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REPORT No. 10/16
PETITION 387-02
REPORT ON ADMISSIBILITY

CARLOS ANDRÉS FRATICELLI
ARGENTINA

Approved by the Commission at its session No. 2063 held on April 14, 2016
157th Regular Period of Sessions

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Argentina. April 14, 2016.

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ADMISSIBILITY
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I. SUMMARY

1. On June 3, 2002, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition filed by Carlos E. Edwards and Aurelio Cuello Murúa (hereinafter “the petitioners”) against the Republic of Argentina (hereinafter “Argentina” or “the State”). The petition alleges the international responsibility of the State for violating the judicial guarantees of Mr. Carlos Andrés Fraticelli (hereinafter “the alleged victim”), both in the trial against him for the death of his daughter, and in the proceeding to remove him from his position as judge.

2. The petitioners argue that the criminal proceeding against Mr. Fraticelli for the death of his daughter and the proceeding that led to his removal from his position were arbitrary, as they did not have independent and impartial judges or courts. In addition, he argues that the remedies pursued were not adequate or effective, in addition to there being unwarranted delay. Therefore, they consider applicable the exceptions to the prior exhaustion of domestic remedies requirement set out at Article 46 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”). The State notes that the proceeding unfolded in a context in which there was strict respect for the applicable law and international standards. In addition, Mr. Fraticelli is said to have had access to all applicable legal remedies, which at the time of his filing with the Commission had not yet been exhausted. Accordingly, the State argues that the petition should be found inadmissible in keeping with Article 46 of the American Convention.

3. Without prejudging the merits of the complaint, after examining the position of the parties, and in pursuant to the requirements set out in Articles 46 and 47 of the American Convention, the Commission decides to declare the case admissible for the purposes of examining the arguments regarding the alleged violations of the rights set forth in Article 7 (right to personal liberty), Article 8 (judicial guarantees), Article 23 (right to participate in government), Article 24 (equality before the law), and Article 25 (judicial protection), in relation to Articles 1(1) and 2 of the Convention. The Commission also decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE IACHR

4. The IACHR received the petition on June 3, 2002. On March 31, 2004, the IACHR transmitted the pertinent parts to the State, giving it two months to submit ITS observations, based on Article 30(3) of its Rules of Procedure then in force. The State requested a one-month extension on May 26, 2004, which was granted by the IACHR on June 21, 2004. The response from the State was received on August 3, 2004 and it was forwarded to the petitioners on September 29, 2004.

5. The petitioners filed an amendment to their petition on July 1, 2004, and additional observations on November 10, 2004, September 6, 2006, March 16, 2009, and March 22, 2010. The State forwarded additional observations on August 14, 2006, December 10, 2008, and September 22, 2009. These communications were duly forwarded to the other party.

6. In the course of the processing of this petition, the petitioners proposed a friendly settlement agreement on March 22, 2010, as per the terms of Article 48(f) of the Convention. The IACHR requested the State to express its views concerning the appropriateness of pursuing a friendly settlement on June 25 and August 6, 2010, and February 11, 2011; the State sent its acceptance on June 7, 2011. Nonetheless, the State

subsequently rejected the possibility of a friendly settlement by communication of July 3, 2015, so the IACHR continued to process the petition.

Precautionary measures

7. On September 6, 2006, the petitioners requested precautionary measures for Mr. Fraticelli since he continued to be held in pretrial detention after five years and nine months, exceeding the term set by law. By communication of September 20, 2006, the IACHR denied the request considering that the elements required by Article 25 of its Rules of Procedure were not present.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

8. The petitioners argue that Mr. Carlos Andrés Fraticelli and his former wife, María Graciela Diesser, were unjustly declared liable for the death of their daughter Natalia Fraticelli, 15 years of age, in the province of Santa Fe; she was found deceased in her room on May 20, 2000. According to the petitioners, since the beginning of the investigations the analysis of the case was characterized both by the influence of public opinion and by the pre-judging of the matter by the judges in charge.

9. The petitioners adduce that while the police initiated an investigation on their own initiative into the death of Natalia Fraticelli, given the absence of violence at the entry to the house and knowledge of problems between the husband and wife, they indicated without any evidence whatsoever that her parents may have borne some responsibility for her death. In addition, they state that due to the position of Mr. Fraticelli, at the time a judge in the city of Rufino, Santa Fe, the case was publicly portrayed in the media.

10. As regards the impartiality of the judges, the petitioners indicate that judge Carlos Risso of the city of Melincué, province of Santa Fe, in charge of the investigative phase of the case, made several statements to the daily newspaper "La Capital" from May 26 to May 30, 2000, in which he indicated that Mr. Fraticelli and Ms. Diesser were responsible for the death of their daughter. They indicate that at that time the investigation had not yet concluded; Ms. Diesser's procedural situation had not been resolved; and Mr. Fraticelli had not even been tried, as he enjoyed immunity in his capacity as a judicial officer. They argue that given these facts, both Mr. Fraticelli and Ms. Diesser filed several motions of recusal, which were dismissed.

11. According to the petitioners, the judges of the Court of Criminal Appeals of the city of Venado Tuerto had prejudged the matter, as they went to the home of Mr. Fraticelli the day Natalia died because of the close working relationship they had with him. They indicate that the president of that collegial body, Judge Burrone de Juri, in an interview with the television program "Hora clave" on July 6, 2000, directly blamed Ms. Diesser, and indirectly blamed Mr. Fraticelli. Given that at that moment Mr. Fraticelli was facing a proceeding to remove him from office, and therefore was not a party to the trial, they filed several motions of recusal before the Court of Criminal Appeals of the city of Venado Tuerto and before the Supreme Court of Santa Fe, which were dismissed.

12. The petitioners consider that the prejudging was evident, since once it was ordered that Mr. Carlos Fraticelli be removed from his position on November 24, 2000, Judge Risso ordered his detention and prosecution; he was convicted at trial on May 14, 2002, and sentenced to life in prison, legal fees, and costs. That judgment was confirmed by Judge Burrone de Juri on appeal on July 30, 2003, even though up until that time the motions of recusal filed by both Mr. Fraticelli and Ms. Diesser had not been resolved nor was there a conclusive diagnosis of the causes of Natalia Fraticelli's death.

13. Specifically, they adduce the existence of contradictions among the autopsy reports done on Natalia Fraticelli. They indicate that while the forensic physician ruled that the cause of death was mechanical strangulation, the reports by the Chief of Criminalistic Medicine of the Second Regional Unit and by the professor of neurosurgery of the School of Medicine at the Universidad Nacional del Rosario indicated that the cause was not strangulation. In addition, the petitioners indicate that the State dismissed several items of

evidence, such as the high dosages of medicines that were not part of the treatment for Natalia's epilepsy, the testimony of Ms. María del Carmen Tenaglia, as well as the performance of a new autopsy, all of which could have pointed to a possible suicide.

14. In response to the denial of the appeal, the petitioners filed a constitutional motion on July 29, 2003, which was rejected on October 27, 2003, by the Court of Appeals. Subsequently, they filed a complaint appeal (*recurso de queja*) before the Supreme Court of Justice of the Province of Santa Fe, and when it was rejected, a federal special appeal on April 16, 2004, before the same court, which was also rejected. Finally, they filed a complaint appeal before the Supreme Court of Justice of the Nation on February 8, 2005.

15. On August 8, 2006, the Supreme Court of Justice of the Nation ruled the complaint appeal admissible and found that the special appeal was in order. The judgment appealed was overturned and the proceedings went back to the Court of Criminal Appeals of Venado Tuerto so as to hand down a new pronouncement. Nonetheless, according to the petitioners, the Supreme Court of Justice of the Nation ruled only on formal aspects related to the constitution of the court that upheld the convictions of Mr. Fraticelli and Ms. Diesser and did not rule on the alleged prejudging of the matter, the refusal to admit evidence, or the criminal liability of the alleged victim, accused of an offense by nonfeasance.

16. As regards the right to liberty of the alleged victim, the petitioners adduce that he was held in pretrial detention for five years and nine months, which is in excess of the time of three years and six months established as the maximum by law. Mr. Fraticelli requested his provisional release on August 15, 2006, request that was denied on August 20, 2006, by the judge in charge of enforcement of judgments in the locality of Melincué, the same judge who handed down the guilty verdict at trial, with the argument that there was dangerousness; accordingly, they appealed the decision the same day.

17. On November 20, 2009, the Court of Appeals for Criminal Matters in Venado Tuerto ordered that the appeal be admitted and ruled on the merits, declaring the acquittal of Ms. Diesser and Mr. Fraticelli for the crime of homicide. In addition, the petitioners mention that during his deprivation of liberty Mr. Fraticelli was not treated in keeping with the principle of humane treatment, but they did not produce specific information on this point.

18. The petitioners allege that the media and political influence continued through the proceeding since, after the acquittal, the General Prosecutor of the Court (Procurador General de la Corte) of the province Santa Fe, Agustín Basso, issued several negative statements on that pronouncement and instructed the prosecutor to appeal the decision of acquittal. In this regard, the prosecutor of the Court of Criminal Appeals of Venado Tuerto filed a constitutional motion on December 4, 2009 before the Court of Criminal Appeals of Venado Tuerto, which was rejected. In response to that rejection, the prosecutor filed a complaint appeal before the Supreme Court of Justice of the Nation. According to available public information, the motion was rejected in December 2014¹, and on February 18, 2016, the Supreme Court of Justice of the Nation rejected the motion for review to challenge that denial, thus upholding the acquittal of Ms. Diesser and Mr. Fraticelli.²

19. As regards the removal of Mr. Fraticelli, the petitioners alleged that the trial was begun in the wake of his daughter's death so that he could face criminal charges. They also affirm that the panel was constituted irregularly as it was made up of only two of the five districts of the province of Santa Fe, and by two appellate court judges and not by two supreme court justices, as provided by provincial law 7050 and the Constitution of the province of Santa Fe.

¹ Information available at: <http://www.lanacion.com.ar/1872151-caso-fraticelli-la-corte-dejo-firme-la-absolucion-al-ex-juez-y-su-esposa>

² Information available at: <http://www.lanacion.com.ar/1872151-caso-fraticelli-la-corte-dejo-firme-la-absolucion-al-ex-juez-y-su-esposa>

20. In addition, the petitioners indicate that as a result of the resignation of one of the judges, approved by decree of the Executive branch, a new judge was included who was deprived from participating in fundamental stages of the proceeding, such as the deliberation whether to admit or reject the complaint that led to the removal of Mr. Fraticelli, and the production of evidence. In the view of the petitioners, this constituted a violation of the procedural principle of the physical identity of the judge, which notes that the judges who hand down the judgment in a proceeding should be the same judges who participated from the outset of the trial, when one is replaced. In response to these events the petitioners filed a motion for revocation, which was dismissed on October 4, 2000.

21. They also note that due process was violated as certain procedural acts were performed exclusively by the President of the judicial panel when Law 7050 provides that those acts should be performed by all the members of the panel or the majority of them. The petitioners state that they filed a constitutional motion with the Supreme Court of Justice of Santa Fe In response to the alleged procedural flaws, which turned out to be ineffective since the members of that court were the same ones who sat on the original panel, in response to which they filed a special appeal, which was rejected on December 12, 2001. Finally, they filed a complaint appeal with the Supreme Court of Justice of the Nation, which was rejected on October 3, 2002.

22. The petitioners adduce that the violation is evident, since after his removal from his judgeship Law 7050 was amended by Law 12,949 of May 15, 2008, which included the other districts of the province, as well as the case-law of the Supreme Court of Justice of Santa Fe to the effect that the members of that court who were members of the judicial panel should recuse themselves from hearing the provincial constitutional motion against the judgment of removal.

23. Finally, the petitioners indicate that Mr. Fraticelli's right to equality before the law was violated since except for the judges appointed with legislative agreements, they cannot return to their positions once charges against them in a criminal case have been dismissed.

24. Based on the foregoing, the petitioners allege that the State violated the rights recognized in Articles 7, 8, 24, and 25 of the American Convention, in relation to Articles 1(1) and 2, to the detriment of Mr. Carlos Andrés Fraticelli.

B. Position of the State

25. The State argues that its action has unfolded strictly in keeping with the law and applicable international standards, since Mr. Fraticelli was tried by courts that were properly constituted, that are impartial and independent, and since he had access to all judicial remedies. With respect to the impact of public opinion on the case against Ms. Diesser and Mr. Fraticelli, the State affirms that at no time did the press articles put out constitute a media condemnation, but to the contrary, and as is evident if one reads them, the treatment of the facts was not sensationalist nor was the coverage characterized by any imbalance to the detriment of Mr. Fraticelli. In addition, it notes that the opinions put out by the media were only a reflection of the free exercise of the right to information enjoyed by every person, and that these do not respond to any factor attributable to the State.

26. The State also argues that, contrary to a possible impact on the impartiality of the judges, publicity is a requirement that is tied to the principles behind the notion of republican government and the organization of social power. As regards the prejudging of the matter attributed to Judge Risso, due to the public attention the matter received, the State says that the statements attributed to him can hardly be considered to amount to prejudging, and that in any event they did not reproduce the judge's complete reasoning but rather the reporter's personal interpretation. Moreover, it argues that those statements do not contain any element that would lead one to assume, even as a matter of suspicion, that one was before a case in which an opinion was being given in advance, considering that at that moment, Judge Rossi limited himself to expressing general considerations. The State further argues that the judge had already formed an opinion based on the information in the record, for there was already a body of proceedings and numerous pieces of evidence produced, including the autopsy reports.

27. The State argues that the statements attributed to Judge Burrone de Juri did not constitute prejudging against Mr. Fraticelli, for in addition to having been general remarks, the Court of Appeals of Venado Tuerto had confirmed the prosecution of Graciela Diesser before the television program. It further indicates that while Mr. Fraticelli had not been prosecuted at that time, that circumstance was because he enjoyed immunity that stood in the way of such a measure being adopted. Nonetheless, the prosecutor involved accused him of being the co-perpetrator in the homicide of his daughter along with Mr. Graciela Diesser; that reasoning was shared by Judge Risso on May 25, 2000.

28. As regards the recusal of the judges of the Court of Appeals of Venado Tuerto, the State considers that it has no basis since the fact that they had gone to the home the day of the child's death did not affect them in their capacity as judges or in their impartiality.

29. The State indicates that on August 8, 2006, the Supreme Court of Justice of the Nation declared the special remedy filed by the petitioners against the conviction to be in order, and overturned the judgment appealed in the case, due to which the case was brought back to its initial state. Accordingly, it notes that on August 23, 2006, pursuant to decree No. 32/2006 establishing the rotation of cases, the proceedings were forwarded to the Court of Criminal Appeals of Rosario.

30. Nonetheless, the defense counsel for Carlos Fraticelli, according to the State, challenged the decision that remanded the case to the Court of Criminal Appeals of Rosario, considering that it was a violation of the guarantee of a court competent by its constitution, and that the case should have remained in the Judicial District of Venado Tuerto. The State indicates that the Court of Criminal Appeals of Rosario granted the challenge and forwarded the proceedings to the Court of Criminal Appeals of Venado Tuerto, which accepted jurisdiction on September 15, 2006.

31. In addition, the State notes that on October 3, 2006, the Court of Criminal Appeals of Venado Tuerto granted the request for provisional release and that there are no elements that indicate that the alleged victim suffered any unjust incarceration. Indeed, had that been the case, the State argues that the alleged victim has not exhausted available domestic remedies, such as the action for compensation for damages before the competent courts.

32. As regards the proceeding to remove him as judge, specifically as regards the composition of the Court, the State adduces that according to the Organic Law on the Judicial Branch of the Province of Santa Fe, in case of recusal, absence, impediment, leave, or vacancy, the Supreme Court of Justice of Santa Fe is made up of judges from the Courts of Appeals corresponding to the subject matter at issue who are called on to sit on the court in those circumstances, who shall be considered members of the Court for that sole purpose. Therefore, according to the State, the composition of the Supreme Court of Justice of Santa Fe was in keeping with the law. In addition, it notes that in response to the resignation of one of the judges, the replacement was immediate and lawful, accordingly the State also guaranteed the continuity of the organ and of the proceeding itself.

33. With respect to the argument that the President of the Court performed certain procedural acts, the State notes that procedural impetus by the President of the Court is a characteristic of any collegial body, and that it does not represent an encumbrance on the procedural guarantee.

34. As regards the application of the legislative amendments made to provincial law 7050 on the trial of judges, and changes in the case-law of the Supreme Court of Justice of Santa Fe, the State emphasizes that they do not apply to the case of Mr. Fraticelli, as they were not in force at the time of his removal. Finally, it adduces that the removal from his position was not tied to the criminal proceeding against him, for it was an impeachment proceeding for notorious failure to perform the duties of judge, given the obstruction of the proceeding and the failure to contribute to the effort to clarify his daughter's death, thus the causes of his removal were independent and autonomous in relation to the criminal proceeding. It also indicated that the removal was reviewed both by the Supreme Court of Justice of Santa Fe and by the Supreme Court of Justice of the Nation, which agreed that there was no reason to order that the petitioner be reinstated in the position of judge.

35. In conclusion, the Argentine State considers that the rights of the alleged victim have not been violated, since the case of Mr. Fraticelli has been resolved in his favor; therefore, the domestic remedies have proved effective. As regards the materiality of the fact and the lack of any evidence showing any responsibility on the part of Mr. Fraticelli, the State considers that it is not a matter susceptible of being addressed in the context of the debate before the Commission, for otherwise the Commission would be sitting as a court of fourth instance. In its final communication it emphasized that the motion of appeal against the resolution issued in response to the constitutional motion that attacked the acquittal of Ms. Diesser and Mr. Fraticelli had yet to be ruled on, thus the petition is inadmissible and it asks the IACHR to so find.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

36. The petitioner is authorized, in principle, by Article 44 of the American Convention to file petitions with the Commission. The Commission notes as the alleged victim an individual person with respect to whom the Argentine State undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Argentina has been a state party to the American Convention since September 5, 1984, the date it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to take cognizance of the petition, since it alleges violations of rights protected in the American Convention said to have taken place in Argentine territory.

37. The Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State as of the date of the facts alleged in the petition. Finally, the Commission is competent *ratione materiae*, given that the petition alleges violations of human 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 the admission of claims regarding the alleged violation of the American Convention. The purpose of this requirement is to afford the national authorities an opportunity to take cognizance of the alleged violation of a protected right and, if appropriate, to solve the situation before it is taken up by an international mechanism. Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies is not applicable when the domestic legislation of the state in question does not afford due process of law for the protection of the right or rights alleged to have been violated; when the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or when there has been unwarranted delay in rendering a final judgment under said remedies.

39. In the instant case, the petitioners alleged, during most of the processing of the petition, that the exceptions to the prior exhaustion requirement established at Article 46(a) and (b) of the Convention apply since the judicial remedies, in both the criminal case and in the procedure to remove Mr. Fraticelli from the bench, were not adequate or effective. In addition, they indicated that the criminal trial extended for more than 10 years, violating the requirement of a reasonable time. For its part, the State argues that the case brought by the alleged victim was resolved in his favor and that there is no basis for a finding of denial of justice or unwarranted delay in justice. It also indicates that when the petition was filed an appeal was pending, thus there is a failure to comply with the requirement of admissibility of the exhaustion of domestic remedies established in Article 46(1)(a) of the Convention.

40. In view of the position of the parties, and as appears in the record, the Commission observes that the purpose of the instant petition refers to two proceedings, one a criminal trial and the other an

impeachment proceeding regarding the removal of the alleged victim as judge. Concerning the generic allegation regarding the alleged mistreatment, the petitioners do not provide specific information on the circumstances or the pursuit of a judicial remedy or a formal initiative vis-à-vis the competent prison authority with respect to his conditions of detention, accordingly the Commission considers that it is not part of the substance of the case.

41. With respect to the criminal proceeding, the petitioners filed a motion of appeal, a constitutional motion, a complaint appeal before the Supreme Court of Justice of the Province of Santa Fe, and a federal special appeal, all of which were rejected. Upon the rejection of this last remedy, they filed a complaint appeal before the Supreme Court of Justice of the Nation on February 8, 2005, which was resolved favorably on August 8, 2006, giving rise to the revocation of the judgment appealed and also the return of the proceeding to the trial court.

42. Moreover, the IACHR observes that on November 20, 2009, the Court of Criminal Appeals admitted the motion of appeal and acquitted Ms. Diesser and Mr. Fraticelli for the crime of homicide of which they were accused. That decision on appeal was appealed, in turn, by the prosecutorial authorities before the Court of Criminal Appeals of Venado Tuerto on December 4, 2009, which affirmed the judgment. The prosecutorial authorities then brought a complaint appeal against this decision before the Supreme Court of Justice of the Nation which, according to available public information, was also denied, in response to which the prosecutorial authorities filed a motion for review, which was resolved on February 18, 2016, affirming the acquittal.

43. As regards the removal proceeding, the IACHR finds that the resignation of one of the judges and his replacement was appealed by the petitioners by a motion for revocation, which was dismissed on October 4, 2000. In addition, they filed a constitutional motion against his removal before the Supreme Court of Justice of Santa Fe which, according to the petitioners, was ineffective since the members of that Court were the same ones who made up the judicial panel below. For that reason, the petitioners filed a federal special appeal before the Supreme Court of Justice of Santa Fe, which was rejected on December 12, 2001. In the face of that rejection they filed a complaint appeal before the Supreme Court of Justice of the Nation, which was rejected on October 3, 2002.

44. In view of all the foregoing, the IACHR considers, with respect to the criminal proceeding, that domestic remedies were exhausted in the terms of Article 46(1)(a) of the Convention with the judgment of the Supreme Court of Justice of the Nation of February 18, 2016, confirming the acquittal. In relation to the removal, the IACHR concludes that the domestic judicial remedies were exhausted with the judgment of October 3, 2002, of the Supreme Court of Justice of the Nation, rejecting the complaint appeal filed by Mr. Fraticelli.

2. Timeliness of the petition

45. Article 46(1)(b) of the American Convention establishes that for a petition to be admissible by the Commission it must be filed within six months of the date on which the alleged victim has been notified of the final decision.

46. The petition before the IACHR was filed on June 3, 2002, and domestic remedies with respect to the criminal proceeding were exhausted with the judgment of February 18, 2016. Therefore, the exhaustion of domestic remedies occurred while the petition was being processed before the Commission. According to the doctrine of the IACHR, the analysis of the requirements set forth in Article 46(1)(b) of the

Convention should be done in light of the situation as of the moment the decision is issued regarding the admissibility or inadmissibility of the claim³.

47. With respect to the removal proceeding, the IACHR established that remedies were exhausted with the decision issued on October 3, 2002, by the Supreme Court of Justice of the Nation. Therefore, with respect to this claim, the deadline established in Article 46(1)(b) of the Convention has been met.

3. Duplication of procedures and international *res judicata*

48. It does not appear from the record that the subject matter of the petition is pending another procedure for international settlement, nor that it reproduces a petition already examined by this or any other international organization. Therefore, the grounds for inadmissibility established at Articles 46(1)(c) and 47(d) of the Convention do not apply.

4. Colorable claim

49. For the purposes of admissibility, the Commission should decide whether the facts alleged tend to establish a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” as per Article 47(c). The test for analyzing admissibility differs from that used for analyzing the merits of the petition, given that the Commission performs only a *prima facie* analysis to determine whether the petitioners establish the apparent or possible violation of rights guaranteed by the American Convention. It is a summary analysis that does not imply prejudging or issuing a preliminary opinion on the merits.

50. In addition, neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to identify the specific rights alleged to be violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable and whose violation could be established if the facts alleged are proven by sufficient elements.

51. The petitioners make claims regarding the lack of judicial independence and impartiality; prolonged pretrial detention; unwarranted delay during the criminal proceeding pursued against the alleged victim; and other due process violations. These facts, if proven, could tend to establish the violation of the right to be tried in a reasonable time or else to be released, the right to judicial guarantees, and the right to judicial protection, protected at Articles 7, 8, and 25 in relation to Article 1(1) of the Convention. For its part, the Argentine State argues that the “fourth instance” formula applies to the instant case since, if it is admitted, the Commission would be reviewing the judgments, violating its auxiliary nature as established by the American Convention.

52. In this regard, the Commission has consistently indicated that it is not competent to review issues of domestic law that correspond to the sphere of competence of the domestic courts, whereas it is competent to declare a petition admissible and to rule on its foundation when it refers to a domestic judicial judgment that has been handed down without due process, or that apparently violates any other right guaranteed by the Convention. Therefore, the Commission considers that in the instant case the analysis in the merits phase of the violations alleged by the petitioners does not constitute the Commission sitting as a court of “fourth instance.”

53. In the merits phase of the instant case, the Commission will analyze whether, in the proceeding to remove Mr. Fraticelli, guarantees of due process and judicial protection established in Articles

³ IACHR, Report No. 15/15, Petition 374-05. Members of the Trade Union of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015, para. 41. *Accord I/A Court H.R., Case of Wong Ho Wing v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2015. Series C No. 297. paras. 25-28.

8(1) and 25 were violated, as well as the right to have access to, and remain, in conditions of equality, in public service, enshrined in Article 23(1)(c) of the American Convention. In this respect, the Commission takes note that the Court has indicated that “general conditions of equality are attained when ‘the criteria and processes for appointment, promotion, suspension, and dismissal are objective and reasonable’ and when ‘no one is subject to discrimination’ in the exercise of this right.”⁴

54. In addition, the IACHR will analyze, in the merits stage, whether the fact that the legislation of the province of Santa Fe does not permit the reinstatement of judges after having been acquitted after a criminal proceeding could constitute a violation of the rights enshrined in Articles 2, 23, and 24 of the American Convention. In this regard, the IACHR takes note that, according to the petitioners, the province of Santa Fe is the only one with a prohibition on reinstatement after an acquittal, and that this prohibition does not apply to the members of the Supreme Court of Justice of Santa Fe.

55. In view of the elements of fact and law presented by the parties and the nature of the matter put before it, the IACHR considers that the petitioners’ arguments, if proven, tend to establish possible violations of the rights enshrined in Article 7 (right to personal liberty), Article 8 (right to a fair trial), Article 23 (political rights), Article 24 (right to equality before the law), and Article 25 (judicial protection) in relation to Articles 1(1) and 2 of the American Convention, to the detriment of Mr. Fraticelli.

V. CONCLUSIONS

56. Based on the considerations of fact and law set forth, the Inter-American Commission concludes that this petition satisfies the requirements of admissibility set out at Articles 46 and 47 of the American Convention and, without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the instant petition admissible in relation to Articles 7, 8, 23, 24, and 25 of the American Convention in relation to the obligations set forth at Articles 1(1) and 2 of the same instrument;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 14th day of the month of April, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

⁴I/A Court HR. Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 236; I/A Court HR. Case of the Constitutional Court (Camba Campos et al.) v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2013. Series C No. 268, para. 194.