Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Ricardo Nicolas Canese Krivoshein v. Paraguay
Doc. Type:	Judgment (Merits, Reparations and Costs)
Decided by:	President: Sergio Garcia Ramirez; Vice President: Alirio Abreu Burelli; Judges: Oliver Jackman; Antonio A. Cancado Trindade; Manuel E. Ventura Robles; Diego Garcia-Sayan; Emilio Camacho Paredes Judge Cecilia Medina Quiroga excused herself from hearing this case, in accordance with Articles 19 of the Statute and 19 of the Rules of Procedure of the Court.
Dated:	31 August 2004
Citation:	Canese v. Paraguay, Judgment (IACtHR, 31 Aug. 2004)
Represented by:	APPLICANTS: Viviana Krsticevic, Raquel Talavera and Ana Aliverti

In the Case of Ricardo Canese,

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), pursuant to Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), [FN1] delivers this judgment.

[FN1] This judgment is delivered under the terms of the Rules of Procedure adopted by the Inter-American Court of Human Rights at its XLIX Regular Session by an Order of November 24, 2000, which entered into force on June 1, 2001, and according to the partial reform adopted by the Court at its LXI Regular Session by an Order of November 25, 2003, in force since January 1, 2004.

I. INTRODUCTION OF THE CASE

1. On June 12, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court an application against the State of Paraguay (hereinafter "the State" or "Paraguay"), originating from petition No. 12,032, received by the Secretariat of the Commission on July 2, 1998.

2. The Commission filed the application based on Article 61 of the American Convention, for the Court to decide whether the State had violated Articles 8 (Right to a Fair Trial), 9

(Freedom from Ex Post Facto Laws), 13 (Freedom of Thought and Expression) and 22 (Freedom of Movement and Residence) of the American Convention, all in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Ricardo Nicolás Canese Krivoshein (hereinafter "Ricardo Canese", "Mr. Canese" or "the alleged victim"), owing to the "sentence and prohibition to leave the country imposed on Ricardo Canese, engineer, […] as a result of statements made while he was a presidential candidate. According to the facts alleged by the Inter-American Commission, in August 1992, during the electoral debates leading up to the 1993 Paraguayan presidential elections, Ricardo Canese questioned the suitability and integrity of Juan Carlos Wasmosy, who was also a presidential candidate, when he stated that the latter "was the Stro[e]ssner family's front man in CONEMPA" (Paraguayan Building Companies Consortium) (hereinafter "CONEMPA"), a company that took part in developing the Itaipú bi-national hydroelectric initiative, and whose President, at the time when the statements were made, was Mr. Wasmosy. The statements were published in several Paraguayan newspapers. The Commission indicated that, as a result of these statements and based on a complaint filed by some members of CONEMPA, who had not been named in the statements, Mr. Canese was tried, sentenced in first instance on March 22, 1994, and sentenced in second instance on November 4, 1997, for the offenses of slander to two months' imprisonment and a fine of 2,909,000 guaranís ("equal to [...] US$1,400"). The Commission also stated that, as a result of the criminal proceedings against him, Mr. Canese was subjected to a permanent prohibition to leave the country, which was lifted only under exceptional circumstances and irregularly.

3. The Commission also requested the Court, in accordance with Article 63(1) of the Convention, to order the State to adopt the specific measures of reparation set out in the application. Lastly, it requested the Inter-American Court to order the State to pay the costs and expenses arising from processing the case in the domestic jurisdiction and before the organs of the Inter-American System.

II. COMPETENCE

4. Paraguay has been a State Party to the American Convention since August 24, 1989, and accepted the jurisdiction of the Court on March 26, 1993. The Court is therefore competent to hear the instant case, in the terms of Articles 62 and 63(1) de la Convention.

III. PROCEEDING BEFORE THE COMMISSION

5. On July 2, 1998, the Center for Justice and International Law (CEJIL), the Journalists' Trade Union of Paraguay (SPP), the National Electricity Board Workers' Trade Union (ANDE), and the lawyers, Pedro Almada Galeano, Alberto Nicanor Duarte and Carlos Daniel Alarcón (hereinafter "the petitioners"), filed a petition before the Inter-American Commission, based on the alleged violation by Paraguay of Articles 8 and 22 of the American Convention, "against Ricardo Canese, former presidential candidate of the Republic of Paraguay, by prohibiting him from leaving national territory[,…] owing to criminal proceedings for slander and defamation (injuria) […] as a result of statements made during the electoral campaign against [his fellow] candidate, Juan Carlos Wasmosy," filed by the latter's business partners.

6. On July 15, 1998, the Commission designated the petition No. 12,032.

7. On May 7, 1999, the Commission made itself available to the parties to reach a friendly settlement.

8. On August 20, 1999, the petitioners submitted a proposal for a friendly settlement to the Commission. On November 3, 1999, the State rejected the petitioners' proposal.

9. On August 15, 2001, the petitioners requested that the attempt to reach a friendly settlement should be concluded.

10. On February 28, 2002, in accordance with Article 50 of the Convention, the Commission adopted report No. 27/02, in which it recommended that the State:

1. Lift the criminal charges against Ricardo Canese.
2. Lift the restrictions imposed on Mr. Canese's freedom of movement
3. Make reparation to Mr. Canese, by paying the corresponding compensation.
4. Take the necessary measures to prevent such facts from occurring in the future.

11. On March 13, 2002, the Commission forwarded the said report to the State and granted it two months from the date of transmittal to provide information on the measures adopted to comply with the recommendations. On May 23, 2002, the State presented its answer to Report No. 27/02 (supra para. 10).

12. On June 12, 2002, the Commission submitted the instant case to the jurisdiction of the Court.

IV. PROCEEDING BEFORE THE COURT

13. On June 12, 2002, the Commission filed the application before the Court (supra para. 1), appointing José Zalaquett and Santiago A. Canton as delegates and Ariel Dulitzky and Eduardo Bertoni as legal advisers.

14. On July 2, 2002, after the President of the Court (hereinafter "the President") had made a preliminary review of the application, the Secretariat of the Court (hereinafter "the Secretariat") notified it to the State, together with its attachments, advising the State of the time limits for answering it and appointing its representatives in the proceeding. The same day, on the instructions of the President, the Secretariat informed the State of its right to appoint a judge ad hoc to take part in the consideration of the case.

15. On July 2, 2002, in accordance with the provisions of Article 35(1) subparagraphs (d) and (e) of the Rules of Procedure, the Secretariat notified the application to the Center for Justice and International Law (hereinafter "CEJIL" or "the representatives"), in its capacity as the original petitioner and representative of the alleged victim, and informed it that it had 30 days to submit its brief with requests, arguments and evidence (hereinafter "brief with request and arguments").

16. On July 22, 2002, the Secretariat informed the Commission that the section on the object of its application (page 2, paragraph 6), referred to Articles 1, 8, 9, 13 and 25 of the American Convention, while, the rest of the application referred to Article 22, rather than Article 25; it therefore requested the corresponding clarification. On July 26, 2002, the Commission forwarded a note advising that the discrepancy in the application was due to a "typing" error and that page 2, paragraph 6, should read "Article 22."

17. On August 16, 2002, having requested an extension, which the President granted, the State appointed Marcos Kohn Gallardo as agent and Mario Sandoval as deputy agent, and advised that it had appointed Emilio Camacho as judge ad hoc.

18. On September 9, 2002, CEJIL submitted its brief with requests, arguments and evidence, having requested two extensions, which the President granted. In this brief, CEJIL indicated that, in addition to the articles included in the Commission's application (supra para. 2), the State had violated Article 2 (Domestic Legal Effects) of the American Convention.

19. On September 10 and 16, 2002, on the instructions of the President, the Secretariat advised the Commission and the State, respectively, that they had until October 7, 2002, to present their comments on the brief with requests and arguments.

20. On November 15, 2002, the Commission presented its comments on the brief with requests and arguments (supra paras. 18 and 19).

21. On November 15, 2002, the State forwarded a brief with its answer to the application and its comments on the representatives' brief with requests and arguments (supra paras. 14 and 19), having requested an extension, which the President granted. On November 22, 2002, the State presented the original of this brief and its respective attachments.

22. On January 13, 2003, CEJIL submitted a brief with information about the existence of "new facts" and, as an attachment, forwarded a copy of Decision and Judgment No. 1362 handed down by the Criminal Chamber of the Supreme Court of Justice of Paraguay on December 11, 2002, in relation to an appeal for review filed by the alleged victim.

23. On February 17, 2003, the State presented a brief, to which it attached an authenticated copy of the Decision and Judgment forwarded by the representatives on January 13, 2003 (supra para. 22), and requested "that this document should be admitted as evidence arising from [a] supervening fact."

24. On January 9, 2004, the Commission advised that it had appointed Ignacio Álvarez and Lilly Ching as legal advisers, in substitution for Ariel Dulitzky (supra para. 13).

25. On January 12, 2004, the State presented a brief in which it advised that Marcos Kohn Gallardo had resigned as its agent, and that future communications should be addressed to the deputy agent, until a new agent had been appointed.

26. On January 27, 2004, the State appointed César Manuel Royg Arriola as the new agent in the case.

27. On February 19, 2004, the Asociación por los Derechos Civiles (ADC) [Civil Rights Association] submitted an amicus curiae brief.

28. On February 24, 2004, the Inter-American Press Association (IAPA) submitted an amicus curiae brief.

29. On February 27, 2004, the President issued an Order in which, in accordance with Article 47(3) of the Rules of Procedure, he requested Miguel López and Fernando Pfannl, proposed as witnesses by the Commission and the representatives, to provide their testimonies by affidavit, and Hermann Baumann, Ramón Jiménez Gaona, Oscar Aranda, Juan Carlos Mendonça and Wolfgang Schöne, proposed by the State, the former as witnesses and the last two as expert witnesses, to provide their testimonies and expert reports, respectively, by statements made before the Chief Public Recording Officer of the Government of the Republic of Paraguay. The President granted a non-extendible period of twenty days from the transmittal of these affidavits for the Inter-American Commission, the representatives, and the State to submit any observations they deemed appropriate on the said witness statements and expert reports presented by the other parties. In the Order, the President convened the parties to a public hearing to be held at the seat of the Inter-American Court, as of April 28, 2004, to hear their final oral arguments on merits and possible reparations and costs, and also the testimonial statements of Ricardo Nicolás Canese Krivoshein and Ricardo Lugo Rodríguez, and the expert reports of Jorge Seall-Sasiain, Horacio Verbitsky and Danilo Arbilla. Lastly, in the Order, the President advised the parties that they had until May 29, 2004, to submit their final written arguments on merits and possible reparations and costs.

30. On March 4, 2004, la Asociación para la Defensa del Periodismo Independiente (PERIODISTAS) [the Independent Journalism Defense Association] presented an amicus curiae brief.

31. On March 19, 2004, the State forwarded the testimonial statements and the expert report (affidavits) made by the witnesses Hermann Baumann, Ramón Jiménez Gaona and Oscar Aranda Núñez, and by the expert witness, Juan Carlos Dionisio Mendonça del Puerto before the Chief Public Recording Officer of the Government of the Republic of Paraguay (supra para. 29). On March 24, 2004, the State presented a note in which it advised that "it had not been possible to obtain the expert [evidence] of Wolfgang Schöne within the time limit established by the Court; consequently, [it had not forwarded] that evidence." Moreover, in these communications, the State requested the Court to allow the three witnesses who had made statements (affidavits) before the Chief Public Recording Officer of the Government of the Republic of Paraguay, to appear at the public hearing before the Court. This request was communicated to the President of the Court, who decided, on April 2, 2002, not to request the appearance of the said witnesses at the public hearing, because he did not consider it necessary.

32. On March 25, 2004, Fernando A. Pfannl Caballero, proposed as a witness by the Commission and the representatives, forwarded his sworn written statement made on March 25, 2004 (supra para. 29). The State made no comment on this statement.

33. On March 29, 2004, Miguel Hermenegildo López, proposed as a witness by the Commission and the representatives, forwarded his sworn written statement made before public notary (affidavit) that same day (supra para. 29). The State made no comment on this statement.

34. On April 12, 2004, the representatives advised that they had no comments to make on the affidavits made by Hermann Baumann, Ramón Jiménez Gaona and Oscar Aranda Núñez, and by the expert witness, Juan Carlos Mendonça (supra paras. 29 and 31); they also stated that "there is no need for any kind of clarification or elaboration" regarding these affidavits.

35. On April 15, 2004, the Commission advised that it had no comments to make on the affidavits made by the witnesses Hermann Baumann, Ramón Jiménez Gaona and Oscar Aranda Núñez, and by the expert witness, Juan Carlos Mendonça (supra paras. 29 and 31).

36. On April 19, 2004, the Commission advised that the expert witness, Jorge Seall-Sasiain, could not appear at the public hearing before the Court (supra para. 29), owing to circumstances beyond his control.

37. On April 27, 2004, the State forwarded a copy of "decision and judgment number eight hundred and four" delivered by the Criminal Chamber of the Supreme Court of Justice of Paraguay that same day, concerning a petition for clarification filed by the alleged victim.

38. On April 28 and 29, 2004, the Court received the statements of the witnesses and the reports of the expert witnesses proposed by the Inter-American Commission and by the representatives of the alleged victim at a public hearing on merits and possible reparations and costs. The Court also heard the final oral arguments of the parties.

There appeared before the Court:

for the Inter-American Commission on Human Rights:

Santiago A. Canton, delegate;
Eduardo Bertoni, delegate;
Ignacio Álvarez, legal adviser, and
Lilly Ching, legal adviser.

for the representatives of the alleged victim:

Viviana Krsticevic, Executive Director, CEJIL;
Raquel Talavera, lawyer, CEJIL, and
Ana Aliverti, lawyer, CEJIL.

for the State of Paraguay:

César Manuel Royg Arriola, Agent, and
Mario Sandoval, Deputy Agent.

Witness proposed by the Inter-American Commission on Human Rights and by the representatives of the alleged victim:

Ricardo Nicolás Canese Krivoshein.

Witness proposed by the Inter-American Commission on Human Rights:

Ricardo Lugo Rodríguez.

Expert witnesses proposed by the representatives of the alleged victim:

Horacio Verbitsky, and
Danilo Arbilla.

39. On April 29, 2004, during the presentation of final oral arguments at the public hearing on merits and possible reparations and costs, the State presented the 1992 Constitution of Paraguay, the Penal Code of Paraguay, promulgated on November 26, 1997, and the Code of Criminal Procedure of Paraguay, promulgated on July 8, 1998.

40. On May 28, 2004, the Commission presented its final written arguments.

41. On May 28, 2004, Paraguay forwarded its final written arguments.

42. On May 29, 2004, the representatives of the alleged victim presented their final written arguments. The attachments to this brief were received on June 3, 2004.

43. On August 16, 2004, on the instructions of the President, the Secretariat requested the State to forward, by August 20, 2004, at the latest, as helpful evidence, the 1910 Penal Code of Paraguay, the 1890 Code of Criminal Procedure of Paraguay, Act No. 1,444, and "Decisions" No. 122/99, No. 124/99, No. 154/2000, No. 155/2000, and No. 157/2000 regulating the latter.

44. On August 24, 2004, the State sent an e-mail, with the electronic version of Act No. 1,444 and the "Decisions" that regulate it, which had been requested as helpful evidence (supra para. 43).

45. On August 27, 2004, Paraguay forwarded the 1914 Penal Code of Paraguay and the 1890 Code of Criminal Procedure of Paraguay, which had been requested as helpful evidence (supra para. 43).

V. THE EVIDENCE

46. Before examining the evidence received, the Court will make some observations, in light of the provisions of Articles 44 and 45 of the Rules of Procedure, which are applicable to this specific case, most of which have been developed in its case law.

47. First, it is important to point out that in probative matters, the adversary principle, which respects the right of the parties to defend themselves, applies to matters pertaining to evidence; it is one of the principles on which Article 44 of the Rules of Procedure is based, concerning the time at which the evidence should be submitted to ensure equality between the parties. [FN2]

[FN2] Cf. Case of the Gómez-Paquiyauri brothers. Judgment of July 8, 2004. Series C No. 110, para. 40; Case of 19 Merchants. Judgment of July 5, 2004. Series C No. 109, para. 64; and Case of Molina-Theissen. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of July 3, 2004. Series C No. 108, para. 21.

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48. In the matter of receiving and assessing evidence, the Court has indicated previously that its proceedings are not subject to the same formalities as domestic proceedings and, when incorporating certain elements into the body of evidence, particular attention must be paid to the circumstances of the specific case and to the limits imposed by respect for legal certainty and the procedural equality of the parties. Likewise, the Court has taken account of international case law; by considering that international courts have the authority to assess and evaluate the evidence according to the rules of sound criticism, it has always avoided a rigid determination of the quantum of evidence needed to support a judgment. This criterion is especially true for international human rights courts, which have greater latitude to assess the evidence on the pertinent facts, in accordance with the principles of logic and on the basis of experience, in order to determine the international responsibility of a State for the violation of human rights. [FN3]

[FN3] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 41; Case of 19 Merchants, supra note 2, para. 65; and Case of Molina-Theissen. Reparations, supra note 2, para. 23.

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49. Based on the foregoing, the Court will now proceed to examine and weigh all the elements of the body of evidence in this case, according to the principle of sound criticism within the applicable legal framework.

A) DOCUMENTARY EVIDENCE

50. The Inter-American Commission provided documentary evidence when submitting its application brief (supra paras. 1 and 13). [FN4]

[FN4] Cf. attachments 1 to 23 of the application brief of June 12, 2002, submitted on June 13 and August 9, 2002 (folios 1 to 323 of the file of attachments to the application).

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51. The State forwarded a complete copy of the motion for dismissal filed by Mr. Canese on November 11, 1997, before the Third Chamber of the Court of Criminal Appeal, [FN5] which had been submitted incomplete as part of attachment 21 to the Commission's application (supra paras. 1 and 13).

[FN5] Cf. folios 316 to 320 of tome II of the file on merits and possible reparations and costs.

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52. The representatives of the alleged victim submitted documentation when forwarding their brief with requests and arguments (supra para. 18), [FN6] and when presenting their final written arguments (supra para. 42). [FN7]

[FN6] Cf. attachments 1 to 11 of the brief with requests and arguments of September 9, 2002, submitted on September 12 and 20, 2002 (folios 566 to 617 of the file of attachments to the brief with requests and arguments).
[FN7] Cf. folios 926 to 950 of tome IV of the file on merits and possible reparations and costs.

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53. The State attached various documents as evidence to its brief in answer to the application and with observations on the brief with requests and arguments (supra para. 21). [FN8]

[FN8] Cf. attachments 1 to 4 to the brief in answer to the application, and with observations on the brief with requests and arguments of November 15, 2002, submitted on November 22, 2002 (folios 619 to 1403 of tomes I and II of the file of attachments to the brief in answer to the application, and with observations on the brief with requests and arguments).

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54. The representatives of the alleged victim and the State presented a copy of decision and judgment No. 1362 handed down by the Criminal Chamber of the Supreme Court of Justice of Paraguay on December 11, 2002, regarding an appeal for review filed by the alleged victim (supra paras. 22 and 23). [FN9]

[FN9] Cf. folios 489 to 495 and 502 to 508 of tome II of the file on merits and possible reparations and costs.

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55. The State submitted a copy of decision and judgment No. 804 handed down by the Criminal Chamber of the Supreme Court of Justice of Paraguay on April 27, 2004, regarding a petition for clarification filed by the alleged victim and his lawyer (supra para. 37). [FN10]

[FN10] Cf. folios 807 to 810 of tome III of the file on merits and possible reparations and costs.
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56. The State submitted documentation during the presentation of its final oral arguments at the public hearing on merits and possible reparations and costs (supra paras. 38 and 39). [FN11]

[FN11] Cf. evidence file submitted by the State on April 29, 2004, during the presentation of its final oral arguments at the public hearing.
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57. The State submitted a copy of several domestic norms that were requested as helpful evidence (supra paras. 43, 44 and 45). [FN12]

[FN12] Cf. evidence file submitted by the State on August 24 and 27, 2004, which had been requested by the President of the Court.
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58. Fernando Pfannl Caballero and Miguel Hermenegildo López, witnesses proposed by the Commission and by the representatives of the alleged victim, forwarded their sworn written statements (supra paras. 32 and 33), [FN13] as required by the President in the Order of February 27, 2004 (supra para. 29). The Court will now summarize the relevant parts of these statements.

[FN13] Cf. folios 756 to 760 and 770 to 773 of tome III of the file on merits and possible reparations and costs.
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a) Testimony of Fernando Antonio Pfannl Caballero, national Senator from 1993 to 1998

The witness is Paraguayan and was a national Senator from 1993 to 1998. He had also been proposed as a candidate for Mayor of Asunción, and occupied various managerial positions in the municipality of Asunción from 1998 to 2001.
While he was a Senator, he was a member of the Bicameral Investigation Committee, the Bicameral Budget Committee, the External Affairs Committee, and the Agricultural Affairs Committee, among others.
The Itaipú bi-national entity is a public entity made up of the Governments of Paraguay and Brazil; it belongs to both countries, in equal parts. The purpose of the entity is to exploit the hydroelectric energy potential of the Paraná River on the border between the two countries. To this end, it administers the construction of the dam, the installation of equipment and generating components and other related works and facilities, and the production and sale of electric energy.
The activities carried out by Itaipú relate to matters of public interest. Thus, the companies and persons who work with Itaipú are also related to matters of public interest.
To accomplish its activities, the Itaipú bi-national entity contracts and acquires goods and services from other corporations. CONEMPA was one of the principal corporations contracted

by Itaipú during the construction of the dam and the hydroelectric power plant, principally to carry out construction work.
As a Senator and member of the Bicameral Investigation Committee, the witness took part in the Subcommission responsible for investigating the alleged acts of corruption involving Juan Carlos Wasmosy and CONEMPA. The reports of corruption involving Mr. Wasmosy and CONEMPA were based on real acts of corruption, and have caused significant damage to Itaipú and, consequently, to the States associated with this entity.
The witness knows Mr. Canese; he met him for the first time in the 1970s, when the alleged victim was in exile in Holland, because he required his expertise as an authority on energy-related matters, specializing in bi-national hydroelectric dams on the Paraná River. Since then, they have maintained a relationship based on such matters.
Since the 1970s, Ricardo Canese has taken part in prominent public activities, of national interest, concerning energy-related matters; he is considered to be one of the country's principal authorities in this area. At the beginning of the 1990s, Mr. Canese was carrying out his research work and publishing books and articles on these matters. He also played a very significant role in the political life of the country, because he was elected Municipal Councilor and President of the Municipal Council of Asunción, and was a candidate to the presidency of the Republic of Paraguay.
The electoral process to elect the President of the Republic, which culminated in May 1993, took place in the midst of the transition to democracy. The new Constitution, which guaranteed "a clean and equal basis for the campaigns of the different candidates," governed the general elections process for the first time. In this electoral process, there was a much greater divulgation of information by the campaigns and the press than in the past. It was essential for the democratization process that the electorate should be well informed about the background of each of the candidates and, particularly, those who had participated in or obtained benefits during the dictatorship.
The statements made by the alleged victim about the relationship between Mr. Wasmosy and former dictator Stroessner achieved considerable visibility, because Mr. Canese, as an expert on Itaipú, drew attention to Mr. Wasmosy's collaboration with the dictatorship so that the electorate would be better informed about the facts when they voted. According to the witness, Ricardo Canese's statements "were always consistent with the truth about the facts."
The prohibition to leave the country imposed on the alleged victim severely affected the work of Congress's Bicameral Investigation Committee on Itaipú, because, owing to the bi-national nature of Itaipú, much of the Committee's work had to be conducted in Brazil with the participation of investigators and parliamentarians from that country.
Mr. Canese would have provided crucial collaboration with the work of the Congress's Bicameral Investigation Committee on Itaipú, if he had been allowed to leave the country freely when the work of the Committee required this. In this case, the work of the Committee did not make a decisive contribution to eradicating impunity; consequently, it did not produce the positive results for the country that could have been expected.

b) Testimony of Miguel Hermenegildo López, journalist

The witness is Paraguayan and an active journalist. Currently, he works as an editor with the Paraguayan newspaper "Última Hora." He is also Secretary General of the Journalists' Trade

Union of Paraguay. Since 1979, this is the "only organization" that unites media professionals in Paraguay. In addition, he teaches at the National University of Asunción.

The 1993 presidential elections in Paraguay took place in a context of high expectations and with significant popular participation. These elections produced the first change from a military to a civilian head of State; consequently, they were considered the "true beginning of the democratic transition." There was great enthusiasm among the population to participate and elect the most effective head of State possible for the country's new socio-political context. This enthusiasm was also visible in the conduct of political parties and candidates. Numerous pre-existing and new groups took part in the electoral process as an expression of the exercise of democracy and of rupture with more than three decades of dictatorship.

The alleged victim was well known prior to 1993, because of his continuing denunciation of corrupt acts at the Itaipú bi-national hydroelectric entity, built by Paraguay and Brazil. Mr. Canese also had "visibility" in the media, owing to his appraisals of and reports on energy-related issues. Mr. Canese's political activities intensified as of 1993, when he took part in the first municipal elections as a candidate to the council for the civic party "Asunción para Todos."

Ricardo Canese's statements about Juan Carlos Wasmosy's relationship with the former dictator, Alfredo Stroessner, acquired the visibility "of information that is broadcast in the public arena in pre and post-electoral circumstances." Mr. Canese's statements reminded the public of an aspect of Mr. Wasmosy's past at a decisive moment for the political future of the Republic. Moreover, it was information that many sectors of the public knew from the time of the Stroessner dictatorship.

The discussion on possible acts of corruption and Mr. Wasmosy's links with the Stroessner dictatorship was a topic of public interest, relevant for the electoral process and for the development of democracy in Paraguay. The Itaipú bi-national entity was and still is extremely relevant to Paraguay's economy, because part of the expenditure of the national budget relates to that entity. CONEMPA was one of the major contractors in the construction and operation of the bi-national entity.

He knows of no legal or de facto consequences in Paraguay of the statements made by the alleged victim, other than the lawsuit filed against the latter as a result of his opinions a situation which had "major" national and international repercussions.

He has no evidence of the impact that the lawsuit filed against Mr. Canese had on other people who reported acts of corruption. There was greater "prudence" and "apprehension" in the information disseminated in the media and in the opinions of the journalists and those who denounced this type of act, for fear of actions being filed against them.

Throughout the political transition in Paraguay, there were numerous cases of journalists prosecuted for the offenses of slander, calumny and grave injuria. During the 1990s, Mr. Wasmosy brought actions against two journalists for slander and injuria, due to their opinions on the "Case of Conempa and Itaipú."

As President of the Journalists' Trade Union he is aware of the actions against journalists or other persons for denouncing acts or omissions concerning matters of public interest or with regard to public figures. The witness cited the case of two journalists from the newspaper "ABC Color" who were sued by former President Wasmosy for slander and grave injuria, because, in an investigative piece of journalism, they denounced the linkages of the former head of State "with illegal deals" involving the principal fuel and petroleum products processing and distribution company in Paraguay

The criminal prosecution of those who criticize has drastic consequences, akin to censorship or self-censorship, on individuals who might bring accusations against or question public figures or those in power. The result is a high risk of violating freedom of expression, which resembles prior censorship. Imposing restrictions on leaving the country can become a limitation of freedom of movement, if it is not proved that, in a specific case, this measure is necessary owing to a risk of harming other juridical guarantees or rights.
In general, whatever the area they work in, public officials involved in corrupt acts in Paraguay are not punished or even prosecuted. In this situation, impunity has been the rule, with some exceptions in recent years; this has been exposed in reports by national and international civil organizations, and has put Paraguay among the first three countries in the world with the highest rate of corruption, and in first place in America.

59. The State forwarded the testimonial statements of Hermann Baumann, Ramón Jiménez Gaona and Oscar Aranda, and the expert report of Juan Carlos Dionisio Mendonça del Puerto (supra para. 31), all of them made before the Chief Public Recording Officer of the Government of the Republic of Paraguay (affidavits), in accordance with the instructions of the President in the Order of February 27, 2004 (supra para. 29). The Court will now summarize the relevant parts of these statements.

a) Testimony of Hermann Baumann, member of the CONEMPA Board of Directors

The witness knows Mr. Canese and, as a Director of CONEMPA, filed a criminal action against him for the offenses of slander and injuria in 1992.
Ricardo Canese was sentenced in three instances and, subsequently, absolved in a review of judgment. In the witness's opinion, this situation left unpunished offenses against the witness that had continued for more than ten years and which had been "adequately proved."
Owing to Mr. Canese's statements and as a result of the political activities of Juan Carlos Wasmosy –who was associated with CONEMPA– as candidate for the presidency of the Republic, CONEMPA and the companies that were members of the consortium were subjected to a "vicious negative campaign," of which Mr. Canese was one of the "mentors."
Mr. Canese's statements had considerable economic impact on CONEMPA, which faced systematic difficulty in qualifying for or winning contracts; this, in turn, led to a reduction in the corporation's personnel, which decreased from 800 employees to about 50. Mr. Canese's declarations have had negative consequences on the witness's public and private relationships.
Throughout the proceedings for the offenses of slander and injuria and after he was sentenced, Mr. Canese carried out systematic and repeated activities tending to discredit CONEMPA and its directors.

b) Testimonial statement of Ramón Jiménez Gaona, Chairman of the CONEMPA Board of Directors

The witness knows Mr. Canese and, as Chairman of the CONEMPA Board of Directors, filed a criminal action against him for the offenses of slander and injuria, which resulted in a conviction in three instances.
On August 7, 1992, the newspapers "ABC Color" and "Noticias" published statements attributed to Mr. Canese, in which, when referring to Juan Carlos Wasmosy –at that time a presidential

candidate– he made indirect reference to the directors or owners of the companies that were members of CONEMPA. In these statements, Mr. Canese said that CONEMPA was the company that had "paid substantial dividends to the Dictator," referring to General Alfredo Stroessner, and that "with the support of the Dictator's family, the CONEMPA consortium enjoyed a monopoly for the Paraguayan part of the main civil works of Itaipú."

Throughout the proceedings against him, Mr. Canese and his lawyers introduced numerous delaying tactics, with the result that the proceedings continued for nine years, in three instances.

Notwithstanding the judgment against him, Mr. Canese filed "other delaying remedies," such as an appeal, and motions for dismissal and review, which were rejected. The Supreme Court of Justice of Paraguay admitted the third appeal for review with regard to all the sentences. Consequently, the offenses that had been "totally proved" against Mr. Canese remained unpunished, which is "one of the most disgraceful acts of the Supreme Court of Justice" of Paraguay.

The statements made by Mr. Canese and broadcast by various radio stations and television programs caused significant prejudice to CONEMPA, because they inspired distrust of the consortium and prevented it from qualifying for or being awarded several public bids for public works. In 1992, the company had a plant with 850 workers and employees, and this decreased to less than 50 in 1997. This created a social problem for a group of qualified personnel who had worked on the Itaipú and Yacyretá projects, a group that suffered the consequences of Mr. Canese's statements. Furthermore, these statements directly harmed the directors of CONEMPA, as well as all the companies that were member of the consortium.

The campaign to discredit CONEMPA was not limited to the 1992 publications, but continued for approximately ten years, without Mr. Canese ever trying to prove the truth of these affirmations. Proof of this is that there are no complaints signed by Mr. Canese in the Paraguayan courts; "he merely slandered and defamed repeatedly through the press."

Mr. Canese placed himself at the service of a group of persons who, at the time of the facts, were political adversaries of Mr. Wasmosy.

During the Government of Luis González Macchi, Mr. Canese occupied the position of Deputy Minister of Mines and Energy for approximately one year; he was therefore the head of "the bi-nationals." During this time, Mr. Canese looked into the files of the Itaipú and Yacyretá bi-national entities, without finding any document that would support his charges.

The witness requested the Court to reject the application filed by Mr. Canese against Paraguay.

c) Testimony of Oscar Aranda Núñez, member of the CONEMPA board of Directors

The witness knows Mr. Canese and, as a member of the CONEMPA Board of Directors, filed a criminal action against him for the offenses of slander and injuria in 1992.

Starting in 1992 and for several more years, CONEMPA and, more specifically, the members of its Board of Directors, were victims of attacks on their honor and reputation, because they formed part of this corporation, which is a consortium of Paraguayan companies that have united in order to participate in diverse civil works related to the Itaipú bi-national entity.

Mr. Canese joined the "political enemies" of Juan Carlos Wasmosy –member of CONEMPA, who was a candidate to the presidency of the Republic– and, even after the said criminal action had been filed by the members of the CONEMPA Board of Directors, he continued defaming and slandering them repeatedly.

Mr. Canese was convicted by the Paraguayan justice system in three instances, but the Supreme Court of Justice of Paraguay "reviewed its judgment" and "dismissed the proceedings against him"; consequently, he went unpunished, despite the evidence assembled during the case.
The statements made by Ricardo Canese have had serious consequences for CONEMPA, which encountered difficulties that prevented the consortium from qualifying for or being awarded various bids for public works.
While he was being prosecuted and even when he had been convicted for the offenses of slander and injuria, Mr. Canese attacked CONEMPA and its directors in newspaper articles and interviews.
The only victims of the consequences of Mr. Canese's statements were the members of the consortium.

The witness asked the Court to reject Mr. Canese's claims.

d) Expert report of Juan Carlos Dionisio Mendonça del Puerto, lawyer

The American Convention forms part of the legislation in force in the Republic of Paraguay.
In accordance with the provisions of Articles 137 and 141 of the Constitution of Paraguay and with the monist system adopted by this State, the Constitution is the supreme law; consequently, it ranks higher than the treaties incorporated into the domestic legal system.
Examination of the contents of Articles 11, 13 and 14 of the American Convention and Articles 4, 23, 25, 26 and 28 of the Constitution reveals that the Convention and the Constitution are compatible, so that "the provisions of the American Convention[,…] particularly with regard to the honor and reputation of the individual are in full agreement with the provisions of the Constitution."

B) TESTIMONIAL AND EXPERT EVIDENCE

60. On April 28 and 29, 2004, the Court received the statements of the witnesses and the reports of the expert witnesses proposed by the Inter-American Commission on Human Rights and the representatives of the alleged victim, respectively (supra para. 38). The Court will now summarize the relevant parts of these statements and reports.

a) Testimony of Ricardo Nicolás Canese Krivoshein, alleged victim

He has been an industrial engineer since 1975 and, since 1978, devoted himself to investigating matters relating to the Itaipú bi-national hydroelectric power plant, which is Paraguay's most important public works project and principal natural wealth. In Paraguay, he is probably the person who has written most about this hydroelectric power plant. He also played an active role in the struggle against the dictatorship of Alfredo Stroessner; as a result, he had to go into exile in Holland in 1977 and returned to Paraguay in 1984, when the political conditions permitted.
In 1990 and 1991, together with some Paraguayan "social organizations and public figures," he filed written reports with the Attorney General concerning the activities of CONEMPA and anomalies in its activities relating to the Itaipú hydroelectric power plant; also, concerning the company's alleged tax evasion, based on a decree issued by former President Stroessner. The reports made direct reference to the participation of Mr. Wasmosy, as President of this company,

in allegedly punishable acts committed during the Stroessner dictatorship. The reports were not investigated.

In 1991, when Paraguay opened up to democracy, the witness took part in the Asunción municipal elections for the party Asunción para Todos; he was the first candidate for councilor and was elected. The party put his name forward as candidate for the presidency of the Republic in the 1993 elections.

In August 1992, while the witness was a candidate for the presidency of the Republic, and when being questioned by the press about Mr. Wasmosy's candidacy, he stated that Mr. Wasmosy had amassed "an immense fortune," because he had been President of CONEMPA, which had been contracted to carry out the principal construction works of the Itaipú hydroelectric power plant, owing to connections with the former dictator. In view of these facts, it was not in the country's interests that Mr. Wasmosy should be a candidate for the presidency of the Republic; particularly, in Paraguay's "first free elections." He had sufficient grounds and evidence to make such statements. When the witness made those statements concerning Mr. Wasmosy, he had no expectation of being elected President of the Republic, because he represented a small party; his purpose was to inform the voters. In these elections, Juan Carlos Wasmosy was elected President of the Republic.

After the witness had made the statements about Mr. Wasmosy, Hermann Baumann, Oscar Aranda and Ramón Jiménez Gaona, colleagues of Mr. Wasmosy in CONEMPA, filed a criminal action against Mr. Canese. In his statements, the witness had not mentioned these colleagues, because his criticism was addressed only at Mr. Wasmosy, since the latter had become "very wealthy" during the dictatorship through business dealings. In the course of the criminal proceeding, when making a statement during the preliminary examination and at the conciliation hearing, Mr. Canese declared that, in the statements he had made, he had not referred to the complainants, but only to Mr. Wasmosy, because his interest was "the issue of the presidency of the Republic," "the public interest [and] the issue of Itaipú."

During the criminal proceeding, the alleged victim's lawyers provided the evidence in time, but the judge registered its presentation after the time had elapsed, claiming he had too much work. Mr. Canese was not allowed to exercise the right to "present evidence." The day after he delivered the judgment convicting the witness, the judge was "promoted by the President of the Republic."

In 1999, with the entry into force of the new Penal Code, the witness filed an appeal for review, which was never decided. In 2000, he repeated this remedy, "expanding the grounds." In May 2001 and May 2002, the Supreme Court of Justice of Paraguay declared the said remedies inadmissible. They filed a new appeal for review based on "the same or very similar arguments," and it was decided in his favor by the Supreme Court of Justice of Paraguay on December 11, 2002. The judgment by which the Supreme Court of Justice of Paraguay absolved him does not guarantee that he or any other person who reports corruption involving a public figure will not be subjected to criminal proceedings. According to the witness, the Supreme Court's last decision "was partial and delayed reparation." The State has not granted him any reparation for the losses suffered. In relation to the costs, he has just received notification of the Supreme Court's ruling establishing that the complainants must pay the costs, although the acquittal was handed down eighteen months ago. The Supreme Court of Justice of Paraguay has not made any "offer regarding his losses, or regarding the essential issue, which is [the] most important."

In 1999, the witness exercised the functions of Deputy Minister of Mines and Energy, owing to his active participation in "other social movements," which had demanded that the then President

appoint him to the position. He was Deputy Minister for only eleven months, because he was removed from office for criticizing the President of the Republic for not defending national interests before Brazil with regard to the Itaipú hydroelectric power plant.

As a result of the criminal action, the witness's ability to leave the country was restricted, with the intention of "sanctioning him in advance." When Harvard University issued an invitation to him in 1993, "an attempt was made to detain [him] and to prevent [him] from leaving the country," allegedly because he was involved in a criminal proceedings. He was "systematically" denied authorization to leave the country from the time he was convicted in March 1994 until July 1997, because he was "forbidden by the judge of the case." In light of the foregoing incident, when he was invited to Brazil in 1994 by that country's Workers' Party for the launching of Lula da Silva's candidacy, he requested the corresponding permission and offered a material surety, because, under the previous legislation, there was no provision under which he could be retained, since he was "domiciled" in Paraguay with his family and his professional career. However, the judge denied him permission to leave. In June 1994, the judge again denied the witness permission to leave when the Bicameral Investigation Committee invited him to Brazil to investigate alleged acts of corruption in Itaipú in conjunction with Brazilian parliamentarians. To counter this situation, on the advice of his lawyers, he filed an action on unconstitutionality. He filed several "urgent reminders" for a ruling in this action, until finally, in 1999, the Court issued a negative decision. He received other invitations to scientific and professional congresses and activities, but was not allowed to leave. He was able to leave the country for the first time in July 1997, when he requested permission to go to Uruguay to give testimony in a trial and, when his request was denied, he filed a writ of habeas corpus, which was granted. He was unable to leave the country from 1994 until July 1997. In November 1997, he again requested an exit permit and the Supreme Court of Justice of Paraguay did not grant him the permit, even though the judgment was not final. Several times, the Court failed to decide the habeas corpus he had filed, which meant that he was unable to leave the country. In 1999, when he was appointed Deputy Minister of Mines and Energy, he filed a "general" writ of habeas corpus to be able to leave the country, and this was denied. The functions of a deputy minister involve frequent trips outside the country, so he had to file a writ of habeas corpus each time he needed to travel. He was granted the permits he requested while he was Deputy Minister, because he was exercising a public position. When the witness ceased to be Deputy Minister, he had to file a writ of habeas corpus each time he wanted to leave the country, until, in August 2002, the Supreme Court of Justice of Paraguay lifted the restriction definitively and granted him permission to leave the country, although he had been convicted and was subject to a final appeal for review. A court order was never issued for his imprisonment.

The private lawyers he employed to handle his case worked correctly and presented "urgent reminders" in many instances. Regarding the State's allegations about shortcomings owing to time-barred submissions and procedural inaction on their part, the witness indicated he did not have the authority or the knowledge to discuss with his lawyers whether what they were doing was correct, but all the appeals they submitted appear in the files, including the four appeals for review. There was "negligence" on the part of the judicial authorities during the criminal proceeding against him, and there were delays in providing justice by the judge of first instance, the Court of Appeal, and the Supreme Court of Justice of Paraguay. The criminal proceeding started in October 1992 and the judge of first instance issued a judgment in March 1994, although it was "a fairly simple trial." An appeal was filed in March 1994, and the Court of

Appeal did not hand down a ruling until November 1997. In the case of the Supreme Court of Justice of Paraguay "the delay in justice has been more obvious."
During the Government of President Wasmosy, the statements made by the witness had other consequences, in addition to restrictions to leaving the country. Regarding his freedom of expression, the witness "was silenced for quite a long time," because the director of the private communications network that owned the newspaper "Noticias" and Channel 13, with which he worked, told him he was very satisfied with his work, but his comments and opinions had to cease "immediately"; the director asked him to stop working for the company so that the private communications network and its employees would not be prejudiced. He told Mr. Canese that he was receiving pressure directly from the President of the Republic. "The intention was not only to silence [him], but [to silence] any other person who wanted to emit an opinion on the issue and instill fear among the population," so that the Government would receive as little criticism as possible.
After he was convicted, he also had problems finding work; he was told that his services were wanted, but that he could not be employed because of his problems with Mr. Wasmosy. Mr. Canese began publishing his articles again at the end of 1995 or the beginning of 1996 in the newspaper "La Nación."
The criminal proceeding against the witness affected his family. It also caused him to exercise self-censorship, because he had to be careful about expressing his opinions and could not express his opinion freely. Mr. Canese did not take part in political and electoral activities again, because he considered it stressful, owing to the lack of "real protection" and the absence of the rule of law.
He would like the Court to establish that no one may be persecuted as he was, and that freedom of expression should be protected in Paraguay. To make full reparation to him for the losses suffered, the State should make a "public acknowledgement."

b) Testimony of Ricardo Lugo Rodríguez, Deputy from 1989 to 1993

He has been practicing as a lawyer since 1964. He was the first Deputy for the Ferrerista Revolutionary Party, an office he held from 1989 to 1993. He continued in politics until 1998.
When he was a Deputy, he was a member of several committees in the Chamber of Deputies, and of the Bicameral Unlawful Acts Investigation Committee. The latter was a specialized body of the National Congress composed of members of the Chambers of Deputies and Senators. The Bicameral Unlawful Acts Investigation Committee was created in 1992; its function was to investigate unlawful acts committed during "the dictatorship," and it was of a permanent nature until 1994 or 1995.
The Itaipú bi-national corporation is Paraguay's largest initiative. It takes advantage of the hydroelectric energy of the Paraná River and is considered to be the largest hydroelectric power plant in the world and the second most important engineering works of the century. It was constructed under a treaty concluded between Paraguay and Brazil. The treaty established that the construction of the dam should be "put out to bid." Several companies took part in the first public bid for the diversion of the Paraná River. However, the Governments of Paraguay and Brazil agreed to by-pass the public bid and award the construction contract by a "beneficial concession" ("concesión graciosa") to two companies: UNICOM for Brazil and CONEMPA for Paraguay. CONEMPA was a limited liability company composed of five partners which were five construction companies. Owing to the political connections between the dictator and its

members, CONEMPA, represented at the time by Juan Carlos Wasmosy, an engineer, obtained the exclusive award of the construction work on the Paraguayan side, and was also awarded the construction of some work on the Brazilian side, to be carried out by its five companies. Under the agreement between Paraguay and Brazil, CONEMPA obtained 8% and UNICOM 92% of the construction work.

One of the first issues that the Bicameral Unlawful Acts Investigation Committee examined was the report submitted by the Unified Workers Central (Central Unitaria de Trabajadores) on corruption during construction of the Itaipú hydroelectric power plant and systematic tax evasion by CONEMPA. The Bicameral Committee presented its findings to the Seventh Civil Court of first instance, and also "accompan[ied]" the Unified Workers Central when it presented its "findings" to the Attorney General's office, reporting corruption in the construction of the Itaipú project and systematic tax evasion, based on a concession granted by the former dictator of the Republic, Alfredo Stroessner.

The original cost estimate for the construction of the Itaipú project ranged from two thousand three hundred million to two thousand eight hundred million dollars. However, the final cost was approximately twenty-two thousand three hundred million dollars. Moreover, faced with a possible public bid for the award of healthcare services for the Itaipú workers, CONEMPA organized a healthcare activity and attributed "fabulous sums of money" to itself. The Bicameral Unlawful Acts Investigation Committee of the National Congress considered this situation to be "the most serious known manifestation of corruption in the history of the Republic of Paraguay."

In relation to this situation with the Itaipú project, several public complaints were made, not only by the Bicameral Committee, but also by political opposition sectors, in different media, such as the newspapers "La Tribuna", "ABC", "Última Hora" and "La Nación", some political weekly newspapers such as "El Pueblo", and the official weekly newspaper of the Ferrerista Revolutionary Party, which aired the issue, despite political constraints imposed by the regime.

Owing to his intellectual competence and technical training, Mr. Canese collaborated closely with the Unified Workers Central on the findings presented to the Attorney General's office on corruption in the construction of Itaipú; he also collaborated with the Bicameral Unlawful Acts Investigation Committee on this issue. It would have been important for Mr. Canese to travel to Brazil when the Bicameral Committee invited him to form part of the delegation investigating in situ the corruption in Itaipú. At that time, Mr. Canese was providing advisory services to the Bicameral Committee on the specific issue of Itaipú. Mr. Canese's training and competence, and also his commitment to investigating the facts relating to the construction and start-up of Itaipú, are well known. The witness has neither represented nor defended Mr. Canese.

c) Expert report of Horacio Verbitsky, journalist

The United Nations Development Programme (UNDP) recently presented a report on the quality of democracy; it notes that one of the basic factors for which societies reproach Governments relates to high levels of corruption and the lack of mechanisms to control it. In this context, freedom of expression is, at the very least, the peoples' "right to protest."

The Itaipú hydroelectric dam was built with private bank credits, which made it impossible to control the management of the funds. In this situation, the possibility of scrutiny through public debate, political debate and the reflection of this debate in the press acquired special relevance.

The fact that this case refers to a "political leader," a candidate to an "elected position," does not alter the fundamental dimension of freedom of expression. The construction of public works

using State and public funds is, by definition, “one of the fundamental issues of collective and public interest.” It is difficult to imagine cases where the public interest is more ostensible than in construction works in which “thousands of millions of dollars” are invested, money which comes basically from the taxpayer.

In this case, the complainants filed the action “on an individual basis,” even though they had not been named specifically by Mr. Canese, who had mentioned their companies. In this respect, in several cases before the Inter-American Commission, it has been stated that the proceeding before the Inter-American System is a mechanism to protect individuals rather than companies. In this case, there had been no offense against the complainants, but rather a “political reference to the activity of the companies with which these individuals were connected.”

Slander and injuria should be decriminalized for “all types of citizens,” with no distinction made between “ordinary citizens” and public officials.

Offenses against honor “are used in exactly the same way” as the offense of disrespect or contempt for authority (desacato). The difference consists in whether the act takes place in the public or private sphere. In the practice, offenses against honor do not protect honor, because, when a trial is conducted, the slander and injuria become “public knowledge,” since they are publicly repeated before each instance of the proceeding. These offenses protect “all public officials,” their business partners, and their entrepreneurial friends.

Essentially, the inhibiting effect of prosecuting an individual for the offenses of slander and injuria occurs with the initiation of the proceeding. It is quite common for political leaders not to continue with actions because they know that the inhibitory effect has been achieved; what interests them is the “intimidating effect of the complaint.”

There are different points of view concerning the decriminalization of the offenses of injuria, slander and libel. Those who are against decriminalization of these offenses are generally individuals exercising public functions or some scholars who consider the rule of intent to be sufficient, and that including the actual malice principle is a foreign “implant.”

There are situations when, in the face of political or financial power, the journalist is the weak factor in the equation; and there are other situations when, to the contrary, the media is the strong factor in the equation, in the case of the ordinary individual. The ordinary individual’s right to honor can be strengthened by the right of reply. In the case of reparations for possible restrictions to the freedom of the press and freedom of expression, in addition to the right of reply, there is also civil reparation. Furthermore, in most of “our countries”, public officials appoint the judges and “hold the key to [their] removal.” Consequently, equality before the law between an ordinary individual and a public official who files a complaint against this individual is not perfect, as it should be; they are not equal before the courts.

The American Convention does not establish that States have an obligation to decriminalize offenses against honor. The Convention establishes the right of reply. Nevertheless, to the extent that criminalization is not necessary to preserve democratic public order, “it should yield”; in other words, it does not respond to a social imperative, and there are other less overpowering recourses to protect the rights and guarantees included in the Convention. This criminalization exists “in almost all the countries in the region.”

He is aware of the penal reforms carried out in Paraguay, which are an important step forward. The penal legislation in force in Paraguay that categorizes slander “could be sufficient to resolve this case, but it is not sufficient to resolve the general problem we have described, which occurs in Paraguay and in the rest of the countries in the region.” It is insufficient because it does not

differentiate between the ordinary individual and the public official, which is the minimum that could be added to the norm.

d) Expert report of Danilo Arbilla, journalist

The expert witness is director of a weekly newspaper and magazine in Uruguay; he is a member of the Inter-American Press Association and the Coordinating Committee of the World Press Freedom Committee. He took part in drafting the Chapultepec Declaration and the Declaration of Principles on Freedom of Expression of the OAS Inter-American Commission on Human Rights.
Democracy is in crisis in our countries, and this crisis is manifested by corruption and by the deterioration of the rule of law. When there is a crisis, there is a tendency to seek a "scapegoat," which is generally the press. When the "villain" is the press, certain offenses, incorrectly known as "press" offenses, are used increasingly as instruments to attack freedom of expression and the public's right to information. The justice system can become an instrument to attack freedom of the press and freedom of expression.
When complaints are filed regarding offenses of defamation and injuria supposedly committed through the media, public officials and political leaders, who must be subject to public scrutiny, begin to "industrialize" trials. It is this sector that uses the norms on the offenses of libel and injuria most frequently; they "draft and enact" them. Such laws "conspire" against democracy. The individual who puts forward his candidacy for public office, asks to be appointed, and has certain powers assumes, "in exchange," the permanent commitment to be accountable for what he does. However, to the contrary, the public official establishes and resorts to norms that have the specific effect of protecting and hiding what he does.
While the offenses of defamation and injuria exist, the journalist will always be in an inhibited position, confronted by the choice of providing information or being punished. The inhibiting effect of "press" offenses –slander, injuria, libel– occurs not only when proceedings are filed against or a sanction applied to a journalist, but previously, just by the knowledge that this threat exists. This feeling of threat weighs significantly, because, for the journalist, it represents future problems for his patrimony, that of his company, and for his relationship with his company. There are newspaper owners who are "annoyed" by journalists who involve them in problems. Also, a legal action represents a loss of time and image, since the mere fact that "he has been before the courts," casts doubt on the journalist's credibility.
There are other, less onerous, ways of protecting honor, such as the civil system, which are based on the actual malice and malicious intent of the communicator. The criminal system should not exist in the case of statements or information about public officials or individuals in the public sphere. The Declaration of Principles clearly establishes that the civil system is the appropriate mechanism in the case of public officials or individuals in the public sphere. The American Convention does not establish that States should decriminalize slander, libel and injuria.
The legal action against a journalist is "gratuitous". Honor is defended and there is a gratuitous attack on the freedom of the press.
Paraguay is one of the countries where the justice system and the courts are used as a mechanism for curtailing the right to information. In Paraguay, some newspaper directors have been sued repeatedly.

C) EVIDENCE ASSESSMENT

Documentary Evidence Assessment

61. In this case, as in others, [FN14] the Court accepts the probative value of the documents presented by the parties at the proper procedural opportunity or as helpful evidence, that were not contested or opposed, and whose authenticity was not questioned.

[FN14] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 50; the Case of 19 Merchants, supra note 2, para. 73; and Case of Molina-Theissen. Reparations, supra note 2, para. 31.

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62. With regard to the sworn written statements of the two witnesses proposed by the Commission and the representatives (supra paras. 32, 33 and 58) and the sworn written statements made before public notary by the three witnesses and expert witness proposed by the State (supra paras. 31 and 59) in response to the decision of the President in the Order of February 27, 2004 (supra para. 29), the Court admits them insofar as they correspond to the purpose defined by the Court and assesses them with the body of evidence, applying the rules of healthy criticism.

63. In accordance with Article 44(3) of its Rules of Procedure, the Court admits the copy of decision and judgment No. 1362 delivered by the Criminal Chamber of the Supreme Court of Justice of Paraguay on December 11, 2002, and submitted by both the representatives (supra para. 22) and the State (supra para. 23), and also the copy of decision and judgment No. 804, delivered by the said Criminal Chamber on April 27, 2004, submitted by the State (supra para. 37), because they are supervening evidence.

64. The Court considers that the documents presented by the State on April 29, 2004, during the public hearing on merits and possible reparations and costs are helpful (supra paras. 38, 39 and 56); also those presented by the representatives of the alleged victim in their final written arguments (supra paras. 42 and 52); particularly as they were not contested or opposed, and their authenticity was not questioned, so they are added to the body of evidence.

65. With respect to the press articles presented by the parties, this Court has considered that, even though they are not documentary evidence stricto sensu, they can be assessed when they refer to well-known public and notorious facts, or statements by State officials, or corroborate aspects of the instant case. [FN15]

[FN15] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 51; Case of Herrera-Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 71; and Case of Myrna Mack-Chang. Judgment of November 25, 2003. Series C No. 101, para. 131.

Testimonial and Expert Evidence Assessment

66. With regard to the statement made by the alleged victim in the instant case (supra paras. 38 and 60(a)), the Court admits it to the extent that it corresponds to the purpose of the examination established by the President in the Order of February 27, 2004 (supra para. 29). In this respect, the Court considers that, as he is the alleged victim who has a direct interest in the case, his statement must be assessed together with all the evidence in the proceedings and not in isolation. As the Court has indicated, in matters concerning merits and reparations, the statements of the alleged victim are useful insofar as they can provide more information on the consequences of the violations perpetrated. [FN16]

[FN16] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 63; Case of 19 Merchants, supra note 2, para. 80; and Case of Molina-Theissen. Reparations, supra note 2, para. 32.

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67. In the case of the testimonial statement made by Ricardo Lugo Rodríguez, and the reports of the expert witnesses Horacio Verbitsky and Danilo Arbilla (supra paras. 38, 60(b), 60(c) and 60(d)), which were not contested or opposed, the Court admits them and accords them probative value.

68. In light of the above, the Court will assess the probative value of the documents, statements and expert reports presented in writing or made before it. The evidence presented during the proceeding has been incorporated into a single body of evidence, which is considered as a whole. [FN17]

[FN17] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 66; Case of 19 Merchants, supra note 2, para. 82; and Case of Molina-Theissen. Reparations, supra note 2, para. 36.

VI. PROVEN FACTS

69. Having examined the different documents, the statements of the witnesses, the reports of the expert witness, and the arguments of the Commission, the representatives of the alleged victim and the State during the proceedings, the Court considers that the following facts are proven:

With regard to Ricardo Canese

69(1) Ricardo Canese has been an industrial engineer since 1975. From 1977 to 1984 he lived in exile in Holland, as a result of his stance against the dictatorship of Alfredo Stroessner in Paraguay. [FN18]

[FN18] Cf. testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court on April 28, 2004; and curriculum vitae of Ricardo Nicolás Canese Krivoshein (file of attachments to the application, attachment 20, folios 212 to 215).

69(2) Since 1978, Mr. Canese has researched and written books and newspaper articles on the Itaipú bi-national hydroelectric power plant, which is one of the largest hydroelectric dams in the world and the principal natural wealth of Paraguay. The purpose of the Itaipú power plant is to exploit the hydroelectric potential of the Paraná River, on the border between Paraguay and Brazil. In 1973, Paraguay and Brazil concluded an agreement to construct this project. [FN19] The CONEMPA Consortium was one of the two companies contracted to carry out the construction work of this hydroelectric power plant. Juan Carlos Wasmosy was Chairman of the Board of Directors of this company from 1975 to 1993. [FN20]

[FN19] Cf. testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004; testimony of Ricardo Lugo Rodríguez given before the Inter-American Court during the public hearing held on April 28, 2004; expert report of Horacio Verbitsky given before the Inter-American Court during the public hearing held on April 28, 2004; sworn written statement made by Miguel Hermenegildo López on March 29, 2004 before public notary (file on merits and possible reparations and costs, tome III, folios 770 to 773); sworn written statement made by Fernando Antonio Pfannl Caballero on March 25, 2004 (file on merits and possible reparations and costs, tome III, folios 756 to 760); judgment delivered by the First Criminal Trial Court on March 22, 1994 (file of attachments to the application, attachment 8, folio 67 and copy of file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 882 to 886); curriculum vitae of Ricardo Nicolás Canese Krivoshein (file of attachments to the application, attachment 20, folios 214 to 215); article entitled “Paraguay hijo de Stroessner”, published on June 8, 1996, in the Argentine journal “Noticias” (file of attachments to the application, attachment 17, folio 127 to 129); newspaper article entitled “Itaipú, 20 años de lucha. La renegociación del Tratado”, published on May 5, 1993, in the Paraguayan newspaper “Noticias” (file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 3, folio 624); newspaper article entitled “Noticia de un arresto” published on June 1, 1996 (file of attachments to the application, attachment 17, folios 200 and 201); and newspaper article entitled “Itaipú, 20 años de lucha (I). La mayor vergüenza natural conocida”, published on April 13, 1993, in the Paraguayan newspaper “Noticias” (file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 3, folio 629).

[FN20] Cf. testimony of Ricardo Lugo Rodríguez given before the Inter-American Court during the public hearing held on April 28, 2004; newspaper article entitled “Noticia de un arresto”, published on June 1, 1996, in the journal “Noticias” (file of attachments to the application, attachment 17, folio 201); newspaper article entitled “Canese pide se investigue CONEMPA e Itaipú”, published on June 29, 1993, in the newspaper “Noticias” (file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 3, folio 623); and public deed constituting the company, CONEMPA S.R.L. dated

December 19, 1975 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 665 to 679).

69(3) In 1990 and 1991, the alleged victim filed reports before the Attorney General that CONEMPA had allegedly committed punishable acts in relation to the Itaipú hydroelectric power plant, and also referring to this company's alleged tax evasion, based on a decree issued by former President Stroessner. [FN21]

[FN21] Cf. testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004.

69(4) In 1992, the National Congress created the Bicameral Unlawful Acts Investigation Committee, made up of members of the Chambers of Deputies and Senators; its function was to investigate the unlawful acts committed during the dictatorship. One of the first issues the Committee examined was the report presented by the Unified Workers Central on corruption in the construction of the civil works of the Itaipú hydroelectric power plant and systematic tax evasion by CONEMPA. In this respect, it processed the file "Investigation into corruption in Itaipú", which involved Juan Carlos Wasmosy and CONEMPA. Mr. Canese provided advisory services to the Bicameral Committee on the specific issue of the Itaipú power plant. The Bicameral Committee presented its conclusions to the Seventh Civil Court of First Instance and "accompan[ied]" the Unified Workers Central to submit its conclusions to the Attorney General's office. [FN22]

[FN22] Cf. testimony of Ricardo Lugo Rodríguez given before the Inter-American Court during the public hearing held on April 28, 2004; sworn written statement made by Fernando Antonio Pfannl Caballero on March 23, 2004 (file on merits and possible reparations and costs, tome III, folios 756 to 760); communication of June 8, 1994, addressed by the President and Secretary General of the Bicameral Unlawful Acts Investigation Committee of the National Congress to the First Trial Judge for Criminal Matters (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 942); communication of June 3, 1996, addressed by the President and the Rapporteur of the Bicameral Unlawful Acts Investigation Committee of the National Congress to Ricardo Canese (file of attachments to the application, attachment 16, folio 107); and newspaper article entitled "Dos calificados testigos desnudaron la corrupción del Presidente Wasmosy" published on June 4, 1997, in the newspaper "La República" (file of attachments to the application, attachment 17, folios 176 and 177).

Regarding Mr. Canese's political activities, the 1993 presidential elections, and the statements he made in the context of the electoral campaign

69(5) In 1991, Mr. Canese participated in the Asunción municipal elections for the popular party Asunción para Todos; he was the first candidate for councilor and was elected. The alleged victim exercised this office from 1991 to 1996. [FN23]

[FN23] Cf. testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004; curriculum vitae of Ricardo Nicolás Canese Krivoshein (file of attachments to the application, attachment 20, folio 217); and communication of June 8, 1994, addressed by the President and Secretary General of the Bicameral Unlawful Acts Investigation Committee of the National Congress to the First Trial Judge for Criminal Matters (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 942).

69(6) The popular party Asunción para Todos proposed Mr. Canese's candidacy for the presidency of the Republic in the 1993 elections. Juan Carlos Wasmosy was the presidential candidate of the Colorado Party in these elections. The elections took place in the context of the transition to democracy, because, up until 1989, the country was under a dictatorship that had lasted 35 years. [FN24]

[FN24] Cf. testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004; sworn written statement made by Miguel Hermenegildo López on March 29, 2004 before public notary (file on merits and possible reparations and costs, tome III, folios 754 to 760); sworn written statement made by Fernando Antonio Pfannl Caballero on March 23, 2004 (file on merits and possible reparations and costs, tome III, folios 756 to 758); newspaper article entitled "Principales candidatos se comprometieron a cogobernar" published on April 13, 1993; political propaganda of Ricardo Canese's candidacy for the presidency of the Republic published on March 9, 1993 in the newspaper "Noticias" (file of attachments to the application, attachment 17, folios 112 and 113); and newspaper article entitled "Wasmosy fue prestanombre de la familia Stroessner" published on August 17, 1992, in the newspaper "ABC Color" (file of attachments to the application, attachment 19, folio 211).

69(7) In August 1992, during the electoral campaign for the presidency of the Republic, Mr. Canese was interviewed by journalists of the Paraguayan newspapers "Noticias" and "ABC Color" concerning Mr. Wasmosy's candidacy. [FN25] On August 27, 1992, "Noticias" published an article entitled "Wasmosy forjó su fortuna gracias a Stroessner" [Wasmosy amassed his fortune thanks to Stroessner], in which Mr. Canese stated, inter alia, that "Wasmosy […] passed from bankruptcy to the most spectacular wealth, thanks to support from the dictator's

family, which allowed him to assume the chairmanship of CONEMPA, the consortium that enjoyed the monopoly, in Paraguay, of the principal civil works of Itaipú." [FN26] The same day, "ABC Color" published an article entitled "Wasmosy fue prestanombre de la familia Stroessner", [Wasmosy was the Stroessner family's front man], in which Mr. Canese indicated, inter alia, that "[i]n the practice, Mr. Wasmosy was the Stroessner family's front man in CONEMPA, and the company transferred substantial dividends to the dictator." [FN27]

[FN25] Cf. testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004; action on unconstitutionality filed on November 29, 1997 by Ricardo Canese before the Supreme Court of Justice of Paraguay (file of attachments to the application, attachment 21, folio 225; and copy of the file on the action on unconstitutionality in the case "Ricardo Canese, for slander and injuria" before the Supreme Court of Justice of Paraguay, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1259); newspaper article entitled "Wasmosy forjó su fortuna gracias a Stroessner" published on August 27, 1992, in the newspaper "Noticias" (file of attachments to the application, attachment 19, folio 210); and newspaper article entitled "Wasmosy fue prestanombre de la familia Stroessner" published on August 27, 1992, in the newspaper "ABC Color" (file of attachments to the application, attachment 19, folio 211).
[FN26] Cf. Newspaper article entitled "Wasmosy forjó su fortuna gracias a Stroessner" published on August 27, 1992 in the newspaper "Noticias" (file of attachments to the application, attachment 19, folio 210).
[FN27] Cf. Newspaper article entitled "Wasmosy fue prestanombre de la familia Stroessner" published on August 27, 1992 in the newspaper "ABC Color" (file of attachments to the application, attachment 19, folio 211).

69(8) Juan Carlos Wasmosy was elected President of the Republic on May 9, 1993, and took office on August 15, 1993. [FN28]

[FN28] Cf. testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004; testimony of Ricardo Lugo Rodríguez given before the Inter-American Court during the public hearing held on April 28, 2004; and action on unconstitutionality filed on November 29, 1997, by Ricardo Canese before the Supreme Court of Justice of Paraguay (file of attachments to the application, attachment 21, folio 307; and copy of the file on the action on unconstitutionality in the case "Ricardo Canese, for slander and injuria" before the Supreme Court of Justice of Paraguay, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1327).

69(9) In April 1999, during the Government of President Luis González Macchi, Ricardo Canese was appointed Deputy Minister of Mines and Energy. He held that office for eleven months. [FN29]

[FN29] Cf. testimony of Ricardo Nicolás Canese Krivoshein before the Inter-American Court during the public hearing held on April 28, 2004; and Decree No. 2386 of April 9, 1999, appointing Ricardo Canese Krivoshein Deputy Minister of Mines and Energy of the Ministry of Public Works and Communications (file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 2, folio 620).

With regard to the criminal proceedings against Mr. Canese and the domestic judicial proceedings

69(10) On October 23, 1992, the lawyer of Ramón Jiménez Gaona, Oscar Aranda and Hermann Baumann, CONEMPA Directors, filed a criminal complaint before the Criminal Trial Court against Ricardo Canese, for the offenses of slander and injuria, allegedly "perpetrated […] on August 27 that year [1992], in publications that had appeared in the newspapers 'ABC Color' and 'Noticias-El Diario' in which he made slanderous and injurious accusations against 'CONEMPA S.R.L.' that affected [them] personally [,…] as directors of the company." [FN30]

[FN30] Cf. criminal complaint filed by the lawyer of Ramón Jiménez Gaona, Oscar Aranda and Hermann Baumann before the Criminal Court of First Instance against Ricardo Canese for the offenses of slander and injuria (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 766 to 775).

69(11) On September 8, 1993, the First Trial Judge decided to declare "the preliminary proceedings closed and to elevate the case to a plenary proceedings." [FN31] On September 24, 1993, Mr. Canese's lawyer requested "that the case be opened for the submission of evidence within the legally established time limit, so as to produce evidence that protected the rights of [his] client." [FN32]

[FN31] Cf. interlocutory order No. 1213, issued by the First Trial Judge for Criminal Matters on September 8, 1993 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 828).

[FN32] Cf. brief submitted by Ricardo Canese's lawyer to the First Trial Judge for Criminal Matters of Asunción on September 24, 1993 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, attachment 4, folio 831).

69(12) On October 11, 1993, the First Trial Judge ordered "that the case be opened for the submission of evidence within the legally established time limit." [FN33] On October 26, 1993, Mr. Canese's lawyer offered the "testimonial statements" of six individuals, and requested that the evidence offered should be admitted and that the respective hearings should be arranged. [FN34] On November 5, 1993, the complainants' lawyer requested the First Trial Judge to close the evidentiary stage, because "the peremptory period of ten days, established in Art. 4 of Decree Law 14,338/46, for providing evidence had elapsed, and [because] counsel for the defense ha[d] not pressed for the evidence to be taken or requested application of the time allowed for receiving evidence." [FN35] On November 8, 1993, the Secretary of the Criminal Trial Court informed the judge that, "on October 11, [1993 …] an order had been issued to open the case for the submission of evidence […] and the time limit established by law ha[d] now elapsed." [FN36]

[FN33] Cf. ruling delivered by the First Trial Judge for Criminal Matters on October 11, 1993 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 832).

[FN34] Cf. brief submitted by Ricardo Canese's lawyer to the First Trial Judge for Criminal Matters on October 26, 1993 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 834).

[FN35] Cf. brief submitted by the complainants' lawyer to the First Trial Judge for Criminal Matters on November 5, 1993 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 835).

[FN36] Cf. report of the Secretary of the First Criminal Trial Court dated November 8, 1993 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 836).

69(13) On November 10, 1993, the First Trial Judge for Criminal Matters announced hearings for November 22, 23, 24, 25, 26 and 29, 1993, so that the witnesses proposed by the defense "[could] appear before the Court to make their testimonial statements." [FN37] On November 12, 1993, the complainants' lawyer filed an "[a]ppeal for reconsideration of judgment against the ruling dated November 10, [1993]," in which he requested the First Trial Judge for Criminal Matters to revoke this ruling and order the evidentiary stage to be closed, based on "the actuary's report of November 8, 1993" (supra para. 69(12)) [FN38].

[FN37] Cf. ruling delivered by the First Criminal Trial Court on November 10, 1993 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 837).
[FN38] Cf. appeal for reconsideration of judgment filed on November 12, 1993, by the complainants' lawyer before the First Criminal Trial Court (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 838 to 842).

69(14) On November 26, 1993, the First Trial Judge for Criminal Matters revoked the ruling of November 10, 1993 (supra para. 69(13)) because he had delivered it "after the period for presenting evidence had expired" and ordered the evidentiary stage to be closed. [FN39]

[FN39] Cf. interlocutory order No. 1557 issued by the First Criminal Trial Court on November 26, 1993 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 843 to 844).

69(15) On March 22, 1994, the First Trial Judge for Criminal Matters delivered final judgment No. 17, declaring that Ricardo Canese was responsible for the offenses of slander and injuria and, consequently, imposing a sentence of four months' imprisonment, payment of a fine of 14,950,000.00 guaranis, and payment of costs, and declaring his civil liability for the unlawful acts in question. [FN40]

[FN40] Cf. final judgment No. 17 handed down by the First Trial Judge for Criminal Matters on March 22, 1994 (file of attachments to the application, attachment 8, folios 62 to 69, and copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 881 to 887).

69(16) On March 25, 1994, Ricardo Canese's lawyer filed an appeal against final judgment No. 17 (supra para. 69(15)) requesting its annulment. [FN41]

[FN41] Cf. brief dated March 25, 1994, after notification to Ricardo Canese's lawyer of final judgment No. 17 of March 22, 1994, in which this lawyer filed an appeal for annulment of the judgment (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief

answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 887).

69(17) On April 5, 1994, the complainants' lawyer filed an appeal against the judgment of March 22, 1994 (supra para. 69(15)) "as regards the length of imprisonment and the fine imposed." [FN42]

[FN42] Cf. appeal filed on April 5, 1994, by the complainants' lawyer (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 888 to 890).

69(18) On April 8, 1994, the First Trial Judge for Criminal Matters admitted the appeal for annulment filed by Mr. Canese's lawyer (supra para. 69(16)) and the appeal filed by the complainants (supra para. 69(17)). [FN43]

[FN43] Cf. ruling issued by the First Criminal Trial Court on April 8, 1994 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 892).

69(19) On March 18, 1996, Ricardo Canese's lawyer presented a "brief [of] statements" addressed to the Appeals Chamber, in which he requested revocation of the sentence of March 22, 1994 (supra para. 69(15)). [FN44]

[FN44] Cf. brief filed on March 18, 1996, by Ricardo Canese's lawyer (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 990 to 995).

69(20) On November 4, 1997, the Third Chamber of the Court of Criminal Appeal issued decision and judgment No. 18, in which it decided "the appeals for annulment filed by the lawyer [of the complainants and by Mr. Canese's lawyer] against judgment No. 17 of March 22, 1994" (supra para. 69(16), 69(17) and 69(18)). The Court of Appeal decided "to modify the classification of the offense established in the case, and consider that the conduct of the accused Ricardo Canese fell within the purview of Article 370 of the Penal Code," which classified the offense of slander. This court also decided "to modify the judgment that had been appealed, establishing a two-month term of imprisonment, and also to modify the additional sanction of the

fine, establishing this in the sum of two million nine hundred and nine thousand and ninety guaranis, with the defendant to pay costs." [FN45]

[FN45] Cf. decision and judgment No. 18 handed down by the Third Chamber of the Court of Criminal Appeal on November 4, 1997 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1041 to 1059).

69(21) On November 7, 1997, the complainants' lawyer filed an appeal against decision and judgment No. 18 of November 4, 1997, before the Third Chamber of the Court of Criminal Appeal (supra para. 69(20)) "regarding the length of the imprisonment and the amount of the fine imposed." [FN46]

[FN46] Cf. appeal filed by the complainants' lawyer on November 4, 1997, against decision and judgment No. 18 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1067 to 1070).

69(22) On November 11, 1997, Ricardo Canese's lawyer filed "a motion for dismissal of the case" before the Third Chamber of the Court of Criminal Appeal, because he had been notified "at a domicile that differed from the one included numerous times in the case record." [FN47]

[FN47] Cf. motion for dismissal of the case filed by Ricardo Canese's lawyer before the Third Chamber of the Court of Criminal Appeal on November 11, 1997 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1074 to 1078).

69(23) On November 12, 1997, Ricardo Canese's lawyer filed an appeal for annulment against decision and judgment No. 18 of November 4, 1997, before the Third Chamber of the Court of Criminal Appeal (supra para. 69(20)). [FN48]

[FN48] Cf. appeal for annulment filed by Ricardo Canese's lawyer before the Third Chamber of the Court of Criminal Appeal on November 12, 1997 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial

Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1079).

69(24) On November 19, 1997, the Third Chamber of the Court of Criminal Appeal issued interlocutory order No. 552, "admit[ting] the appeal filed by the complainants' lawyer] against decision and judgment No. 18 of November 4 [1997], as regards the length of the imprisonment and the amount of the fine imposed, […] and decided to transfer [the] file to the Supreme Court of Justice" (supra para. 69(21)). [FN49]

[FN49] Cf. interlocutory order No. 552 issued by the Third Chamber of the Court of Criminal Appeal on November 19, 1997 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1082).

69(25) On November 19, 1997, Mr. Canese and his lawyer filed an action on unconstitutionality against the judgment delivered by the First Trial Judge for Criminal Matters on March 22, 1994 (supra para. 69(15)), and against decision and judgment No. 18 of November 4, 1997 (supra para. 69(20)). [FN50]

[FN50] Cf. action on unconstitutionality filed by Ricardo Canese's lawyer before the Supreme Court of Justice of Paraguay on November 29, 1997 (file of attachments to the application, attachment 21, folios 224 to 315, and copy of the file on the action on unconstitutionality in the case "Ricardo Canese, for slander and injuria" before the Supreme Court of Justice of Paraguay, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1258 to 1334).

69(26) On February 2, 1998, Mr. Canese's lawyer filed a brief before the Third Chamber of the Court of Criminal Appeal, requesting a decision on the motion for dismissal submitted on November 11, 1997 (supra para. 69(22)). [FN51] On February 26, 1998, the Third Chamber of the Court of Criminal Appeal issued interlocutory order No. 48, in which it decided "not to admit" the motion for dismissal filed by Mr. Canese (supra para. 69(22)). [FN52] On March 4, 1998, Ricardo Canese and his lawyer filed an appeal against the said interlocutory order No. 48. [FN53] On March 6, 1998, the Third Chamber of the Court of Criminal Appeal issued interlocutory order No. 67, "admit[ting] the appeal filed by Ricardo Nicolás Canese Krivoshein against interlocutory order No. 48 of February 26, [1998 …,] and deciding to transfer [the] case to the Supreme Court of Justice." [FN54]

[FN51] Cf. brief submitted by Ricardo Canese's lawyer to the Third Chamber of the Court of Criminal Appeal on February 2, 1998 (copy of the file of the criminal proceeding against

Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1086).
[FN52] Cf. interlocutory order No. 48 issued by the Third Chamber of the Court of Criminal Appeal on February 26, 1998 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1087 and 1088).
[FN53] Cf. appeal filed by Ricardo Canese's lawyer on March 4, 1998 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1096).
[FN54] Cf. interlocutory order No. 67 issued on March 6, 1998, by the Third Chamber of the Court of Criminal Appeal (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1097).

69(27) On February 26, 1998, the Third Chamber of the Court of Criminal Appeal issued interlocutory order No. 49, in which it decided "not to admit" the appeals for annulment filed by Mr. Canese's lawyer (supra para. 69(23)) against decision and judgment No. 18 of November 4, 1997 (supra para. 69(20)), because they had been submitted after the 24-hour time limit. [FN55] Mr. Canese filed a "complaint regarding the rejected appeal." On May 27, 1998, the Supreme Court of Justice of Paraguay issued interlocutory order No. 559 in which it decided "not to admit the complaint […], because it was unfounded." [FN56]

[FN55] Cf. interlocutory order No. 49 issued by the Third Chamber of the Court of Criminal Appeal, on February 26, 1998 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1089).
[FN56] Cf. brief submitted by the complainants' lawyer to the Supreme Court of Justice of Paraguay on December 12, 2000 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 1127 to 1130).

69(28) On June 21, 1998, the Second Judicial Secretary of the Supreme Court of Justice of Paraguay issued a decision deciding "to consider that the action on unconstitutionality had been initiated" (supra para. 69(25)) and notify it "to the other party." [FN57]

[FN57] Cf. decision issued by the Second Judicial Secretary of the Supreme Court of Justice of Paraguay on July 21, 1998 (copy of the file on the action on unconstitutionality in the case "Ricardo Canese, for slander and injuria" before the Supreme Court of Justice of Paraguay, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1348).

69(29) On July 8, 1998, the new Code of Criminal Procedure was promulgated. [FN58]

[FN58] Cf. Code of Criminal Procedure of Paraguay promulgated on July 8, 1998, Ediciones Librería El Foro S. A., Asunción, 2001 (file of documents submitted by the State during the public hearing on April 29, 2004).

69(30) On November 26, 1998, a new Penal Code entered into force, modifying the criminal classification of the offense of slander, and also reducing the sanctions for this offense. [FN59]

[FN59] Cf. Code of Criminal Procedure of Paraguay promulgated on November 26, 1997, Ediciones Librería El Foro S. A., Asunción, 2001 (file of documents submitted by the State during the public hearing on April 29, 2004); and decision and judgment No. 1362 issued by the Criminal Chamber of the Supreme Court of Justice of Paraguay on December 11, 2002 (file on merits and possible reparations and costs, tome II, folios 502 to 508).

69(31) On February 8, 1999, Ricardo Canese and his lawyers submitted a brief, requesting the annulment of judgment No. 17 of March 22, 1994 (supra para. 69(15)) and of decision and judgment No. 18 of November 4, 1997 (supra para. 69(20)), the extinguishment of the punishable act and review of the sentence; they based their requests, inter alia, on the grounds that a new Penal Code had entered into force, which, among other elements, reduced the sanctions for the offense of slander and established a fine as an alternative to imprisonment. [FN60]

[FN60] Cf. brief submitted by Ricardo Canese and his lawyer to the Third Chamber of the Court of Criminal Appeal on February 8, 1999 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1101 to 1106).

69(32) On March 18, 1999, Ricardo Canese and his lawyer submitted a brief to the Third Chamber of the Court of Criminal Appeal, requesting, inter alia, that it rule on the appeal filed on March 4, 1998, against interlocutory order No. 48 of February 26, 1998 (supra para. 69(26)). [FN61]

[FN61] Cf. brief submitted by Ricardo Canese and his lawyer to the Third Chamber of the Court of Criminal Appeal on March 18, 1999 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1108 and 1109).

69(33) On May 18, 1999, the Criminal Chamber of the Supreme Court of Justice of Paraguay issued interlocutory order No. 576, in which it declared that the Third Chamber of the Court of Criminal Appeal had "erroneously admitted" the appeal filed on March 4, 1998 (supra para. 69(26)) against interlocutory order No. 48 of February 26, 1998, which decided to reject the motion for dismissal of the case (supra para. 69(26)). [FN62]

[FN62] Cf. interlocutory order No. 576 issued by the Criminal Chamber of the Supreme Court of Justice of Paraguay on May 18, 1999 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1115).

69(34) On May 26, 1999, Mr. Canese and his lawyer submitted a brief to the Criminal Chamber of the Supreme Court of Justice of Paraguay, requesting, inter alia, that "the files be joinder[ed] into a single case, to be processed by the Constitutional Chamber of the Supreme Court of Justice [and,] consequently, that the case files be forwarded to the Constitutional Chamber to be tried simultaneously." [FN63] On June 30, 1999, the file was forwarded to the Constitutional Chamber of the Supreme Court of Justice of Paraguay. [FN64]

[FN63] Cf. brief submitted by Ricardo Canese and his lawyer to the Supreme Court of Justice of Paraguay on May 26, 1999(copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1119 and 1120).

[FN64] Cf. decision of June 30, 1999, of the Secretary of the Supreme Court of Justice of Paraguay (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 1126).

69(35) On June 7, September 13, October 26 and December 9, 1999, and on February 2 and 16, 2000, Mr. Canese and his lawyer submitted briefs to the Supreme Court of Justice of Paraguay,

requesting a ruling in the action on unconstitutionality filed on November 19, 1997 (supra para. 69(25) and 69(28)). [FN65]

[FN65] Cf. communication submitted by Ricardo Canese and his lawyer on June 7, 1999 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1121 and 1122); and briefs submitted by Canese and his lawyer on September 13, 1999, October 26, 1999, December 9, 1999, February 2, 2000, and February 16, 2000 (copy of the file on the action on unconstitutionality in the case "Ricardo Canese, for slander and injuria" before the Supreme Court of Justice of Paraguay, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1371, 1372 and 1375 to 1378).

69(36) On March 8, 2000, Mr. Canese and his lawyers filed an "appeal for review of judgment" and a request for "the extinguishment and prescription of the criminal proceeding" before the Criminal Chamber of the Supreme Court of Justice of Paraguay. They also requested that the judgment of March 22, 1994, be annulled (supra para. 69(15)), that decision and judgment No. 18 of November 4, 1997, be annulled (supra para. 69(20)) and that a "final stay of proceedings" be declared, based, inter alia, on "the recent entry into force of the new Code of Criminal Procedure." [FN66]

[FN66] Cf. appeal for review filed by Ricardo Canese and his lawyers before the Criminal Chamber of the Supreme Court of Justice of Paraguay on March 8, 2000 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1141 to 1144).

69(37) On October 3, 2000, the Constitutional Chamber of the Supreme Court of Justice of Paraguay issued interlocutory order No. 1645, with its ruling on the action on unconstitutionality filed by Mr. Canese and his lawyer on November 19, 1997 (supra para. 69(25), 69(28) and 69(35)). In this decision, based on the actuary's report indicating that "the last judicial action designed to advance the instant case is the decision of July 21, 1998," the Constitutional Chamber declared that "the case had extinguished," because "more than six months ha[d] passed, and the proceedings had not been prosecuted during that period, which demonstrated that the plaintiff in the […] action, had abandoned the case." [FN67]

[FN67] Cf. interlocutory order No. 1645 issued by the Constitutional Chamber of the Supreme Court of Justice of Paraguay on October 4, 2000 (copy of the file on the action on unconstitutionality in the case "Ricardo Canese, for slander and injuria" before the Supreme

Court of Justice of Paraguay, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1387).

69(38) On October 30, 2000, Mr. Canese and his lawyer filed a motion for dismissal against interlocutory order No. 1645 of October 4, 2000, before the Constitutional Chamber of the Supreme Court of Justice of Paraguay (supra para. 69(37)), "owing to a substantive error and lack of impartiality," because "there was a substantive error in the actuary's report," since, inter alia, "approximately twenty judicial proceedings had been undertaken subsequent to July 21, 1998." [FN68]

[FN68] Cf. motion for dismissal filed by Ricardo Canese and his lawyer before the Constitutional Chamber of the Supreme Court of Justice of Paraguay on October 30, 2000 (copy of the file on the action on unconstitutionality in the case "Ricardo Canese, for slander and injuria" before the Supreme Court of Justice of Paraguay, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 1389 to 1395).

69(39) On December 12, 2000, the complainants' lawyer submitted a brief, in which he "provide[d] grounds for the appeal filed against decision and judgment No. 18 of November 4, 1997, regarding the length of the sentence and the amount of the fine imposed" (supra para. 69(21)), which the Third Chamber of the Court of Criminal Appeal had admitted on November 19, 1997 (supra para. 69(24)). [FN69]

[FN69] Cf. brief submitted by the complainants' lawyer to the Supreme Court of Justice of Paraguay on December 12, 2000 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 1127 to 1130).

69(40) On April 10, 2001, Mr. Canese and his lawyer submitted a brief, requesting the Criminal Chamber of the Supreme Court of Justice of Paraguay to rule on the appeal for review filed on March 8, 2000 (supra para. 69(36)). [FN70]

[FN70] Cf. brief submitted on by Ricardo Canese and his lawyer to the Criminal Chamber of the Supreme Court of Justice of Paraguay April 10, 2001 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1145).

69(41) On May 2, 2001, the Criminal Chamber of the Supreme Court of Justice of Paraguay issued decision and judgment No. 179, on the appeal for review and annulment filed by Mr. Canese on March 8, 2000 (supra para. 69(36) and 69(40)) and the appeal against the judgment of second instance filed by the complainants' lawyer on November 7, 1997 (supra para. 69(21), 69(24) and 69(39)). The Criminal Chamber decided to reject the appeal for annulment, not to admit the appeal for review and, with regard to the complainants' appeal, to confirm decision and judgment No. 18 of November 4, 1997, issued by the Third Chamber of the Court of Criminal Appeal (supra para. 69(20)). [FN71] On May 7, 2001, the complainants' lawyer filed a petition for clarification concerning the failure of decision and judgment No. 179 to rule on costs. [FN72]

[FN71] Cf. brief submitted by Ricardo Canese and his lawyer to the Criminal Chamber of the Supreme Court of Justice of Paraguay on April 10, 2001; and decision and judgment No. 179 issued by the Criminal Chamber of the Supreme Court of Justice of Paraguay on May 2, 2001 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1145 and 1154 to 1162).

[FN72] Cf. brief submitted by the complainants' lawyer to the Criminal Chamber of the Supreme Court of Justice of Paraguay on May 7, 2001 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 1163).

69(42) On May 14, 2001, Mr. Canese and his lawyer submitted a brief to the Criminal Chamber of the Supreme Court of Justice of Paraguay, in which they stated that they "reserved the right to file the appeal for review again in another procedural instance, should this be appropriate." [FN73] Between May 14 and October 15, 2001, Ricardo Canese and his lawyer filed an appeal for review of the sentence. [FN74] On October 15, 2001, Ricardo Canese and his lawyer submitted a brief, requesting that the appeal for review of the sentence be declared admissible, that the judgment of

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[FN73] Cf. brief submitted by Ricardo Canese and his lawyer to the Criminal Chamber of the Supreme Court of Justice of Paraguay on May 14, 2001 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1165 and 1166).

[FN74] Cf. appeal for review of sentence filed by Ricardo Canese and his lawyer before the Criminal Chamber of the Supreme Court of Justice of Paraguay (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with

observations on the brief with requests and arguments, tome II, attachment 4, folios 1178 to 1184).

March 22, 1994 be annulled (supra para. 69(15)), that decisions and judgments No. 18 of November 4, 1997 (supra para. 69(20)), and No. 179 of May 2, 2001, be annulled (supra para. 69(41)), and that the case be declared "dismissed." [FN75]

[FN75] Cf. brief submitted by Ricardo Canese and his lawyer before the Criminal Chamber of the Supreme Court of Justice of Paraguay on October 15, 2001 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1170 and 1171).

69(43) On September 7, 2001, the Constitutional Chamber of the Supreme Court of Justice of Paraguay issued interlocutory order No. 1487, rejecting the motion for dismissal filed by Mr. Canese and his lawyer on October 30, 2000 (supra para. 69(38)), against interlocutory order No. 1645 of October 4, 2000 (supra para. 69(37)), because it was totally inadmissible to annul the interlocutory order declaring that the legal proceeding on the action on unconstitutionality had extinguished." [FN76]

[FN76] Cf. interlocutory order No. 1487 issued by the Constitutional Chamber of the Supreme Court of Justice of Paraguay on September 7, 2001 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1177).

69(44) On November 19, 2001, the Criminal Chamber of the Supreme Court of Justice of Paraguay issued decision and judgment No. 880, in which it decided the petition for clarification filed by the complainants' lawyer on May 7, 2001, concerning a decision on costs (supra para. 69(41)). The Criminal Chamber decided that each party should assume the respective costs. [FN77]

[FN77] Cf. decision and judgment No. 880 issued by the Criminal Chamber of the Supreme Court of Justice of Paraguay on November 19, 2001 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1172 to 1173).

69(45) On February 11, 2002, Ricardo Canese and his lawyers filed an appeal for review before the Criminal Chamber of the Supreme Court of Justice of Paraguay, based, inter alia, on "the recent entry into force of the new Code of Criminal Procedure and the new Penal Code." The appeal asked the Chamber to consider "that the appeal for review of sentence was reiterated, and the extinguishment and prescription of the criminal action requested"; also, that final judgment No. 17 of March 22, 1994, decision and judgment No. 18 of November 4, 1997, and decision and judgment No. 179 of May 2, 2001, should be annulled (supra para. 69(15), 69(20) and 69(41)), and to declare the dismissal of the proceedings. [FN78]

[FN78] Cf. appeal for review filed by Ricardo Canese and his lawyers before the Criminal Chamber of the Supreme Court of Justice of Paraguay on February 11, 2002 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1185 to 1190).

69(46) On May 6, 2002, the Criminal Chamber of the Supreme Court of Justice of Paraguay delivered decision and judgment No. 374, deciding "not to admit the appeal for review filed by Ricardo Canese" on February 11, 2002 (supra para. 69(45)). Among other elements, the grounds for this decision were that "the brief requesting the appeal for review did not offer 'any evidence or indicate new facts' which would justify applying a more favorable norm to the convicted person"; so that, "based on the provisions of Act. No. 1444 'which regulates the period of transition to the new system of criminal procedure' and on Article 481, paragraphs 4 and 5, of the Code of Criminal Procedure in force, the appeal for review must be rejected as inadmissible." [FN79]

[FN79] Cf. decision and judgment No. 374 issued by the Criminal Chamber of the Supreme Court of Justice of Paraguay on May 6, 2002 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1199 to 1202).

69(47) On May 28, 2002 Mr. Canese and his lawyers filed a "petition for clarification" regarding decision and judgment No. 374 of May 6, 2002 (supra para. 69(46)), in order to establish whether "the 'inadmissibility' of the review […] referred exclusively to the specific appeal for review filed before the Criminal Chamber of the Supreme Court of Justice of Paraguay, or whether, 'at some time', should there be grounds, [they] could file this appeal for review again, before the pertinent instance." On July 23, 2002, the Criminal Chamber of the Supreme Court of Justice of Paraguay delivered decision and judgment No. 756, in which it explained that the rejection of the appeal for view owing to inadmissibility corresponded only to that specific case; and did not prevent a new appeal to be filed on different grounds. [FN80]

[FN80] Cf. petition for clarification filed by Ricardo Canese and his lawyers before the Criminal Chamber of the Supreme Court of Justice of Paraguay on May 28, 2002; and decision and judgment No. 756 issued by the Criminal Chamber of the Supreme Court of Justice of Paraguay on July23, 2002 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1205 to 1208).

69(48) On August 12, 2002, Ricardo Canese and his lawyers filed an appeal for review before the Criminal Chamber of the Supreme Court of Justice of Paraguay, based on the existence of a "new fact." This fact was that the Inter-American Commission had submitted an application to the Inter-American Court concerning alleged violations of Mr. Canese's human rights and it had been notified to the State. In this appeal, they requested that: a) final judgment No. 17 of March 22, 1994, decision and judgment No. 18 of November 4, 1997, decision and judgment No. 179 of May 2, 2001, and decision and judgment No. 374 of May 6, 2002 (supra para. 69(15), 69(20), 69(41) and 69(46)) be annulled; b) the conviction and sentence be declared dismissed, "and any resulting legal effects eliminated […]"; c) the decision on the appeal include a public apology for the violation of freedom of expression; d) "the current and former State officials who created the violation" repair Mr. Canese's financial losses; and e) the complainants be ordered to pay "the costs of the [domestic] proceeding, and also of the procedure before the Inter-American C[ommission on Human Rights] and the Inter-American Court of Human Rights." [FN81]

[FN81] Cf. appeal for review filed by Ricardo Canese and his lawyers on August 12, 2002, before the Criminal Chamber of the Supreme Court of Justice of Paraguay (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 1212 to 1244).

69(49) On December 11, 2002, the Criminal Chamber of the Supreme Court of Justice of Paraguay delivered decision and judgment No. 1362, ruling on the appeal for review filed on August 12, 2002 (supra para. 69(48)). The Criminal Chamber decided: a) to admit the appeal for review; b) to annul final judgment No. 17 handed down by the First Criminal Trial Court on March 22, 1994, and decision and judgment No. 18 handed down by the Third Chamber of the Court of Criminal Appeal on November 4, 1997 (supra para. 69(15) and 69(20)); c) to absolve Mr. Canese from guilt and pardon him; and d) to cancel all records "relating to the fact investigated in these proceedings." As partial grounds for this decision, the Criminal Chamber indicated that it complied with the requirement of the existence of a "new fact," because "there is a new Penal Code that has radically changed the criminal classification of slander; second, because the positive criminal norm (Art. 152 CP1997) introduces grounds for exempting criminal responsibility – among other elements – in cases of public interest; third, because, if paragraph 5 of Art. 152 of the Penal Code [were] applied in the specific case, Art. 13 of the

American Convention would be violated[,…] with the aggravating factor that the proceedings instituted in first instance were not even opened to evidence." The sanctions imposed in the said 1994 and 1997 judgments were never executed. [FN82]

[FN82] Cf. decision and judgment No. 1362 issued by the Criminal Chamber of the Supreme Court of Justice of Paraguay on December 11, 2002 (file on merits and possible reparations and costs, tome II, folios 502 to 508); and testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004.

69(50) On December 15, 2002, Ricardo Canese and his lawyer filed a petition for clarification regarding decision and judgment No. 1362 of December 11, 2002 (supra para. 69(49)), concerning the omission of a decision on which party should pay costs. On April 27, 2004, the Criminal Chamber of the Supreme Court of Justice of Paraguay issued decision and judgment No. 804, deciding to admit the said petition for clarification and "[i]mpose the costs and expenses of the whole proceeding on the complainants." [FN83]

[FN83] Cf. decision and judgment No. 804 issued by the Criminal Chamber of the Supreme Court of Justice of Paraguay on April 27, 2004 (file on merits and possible reparations and costs, tome III, folios 807 to 810).

Regarding Ricardo Canese's requests to leave Paraguay, and the restrictions and permissions

A) Permissions to leave the country that were denied

69(51) In his capacity as candidate for the presidency of Paraguay, Ricardo Canese traveled to the United States to make a presentation at Harvard Law School on "Democratization in Paraguay: The Role of Civil and Military Forces in the Transition," on February 16, 1993, despite "[the State's] attempt to detain [him] and prevent [his] departure from the country," because he was "being prosecuted." [FN84]

[FN84] Cf. testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004; poster on the presentation by Ricardo Canese scheduled by the Human Rights Program of Harvard Law School for February 16, 1993 (file of attachments to the application, attachment 17, folio 115); document with the itinerary of confirmed appointments for Ricardo Canese from February 15 to February 19, 1993, in the United States of America (file of attachments to the application, attachment 17, folios 116 and 117); and newspaper article entitled "Conferencia en Harvard. Canese: 'Puede naufragar la transición paraguaya'" published on February 18, 1993, in the Paraguayan newspaper "Noticias" (file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 3, folio 632).

69(52) On April 18, 1994, Mr. Canese and his lawyers submitted to the First Criminal Trial Court a request for "permission to travel abroad," so that he could attend the "IX Encontro Nacional do Partido dos Trabalhadores" [the eleventh National Meeting of the Workers Party] and the launch of the presidential candidacy of Luíz Inácio Lula da Silva in Brazil. In this request, Mr. Canese offered "the joint and several, personal surety of both the lawyers representing him." [FN85] On April 28, 1994, Ricardo Canese and his lawyers submitted a brief to the First Criminal Trial Court asking them to take a decision on his request for authorization to leave the country "with the guarantee and surety of both the lawyers representing him." [FN86] Also, the same day, Mr. Canese and his lawyer submitted another brief to the same Court, in which Mr. Canese offered "to provide a material surety" and stated that "he was domiciled, because he was the owner of two properties." [FN87] On April 20, 1994, the Court forwarded these requests to the complainants, [FN88] who submitted a brief to the Court "opposing the permission requested" by Ricardo Canese to leave the country, because "he [was] involved in a lawsuit; especially, because it was a criminal proceedings and he had to remain subject to the jurisdiction of the judge hearing the case." [FN89]

[FN85] Cf. brief submitted by Ricardo Canese and his lawyers to the First Criminal Trial Court on April 18, 1994 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 899 to 900); and invitation dated March 30, 1994, to the "IX Encontro Nacional do Partido dos Trabalhadores" and the launch of the presidential candidacy of Luíz Inácio Lula da Silva, signed by the Secretary of International Relations of the Workers' Party and addressed to Ricardo Canese (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, attachment 4, folios 897 to 898).

[FN86] Cf. brief dated April 28, 1994, presented by Ricardo Canese and his lawyers to the First Criminal Trial Court (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 904).

[FN87] Cf. brief dated April 28, 1994, presented by Ricardo Canese to the First Criminal Trial Court (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 905); public deed of property transfer to Ricardo Canese of November 29, 1979; public deed of property transfer to Ricardo Canese of August 18, 1986; and public deed of property transfer to Ricardo Canese and Vicenta R. Atunez de Canese of May 24, 1990 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 906 to 926).

[FN88] Cf. decision of the First Criminal Trial Court of April 20, 2004 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 902).
[FN89] Cf. brief dated April 28, 1994, presented by the complainants' lawyer to the First Criminal Trial Court (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 930 to 931).

69(53) On April 29, 1994, the First Criminal Trial Court issued interlocutory order No. 409, deciding "not to authorize [Ricardo Canese] to leave the country," because it considered that the reason alleged (supra para. 69(52)) "was not sufficient" to authorize his departure from the country and that, since he was pending compliance with a sentence, Mr. Canese should remain subject to the jurisdiction of the judge of the case. Moreover, the judge indicated that "Art. 708 of the Code of Criminal Procedure authorize[d] the Court to order the detention of a defendant, if he attempted to leave the country; especially in the case of someone who had been convicted such as the person in the instant case." [FN90]

[FN90] Cf. interlocutory order No. 409 issued by the First Criminal Trial Court on April 29, 1994 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 933 and 934).

69(54) On May 3, 1994, Ricardo Canese filed an action on unconstitutionality against interlocutory order No. 409 of April 29, 1994 (supra para. 69(53)). [FN91]

[FN91] Cf. action on unconstitutionality filed by Ricardo Canese and his lawyer on May 3, 1994 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 938); and testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004.

69(55) On June 8, 1994, Ricardo Canese and his lawyer submitted a brief to the First Criminal Trial Court requesting "permission to leave the country" for four days, because the Bicameral Unlawful Acts Investigation Committee of the National Congress had decided to include him in the "Official Legislative Committee" that would travel to Brazil on June 14, 1994. In this brief, Mr. Canese offered effective, personal surety. [FN92] On June 8, 1994, the President and the Secretary General of the Bicameral Committee requested the First Trial Judge for Criminal

Matters to bear in mind, when considering [Mr. Canese's] request to leave the country, that the Bicameral Committee considered it "necessary that Ricardo Canese accompany [the Commission's] delegation that [would] travel to Brazil on […] June 14 and return on June 18, [1994], in view of his expertise in matters relating to Itaipú." The Bicameral Committee also indicated that Mr. Canese would return to Paraguay together with the delegation, "and that any suggestion that he wishes to abscond from the country in order to evade his trial should be rejected." [FN93]

[FN92] Cf. brief submitted by Ricardo Canese and his lawyer to the First Criminal Trial Court on June 8, 1994 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 944 and 945); and testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004.
[FN93] Cf. communication of June 8, 1994, addressed by the President and Secretary General of the Bicameral Unlawful Acts Investigation Committee of the National Congress to the First Trial Judge for Criminal Matters (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 942).

69(56) On June 9, 1994, the First Criminal Trial Court issued interlocutory order No. 593, deciding to forward the requests of the Bicameral Unlawful Acts Investigation Committee and Ricardo Canese (supra para. 69(55)) to the Supreme Court of Justice of Paraguay. [FN94] The following day, that Court decided to return "the principal case files to the court of origin," because the "petition is based on different reasons from those supporting the order currently contested by the action on unconstitutionality." [FN95] On June 10, 1994, the First Criminal Trial Court "forwarded" the said request to leave the country to the complainants and, the same day, the latter ratified their opposition to Mr. Canese being granted permission to leave the country. [FN96]

[FN94] Cf. interlocutory order No. 593 issued by the First Criminal Trial Court on June 9, 1994 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 946).
[FN95] Cf. decision issued by the Supreme Court of Justice of Paraguay on June 10, 1994 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 950 and 951).
[FN96] Cf. decision of the First Criminal Trial Court of June 10, 1994; and brief of June 14, 1994, presented by the complainants' lawyer to the First Criminal Trial Court (copy of the file of

the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 950, 952 and 953).

69(57) On June 14, 1994, after Mr. Canese and his lawyer had filed a brief that same day asking for a decision on the request for permission to leave the country of June 8, 1994 (supra para. 69(55)), [FN97] the First Criminal Trial Court issued interlocutory order No. 622, deciding "not to admit" this request. The said Court considered that Mr. Canese was in the same situation as that determined on April 29, 1994 (supra para. 69(53)) and stated that "even though the reasons [were] different, the intention [was] the same (to leave the country)." [FN98]

[FN97] Cf. brief of June 14, 1994, presented by Canese to the First Criminal Trial Court (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folio 954).
[FN98] Cf. interlocutory order No. 622 issued by the First Criminal Trial Court on June 14, 1994 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome I, attachment 4, folios 955 and 956).

69(58) In May 1997, Mr. Canese and his lawyers submitted to the Supreme Court of Justice of Paraguay a request for permission for Mr. Canese to travel to Uruguay to appear as a witness before the Uruguayan courts on May 12, 1997, in a lawsuit filed by Juan Carlos Wasmosy against the newspaper "La República." The Supreme Court of Justice of Paraguay failed to rule on this request. [FN99]

[FN99] Cf. testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004; newspaper article entitled "Convocarán a testigos paraguayos" published on April 4, 1997 (file of attachments to the application, attachment 17, folios 166 and 167); newspaper article entitled "Justicia uruguaya citó a testigos paraguayos para el 12 de mayo," published on May 3, 1997, in the newspaper "Noticias" (file of attachments to the application, attachment 17, folio 168); and newspaper article entitled "No testificó porque la Corte le negó ir" published on May 15, 1997, in the newspaper "La Nación" (file of attachments to the application, attachment 17, folio 169).

69(59) On October 17, 1997, the Attorney General's office issued report No. 1288, in which it indicated to the Supreme Court of Justice of Paraguay that "it [could] not process" the "action on unconstitutionality filed" by Mr. Canese (supra para. 69(54)), because the latter had not filed

remedies of appeal and annulment against the decision of first instance and "consequently they are not final." [FN100]

[FN100] Cf. report No. 1,288 issued by Attorney General's office on October 17, 1997 (file of attachments to the application, attachment 18, folio 209, and file of attachments to the brief with requests and arguments, attachment 2, folio 568); and testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004.

69(60) On November 3, 1997, the Paraguayan National Electricity Board Workers Trade Union (SITRANDE) invited Ricardo Canese to represent Paraguay at the first meeting of the COSSEM Energy Policy Research Center (CEPEC) on November 19 and 20, 1997, in Buenos Aires. [FN101] Ricardo Canese filed a petition for habeas corpus in order to request authorization to leave the country to take part in this meeting in Argentina. On November 14, 1997, the Supreme Court of Justice of Paraguay issued interlocutory order No. 1408 in which "it did not admit" the said petition for habeas corpus, because the permissions granted previously, on May 30 and October 19, 1997 (infra para. 69(62) and 69(63)), "responded to Mr. Canese's previous procedural situation [and now] there is evidence that he has been tried and convicted." [FN102]

[FN101] Cf. letter of invitation from the Paraguayan Electricity Board Workers Trade Union (SITRANDE) dated November 3, 1997, to Ricardo Canese (file of attachments to the brief with requests and arguments, attachment 3, folio 569).

[FN102] Cf. interlocutory order No. 1408 issued by the Supreme Court of Justice of Paraguay on November 14, 1997 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1072; and file of attachments to the application, attachment 13, folio 103).

69(61) On May 31, 1999, the Supreme Court of Justice of Paraguay issued decision and judgment No. 270, deciding to reject the "action on unconstitutionality" filed by Ricardo Canese on May 3, 1994 (supra para. 69(54) and 69(59)), because, "in any case, it had become inadmissible, since it had been filed before the legal remedies established by law had been exhausted [,… given that] the pertinent remedy of appeal had not been filed […]. Accordingly, he had acquiesced and also renounced the right to obtain the rectification of the injury caused to him by the decision contested in this special proceeding." [FN103]

[FN103] Cf. decision and judgment No. 270 issued by the Supreme Court of Justice of Paraguay on May 31, 1999 (file of attachments to the application, attachment 22, folios 316 and 317).

Permissions to leave the country that were granted

69(62) In May 1997, Ricardo Canese filed a petition for habeas corpus reparador before the Supreme Court of Justice of Paraguay requesting permission to travel to Uruguay to testify before the Uruguayan courts on June 3, 1997, in a case brought by Juan Carlos Wasmosy against the newspaper "La República". On May 30, 1997, the Supreme Court of Justice of Paraguay issued interlocutory order No. 576, in which it admitted this recourse and authorized him to leave the country for five days as of June 2, 1997. [FN104]

[FN104] Cf. interlocutory order No. 576 issued by the Supreme Court of Justice of Paraguay on May 30, 1997 (file of attachments to the application, attachment 14, folio 104); testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004; newspaper article entitled "Autorizan a Canese para ir al Uruguay" published on May 31, 1997, in the newspaper "La Nación" (file of attachments to the application, attachment 17, folio 172); and newspaper article entitled "Dos calificados testigos desnudaron la corrupción del Presidente Wasmosy" published on June 4, 1997, in the Uruguayan newspaper "La República" (file of attachments to the application, attachment 17, folio 176).

69(63) On October 19, 1997, the Criminal Chamber of the Supreme Court of Justice of Paraguay issued interlocutory order No. 1125, in which it admitted a petition for habeas corpus reparador filed by Ricardo Canese requesting permission to leave the country and decided "to authorize [his] departure from the country for ten days[,] as of September 29, [1997]." [FN105]

[FN105] Cf. interlocutory order No. 1125 issued by the Supreme Court of Justice of Paraguay on October 19, de 1997 (file of attachments to the application, attachment 15, folio 105).

69(64) On September 28, 2000, the Supreme Court of Justice of Paraguay issued interlocutory order No. 1626, in which it admitted a petition for habeas corpus filed by Ricardo Canese and decided to authorize his departure from Paraguay for ten days, from October 7 to 16, 2000, and indicated that Mr. Canese "should report his return." [FN106]

[FN106] Cf. interlocutory order No. 1626 issued by the Supreme Court of Justice of Paraguay On September 28, 2000 (file of attachments al brief with requests and arguments, attachment 4, folio 570).

69(65) On March 6, 2002, the Supreme Court of Justice of Paraguay granted Ricardo Canese permission to leave the country from March 8 to 17, 2002. On March 25, 2002, on his return to Paraguay, Mr. Canese and his lawyer submitted a brief to the Supreme Court of Justice of Paraguay reporting that Mr. Canese had returned to the country and "made [himself] available to the justice system." [FN107]

[FN107] Cf. brief submitted by Ricardo Canese and his lawyer to the Supreme Court of Justice of Paraguay on March 25, 2002 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1198).

69(66) On August 8, 2002, Mr. Canese and his lawyer filed a petition for habeas corpus reparador "as a measure of extreme urgency," to obtain permission to travel to Peru as a "member of the Technical Advisory Team" of the "Comité de Iglesias para Ayudas de Emergencia (CIPAE)" from August 24 to September 2, 2002. [FN108]

[FN108] Cf. petition for habeas corpus filed by Ricardo Canese and his lawyer before the Supreme Court of Justice of Paraguay on August 8, 2002 (file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, attachment 4, folio 1400); and letter of invitation of August 6, 2002, addressed by the Comité de Iglesias para Ayudas de Emergencia (CIPAE) to Ricardo Canese (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1399).

69(67) On August 22, 2002, the Criminal Chamber of the Supreme Court of Justice of Paraguay issued decision and judgment No. 896, on the petition for habeas corpus reparador filed on August 8, 2002 (supra para. 69(66)), stating that "the final judgment did not include any prohibition" to leave the country; it therefore concluded that the prohibition "was issued as a precautionary measure in the said proceedings and has now become untenable." In this respect, the Criminal Chamber declared that "it [was] in order to rectify the circumstances through a general habeas corpus" and, consequently, Ricardo Canese "does not require authorization to travel abroad." [FN109]

[FN109] Cf. decision and judgment No. 896 issued by the Criminal Chamber of the Supreme Court of Justice of Paraguay on August 22, 2002 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folios 1402 to 1403); testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004.

Regarding the losses caused to Ricardo Canese

69(68) The facts of the instant case altered Ricardo Canese's professional, personal and family life and had the effect of inhibiting his full exercise of freedom of expression. After being convicted in a criminal action, Mr. Canese was dismissed from his work at the newspaper "Noticias", owing to the pressure exercised on his employer to dismiss him. The alleged victim suffered non-pecuniary damage as a consequence of the criminal proceedings instituted against him. [FN110]

[FN110] Cf. testimony of Ricardo Nicolás Canese Krivoshein given before the Inter-American Court during the public hearing held on April 28, 2004; testimony of Ricardo Lugo Rodríguez given before the Inter-American Court during the public hearing held on April 28, 2004; and decision and judgment No. 1362 issued by the Criminal Chamber of the Supreme Court of Justice of Paraguay on December 11, 2002 (file on merits and possible reparations and costs, tome II, folios 502 to 508).

Regarding costs and expenses

69(69) Ricardo Canese incurred expenditure in the domestic sphere and at the international level before the Commission. On April 27, 2004, the Criminal Chamber of the Supreme Court of Justice of Paraguay issued decision and judgment No. 804, deciding "[t]o require the complainants to pay the costs and expenses of the entire proceeding" (supra para. 69(50)). [FN111] As the alleged victim's representative, CEJIL incurred different expenditure in the inter-American jurisdiction. [FN112]

[FN111] Cf. decision and judgment No. 804 issued by the Criminal Chamber of the Supreme Court of Justice of Paraguay on April 27, 2004 (file on merits and possible reparations and costs, tome III, folios 807 to 810).

[FN112] Cf. power of attorney granted to three CEJIL lawyers by Ricardo Canese on April 9, 2002, to represent him before the Inter-American Commission and Court (file of attachments to the application, attachment 23, folios 322 and 323); and copies of vouchers presented by CEJIL to confirm expenditure incurred as a result of the proceeding before the Court (attachment 4 to the brief with final arguments of the representatives of the alleged victim, file on merits and possible reparations and costs, tome IV, folios 941 to 950).

VII. PRIOR CONSIDERATIONS

70. The Court acknowledges the importance for the instant case of the decision issued by the Criminal Chamber of the Supreme Court of Justice of Paraguay on December 11, 2002, annulling the judgments against Mr. Canese handed down in 1994 and 1997, and absolving the alleged victim of all criminal liability and its consequences (supra para. 69(49)). In other words, it set aside the criminal conviction handed down for the liability resulting from Mr. Canese's exercise of his right to freedom of thought and expression. The Court also acknowledges the relevance of the decision issued by this Criminal Chamber on August 22, 2002, deciding that,

thereafter, Ricardo Canese would not have to request authorization to leave Paraguay (supra para. 69(67)), as he had had to do since April 1994.

71. Despite the above, this Court observes that the facts that gave rise to the alleged violations were committed during the criminal proceedings against the alleged victim, prior to the delivery of the acquittal on December 11, 2002. The Court recalls that the State's international responsibility arises immediately from an internationally punishable act, although it can only be declared after the State has had the opportunity to repair such an act using its own mechanisms. The possibility of subsequent reparation under domestic law does not prevent the Commission and the Court from hearing a case concerning alleged violations of the American Convention that has already been filed, such as this one, which was brought before the Inter-American System in July 1998. [FN113] Consequently, the Court cannot consider the said decisions by the Criminal Chamber of the Supreme Court of Justice of Paraguay in August and December 2002 to be a factor that obliges it to discontinue the hearing on the alleged violations of the American Convention, which allegedly occurred before they were issued.

[FN113] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 75; and Case of the "Five Pensioners". Judgment of February 28, 2003. Series C No. 98, paras. 130 to 141.

VIII. VIOLATION OF ARTICLE 13 IN RELATION TO ARTICLES 1(1) AND 2 (FREEDOM OF THOUGHT AND EXPRESSION)

Arguments of the Commission

72. Regarding Article 13 of the Convention, the Commission alleged that:

a) Article 13 of the Convention establishes clearly the limits to freedom of expression, which must be exceptional. Moreover, without detriment to the express prohibition of any kind of prior censure, Article 13 also establishes the imposition of subsequent liability. The imposition of this liability is exceptional: among other factors, it must be established by law and be necessary to ensure respect for the rights or reputations of others;
b) "Free discussion and political debate are essential for consolidating democracy in society." Given the urgent social interest surrounding "this type of debate," the justifications for the State to restrict freedom of expression in this context are much stricter and more limited, because the right to freedom of expression and information is one of society's principal mechanisms for exercising democratic control of those responsible for matters of public interest;
c) "The right to freedom of expression is precisely the right of the individual and of the whole community to take part in active, concrete and challenging debates on all aspects of the normal, harmonious functioning of society." These debates can often be critical of and even offensive to those who exercise public positions or who are involved in formulating public policy;
d) Freedom of expression is one of the most effective ways of denouncing corruption. Moreover, the rule should be that alleged acts of corruption are publicized;

e) If the subsequent imposition of liability, applied to a specific case, is disproportionate and not adapted to the interests of justice, it gives rise to a clear violation of Article 13(2) of the American Convention. In this case, the subsequent imposition of liability is unnecessary, since there was no clear harm to reputations, since the complainants were not named personally. The State did not prove that the requirement that the reputations of others should be protected was fulfilled;

f) Examination of the case leads to the conclusion that a subsequent imposition of liability has been applied to Mr. Canese's statements that is incompatible with the Convention. The complaint against the alleged victim was filed by the CONEMPA partners, even though they were not mentioned individually in the statements made by Ricardo Canese. "[W]ithin the context of the treaty[,] an action for the offense of slander and injuria can never be filed, if the attribute that these offenses are intended to protect has not been clearly harmed;"

g) Article 13 of the Convention prohibits restricting freedom of expression by indirect methods or means. The punitive measures resulting from certain statements could, in some cases, be considered an indirect means of restricting freedom of expression. The inhibiting effect of the punitive measure can generate self-censorship in the individual who wishes to speak out, which produces almost the same effect as direct censorship: "opinions do not circulate." Such cases are limited to statements on matters of public interest;

h) The criminal categories of libel, injuria and slander are intended to protect rights guaranteed by the Convention. The legally protected attribute of honor is embodied in Article 11 of the Convention; thus, it cannot be asserted that the criminal categories of libel and injuria violate the Convention. However, in cases where the punitive measure sought involves matters of public interest or political statements in the context of an electoral campaign, the right embodied in Article 13 of the Convention is violated, because there is no imperative social interest that justifies the punitive measure, or because the restriction is disproportionate or constitutes an indirect restriction. It should be established that statements made in the context of matters of public interest, such as an electoral campaign, are not punishable. In such cases, civil proceedings can be instituted, provided that the standard of actual malice is satisfied; in other words, it is necessary to prove that, by disseminating the information, the author intended to cause harm or knew full well that he was disseminating false information. A punitive measure resulting from statements of public interest is incompatible with the provisions of Article 13(3) of the Convention. There are other less restrictive means by which individuals involved in matters of public interest may defend their reputations from unfounded attacks;

i) The statements disseminated by Mr. Canese referred to a matter of public interest, because they took place in the context of an electoral campaign, with regard to a candidate to the presidency of the Republic, who was a public person, and to a matter of public interest. "The sentence imposed on Mr. Canese[,] as a result of the proceedings filed against him by the partners of CONEMPA[,] sought to have an intimidating effect on any debate involving public persons on matters of public interest, and became an indirect means of restricting freedom of expression;"

j) The partners of CONEMPA have voluntarily become involved in matters of public interest, such as their activities with the Itaipú project;

k) The sanction imposed on Mr. Canese for the statements made in the context of an electoral campaign represented an "unnecessary" means of restricting his freedom of expression. Moreover, "the protection of the reputation of unnamed third parties is not an imperative social

need" and "the imperative social interest was more important than the prejudices that could have justified a restriction to freedom of expression;"

l) In this case, the means chosen to protect an alleged legitimate purpose was a disproportionate instrument restricting freedom of expression, because there were other less restrictive means by which Mr. Wasmosy, the only person directly named by Mr. Canese, could have defended his reputation, such as a rebuttal in the media or through a civil proceeding. By convicting Ricardo Canese for expressing his ideas, Paraguay violated the freedom of expression embodied in Article 13 of the Convention. This is true, whether the criminal conviction is considered an indirect restriction of freedom of expression, due to its intimidating nature, or a direct restriction, because it was unnecessary;

m) The sentencing of Mr. Canese constitutes, per se, a violation of Article 13 of the Convention, whether or not the procedure that led to this constituted a violation of this Article;

n) After the Commission's application had been filed before the Inter-American Court, the Supreme Court of Justice of Paraguay revoked the criminal conviction against Ricardo Canese, when deciding an appeal for review that he had filed;

o) The State took an important step towards adapting its legislation to international standards for the protection of human rights, when it modified its penal legislation and criminal procedure at the end of the 1990s. However, the chapter on offenses against honor of the Penal Code of Paraguay continues to be used as an instrument to generate an "intimidating environment that inhibits statements on matters of public interest." Article 151, paragraph 4, of the Paraguayan Penal Code, which establishes an exemption from liability, does not respond to the Commission's recommendation, because: it is not applicable to all types of expression; its wording is not clear and incorporates a weighting between the obligation to investigate and the defense of public interest that does not clearly define the cases in which the exemption described will be applied; the truth test corresponds to the accused, and is only applied to offenses of slander and injuria, but not to libel. The weighting established in Article 151 of the Paraguayan Penal Code does not allow an open, robust and uninhibited debate in a democratic society;"

p) According to the regulation of the offense of slander established in Article 151 of the Penal Code of Paraguay, the author's affirmation must be false and the author must know that it is false. The impossibility of determining with certainty whether an affirmation is false could result in individuals who wish to emit an opinion being inhibited to do so. In practice, it is the accused who must prove why he believed what he said to be true; and this affects public debate;

q) Article 151, paragraph 5, of the Penal Code of Paraguay establishes that the test of the truth of the affirmation or disclosure is only admitted in certain cases, which is characteristic of the legal doctrine known as exceptio veritatis. Since the truth test is "not a feature of the [criminal] classification, the person making the accusation does not have to prove it;"

r) Norms should be drafted so clearly that there is no need to make an effort to interpret them. In this respect, when acquitting Mr. Canese, the Supreme Court of Justice of Paraguay stated that "it should be understood from the text of the law that [the truth test] inverts the onus probandi against the accused; this evidently conflicts with the accusatory system of criminal procedure embodied in the Constitution itself and in the new Code of Criminal Procedure";

s) The said judgment absolving Mr. Canese, delivered by the Supreme Court of Justice of Paraguay, states that no one can be criminally convicted for statements on matters of public interest that involve public individuals or officials, even though such statements may affect the honor or reputation of such individuals. However, the provisions of this judgment constitute a legal interpretation. In application of Article 30 of the Convention, restrictions and, "a contrario

sensu, non-restrictions must be applicable in accordance with the laws enacted in the general interest." The Supreme Court's interpretation cannot be equated with a law, because its effects are not of a general nature and can be modified;

t) Despite the existence of new legislation and the decision of the Supreme Court of Justice of Paraguay, criminal proceedings have been filed as a result of statements relating to matters of public interest;

u) It is necessary to establish, without any doubts open to interpretation, that statements on matters of public interest cannot and must not be penalized. The reformed Code, which maintains offenses against honor, continues to be used as an instrument to create an intimidating environment that inhibits statements of public interest. In its brief with final arguments, it requested the Court to order the State to "adapt fully the legislation on offenses against honor included in the Penal Code;" and

v) The State violated Article 13 of the Convention in relation to Article 1(1) thereof.

Arguments of the representatives of the alleged victim

73. In relation to Articles 13 and 2 of the Convention, the representatives of the alleged victim argued that:

a) Mr. Canese's case illustrates a series of grave violations of freedom of expression in the context of the political debate on matters of public interest. These violations occurred owing to the application of improper restrictions to the right, and to the use of indirect means of restriction;

b) Article 30 of the American Convention embodies a guarantee of the legality of restrictions to freedom of expression;

c) The penalization of offenses against honor, even though it has the legitimate aim of protecting the right to honor or reputation, and is established in the Penal Code of Paraguay, is unsustainable in the Inter-American System. The classification and penalization of slander are not necessary in a democratic society; they are disproportionate and constitute an indirect means of restricting freedom of expression and information;

d) The Court must establish specific standards that are consistent with the Convention as regards laws that restrict freedom of expression in the Americas;

e) The "reduced penalization" proposed by the Commission limits the non-penalization assumptions to questions referring to public individuals in relation to matters of public interest and maintains the criminal classification of offenses against honor. Moreover, it suggests that an investigation must be initiated to determine whether a public individual or a matter of public interest is involved, which produces effects that harm freedom of expression. In this respect, despite the existence in Paraguay of a clear and precise clause ordering the judge not to penalize matters related to "public considerations," according to Article 377, paragraph 3, of the former Penal Code, the judge of first instance convicted Mr. Canese;

f) The need for subsequent imposition of liability required by the Convention is violated by the penalization of slander, because there are less restrictive means, such as civil sanctions and regulation of the right to rectification or reply, which can protect the honor of the individual. The legally protected attribute of honor that the Convention attempts to safeguard may be protected by less stigmatizing means than penal laws. By restricting democratic debate unnecessarily, the requirement of need is not observed;

g) If it is determined that there has been an abuse in the exercise of the right to freedom of expression that violates the honor of a person, civil proceedings allow this to be fully and promptly compensated. The right to rectification or reply is embodied in Article 28 in fine of the Paraguayan Constitution, which "appears to suggest civil proceedings as the most appropriate way to protect the right to freedom of expression." The Civil Code also allows reparation of the possible harm caused to the right to honor of an individual, as a result of inexact publications, considered slanderous or defamatory, by a pecuniary compensation for damages;

h) The application of civil sanctions could also be an indirect means of restricting freedom of expression if certain essential elements are not fulfilled. These include: differentiation between matters that are of public interest and those that are not; differentiation between public and private individuals, and also distinction between statements of fact and value judgments, because the latter cannot be verified. Otherwise, civil sanctions can have an intimidating effect on the defendant in a civil case;

i) The statements made by Mr. Canese occurred in the context of the public debate on matters of public interest that involved two presidential candidates. This is the kind of public debate that the Convention tries to encourage. Also, the restriction of information in an electoral context "has been classified as a specific form of electoral fraud;"

j) "[E]ven if there had been some excess or lack of precision in [Mr. Canese's] statements, if the language had been offensive, or if his opinions were not shared by most of the community, they merited the utmost protection;"

k) The mere fact of subjecting Ricardo Canese to criminal proceedings to decide on the possible harm to the right to honor of the complainants violated the right to freedom of expression protected by the American Convention. And, when applied, criminal sanctions constitute an unlawful means of restricting freedom of expression;

l) The criminal proceedings to which Mr. Canese was subjected "was plagued with arbitrary acts and irregularities." It became a means of inhibiting his participation in the public debate and sanctioning him in advance for his charges. Each step in the proceedings became an opportunity "for arbitrariness and injustice;"

m) "The right to freedom of expression is violated if the person accused of having made false statements that could be proved, is not allowed to prove their truth;"

n) The 1914 Penal Code applied to Ricardo Canese, was based on the presumption of the author's dolus. This made it useless to prove the truth of the facts, because it was a case of "objective liability" based on the presumption of guilt. The impossibility for Mr. Canese to prove the facts that he had reported was one more arbitrary factor added to those perpetrated during the criminal proceedings, to the detriment of his freedom of expression;

o) The duration of the criminal proceedings to which Mr. Canese was subjected was evidently disproportionate in comparison with the penalty established for the offenses he was accused of, should he be convicted. In view of the foregoing, the whole process was "manipulated to dissuade Mr. Canese from playing an active part in the public debate and sanctioning him in advance for his charges regarding the corrupt practices of the Paraguayan political sector;"

p) The new Constitution and the new Paraguayan Penal Code and Code of Criminal Procedure substituted the previous "ancient codes," but can still be improved;

q) Some progress has been made in the measures of reparation requested for Ricardo Canese, because on December 11, 2002, the Supreme Court of Justice of Paraguay revoked his sentence. However, owing to the application of the penal laws classifying the offenses of libel,

injuria and slander, debate is discouraged and journalists who report incidents of corruption in Paraguay are criminally prosecuted;

r) An interpretation on the possibility of filing civil actions for the abusive exercise of freedom of expression adapted to the provisions of the Convention requires that a distinction be established between public and private individuals. Moreover, it is necessary to take into account whether the actual malice or evident negligence of the individual who made the statements has been proved. According to the Inter-American Commission, in cases involving public officials, "it must be proved that, when disseminating information, the author intended to inflict harm or knew full well that he was disseminating false information, or behaved with evident negligence in discovering the truth or falseness of the information;"

s) In the case of Ricardo Canese, had the above mentioned international standards been applied, he could only have received a civil conviction, if it had been proved that he acted with real malice or evidence negligence;

t) Should the decriminalization of certain types of conduct recommended by the Inter-American Commission be accepted, the Paraguayan legislation would have to be modified, because the criminal categories of slander and injuria are drafted inadequately, since they do not distinguish with sufficient clarity between statements that affect public individuals and those which refer to matters of public interest; they do not distinguish statements of facts from statements that constitute value judgments; they do not require the contested information to be false; they do not incorporate the test of real malice; and, in the case of slander, they invert the burden of proof against the defendant by requiring him to prove the truth;

u) Although the new Penal Code has been drafted "like some European codes," it still classifies injuria and libel as offenses, so that those who express opinions continue to lay themselves open to criminal proceedings and to prison sentences. In the same way, "it omits the necessary distinction between public individuals or matters of public interest, and private individuals." The State failed and continues to fail to comply with its obligation to adopt the domestic norms, of a legislative or any other nature, necessary to make Mr. Canese's right to freedom of expression effective, in accordance with Article 2 of the Convention in relation to Article 13 thereof; and

v) The State violated Article 13 of the Convention to the detriment of Ricardo Canese, in relation to Article 2 and to the general obligation to respect and guarantee rights established in Article 1(1) thereof.

Arguments of the State

74. With regard to Articles 13 and 2 of the Convention, the State indicated that:

a) It denied "any participation […] in the violation of [the] freedom of thought and expression" of Ricardo Canese;

b) Paragraph 3 of Article 11 of the Convention allows States to protect the honor and reputation of the individual by law, and also authorizes "interference with or attacks on these legally protected attributes to be contested by means of judicial, civil or criminal proceedings;"

c) The criminal proceedings against Mr. Canese took place under the 1910 Penal Code, partially modified in 1914. Protection of an individual's honor and reputation, carried out by the State in accordance with the 1910 Penal Code, cannot constitute per se a violation of the Convention;

d) "The Paraguayan Penal Code, drafted on the basis of nineteenth century legal doctrine, did not protect a wide range of the basic rights and guarantees of an individual accused of committing punishable acts and even embodied the presumption of dolus in its Article 16[. A] few years ago, the Supreme Court of Justice […] revoked [this Article], considering that it harmed the presumption of innocence;"

e) The effort to reform the penal system, in accordance with the rules of the "international human rights system," culminated in the total reform of the former Penal Code with the introduction of a new modern democratic body of laws. The new Penal Code protects the honor and reputation of the individual, establishing among its norms the criminal categories of libel, slander, injuria and denigrating the memory of the dead, with sanctions of a pecuniary nature; namely, fines. Imprisonment is only applied in aggravated circumstances, and for no more than two years. It cannot be said, as the Commission does in the application, that these procedures should be considered indirect restrictions to or means that violate Article 13 of the Convention;

f) In practice, the sanctions applied under Paraguay's current penal system are exclusively pecuniary, and up to two years' imprisonment can only be applied in very serious cases; this has not occurred;

g) All those who filed proceedings against Mr. Canese are private individuals, who were affected by "his statements –evidently in a public situation– because they are partners in a company, which is also private." The private complaint against Mr. Canese was filed by the directors of the private company, CONEMPA S.R.L., because "they [considered that] their honor and reputation had been harmed, as they had been alluded to directly," since when Mr. Canese mentioned the "directors of Conempa," he alluded to them personally;

h) Juan Carlos Wasmosy never filed any civil or criminal action against Mr. Canese. Consequently, "any statement made by Mr. Canese with regard to [Mr.] Wasmosy should be considered apart, because the latter never filed a lawsuit against [Mr.] Canese;"

i) The disputed issue in this case should be recognized as a problem between individuals that arose in the context of a public statement. Mr. Canese's statements about the directors of a private company committing punishable acts are not of public interest;

j) The protection of a legal attribute, for which the State has included a punishable act in its list of criminal categories in the Penal Code, should not be confused with the prosecution of a punishable act by the State, because the criminal procedure regime prevents any involvement of the Attorney General's office in this type of punishable act. Consequently, its prosecution is always the responsibility of the individuals affected;

k) The principle of penal proportionality was used when applying the punitive measure. Even if the new penal norm were used in this specific case, the prison sentence could be up to one year, because the punishable act was committed in an aggravated manner. It can be observed that the jurisdictional bodies that heard Mr. Canese's case respected the principles of substantive proportionality;

l) "[I]t does not acknowledge any violation of the right to freedom of thought and expression recognized in Art. 13 of the American Convention" to the detriment of Mr. Canese, because the instant case was filed by private individuals exercising their legitimate right to take legal action against facts they consider have harmed their honor and reputation. Even though the fact occurred at a public meeting or in public circumstances, the statements affected specific individuals, who were known to have been associated with the private company for many years and, consequently, were known to Paraguayan society;

m) The Paraguayan Constitution forcefully prohibits all forms of censorship of freedom of expression and freedom of the press. Under the new penal system, no journalist, social communicator or private individual has been convicted for libel, injuria or slander owing to thier opinions;
n) Mr. Canese was never detained by any authority and did not have to pay a fine or sanction for his public statements in 1992;
o) It has not violated Mr. Canese's right to thought and expression "because, throughout the whole of this criminal proceedings and to date, he has worked in different media […], where he has fully exercised his rights that have allegedly been violated"; he was even Deputy Minister of Mines and Energy in the Government of the party in power; and
p) In light of the recommendations of the Inter-American Commission in the 2001 report on human rights in Paraguay, the Paraguayan penal system is one of the most advanced, and with most guarantees, in the region, so there is "no reason for the Paraguayan State to be condemned for failure to comply with Article 2" of the Convention.

Considerations of the Court

75. Article 13 of the American Convention establishes, inter alia, 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.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
[…]

76. In light of the proven facts in the instant case, the Court must determine whether Paraguay restricted unduly the right to freedom of thought and expression of Ricardo Canese, as a result of the criminal proceeding, the criminal and civil sanctions, and the restrictions to leaving the country to which he was subjected for almost eight years and four months.

1) The content of the right to freedom of thought and expression

77. In relation to the content of the right to freedom of thought and expression, the Court has indicated previously that those who are protected by the Convention have not only the right and freedom to express their thoughts, but also the right and freedom to seek, receive and disseminate information and ideas of all kinds. Consequently, freedom of expression has an individual dimension and a social dimension:

It requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others. [FN114]

[FN114] Cf. Case of Herrera-Ulloa, supra note 15, para. 108; Case of Ivcher-Bronstein. Judgment of February 6, 2001. Series C No. 74, para. 146; Case of "The Last Temptation of Christ" (Olmedo Bustos et al.). Judgment of February 5, 2001. Series C No. 73, para. 64; and Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30.

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78. In this respect, the Court has indicated that the first dimension of freedom of expression "is not exhausted in the theoretical recognition of the right to speak or write, but also includes, inseparably, the right to use any appropriate method to disseminate ideas and allow them to reach the greatest number of persons." [FN115] In this sense, the expression and dissemination of ideas and information are indivisible, so that a restriction of the possibilities of dissemination represents directly, and to the same extent, a limit to the right to free expression. [FN116]

[FN115] Cf. Case of Herrera-Ulloa, supra note 15, para. 109; Case of Ivcher-Bronstein, supra note 114, para. 147; Case of "The Last Temptation of Christ" (Olmedo Bustos et al.), supra note 114, para. 65; and Compulsory Membership in an Association prescribed by Law for the Practice of Journalism, supra note 114, para. 31.

[FN116] Cf. Case of Herrera-Ulloa, supra note 15, para. 109; Case of Ivcher-Bronstein, supra note 114, para. 147; Case of "The Last Temptation of Christ" (Olmedo Bustos et al.), supra note 114, para. 65; and Compulsory Membership in an Association prescribed by Law for the Practice of Journalism, supra note 114, para. 36.

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79. Regarding the second dimension of the right to freedom of expression, the social element, it is necessary to indicate that freedom of expression is a way of exchanging ideas and information between persons; it includes the right to try to communicate one's point of view to others, but it also implies everyone's right to receive other people's opinions, information and news. For the ordinary citizen, awareness of other people's opinions and information is as important as the right to impart their own. [FN117]

[FN117] Cf. Case of Herrera-Ulloa, supra note 15, para. 110; Case of Ivcher-Bronstein, supra note 114, para. 148; Case of "The Last Temptation of Christ" (Olmedo Bustos et al.), supra note 114, para. 66; and Compulsory Membership in an Association prescribed by Law for the Practice of Journalism, supra note 114, para. 32.

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80. This Court has stated that both dimensions are of equal importance and should be guaranteed simultaneously in order to give full effect to the right to freedom of expression in the terms of Article 13 of the Convention. [FN118]

[FN118] Cf. Case of Herrera-Ulloa, supra note 15, para. 111; Case of Ivcher-Bronstein, supra note 114, para. 149; Case of "The Last Temptation of Christ" (Olmedo Bustos et al.), supra note 114, para. 67; and Compulsory Membership in an Association prescribed by Law for the Practice of Journalism, supra note 114, para. 32.

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81. In the instant case, the statements for which Mr. Canese was sued, made in the context of an electoral campaign and published in two Paraguayan newspapers, permitted the two dimensions of freedom of expression to be exercised. On the one hand, it permitted Mr. Canese to disseminate the information he possessed concerning one of the opposing candidates and, on the other hand, it promoted an exchange of information with voters, providing them with additional elements for forming an opinion and taking decisions regarding the election of the future President of the Republic.

2) Freedom of thought and expression in a democratic society

82. In its Advisory Opinion OC-5/85, the Inter-American Court referred to the close relationship that exists between democracy and freedom of expression, when it stated that:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a conditio sine qua non for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free. [FN119]

[FN119] Cf. Case of Herrera-Ulloa, supra note 15, para. 112; and Compulsory Membership in an Association prescribed by Law for the Practice of Journalism, supra note 114, para. 70.

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83. In the same terms used by the Inter-American Court, the European Court of Human Rights has underscored the importance that freedom of expression has in a democratic society, when it stated that:

[…] freedom of expression constitutes one of the essential pillars of democratic society and a fundamental condition for its progress and the personal development of each individual. This freedom should not only be guaranteed with regard to the dissemination of information and ideas that are received favorably or considered inoffensive or indifferent, but also with regard to those that offend, are unwelcome or shock the State or any sector of the population. Such are the requirements of pluralism, tolerance and the spirit of openness, without which no 'democratic

society' can exist. […] This means that […] any formality, condition, restriction or sanction imposed in that respect, should be proportionate to the legitimate end sought. [FN120]

[FN120] Cf. Case of Herrera-Ulloa, supra note 15, para. 113; Ivcher Bronstein case, supra note 114, para. 152; "The Last Temptation of Christ" case (Olmedo Bustos et al.), supra note 114, para. 69; Scharsach and News Verlagsgesellschaft v. Austria, no. 39394/98, § 29, ECHR 2003-XI; Perna v. Italy [GC], no.48898/98, § 39, ECHR 2003-V; Dichand and others v. Austria, no. 29271/95, § 37, ECHR 26 February 2002; Eur. Court H.R., Case of Lehideux and Isorni v. France, Judgment of 23 September 1998, para. 55; Eur. Court H.R., Case of Otto-Preminger-Institut v. Austria, Judgment of 20 September 1994, Series A no. 295-A, para. 49; Eur. Court H.R. Case of Castells v. Spain, Judgment of 23 April 1992, Series A. No. 236, para. 42; Eur. Court H.R. Case of Oberschlick v. Austria, Judgment of 25 April 1991, para. 57; Eur. Court H.R., Case of Müller and Others v. Switzerland, Judgment of 24 May 1988, Series A no. 133, para. 33; Eur. Court H.R., Case of Lingens v. Austria, Judgment of 8 July 1986, Series A no. 103, para. 41; Eur. Court H.R., Case of Barthold v. Germany, Judgment of 25 March 1985, Series A no. 90, para. 58; Eur. Court H.R., Case of The Sunday Times v. United Kingdom, Judgment of 29 March 1979, Series A no. 30, para. 65; and Eur. Court H.R., Case of Handyside v. United Kingdom, Judgment of 7 December 1976, Series A No. 24, para. 49.

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84. The United Nations Human Rights Committee [FN121] and the African Commission on Human and Peoples' Rights [FN122] have also ruled similarly.

[FN121] Cf. U.N. Human Rights Committee, Aduayom et al. v. Togo (422/1990, 423/1990 and 424/1990), communication of 12 July 1996, para. 7(4).

[FN122] Cf. African Commission on Human and Peoples' Rights, Media Rights Agenda and Constitutional Rights Project v. Nigeria, Communication Nos 105/93, 128/94, 130/94 and 152/96, Decision of 31 October 1998, para 54.

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85. In this respect, it is worth underscoring that the Heads of State and Government of the Americas adopted the Inter-American Democratic Charter on September 11, 2001, in which, inter alia, they stated that:

Transparency in government activities, probity, responsible public administration on the part of Governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy. [FN123]

[FN123] Inter-American Democratic Charter, adopted at the plenary session of the OAS General Assembly held on September 11, 2001, Article 4.

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86. Thus, the different regional systems for the protection of human rights and the universal system agree on the essential role played by freedom of expression in the consolidation and dynamics of a democratic society. Without effective freedom of expression, exercised in all its forms, democracy is enervated, pluralism and tolerance start to deteriorate, the mechanisms for control and complaint by the individual become ineffectual and, above all, a fertile ground is created for authoritarian systems to take root in society. [FN124]

[FN124] Cf. Case of Herrera Ulloa, supra note 15, para. 116.

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87. The Court observes that the statements for which Mr. Canese was sued took place during the debates of the electoral campaign for the presidency of the Republic, in the context of the transition to democracy, because, for 35 years and until 1989, the country had been ruled by a dictatorship. In other words, the presidential elections in which Mr. Canese took part and during which he made his statements, formed part of an important process of democratization in Paraguay.

3) The importance of freedom of thought and expression in the context of an electoral campaign

88. The Court considers it important to emphasize that, within the framework of an electoral campaign, the two dimensions of freedom of thought and expression are the cornerstone for the debate during the electoral process, since they become an essential instrument for the formation of public opinion among the electorate, strengthen the political contest between the different candidates and parties taking part in the elections, and are an authentic mechanism for analyzing the political platforms proposed by the different candidates. This leads to greater transparency, and better control over the future authorities and their administration.

89. In this respect, the European Court has stated that:

While precious to all, freedom of expression is particularly important for political parties and their active members (see, mutatis mutandis, the United Communist Party of Turkey and Others v. Turkey judgment of 30 January 1998, Reports 1998-I, p. 22, § 46). They represent their electorate, draw attention to their preoccupations and defend their interests. Accordingly, interferences with the freedom of expression of a politician who is a member of an opposition party, like the applicant, call for the closest scrutiny on the Court's part. [FN125]

[FN125] Eur. Court H.R., Case of Incal v. Turkey, judgment of 9 June 1998, Reports 1998-IV, para. 46.

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90. The Court considers it essential that the exercise of freedom of expression should be protected and guaranteed in the political debate that precedes the election of State authorities who will govern a State. The formation of the collective will through the exercise of individual

suffrage is nourished by the different options presented by the political parties through the candidates that represent them. Democratic debate implies that the free circulation of ideas and information on the candidates and their political parties is permitted through the media, the candidates themselves, and any individual who wishes to express his opinion and provide information. Everyone must be allowed to question and investigate the competence and suitability of the candidates, and also to disagree with and compare proposals, ideas and opinions, so that the electorate may form its opinion in order to vote. In this respect, the exercise of political rights and freedom of thought and expression are closely related and reinforce one another. Hence, the European Court has established that:

Free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system (see the Mathieu-Mohin and Clerfayt v. Belgium judgment of 2 March 1987, Series A no. 113, p. 22, § 47, and the Lingens v. Austria judgment of 8 July 1986, Series A no. 103, p. 26, §§ 41–42). The two rights are inter-related and operate to reinforce each other: for example, as the Court has observed in the past, freedom of expression is one of the "conditions" necessary to "ensure the free expression of the opinion of the people in the choice of the legislature" (see the above-mentioned Mathieu-Mohin and Clerfayt judgment, p. 24, § 54). For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely. [FN126]

[FN126] Eur. Court H.R., Case of Bowman v. The United Kingdom, judgment of 19 February 1998, Reports 1998-I, para. 42.

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91. The Court observes that, in his statements, the alleged victim referred to CONEMPA, whose President was Juan Carlos Wasmosy, at that time a presidential candidate, "passing" dividends to former dictator Stroessner. It has been proved, and it is also a public fact, that this consortium was one of the two companies contracted to execute the construction work of the Itaipú hydroelectric power plant, one of the larges hydroelectric dams in the world and Paraguay's principal public works project.

92. The Court considers that there is no doubt that the statements made by Mr. Canese with regard to CONEMPA concern matters of public interest, because, when he made them, this company was involved in the construction of the said hydroelectric power plant. According to the body of evidence in the instant case (supra para. 69(4)), the National Congress itself, through its Bicameral Unlawful Acts Investigation Committee, was investigating corruption at Itaipú, involving Juan Carlos Wasmosy and the said company.

93. The Court observes that, when issuing the decision annulling the sentences handed down in 1994 and 1997 (supra para. 69(49)), the Criminal Chamber of the Supreme Court of Justice of Paraguay indicated that the statements made by Mr. Canese in the political context of the electoral campaign for the presidency of the Republic, "were necessarily important in a democratic society, working towards a participative and pluralist power structure, a matter of public interest."

94. In this case, when making the statements for which he was sued, Mr. Canese was exercising his right to freedom of thought and expression in the context of an electoral campaign, with regard to a presidential candidate who is a public figure, on matters of public interest, by questioning the competence and suitability of a candidate to assume the presidency of the Republic. During the electoral campaign, Mr. Canese, as a presidential candidate, was interviewed about the candidacy of Mr. Wasmosy by journalists from two national newspapers. When publishing Mr. Canese's declarations, the newspapers "ABC Color" and "Noticias" played an essential role as vehicles for the exercise of the social dimension of freedom of thought and expression, [FN127] because they sought and transmitted to the electorate the opinion of one of the presidential candidates about another, which ensured that the electoral had more information and different opinions before it took a decision.

[FN127] Cf. Case of Herrera-Ulloa, supra note 15, para. 117; and Case of Ivcher-Bronstein, supra note 114, para. 149.

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4) Restrictions to freedom of thought and expression allowed in a democratic society

95. The Court considers that is it important to underscore, as in previous cases, that the right to freedom of expression is not an absolute right, but may be restricted, as established in paragraphs 4 and 5 of Article 13 of the Convention and in Article 30 thereof. Moreover, in paragraph 2 of the said Article 13, the American Convention indicates the possibility of establishing restrictions to freedom of expression through the subsequent imposition of liability in cases of an abusive use of this right. However, this should in no way limit, more than strictly necessary, the full scope of freedom of expression and become a direct or indirect means of prior censorship.

96. Owing to the circumstance of the instant case, the Court considers it necessary to examine in detail whether, in order to impose subsequent liability on Mr. Canese for his statements, the requirement of necessity in a democratic society is met. [FN128] The Court has indicated that the "necessity" and, hence, the legality of restrictions imposed on freedom of expression under Article 13(2) of the American Convention, depend upon showing that the restrictions are required by a compelling public interest. If there are various options to achieve this objective, the one which least restricts the protected right should be selected. Given this standard, it is not enough, for example, to demonstrate that a law performs a useful or desirable purpose; to be compatible with the Convention, the restrictions must be justified by reference to collective purposes which, owing to their importance, clearly outweigh the social need for the full enjoyment of the right that Article 13 guarantees and do not limit the right established in this Article more than is strictly necessary. In other words, the restriction must be proportionate to the interest that justifies it and closely tailored to accomplishing this legitimate objective, interfering as little as possible with the effective exercise of the right to freedom of expression. [FN129]

[FN128] Cf. Case of Herrera-Ulloa, supra note 15, para. 120.

[FN129] Cf. Case of Herrera-Ulloa, supra note 15, paras. 121 and 123; Compulsory Membership in an Association prescribed by Law for the Practice of Journalism, supra note 114, para. 46; see also Eur. Court H. R., Case of The Sunday Times v. United Kingdom, supra note 120, para. 59; and Eur. Court H. R., Case of Barthold v. Germany, supra note 120, para. 59.

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97. Democratic control exercised by society through public opinion encourages the transparency of State activities and promotes the accountability of public officials in public administration, for which there should be a reduced margin for any restriction on political debates or on debates on matters of public interest. [FN130]

[FN130] Cf. Case of Herrera-Ulloa, supra note 15, para. 127; Case of Ivcher-Bronstein, supra note 114, para. 155; similarly, Feldek v. Slovakia, no. 29032/95, § 83, ECHR 2001-VIII; and Sürek and Özdemir v. Turkey, nos. 23927/94 and 24277/94, § 60, ECHR Judgment of 8 July 1999.

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98. The Court has established that it is logical and appropriate that statements concerning public officials and other individuals who exercise functions of a public nature should be accorded, in the terms of Article 13(2) of the Convention, a certain latitude in the broad debate on matters of public interest that is essential for the functioning of a truly democratic system. [FN131] The same principle applies to opinions and statements of public interest made with regard to an individual who stands as candidate for the presidency of the Republic, thereby voluntarily laying himself open to public scrutiny, and to matters of public interest about which society has a legitimate interest to keep itself informed and to know what influences the functioning of the State, affects general interests or rights, or entails important consequences. As has been established, it is evident that Mr. Canese's statements about CONEMPA relate to matters of public interest (supra para. 92).

[FN131] Cf. Case of Herrera-Ulloa, supra note 15, para. 128.

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99. In this respect, when it delivered its ruling annulling the sentences handed down in 1994 and 1997, on December 11, 2002 (supra para. 69(49)), and absolved the alleged victim of guilt and pardoned him, the Criminal Chamber of the Supreme Court of Justice of Paraguay referred to the nature and relevance of his statements, when it indicated, inter alia, that:

The statements made by Mr. Canese – in the political context of an election campaign for the presidency – were, necessarily, important in a democratic society working towards a participative and pluralist power structure, a matter of public interest. There is nothing more important and public than the popular discussion on and subsequent election of the President of the Republic.

100. The foregoing considerations do not, by any means, signify that the honor of public officials or public figures should not be legally protected, but that it should be protected in accordance with the principles of democratic pluralism. [FN132] Moreover, the protection of the reputation of individuals who are involved in activities of public interest should be carried out according to the principles of democratic pluralism.

[FN132] Cf. Case of Herrera-Ulloa, supra note 15, para. 128.

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101. Article 11 of the Convention establishes that everyone has the right to have his honor respected and his dignity recognized. Hence, this right implies a limit to the expressions, attacks or interferences of individuals or the State. Consequently, it is legitimate for the individual who considers his honor affected to have recourse to the judicial mechanisms established by the State to protect it.

102. With regard to permissible limitations to freedom of expression, the European Court of Human Rights has maintained consistently that a distinction must be made between the restrictions applicable when the object of the expression is an individual and when reference is made to a public person, such as a politician. In this respect, the European Court has stated that:

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues. [FN133]

[FN133] Cf. Eur. Court H.R., Case of Dichand et al. v. Austria, supra note 120, para. 39; Eur. Court H.R., Case of Lingens vs. Austria, supra note 120, para. 42.

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103. Thus, in the case of public officials, individuals who exercise functions of a public nature, and politicians, a different threshold of protection should be applied, which is not based on the nature of the subject, but on the characteristic of public interest inherent in the activities or acts of a specific individual. Those individuals who have an influence on matters of public interest have laid themselves open voluntarily to a more intense public scrutiny and, consequently, in this domain, they are subject to a higher risk of being criticized, because their activities go beyond the private sphere and belong to the realm of public debate. [FN134] Therefore, in the context of the public debate, the margin of acceptance and tolerance of criticism by the State itself, and by public officials, politicians and even individuals who carry out activities subject to public scrutiny, must be much greater than that of individuals. The

directors of CONEMPA, a consortium contracted to execute a large part of the construction work of the Itaipú hydroelectric power plant fall within this premise.

[FN134] Cf. Case of Herrera-Ulloa, supra note 15, para. 129.

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104. Based on the foregoing considerations, the Court will decide whether, in this case, the subsequent imposition of criminal liability with regard to the alleged abusive exercise of the right to freedom of thought and expression by statements on matters of public interest, may be considered to comply with the requirement of necessity in a democratic society. In this respect, it should be recalled that penal laws are the most restrictive and severest means of establishing liability for an unlawful conduct.

105. The Court considers that, in the proceedings against Mr. Canese, the judicial bodies should have taken into account that he made his statements in the context of an electoral campaign for the presidency of the Republic and with regard to matters of public interest; circumstances in which opinions and criticisms are issued in a more open, intense and dynamic way, according to the principles of democratic pluralism. In the instant case, the judge should have weighed respect for the rights or reputations of others against the value for a democratic society of an open debate on topics of public interest or concern.

106. The criminal proceeding, the subsequent sentence imposed on Mr. Canese for more than eight years, and the restriction to leave the country applied during almost eight years and four months, facts which are the grounds for this case, constitute an unnecessary and excessive punishment for the statements that the alleged victim made in the context of the electoral campaign concerning another candidate to the presidency of the Republic on matters of public interest. They also limited the open debate on topics of public interest or concern and restricted Mr. Canese's exercise of freedom of thought and expression to emit his opinions for the remainder of the electoral campaign. In the circumstances of the instant case, there was no imperative social interest that justified the punitive measure, because the freedom of thought and expression of the alleged victim was restricted disproportionately, without taking into consideration that his statements referred to matters of public interest. In a democratic society, the foregoing constitutes an excessive restriction or limitation of the right to freedom of thought and expression of Ricardo Canese, incompatible with Article 13 of the American Convention.

107. Furthermore, the Court considers that, in this case, the criminal proceeding, the consequent sentence imposed on Mr. Canese for more than eight years, and the restrictions to leave the country during almost eight years and four months constituted indirect means of restricting his freedom of thought and expression. In this respect, after his criminal conviction, Mr. Canese was dismissed from the newspaper where he worked and, for some time, did not publish his articles in any other newspaper.

108. In view of the above, the Court considers that the State violated the right to freedom of thought and expression embodied in Article 13 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Ricardo Canese, given that the restrictions to the exercise

of this right imposed on him during approximately eight years exceed the framework established in the said Article.

109. The Court will not rule on the claims of the representatives of the alleged victim regarding the alleged violation of Article 2 of the Convention, given that the facts of this case do not fall within its provisions.

IX. VIOLATION OF ARTICLE 22 IN RELATION TO ARTICLE 1(1) (FREEDOM OF MOVEMENT AND RESIDENCE)

Arguments of the Commission

110. Regarding Article 22 of the Convention, the Commission indicated that:

a) Mr. Canese was submitted to a permanent restriction to leave the country and the Paraguayan judges lifted this restriction only in "exceptional circumstances and very irregularly;"
b) In June 1994, Ricardo Canese filed an action on unconstitutionality before the Supreme Court of Justice of Paraguay against the restriction to leave the country imposed on him. However, these proceedings "were conducted with evident negligence" by the Paraguayan authorities, and it was only in May 1999 that the Supreme Court of Justice of Paraguay declared that the action on unconstitutionality was inadmissible, "without having considered [it] thoroughly;"
c) Measures that restrict freedom of movement in a democratic society must be essential, adapted to the principle of proportionality, and compatible with other rights;
d) According to the Code of Criminal Procedure in force when the judgment convicting Mr. Canese was handed down, the surety for the costs of a lawsuit was the only kind of surety required of the defendant who requested authorization to absent himself from his domicile, and assets deposited with the court were the guarantee in the case of other sureties. In this respect, and according "to information provided by the petitioners, which has not been challenged by the State, Ricardo Canese provided effective sureties to the judicial authorities." Hence, the prohibition to leave the country imposed on Ricardo Canese lacked a legal basis, since Paraguayan legislation in force when the sentence was handed down did not establish the prohibition to leave the country as an integral part of the punishment; therefore, it was contrary to the Convention;
e) The new Code of Criminal Procedures establishes the possibility of prohibiting departure from the country as a provisional precautionary measure. However, it also provides for other measures that are less restrictive of freedom of movement, which should have been applied to Ricardo Canese, given his personal situation;
f) The time during which Mr. Canese's permission to leave the country was restricted is completely disproportionate to the interest the measure was intended to protect, which was his presence at the proceedings; particularly bearing in mind that there were other guarantees, such as the material surety provided by Ricardo Canese. It should also be considered that the measure was disproportionate and continued beyond a reasonable time, because it was applied during more than eight years, when the possible sanction applicable was a few months;

g) The State has not demonstrated the need for the measure imposed on Mr. Canese. Despite the existence of the restriction to his freedom of movement, Mr. Canese left the country on several occasions, as a result of filing a petition for habeas corpus, and he returned to Paraguay without trying to evade the legal proceedings;
h) The restrictions became "a reprisal or an alternative, anticipated sanction not established by law[,] instead of a precautionary measure to protect the proceedings." Any measure that restricts freedom, if it is purely procedural, must be exceptional and, when ordering it, the personal situation of the defendant and the guarantees that exist to ensure the security of the proceedings must be taken into account; and
i) The State did not prove the essential nature, proportionality, and necessity of the arbitrary measures that restricted the freedom of movement of the alleged victim. These measures became an anticipated sanction that is not established in the Paraguay Penal Code.

Arguments of the representatives of the alleged victim

111. Regarding Article 22 of the Convention, the representatives stated that they endorsed the arguments set out by the Commission, and emphasized that:

a) Mr. Canese was subjected to a permanent restriction to leave the country and the judicial authorities only lifted this restriction in exceptional circumstances and irregularly;
b) "The prohibition to leave the country was not established in Paraguayan law." According to the legislation in force at the time of the facts, "only personal and effective sureties and the surety for the costs of a lawsuit were established as alternative measures to the deprivation of freedom during the proceeding." Mr. Canese provided sufficient guarantees that he would abide by the punitive measure imposed, by providing material surety and by his preceding acts;
c) The measure is also disproportionate, because it was imposed for more than eight years, when the possible sanction applicable was less than one year's imprisonment; in this respect, it exceeded the time established as reasonable;
d) The State did not prove the essential nature, proportionality and necessity of the measures restricting the freedom of movement imposed on the alleged victim;
e) Rather than a precautionary measure, the restriction of Mr. Canese's freedom of movement became an "anticipated sanction," not established in the Paraguayan Penal Code; and
f) The disputed precautionary measure "bec[ame] an anticipated sanction[,] and consequently violated Article 22 [of the Convention] in relation to Article 8, paragraphs 1 and 2," thereof, and the obligation to adopt domestic legislative measures, all in violation of Article 1(1) of the American Convention.

Arguments of the State

112. Regarding Article 22 of the Convention, the State argued that:

a) The measure adopted by the Paraguayan courts was ordered as a precautionary measure and following the sentence handed down by the court of first instance. The restriction sought "to ensure that the wrongdoer remained subject to the proceedings." However, Mr. Canese's restriction to leave the country was not absolute, as the alleged victim acknowledged expressly in his statement before the Inter-American Court during the public hearing. Also, "it was the only

measure adopted by the Paraguayan courts throughout the whole criminal proceeding." "When denying [permission to leave national territory], it was acting in accordance with [the ...] 1890 Code of Criminal Procedure [...] and none of its provisions established alternate or substitute measures to preventive detention that would have a less onerous effect on the quality of life of those accused of punishable acts. This was only rectified by the adoption and implementation of the new Code of Criminal Procedure or Act No. 1286/98;"

b) On one occasion when Mr. Canese requested permission to leave the country, he offered "a material surety, with capital assets, as a precaution against failing to return"; an offer that was rejected. "The rejection of [this] offer shows that the courts considered the capital assets surety to be insufficient;"

c) "It would be unjust to sanction the State [...] for the alleged failure to comply with [Article] 22 of the American Convention, because the State [...] has adapted the precautionary measures regime to the minimum standards described in the international norms that guarantee the right[s] of all those accused of committing a punishable act. The new Code of Criminal Procedure [...] has established a system of personal and material sureties, which respects the principles of legality, exceptionality and duration;"

d) On August 22, 2002, the Criminal Chamber of the Supreme Court of Justice of Paraguay delivered a decision and judgment, restoring Mr. Canese's freedom of movement; and

e) The Court cannot condemn Paraguay, because it acted in conformity with the Constitution, domestic legislation and the American Convention. In addition, it guaranteed due process of law and granted Mr. Canese guarantees and measures that provided an alternative to imprisonment during the proceeding, which even concluded with his being absolved.

Considerations of the Court

113. Article 22 of the Convention establishes that:

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
2. Every person has the right lo leave any country freely, including his own.
3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.
[…]

114. Article 22 of the Convention protects freedom of movement and residence, which includes the right to leave any country freely, including one's own country. It is alleged that the latter aspect has been violated in the instant case.

115. The Court endorses the comments made by the Human Rights Committee in its General Comment No. 27, [FN135] in the sense that the right to freedom of movement is the right of all persons to move freely from one place to another and to establish themselves in the place of their choice. The enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or stay in a place. [FN136] This is an essential condition for an individual to be able to live his life freely.

[FN135] Cf. U.N. Human Rights Committee, General Comment No. 27 of November 2, 1999.
[FN136] Cf. U.N. Human Rights Committee, General Comment No. 27, supra note 135, para. 5.

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116. In addition, the Human Rights Committee has referred to the right to leave the territory of any country; in this respect, it has stated that:

Freedom to leave the territory of a State may not be made dependent on any specific purpose or on the period of time the individual chooses to stay outside the country. Thus traveling abroad is covered, as well as departure for permanent emigration. Likewise, the right of the individual to determine the State of destination is part of the legal guarantee. [FN137]

[FN137] Cf. U.N. Human Rights Committee, General Comment No. 27, supra note 135, para. 8.

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117. Freedom of movement and residence, including the right to leave the country, may be restricted, in accordance with the provisions of Articles 22(3) and 30 of the Convention. However, these restrictions must be expressly established by law, and be designed to prevent criminal offenses or to protect national security, public order or safety, public health or morals, or the rights and freedoms of others, to the extent necessary in a democratic society.

118. When referring to the nature of the restriction to leave the country imposed on Mr. Canese, the State indicated in its brief answering the application, and with comments on the brief with requests and arguments, and in its final written arguments, that the measure adopted by the Paraguayan courts had been ordered "as a precautionary measure" following the sentence delivered by the court of first instance. It also stated that this restriction sought "to ensure that the wrongdoer remained subject to the proceeding" (supra para. 112(a)).

119. Despite the State's arguments, the Court has verified that, in this case, there is considerable uncertainty about the nature of this restriction, given that, in the copy of the case file of the criminal proceedings filed against the alleged victim, which was provided by Paraguay, there is no decision, nor order issued by the judge in the case establishing the prohibition for Mr. Canese to leave the country as a precautionary measure – a restriction which, in practice, was applied during approximately eight years and four months. Furthermore, when deciding on the restriction imposed on Mr. Canese, the Criminal Chamber of the Supreme Court of Justice of Paraguay stated on August 22, 2002, that, in view of the fact that the "final executable judgment [did] not include any prohibition" to leave the country, it concluded that this prohibition "was issued as a precautionary measure in the said proceedings" (supra para. 69(67)).

120. As has been proved, on April 29, 1994, approximately one month after the delivery of the judgment of first instance, the State restricted Mr. Canese's right to freedom of movement for the first time, by denying his request for authorization to leave the country filed before the First Criminal Trial Court in order to attend the "IX Encontro Nacional do Partido dos Trabalhadores"

and the launching of the presidential candidacy of Luíz Inácio Lula da Silva in Brazil (supra para. 69(52) and 69(53)). Mr. Canese offered personal and material surety and indicated the reasons why he should be considered domiciled in Paraguay. The said court considered that the reasons he alleged "[were] insufficient" and that, since Mr. Canese was pending compliance with his sentence, he must remain subject to the jurisdiction of the judge of the case.

121. Subsequent to the said decision denying him permission to leave the country, Mr. Canese filed requests for authorization to leave the country each time he needed to travel abroad before the judge in the case, and also petitions for habeas corpus before the Supreme Court of Justice of Paraguay; these were sometimes granted and sometimes rejected. The restriction to leave the country meant that Mr. Canese had to request judicial permission each time he wished to leave the country and comply with the corresponding decision of the judge of the case or of the Supreme Court of Justice of Paraguay.

122. This situation continued until the Criminal Chamber of the Supreme Court of Justice of Paraguay decided, on August 22, 2002, that "it was in order to rectify the circumstances in favor of a general habeas corpus" and that Mr. Canese did not need to request authorization to leave the country again, because "the final executable judgment [did] not include any prohibition" to leave the country; it therefore concluded that this prohibition had been "issued as a precautionary measure, in the said proceeding," and had become "unsustainable" by then.

123. Owing to the circumstances in which the facts of the instant case occurred, the Court considers it necessary to examine in detail whether, by establishing restrictions to Mr. Canese's right to leave the country, the State complied with the requirements of the legality, necessity and proportionality of the restrictions to the extent necessary in a democratic society; these are inferred from Article 22 of the American Convention.

a) Requirement of legality in a democratic society

124. In relation to the requirement of the legality of restrictions to freedom of movement, residence and to leave the country, the Human Rights Committee has indicated that the law itself has to establish the conditions under which these rights may be limited, so that restrictions that are not provided for in the law or are not in conformity with the requirements of Article 12, paragraph 3, of the International Covenant on Civil and Political Rights would violate those rights. The Committee also stated that, in adopting laws providing for the permitted restrictions, States should always be guided by the principle that the restrictions must not impair the essence of the right, use precise criteria, and not confer unfettered discretionality on those charged with their execution. [FN138]

[FN138] U.N. Human Rights Committee, General Comment No. 27, supra note 135, paras. 12 and 13.

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125. First, the Court emphasizes the importance of the exercise of the principle of legality in establishing a restriction of the right to leave the country in a democratic society, given the

significant impact that this restriction has on the exercise of personal freedom. Consequently, the State should define precisely and clearly by law, the exceptional circumstances under which a measure such as the restriction to leave the country is admissible. The lack of legal regulation prevents such restrictions from being applied, because neither their purpose nor the specific circumstances under which it is necessary to apply the restriction to comply with some of the objectives indicated in Article 22(3) of the Convention have been defined. It also prevents the defendant from submitting any arguments he deems pertinent concerning the imposition of this measure. Yet, when the restriction is established by law, its regulation should lack any ambiguity so that it does not create doubts in those charged with applying the restriction, or the opportunity for them to act arbitrarily and discretionally, interpreting the restriction broadly. This is particularly undesirable in the case of measures that severely affect fundamental attributes, such as freedom. [FN139]

[FN139] Cf. Case of Baena-Ricardo et al. Judgment of February 2, 2001. Series C No. 72, paras. 108 and 115; Case of Cantoral-Benavides. Judgment of August 18, 2000. Series C No. 69, para. 157; and Case of Castillo-Petruzzi et al. Judgment of May 30, 1999. Series C No. 52, para. 121.

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126. With regard to the legality of the restriction of the right to leave the country imposed on Mr. Canese, the Court has verified that none of the articles of the 1890 Code of Criminal Procedure establish the prohibition to leave the country without authorization as a precautionary measure. Article 332 of Title XVI of this Code of Criminal Procedure entitled "Detention and preventive detention" established that "[e]xcept in the case of [a] sanction imposed by a judgment, the freedom of the individual may only be restricted by detention or preventive detention." Also, Article 708 of this Code stipulated that, "[i]n cases of libel or injuria, the detention or preventive detention of the defendant shall never be ordered, unless there are grounds for presuming that he will try to abandon the country." Hence, as indicated by the State in its arguments (supra para. 112(a)), the 1890 Code of Criminal Procedure did not provide any alternative precautionary measure to preventive detention or detention.

127. In this respect, Paraguay indicated that "when denying [permission to leave national territory], it was acting in accordance with [the ...] 1890 Code of Criminal Procedure [...] and none of its provisions established alternate or substitute measures to preventive detention that would have a less onerous effect on the quality of life of those accused of punishable acts. This was only rectified by the adoption and implementation of the new Code of Criminal Procedure or Act No. 1286/98" (supra para. 112(a)).

128. Based on these considerations, the Court concludes that a restriction to leave the country was imposed on Mr. Canese as a precautionary measure in relation to the criminal proceedings filed against him; and, since it was not regulated by law, it failed to comply with the requirement of legality necessary for the restriction to be compatible with Article 22(3) of the Convention.

b) Requirement of necessity in a democratic society

129. Having examined the legality of the restriction, the Court considers it essential to stress that precautionary measures affecting personal freedom and the freedom of movement of the defendant are of an exceptional nature, because they are limited by the right to presumption of innocence and the principles of necessity and proportionality, essential in a democratic society. International case law and comparative criminal legislation agree that, in order to apply such precautionary measures during criminal proceedings, there must be sufficient evidence to reasonably suppose the guilt of the defendant and the presence of one of the following situations: danger that the defendant will abscond; danger that the defendant will obstruct the investigation; and danger that the defendant will commit an offense – and the latter is currently under discussion. Also, these precautionary measures may not constitute a substitute for imprisonment or fulfill the purposes of the latter; as can happen, if they continue to be applied, when they have ceased to fulfill the functions mentioned above. Otherwise, the application of a precautionary measure affecting the personal freedom and freedom of movement of the defendant would be tantamount to anticipating a sentence, which is at odds with universally recognized general principles of law. [FN140]

[FN140] Cf. Case of Suárez-Rosero. Judgment of November 12, 1997. Series C No. 35, para. 77.

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130. In the instant case, the first judicial decision in which Mr. Canese was not authorized to leave the country was issued on April 29, 1994 (supra para. 69(53)), approximately one month after the judgment of first instance had been delivered. The Court observes that, with regard to the requirement of necessity in a democratic society, the State indicated that the restriction of freedom of movement imposed on Mr. Canese sought "to ensure that the wrongdoer remained subject to the proceedings" (supra para. 112(a)), which would appear to indicate that the restriction was imposed on the alleged victim for almost eight years and four months because the judicial authorities considered there was a danger that Mr. Canese would abscond.

131. It must be considered whether the restriction to leave the country imposed on Mr. Canese was necessary to ensure that he did not evade the proceedings and his possible criminal liability. With regard to the elements that could have influenced the possibility of Mr. Canese absconding, the Court observes that: a) regarding the gravity of the offense and the severity of the sanction, Mr. Canese was convicted in second instance for the offense of slander to a sanction of two months' imprisonment and a fine of two million nine hundred and nine thousand guaranis; b) it has been proved that the alleged victim offered a personal surety and a material surety and proof of his domicile in Paraguay; and c) even the President and Secretary General of the Bicameral Unlawful Acts Investigation Committee of the National Congress sent a communication to the judge in the case asking that, when deciding on one of Mr. Canese's requests for authorization to leave the country, he should take into account that the Bicameral Commission considered it necessary that Mr. Canese accompany the Commission's delegation that would travel to Brazil in June 1994 and indicated that Mr. Canese would return to Paraguay together with the Bicameral Commission's delegation, "and that any suggestion that he wishes to abscond from the country in order to evade his trial should be rejected" (supra para. 69(55)). However, this permission was not granted by the judge in the case. Furthermore, the Court considers that, with time, this restriction became unnecessary because, during the almost eight years and four months when it

was applied, Mr. Canese was granted permission to leave the country on repeated occasions as of May 1997, and he always returned to Paraguay and even submitted briefs to the judicial authorities informing them of his return (supra para. 69(62) to 69(65)), which shows that he would not have evaded his criminal liability should the sentence have been executed. Based on the foregoing considerations, the Court concludes that the restriction to leave the country imposed on Mr. Canese during almost eight years and four months did not comply with the requirement of necessity in a democratic society, in violation of the provisions of Article 22(3) of the Convention.

c) Requirement of proportionality in a democratic society

132. Regarding the requirement of proportionality in a democratic society, the Human Rights Committee stated in its General Comment No. 27 that:

14. […] Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.
15. The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law. States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided. [FN141]

[FN141] U.N. Human Rights Committee, General Comment No. 27, supra note 135, paras. 14 and 15.
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133. The Court considers that the restriction of the right to leave the country imposed during criminal proceedings by means of a precautionary measure should be proportionate to the legitimate purpose sought, so that it is only applied when there is no other less restrictive measure and during the time that is strictly necessary to comply with its purpose: in this case, to avoid Mr. Canese absconding (supra para. 130).

134. As has been demonstrated (supra paras. 120 to 122), and as indicated when examining the requirement of necessity (supra para. 130 and 131), Mr. Canese's right to leave Paraguay freely was restricted for almost eight years and four months. According to the 1914 Penal Code, the maximum sanction that could have been imposed on Mr. Canese would have been 22 months' imprisonment and a fine of up to two thousand pesos. If the sentence against Mr. Canese had been executed, which did not happen, because he filed several appeals and was absolved on December 11, 2002 (supra para. 69(49)), he would have had to serve a sentence of two months' imprisonment. Regarding the sanction of payment of a fine, Mr. Canese offered personal surety and material surety and provided evidence of his domicile in Paraguay. The Court finds that the restriction of the right to leave the country imposed on Mr. Canese and the time during which it was applied were disproportionate to the objective sought, because there were other less onerous means that could guarantee compliance with the sanctions. In view of the foregoing

considerations, the restriction of the right to leave the country freely that was imposed on Mr. Canese did not comply with the requirement of proportionality in a democratic society, which should characterize the precautionary measure, in violation of Article 22(3) of the American Convention.

135. On the foregoing grounds, the Court concludes that the State applied a restriction to Ricardo Canese's right to leave the country without observing the requirements of legality, necessity and proportionality, necessary in a democratic society; thereby violating Article 22(2) and 22(3) of the American Convention.

X. VIOLATION OF ARTICLE 8 IN RELATION TO ARTICLE 1(1) (RIGHT TO A FAIR TRIAL)

Arguments of the Commission

136. Regarding Article 8 of the Convention, the Commission argued that:

a) The proceedings against Ricardo Canese lasted almost ten years and, as a result of the judgment of first instance, his freedom of movement was restricted;
b) The alleged victim was sentenced in first instance on March 22, 1994, and appealed this conviction; it was only three years after having filed the appeal that the judgment of second instance was delivered (November 4, 1997). Finally, on December 11, 2002, the Supreme Court of Justice of Paraguay revoked the criminal conviction when deciding an appeal for review filed on February 8, 1999, after the new Paraguayan Penal Code entered into force;
c) It is necessary to consider whether the proceedings took place within a reasonable time. Regarding the complexity of the case, "the proceedings was particularly simple," principally because there were few probative elements in the case file and they dated from the time the proceedings were initiated. The probative elements offered by the defense lawyer were rejected by the judge, considering that the presumption of exceptio veritatis had not been met. "The case cannot be considered complex, as it consisted essentially in the judge's assessment of the content of the newspaper articles;"
d) With regard to the procedural activity of the interested party, Mr. Canese did not carry out any delaying activities during the proceedings in first and second instance; he even accepted the content of the press articles on which the accusation was founded and the evidence he offered was rejected. "Even if the petitioner had not acted with due diligence during the proceedings, [...] the ten years that the proceedings lasted, which included measures that restricted freedom of movement, were excessive for an offense whose punishment could only be one year's imprisonment;"
e) The judicial authorities acted with "manifest negligence," directly contributing to the "delay in the proceeding." "[Mr.] Canese was never able to argue that the articles on which the accusation was founded were true, and the evidence he offered was not accepted; consequently, it is not reasonable for the appeal to have taken three years, and that the appeals for review were finally decided in May 2002;"
f) There was an "unjustified delay" in the proceedings filed against Mr. Canese, because eight years elapsed from the time the judgment of first instance was delivered until the judgment was considered executed in May 2002;

g) From the documents in the case file, it is evident that the order which permanently restricted Mr. Canese's freedom of movement was based on the judgment of first instance. The Paraguayan Penal Code under which Mr. Canese was convicted did not establish the prohibition to leave the country as part of the sanction, so it should be considered "a preventive measure adopted to ensure compliance with the final sanction that might be imposed;"
h) The State did not justify the necessity to restrict Mr. Canese from leaving national territory on a permanent basis, because neither the existence of a lawsuit against him, nor the sentence delivered in first instance, which was not final, necessarily provided justification. Mr. Canese even abandoned national territory with permissions obtained by means of petitions for habeas corpus, which suggests that the restriction was unnecessary and disproportionate, and that the Paraguayan justice system itself did not consider he would abscond or evade the proceedings. Also, the Paraguayan jurisdictional bodies contradicted each other by denying Mr. Canese's requests to leave the country;
i) The criminal proceedings filed against Mr. Canese and the restriction of his freedom of movement for eight years exceeded the reasonable time to which this kind of measure should be limited; particularly taking into account that the sanction Mr. Canese could have faced was two months' imprisonment and a fine; and
j) The restriction to leave the country imposed on Ricardo Canese became an excessive and anticipated punitive measure, in violation of the principle of innocence established in Article 8(2) of the American Convention in relation to the general obligation to respect and guarantee rights established in Article 1(1) thereof, because it lasted so long and without any justification, despite the remedies filed in the domestic sphere to counter it.

Arguments of the representatives of the alleged victim

137. Regarding Article 8 of the Convention, the representatives of the alleged victim indicated that they endorsed the arguments presented by the Commission and added that:

a) The proceedings against Mr. Canese were not decided within a reasonable time, based on a "global consideration of the proceedings," because more than eight years elapsed from when the judgment of first instance was delivered until it was executed;
b) The imposition of a "coercive" measure before a judgment is final should be governed by precautionary purposes and its duration should be less than that of the expected sanction; otherwise, such a measure is unlawful; and
c) The State violated Ricardo Canese's right to presumption of innocence established in Article 8 of the American Convention, in relation to Article 1(1) thereof, because it imposed on him a permanent restriction to leave the country for eight years, even though he had not been declared guilty of an offense; this "converted it into an anticipated and, therefore, arbitrary, punishment."

Arguments of the State

138. Regarding Article 8 of the Convention, the State indicated that:

a) The proceedings against Mr. Canese were governed by the 1890 Code of Criminal Procedure, "[which], when regulating proceedings, established norms that did not favor the individual";
b) The new Code of Criminal Procedure of 1998 establishes that an ordinary criminal proceedings may not last more than three years, unless the judgment is appealed, in which case, a further six months are added. If the criminal proceedings have not been finally concluded in this lapse, the Code itself establishes the extinguishment of the State's criminal proceedings;
c) The mere passage of time does not necessarily signify the violation of the concept of reasonable time, which should govern any criminal proceedings with full guarantees;
d) It agrees with the Commission that proceedings for slander and injuria should not be considered complex, unless there is a great deal of evidence to be provided to the proceedings, and a large number of witnesses or victims, which did not occur in this case;
e) It does not agree with the considerations of the Commission regarding the attitude of Mr. Canese's lawyers during the proceedings, because it considers that "it was far from being typical or normal conduct in criminal proceedings." "To justify this affirmation, it is necessary to mention not only the case that the Commission referred to: the delaying activities regarding the action on unconstitutionality[,] which the plaintiff never notified to the defendant – it should be recalled that we are considering a private criminal proceeding, and the State is only obliged to deal with cases about which it is notified – which obliged the Supreme Court of Justice to deliver a decision that the legal action had lapsed owing to its abandon, almost three years after the respective action had been filed." Mr. Canese's lawyers had already been prejudiced by the closure of the evidentiary stage of the proceeding, "because they had not pressed for a [decision] on the steps taken and had not requested the time for submitting evidence to be extended; a measure that corresponded to them because they had offered evidence." This negligence was repeated on several occasions during the proceedings;
f) "The Paraguayan State could be found accountable for its obligation to decide the legal situation of [Mr.] Canese[,] since [the action] was processed under a procedural norm that led to a vitiated proceeding[,] because it did not respect the minimum standards that should be enjoyed by anyone accused of committing a punishable act, and who has not been convicted owing to measures he has taken [...], to ensure that individuals accused of punishable acts enjoy all the rights and guarantees established in the international human rights system;
g) It is possible that "… [Mr.] Canese's case –regulated by the old procedure– was one of those delayed beyond the minimum parameters established in the American Convention; although it is not possible to attribute this to the bodies of the Paraguayan State, which, in the midst of the crisis, ha[ve] been able to overcome such problems and implement the new penal model –in form and content;"
h) "Even though the Paraguayan State […] may be accountable for the delay in the final decision in the proceedings against [Mr.] Canese," the following considerations should be taken into account when examining the alleged violation of Article 8 of the Convention: the criminal proceedings to which Mr. Canese was subjected was regulated by a norm of an investigative nature; the criminal proceedings were of a private nature; in other words, "it would not have been appropriate for [the State] to expedite the proceedings de oficio; [and …], on several occasions, [Mr.] Canese's representatives acted inadequately by making time-barred submissions or through lack of procedural activity." In this respect, "the Paraguayan State cannot be attributed with all the responsibility for the time consumed to obtain a final decision in the case; on this point, the Court should therefore decide to reject the claim;"

i) Mr. Canese was given all the guarantees of due process for his defense; however, the procedural actions undertaken by his defense lawyers were not the "most appropriate", but, to the contrary, negligent. Nevertheless, the State absolved him of all guilt and pardoned him for the offenses of slander and injuria in decision and judgment No. 1362 delivered by the Supreme Court of Justice of Paraguay on December 11, 2002;

j) Regarding the restriction to leave the country, Mr. Canese was subjected to "a precautionary measure of a personal nature [...] following a request he made to abandon the country, which was opposed in the private dispute, after the judgment of first instance convicting him had been delivered." In the Paraguayan criminal justice system, the measure restricting departure from the country is "a frequent precautionary measure and does not harm any right;"

k) Mr. Canese's "freedom of movement" was only restricted after April 29, 1994, the date on which the Criminal Court of First Instance delivered the judgment condemning him to imprisonment and a fine. "When the judgment was confirmed by a court of [second] instance, the possibility of abandoning the country was cancelled, because the judgment had ordered imprisonment and a fine;"

l) On two occasions, Mr. Canese has benefited from permission to leave the country. On August 22, 2002 the Criminal Chamber of the Supreme Court of Justice of Paraguay lifted the precautionary measure restricting freedom of movement, "because restricting [Mr.] Canese's freedom to leave the country did not form part of the judgment against him;"

m) Regarding the alleged violation of the principle of presumption of innocence to the detriment of Mr. Canese, by prohibiting him from leaving the country for "eight years," it denies the affirmation in the application regarding the duration of the personal precautionary measure, because the period during which Mr. Canese was deprived "of freedom to leave the country" was almost five years. However, Mr. Canese was never deprived of his freedom of movement within the Republic;

n) "Under the former procedural legislation, the regime of precautionary measures of a personal nature was chaotic and not regulated by the basic principles that govern such matters. However, with the adoption of the new Code of Criminal Procedure, this regime has been transformed completely, and now respects the principles of legality, exceptionality, necessity, restriction or proportionality, and duration [...]. The Paraguayan State has reformed its regime of precautionary measures, and its provisions now include measures that provide an alternative or substitute for preventive detention [...,] which may never exceed two years. Finally, detention and preventive detention have been prohibited in criminal proceedings for a private criminal action;"

o) The alleged undue delay of the judicial bodies should be considered in light of the time required by the different instances and the legal justification. The First Criminal Trial Court received the private complaint on October 23, 1992, and delivered final judgment on March 22, 1994, so it took 17 months. The Court of Appeal delivered judgment of second instance on November 4, 1997, taking 43 months. The final instance delivered its judgment on May 2, 2001, taking 42 months. This "adds up to a little more than eight years." This must be evaluated in light of the "criminal procedural norm regulating the time for deciding the case in question; this was the ancient 1890 Code of Criminal Procedure [...], which, evidently, did not respond to the criteria of a reasonable time for the criminal proceedings;" and

p) "The principle of the innocence of Mr. Canese" has been respected throughout the criminal proceeding, because he was never deprived of his civil and political rights and guarantees and they have never been restricted. This can be verified from the copy of the case

file, which confirms that he was never deprived of freedom of movement within national territory, and never restricted in any other personal or patrimonial way.

Considerations of the Court

139. Article 8 of the American Convention establishes 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.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

[…]

f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

[…]

a) Regarding the principle of reasonable time as regards the duration of the criminal proceedings filed against Mr. Canese

140. Examination of the criminal proceedings file, a copy of which was provided by the State, shows that the action against Mr. Canese was filed on October 23, 1992. The judgment of first instance was delivered on March 22, 1994, by the First Trial Judge for Criminal Matters and the judgment of second instance was delivered on November 4, 1997, by the Third Chamber of the Court of Criminal Appeal (supra para. 69(15) and 69(20)). Both the complainants' lawyer and Mr. Canese's lawyer filed remedies of appeal against this judgment of second instance on November 7 and 12, 1997, respectively (supra para. 69(21) and 69(23)). On February 26, 1998, the Third Chamber of the Court of Criminal Appeal decided not to admit the remedy of appeal filed by Mr. Canese (supra para. 69(27)). Regarding the appeal filed by the complainants' lawyer, on November 19, 1997, the Third Chamber of the Court of Criminal Appeal admitted it and ordered the case files to be forwarded to the Supreme Court of Justice of Paraguay (supra para. 69(24)). However, this appeal was only decided by the Criminal Chamber of the Supreme Court of Justice of Paraguay on May 2, 2001 (supra para. 69(41)); in other words, it took almost three years and five months to rule on the appeal.

141. With regard to the principle of reasonable time indicated in Article 8(1) of the American Convention, this Court has established that three elements must be taken into account to determine the reasonableness of the duration of a proceeding: a) the complexity of the matter; b) the procedural activity of the interested party, and c) the conduct of the judicial authorities. [FN142]

[FN142] Cf. the Case of 19 Merchants, supra note 2, para. 190; Case of Hilaire, Constantine and Benjamin et al. Judgment of June 21, 2002. Series C No. 94, para. 143; and Case of Suárez-

Rosero, supra note 140, para. 72. Similarly, Cf. Eur Court H.R., Motta v. Italy, Judgment of 19 February 1991, Series A No. 195-A, para. 30; and Eur Court H.R, Ruiz-Mateos v. Spain, Judgment of 23 June 1993, Series A No. 262, para. 30.

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142. The Court considers that, in certain cases, a prolonged delay may, in itself, constitute a violation of judicial guarantees. It is for the State to explain and prove why it has required more time than would be reasonable, in principle, to deliver final judgment in a specific case, in accordance with these criteria. [FN143]

[FN143] Cf. Case of 19 Merchants, supra note 2, para. 191; Case of Hilaire, Constantine and Benjamin et al., supra note 142, para. 145; and Case of Las Palmeras. Judgment of December 6, 2001. Series C No. 90, paras. 63 and 64.

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143. When examining the criteria that should be taken into account to determine the reasonableness of the time during which the proceedings evolved (supra para. 141), the Court has verified that Mr. Canese was prosecuted and judged for the offenses of slander and injuria and that the principal probative elements were the two newspaper articles in which the statements against which legal action was taken were published, because no testimonial statements or expert reports were received. Furthermore, in his statement during the preliminary examination, Mr. Canese acknowledged that he had made the said statements, so that the probative material in the criminal proceedings was not very complex. In this respect, the State indicated that it agreed with the Commission that actions for slander and injuria "should not be considered complex, unless there is a great deal of evidence to be provided to the proceedings, and a large number of witnesses or victims, which did not occur in this case."

144. Regarding the procedural activity of the parties, Mr. Canese filed several remedies in exercise of his rights under the domestic legal system and, it is established in the file that, on repeated occasions, both Mr. Canese and the complainants' lawyer submitted briefs requesting the domestic courts to decide on the appeals that had been filed.

145. In the instant case, the conduct of the judicial authorities is closely related to the previous parameter for examining reasonable time. The State alleged that it should be borne in mind that the criminal proceedings to which Mr. Canese was subjected was regulated by a norm of an investigative type; that the criminal proceedings were of a private nature; in other words, "it would not have been appropriate for [the State] to expedite the proceedings de oficio"; and that, on several occasions, Mr. Canese's representatives acted inadequately "by making time-barred submissions or through lack of procedural activity." On several occasions, the judicial authorities even delayed decisions on the appeals that the complainants were requesting insistently. For example, after the Third Chamber of the Court of Criminal Appeal had granted the remedy of appeal filed by the complainants' lawyer against the judgment of second instance on November 19, 1997, and ordered that the case files should be forwarded to the Supreme Court of Justice of Paraguay, the complainants' lawyer was obliged to request that this appeal be decided. Despite

this, the Criminal Chamber of the Supreme Court of Justice of Paraguay took approximately three years and five months to rule on the appeal.

146. In the criminal proceedings filed against Mr. Canese, the judicial authorities did not act with due diligence and promptness; this is reflected, for example, by: a) the proceedings lasted eight years and six months until the judgment of second instance was final; b) the time that elapsed between the filing of the appeal against the judgment of first instance and the delivery of the judgment of second instance was three years and seven months; and c) the time that elapsed between the filing of the remedy of appeal against the judgment of second instance filed by the complainants' lawyer and the final decision was approximately three years and five months.

147. The Court observes that the State itself affirmed that it is possible that "…[Mr.] Canese's case –regulated by the old procedure– was one of those delayed beyond the minimum parameters established in the American Convention; although it is not possible to attribute this to the bodies of the Paraguayan State, which, in the midst of the crisis, ha[ve] been able to overcome such problems and implement the new penal model –in form and content."

148. Regarding these allegations by Paraguay (supra paras. 145 and 147), the Court reiterates that, as stipulated in Article 27 of the Vienna Convention on the Law of Treaties, it is a basic principle of international law that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." In international law, a customary norm establishes that a State which has ratified a human rights treaty must introduce the necessary modifications to its domestic law to ensure proper compliance with the obligations it has assumed. [FN144] States may not fail to comply with these treaty-based obligations by invoking alleged difficulties of a domestic nature. [FN145] Consequently, the State cannot invoke the regulation of the criminal procedure in Paraguay applied to the proceedings against Mr. Canese in order not to comply with the guarantee of reasonableness in the time required to judge the alleged victim, in accordance with its obligation established in Article 8(1) of the American Convention.

[FN144] Cf. Case of Juan Humberto Sánchez. Interpretation of judgment on preliminary objections, merits and reparations. (Art. 67 American Convention on Human Rights). Judgment of November 26, 2003. Series C No. 102; para. 60; Case of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 117; and Case of Barrios Altos. Intepretation of the judgment on merits. (Art. 67 American Convention on Human Rights). Judgment of September 3, 2001. Series C No. 83, para. 17.

[FN145] Cf. Case of Bulacio, supra note, para. 144; Case of Trujillo-Oroza. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, para. 106; and Case of Barrios Altos. Judgment of March 14, 2001. Series C No. 75, para. 41.

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149. The Court has also established that the Constitutional Chamber of the Supreme Court of Justice of Paraguay took almost three years to decide the action on unconstitutionality filed by Mr. Canese on November 19, 1997, against the judgments of first and second instance. It should be noted that, in this decision, the Constitutional Chamber declared that the "legal action had

extinguished," even though Mr. Canese and his lawyer had requested six times [FN146] that this action on unconstitutionality be decided.

[FN146] Mr. Canese and his lawyer submitted requests to the Supreme Court of Justice of Paraguay on June 7, September 13, October 26 and December 9, 1999, and also February 2 and 16, 2000.

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150. Furthermore, the decision of the Criminal Chamber of the Supreme Court of Justice of Paraguay of December 11, 2002 (supra para. 69(49)), which absolved Canese, stated that:

The accused should be protected effectively by delivering a final judgment in this instance, because this criminal case has been processed before all the judicial instances for almost ten years and, according to Article 8 of the said American Convention, "Every person has the right to a hearing, with due guarantees and within a reasonable time."

151. Based on the foregoing considerations, and on a comprehensive examination of the criminal proceedings filed against Mr. Canese, this Court concludes that the State violated the right of Mr. Canese to a hearing, within a reasonable time, in violation of the provisions of Article 8(1) of the American Convention.

b) Regarding the right to presumption of innocence

152. Article 8(2) of the American Convention establishes that:

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. […]

153. The Court has indicated that Article 8(2) of the Convention requires that a person cannot be convicted unless there is clear evidence of his criminal liability. If the evidence presented is incomplete or insufficient, he must be acquitted, not convicted. [FN147] In this respect, the Court has stated that the principle of presumption of innocence is founded upon the existence of judicial guarantees, by affirming the notion that a person is innocent until proven guilty. [FN148]

[FN147] Cf. Case of Cantoral Benavides, supra note 139, para. 120.
[FN148] Cf. Case of Suárez-Rosero, supra note 140, para. 77.

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154. The Court considers that the right to presumption of innocence is an essential element for the effective exercise of the right to defense and accompanies the defendant throughout the proceedings until the judgment determining his guilt is final. This right implies that the defendant does not have to prove that he has not committed the offense of which he is accused, because the onus probandi is on those who have made the accusation.

155. As has been proved (supra para. 69(15)), on March 22, 1994, the judge of first instance declared that Mr. Canese had committed the offenses of injuria and slander and, in second instance, on November 4, 1997, the conviction for the offense of injuria was revoked and he was sentenced for slander (supra para. 69(20)). Subsequently, on December 11, 2002, the Criminal Chamber of the Supreme Court of Justice of Paraguay absolved Mr. Canese of the offense of slander (supra para. 69(49)).

156. According to the provisions of Article 370 of the 1914 Penal Code, the offense of slander is committed by:

[…] any person who, before several persons gathered together or separately, but so that the information may be disseminated, or in a public document or by printed media, or in caricatures or drawings of any kind, distributed or shown to the public, shall attribute to another person: offenses subject to criminal proceedings without defining them, or subject to a private criminal proceedings, even though they are specific; or facts that could expose the other person to a disciplinary procedure or to public contempt or odium; or dishonesty or lack of morality that could cause considerable prejudice to the reputation, standing or interests of the person offended.

157. Article 372 of this Code established that the offense of injuria is committed by:

[…] any person who, with the exception of the aforementioned cases, shall insult, discredit, dishonor or slight another person, in writing or in action. […]

Should an injurious statement be published in printed matter or a newspaper, the criminal offender shall be punished with from one to five months' imprisonment and a fine of from four hundred to one thousand pesos.

158. These norms of the 1914 Penal Code which regulated the offenses of slander and injuria filed against Mr. Canese did not include the truth or notoriety of the statement or declaration as an element of the criminal classification. Accordingly, consideration of whether such offenses had been committed focused on whether a statement or declaration had been made that attributed to another person an offense which could expose that person to a disciplinary procedure or "cause considerable prejudice to the reputation, standing or interests of the person offended," or in which another person was "insult[ed], discredit[ed], dishonor[ed] or slight[ed]," and in determining the dolus of the author of such conduct.

159. The Court has noted that the First Criminal Trial Court and the Third Chamber of the Court of Criminal Appeal presumed the dolus of the accused, because he did not retract the statements he had made, but rather ratified them, and owing to his level of intellectual preparation and his knowledge of the Itaipú public works which, in the judge's opinion, implied that "he knew perfectly well who his statements were aimed at, their scope, and the damage they could cause." Also, based on these conclusions, the judges assumed that Mr. Canese intended to injure or insult the image, reputation, credit or interests of the members of the CONEMPA board of directors.

160. To illustrate the reasoning of the criminal courts, the Court deems it pertinent to underscore what was established in the judgment of first instance when the judge stated that:

[…] it should be noted here that the defendant appeared before this court on various occasions accompanied by several political leaders and party members, which led this court to conclude that what he stated on those occasions was evidently intentional.
[…]
[…T]he time has come to determine clearly the result of these preliminary proceedings, opened to investigate the offenses for which the action has been filed, and the court reaches the obvious conclusion that the defendant has not been able to refute the accusation that he intentionally committed the offenses classified in Articles 370 and 372 of the Penal Code.

161. Based on the foregoing, the Court finds it evident that both the First Criminal Trial Court and the Third Chamber of the Court of Criminal Appeal presumed the dolus of Mr. Canese and, based on this, they demanded that he should refute the existence of his punishable intention. Hence, these courts did not presume the innocence of the defendant. The Court therefore concludes that the State violated Article 8(2) of the American Convention to the detriment of Mr. Canese.

162. Regarding the restriction to leave the country, the Court has indicated that this restriction could constitute a substitution for imprisonment, if it continues to be applied when it has ceased to fulfill its function as a procedural guarantee (supra para. 129). [FN149] In the instant case, it has been established, in accordance with the aforementioned parameters, that the restriction of freedom of movement applied to Mr. Canese during almost eight years and four months became unnecessary and disproportionate (supra paras. 131, 134 and 135) to ensure that he did not evade his criminal liability should the sentence be executed. In the practice, this signified anticipating the sentence imposed but never executed, which constitutes a violation of the right to presumption of innocence established in Article 8(2) of the Convention.

[FN149] Cf. Case of Suárez-Rosero, supra note 140, para. 77.
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c) Regarding to right to defense

163. The relevant phrases of Article 8 of the American Convention establish that:

[…]. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
[…]
f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
[…]

164. In the instant case, it has been proved that, in the criminal proceedings filed against Mr. Canese, he was not allowed to obtain a hearing for other persons who, as witnesses and expert

witnesses, could "throw light on the facts." During the proceedings in first instance, after having issued an order summoning the witnesses proposed by Mr. Canese to a hearing, the judge revoked this decision and ordered the evidentiary stage to be closed. Consequently, through judicial negligence, no testimonial evidence was provided, eliminating the possibility of Mr. Canese presenting probative material in his defense that could "throw light on the facts." Furthermore, no testimonial evidence was provided before the Third Chamber of the Court of Criminal Appeal.

165. Mr. Canese's defense consisted in repeating before the courts that his statements were not addressed at the complainants, but referred to Mr. Wasmosy, in the context of the electoral campaign for the presidency of the Republic. The courts considered that the ratification of his declarations in his statement during the preliminary examination and during the conciliation stage, constituted a "'simple confession' of the offense."

166. Based on the above, the Court considers that the Court violated Article 8(2)(f) of the American Convention to the detriment of Ricardo Canese.

167. In view of all the foregoing, the Court declares that the State violated Article 8(1), 8(2) and 8(2)(f) of the Convention, in relation to Article 1(1) thereof, to the detriment of Ricardo Canese.

XI. VIOLATION OF ARTICLE 9 IN RELATION TO ARTICLE 1(1) (FREEDOM FROM EX POST FACTO LAWS – PRINCIPLE OF LEGALITY AND RETROACTIVITY)

Arguments of the Commission

168. Regarding Article 9 of the Convention, the Commission stated that:

a) The fundamental right embodied in Article 9 of the Convention imposes on the State the obligation to apply the most favorable criminal norm to the defendant, even if it is promulgated after the fact or the conviction;
b) Paraguay violated Article 9 of the Convention to the detriment of Ricardo Canese, because it did not apply the most favorable criminal norm. Mr. Canese was condemned for the offense of slander under the 1914 Paraguayan Penal Code, which established a sanction of from 2 to 22 months' imprisonment and an additional fine. The Penal Code of Paraguay that entered into force in November 1998 reappraised the unjust penalty by establishing a maximum sanction of up to one year's imprisonment or a fine. The new Code is more favorable because it reduced the minimum and the maximum sanctions;
c) Although it is true that the prison sentence imposed on Ricardo Canese did not exceed the limited established in the new penal legislation, it is necessary to consider whether the sanction should be reduced proportionately to the reduction in the sanction established by the legislator. The most favorable sanction must be applied, even when the person has been condemned, since the legislator has reappraised the unjust penalty, because he considers that a lesser sanction should be imposed for the same conduct;

d) Mr. Canese should benefit from the most favorable sanction under the new penal Code; in other words, the sanction can be imprisonment or the payment of a fine, but both sanctions cannot be applied without violating the Convention, "as happened in this case;"
e) Since the minimum penalty for the offense of slander under the 1914 Penal Code was applied to Ricardo Canese, according to the pro reo principle, the minimum penalty established by the new legislation should be applied to him. As of the entry into force of the new Penal Code, there is a more favorable sanction that should have been applied to Ricardo Canese. "Ricardo Canese requested the application of the new penal legislation for different reasons, including procedural issues, [so that] the mere request should have been sufficient for the judicial authorities, de oficio, to modify the sanction to the most favorable one;" and
f) The State violated Article 9 of the Convention to the detriment of Ricardo Canese, in relation to the general obligation to respect and guarantee the rights established in Article 1(1) thereof.

Arguments of the representatives of the alleged victim

169. Regarding Article 9 of the Convention, the representatives stated that:

a) They endorsed the arguments submitted by the Commission. They also emphasized that the concrete application of the penal normative violated the principle of legality and retroactivity. In this respect, they indicated that Mr. Canese was "applied the most onerous sanction non-retroactively," even when he had requested the retroactive application of the new Penal Code and Code of Criminal Procedure, both in force as of 1998. These Codes were less harsh for two reasons: first, because they established the sanction of a fine that was alternative and not additional to imprisonment, so that the person convicted for the offense of slander could not be sentenced to the two types of sanctions simultaneously and, second, because the minimum and maximum sanctions were reduced;
b) When sentencing Mr. Canese, the judge imposed the minimum sanction of those established in the previous code. However, the minimum sanction for the offense of slander under the new legislation should have been applied; namely, a fine equal to 180 days. Mr. Canese filed several appeals for review, in which he requested the retroactive application of the new legislation, which was denied expressly by the Supreme Court of Justice of Paraguay on two occasions, until in December 2002, Paraguay's maximum court absolved Mr. Canese, because it considered, inter alia, that it was necessary to apply the penal legislation in force; and
c) The State "has failed in its obligation to respect and guarantee […] a proceeding which respects the principle of legality and non-retroactivity […], all in violation of Article 1(1) of the American Convention."

Arguments of the State

170. Regarding Article 9 of the Convention, the State indicated:

a) In its final written arguments, that, on December 11, 2002, the Supreme Court of Justice of Paraguay delivered decision and judgment No. 1362, in which it absolved Ricardo Canese totally of guilt and pardoned him, by applying the most favorable criminal norm, in response to the appeal for review filed on August 12, 2002, by Ricardo Canese against the final judgment

against him. He questioned the adverse judgment by arguing, among other matters, that a more favorable norm had been promulgated subsequently;

b) In its brief answering the application, and with observations on the brief with requests and arguments, that it endorsed the Commission's opinions regarding the scope and content of the principles of legality and retroactivity, but, in this specific case, it had not violated the content of these principles;

c) In its brief answering the application, and with observations on the brief with requests and arguments, with regard to the appeal for review, that the criminal procedure norms "establish that the legal actors are: 1) the person convicted; 2) the spouse, companion or direct next of kin to the fourth degree or by adoption, or to the second degree by marriage, if the person convicted has died; and 3) the Attorney General's office representing the person convicted. [...W]henever he filed an appeal for review, the legal actor never requested that the case should be reviewed as regards application of the most favorable norm, which [...] did not benefit him as far as imprisonment was concerned; while, for the fine to be applied as the sole sanction, the superior court must rule on the substance of the decision that has been opposed, and this [...] was never contested. Accordingly, it [can]not agree with the contents of point 109 of the Commission's application;" and

d) In its brief answering the application, and with observations on the brief with requests, arguments and evidence, that, when defining the imprisonment regime, the new Paraguayan penal laws have established that it "will have a minimum duration of six months and a maximum of twenty-five years." Consequently, "when the penal norm does not refer to the minimum sanction, it must be understood that the minimum length of the sanction is six months."

Considerations of the Court

171. Article 9 of the American Convention establishes that:

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

172. In the instant case, the Commission and the representatives argued that Paraguay did not apply to Canese the most favorable norm that entered into effect on November 26, 1998, after the judgment of second instance convicting him had been handed down on November 4, 1997. The State indicated that it had not violated the principles of legality and retroactivity and that Ricardo Canese was absolved by the application of the most favorable penal norm in the judgment delivered by the Supreme Court of Justice of Paraguay on December 11, 2002.

173. In order to consider the alleged violation of Article 9 of the Convention in this case, it is necessary to refer to the principles of legality, non-retroactivity of the unfavorable norm, and retroactivity of the most favorable penal norm, which it is alleged was violated in the instant case.

174. Concerning the principle of legality in the penal sphere, the Court has indicated that the elaboration of penal categories presumes a clear definition of the criminalized conduct, which establishes its elements, and allows it to be distinguished from behaviors that are either not punishable or punishable but not with imprisonment. Ambiguity in describing offenses creates doubts and the opportunity for abuse of power, which is particularly undesirable when determining the criminal liability of an individual and punishing the latter with penalties that severely affect fundamental attributes such as life or freedom. [FN150]

[FN150] Cf. Case of Baena-Ricardo et al., supra note 139, paras. 108 and 115; Case of Cantoral-Benavides, supra note 139, para. 157; and Case of Castillo-Petruzzi et al., supra note 139, para. 121.

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175. According to the principle of the non-retroactivity of the unfavorable penal norm, the State is prevented from exercising its punitive power in the sense of applying retroactively penal laws that increase sanctions, establish aggravating circumstances or create aggravated types of offenses. It is also designed to prevent a person being penalized for an act that, when it was committed, was not an offense or could not be punished or prosecuted. [FN151]

[FN151] Cf. Case of Baena-Ricardo et al., supra note 139, para. 106; and Case of Castillo-Petruzzi et al., supra note 139, para. 120.

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176. This Court has interpreted that the principles of legality and non-retroactivity of the unfavorable norm are applicable not only in the penal sphere, but also, their scope extends to matters relating to administrative sanctions. [FN152]

[FN152] Cf. Case of Baena-Ricardo et al., supra note 139, para. 106.

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177. Under the rule of law, the principles of legality and non-retroactivity govern the actions of all bodies of the State in their respective fields, particularly when the exercise of its punitive power is at issue. [FN153]

[FN153] Cf. Case of Baena-Ricardo et al., supra note 139, para. 107.

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178. The principle of the retroactivity of the most favorable penal norm is established in Article 9 in fine of the Convention, when it indicates that, if subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom. This norm should be interpreted in good faith, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of the object and

purpose of the American Convention, which is the effective protection of the individual, [FN154] and also by an evolving interpretation of the international instruments for the protection of human rights.

[FN154] Cf. Case of 19 Merchants, supra note 2, para. 173; Case of Baena Ricardo et al. Competence. Judgment of November 28, 2003. Series C No. 104, paras. 94, 98, 99 and 100; Case of Cantos. Preliminary Objections. Judgment of September 7, 2001. Series C No. 85, para. 37; and Case of Constantine et al. Preliminary Objections. Judgment of September 1, 2001. Series C No. 82, paras. 75 and 86.

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179. In this respect, both the law establishing a lighter punishment for offenses, and the one encompassing norms such as those that decriminalize a behavior which was previously considered an offense, or create a new motive for justification or innocence, or an impediment to the effectiveness of a penalty, should be interpreted as the most favorable penal norm. The foregoing is not a closed list of cases that merit the application of the principle of the retroactivity of the most favorable penal norm. It is worth emphasizing that the principle of retroactivity is applicable to laws enacted before the judgment was delivered and during its execution, because the Convention does not establish a limit in this respect.

180. According to Article 29(b) of the Convention, if any laws of any State Party, or another international convention to which the said State is a party, grant greater protection or regulate more broadly the enjoyment and exercise of some right or freedom, the State shall apply the most favorable norm for the protection of human rights. [FN155]

[FN155] Cf. Compulsory Membership in an Association prescribed by Law for the Practice of Journalism, supra note 114, para. 52.

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181. It should be recalled that, on several occasions, the Court has applied the principle of the most favorable norm to interpret the American Convention, so that the most favorable alternative for the protection of the human rights enshrined in this Convention should always be chosen. [FN156] As this Court has established, if two different norms are applicable to a situation, “the norm most favorable to the individual must prevail.” [FN157]

[FN156] Cf. Case of Herrera-Ulloa, supra note 15, para. 184; Case of Baena-Ricardo et al., supra note 139, para. 189; Case of Baena Ricardo et al. Preliminary Objections. Judgment of November 18, 1999. Series C No. 61, para. 37; and 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 of July 16, 1993. Series A No. 13, para. 50.

[FN157] Cf. Juridical Status and Rights of Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 21; and Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American

Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 52.

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182. Having examined the principles of legality, non-retroactivity of the unfavorable norm, and retroactivity of the most favorable penal norm, the Court must now determine whether, in this case, Paraguay violated the latter principle. It has been established in the instant case that Mr. Canese was tried and condemned under the 1914 Penal Code. However, after delivery of the judgment of second instance on November 4, 1997, which declared that he was responsible for the offense of slander, a new Penal Code entered into force on November 26, 1998. Article 370 of the 1914 Penal Code, which regulated the offense of slander, established that the person guilty of this offense "shall be punished with from two to twenty-two months' imprisonment and a fine of up to two thousand pesos"; consequently, the fine could not be imposed as the sole sanction, but had to be accompanied by imprisonment. Based on this norm, when deciding the remedies of appeal and annulment filed by Mr. Canese and by the complainants against the judgment of first instance, the Third Chamber of the Court of Criminal Appeal convicted him on November 4, 1997, for the offense of slander to the principal sanction of two months' imprisonment and to the additional sanction of payment of a fine of two million nine hundred and nine thousand and ninety guaranis.

183. As has been established, one year and twenty-two days after the delivery of this judgment of second instance, a new Penal Code entered into force, which, inter alia, modified the sanctions that the judge could impose for the offense of slander. The new Code reduced the minimum and maximum sanctions for the offense of slander and established a fine as an alternative sanction to the penalty of imprisonment. The new Code established that "[w]hen the act is carried out before a multitude or by dissemination in publications [...], or repeatedly over an extended period, the penalty c[ould] be increased to imprisonment for up to one year or a fine." This change signified that the legislator wished to reduce the penalty for the offense of slander.

184. As has been indicated above (supra paras. 70 and 71), the Court acknowledges the importance of the ruling of the Criminal Chamber of the Supreme Court of Justice of Paraguay on December 11, 2002, admitting the appeal for review filed on August 12, 2002, by Mr. Canese and his lawyers, annulling the sentences and absolving Mr. Canese from guilt and pardoning him. However, in order to consider the alleged violation of the principle of retroactivity, it is necessary to examine the period from November 26, 1998 to December 11, 2002, during which Ricardo Canese and his lawyers filed several appeals for review, requesting, inter alia, the annulment of the sentences and the review of the judgment, and basing these petitions on the entry into force of the new Penal Code in 1998. During this period, the Criminal Chamber of the Supreme Court of Justice of Paraguay declared that these appeals for review were inadmissible, one of them on the basis that it did not "offer 'any evidence or indicate new facts' that would justify applying a more favorable norm to the convicted person." [FN158] (supra para. 69(46)).

[FN158] Decision and judgment No. 374 issued by the Criminal Chamber of the Supreme Court of Justice of Paraguay on May 6, 2002 (copy of the file of the criminal proceeding against Ricardo Canese for the offenses of slander and injuria before the First Criminal Trial Court, file

of attachments to the brief answering the application, and with observations on the brief with requests and arguments, tome II, attachment 4, folio 1200).
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185. However, in decision and judgment No. 1362 delivered by the Criminal Chamber of the Supreme Court of Justice of Paraguay on December 11, 2002, which absolved Canese, it indicated that:

The appeal for review filed should prosper, because, in the first place, the legitimate cause for review (Art. 481, para. 4, of the Code of Criminal Procedure), which establishes that: "when, subsequent to the judgment, new facts supervene ... makes it evident that ... the act committed is not punishable or a more favorable norm should be applied." And this is so, because there is a new Penal Code, which has transformed radically the penal classification of slander.

186. It has been established that, for approximately four years during which a new Penal Code was in force that contained more favorable norms than those applied in the judgments convicting Mr. Canese, this more favorable normative was not taken into account by the Criminal Chamber of the Supreme Court of Justice of Paraguay, despite the appeals filed by Mr. Canese, requesting, inter alia, the review of his sentence; and it was not considered, de oficio, by the competent judge. The Court considers that, in accordance with the principle of the retroactivity of the most favorable penal norm, those courts should have compared the most favorable aspects of the new Code applicable to the specific case and determined whether the sanctions imposed on Mr. Canese should be reduced, or whether only the sanction of a fine should be imposed, since the latter had ceased to be additional to the sanction of imprisonment for the offense of slander and had become an autonomous alternative.

187. In view of the foregoing, the Court concludes that the State did not duly apply the principle of the retroactivity of the most favorable penal norm in Mr. Canese's case for approximately four years and, therefore, violated Article 9 of the Convention, in relation to Article 1(1) thereof, to his detriment.

XII. REPARATIONS APPLICATION OF ARTICLE 63(1)

Arguments of the Commission

188. Regarding measures of reparation, the Commission indicated that "reparation should be granted individually to Ricardo Canese, the person whose rights have been violated." It also stated that the reforms made to the section on offenses against honor of the Penal Code and to Paraguayan legislation, which were not applied during the proceedings against Mr. Canese, did not release the State from its obligation to make full reparation to the latter for the "violations established in the application." The Commission presented the following requests for reparations and costs to the Court:

a) In its application brief, it requested the Court to order the State to ensure that the reform of the legislation on offenses against honor, included in the 1998 Penal Code, was fully and thoroughly complied with by all State authorities;

b) In its brief with final arguments, it requested the Court to order the State "to reform all the legislation concerning offenses against honor included in the Penal Code. In particular, to establish clearly, with no room for interpretation, that statements on matters of public interest should not and cannot be penalized." The reformed Code, which still includes offenses against honor, continues to be used as an instrument to create an intimidating environment that inhibits statements of public interest. The State must guarantee the non-repetition of situations such as those that befell Mr. Canese;
c) To order the State to abstain from making excessive use of measures that restrict rights and that are applied to guarantee presence at a trial; to ensure that they are "proportionate and appropriate;" to limit, insofar as possible, the use of restrictive measures to guarantee presence at a trial, and to implement mechanisms that ensure that rights are not endangered for an indefinite or over-long period, taking into account the legal interest that such measures are designed to protect, the seriousness of the offense for which an action has been filed, and the personal situation of the defendant;
d) To order the State to ensure that the restrictive measures applied to guarantee presence at a trial do not become "an anticipated punishment, which is not established by law;"
e) To order the State to make a public apology for the human rights violations which it perpetrated and to publish the judgment handed down by the Court. These are very appropriate measures to make reparation to Mr. Canese; they also provide reparation to Paraguayan society as a whole;
f) Regarding compensation for pecuniary damage, to establish an amount in fairness "for the violations endured during eight years, as of the judgment of first instance, taking into account the possible loss of earnings represented by the restriction of his right to leave the country;"
g) Regarding compensation for non-pecuniary damage, to establish an amount in fairness, which takes into consideration "the situation of someone subjected to a proceeding during eight years, to measures restricting his freedom of movement for the same period, and to a permanent feeling of vulnerability as a result of a criminal conviction for exercising a right," which have caused Mr. Canese "extreme pain and suffering;" and
h) In relation to costs, to order the State to pay the costs incurred at the national level by processing the legal actions filed by the alleged victim, and also those incurred at the international level by processing the case before the Commission and the Court.

Arguments of the representatives of the alleged victim

189. The representatives of the alleged victim stated that reparation should be made to Ricardo Canese, the person directly prejudiced by the acts that violated his rights, and indicated to the Court that:

a) The State's argument concerning the alleged reparation to Mr. Canese, owing to the decision handed down by the Supreme Court of Justice of Paraguay on December 11, 2002, that absolved him of the offense of slander, constitutes "a partial and belated reparation" and does not guarantee "the non-repetition of the facts denounced;"
b) According to Paraguayan legislation, the judgments of the Supreme Court do not have a binding effect for judges, and do not have an effect erga omnes; therefore, there is no certainty that "the same legal doctrine will apply in a similar case." The judgment of the Supreme Court of Justice of Paraguay of December 11, 2002, cannot guarantee that no one "will be prosecuted and

sanctioned in future for expressing his opinion on matters that interest the Paraguayan community in general;"

c) The test used by the Supreme Court of Justice of Paraguay in the said acquittal is not adapted to international standards on freedom of expression, because "it suggests that the application of a sanction for the offenses of slander and injuria in relation to matters of public interest involving public officials or individuals, depends on the truth of the allegedly injurious or defamatory statements;"

d) The composition of the Supreme Court of Justice of Paraguay has changed radically over the last year. Of the nine justices who composed this Court, seven abandoned their seats owing to an impeachment proceeding or to their resignation; therefore, "the case law of this court may be modified by the new members in the short term;"

e) Despite Mr. Canese's acquittal and the reform of Paraguay's legislation, individuals who report irregularities in the administration of public funds continue to be prosecuted; and

f) The decision of the Supreme Court of Justice of Paraguay of April 27, 2004, recognized Mr. Canese's right to reimbursement of the costs and expenses he incurred before the national courts. However, this decision has not been executed, and he has not been reimbursed for the expenses he incurred during the "unfair criminal proceedings."

190. In view of the foregoing, the representatives requested the Court:

a) To order the State to acknowledge publicly its international responsibility for the facts that prejudiced Ricardo Canese, and to apologize publicly;

b) To order the State to publish "in two newspapers with widespread national circulation" the express acknowledgement of its responsibility for the facts and the apology;

c) To order the State to eliminate the offenses of libel, injuria and slander from the Penal Code, because "[t]he criminalization of the free expression of ideas is contrary to the objective of guaranteeing a democratic way of life;"

d) To order the State to adopt the legislative or any other provisions to ensure that, in the context of criminal proceedings, measures of personal coercion will only be used exceptionally, so that freedom of movement is only limited when necessary "to prevent the imminent flight of someone subject to a proceeding;"

e) To establish precise criteria concerning permissible restrictions to freedom of expression to protect a person's right to honor, which will serve as a guide, so that the different State bodies can adapt their legislative or any other provisions to the American Convention;

f) To establish an amount in fairness for compensation of pecuniary damage, "taking into account the testimony of the [alleged] victim." The compensation for pecuniary damage should include both indirect damage, namely, the patrimonial damage suffered by Ricardo Canese as a result of having been subjected to the legal proceeding, and loss of earnings in relation to the earnings that the alleged victim failed to receive owing to the violation of his rights. When determining the compensation for pecuniary damage, it should be taken into account that Ricardo Canese was obliged to undertake a long and arduous litigation before the national courts to obtain the review of his sentence and of the decision that made it impossible for him to leave the country, and that he was released by the newspaper "Noticias" and by Channel 13, where he had worked as a columnist. Also, during this period, several companies desisted from employing him;

g) To establish an amount in fairness for the moral damage, bearing in mind that the alleged victim has been obliged to endure the frustrations arising from being subjected to criminal proceedings and prevented from carrying out his regular professional activities, which was determinant in the "continuation of his political activities." Moreover, the inflexible measures restricting Mr. Canese's freedom of movement, applied over a period that greatly exceeded reasonable limits, prevented him from "cultivating [...] connections abroad;" and

h) To order the State to reimburse expenses and costs as follows:

i. for the domestic litigation, the total costs assumed by the lawyers [FN159] and by Mr. Canese [FN160] was US$16,520 (sixteen thousand five hundred and twenty United States dollars); and

ii. the amount due to CEJIL for the litigation before the Inter-American System is US$10,163.02 (ten thousand one hundred and sixty-three United States dollars and two cents). [FN161]

[FN159] The representatives of the alleged victim indicated that: the legal fees for their work during ten years was estimated to be US$5,000.00 (five thousand United States dollars) for each lawyer, for a total of US$10,000.00 (ten thousand United States dollars); it was estimated that the expenses assumed by the lawyers for rent, electricity, telephone and water corresponded to 10% of fixed monthly expenditure, calculated over 120 months, which was the period during which the lawyers provided their services, which implies a total of US$2,400.00 (two thousand four hundred United States dollars); it is estimated that the expenditure assumed by the lawyers for stationery, materials, "use of computers and other office equipment" corresponded to 10% of fixed monthly expenses –calculated to be US$10 (ten United States dollars) a month– during 120 months, which implies a total of US$120.00 (one hundred and twenty United States dollars); and it is estimated that the travel expenses assumed by the lawyers corresponded to 10% of fixed monthly expenses –calculated on the basis of US$100.00 (one hundred United States dollars) a month for each lawyer– during 120 months, which implies a total of US$1,200.00 (one thousand two hundred United States) for each lawyer, for a total of US$2,400.00 (two thousand four hundred United States dollars).

[FN160] Regarding the expenditure assumed by Mr. Canese, the representatives indicated that he should be reimbursed: US$100.00 (one hundred United States dollars) for 10,000 copies made during ten years; and US$1,500.00 (one thousand five hundred United States dollars) for expenses incurred owing to his trip to Washington D.C. in October 2000 to submit his case to the Commission.

[FN161] Regarding reimbursement of the expenditure assumed by CEJIL to litigate the case before the Commission, the representatives indicated that they should receive a total of US$7,203.11 (seven thousand two hundred and three United States dollars and eleven cents) for the following items: meetings in Asunción, Paraguay, on December 13 and 15, 1999, which signified an expenditure of US$741.35 (seven hundred and forty-one United States dollars and thirty-five cents); hearings before the Commission in Washington, USA, from March 1 to 4, 2001, which signified an expenditure of US$890.00 (eight hundred and ninety United States dollars); hearings before the Commission in Washington, USA, from November 12 to 15, 2001, which involved an expenditure of US$1(1)35.00 (one thousand one hundred and thirty-five United States dollars); telephone and fax use, which signified an expenditure of US$2,500.00 (two thousand five hundred United States dollars); expenses for mailing correspondence, which

signified an expenditure of US$411.76 (four hundred and eleven United States dollars and seventy-six cents), and supplies (copies, stationery, etc.), which signified an expenditure of US$1,525.00 (one thousand five hundred and twenty-five United States dollars); and reimbursement of the expenditure assumed by CEJIL to litigate the case before the Court, which is estimated at US$2,959.91 (two thousand nine hundred and fifty-nine United States dollars and ninety-one cents) corresponding to the expenditure related to the public hearing held before the Inter-American Court.

Argument of the State

191. The State rejected any claim of the applicants for any kind of reparation or the costs of the national and international proceedings.

Considerations of the Court

192. As stated in the preceding chapters, the Court has decided that the State is responsible for the violation of Articles 13, 22(2), 22(3), 8(1), 8(2), 8(2)(f) and 9 of the Convention, all in relation to Article 1(1) thereof, to the detriment of Ricardo Canese. In its consistent case law, the Court has established that it is a principle of international law that any violation of an international obligation that has produced damage entails the obligation to repair it adequately. [FN162] To this end, the Court has based itself on Article 63(1) of the American Convention, according to which:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

Consequently, the Court will now consider the measures necessary to repair the damage caused to Ricardo Canese as a result of the said violations of the Convention.

[FN162] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 187; Case of 19 Merchants, supra note 2, para. 219; and Case of Molina-Theissen. Reparations, supra note 2, para. 39.

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193. As the Court has indicated, Article 63(1) of the American Convention contains a norm of customary law that is one of the fundamental principles of contemporary international law on State responsibility. When an unlawful act occurs, which can be attributed to a State, this gives rise immediately to its international responsibility for violating the international norm, with the consequent obligation to cause the consequences of the violation to cease and to repair the damage caused. [FN163]

[FN163] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 188; Case of 19 Merchants, supra note 2, para. 220; and Case of Molina-Theissen. Reparations, supra note 2, para. 40.

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194. Whenever possible, reparation of the damage caused by the violation of an international obligation requires full restitution (restitutio in integrum), which consists in the re-establishment of the previous situation. If this is not possible, as in the instant case, the international Court must determine a series of measures to ensure that, in addition to guaranteeing respect for the violated rights, the consequences of the violations are remedied and compensation paid for the damage caused. [FN164] The responsible State may not invoke provisions of domestic law to modify or fail to comply with its obligation to repair, all aspects of which (scope, nature, methods and determination of the beneficiaries) are regulated by international law. [FN165]

[FN164] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 189; Case of 19 Merchants, supra note 2, para. 221; Case of Molina-Theissen. Reparations, supra note 2, para. 42.

[FN165] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 189; Case of 19 Merchants, supra note 2, para. 221; Case of Molina-Theissen. Reparations, supra note 2, para. 42.

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195. It has to be taken into consideration that, in many cases of human rights violations, such as the instant case, restitutio in integrum is not possible; therefore, bearing mind the nature of the juridical right affected, reparation is made, inter alia, according to international case law, by means of fair indemnity or pecuniary compensation. It is also necessary to add any positive measures the State must adopt to ensure that the harmful acts, such as those that occurred in this case, are not repeated. [FN166]

[FN166] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 189; Case of 19 Merchants, supra note 2, para. 222; Case of Molina-Theissen. Reparations, supra note 2, para. 42.

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196. As the term implies, reparations are measures intended to erase the effects of the violations committed. Their nature and amount depend on the damage caused at both the pecuniary and the non-pecuniary levels. Reparations are not meant to enrich or impoverish the victim or his next of kin. In this respect, the reparations established should be in relation to the violations that have previously been declared. [FN167]

[FN167] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 190; Case of 19 Merchants, supra note 2, para. 223; and Case of Herrera-Ulloa, supra note 15, para. 194.

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197. In accordance with the evidence gathered during the proceedings and in light of the foregoing criteria, the Court proceeds to consider the claims presented by the Commission and the representatives of the victim concerning reparations, in order to determine, first, who is the beneficiary of the reparations, and then to establish the measures of reparation to repair non-pecuniary damage, and also other forms of reparation, and costs and expenses.

198. The Court has determined that the facts of the instant case constitute a violation of Articles 13, 22(2), 22(3), 8(1), 8(2), 8(2)(f) and 9 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Ricardo Canese, who, as the victim of the said violations, has a right to the reparations established by the Court.

199. The Court observes that, after the application had been filed, the State, through its courts, delivered relevant decisions regarding the claims made by the Commission and the representatives of the victim. In this respect, the Court acknowledges the importance for the instant case of the ruling handed down by the Criminal Chamber of the Supreme Court of Justice of Paraguay on December 11, 2002, which annulled the sentences against Mr. Canese, and recognizes the pertinence of the decision issued by the said Criminal Chamber on August 22, 2002, deciding that, thereafter, Ricardo Canese did not need to request authorization to leave Paraguay, as he had had to since April 1994.

200. The Court takes into consideration these decisions taken by the State, as they make a positive contribution to settling this dispute. [FN168]

[FN168] Cf. Case of “Five Pensioners”, supra note 113, para. 176.

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A) PECUNIARY DAMAGE

201. In this section, the Court will determine the pecuniary damage, which presumes the loss of or harm to the income of the victim, the expenditure incurred as a result of the facts, and the pecuniary consequences that have a causal link to the facts of the case sub judice. [FN169]In this regard, it will establish a compensatory amount that seeks to repair the patrimonial consequences of the violations declared in this judgment. To decide on the claims for pecuniary damage, the Court will take into account the body of evidence in this case, its own case law, and the arguments of the parties.

[FN169] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 205; Case of 19 Merchants, supra note 2, para. 236; and Case of Molina-Theissen. Reparations, supra note 2, para. 55.

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202. Regarding the possible earnings that Mr. Canese failed to receive, the Court will not establish any compensation for this concept, because there are insufficient elements in the body of evidence to allow it to establish an approximate amount for the earnings Mr. Canese failed to receive, or the activities he failed to receive earnings for abroad.

203. In relation to the indirect damage alleged by the representatives, the Court will not establish any compensation for this concept, because they did not indicate any expenses incurred by Mr. Canese that had a causal link to the facts of the case, and that differed from those he assumed in relation to the procedures before the domestic judicial bodies (infra paras. 214 and 215); nor did they establish clearly the other losses of a pecuniary nature suffered by the victim, over and above the alleged loss of earnings.

B) NON-PECUNIARY DAMAGE

204. Non-pecuniary damage can include the suffering and hardship caused to the direct victim and to his next of kin, the harm of objects of value that are very significant to the individual, and also changes, of a non-pecuniary nature, in the living conditions of the victim or his family. Since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated in two ways in order to make integral reparation to the victims. First, by the payment of a sum of money or the granting of goods or services with a monetary value, that the Court decides by the reasonable exercise of judicial discretion and in terms of fairness. Second, by performing acts or implementing projects with public recognition or repercussion, such as broadcasting a message that officially condemns the human rights violations in question and makes a commitment to efforts designed to ensure that it does not happen again. Such acts have the effect of acknowledging the dignity of the victim. [FN170] The first aspect of reparation for non-pecuniary damage will be considered in this section and the second in section (C) of this chapter.

[FN170] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 211; Case of 19 Merchants, supra note 2, para. 244; and Case of Molina-Theissen. Reparations, supra note 2, para. 65.

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205. International case law has established repeatedly that the judgment constitutes, per se, a form of reparation. [FN171] However, owing to the circumstances of the instant case, and the consequences of a non-pecuniary nature that the proceedings and the criminal conviction had on the professional, personal and family life of the victim, and on the exercise of his rights to freedom of thought and expression and freedom of movement, the Court considers that, non-pecuniary damage should also be repaired, by the payment of compensation in fairness. [FN172]

[FN171] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 215; Case of 19 Merchants, supra note 2, para. 247; and Case of Molina-Theissen. Reparations, supra note 2, para. 66.

[FN172] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 215; Case of 19 Merchants, supra note 2, para. 247; and Case of Molina-Theissen. Reparations, supra note 2, para. 66.

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206. To establish compensation for non-pecuniary damage, the Court will take into account that the criminal proceedings filed against Mr. Canese, the criminal conviction imposed by the competent courts, and the restriction of his right to leave the country during almost eight years and four months affected his professional activities and had an inhibiting effect on his exercise of freedom of expression. It should be recalled that the violations of Mr. Canese's rights established in this judgment originated from the dissemination of statements he made as a candidate to the presidency of the Republic, in the context of an electoral campaign, when he referred to matters of public interest concerning another candidate.

207. Bearing in mind the different aspects of the non-pecuniary damage caused, the Court establishes, in fairness, the amount of US$35,000.00 (thirty-five thousand United States dollars) or the equivalent in Paraguayan currency, which the State must pay to Mr. Canese as compensation for non-pecuniary damage.

C) OTHER FORMS OF REPARATION (MEASURES OF SATISFACTION AND GUARANTEES OF NON-REPETITION)

208. In this section, the Court will begin to determine the measures of satisfaction that seek to repair the non-pecuniary damage, which are not of a pecuniary nature, but have public repercussions. [FN173]

[FN173] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 223; Case of 19 Merchants, supra note 2, para. 253; and Case of Molina-Theissen. Reparations, supra note 2, para. 77.

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209. As it has established in other case, as a measures of satisfaction, [FN174] the State must publish once in the Official Gazette and in another newspaper with national circulation, the chapter of this judgment on proven facts, without the corresponding footnotes, and its operative paragraphs.

[FN174] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 235; Case of Molina-Theissen, supra note 2, para. 86; and Case of Myrna Mack-Chang, supra note 15, para. 280.

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210. The Court takes into consideration the recent reforms that the State has made to its penal and procedural legislation, to adapt its domestic norms to the American Convention, which entered into force from 1998 to 2000, after the judgments convicting Mr. Canese had been delivered.

211. With regard to the other claims for reparations, the Court considers that this judgment constitutes per se a form of reparation.

D) COSTS AND EXPENSES

212. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparation embodied in Article 63(1) of the American Convention, because the measures taken by the victim in order to obtain justice, at the domestic and the international level, imply expenditure that must be compensated when the State's international responsibility has been declared in a judgment against it. Regarding reimbursement, the Court must prudently assess their scope, which includes the expenses incurred before the authorities of the domestic jurisdiction, and also those incurred during the proceedings before the Inter-American System, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of fairness and by evaluating the expenses indicated by the Inter-American Commission and by the representatives, providing the amount is reasonable. [FN175]

[FN175] Cf. Case of the Gómez-Paquiyauri brothers, supra note 2, para. 242; Case of 19 Merchants, supra note 2, para. 283; and Case of Molina-Theissen. Reparations, supra note 2, para. 95.

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213. With regard to recognition of costs and expenses, legal assistance to the victim starts before the domestic judicial bodies and continues in the successive instances of the Inter-American System for the protection of human rights; namely, in the proceedings before the Commission and before the Court. Consequently, for these purposes, the concept of costs includes those that correspond to access to justice at the national level, and those that refer to justice at the international level before the two instances: the Commission and the Court. [FN176]

[FN176] Cf. Case of 19 Merchants, supra note 2, para. 284; Case of Molina-Theissen. Reparations, supra note 2, para. 96; and Case of Maritza-Urrutia. Judgment of November 27, 2003. Series C No. 103, para. 183.

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214. In relation to the costs and expenses incurred before the domestic judicial bodies, the Court notes that, in decision and judgment No. 804 issued on April 27, 2004 (supra para. 69(50)), the Criminal Chamber of the Supreme Court of Justice of Paraguay ordered "that the complainants should pay the costs and expenses of the whole proceeding"; in other words, Mr. Canese does not have to pay these expenses. Hence, the Court does not consider it necessary to take into account expenses incurred in the domestic judicial sphere when determining the total amount that Paraguay must reimburse Mr. Canese for the concept of costs and expenses.

215. The Court takes into consideration that the victim incurred some expenditure in processing the case before the Inter-American Commission and that he acted through representatives before the Commission and the Court (supra para. 69(69)). Accordingly, it considers it fair to order the State to reimburse Ricardo Canese the total amount of $5,500.00 (five thousand five hundred United States dollars). Of this total amount, the sum of US$1,500.00 (one thousand five hundred United States dollars) corresponds to the expenses incurred by Mr. Canese and the sum of US$4,000.00 (four thousand United States dollars) corresponds to the costs and expenses that Mr. Canese must reimburse to his representatives for the expenses they assumed in the international proceedings before the Inter-American System for the protection of human rights.

E) METHOD OF COMPLIANCE

216. To comply with this judgment, the State shall pay the compensation (supra para. 207), and reimburse the costs and expenses (supra para. 215) and adopt the measure ordered in paragraph 209 of this judgment, within six months of its notification.

217. The payment intended to settle the costs and expenses arising from the measures taken by the victim and by his representatives in the international proceedings before the Inter-American System for the protection of human rights shall be made in favor of Ricardo Canese (supra para. 215), who shall make the corresponding payments as agreed between himself and his representatives.

218. The State shall comply with its pecuniary obligations by payment in United States dollars or the equivalent in Paraguayan currency, using the exchange rate between the two currencies in force on the market in New York, United States, the day before the payment to make the respective calculation.

219. If, due to causes attributable to the beneficiary of the compensation, it should not be possible for him to receive it within the established term of six months, the State shall deposit the amount in favor of the beneficiary in an account or a deposit certificate of a solvent Paraguayan banking institution, in United States dollars or the equivalent in Paraguayan currency, and in the most favorable financial conditions permitted by law and banking practice in Paraguay. If, after ten years, the compensation has not been claimed, the amount shall be returned to the State, with the interest earned.

220. The amounts for compensation for non-pecuniary damage and costs and expenses established in this judgment may not be encumbered, reduced or conditioned by any current or future fiscal measures. Consequently, they must be delivered to the beneficiary integrally, as established in this judgment.

221. If the State should delay payment, it must pay interest on the amount owed, corresponding to banking interest on arrears in Paraguay

222. In accordance with its consistent practice, the Court reserves the faculty inherent in its attributes to monitor full compliance with this judgment. The case shall be filed once the State

has fully complied with the provisions of this judgment. Within six months from notification of this judgment, Paraguay shall provide the Court with a first report on the measures taken to comply with the judgment

XIII. OPERATIVE PARAGRAPHS

223. Therefore,

THE COURT,

DECLARES:

Unanimously, that:

1. The State violated the right to freedom of thought and expression embodied in Article 13 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ricardo Nicolás Canese Krivoshein, in the terms of paragraphs 96 to 108 of this judgment.
2. The State violated the right to freedom of movement embodied in Article 22 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ricardo Nicolás Canese Krivoshein, in the terms of paragraphs 119 to 135 of this judgment.
3. The State violated the principle of reasonable time, the right to presumption of innocence and the right to defense embodied, respectively in Article 8(1), 8(2) and 8(2)(f) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ricardo Nicolás Canese Krivoshein, in the terms of paragraphs 139 to 167 of this judgment.
4. The State violated the principle of the retroactivity of the most favorable norm embodied in Article 9 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ricardo Nicolás Canese Krivoshein, in the terms of paragraphs 182 to 187 of this judgment.

AND ORDERS:

Unanimously, that:

5. This judgment constitutes per se a form of reparation, in the terms of its paragraphs 205 and 211.
6. The State shall pay the sum of US$35,000.00 (thirty-five thousand United States dollars) or the equivalent in Paraguayan currency, to compensate the non-pecuniary damage caused to Ricardo Nicolás Canese Krivoshein, in the terms of paragraphs 206 and 207 of this judgment.
7. The State shall pay Ricardo Nicolás Canese Krivoshein the total amount of US$5,500.00 (five thousand five hundred United States dollars), for costs and expenses. Of this total, the sum of US$1,500.00 (one thousand five hundred United States dollars) shall correspond to the expenses which Mr. Canese Krivoshein incurred before the Inter-American Commission, and the amount of US$4,000.00 (four thousand United States dollars) to the costs and expenses that Mr. Canese Krivoshein must reimburse to his representatives for the expenditure they assumed in the

international proceeding before the Inter-American System for the protection of human rights, in the terms of paragraphs 214, 215 and 217 of this judgment.

8. The State shall publish once in the Official Gazette and in another newspaper with national circulation the chapter on the proven facts in this judgment, without the corresponding footnotes, and its operative paragraphs, in the terms of paragraph 209 of this judgment.

9. The State shall comply with the measures of reparation and reimbursement of costs and expenses ordered in operative paragraphs 6, 7 and 8 of this judgment, within six months of its notification, in the terms of paragraph 216 of this judgment.

10. The State shall comply with its obligations of a pecuniary nature by payment in United States dollars or the equivalent in Paraguayan currency, using the exchange rate between the two currencies in force on the market in New York, United States, the day before the payment to make the respective calculation, in the terms of paragraph 218 of this judgment.

11. The payment for non-pecuniary damage, and costs and expenses established in this judgment may not be encumbered, reduced or conditioned by any current or future fiscal measures, in the terms of paragraph 220 of this judgment.

12. If the State should delay payment, it must pay interest on the amount owed, corresponding to banking interest on arrears in Paraguay.

13. If, due to causes attributable to the beneficiary of the compensation, it should not be possible for him to receive it within the established term of six months, the State shall deposit the amount in favor of the beneficiary in an account or a deposit certificate of a solvent Paraguayan banking institution, in United States dollars or the equivalent in Paraguayan currency, and in the most favorable financial conditions permitted by law and banking practice in Paraguay. If, after ten years, the compensation has not been claimed, the amount shall be returned to the State, with the interest earned.

14. It shall monitor full compliance with this judgment. The case shall be filed once the State has fully complied with the operative paragraphs of this judgment. Within six months from notification of this judgment, Paraguay shall provide the Court with a first report on the measures taken to comply with this judgment.

Judge ad hoc Camacho Paredes informed the Court of his separate concurring opinion, which accompanies this judgment.

Done, at San José, Costa Rica, on August 31, 2004, in Spanish and English, the Spanish text being authentic.

Sergio García-Ramírez
President

Alirio Abreu-Burelli
Oliver Jackman
Antônio A. Cançado Trindade
Manuel E. Ventura-Robles
Diego García-Sayán

Emilio Camacho-Paredes
Judge ad hoc

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

SEPARATE CONCURRING OPINION OF JUDGE AD HOC EMILIO CAMACHO PAREDES

I share the conclusions of this judgment, and consequently support it. However, the issues raised and the responsibilities determined have prompted some reflections that I feel obliged to set forth in this opinion.

1. Filing a criminal prosecution does not entail criminal conduct, because injuria and slander are classified in the penal legislation (Arts. 150 and 151, Act 1160) and (370-slander- and- 372–injuria- of the former Penal Code); in other words, the proceeding was initiated on the basis of legal provisions that were in force at the time, and are still in force in the current penal legislation. Consequently, the Paraguayan State cannot be blamed automatically for having initiated criminal proceedings. The initiation and the proceedings of the case must be examined carefully, as the Inter-American Court of Human Rights has done, together with the conduct of the judges who allowed serious procedural irregularities to be committed that affected the fundamental rights of the appellant, and which, in this specific case, show that an external determination could prevail over the proper administration of justice.

2. Personal freedom and, particularly, freedom of movement (Art. 41 of the Constitution) and Article 22 of the Convention were seriously restricted by preventing him [Ricardo Canese] from leaving the country, despite the permission he requested repeatedly. The attitude of the judicial agents who repeatedly denied him permission to leave the country was illegal and unconstitutional, openly arbitrary and unjustifiable, in the case of a person who had convincingly demonstrated his domicile in the country, and that he was airing a matter of public interest. Moreover, the case related to a candidate to the presidency of the country, a municipal councilor, exercising his profession and with all his family residing in the country.

The judge of first instance did not allow the case to be opened to evidence! The judge did not allow the proposed witnesses to testify. Furthermore, the complainants were not cited and, even so, the proceeding went forward.

3. The following are the most relevant judicial decisions for an adequate understanding of the case:

In final judgment No. 17 of March 22, 1994, the judge of first instance condemned him [Canese] to four months' imprisonment and a fine of 14.950.000 Gs.; in decision and judgment No. 18 of November 4, 1997, the Third Chamber of the Court of Criminal Appeal modified the sentence and condemned him to two months' imprisonment and a fine of 2.969.000 Gs. for slander, absolving him of injuria.-
In decision and judgment No. 179-May 2, 2001- the Supreme Court of Justice, confirmed the conviction imposed by the Court of Appeal.-
In decision and judgment No. 1362 of December 11, 2002, the Supreme Court of Justice. Admitted the appeal for review and annulled judicial decisions: S.D: 17-22-III-94 of the First Criminal Court of First Instance, and decision and judgment No. 18 of November 4, 1997. It absolved Canese of guilt and pardoned him.
Decision and judgment No. 804 of April 27, 2004, of the Supreme Court of Justice admitted the petition for clarification filed by Mr. Canese against decision and judgment No. 1362 of December 11, 2002, and ordered the complainant to pay the costs of the entire proceedings.
The Supreme Court of Justice considered that the plaintiff had failed to expedite the action (six months) – interlocutory order No. 1645; this constitutes a reluctance to use the supervisory powers (facultades ordenatorias) recognized in procedural legislation and, basically, the obligation to apply the Constitution over and above any procedural obstacle or tactic, at least in cases such as this one, in which the passage of time made the arbitrariness to which Mr. Canese was subjected more evident every day (see Sapena, Josefina. Constitutional case law. Arbitrariness [FN1]). In this respect, the Inter-American Court has firmly established that judges "who are in charge of directing the proceeding, have the duty to direct and channel the judicial proceeding with the aim of not sacrificing justice and due legal process to formalism and impunity," [FN2] which is what evidently happened in the instant case, directly affecting Mr. Canese's constitutional rights.

[FN1] Sapena, Josefina. Constitutional case law
[FN2] Case of Myrna Mack-Chang, para. 211.
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4. In interlocutory order No. 409 of April 29, 1994, the First Judge of First Instance for Civil Affairs prevented his departure from the country. The request for authorization to leave the country occupies a special chapter and this is how the Inter-American Court considered it, because it was obviously not a tactic for absconding. The judge, or the judges who refused the requests to leave the country, and those who allowed this to continue over such a long period of time, evidently violated constitutional guarantees and the rights established in the Convention. Clearly, responsibilities should be disaggregated and determined in due course, because the responsibility of the judge who denied permission differs from that of the judge who allowed the restriction to be maintained for such a long time, and from that of the judge who intervened for a short time.

5. Freedom of the press and public interest. The debate occurred on a matter of public interest, an aspect that was obviously not considered by the judges involved in the case. This is the only way to understand the extreme severity in the criteria adopted, which converted a simple trial for slander and injuria, at least in the sphere of precautionary measures, into a typical case of

judicial arbitrariness. More than eight years without any judicial instance using its supervisory powers (facultades ordenatorias) to guide the proceeding back to its normal channels.

The complainants were private individuals, not the Paraguayan State. The case involved a conflict between individuals on matters of evident public interest. The partners of CONEMPA were involved in matters of public interest and, consequently, the primacy of this over private interests must be acknowledged, as expressly established in Article 128 of the Paraguayan Constitution.-

In this case, the criminal conviction can be seen as an indirect limitation of freedom of expression, which violated Article 13 of the American Convention.-

6. Prohibition to leave the country and reasonable duration. Eight years elapsed from the final decision of first instance, until a final judgment was handed down. The arguments indicated in the judgment show that there existed a clear restriction to leave the country during almost eight years; this constituted a flagrant and arbitrary violation of the presumption of innocence (Art. 17(1)), of individual liberty and security (Art. 9 of the Constitution) and the right to a defense (Art. 16 of the Constitution); all these rights recognized in Article 8(1) and 8(2) of the Convention. He [Canese] received a completely different treatment to other defendants, who, for the most part, enjoy procedural guarantees; also his right to equality was disregarded (Arts. 46 and 47 of the Constitution). On this point, the attitude of the judicial agents involved is striking, because, systematically and repeatedly they denied his requests for permission to leave the country, reaching the inadmissible extreme of maintaining a precautionary measure for more time that the maximum sanction possible; in these proceedings, the latter was only 18 months at first and then nothing – when the Court of Appeal revoked the sanction of imprisonment, and the Supreme Court of Justice annulled the whole proceeding.

7. The judges did not apply the Constitution or the iura novit curia principle, as they should have done; they should have rectified the proceedings and not conformed to what the defense did or did not do. That argument is inadmissible when fundamental rights are at stake, which even involved the responsibility of the Paraguayan State, that was a party jointly and severally as established in article 106 of the Constitution. Moreover, the decisions of second and third instance did not consider the conduct of the judges who permitted a precautionary measure to continue for many years.

8. In our opinion, the precautionary measure, which was arbitrary, illegal and irrational, was the measure that caused most harm. The CIVIL PROCEEDING WAS NOT EXHAUSTED; consequently, in principle, compensation for non-pecuniary damage could not be established coercively, because it would have established a jurisdiction parallel to the ordinary jurisdiction, creating a supplementary judiciary, in violation of Article 137 of the Constitution, which establishes the priorities within the legal system. This could even have led to an erroneous use of international human rights treaties. International treaties and conventions are ranked below the Constitution and, it is especially evident that, in the instant case, it was not a matter of denying a right, but of indicating that the civil action for compensation should have been filed, and that the Paraguayan State is able to guarantee this type of trial, as shown by the case of Napoleón Ortigoza, Hilario Orellado et al., [FN3] where the Paraguayan State was condemned to pay many

millions of guaranis for compensation and non-pecuniary damage, as a result of civil actions following the annulment of the judgment by the Supreme Court of Justice. The latter annulled the judgment which had condemned Ortigoza to more than twenty years' imprisonment (and somewhat less to the other defendants) during the dictatorship.

[FN3] This is established in a final judgment of the Supreme Court of Justice.

Nevertheless, it should be indicated that the extended procedure followed by the parties and, particularly the authentic anguish suffered by the appellant, victim of an inadmissible precautionary measure, with the consequent damage, requires this Court to rule on the claim for compensation. As the chapter of this judgment on considerations establishes, "the State's international responsibility arises immediately from an internationally wrongful act, although it can only be declared after the State has had the opportunity to repair the act using its own mechanisms."

The Court has reiterated in its judgments that "it is a principle of international law that any violation of an international obligation that has caused damage gives rise to the obligation to remedy it adequately." [FN4] Hence, in application of the provisions of Article 63(1) of the American Convention, if the Court finds the State has violated a right or freedom protected by the Convention, "it shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated [...and,] if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party." In the instant case, in accordance with this norm, the Court ordered the reparation corresponding to Mr. Canese for the damage caused by the violations of the Convention declared in the judgment. It is the State's obligation to comply with the measures of reparation ordered by the Inter-American Court.

[FN4] Case of the Gómez-Paquiyauri brothers. Judgment of July 8, 2004. Series C No. 110, para. 187; Case of 19 Merchants. Judgment of July 5, 2004. Series C No.109, para. 219; and Case of Molina-Theissen case. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of July 3, 2004. Series C No. 108, para. 39.

The appellant cannot be obliged to reinitiate the whole judicial procedure claiming compensation; nor can the domestic constitutional legislation of the respondent country be disregarded, or the clear requirement of exhaustion of the ordinary remedies that have been created. The Court has established a case law whereby, having verified the existence of a damage in the penal jurisdiction with the corresponding sanction, it can require the respondent State to reach an agreement on compensation with the plaintiff (see pp. 501 to 750 – Faúndez Ledesma). Moreover, it should not be forgotten that the fundamental purpose of the appellant has always been to demonstrate the arbitrariness committed by the State and its judicial agents, particularly by maintaining almost indefinitely a restrictive precautionary measure that exceeded any legal or rational consideration.

We have to observe that there was arbitrariness in the contested judicial decisions. It is inadmissible to punish an individual with a precautionary measure for years; even longer that the possible maximum sanction that existed. Also, the State exposed itself to incalculable patrimonial damage, deriving from the obligation to provide reparation that arises from the unlawful conduct of the judges involved in the case. This type of conduct by officials cannot be allowed under the rule of law.

The judges, who are in charge of directing the proceeding, always have the duty to ensure proper compliance with the law. This has been established by the Inter-American Court: “In light of the above, the Court deems that the judges, who are in charge of directing the proceeding, have the duty to direct and channel the judicial proceeding with the aim of not sacrificing justice and due process to formalism and impunity.” [FN5]

This means that, necessarily the Inter-American Court must consider the functioning of the respondent State’s domestic judicial organs, as established in the Juan Humberto Sánchez case: “In order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, the Court may have to examine the respective domestic proceedings,” [FN6] so as to establish whether all the procedures were in accordance with the international provisions to which the respondent State is a signatory.

Articles 15 and 18 of the Paraguayan Code of Civil Procedure establish the supervisory powers (facultades ordenatorias) of the judges and the obligation to apply the Constitution in the first place. Failure to comply with this can even lead to a sanction, as established in Act 1084, pursuant to the principle of the priority of the laws established in article 137 of the Constitution

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[FN5] Case of Myrna Mack-Chang, para. 211.
[FN6] ICourtHR. Case of Juan Humberto Sánchez, para. 120, Judgment of June 7, 2003.

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9. The domestic process is not exhausted as regards reparation for non-pecuniary and pecuniary damage; moreover, no claim has even been filed; nevertheless, for the reasons set out above, it is necessary to stipulate the amount.

The case records clearly show that Article 8 of the American Convention on Human Rights (Right to a Fair Trial) has been violated, by arbitrarily maintaining a restrictive measure without valid legal grounds. This arbitrariness is also clear from the sentences delivered in the case, all of them much shorter than the duration of the restrictive measures. Hence, the right established in Article 10 of the American Convention materializes.

Furthermore, and we repeat this, maintaining a precautionary measures for years is not in keeping with any of the principles and guarantees at stake: due process of law (Articles 16 and 17 of the Constitution), presumption of innocence (Article 17(1)), reasonableness of judicial decisions (Article 8 of the Convention) and Article 46 and ff. of the Inter-American Convention. According to the principles established by the Inter-American Court for determining the

reasonableness of the duration of a proceeding: [FN7] a) complexity of the case, b) procedural activity of the interested party, and c) conduct of the judicial authorities, it is not possible to consider as valid a precautionary measure that was in force for over eight years and proceedings that continued even longer, to then reach a judicial decision annulling all the previous proceedings.

In some case, a prolonged delay can even per se constitute a violation of judicial guarantees; this should be indicated by the Inter-American Court and rectified by the Paraguayan State. Finally, we should mention that the Paraguayan State is making efforts to improve the exercise of human rights and to achieve their effective judicial protection, and it has been the same Supreme Court of Justice that has issued corrective decisions in this case, thus placing Paraguay on the right path towards respect for human rights.

[FN7] Case of Hilaire, Constantine and Benjamin. Judgment of June 21, 2002.

Emilio Camacho-Paredes
Judge ad hoc

Pablo Saavedra-Alessandri
Secretary