REPORT No. 12/10
CASE 12.106
ADMISSIBILITY
ENRIQUE HERMAN PFISTER FRÍAS and LUCRECIA PFISTER FRÍAS
ARGENTINA
March 16, 2010

I. SUMMARY

1. On April 29, 1998, the Inter-American Commission on Human Rights ("the Commission") received a petition through the National Office of the Organization of American States in Buenos Aires. The petition was filed by the attorneys Julio César Strassera, Nicolás Corradini, and Santiago Felgueras ("the petitioners") and it alleged the responsibility of the Argentine State ("the State," "the Argentine State," or "Argentina") in failing to provide redress for the facts that led to the exile of Mr. Enrique Hernán Pfister Frías and Mrs. Lucrecia Oliver de Pfister Frías ("the alleged victims"). The petitioners claimed that the State was responsible for violating the right to personal liberty, to a fair trial, to movement and residence, to equal treatment, and to judicial protection, as enshrined in Articles 7, 8, 22, 24, and 25 of the American Convention on Human Rights ("the Convention" or "the American Convention"), in conjunction with the duties of respecting those rights and enacting of domestic legislation as set out in Articles 1.1 and 2 thereof.

2. The petition states that on October 10, 1976, as a result of the persecution they suffered under the military dictatorship, the Pfister Frías family entered the Embassy of Venezuela, where Mr. Enrique Hernán Pfister allegedly remained for approximately eight months and that, subsequently, he and his family went into exile to Venezuela. It claims that in seeking to obtain redress for the harm caused during those years of forced exile, they exhausted domestic remedies by applying for the compensation established by Law 24.043, with that request being rejected.[1] In addition, they claim that to challenge that resolution, they filed a direct appeal with the National Administrative Chamber, which was also rejected. They also contend that both the judicial and administrative decisions violated the right to equal treatment, because the alleged victims were not given the compensation provided by law, in contrast to other individuals in similar situations who were compensated.

3. The State argued: (i) that the petition was not filed within a reasonable time; (ii) that the domestic remedies were not exhausted; and (iii) that the alleged facts did not tend to establish a violation of the American Convention. Regarding the second point, the State contended that neither an ordinary proceeding had been exhausted, and nor a damages suit been filed to secure redress. Regarding the third of these points, the State held that the scope of the law did not cover the Pfister family's situation and that the court rulings cited by the petitioners entailed significant divergences from the facts claimed by the alleged victims.

4. In accordance with Articles 46 and 47 of the American Convention and with Articles 30 and 37 of its Rules of Procedure, and after analyzing the positions of the parties, the Commission decided to find the petition admissible. The IACHR therefore resolved to notify the parties of its decision and to continue with its analysis of the merits with respect to the alleged violations of Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 (obligation of ensuring rights) thereof. The Commission also resolved to give notice of this decision to the parties, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

[1] That law is titled "Benefits for people placed at the disposal of the national executive branch during the state of emergency and for civilians arrested under orders issued by military courts."

5. On November 10, 1998, the Commission acknowledged receipt of the petition and asked the petitioner to report back, indicating the date on which notice of the final decision exhausting domestic remedies was given. On December 24, 1998, the petitioners replied to this request for information. On February 10, 1999, the Commission forwarded the relevant parts of the petition to the State, along with a period of 90 days in which to return its observations. On May 10, 1999, the State requested extensions of that deadline by means of communications dated May 10, 1999, and June 7, 1999. On July 7, 1999, the State submitted its response to the petition, the relevant parts of which were conveyed to the petitioners on the same date.

6. The petitioners submitted additional comments on September 24, 1999, and July 23, 2000. The relevant parts of those comments were duly conveyed to the State on October 25, 1999, and July 27, 2000, respectively. In addition, the petitioners submitted information on February 16, 2001, which was forwarded to the State for its comments on March 26 of that year. On June 21, 2001, the petitioners submitted comments, which were conveyed to the State on August 20 of that year.

7. Under extensions granted by the IACHR, the State submitted its comments on July 7, 1999, March 14, 2000, September 5, 2000, and December 14, 2000. The relevant parts of those comments were duly forwarded to the petitioners on August 19, 1999, March 28, 2000, September 18, 2000, and December 19, 2000. The State also submitted comments on March 26, 2001, which were conveyed to the petitioners on May 25, 2001. On October 4, 2001, the State submitted additional information, which was forwarded to the petitioners on October 17, 2001.

III. POSITIONS OF THE PARTIES

A. Petitioners

8. The petitioners hold that between May 25, 1973, and February 1974, Enrique H. Pfister Frías was employed as the Minister of Government, Justice, and Public Investigations of the Province of Salta. They sustained that on March 12, 1975, a car bomb was detonated at the Pfister family home, destroying the house. They claim that as a result, the Pfister family temporarily relocated to the city of Buenos Aires and, later, to Acassuso, in the province of Buenos Aires, where they remained until October 10, 1976.

9. The petition indicates that following the military coup of March 24, 1976, the alleged victims were told by various individuals that there was "an imminent threat to their personal liberty and physical integrity,"[2] and so they applied to the Embassy of the Republic of Venezuela for political asylum. According to the petitioners, on October 10, 1976, the Pfister family entered the Embassy building and was "denied liberty in their own country, since they were subject to the discretionary actions of the government and its official and nonofficial security agencies."[3] On account of the physical space available at the embassy, only Enrique H. Pfister Frías remained there. They also claim that Mr. Pfister Frías remained "in political asylum at the diplomatic premises for almost eight months, his freedom denied."[4] They also presented information indicating that on April 1977, the Pfister family left to Venezuela, and they returned to Argentina on December 22, 1983.

10. Regarding the exhaustion of domestic remedies, the petitioners state that as a result of the friendly settlement agreement set out in the Commission's Report No. 1/93, the State adopted a policy of reparations for the victims of the military dictatorship, enshrined in Law 24.043. The petitioners claim that the alleged victims applied to the Interior Ministry for the benefits offered by that law. They argue that although their request did not meet the stipulated requirements "in line with the letter of the

[2] Petition presented on April 29, 1998, to the headquarters of the National Liaison Office of the Organization of American States in Buenos Aires.

[3] *Ibid.*

[4] *Ibid.*

law," their situation was comparable to other individuals who, although were not completely in accordance with the terms of the law, were granted those benefits. They state that on October 23, 1996, the Minister of the Interior issued Resolution No. 2.770, rejecting the application for benefits because of the facts "failed to concur" with Law 24.043.

11. They further report that they lodged a direct appeal against Resolution No. 2.770 with the Administrative Chamber, but that it was rejected by the Court on the ground that the circumstances established under Law 24.043 had not been met. They note that the filing of this appeal exhausted the remedies offered by domestic jurisdiction. They also contend that it had been decided to compensate, under the Law 24.043, individuals who had suffered similar human rights violations and who did not have an adequate channel for making their claim. In addition, they noted that the intent of the Congress was to establish an administrative procedure, because none of the judicial remedies afforded under domestic law were useful to present this kind of claims.[5]

12. The petitioners also contend that the provisions of Law 24.043 should operate as a suitable and effective remedy. In addition, they explain their reasons for not pursuing the matter through an ordinary judicial process. In this regard, they alleged that the jurisprudence of the domestic courts had established that when the law allowed a direct appeal to the Appeals Chamber, the parties does not have available an ordinary judicial process. They contend that such an action would not have allowed a broader debate before the judiciary, and that no case similar to the one currently before the Commission had been successful.

13. With reference to the action for civil damages, they alleged that statutory limitations would apply. They contend that the position of the courts was not to use the restoration of the democratic order in 1983 as the start of the countdown for the activation of statutory limitations. The petitioners claim that the State's position is that their clients should have pursued a claim for damages within two years following their departure from the country, when the illegal repression was still going on. They maintain that such a civil case would have been unsuitable for examining the facts, because in such a remedy it is the applicant who must initiate the proceedings and offer evidence. Consequently, they would have had first to demonstrate the existence of what they called "the criminal plan pursued by the military government and the systematic persecution of individuals."

14. Regarding the alleged violation of the obligation to repair the harm inflicted of their rights to humane treatment and freedom of movement and residence, the petitioners contend that if they had not taken refuge in a foreign embassy, they would "probably have been murdered or disappeared."[6] They contend, that such threat together with the harassment they suffered, forced them to relocate to another country, without either documents or the possibility of return, which led to "significant harm and the constant and prolonged violation of [those] rights." They state that the Supreme Court of Argentina has denied them the possibility of pursuing compensation, because it has ruled that statutory limitations apply to the applicable judicial actions. They also claim that the Supreme Court of Justice's position regarding the statutory limitations, and the State's decision to deny the alleged victims the compensation provided under Law 24.043, is against the jurisprudence of the Inter-American Court of Human Rights.[7]

15. Regarding the alleged violation of Article 8.1 of the American Convention, the petitioners claim that in the domestic proceedings, evidence and personal testimony was submitted indicating that the Pfister Frías family would have been arrested if they remained in Argentina, and also indicating the circumstances that forced them into exile. According to the petitioners, such evidence was not examined

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[5] They thus indicate that the Supreme Court of Justice ruled in the case of *Noro, Horacio José v. Interior Ministry – Art. 3, Law 24.043* that the purpose of that legislation was to provide financial compensation those individuals who, during the military dictatorship, were denied their physical freedom as a result of illegitimate acts by the authorities exercising power. They also cite various judicial decisions issued by both the Administrative Chamber and the Supreme Court of Justice, ordering the redress afforded by Law 24.043 to be given to individuals who, during the military dictatorship, had gone into exile after being arrested.

[6] Petition presented on April 29, 1998, to the office of the Organization of American States in Buenos Aires.

[7] In this regard, they cite the Inter-American Court in the *Velásquez Rodríguez Case*.

at either the administrative or the judicial trial. They explain that the direct appeal to the Appeals Chamber works as second-instance decision and, consequently, new evidence cannot be presented. They maintain that the Chamber should have ordered the timely presentation of evidence in order to establish the facts on which the claim was based. They also contend that parties at trial must be given the opportunity to prove the facts related to their rights prior to the adoption of a decision on the merits, which reaffirms the existence of a violation of the right of defense at trial.

16. Regarding the alleged violation of the right to equal treatment, the petitioners contend that in similar cases, the compensation provided by Law 24.043 was granted. Thus, they maintain that the Argentine State gave compensation to individuals who were detained for a few hours or who were never arrested.

17. In consideration of the foregoing, the petitioners request the Commission to declare that the right to personal liberty, the right to a fair trial, the right of movement and residence, and the right to judicial protection enshrined in Articles 7, 8, 22, 24, and 25 were violated, and to recommend that the Argentine State grant fair compensation.

B. State

18. In its submissions to the IACHR, the State offered three lines of defense: (i) the petition was not filed within a reasonable time; (ii) domestic remedies were not exhausted; and (iii) the alleged facts do not tend to establish violations of rights protected by the American Convention.

19. Regarding the failure to file the petition within a reasonable time, the State argues that although the conditions for lodging claims did not exist at the time that the alleged violations were taking place, that situation came to an end on December 10, 1983. They contend that more than 15 years of democratic life has passed in Argentina before the petitioners presented their case to the Commission, which exceeds the reasonable time demanded by Article 38.2 of the Rules of Procedure.[8] The State therefore concludes that it is no possible to refer to the events that took place between 1976 and 1983 or to its duty of providing redress.

20. Regarding the failure to exhaust domestic remedies, the State claims that Law 24.043 does not apply to the situation described by the petitioners; consequently, they would be attacking its content and should therefore pursue an ordinary judicial proceeding that would analyze the constitutionality of such legislation. Argentina adds that the remedies to challenge the law offered by domestic jurisdiction are available and effective. It also states that the petitioners used the wrong action to assert their claim. The States alleges, that the authorities who analyzed their claim were unable to challenge the selection criteria chosen by the legislature to determine the beneficiaries of the law.

21. The State holds that Law 24.043 applies when a formal decision was issued ordering the arrest of a person, or when a person was taken into custody regardless of the existence of an order for his arrest. It adds that the benefits under such law have been granted to persons, against whom an arrest warrant was issued but who were never taken into custody. It indicates that the people placed at the disposal of the executive branch who availed themselves of the option of leaving the country were also covered by one of those two situations. In contrast to those cases, according to the State the petitioners did not establish either the effective denial of their freedom or the existence of a formal arrest warrant. Consequently, the alleged victims were not considered eligible for the benefits afforded by Law 24.043. Argentina states that the law does not cover cases in which there was a restriction on freedom of movement in the country.

22. The Argentine State also holds that the petitioners have not exhausted proceedings for damages. It contends that according to the petition, the violation end with the return of democracy to Argentina. Consequently, according to the State, the period of two years expired under the democratic

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[8] That article is from the amendments to the Commission's Rules of Procedure adopted in 1996.

regime. According to the State, the petitioners did not bring their case to the courts, during such period as other people did successfully.

23. The State further holds that complaint lodged by the petitioners does not tend to establish a violation of the Convention in accordance with Article 47.b. It adds that under the "fourth instance theory," the Commission may not review judgments handed down by domestic courts acting within the scope of their competence and observing due guarantees, unless a violation of the Convention has been committed, which is not the case with the instant petition.

24. Regarding the requirement that the facts tend to establish a violation of the American Convention, the State also holds that there was no breach of Article 8.1, because the recognition of the alleged victims as beneficiaries of Law 24.043 did not depend on the analysis of the evidence offered, but rather on the scope of that law's application. It adds, that the judgment adopted by the Administrative Chamber, ruled that the facts alleged by the petitioners had been established, and that the rejection of their claim was not based on the failure to prove their claims but rather on the legal assessment made of them.

25. In addition, it contends that the differentiated resolution of disputes regarding a single matter is common in any judicial system. The State also holds that although evidence may be submitted to supports one position or another, the decisions adopted are within the margin of appreciation of the local courts and, consequently, outside the Commission's competence. It maintains that the law clearly indicates, that the appeal, does not admit the presentation of any evidence. It therefore holds that the Appeals Chamber's decision was not arbitrary.

26. Regarding the alleged violation of the right to equal treatment, the State contends that it must be given a "margin of discretion" for establishing the scope of their policies of reparation. It holds that the equality before the law should be analyzed by recognizing that the provisions of Law 24.043 offer a special benefit that is not reparatory. According to the State, the scope of this policy is governed by the principle of equity and not by "strict, linear" equality. In this regard, it adds that the IACHR must also take into account the fact that this law demands a restricted interpretation. The State, sustain that it falls under the competence of the Congress to decide on the possible application of the entitlements under the reparations policy to additional persons. It also holds that any extension of Law 24.043's benefits is a matter of domestic law and is not related to the obligation of making reparations for "alleged human rights violations."

27. Finally, the State asked that the petition be declared inadmissible because the facts it sets out do not tend to establish a violation of rights enshrined in the American Convention.

III. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission *ratione personae, ratione materiae, ratione temporis,* and *ratione loci*

28. The petitioners are entitled, in principle, to lodge petitions with the Commission under Article 44 of the American Convention. The petition names, as its alleged victims, individual persons with respect to whom the State of Argentina had assumed the duty to respect and ensure the rights enshrined in the American Convention. With reference to the State, the Commission notes that Argentina has been a State party to the American Convention since September 5, 1984, when it deposited its instrument of ratification. The Commission therefore has competence *ratione personae* to examine the complaint. The Commission has also competence *ratione loci* to hear the matter since the petition alleges violations of rights protected by the American Convention occurring within the territory of Argentina, which is a State party to that treaty. Additionally, the Commission has competence *ratione materiae* since the petition describes possible violations of human rights that are protected by the American Convention.

29. The IACHR has competence *ratione temporis*, because the State was a party on the American Convenction when the alleged violations took place. In this regard, the Commission notes that

the petitioners' claims address alleged violations of Convention protected rights, during the proceedings where they sought redress for the violations that reportedly forced them into exile. These proceedings were held after the date on which the Convention came into force for the Argentine State, and regarding which the Commission has competence *ratione temporis.*

30. With regard to the facts that allegedly force the Pfister family to seek asylum in the Venezuelan embassy, and to their exile on such country the IACHR notes that took place before the ratification of the American Convention by Argentina; therefore, the Commission does not has competence *ratione temporis.* Nonetheless, the IACHR will analyze them before the American Declaration of the Rights and Duties of man.

B. Other requirements for admissibility

1. Exhaustion of domestic remedies

31. Article 46 of the American Convention stipulates, as a requirement for a case to be admitted, "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, to resolve it before it is placed before an international venue.

32. The Argentine State claimed that the remedy afforded by Law 24.043 does not apply to the facts alleged by the petitioners and that consequently, the domestic remedies were incorrectly exhausted. It also argued that they failed to exhaust domestic remedies on three grounds: (i) the petitioners failed to lodge an extraordinary appeal against the decision handed down by the Administrative Chamber; (ii) the petitioners could have challenged the constitutionality of the law through an ordinary proceeding; and (iii) their failure to file suit for damages, since the deadline to establish statutory limitations began to run from the moment that the alleged violation ceased, which coincided with the restoration of democracy in 1983.

33. The petitioners argued that the direct appeal provided under Law 24.043 was the suitable and effective remedy to seek compensation for the events that led to the exile of the Pfister Frías family. They also claimed that they were not required to file an unconstitutionality suit because it was an extraordinary remedy. Statutory limitations already applied to actions for claiming damages.

34. Regarding the application of law 24.043, the Commission notes that according to the Inter-American Court of Human Rights and of the Commission jurisprudence, only those remedies that are suitable and effective need to be exhausted. According to the Court, "adequate domestic remedies are those which are suitable to address an infringement of a legal right."[9]

35. In this regard, the Commission notes that in 1991, the State enacted Law 24.043, establishing a procedure to compensate "people placed at the disposal of the national executive branch during the state of emergency, and civilians arrested under orders issued by military courts." Believing their situation to be covered by that law, the petitioners lodged their application in accordance with Article 3. According to that provision, "applications for this benefit shall be lodged with the Interior Ministry," and, if denied, "appeals may be filed within ten days following notification with the National Federal Administrative Appeals Chamber of the Federal Capital." The petitioners complied with this process. First of all, they lodged their application with the Interior Ministry, which denied it by means of Resolution 2770/96. Second, they lodged the appeal provided for in Law 24.043 with the National Appeals Chamber, which denied that appeal on October 9, 1997.

[9] I/A Court H. R., *Case of Velásquez Rodríguez Case v. Honduras***,** Merits, Judgment of July 29, 1988, Series C No. 4, para. 64.

36. The State claimed that the remedy offered by Law 24.043 was not suitable for seeking compensation for the facts alleged by the petitioners. However, the petitioners contended that this law had been applied in similar cases[10].

37. In connection with this, the Commission notes that the Supreme Court of Justice ruled regarding the application of this law in sentences given after the presentation of the petition before the Commission:

> In that the conditions in which the applicant had to remain in and subsequently abandon the country – which have not been disputed – indicate that her decision to take refuge, first, under the flag of a friendly nation and, subsequently, to emigrate, far from being considered "voluntary" or freely adopted, was the only, desperate alternative she had for protecting her life from the threat posed by the State itself and by parallel organizations or, at the least, for regaining her liberty, since... upon taking the decision to emigrate, she already faced a breach of that most basic right" in that "...arrest, not only in law but according to common sense, implies various restrictions of freedom of movement... Consequently... also inherent in the concept of arrest under the law in question is the forced confinement of the entire family... as the only way of avoiding the threat of death that had already taken two of its members.[11]

38. Accordingly, and taking into consideration that the petitioners alleged facts similar to those analyzed and decided under law 24.043 in other cases, the Commission concludes that such law establishes a suitable remedy.

39. Regarding the extraordinary appeal, the Commission notes that this remedy is established to challenge a law applied in a case because it is against the Constitution or to the international treaties which Argentine is party[12]. In this regard, the IACHR considers that the petitioner is not obliged to exhaust such remedy, because it is a mechanism of control to declare inapplicable a law and the allegations of the petitioners refer to decisions of the authorities that rejected their compensation, not to the law 24.043.

40. Concerning the ordinary proceeding, the Commission notes that according to article 319 the Code of the Civil Procedure a case shall be pursue by such process in cases when there is no specific action[13]. In this regard, the IACHR notes that law 24.043 establishes a specific remedy, therefore the ordinary proceeding was not a remedy that had to be exhausted prior to present the case before the Inter-American system.

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[10] The petitioners cited the following sentences: Noro, Horacio José v. Interior Ministry- law 24.043, judgment of July 15, 1997; Quiroga, Rosario Evangelina v Interior Ministry, judgment of June 1, 2000; Bufano, Alfredo Mario v. Interior Ministry, judgment of June 1, 2000.

[11] Supreme Court of Justice of the Nation, judgment of October 14, 2004, *Yofre de Vaca Narvaja, Susana v. Interior Ministry – resolution M.J.H.* (file 443.459/98). The quotation comes from the opinion of the Attorney General, to which the Court adhered in this case. This precedent was repeated in the following Supreme Court cases: *Cuesta, Lucrecia Silvia v. Ministry of Justice and Human Rights, Art. 3 Law 24.043* (resolution 550/01)" of March 28, 2006. Similarly, the Supreme Court referred to the cited extract in: *Dragoevich, Héctor Ramón v. Ministry of Justice and Human Rights – Art. 3 Law 24.043* (resolution 612/01), judgment of December 2, 2008.

[12] Article 14 of Law 48 reads as follows: "Once a case is with the provincial courts it shall remain there through sentencing and conclusion; final rulings handed down by provincial superior courts may only be appealed to the Supreme Court in the following cases: 1) when in the course of litigation the validity of a treaty, a law passed by Congress or an authority exercised at the federal level has been questioned and the decision has been to rule the treaty, law or authority in question invalid; 2) when the validity of a provincial law, decree or authority has been challenged as contrary to the National Constitution, treaties or laws of Congress, and the decision has upheld the validity of the provincial law or authority; 3) when the sense of some clause in the Constitution, treaty or act of Congress, or a commission performed in the Nation's name has been challenged and the decision goes against the validity of the title, right, privilege or exemption that is based on that clause and is the subject of litigation."

[13] According to this article: "All judicial controversies which do not have special treatment, will be processed in ordinary proceedings, except where this Code authorizes the Court to determine the kind of process to be applied. When the special laws referred to the trial or summary trial the case should be proceed under the ordinary trial procedure. When the controversy is about rights that are not measurable in money, or there is doubt about the claimed value and does not correspond a summary trial, or a special process, the judge will determine the type of process applied. In these cases and in all those where this code allows the judge to determine the kind of procedure the decision can't be appealed".

41. In accordance with this, it is necessary to establish if the petitioners should exhaust a civil action for damages. In this regard, the Commission has established that the requirement to exhaust domestic remedies does not mean that the alleged victims are obliged to exhaust every remedy available to them.[14] Consequently, if the alleged victim raised the issue by any of the valid and available options under domestic law, and the State had the opportunity to correct the situation under its jurisdiction, the purpose of the international provision must be considered to have been accomplished.[15] In this case the petitioners filed the motion established by law 24.043, to overrule the resolution given to them by the Interior Ministry which was the suitable remedy to exhaust.

42. In sum, the Commission concludes that in the case at hand, the remedies offered by domestic jurisdiction were pursued and exhausted, in compliance with Article 46 of the Convention.

2. Filing period

43. Under Article 46.1.b of the American Convention, for a petition to be admissible, it must be lodged within a period of six months from the date on which the allegedly injured party was notified of the judgment whereby the domestic remedies were exhausted. In the case at hand, the petitioners were notified of the final judgment on October 28, 1997, and the petition was filed on April 29, 1998: in other words, one day after the deadline set by the Convention. However, the Commission has repeatedly noted, citing the Inter-American Court, the commonly accepted principle that the procedural system is a means of attaining justice, and that justice cannot be sacrificed for the sake of mere formalities.[16]

44. The State contended that the petitioners failed to submit their case within a reasonable time. On this point, the Commission notes that according to Article 32 of its Rules of Procedure: "In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission." In accordance with this, and bearing in mind that in the instant case the Commission has not ruled that the exceptions to the prior exhaustion of domestic remedies rule are applicable, it is irrelevant to analyze whether or not the petition was presented within a reasonable time. Consequently, the Commission finds that the requirement set by Article 46.1.b of the Convention has been met.

3. Duplication of international proceedings and *res judicata*

45. Nothing in the case file indicates that the substance of the petition is pending a decision in any other international settlement proceeding or that it is substantially the same as any other petition already examined by this Commission or another international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

4. Characterization of the alleged facts

46. For the purposes of admissibility, the Commission must decide whether the alleged facts tend to establish a rights violation, as stipulated in Article 47.b of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," as described in Article 47.c. The level of conviction regarding those standards is different from that required in deciding on the merits of a

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[14] IACHR, Report No. 76/09, Petition 1473-06, Admissibility, Community of La Oroya, Peru, August 5, 2009, para. 64; IACHR, Report No. 40/08, Petition 270/07, Admissibility, I.V., Bolivia, July 23, 2008, para. 70.

[15] IACHR, Report No. 76/09, Petition 1473-06, Admissibility, Community of La Oroya, Peru, August 5, 2009, para. 64; IACHR, Report No. 57/03, Case 12.337, Marcela Andrea Valdés Díaz, Chile, October 10, 2003, para. 40; and IACHR, Report No. 40/08, Petition 270/07, Admissibility , I.V., Bolivia, July 23, 2008, para. 70.

[16] *See:* I/A Court H. R., *Case of Cayara v. Peru,* Preliminary Objections, Judgment of February 3, 1993, Series C No. 14, para. 42; I/A Court H. R., *Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50, and 51, American Convention on Human Rights),* Advisory Opinion OC-13/93, July 16, 1993, Series A No. 13, para. 43; IACHR, Report No. 20/09, Petition 235-00, Admissibility, Agustín Vladimiro Zegarra Marín, Peru, March 19, 2009, para. 66.

complaint; the IACHR must perform a summary *prima facie* evaluation, not to establish the existence of a violation, but to examine if the petition establishes grounds for the apparent or potential violation of a right guaranteed by the Convention. This determination involves a summary analysis which does not imply a prejudgment or advance opinion on the substance of the matter.[17]

47. The State argued that the petitioners are using the Commission, as a fourth instance because they intend the Commission to revise the judgments of the national courts. In this regard, the Commission has stated that it has no competence to review national legal matters or to act as a fourth instance. However, it is competent to examine and rule on issues arising from an alleged breach by a State with its obligations under the Convention. In this case, more specifically, the Commission has competence over the obligations of the State to adopt domestic legal measures and ensure the rights to judicial guarantees and judicial protection, enshrined in Articles 8 (1) and 25 in relation to Articles 1 (1) and 2 of the American Convention on Human Rights.

48. In relation, to the facts that led the Pfister family to request asylum in the Venezuelan embassy, and their exile on such country, the Commission considers that if proven, would tend to establish violations of the rights set forth on articles I and VIII of the American Declaration.

49. Finally, in relation with the allege violation of article 24, the Commission had established that "the right to equal protection of the law cannot be assimilated to the right to equal outcome in judicial proceedings involving the same subject matter"[18]. The petitioners argue that the Administrative National Chamber of Appeals denied them the reparations stated under law 24,043, unlike other similar cases in which the Courts granted it. In this regard, the Commission considers that the mere invocation of other rulings on the same subject with different result is not sufficient to characterize *prima facie* as a possible violation of article 24 of the Convention.

V. CONCLUSIONS

50. The Commission concludes that it has competence to hear the instant case and that the petition is admissible under Articles 46 and 47 of the American Convention.

51. In accordance with arguments of fact and law set out above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible as regards the alleged violations of the rights enshrined in Articles 8 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof.

2. To declare this case admissible with regard to the presumed violations of Articles I and VIII of the American Declaration of the Rights and Duties of Man.

3. To declare inadmissible the claims regarding Articles 24 of the American Convention.

4. To notify the parties of this decision.

5. To continue with its analysis of the merits of the case.

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[17] IACHR, Report No. 58/09, Petition 12.354, Admissibility, Kuna of Madungandí and Emberá of Bayano Indigenous Peoples and their Members, Panama, April 21, 2009, para. 57.

[18] IACHR, Report Nº 39/96, Case 11.673, Santiago Marzioni, Argentina, October 15, 1996, para. 57.

6. To make this report public and to publish it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 16th day of the month of March, 2010. In favor: Felipe González, President; Paulo Sérgio Pinheiro,First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, and José de Jesús Orozco Henríquez; Rodrigo Escobar Gil (dissented).