of the benefits accruing to service in an institution so closely identified with the general good of the State with which it is connected;

21. Faced with an illegal and arbitrary act that violates the right to property that the complainant possesses in relation to the post of which the aim is to deprive him, the only possible course is to protect his exercise of that right[...];

22. [Therefore,] [the Court] grants the protection requested [...] by Ricardo Israel Zipper, only to the extent of vacating Order No. 435 of the acting rector of the University of Chile of January 24, 2003, keeping the post to which it refers and Mr. Israel in employment.[FN15]

[FN15] Idem.

50. The University of Chile appealed the aforesaid decision to the Supreme Court of Chile. On August 27, 2003, said tribunal overturned the judgment of the Santiago Appellate Court and rejected the petition filed by Ricardo Israel Zipper. The pertinent parts of the Supreme Court ruling provided as follows:

8) Article 12 of Decree with Force of Law No. 153 of 1981 provides: In particular, the Rector may: h) Appoint the University's academic and administrative staff according to the complement he approves in advance. [...] The petitioner was appointed to the above-mentioned post, which he held until the date on which the above-cited Order was issued, by which the Rector of the respondent Institution, in use of his discretionary powers, which are nothing if not an obvious extension of his decision-making authority with regard to the staff complement, decided to abolish from said staff the post to which the petitioner had been appointed;

9) It emerges from the foregoing that in the instant case there are legal standards contained in DFL No. 153, which expressly recognize his autonomy not only for the purposes of carrying out his functions as regards lecturing, research, creation, extension, and design of the study program that he teaches, which constitute the activities more commonly associated with or inherent to the nature of said functions, but that said autonomy also has to do with the powers to organize its operations and administration in the manner the best suits its interests; these standards take precedence over general laws [...]. It was in the framework of this autonomy and by the powers that flow from Article 12 (h) that the respondent, through its rector, was able to issue the order challenged in these proceedings, since the said provision allows the appointment of the University's academic and administrative staff according to the complement approved by him in advance. It follows from this that if the aforesaid approved complement, which need not remain the same since the inception of this center of higher learning, does not provide for certain posts, then he may not only appoint but must also be able to abolish them, since this power cannot be understood otherwise, rooted as it is, as noted, in his legal autonomy and expressly recognized [...];

10) As for the rest, Article 2 of Law No. 18.663 provides that no prior notice of any sort is required or has been required to eliminate posts. [...];

11) It should be noted, finally, with regard to merits in the instant case, that the present matter has nothing to do with the exercise of disciplinary authority with respect to faculty members, students, and staff of the University, since the petitioner's functions were terminated, as the parties have stated, exclusively because the post that he occupied was eliminated, which elimination caused the staff member's removal as a direct result of that circumstance, and it is impossible to conceive of tenure in a post or position when it ceases to exist for the reason mentioned [...];

12) In these circumstances, the aforesaid action for unconstitutionality cannot prosper and must be dismissed, without prejudice to such other rights as may be asserted before the appropriate authority or tribunals. [...] the appealed judgment of July 15 last is revoked [...], and the petition for protection is declared rejected [...].[FN16].

[FN16] Appeal 3241/2003, Ruling 14553, August 27, 2003. Supreme Court of Chile. Petitioner's communication of November 17, 2003. Annex (unnumbered).

B. Legal Considerations

51. In Report No. 61/04 the IACHR declared Case 12.470 admissible with respect to the alleged violations of the rights contained in Articles 8, 11, 13, 21, and 24 of the American Convention in conjunction with Article 1(1) thereof, and of 25 of the American Convention in connection with Articles 1(1) and 2 of said instrument.

Protection of the Right to Privacy Recognized in Article 11 of the American Convention in Conjunction with Article 1(1) Thereof

52. The petitioner claims that in 2002 the alleged victim became the target of a “campaign of harassment” based on the following alleged incidents: (1) Returning from a trip, he found that all the furniture had been removed from his office; they were later returned without an explanation offered; (2) he was ordered to return funds to a foreign foundation, a portion of which had gone toward financing activities of Chilean students abroad; however, first the University of Chile made a 15% deduction for administrative expenses, which reportedly upset the donor; (3) his secretary was replaced repeatedly without his consent; (4) he was kept without office supplies for long periods; (5) his name was no longer taken into consideration for thesis or dissertation direction, a task he had habitually performed; (6) he was not permitted to deliver a course that concerned an area that he was researching, and an outside professor was chosen in his place; (7) during his final year, he ceased to be invited to any meetings of the Institute of Public Affairs; (8) his name was excluded from the Political Science Masters Degree Program.

53. The petitioner adds that the alleged victim resigned his position as director of the Institute of Political Science of the University of Chile in 2000 “after receiving an anonymous note which contained threats against him and his family.” The petitioner also said that on May 31, 2003, persons unknown painted the word “Jihad” on the door of his domicile.

54. For its part, the State said that the events that the petitioner regards as “acts of harassment” occurred over different periods and in separate circumstances and that, moreover, the rule of exhaustion of domestic remedies have not been met. The State also held that “the petitioner refers to each and every incident that supposedly constitute a ‘campaign of harassment’ in vague and imprecise terms” and that “even when considered altogether [...] they do not genuinely amount to a campaign of harassment that would entail a violation of Article 11 of the Convention in the sense of comprising an attack on a person’s honor, dignity, or reputation.”

55. Article 11 of the American Convention provides:

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

56. The Inter-American Court has held that the protection of an individual’s private life, family and home from arbitrary or abusive interference implies recognition that there is a

personal sphere that must be exempt from and immune to abusive and arbitrary invasion or attack by third parties or the public authorities.[FN17]

[FN17] Cfr. I/A Court H.R., Ituango Massacres v. Colombia Case. Judgment of July 1, 2006. Series C No. 148, paras. 193 and 194.

57. As regards the supposed anonymous note that the alleged victim reportedly received and the fact that persons unknown painted the word “Jihad” on the door of his domicile, the Commission finds that the petitioner has not shown that these acts had any connection with the University of Chile.

58. As to the facts concerning alleged acts of harassment in the workplace, the Commission finds that the petitioner has not supplied sufficient evidence to show, or from which reasonably to deduce, any abusive or arbitrary interference or attack on the part of the University of Chile on the alleged victim’s home, correspondence, or private or family life, or that there was an unlawful attack on his honor or reputation. Thus, the IACHR is unable to infer firm conclusions on the facts alleged by the petitioner in regard to which he did not provide sufficient evidence.

59. Based on the foregoing, the IACHR concludes that a violation has not been shown of Article 11 of the American Convention in conjunction with Article 1(1) thereof, to the detriment of Ricardo Israel Zipper.

Right to Freedom of Thought and Expression Recognized in Article 13 of the American Convention in Conjunction with Article 1(1) Thereof

60. As regards the right to freedom of thought and expression, the petitioner argues that “the arbitrary and unlawful measure adopted by the authorities of the University of Chile had the effect of silencing [the alleged victim], interfering with his exercise of freedom of expression.”

61. The State, for its part, says that the post was not abolished with the intention of preventing Ricardo Israel Zipper from disseminating his “educational teachings.” In the opinion of the State, that “accusation is what is most surprising about the case” precisely because the petitioner has not established a clear link between the abolition measure and his right to freedom of expression.

62. Article 13 of the American Convention recognizes that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

[...]

63. The IACHR considers that an arbitrary interference in the freedom to impart knowledge along with an administrative reprimand, the abolition of a post, or any other act designed to silence or restrict the expressions of a professor can entail a violation of the right to freedom of thought and expression, provided that it is shown that those acts are connected with the expressions of the alleged victim and had the purpose of silencing them or intimidating others.

64. In that regard, the Commission considers that in the instant case the petitioner has not provided factual or legal elements that demonstrate or lead to the reasonable deduction that the decision to eliminate the full-time tenured professorship occupied by the alleged victim was in any way connected with his exercise of freedom of thought and expression. Indeed, as the petitioner himself says, “there was nothing personal against [Professor] Israel” and that “no one suggested that the ideas that [he] professed were either dangerous or odious, nor was there any objection to the ideas [he] expressed [...] on the radio and television programs on which he routinely appeared.”

65. The right to freedom of thought and expression does not protect the right to keep a position of employment as a university lecturer. What it protects is the right of the teacher to be free from arbitrary interference in the freedom to impart knowledge or not to have their rights infringed in reprisal for any information, ideas or opinions that they might have expressed in the exercise of their freedom to impart knowledge.

66. Based on the foregoing and bearing in mind the submissions of the parties, the IACHR concludes that the Chilean State did not violate the right to freedom of expression enshrined in Article 13 of the American Convention, in conjunction with the general obligation contained in Article 1(1) of that treaty, to the detriment of Ricardo Israel Zipper.

Right to Property Recognized in Article 21 of the American Convention in Conjunction with Article 1(1) Thereof

67. Article 21 of the American Convention recognizes that:

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

[...]

68. As regards the right to property recognized in the preceding provision, the petitioner claims that in 1985 the alleged victim became a tenured professor at the University of Chile and

was in possession (en propiedad) of the post that was abolished according to “Order No. 435 of January 10, 2003.”

69. The petitioner adds that by eliminating the post “the State [stripped] [Professor] Israel of his status of tenured, full-time professor, working 44 hours a week,” which deprived him “of the remuneration that came with the post, [and] the other intangible benefits accruing to [his] position as a tenured professor of the INAP”, such as “being a faculty member of a university, the social standing that that brings, professional recognition, and an academic tribune for putting forth his ideas.”

70. For its part, the State says that “the right to property [...] includes the powers to use, enjoy and dispose of a thing or property, which may be tangible and intangible” and that “what distinguishes the right to property from other real rights, is [...] that the owner can dispose of a property, [that is,] whoever owns a property can transfer it, gratuitously or for consideration, and in the event of death the property passes to his or her heirs.”

71. Furthermore, the State also mentions that “although the term possession (propiedad) is used in Chilean law to refer to the status or capacity in which a public servant occupies a particular post or job, the term is used to refer to incumbency, as opposed to one who holds it as an “alternate” or on a “temporary” or “acting” basis.

72. Based on the information submitted by the parties, the Commission notes that the University of Chile paid the alleged victim all his salaries until the date of the notice of elimination of the position of tenured professor. As regards the emoluments that the alleged victim ceased to receive as result of his dissociation from the university, the Commission must determine if they constitute acquired rights.

73. In this connection, the Commission considers that the fact that a person is in “possession of a post” that is not held for life does not entail the recognition of acquired rights, provided that the decision to remove them is in accordance with the law and the guarantees of due process and effective judicial protection enshrined in the American Convention. In the instant case, the petitioner has not presented evidence to show that the way in which the administration proceeded in eliminating the post and the judicial authorities dealt with the remedies violated the aforementioned principles.

74. Based on the foregoing, the Commission finds that the administrative decision to eliminate the post of tenured professor did not affect the alleged victim’s assets and, therefore, the State did not violate the right to property recognized in Article 21 of the American Convention, in conjunction with the general obligation contained in Article 1(1) thereof, to the detriment of Ricardo Israel Zipper.

Right to Equal Protection Provided in Article 24 of the American Convention in Connection with Article 1(1) Thereof

75. With respect to the right to equal protection of the law, the petitioner holds that the alleged victim was a victim of discrimination since “[w]hereas his post was abolished, other

teaching staff were hired by the same department where he worked,” which, “put [him] in an unequal position vis a vis his peers.”

76. The petitioner says that Ricardo Israel Zipper suffered discrimination “in comparison with other workers, in both the public and the private sector, who if dismissed from their jobs would be able to resort to the regular courts so that they might decide on the legality of the [measure adopted by the university authorities]; however, as an academic whose position had been abolished , [...] he did not have that right.” The petitioner also says that while “other professors were subjected to disciplinary proceedings, with full observance of fair trial guarantees, which enabled them to defend themselves, Professor Israel was the subject of a different procedure with the aim of avoiding an adversarial proceeding.”

77. For its part, the State said that in 2003, which was when [Ricardo Israel Zipper’s] position was abolished, 172 other posts were eliminated; 203 more were done away with in 2004, and a further 119 [from] January to October [2005].. The State attributed this situation to “the fluidity that inevitably [...] exist[s] in the management of the university’s personnel” and noted that the foregoing “has been accepted and settled accordingly, by the oversight organ for administrative acts, the Office of the Comptroller General, and the courts of justice.”

78. Article 24 of the American Convention provides, “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.” The Inter-American Court has found that “not all differences in treatment are in themselves offensive to human dignity.”[FN18] In this regard the Court has distinguished between distinctions and discriminations, “so that the former are differences that are compatible with the American Convention because they are reasonable, proportionate and objective, while the latter are arbitrary differences that lead to the detriment of human rights.”[FN19]

[FN18] Cfr. Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A, No. 4, para. 56; Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A, No. 17, para. 46; and Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC- 18/03 of September 17, 2003. Series A, No. 18, para. 89; I/A Court H.R., Castañeda-Gutman v. Mexico Case. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 211

[FN19] Cfr. Juridical Condition and Rights of the Undocumented Migrants, supra note 15, par. 84; I/A Court H.R., Castañeda-Gutman v. Mexico Case. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 211-----

79. In effect, the development of the right to equality and non discrimination highlights several conceptions of the mentioned right. For example, one conception is related the prohibition on arbitrary differential treatment –understanding differential treatment as any kind of distinction, exclusion, restriction or preference. Another conception is related to the obligation of creating actual equality conditions for those historically excluded groups subjected to higher risks of discrimination. Although in certain cases both perspectives may be present, each

perspective deserves a specific State response and a different treatment under the light of the American Convention.

80. In that sense, although certain criteria may be taken as a basis for analysis, the determination of the articles of the Convention that are to be applied to any specific case must take into consideration the person or group of persons affected, the reasons that motivated the alleged discrimination, the rights or interests involved, the means or omissions through which the alleged discrimination took place, among other considerations.

81. Therefore, bearing in mind the evidence, the IACHR considers that the petitioner has not offered any proof that the alleged victim suffered discrimination or different treatment based on a suspect criterion. The petitioner himself says that there is no reason that can explain why Professor Israel Zipper was treated differently compared to other professors who were reputedly dismissed following disciplinary proceedings. Based on that understanding, the petitioner failed to provide evidence on comparison factors that might have demonstrated discriminatory treatment.

82. Based on the foregoing, the Commission concludes that in the instant case there was no violation of Article 24 of the American Convention in conjunction with Article 1(1) thereof, to the detriment of Ricardo Israel Zipper.

Right to Judicial Protection and a Fair Trial Recognized in Articles 25 and 8 of the American Convention in Connection with Article 1(1) thereof

83. Article 8 of the Convention provides that:

1. 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.

[...]

84. Furthermore, Article 25 of the American Convention provides:

1. Everyone 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.

85. It is a basic principle of international human rights law that the State is responsible for any and all acts or omissions of any of its powers or organs. Article 1(1) of the American Convention is of fundamental importance in this regard.[FN20]. Regarding acts or omissions of domestic judicial bodies, Articles 25 and 8 of the Convention define the scope of the above-mentioned principle of generation of responsibility for the acts of all State organs.[FN21].

[FN20] I/A Court H.R., “Mapiripán Massacre” v. Colombia Case. Preliminary Objections. Judgment of March 7, 2005. Series C No. 122, para. 108.

[FN21] I/A Court H.R., I/A Court H.R., The “Street Children” v. Guatemala Case (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 220.

86. In particular, with respect to the scope of the right to a fair trial, the Inter-American Court has held that:

In any subject matter, even in labor and administrative matters, the discretionality of the administration has boundaries that may not be surpassed, one such boundary being respect for human rights. It is important for the conduct of the administration to be regulated and it may not invoke public order to reduce discretionally the guarantees of its subjects. For instance, the administration may not dictate punitive administrative actions without granting the individuals sanctioned the guarantee of the due process.[FN22].

[FN22] Emphasis added. I/A Court H.R., Baena Ricardo et al. v. Panama Case. Judgment of February 2, 2001. Series C No. 72, para. 126.

87. The petitioner claims that instead of ordering the elimination of the position of tenured professor held by Mr. Ricardo Israel Zipper, based on information with regard to his lecturing activities considered at the meeting of the Board of the Institute of Public Affairs on January 7, 2003, the authorities of the University of Chile should have initiated a disciplinary proceeding against the alleged victim, in which his right to defend himself would have been observed.

88. Furthermore, the petitioner argues that the “petition for a writ of protection filed with the Chilean Courts by Professor Israel proved not to be [the] effective remedy to which Article 25 of the Convention refers,” since, “rather than use the lawful disciplinary [proceeding], his post was eliminated so as not to give him a hearing.” The petitioner also indicated that “in the proceeding before the Supreme Court of Justice, said tribunal decided not to hear arguments from the parties,” and that “[in reading out the judgment of the Supreme Court of Justice] there was a strong sensation that the justices [...] did not read the appealed judgment, [...] nor did they read the minutes of the meeting of the Board of the INAP of January 7, 2003, the contents of which reflect an clear contradiction with the arguments advanced by the University for proceeding to eliminate the post.”

89. The State informed that under Decree with Force of Law 153 of 1981, the University of Chile “has the power to change its staff and to create and, therefore, abolish positions in accordance with the academic management decisions that [...] it adopts.” It also holds that abolition of a post is a legal way of putting an end to a position, irrespective of the person who holds it, when so ordered by the competent authority, in this case the University of Chile. The State clarified that even though elimination of a post does not constitute a punishment, as an administrative act it is open to challenge.

90. In that regard, the State said that in this particular case the alleged victim “had access to all the possibilities of defense that the legislation in force makes available to him,” given that he lodged an appeal with the Santiago Appellate Court, filed a complaint with the Office of the Comptroller General challenging the legality of Order No. 435, and, “in an open letter, presented another complaint to the President of the Republic, as patron of the University of Chile. The State adds that “the situation affecting Senator Israel came to the attention of the University Senate [...] which set up a commission of inquiry, which reviewed the decisions in his regard and offered no objections as to either form or substance in the matter.”

91. Finally the State noted that “the fact that [the Supreme Court of Justice] did not agree to hear arguments from the parties in no sense constitutes an infringement of procedural law,” since “the procedure provided for processing writs of protection [...] is of a written nature” [...]. From that point of view, the principle of bilaterality in the hearing is met [...] in writing. [In that regard] if the court in question deems it necessary, [...] it also hears the oral arguments of the attorneys, which are ancillary to the submissions already made in writing

92. The Commission considers that the petitioner has not set out facts that show that the State of Chile committed a violation of the American Convention through the university authorities’ exercise of their statutory powers to organize the university staff by creating and, in this case, abolishing posts. Furthermore, the information put forward by the parties suggests that the administrative acts through which the university authorities wield said powers can be challenged by means of a judicial remedy that permits the discussion of potentially abridged constitutional or legal rights, in accordance with the guarantees afforded by due process of law.

93. In the instant case, the alleged victim made use of the aforementioned judicial remedy and, thus, was able to contest the decision to abolish the elimination of his post in two separate judicial proceedings. Before the competent judges, the alleged victim charged violation, *inter alia*, of his right of possession of the post and of his rights to nondiscrimination and to have his psychological and moral integrity respected.

94. Upon examining the remedy thus invoked, the lower court judge found no violation of the right to humane treatment or of the right to equal protection. However, the judge considered that the university had infringed the alleged victim’s right to remain in possession of the abolished university position given that, in his opinion, the rector did not have the authority to eliminate said position. In turn, the judge at second instance found that the legal framework in place conferred on the rector powers autonomously to organize the university operations and administration, in particular, to abolish any position, including the one held by the alleged victim, and that in exercising said power the rector had not injured any rights.

95. The IACHR must now consider the argument that the real motive for abolishing the post was to dispense with the services of the alleged victim and not the reorganization of the educational entity, to which end the minutes of the meeting of January 7, 2003, were of particular evidentiary worth. Indeed, the petitioner claimed that “evidence that concerned him was kept from him,” referring specifically “to the minutes of the meeting of January 7, 2003, which stated that the previous year Professor Israel had not performed his lecturing or

investigation tasks and it was decided to eliminate his position.” The petitioner also held that those minutes “would have demonstrated the speciousness of the supposed reorganization needs of the Institute of Public Affairs” and that if “there [had been] any cause for complaint against him or any grounds that might warrant his dismissal,” the alleged victim should have been afforded the right to a disciplinary proceeding.

96. In this regard the Commission notes that based on the information in the record the alleged victim was unaware of the existence of said minutes until the first instance was exhausted and that it emerges from his original petition that he had the opportunity to submit said evidence for appraisal at second instance.[FN23]. However, the Chilean Supreme Court expressly clarified with regard to the nature of the matter before it that it had “nothing to do with the exercise of disciplinary authority with respect to faculty members, students, and staff of the University, since the petitioner’s functions were terminated [...] exclusively because the post that he occupied was eliminated, which elimination caused the staff member’s removal as a direct result of that circumstance.”[FN24]

[FN23] Complaint of violation of human rights of Ricardo Jacob Israel Zipper. Petitioner’s communication of November 17, 2003, pp. 8-9; Communication of the State of Chile. March 7, 2006. Minutes of Hearing No. 27, 124th Regular Session. Inter-American Commission on Human Rights, p. 14

[FN24] Appeal 3241/2003, Ruling 14553, August 27, 2003. Supreme Court of Chile. Petitioner’s communication of November 17, 2003. Annex (unnumbered).

97. The Commission considers that the fact that the alleged victim’s claims before the Chilean judicial authorities were not successful does not constitute a violation of the articles of the Convention. The Commission notes that in the instant case, the alleged victim was granted an effective remedy and the necessary procedural guarantees to take as satisfied the right to a fair trial under the terms of Articles 8 and 25 of the American Convention.

V. CONCLUSIONS

98. Based on the considerations set out above, the IACHR concludes that the Chilean State is not responsible for violation of the rights to privacy, freedom of thought and expression, and equal protection enshrined in Articles 11, 13, 21, and 24 of the American Convention, in conjunction with Article 1(1) thereof, or of the rights to a fair trial and judicial protection enshrined in Articles 8 and 25 of the American Convention, in connection with Articles 1(1) and 2 of said instrument, to the detriment of Ricardo Jacob Israel Zipper.

99. The IACHR has decided to transmit the instant report to the State of Chile and to notify the petitioners of its adoption under Article 50 of the American Convention.

100. Based on the analysis and conclusions contained in the instant report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To conclude in the instant case that there was no violation of Articles 11, 13, 21, and 24 of the American Convention in conjunction Article 1(1) thereof, or of Articles 8 and 25 of said treaty in connection with Articles 1(1) and 2 thereof.
2. To transmit the instant report to the State of Chile and the petitioner and to publish it in its Annual Report to the OAS General Assembly.

Done and signed in Washington, D.C., on November 10th, 2009. Signed: Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-President; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez and Paolo Carozza, Members of the Commission.