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**REPORT No. 58/14**  
**PETITION 644-07**  
REPORT ON ADMISSIBILITY

DUVI ALFREDO TEIXIDOR VINJOY  
URUGUAY

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Uruguay. July 24, 2014.

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ADMISSIBILITY

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**I. SUMMARY**

1. On December 27, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received—by post—a petition dated December 16 2004, lodged by Alejandro Nissen Pessolani (hereinafter “the petitioner” or “the alleged victim”) claiming that the Republic of Paraguay (hereinafter “the State” or “Paraguay”) bore international responsibility with regard to two proceedings against the petitioner before the Jury of Judgment of Magistrates (hereinafter “JEM”), allegedly in violation of the rights to a fair trial and judicial protection, brought for the purpose of removing him from his post as a Criminal Prosecutor.

2. The petitioner alleges possible violation of the rights to judicial independence, compensation, and judicial protection, enshrined in Articles 8, 10, and 25 of the American Convention on Human Rights (hereinafter “the American Convention”), as well as of the obligation to respect and ensure the rights envisaged in Article 1.1 thereof. The State claims, on the one hand, that the judicial process respected the rights to a fair trial and judicial protection and that the IACHR cannot be used as a final judicial instance and, on the other hand, that there was a failure to exhaust domestic remedies with respect to the alleged compensation.

3. After examining the positions of the parties and compliance with the requirements established in Articles 46 and 47 of the American Convention, the Commission decided to declare the petition admissible for purposes of examining the alleged violation of Articles 2, 8, 9, and 25 of the American Convention, in relation to Article 1.1 thereof, and inadmissible with regard to Article 10. Likewise, it decided to notify the parties of this decision and to publish and include it in its Annual Report to the OAS General Assembly.

**II. PROCESSING BY THE COMMISSION**

4. The petition was registered as number 1415-04. On May 31, 2006, the pertinent parts thereof were transmitted to the State for its observations. The petitioner presented his observations on November 6, 2006; March 27, April 19, June 5, July 31, September 10 and 20, and November 1, 2007; March 26, April 8, November 25, and December 8, 2008; September 30, 2009; and July 23, 2010, and these were forwarded to the State.

5. The State submitted its observations on September 19, October 12, and November 30, 2006; July 9, November 15, and December 27, 2007; and January 15, 2008, and these were forwarded to the petitioner. In this last note, the State requested a hearing, which the IACHR did not grant. Likewise, the State presented its observations on March 11, 2009, which were transmitted to the petitioner.

6. On August 5 and 31, 2010, the petitioner expressed an interest in seeking a friendly settlement. On August 5, 2011, a working meeting was held between the parties with respect to the possible friendly settlement, through the good offices of the IACHR.

7. The petitioner submitted its observations on August 8, 2011, which were transmitted to the State. On August 29, 2011, the State indicated that it could not reach an interagency agreement on the friendly settlement and it therefore asked the IACHR to continue moving forward with the petition.

8. The petitioner submitted his observations on September 22, 2011; February 6, April 3, June 25, and May 28, 2012; and January 28, 2014, which were forwarded to the State. It bears mentioning that the petitioner has transmitted notes each time requesting prompt attention to his petition.

### **III. POSITIONS OF THE PARTIES**

#### **A. Position of the petitioner**

9. The petitioner states that in 2001, in his capacity as Prosecutor for Criminal Unit No. 10, he began to investigate a series of acts of corruption in both the public and private sectors, trafficking in stolen vehicles, organized crime, criminal association, contraband, tax evasion, and money laundering in respect of the political sector and entrepreneurs with influence in the government. He indicates that among those being investigated were the son of a former President of the Republic and Cristian Paolo Ortiz, also known as "Planta Ortiz," as well as the Dures, a married couple. He alleges that "in order to remove him from the Public Prosecutor's Office, which was investigating them," two proceedings were instituted against him before the JEM, the body responsible for prosecuting and removing persons who work as prosecutors in the Public Prosecutor's Office.

10. He argues that the individuals he was investigating had asked the Office of the Prosecutor General of the State (hereinafter "FGE") as early as April 2001 to strip him of his prosecutor's post. He states that the FGE had warned him that he should be careful and "that he should not break the rules of the game," that it would let him know when a case was to be opened against him, "that a door was opening for them to destroy [him] and that they could take [him] to the Jury." He assumes that given the inability of the FGE to prevent those investigations, which were not handled by the Office of the Prosecutor General of the State, from being conducted, the first formal complaint had to be brought against him, as provided for in Laws 1.084 and 1.752, which govern proceedings before the JEM.

11. He points out that, on March 12, 2002, Cristian Paolo Ortiz lodged that first complaint against him, for poor performance of his duties. He alleges that the complaint did not meet the requirements under law since the complainant had provided as proof of his economic solvency a property that had been seized by order of the court in the investigation against him, which means that the necessary bond had not been posted. He states that he complained to the JEM that Mr. Ortiz's complaint "was simply intended to remove him from that case and from [his] prosecutor's post so that emphasis would no longer be placed on investigations of that type," but the JEM decided to initiate its processing of the complaint, on May 22, 2002.

12. He claims that said proceeding violated Article 8 of the American Convention. In this connection, he maintains that even before the investigation against him was launched, the President of the JEM, without the vote of the other members of the Jury, first requested and then called on the petitioners to turn over the file of the investigation on the supposedly illegal origin of the automobile owned by the Office of the President of the Republic. He contends that he challenged the President and the other members of the JEM, but since it is the JEM itself that rules on the challenge, it was rejected. He claims that he was also suspended from his functions by the President of the JEM, who, along with other JEM magistrates, was also being investigated by the petitioner for crimes of corruption.

13. He alleges that had access to the draft of a final judgment against him that had been drawn up by the Public Prosecutor's Office, allegedly by order of the FGE. He therefore made it available to the press and, on October 30, 2002, submitted it to a notary public for notarization.

14. He claims that the JEM issued judgment No. 2/03 in his case on April 7, 2003, seven months after expiration of the 180-day period provided for in Law 1084, the same day on which the petitioner made a formal accusation and a request for parliamentary impeachment of the President of the JEM in the investigation of trafficking in vehicles. He maintains that the JEM decided to remove him from his post. Likewise, he alleges that the JEM convicted him for acts other than those denounced and that they were not discussed in the evidentiary hearing, in violation of the principle of consistency and due process guarantees. He indicates that he filed a petition for clarification, which was rejected. He points out that, in view of that

rejection, on April 22, 2003, he brought an action of unconstitutionality with the Supreme Court of Justice (hereinafter "CSJ") to have the JEM's judgment suspended.

15. He states that although the judgment against him was not final, on April 28, 2003, an Interim Prosecutor for Criminal Unit No. 10 was appointed, who withdrew the investigations he had been handling. He claims that the process took place without his participation or that of the staff members of the unit, which was permanently dismantled. He alleges that the unit was searched by about 12 staff members of the Prosecutor General's Office who went off with all the files. He indicates that he appealed the decision on the appointment, in order to continue the investigations, but that he did not receive any response from the FGE to this or other requests.

16. He indicates that on May 16, 2003, the CSJ issued Interlocutory Decree No. 552, deciding to suspend the effects of the JEM's judgment until the Court issued its ruling on the action of unconstitutionality. The petitioner states that on the same day he resumed his functions as a prosecutor.

17. He points out that the Dures, who were being investigated by the petitioner for wrongful acts against the public treasury, lodged the second complaint against him, in April 2003, for poor performance owing to a clear-cut bias. He states that on May 16, 2003, a few hours after having resumed his functions, the JEM decided to grant the petition and suspend him. He alleges that the JEM granted the petition in view of the suspension of the effects of judgment No. 2/03. In this regard, he claims that this decision violated the principle of the presumption of innocence and of due process, since it prevented him from taking part in the proceeding.

18. He points out that in response to the JEM's request to suspend him in this second case, on May 20, 2003, the CSJ decided that the petitioner was to be suspended without pay until the final ruling was made. He maintains that "the pressure of the press and the indignation of the citizenry were immediate." Consequently, the CSJ retracted its decision in part and ordered that he be paid 50 percent of his salary. He indicates that this situation affected his family for a year, until a nine-member jury acquitted him though final judgment No. 11-04 of April 29, 2004. He alleges that he filed a petition for clarification so that the JEM would rule on costs and that, on May 13, 2004, it decided that "each party should bear its own costs."

19. He states that the action of unconstitutionality against Judgment No. 2/03 of the JEM was rejected on June 16, 2004, through Agreement and Judgment No. 915 of the CSJ. He claims that the only action that can be brought against a JEM judgment under domestic law is an action of unconstitutionality; therefore he considers that domestic remedies have been exhausted.

20. He maintains that individuals he investigated for corruption filed two other petitions against him for compensation for damages, in which the Civil and Commercial Courts of First Instance rejected the objections raised by the petitioner. He claims the country was confronted with "an acute institutional crisis that allows the alleged matters to take place."

21. The petitioner argues that in the second proceeding (initiated by the Dures) his salary was withheld in the institution by order of the FGE, and therefore that on October 20, 2006, he asked the Office of the Public Prosecutor for the earnings that had been withheld despite his acquittal, and that he did not receive any response. He maintains that the State has violated the right of compensation for a miscarriage of justice envisaged in Article 10 of the American Convention. In response to the State's argument that no administrative proceeding or demand for compensation for damages had been initiated (see III B *infra*), he replied that a verdict acquitting him had been reached and that said response by the State shows its "obstructionist spirit ... in failing to recognize the error it has committed."

22. In addition, the petitioner complained that the report drawn up by the Human Rights Office of the Public Prosecutor's Office and transmitted to the Human Rights Office of the Ministry of Foreign Affairs

through Note 116 of September 18, 2006,<sup>1</sup> was replaced by another prepared by the Office of the Prosecutor General of the Nation, which was the response the State submitted to the IACHR. He denounced a double ruling on the part of the State and the practice of irregularities. He asks the IACHR to reject any other submission from the State that does not come from the Human Rights Office of the Public Prosecutor's Office.

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

23. The State indicates that on March 12, 2002, Cristian Paolo Ortiz lodged a formal charge and requested prosecution of the petitioner in his capacity as Criminal Prosecutor, on the grounds established in Article 14 of Law No. 1084/97 for poor performance of his duties, specifically as noted in subparagraphs b, g, m, and p.<sup>2</sup>

24. It points out that on March 18, 2002, the JEM deemed the complainant notified in the stated capacity, added the legal instruments presented, deemed the petitioner's prosecution instituted, and transmitted the formal charge to the accused, summoning him to reply within the statutory time frame.

25. It indicates that on April 16, 2002, the petitioner responded to the formal charge and, on May 22, 2002, the Jury decided to consider it replied to, added the legal documents presented, and since some disputed facts had to be proven, ordered the opening of the evidentiary stage. It adds that it admitted the documentary evidence in the form of reports and testimony offered by the complainant party as well as evidence in the form of legal instruments, testimony, confessions, and reports offered by the defense.

26. It points out that a public oral hearing was held on August 13, 2002. It indicates that on August 29, 2002, the JEM added the transcript of the evidentiary hearing, which was transmitted to the parties so that they might present their respective arguments—conclusions that were presented and added on September 10 of the same year, and ordered the closure of proceedings for judgment.

27. It contends that on April 7, 2003, the JEM decided to remove the petitioner from his position as Criminal Prosecutor, for poor performance of his duties, in accordance with subparagraphs b, g, and n<sup>3</sup> of Article 14 of Law 1084/97, communicating the decision to the Chambers of the National Congress, the CSJ, and the Council of Magistrates. It indicates that the JEM considered that Prosecutor Nissen had told the complainant who had been under investigation that "in the event he does not cooperate there is the possibility of a 10-year sentence," that he allegedly "provided information and made comments and declarations to the press and third parties that went beyond the sensitive parameters of criminal investigation in its preliminary stage," and that he allegedly illegally ordered "an expert from the Public Prosecutor's Office to do his work in the context of a proceeding" conducted before the JEM, which would be expert involvement outside of a criminal trial or proceeding for which he was responsible.

<sup>1</sup> The IACHR contacted the petitioner through a note dated October 6, 2008, and informed him that said report was not in the IACHR file.

<sup>2</sup> Article 14.-The following constitutes poor performance of duties warranting the removal from office of judicial magistrates, prosecutors, public prosecutors, and justices of the peace: [...];

b) repeated and serious noncompliance with the obligations established in the National Constitution, Procedural Codes, and other laws on the exercise of their duties; [...];

g) demonstration of a clear-cut bias or ignorance of the law in trials, manifested through repeated acts; [...];

m) participation in public demonstrations when such acts might seriously and gravely jeopardize their independence or impartiality, as well as the use of party emblems and insignia; [...];

p) receipt of gifts or acceptance of promises or other benefits, directly or indirectly, from persons who in any way may play a role or have an interest in the proceedings they are handling; [...].

<sup>3</sup>Article 14.-The following constitutes poor performance of duties warranting the removal from office of judicial magistrates, prosecutors, public prosecutors, and justices of the peace:

n) give information or issue declarations or comments to third parties about the trials they are handling, when they might affect their processing, or affect the honor or reputation or the presumption of innocence established in the National Constitution; or sustain polemics about ongoing trials;

28. It indicates that on April 10, 2003, the petitioner filed a petition for clarification and reversal of the decision of April 7, 2003, asking that the court “in the exercise of its prerogative, declare null and void the communications transmitted in relation to said resolution.”

29. It maintains that since the preconditions required for allowing said appeal did not exist, given that the complainant was requesting clarifications of matters that were clearly expressed in Article 31 of Law No. 1084/97,<sup>4</sup> of April 22, 2003, the JEM decided not to grant the petitions for clarification and reversal.

30. It points out the petitioner brought an action of unconstitutionality against said decision, which was heard on April 25 of the same year and rejected on June 16, 2004, by the CSJ.

31. It claims that the petitioner was accused of poor performance of his duties by the body that judges the conduct of magistrates and prosecutors and that “each and every one of the appropriate procedural stages” was implemented during that proceeding. It argues that the petitioner used “the procedural devices provided by law to appeal each and every one of the decisions” of the JEM that were unfavorable to him, and therefore that the rules of due process had been complied with. The State argues that the fact that the judgment went against the petitioner does not mean that the decision was arbitrary or illegal. It adds that the vote of the CSJ sitting *en banc* (nine members) was unanimous.

32. In response to the petitioner’s allegation regarding non-payment of lost earnings given his acquittal in the second proceeding (see III A *supra*), the State replies that domestic legislation provides the administrative litigation process for him to request reversal of an administrative decision he considers detrimental to his rights. It indicates that payment of said salaries depends on an administrative decision that so provides. It alleges that the petitioner can also initiate of process for compensation for damages.

33. Likewise, the State disputes the petitioner’s allegation regarding the political situation and institutional crisis in the country as the supposed cause of the decisions rendered by the Civil and Commercial Courts of First Instance to reject the preliminary observations presented by the petitioner in the proceedings for compensation for the damages against him (see III A *supra*).

34. In addition, as concerns the petitioner’s allegation concerning a double ruling on the part of the State (see III A *supra*), it responds that the State’s official observations were set out in the Report of the FGE that the Public Prosecutor’s Office presented to the IACHR.

35. The State contends that the petitioner cannot use the IACHR as a judicial instance of last resort to try to reverse court decisions in proceedings in which he participated fully—decisions that are final and enforceable.

#### IV. ANALYSIS

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

36. The petitioner is entitled to lodge a petition with the Commission under Article 44 of the American Convention and Article 23 of its Rules of Procedure. The petition identifies as the alleged victim an individual for whom the State has pledged to respect and ensure the rights recognized in the American

<sup>4</sup> Article 31.- The Jury shall render a final judgment within a period of 30 days from the time the procedural decisions are enforceable and within 180 days from the start of the proceeding.

The Jury’s decision may consist of only removal or acquittal of the accused.

In the case of removal, said decision shall be communicated to the Chambers of Congress, the Supreme Court of Justice, and the Council of Magistrates.

The Jury shall decide on the costs of the proceeding.



Convention since August 24, 1989, the date on which Paraguay deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

37. The Commission is competent *ratione loci* to consider the petition, inasmuch as the facts therein are alleged to have taken place in a State party to the American Convention. The Commission is also competent *ratione temporis* to examine this petition under the American Convention since the facts occurred following ratification of the American Convention. Lastly, the Commission is competent *ratione materiae* because the petition alleges possible violations of rights protected by the American Convention.

## **B. Admissibility requirements**

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

38. Article 46.1.a of the American Convention requires the prior exhaustion of domestic remedies in keeping with generally recognized principles of international law as a requirement for admitting claims alleging violations of the American Convention. For its part, Article 46.2 of the Convention provides that the prior exhaustion of domestic remedies requirement shall not be applicable when (i) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (ii) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

39. The State has not presented arguments regarding the exhaustion of domestic remedies with regard to the proceeding on removal of the prosecutor from his post and argued that the administrative litigation process and the claim for damages for the alleged lost earnings have not been exhausted. For his part, the petitioner contends that domestic remedies were exhausted with the CSJ's rejection on June 16, 2004, of the action of unconstitutionality. As concerns lost earnings, the petitioner maintains that the judgment of April 29, 2004, acquitted him in the second proceeding, that a judicial error was made, and that those earnings were retained by order of the FGE.

40. The Commission observes that the subject of the present petition is the alleged prosecution of the alleged victim for the purpose of removing him from his post as Criminal Prosecutor through proceedings that allegedly violate the right to a fair trial and deprive him of effective judicial protection, with a view to hindering his work as a prosecutor.

41. The Commission notes that as a result of the complaint lodged against the petitioner by Paolo Ortiz on April 7, 2003, the JEM, through judgment No. 2/03, allegedly decided to remove the petitioner from his post. On April 10, 2003, the petitioner allegedly filed a petition for clarification and for reversal of the decision of the JEM, which was presumably denied by the JEM on April 22, 2003. The petitioner allegedly lodged an action of unconstitutionality against the JEM's ruling, which was rejected by the CSJ on June 16, 2004.

42. Moreover, the complaint lodged against the petitioner by the Dures was allegedly opened for processing on May 16, 2003. On May 20, 2003, the CSJ decided to suspend the petitioner, without pay, until the JEM made its final decision. The CSJ allegedly revoked its decision in part and ordered payment of 50 percent of the petitioner's salary. On April 29, 2004, the petitioner was allegedly acquitted by the JEM. The petitioner presumably filed a petition for clarification regarding the absence of a ruling on costs and, on May 13, 2004, the JEM allegedly decided "that each party should bear its own costs." In addition, on October 20, 2006, the petitioner presumably petitioned the Public Prosecutor's Office for his lost earnings, but did not receive a response.

43. The Commission notes that the first proceeding ended with the rejection of the action of unconstitutionality against judgment No.2/03, through a CSJ ruling of June 16, 2004,<sup>5</sup> whereby the remedies were allegedly exhausted, and that in the second proceeding, the alleged victim was allegedly acquitted on April 29, 2004, and the petition for clarification of costs rejected on May 13, 2004. The Commission considers therefore that the petition meets the requirement set in Article 46.1.a of the American Convention.

## **2. Time period for lodging the petition**

44. The American Convention provides that for a petition to be deemed admissible by the Commission, it must be lodged within a period of six months from the date on which the alleged victim is notified of the final judgment. In the case at hand, the petitioner alleges that the two proceedings against him were part of an effort to remove him from his post.

45. The Commission notes that, in view of the sequence of decisions, the ruling on the action of unconstitutionality was allegedly issued on June 16, 2004, and the petition, dated December 16, 2004, sent by post, was received by the IACHR on December 27, 2004. In this connection, as indicated in the Rules of Procedure, the six-month time period is calculated from the date of notification of the ruling of June 16, 2004, issued by the CSJ. Although the Commission does not know the date of notification, even taking into account the date of issuance of the aforementioned ruling and in keeping with IACHR practice in the matter,<sup>6</sup> it is reasonable to presume that the petition was lodged in a timely manner, considering the days that elapsed while the petition was being sent through the mails. Consequently, the Commission considers that the instant petition meets the requirement established in Article 46.1.b of the American Convention.<sup>7</sup>

## **3. Duplication of international proceedings**

46. The case file does not contain any information that would suggest that the present matter is pending in another international proceeding for settlement or that it has been previously decided on by the Inter-American Commission. Thus, the IACHR concludes that the exceptions provided in Articles 46.1.d and 47.d of the Convention are not applicable.

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

47. The Commission does not consider it appropriate at this stage of the procedure to determine whether or not the alleged violations occurred to the detriment of the alleged victims. For the purposes of admissibility, the IACHR need only, at this point in time, decide whether the allegations state facts which, if proven, would tend to establish violations of the American Convention, as provided in Article 47.b thereof, and whether the petition is “manifestly groundless” or “obviously out of order,” in accordance with paragraph (c) of the same article.

48. The standard for assessing these matters is different from the one required for deciding on the merits of the complaint. The IACHR must undertake a *prima facie* evaluation to determine whether the complaint demonstrates an apparent or potential violation of a right protected by the American Convention but not whether such a violation occurred.<sup>8</sup> In the current stage, a summary review that does not prejudice or advance an opinion on the substance must be conducted. By establishing both an admissibility stage and a merits stage, the Commission’s own Rules of Procedure reflect this distinction between the evaluation

<sup>5</sup> Law 1084/97, which governs the procedure for prosecution and removal of Magistrates. Article 33. In addition to an appeal for reversal and clarification against the final verdict of the Jury, an action of unconstitutionality may also be brought, which shall be decided on by the Court sitting *en banc*.

<sup>6</sup> See: IACHR, Report No. 69/08, Petition 681-00, Guillermo Patricio Lynn, Argentina, Admissibility, October 16, 2008, pars. 44-46; Report No. 93/03, Petition 337-07, Samanta Nunes da Silva, Brazil, Admissibility, September 7, 2009, pars. 43-44; Report No. 79/08, Petition 95-01, Marcos Alejandro Martín, Argentina, Admissibility, October 17, 2008, pars. 38-39.

<sup>7</sup> IACHR, Report No. 115/12, Giovanna Janett Vidal Vargas, Chile, Admissibility, November 13, 2012, par. 42.

<sup>8</sup> See IACHR, Report No. 128/01, Case 12.367, *Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of the Daily Newspaper “La Nación”* (Costa Rica), December 3, 2001, par. 50; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, par. 43; Report No. 32/07, Petition 429-05, *Juan Patricio Marileo Saravia et al.* (Chile), April 23, 2007, par. 54.



required for the Commission to declare a petition admissible and the one required to establish the existence of a violation attributable to the State.<sup>9</sup>

49. Neither the American Convention nor the Rules of Procedure of the IACHR require petitioners to identify the specific rights allegedly violated by the State in matters submitted to the Commission, even though the petitioners may do so. However, it is the duty of the Commission, in following the system of legal precedents, to determine in its admissibility reports which provision of relevant inter-American instruments is applicable and could be deemed to have been violated, should the alleged facts be proven by means of sufficient evidence.

50. In the instant petition, a series of arguments have been presented on the alleged violation of the rights to a fair trial and to judicial protection enshrined in Articles 8 and 25 of the American Convention. For its part, the State alleges that the fact that the ruling went against the petitioner does not mean that the decision was arbitrary or unlawful.

51. In view of the elements of fact and of law presented by the parties and the nature of the matter put to it for consideration, the IACHR is of the view that the petitioner's allegations regarding the proceedings allegedly instituted against him to remove him from his position as Prosecutor, presumably in violation of the rights to a fair trial and to judicial protection, could tend to establish violations of Articles 8 and 25 of the American Convention in relation to Article 1.1 thereof.

52. The Commission notes that the alleged facts could tend to establish violations of the duty to adopt provisions under domestic law in relation to the right to appeal the decision before a higher body, in the proceeding before the JEM, since the only action envisaged to appeal said decision would be the action of unconstitutionality. Therefore, the IACHR shall also, during the merits stage, examine the applicability of Article 2 of the American Convention, in relation to Article 1.1 thereof. Likewise, the Commission considers that it should examine during the merits stage whether the standard applied in the proceeding that culminated in the removal of the petitioner from his post was consistent with the principle of legality recognized in the American Convention, a principle that must be adhered to in the context of disciplinary and prosecutorial proceedings since the failure to do so could constitute a violation of Article 9 of said instrument.

53. Lastly, the Commission considers that the petitioner has not presented basic elements in support of his claims regarding the alleged violation of Article 10 of the American Convention. Therefore, this complaint does not meet the requirements established in Article 47.b of the American Convention and it is therefore found to be inadmissible.

## V. CONCLUSIONS

54. The Commission concludes that it is competent to examine the claims submitted by the petitioner on the alleged violation of Articles 2, 8, 9, and 25 in relation to Article 1.1 of the American Convention and that these are admissible, pursuant to the requirements established under Articles 46 and 47 of the American Convention.

55. Likewise, the Commission concludes that the claims presented by the petitioner regarding the alleged violation of the right to compensation for a miscarriage of justice enshrined in Article 10 are inadmissible.

56. Based on the foregoing considerations of fact and law,

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<sup>9</sup> See IACHR, Report No. 31/03, Case 12.195, *Mario Alberto Jara Oñate et al.* (Chile), March 7, 2003, par. 41; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, par. 43; Petition 429-05, *Juan Patricio Marileo Saravia et al.* (Chile), April 23, 2007, par. 54; Petition 581-05, *Víctor Manuel Ancalaf LLaupe* (Chile), May 2, 2007, par. 46.

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

**DECIDES:**

1. To declare the instant petition admissible with regard to Articles 2, 8, 9, and 25 of the American Convention in relation to Article 1.1 of the American Convention.
2. To rule the instant petition inadmissible with respect to Article 10 of the American Convention.
3. To notify the State and the petitioner of this decision.
4. To continue the analysis of the merits of the case.
5. To publish this decision and include it in its Annual Report to the OAS General Assembly.