

**REPORT No. 157/10**  
PETITION 696-03  
INADMISSIBILITY  
MARCELO SÁNCHEZ MOURAZOS  
ARGENTINA  
November 1, 2010

**I. SUMMARY**

1. This report refers to petition 696-03, whose proceedings were initiated by the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission,” the “Commission,” or “IACHR”) following the filing of a petition by Mr. Marcelo Sánchez Mourazos and José Sánchez (hereinafter the petitioners), on behalf of the former, against the Argentine Republic (hereinafter “Argentina” or “the State”). This petition was received on September 2, 2003. The petitioners claim that, pursuant to the provisions of the American Convention on Human Rights (hereinafter the “American Convention” or “the Convention”), the State is responsible for the alleged violation of its obligation to respect rights, of the right to life, the right to humane treatment, the right to personal liberty, to a fair trial, to freedom from ex post facto laws, to privacy, to property, and to equal protection, provided for by articles 1, 4, 5, 7, 8, 9, 11, 21 and 24, respectively by said Convention, with prejudice to Mr. Marcelo Sánchez Mourazos.

2. The petitioners claim that in December 2002 Mr. Sánchez Mourazos was convicted of the crime of “transporting narcotic substances” by the Federal Oral Court of Salta for a crime he did not commit and was sentenced to six years and two months of imprisonment, a fine, and full disqualification [*inhabilitación absoluta*, i.e. disqualification from public office or employment, deprivation of electoral rights and of the right to receive a pension] for the duration of his sentence. They state that at the same time of Mr. Sánchez Mourazos trial, another person was also being prosecuted separately, who had confessed to hiding the drugs in the car of the alleged victim. They affirm that this confession was quashed, and that as a result the aforementioned person was acquitted. The petitioners maintain that in spite of this confession Mr. Mourazos was convicted.

3. The State, in turn, claims that the petition should be declared inadmissible due to the lack of exhaustion of domestic remedies; and because the petition does not provide facts that tend to establish a violation of the rights and/or guarantees protected by the American Convention. The State maintains that the petitioner’s pure purpose is for the Commission to examine the judicial decisions.

4. After analyzing the information available and verifying compliance with the admissibility requirements set forth in articles 46 and 47 of the American Convention, the Commission declared the case inadmissible because from the information provided by both parties it is not possible to discern elements that might constitute a violation of the American Convention. The Commission decides to remit the report to the parties, publish it, and include it in its Annual Report to the OAS General Assembly.

**II. PROCESSING BEFORE THE COMMISSION**

5. The Inter-American Commission acknowledged receipt of the petition on September 9, 2003. It requested additional information from the petitioners, which was received on February 20, 2004. The relevant parts of the petition were transmitted to the State on April 5, 2004.

6. On September 3, 2004, the Commission sent additional information, provided by the petitioners, to the State. On October 20, 2004 the Commission acknowledged receipt of observations submitted by the State and forwarded this information to the petitioners on November 22, 2004. The observations presented by the petitioners were received on August 15, 2005, and were forwarded to the State on March 6, 2006. The State submitted its observations on December 19, 2006.

7. The Commission received a request for a precautionary measure in favor of the alleged victim on February 23, 2004, due to a hunger strike that Mr. Sánchez Mourazos had begun some days earlier. The IACHR requested information from the State, which was received on March 4, 2004, which said that the alleged victim had ended his hunger strike on February 26 and that, although he had lost weight, he was in good health.

### III. POSITIONS OF THE PARTIES

#### A. Position of the petitioners

8. The petitioners maintain that Mr. Sánchez Mourazos was tried and convicted of the crime of drug trafficking, and sentenced to six years and two months of imprisonment by the Federal Oral Court of Salta.<sup>1</sup> They claim that there were clear irregularities in the proceedings which affected his right to defense, to due process and to equality of arms between the parties. The petitioner Marcelo Sánchez Mourazos emphasizes the lack of the necessary legal certainty on the part of the judges upon which to base his conviction and he alleges there was a systematic denial to include and consider the confession of the party truly guilty of the facts.

9. The petitioners explain that on September 29, 2001 Mr. Sánchez Mourazos had lent his car to the cousin of an acquaintance. The cousin, whose surname is Cardozo, returned the car on October 1, 2001, following which Mr. Sánchez Mourazos drove it to the Customs Office to make some inquiries regarding the export of honey. On his way back home he was stopped by an officer of the Gendarmerie. During the inspection Mr. Sánchez Mourazos was found to have a gun, for which he had a license, and 33 packets of what were allegedly drugs within the car's gas cylinder. The petitioners maintain that Mr. Sánchez Mourazos did not know or understand what was going on until he realized that what were allegedly drugs had surely been left there by his acquaintance and her cousin. Proceedings were initiated against the alleged victim and on December 17, 2002<sup>2</sup> he was convicted of the crime of drug trafficking, and sentenced to six years and two months of imprisonment, and to a fine of \$3,000 pesos and full disqualification [*inhabilitación absoluta*] for the duration of his sentence.

10. They maintain that the procedural defects occurred after the petitioner was indicted and after the evidentiary stage. They explain that during the preliminary inquiry, because of Mr. Sánchez Mourazos' inability to prove how the facts really had occurred, and because he feared that those truly responsible for the crime would engage in attempts on his life or the lives of his next of kin,<sup>3</sup> he decided to assert his right not to testify. His defense counsel requested a continuance of the oral hearing based on the possibility of being able to offer certain, concrete evidence regarding who was the party really responsible for the crime. The Federal Oral Court decided to postpone the trial date two and a half months, but said that this postponement did not entitle the petitioner to enter evidence for which the time period for submission had passed.

11. The petitioners claim that in the plenary stage of the proceedings, the defense counsel of the alleged victim had informed the court of new facts which could serve to identify the person truly responsible for the facts. They go on to say that on October 18, 2002, Mr. Sánchez Mourazos had filed criminal charges against the cousin of his friend. On November 1, 2002, in a face-to-face confrontation in court, Mr. Cardozo had accepted responsibility for the facts and had completely denied the petitioner's

<sup>1</sup> Article 5, paragraph c) of Law 23.737: "The punishment of imprisonment of four to fifteen years and a fine of six thousand to five hundred thousand australes shall be imposed on whomever, without authorization or with an unlawful purpose: c) trades in narcotic drugs or raw materials for their production or manufacture, or has them in his or her possession for the purposes of commerce, or distributes them or gives them in payment, or stores or transports them."

<sup>2</sup> The Commission notes from its reading of the documentary evidence provided by the petitioner that the oral trial was held on December 17, 2002, but the judgment of the first instance convicting and sentencing him was issued on December 26, 2002.

<sup>3</sup> The petitioners make the clarification that on October 4, 2001, while being detained by the Gendarmerie, Mr. Sánchez Mourazos was threatened by a person in civilian dress, who told him that if he testified against those allegedly responsible for the crime, he and his family would have serious problems.

involvement in the crime. Furthermore, in a second court confrontation on November 8, 2002, Mr. Cardozo had ratified everything he said during the first one.

12. The petitioners state that although Mr. Cardozo had confessed, the alleged victim had been convicted by the Federal Oral Court of Salta as the only perpetrator of the crime, at the very same time during which Mr. Cardozo was being held in preventive custody due to the proceedings initiated against him as a consequence of the criminal complaint filed by Mr. Sánchez Mourazos. They state that the Federal Oral Court of Salta was cognizant of these proceedings before the December 10, 2002 hearing and did not consider the inclusion of the investigation carried out by the Second Federal Court on Cardozo to be important. The petitioners maintain that should the proceedings of the aforementioned federal court have been included in his trial, it would have been possible to establish the consistency of his account with Mr. Cardozo's confession, as well as its veracity.

13. The petitioners report, with respect to the proceedings against Mr. Cardozo, that on March 11, 2003 the prosecutor had motioned for the dismissal of the case and on April 2, 2003, the Federal Oral Court of Salta dismissed it based on alleged technical-legal errors, specifically because one of the face-to-face confrontations had been quashed due to the fact that Mr. Cardozo's defense counsel was not present. Consequently, Mr. Cardozo was immediately released. The alleged victim maintains that he should not have to suffer the consequences of the irresponsible behavior and malpraxis of the officials. Furthermore, he says, there is no logical or rational explanation for this, since a case was dismissed "setting a confessed criminal free, and keeping an innocent person in jail."

14. The petitioners also consider that there has been a violation of the right to equal protection, since the evidence was barred on the grounds of its lack of procedural timeliness [*principio de preclusión*] for Mr. Sánchez Mourazos only: the prosecutor was allowed – after the evidentiary stage had passed – to introduce new evidence, *inter alia*, regarding the closing of the Mosconi Airport since 1992. The principle of equal protection was also violated by the same Oral Court of Salta because in other proceedings for graver offenses, i.e., recidivism, a lesser penalty was applied than the one imposed on the alleged victim.

15. They affirm that the Federal Oral Court of Salta had denied, in a single decision of February 11, 2003, two cassation appeals against the judgment of the first instance. In addition, their defense counsel was not granted a hearing to provide legal and technical grounds for the brief submitted, and the decision of denial merely reiterated the reasoning provided in the judgment of the first instance convicting Mr. Sánchez Mourazos.

16. The petitioners report that on March 17, 2003 an appeal for review of the case was filed, which was declared inadmissible by the Second Chamber of Federal Criminal Cassation of Buenos Aires, on the grounds that the appellant's purpose was a reexamination of the evidence upon which the sentence at issue had been based. The petitioners claim that the purpose of the appeals filed was for the appellate court to take cognizance that the court that had convicted and sentenced Mr. Sánchez Mourazos had not taken into consideration the parallel proceedings undertaken against Mr. Cardozo and, especially, the latter's confession that, *inter alia*, proved Mr. Sánchez Mourazos' innocent of the charges made against him.

17. On June 9, 2003 he filed an extraordinary federal appeal before the National Chamber of Cassation, which was denied on August 4, 2003, and, according to the petitioners, not going beyond a mere referral to the arguments made by the General Prosecutor in his Prosecutorial Opinion Report.

18. They maintain that there was also a violation of article 21 of the American Convention on Human Rights, as items confiscated from his parents' home, despite their requests, had not been returned.

19. They also claim that on August 5, 2003 a habeas corpus petition was filed in favor of Mr. Sánchez Mourazos, because his physical integrity was under grave danger due to his filing of a complaint on those allegedly responsible, and due to the conditions of his detention.

20. The alleged victim maintains that the conditions of his detention were inhumane, that for forty days he was not allowed outside to walk and, when he was allowed, it was only for 10 minutes. In addition, he had no activity or recreation; that he had slept on the floor for over three months, under a bed, with abominable food, and suffering stomach and gastrointestinal illnesses. Moreover, he was never provided with psychological or psychiatric care, even though it had been requested by the Penitentiary Ombudsman [*Procurador Penitenciario*] to the Oral Court of Salta.

21. Mr. Sánchez Mourazos stated in an April 27, 2004 communication that to request justice he had engaged in voluntary fasting from February 17 to 26, 2004, the last four days of which he was taken to the Penitentiary Service Criminal Hospital. He also was placed in punishment and isolation cells under subhuman conditions. In addition, during his period of voluntary fasting he was diagnosed with lumbalgia, for which he received no medication or other treatment. Furthermore, on February 23, 2003, the day on which he was admitted to the Penitentiary Service Criminal Hospital, he was suffering from tachycardia, restlessness, breathlessness, lack of air and problems with breathing, dizziness due to low peaks in arterial pressure, insomnia, migraines, intense headaches, and constant and progressive kidney pain.

22. Mr. Sánchez Mourazos stated in his July 6, 2004 communication that on September 9, 2003 he had filed a motion for review with the National Chamber of Criminal Cassation. The Chamber's decision was issued on April 30, 2004, reducing the sentence handed down by the Federal Oral Court of Salta in Case No. 1370/02, from 6 years and two months to four years. Thus, Mr. Sánchez Mourazos said, on June 2, 2004 he was released under probation.

23. Regarding the State's observations claiming that there is no record that the alleged victim had requested recusal of the judges intervening in the case, the latter clarifies that he had filed complaint against three members of the Federal Oral Court of Salta and against the prosecutor, before the Magistrates Council [*Consejo de la Magistratura*] on September 30, 2003 and before the Office of the Attorney General [*Procuración General de la Nación*] on September 22, 2003, in his petition for constitutional protection [*amparo*] filed on August 5, 2003 before the Oral Court and, faced with the lack of a response, he filed a habeas corpus petition before the Office of the Attorney General on September 22, 2003.

24. Based on the foregoing, the petitioners claim that the State was in violation of articles 4, 5, 7, 8, 9, 11, 21 and 24, in connection with article 1(1) of the American Convention, with prejudice to Mr. Marcelo Sánchez Mourazos.

## **B. Position of the State**

25. The Argentine State maintains that domestic remedies have not been properly exhausted, as required by the American Convention and the Commission's Rules of Procedure, and that the petitioners' allegations do not constitute violations of the human rights of Mr. Marcelo Sánchez Mourazos.

26. Regarding the petitioner's claim of an alleged violation of his right to defense, the State notes that the petitioner did not provide any evidence in the stage of the preliminary inquiry and although he argued that he did not do so for fear of reprisals threatening his and his family's safety, in the documentary evidence provided there is nothing to support his statement regarding the reasons that kept him from providing the evidence he thought to be relevant to prove his innocence; he did not, then use these tools for his defense, which are recognized by the country's legislation on criminal procedure. In addition, regarding the alleged threats of which he was a victim, the State maintains that the alleged victim could have used the appropriate remedies provided by domestic legislation to ensure his personal integrity and that of his next of kin, but that he did not do so, as he has not claimed that the court record shows any such complaint.

27. The State argues that the petitioner allowed the barring of evidence in his trial for lack of

timeliness in its presentation, and subsequently attempted to introduce the same evidence as a complainant before another judge who was not the appropriate one to hear the case. This submission, in which the petitioner came, under oath, as a complainant, in a case based on the same facts for which he was indicted in another trial, brought about the dismissal of proceedings, pursuant to national legislation and case law.

28. Regarding the petitioner's appeals, the State emphasizes that the petitioner had accepted the judgment denying the cassation appeal against the judgment of the first instance. The State clarifies that said decision could have been challenged using a direct motion for admission of a denied appeal [*queja*] before the National Chamber of Criminal Cassation, and that although the motion was indeed filed, it was voluntarily withdrawn by the complainant. The State goes on to say that, should the Chamber have denied the motion, Mr. Sánchez would still have had the available remedy of submitting an extraordinary federal appeal.

29. The State maintains that after his "acceptance of the sentence," the petitioner had filed a motion for review based on the norm on the repentant established by article 29 of Law 23.737.<sup>4</sup> Because of this, the Argentine State considers that the procedural conduct of the complainant, in accordance with the principle of Estoppel, is barred from claiming his innocence in an international venue given that in the domestic jurisdiction he had proclaimed himself as a "repentant" in order to receive the benefit of a more benign treatment under criminal law. Thus, the petitioner had been a beneficiary of the judgment of the National Chamber of Criminal Cassation which had found for the new brief submitted by his defense counsel and, as the petitioner himself says, he was released on June 2, 2004.

30. The State argues that the petitioner's purpose is for the Commission to act as a fourth judicial instance and review the opinions in fact and in law issued by the domestic courts that heard the case: from the complainant's account it can be clearly seen that he disagrees with the assessment of the evidence in the case by the judge and the domestic courts that took cognizance of it. The State maintains that from the reasoning provided in the judgment that convicted the petitioner it is clear that many evidentiary items were considered by the court in order to establish his guilt. Therefore, the Argentine State goes on to say, Mr. Cardozo's testimony was not the only item of evidence in the case. Although his testimony was quashed, the judges had nevertheless considered the effect that it eventually could have had on the petitioner's situation in the proceedings, when they wrote that "...Mr. Cardozo's statement...in which he incriminates himself after having denied his involvement, has no objective corroboration in the case."

31. The State argues that it clearly arises from the domestic proceedings that the petitioner, as an accused party, had multiple opportunities to defend his position before the intervening judges, in accordance with the guarantees of due process.

32. The State maintains that, regarding the briefs in which the petitioner complains of an alleged "unlawful aggravation" of the conditions of his detention, domestic procedural legislation provides the opportunity to file a corrective "habeas corpus" petition, a highly abbreviated procedure which, should the truth of the complaint be verified, requires a judicial decision ordering that the necessary measures be adopted to cease the unlawful aggravation of the conditions of detention and which constitutes the appropriate remedy for the situation object of the complaint. The Argentine State considers, therefore, that the aforementioned procedure complies with the required condition of effectiveness, and thus must be exhausted before any submission of a complaint in an international venue; consequently it requests that the petitioner's claims in this regard be declared inadmissible.

33. The State affirms that the alleged victim, now free, intends to contradict his self-

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<sup>4</sup> Article 29 of Law 23.737 (amended by Law 24.424): "The court may reduce the sentence up to half the minimum and the maximum, or entirely, imposed on the person guilty of any of the crimes listed in this law...when, during the processing of the case or before proceedings have begun: a) he or she reveals the identify of accomplices, participants or abettors of the facts under investigation, or related facts, and provides sufficient information to indict the suspects or to allow significant progress in the investigation."

proclaimed condition of repentant by stating in an international venue that he does not agree with or accept the judgment convicting and sentencing him. The State furthermore asserts that it is against the principle of keeping good faith to first receive the benefit of criminal law providing for a more lenient punishment for repentants, and then to repudiate it in an international venue alleging innocence without having exercised a proper defense by exhausting the remedies provided by domestic legislation.

34. The State therefore has requested that the Commission declare the petition inadmissible for lack of exhaustion of domestic remedies and because the facts object of the complaint do not tend to establish the violation of any of the rights established by the American Convention.

#### **IV. ANALYSIS OF ADMISSIBILITY**

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

35. The petitioners have standing to submit a petition before the Commission pursuant to article 44 of the American convention. The petition names as alleged victim an individual whose rights, recognized by the American Convention, the State has undertaken to respect and guarantee. Regarding the State, the Commission notes that Argentina has been a State Party to the Convention since September 5, 1984, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

36. The Commission is competent *ratione loci* to consider the petition, since it alleges the violation of rights protected by the Convention within the territory of a State Party. The IACHR is competent *ratione temporis*, since the obligation to respect and guarantee the rights protected by the American Convention was in force for the State at the time in which the violations of human rights alleged by the petition to have occurred allegedly occurred. Finally, the Commission is competent *ratione materiae* because the petition claims the existence of the violation of human rights protected by the American Convention.

##### **B. Other requirements for the admissibility of the petition**

###### **1. Exhaustion of domestic remedies**

37. Article 46(1)(a) of the American Convention provides that for a petition lodged with the Inter-American Commission to be admissible, it is necessary that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to take cognizance of the alleged violation of a protected right and, if appropriate, to have the opportunity to remedy it before it is examined in an international venue.

38. In the instant case, the petitioners claim that they exhausted all ordinary instances within Argentine jurisdiction and that no possible effective recourse remains against the judgment convicting the petitioner, which became final on August 4, 2003, with the decision of the National Chamber of Criminal Cassation that denied the extraordinary federal appeal.

39. The State, for its part, states that the petitioner filed an appeal against the decision denying the cassation appeal but that he had withdrawn it, although it was the appropriate extraordinary appeal to file.

40. In this respect, the Commission notes that indeed Mr. Sánchez Mourazos withdrew his motion for admission of his denied appeal "in order for the judge to hear the appeal for review" he had filed. In addition, the Commission notes that the motion for admission of a denied appeal that the State demands is of an extraordinary nature and that, in principle, insofar as a criminal proceeding is concerned, what the rule requires is the exhaustion of ordinary remedies. For this reason, the exhaustion of this extraordinary appeal cannot be required of the alleged victim.

41. The Commission notes that Mr. Marcelo Sánchez Mourazos submitted a cassation appeal against the judgment of the first instance convicting him of the crime of transporting drugs and sentencing him to 6 years and two months of imprisonment, a fine, and full disqualification [*inhabilitación absoluta*] for the duration of his sentence. Subsequently, he filed an appeal for review and, when it was denied, an extraordinary federal appeal. The Commission has found that Mr. Sánchez Mourazos filed all the ordinary appeals before the Argentine jurisdiction available under the country's legislation, in order to reverse the human rights violations he alleges were inflicted upon him by the State, as a result of the criminal proceeding to which he was submitted. Thus, the Commission concludes that the requirement established by article 46(1)(a) of the American Convention has been met by the petitioners.

42. Regarding the petitioners' allegations regarding the conditions of his detention and the ill treatment to which the alleged victim was subjected while he served his sentence, the Commission notes that the petitioners affirm they had filed a habeas corpus petition for Mr. Sánchez Mourazos before the judicial authorities. The State, for its part, affirms that this would have been precisely the appropriate and effective remedy that should have been exhausted, but that it was not. In order to have sufficient facts at its disposal to analyze the exhaustion of remedies regarding the matter at hand, the Commission requested more information from the petitioners. A copy of a brief titled "habeas corpus," addressed to the Office of the Attorney General of the Nation was received by the Commission, which makes no mention of any alleged maltreatment or poor conditions of detention which were allegedly suffered by Mr. Sánchez Mourazos. The Commission does not dispose of any other facts related to any complaint before a competent authority, thus concluding that it does not have sufficient facts regarding the exhaustion of remedies, as claimed by the petitioners, with respect to the conditions of incarceration.

## **2. Timeliness of the petition**

43. Under Article 46(1)(b) of the Convention, for a petition to be admitted it must be lodged before the end of the filing period: that is, within six months following the date on which the complainant was notified of the final judgment at the national level.

44. In the instant case, the ruling of the National Chamber of Criminal Cassation regarding the extraordinary federal appeal was handed down on August 4, 2003, and the petition was filed before the Secretariat of the Commission on September 2, 2003; consequently the requirement established by article 46(1)(b) of the American Convention has been met.

## **3. Duplication of proceedings and *res judicata***

45. Article 46(1)(c) provides that the admission of a petition is subject to the requirement that the matter "is not pending in another international proceeding for settlement," and article 47(d) of the Convention provides that the Commission will declare inadmissible any petition that is "substantially the same as one previously studied by the Commission or by another international organization." In the instant case, the parties have not claimed the existence of any of these circumstances leading to inadmissibility, nor does it arise from the proceedings.

## **4. Characterization of the facts alleged**

46. Article 47(b) of the Convention states that the Commission shall consider inadmissible any petition that does not state facts that tend to establish a violation of the rights guaranteed by the Convention. Accordingly, the Commission then proceeds to analyze whether the facts denounced on this occasion constitute a violation of the articles of the Convention cited by the petitioner.

47. From the information and arguments of the petitioners, it transpires that Mr. Marcelo Sánchez Mourazos was tried for the crime of drug trafficking and sentenced to 6 years and two months of imprisonment, a fine, and full disqualification [*inhabilitación absoluta*] for the duration of his sentence. The principal argument of the petitioners refers to the refusal of the court of first instance to take relevant

evidence into account, such as the statement made by a third party in another trial, allegedly confessing that he had committed the offense of which the alleged victim had been accused.

48. The State, for its part, argued that there had been no omissions on the part of the court that heard the case and that at no point had the alleged victim been prevented from using the pertinent procedural mechanisms. The State also argued that the petitioners were using the Commission as a fourth instance since they were attempting to have judgments revised that has been issued by domestic courts acting within their jurisdiction.

49. The Commission notes that, in its conviction of first instance of December 26, 2002, the Federal Oral Court of Salta commented as follows regarding the facts that Mr. Sánchez Mourazos attributed to Mr. Cardozo and the latter's cousin:

From his own account, it clearly transpires that from the start of the criminal proceedings these persons were known to the accused as well as the facts and circumstances he describes, so that they can never be regarded as new or recently known facts [...] their admission in the plenary could only be due to the caprice or tactics of the defense [...] At the same time, the statements made by Cardozo Flores, who accuses himself after having denied his responsibility, are not objectively corroborated in the case...

50. The Court evaluated the evidence produced at the hearing and "the other legally incorporated instrumental, documentary, and informational evidence" and concluded that "both the deed of which Sánchez Mourazos was accused and his responsibility for it had been fully proved."

51. In the instant case, the Commission has no way of inferring from the Argentine judicial proceedings actions or omissions that tend to establish violations of due process under the American Convention. The judicial protection afforded by the Convention comprises the right to fair, impartial and expeditious procedures that allow for the possibility, but never guarantee, a favorable outcome.<sup>5</sup> Thus, interpretation of the law, the pertinent procedure, and assessment of evidence, as well as other matters, pertain to the functions of domestic jurisdiction that cannot be replaced by the IACHR.<sup>6</sup>

52. In short, from the arguments of the parties and the evidence in the file, no facts are stated that tend to establish violation of the right to protection and judicial guarantees nor that the alleged victim has been prevented from accessing remedies under domestic law.

53. The Commission concludes, in light of the above, that the alleged facts do not tend to establish a violation of rights recognized in the American Convention and that, therefore, the petition must be declared inadmissible.

## **V. CONCLUSIONS**

54. Based on the arguments of fact and law set forth above, the Inter-American Commission concludes that the petition is inadmissible in accordance with that established in Article 47(b) of the American Convention, because it does not set forth facts that constitute a violation of the rights protected by the Convention.

55. Regarding the petitioners' allegations regarding the conditions of his detention and the ill treatment to which the alleged victim was subjected while he served his sentence the Inter-American Commission concludes that the petition is inadmissible in accordance with that established in Article 46(1)(a) of the American Convention.

<sup>5</sup> IACHR Report Nº 39/96, Case 11.773, S. Marzioni, Argentina, October 15, 1996, Report No. 48/98, Case 11.403, Carlos Alberto Marín Ramírez, Colombia, September 29, 1998, paragraph 42. Report 58/08, Case 12.122, Armando Sosa Peceros et al, Peru, July 24, 2008.

<sup>6</sup> IACHR, Report Nº39/05 (Peru), Petition 792/01, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre.



56. Given the foregoing considerations,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

**DECIDES:**

1. To declare the petition inadmissible.
2. To notify the parties of this decision.
3. To publish this report and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on November 21, 2010. (Signed): Felipe González, President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission.