I. SUMMARY

1. This report concerns the following 21 petitions received by the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “Commission,” or “IACHR”) on behalf of: Marcelo Darío Posadas, Alberto José Ricciardi, Alejandro Alcides Sánchez, Carlos Eduardo Domínguez Linares, Carlos Osmar Barraza, Carlos Roldán and Oscar Franco, César Alberto Greco, Christian Walter Mutuverria, Enrique Luis Saccella, Fabio Walter Romero, Gustavo Rainieri, Jaime Amado Burgos, José Ángel De Priete, Julio César Ramón Del Valle Ambrosio, Leandro Parpaglione, María Alejandra Torres, María Marta Susana Abalo, Miguel Félix Hidalgo, Oscar Raúl Gorigoitia, Osvaldo Isaías Migueles, and Pablo Rafael Galván (hereinafter the “alleged victims”). The petitions claim that the State of Argentina (hereinafter “Argentina,” “the State,” or “the Argentine State”) bears international responsibility for alleged violations of rights enshrined in the American Convention on Human Rights (hereinafter the “American Convention” or “Convention”). On December 17, 2003, the Commission decided to join the above individual petitions and examine them in a single report.¹

2. All the petitions claim that the State violated fair-trial guarantees recognized in Articles 8 and 25 of the Convention, particularly in Article 8(2)(h), owing the alleged lack of an ordinary appeal to a higher court for the comprehensive review of convictions imposed on the alleged victims. In addition, a number of the petitions include specific submissions with regard to alleged shortcomings in the criminal public defender service, refusal to admit evidence, wrongful application of the law, lack of medical attention, and violation of the right to personal liberty, among others. The specific arguments of each petition are examined below in the section on positions of the parties.

3. Prior to the joinder, the State argued with respect to the petitions of Marcelo Darío Posadas, Christian Walter Mutuverria, and Oscar Raúl Gorigoitia, on which processing had already started, that it had not committed any human rights violations and that the petitioners sought to use the IACHR as a review organ because of their subjective disagreement with convictions handed down in different criminal proceedings. In the wake of the joinder of the 21 petitions, the State indicated its willingness to engage with all of the petitioners in dialogue with a view to reaching a friendly settlement. That process proved unfruitful.

4. Having examined the positions of the parties and compliance with the requirements provided in Articles 46 and 47 of the American Convention, and without prejudging the merits of the petitions, the Commission has decided to declare the case admissible for the purposes of examination of the alleged violations of Article 8(2)(h) of the American Convention in connection with Articles 1(1) and 2 of said treaty. Furthermore, based on the submissions of a number of petitioners, the Commission has decided that in the stage on merits it will examine the alleged violation of Articles 5, 7, 8, and 25 of the same instrument. Also decides that on the merits stage will analyze the alleged violation of Article 5.

¹ The petitions concerning Marcelo Darío Posadas, Leandro Héctor Parpaglione, and Christian Walter Mutuverria were joined on April 2, 2004.
concerning the petition of Mr. Marcelo Dario Posadas. The Commission has decided to declare the case inadmissible in relation to Articles 6, 9, 11, 23, 24, 29, and 30 as invoked by certain petitioners. Therefore, the Commission has decided to notify the parties, continue with its analysis of merits with regard to the aforementioned alleged violations, publish the instant report on admissibility, and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING

5. The Commission forwarded to the State the pertinent parts of the petitions of Marcelo Dario Posadas, Christian Walter Mutuverria, Oscar Raúl Gorigoitia, Carlos Roldán and Oscar Franco, and Pablo Rafael Galván, prior to its joinder decision of December 17, 2003. In that connection, it should be noted that the petition of Marcelo Dario Posadas was received on September 21, 1995, and that the Commission forwarded the pertinent parts thereof to the State on November 29, 1995, with the latter presenting its observations on March 5, 1996.

6. The petition of Christian Walter Mutuverria was received on March 29, 1996, the pertinent portions of which the Commission transmitted on May 18, 1999, to the State, which submitted its response on November 29, 1999. The response of the State was relayed to the petitioner by means of a communication dated December 21, 1999. The petitioner requested more time to respond, which the Commission granted on March 2, 2000. The Commission received the response of the petitioner on July 17, 2000 and relayed it to the State on July 31.

7. The petition of Oscar Raúl Gorigoitia was received on January 19, 1999, and transmitted to the State on September 3, 2002, which conveyed its reply by means of a communication received on November 14, 2002.

8. The petition of Carlos Roldán and Oscar Franco was presented to the then-office of the OAS in Argentina on September 14, 2001, and transmitted to the State on September 8, 2003, requesting it to reply in the following two months. The State requested an extension of one month in a note dated November 25, 2001.

9. The petition of Pablo Rafael Galván was received on December 3, 2001, and transmitted to the State on July 24, 2003.

10. In a communication of December 17, 2003, the Commission forwarded a copy of the pertinent portions of petition 828-01 “Posadas et al.” to the Argentine State, clarifying that it represented the joinder of 15 new petitions in addition to the three on which processing had already started by that date (Oscar Raúl Gorigoitia; Pablo Rafael Galván; and Carlos Roldán y Oscar Franco). The Commission informed the State that the joinder was being carried out under Article 29(1)(d) of its Rules of Procedure since the petitions addressed similar issues concerning the application of Article 8(2)(h) of the American Convention. The Commission gave the State two months in which to present its comments. The petitions concerning Marcelo Dario Posadas, Leandro Héctor Parpaglione, and Christian Walter Mutuverria were joined on April 2, 2004.

---

2 The petition was lodged by Mr. Alberto Bovino.
3 The petition was lodged by Mr. Christian Walter Mutuverria and Mrs. Claudia de Mutuverria.
4 The petition was lodged by Mr. Carlos Varela Álvarez.
5 The petition was presented by the Public Defenders Office before the Federal Oral Courts. In communications received in September 2007, Messrs. Roldán and Franco advised that they had revoked the representation of the Public Defender’s Office; since then they have been represented by Mr. Leandro Héctor Parpaglione.
6 The petition was lodged by Mario Luis Coriolano and the Center for Justice and International Law (CEJIL).
11. In a note of July 15, 2005, the State expressed to the Commission its willingness to initiate a dialogue with the petitioners with a view to attempting to reach a friendly settlement on the basis of a statutory reform. In a communication of July 19, the Commission relayed the State's proposal to all of the petitioners.

12. After the petitioners accepted the proposal of the State to initiate a friendly settlement procedure, the Commission held a hearing at its 128th regular session, which was attended by the State and several petitioners and/or their representatives. At that hearing, which took place on July 18, 2007, the State again expressed its desire to embark on a friendly settlement procedure and, to that end, took the opportunity to outline the points that would comprise a potential friendly settlement agreement.

13. Following that meeting a number of petitioners presented briefs directly to the State, with a copy sent to the Commission, in which they set out their own intentions as regards the outcome of the friendly settlement, in particular, with respect to reparations.

14. On September 6, 2007, in the course of the 129th special session of the IACHR held in Asunción, Paraguay, and on October 11, 2007, in the framework of the 130th regular session, the State and number of petitioners held working meetings in a bid to move toward a friendly settlement of the matter.

15. The additional information submitted by the petitioners in July, August, September, October, and December 2007; as well as in January 2008, was forwarded to the State by means of a communication dated February 5, 2008, in which the IACHR requested information and, if possible, a work schedule for that year.

16. On March 11, 2008, the parties held a working meeting in the context of the 131st regular session of the IACHR.

17. The petitioners furnished additional information on March 25 and 26; April 18; May 8, 13, and 27; June 12, 16, 17, and 19; July 14; and August 21 and 27, all of which was transmitted to the State in a communication dated September 15, 2008.

18. On October 24, 2008, another working meeting was held, in the course of the Commission's 133rd regular session, at which the petitioners expressed their dissatisfaction with the lack of measures on the part of the State to move the friendly settlement process forward. For its part, the State said that an analysis of the legal merits of each petition had been completed and that it would present it to the Commission within 30 days. On December 5, 2008, the Commission sent a note to the State requesting that it send the information promised as soon as possible.

19. In a note dated December 17, 2008, the State informed the Commission that several meetings had been convened with the petitioners and it provided information regarding its analysis of legal merits. That information was relayed to the petitioners in a communication dated March 6, 2009, with the request that they submit comments in that regard.

20. Leandro Héctor Parpaglione and Christian Walter presented a request for precautionary measures to the Commission and, on May 4, 2009 and October 6, 2010, after conducting the necessary analysis, the Commission informed them that it found no basis for invoking the measures envisaged at Article 25 of its Rules of Procedure.

21. The Commission received a number of communications from the representatives of most of the alleged victims requesting the conclusion of the dialogue with the State. In a communication dated December 15, 2009, the Commission brought the foregoing to the attention of the State, which presented comments in that regard in a note of February 12, 2010. From then until this writing, the
Commission has continued to receive communications from the petitioners requesting that it resume its processing of the petition. Those communications have been duly forwarded to the State.

III. POSITIONS OF THE PARTIES

A. THE PETITIONERS

Preliminary issues

22. The petitions covered by this report refer to 21 cases of individuals who mainly claim that the State violated fair-trial guarantees recognized in Articles 8 and 25 of the Convention, particularly in Article 8(2)(h), owing the alleged lack of an ordinary appeal to a higher court for the comprehensive review of convictions imposed on the alleged victims. The specific arguments of each petition are as follows:

1. Marcelo Dario Posadas (Province of Buenos Aires)

23. The petition was received on September 21, 1995.\(^7\) The petition states that the alleged victim was sentenced in August 1994 to five years in prison for the crime of armed robbery. It alleges that the criminal proceeding suffered from a number of flaws, foremost among which was that during the oral proceedings stage his court-appointed defender failed to provide him with an effective defense by refusing, in the closing arguments, to discuss the imputability of the alleged victim and letting him defenceless. Furthermore, the petition says that he was arbitrarily denied his right to appeal against the conviction to a higher court because he was not granted any recourse to do so. In that regard, the petitioner notes that a motion for cassation was presented in which it was argued that Mr. Posadas was tried for armed robbery when he should have been tried for attempted robbery. The petition mentions that the motion for cassation was rejected because the court found that it concerned the appraisal of evidence that was inadmissible and because the lower court error had not been correctly explained by the public defender. A motion for reconsideration of dismissal of appeal was filed against that decision with the National Cassation Chamber for Criminal Matters, which, the petitioner alleges, dismissed it without considering the substantive issues raised. Furthermore, an extraordinary appeal was filed against the conviction and the decisions in the oral proceedings that were considered irregular, as well as against the dismissal of the motion for reconsideration. The extraordinary appeal was ruled inadmissible as was the complaint against the dismissal, with the Supreme Court of Justice basing its refusal on a flaw of form. The final decision was issued on June 6, 1995, meaning that the petition is submitted in due time and remedies have been exhausted. Added to this, the petitioner claims that Mr. Posadas was suffering from a drug addiction and from an incurable degenerative disease, and that while he was in the custody of the state, he was not given the treatment that his condition required.

24. The petitioner claims that the alleged victim was denied his right to have both the issue of his need for rehabilitation measures and his sentence reviewed by a higher judge. The petitioner claims that according to the opinion of one of the State’s own tribunals, the remedy invoked by Mr. Posadas’ defense counsel did not meet the technical requirements to be heard and therefore, he says, the standards of the right to a defense were clearly not met.

2. Christian Walter Mutuverria (Province of Buenos Aires)

25. The petition was received on March 29, 1996.\(^8\) The alleged victim claims that the Argentine State violated his right to a defense at trial. He says that the irregularities started with the

\(^7\) The petition was lodged by Mr. Alberto Bovino.

\(^8\) The petition was lodged by Mr. Christian Walter Mutuverria and Mrs. Claudia de Mutuverria.
“amputation of the evidence adduced” by the 19th Oral Tribunal of the Federal Capital. He mentions that at his trial for the crime of automobile theft and aiding and abetting he was convicted based on an unconstitutional or nonexistent law (Decree Law 6582/58) and an unconstitutional code of criminal procedure.

26. He considers that he did not receive a fair trial because the rules of procedure were violated in the following respects: Not all the evidence put forward was admitted; the evidence and statements of the supposed injured parties, witnesses, and experts were blurred; and moreover, he says, he did not have the opportunity to appeal the conviction. Furthermore, he believes that he received an excessively harsh penalty and that a proceeding on which a final decision had not been issued was taken into account.

27. He claims that the motion for cassation was "useless" since, even though it pointed out the irregularities in the trial and requested its review, the denial of a substantive review made it impossible to highlight the irregularities that occurred, cutting short any possibility of rectifying the situation.

3. Óscar Raúl Gorigoitia (Province of Mendoza)

28. The petition was received on January 19, 1999. The petition states that, while serving as a policeman, the alleged victim was sentenced on September 12, 1997, by the First Criminal Court of Mendoza to 14 years in prison and absolute disqualification from public service for the homicide of a youth, whose mother had reportedly already received compensation from the State. The defense counsel of the alleged victim filed a motion for cassation against the judgment at first instance, alleging flaws in the proceeding: arbitrary appraisal of evidence, lack of grounds for the judgment, and erroneous application of substantive law. The petition alleges that the cassation appeal was rejected on October 19, 1997, owing to defects of form in its presentation. The ruling also established that the causes invoked by the defense were not subject matter for the court’s cognizance. The petitioner asserts that the cassation appeal in Argentina does not permit a factual assessment of the evidence and that, therefore, his right to a two-tier judicial procedure has been infringed.

29. An extraordinary appeal was filed with the Supreme Court of Justice of the Nation to challenge the denial of the motion for cassation. The petitioner claims that the appeal was refused "because it was formally out of order." Subsequently, on August 6, 1998, a motion for reconsideration of dismissal of appeal was filed with the Supreme Court of Justice of the Nation, but that too was declared inadmissible for failure to meet the requirements set forth at Article 280 of the Code of Civil and Commercial Procedure of the Nation. The petitioner claims that both denials were issued in a hasty manner, without a ruling on merits, and on the basis of supposed formal defects in their presentation. The judgment of the Supreme Court that concluded the proceeding was dated August 6, 1999. The petition also claims violation of Article 24 on the grounds that the arguments that the tribunal used to convict Mr. Gorigoitia were the same as those on which it relied to acquit another defendant.

4. José Ángel De Priete (Province of Buenos Aires)

30. The petition was received on May 28, 1996. It states that the alleged victim was captured along with another individual at Buenos Aires international airport moments after the other

---

9 The petition was lodged by Mr. Carlos Varela Álvarez.

10 The petition, dated May 11, 1996, was presented by Mr. José Ángel De Priete, who was deprived of his liberty at the time. In July 2007, Mr. De Priete wrote to the Commission naming the attorney José Luis Federico as his representative before the Commission. In March 2008 he informed that the lawyer Carlos A. Cony Fernández Madero would be representing him.
person had checked in a suitcase containing nine kilograms of cocaine together with that of Mr. De Priete. It states that on June 14, 1995, the Third Oral Criminal Tribunal for Financial Matters sentenced the alleged victim to 7 years and six months of imprisonment, to be served in full, for the crime of accomplice to drug trafficking, as well as ordering him to pay costs. The petition includes allegations that the sentence contains serious errors regarding its legal basis and reasoning and the judge did not weigh evidence that had properly been presented.

31. Mr. De Priete’s defense counsel filed a motion for cassation. However, the alleged victim claims that it was rejected on July 5, 1995, for failure to meet formal requirements that should only apply to extraordinary appeals. He adds that all of his attempted appeals were “systematically denied.” Thus, he says, his right to review of his sentence by a higher court was violated. After the cassation appeal was refused, he filed a motion for reconsideration of dismissal of appeal, which was rejected. Subsequently, an extraordinary appeal to the Supreme Court of Justice of the Nation was turned down on November 15, 1995.

5. Carlos Osmar Barraza (Province of Buenos Aires)

32. The petition was received on February 11, 1997. The petition states that on December 17, 1991, the alleged victim, who was a corporal in the Argentine Federal Police, was engaged in work for a private company in Buenos Aires because his salary was inadequate to his needs. The petition notes that on that date Mr. Barraza walked out of a bank with a sum of money belonging to the private company and was attacked by two individuals intent on taking the money from him. Mr. Barraza fired a shot into the air to intimidate them; however, the bullet struck a passenger transport vehicle wounding a minor, who died some days later.

33. Mr. Barraza was convicted by the Sixth Oral Tribunal for Criminal Matters of an actor criminally responsible for criminal homicide. The petitioners claim that the conduct should have been classified as manslaughter but the court dismissed all the defense arguments presented, thereby violating his right to a defense. The petitioner says that procedural irregularities occurred that were pointed out in the motion for cassation filed on September 21, 1995.

34. She says that the limited framework for challenging a judgment at first instance does not constitute the right of appeal recognized in the American Convention, given that the possibility is confined to the law applied and does not extend to an evaluation of the facts that gave rise to the way in which it was applied. The motion for cassation was rejected on October 10, 1995, and a motion for reconsideration of dismissal of appeal was brought against that decision; however, on March 5, 1996, that too was refused. An extraordinary appeal against that refusal was filed with the Supreme Court of Justice of the Nation, and on June 5, 1996, the First Court of the National Cassation Chamber for Criminal Matters rejected it. Finally, a motion for reconsideration of dismissal of appeal was lodged with the Supreme Court of Justice of the Nation which also denied it without consideration on the merits, in accordance with Article 280 of the Code of Civil and Commercial Procedure of the Nation.

11 The petition was lodged by Mabel Olga Pampin and Andrea Lorena Gauharou. In a communication of August 13, 2007, the petitioner stated that thereafter he would be represented only by Dr. Pampin and any other patronage was revoked. In later communications, the Commission was advised that Dr. Pampin died in December 2009.

12 Art. 280. - Call for Records. Rejection of an extraordinary appeal. Briefs in a regular appeal. When the Supreme Court takes up an extraordinary appeal, the receipt of the case shall entail a call for all pertinent records by which to adopt a decision. The Court, on the basis of its reasoned opinion and by mere invocation of this rule, may reject extraordinary appeals on the grounds of insufficient federal injury or when the claims advanced are groundless or insignificant.
6. **Osvaldo Isaías Migueles (Province of Buenos Aires)**

35. The petition was received on June 24, 1998.\(^{13}\) It states that the alleged victim was tried and convicted for the crime of abortion resulting in death. On December 21, 1993, Mr. Migueles was sentenced to a term of imprisonment of five years and six months, to be served in full, and disqualified from practicing medicine for 11 years and eight months. The alleged victim’s defense counsel filed a motion claiming inapplicability of law with the Supreme Court of Justice of Buenos Aires, which was denied; it subsequently lodged an extraordinary appeal, which was also refused, and finally filed a motion for reconsideration of dismissal of appeal, which the Supreme Court of Justice rejected on March 17, 1998.

36. The petition claims that the alleged victim was denied the right to have his conviction and sentence reviewed at second instance. It also states that he was sentenced to nearly the maximum penalty under the criminal code, which prevented him from benefiting from a probationary sentence. He alleges that this constitutes a violation of Articles 1, 8, and 25 of the American Convention.

37. Osvaldo Isaías Migueles died in December 2003 while a fugitive of justice waiting for the statute of limitations on his sentence to run, according to information supplied by his son, Nestor Isaías Migueles.

7. **María Marta Susana Abalo (Province of Buenos Aires)**

38. The petition was received on December 29, 1999.\(^{14}\) The alleged victim said that she was unjustly convicted, given a suspended sentence of three years in prison, disqualified from practicing her profession as a lawyer for six years, and ordered to pay a fine. In that regard, she explained that the 30th Oral Criminal Court in and for the Federal Capital heard the case in which she was charged with removing a promissory note from a court safe and replacing it with a counterfeit one. According to her, the prosecutor said that there was no evidence as to the authorship of the counterfeit promissory note, but because he was “utterly convinced” that she was guilty he requested a very stiff sentence.

39. She added that there was nothing in the handwriting expert’s opinion to suggest that she had any part in the manufacture. There is also no evidence that she had access to the court’s documents. The judgment takes as proven that she removed an original document from a safe in the court basement without explaining how she could have had access to it and in spite of the negative response of all the court employees.

40. She said that she filed a motion for cassation against the conviction which was denied as it referred to matters of fact. Subsequently, she filed an extraordinary appeal with the Supreme Court of Justice, in which the Cassation Chamber prosecutor considered that the prerequisites for the motion were met, in spite of the fact that the Cassation Chamber had denied it. Accordingly, she filed an appeal with the Supreme Court of Justice, which rejected the suit without considering the issue, in accordance with Article 280 of the Code of Civil and Commercial Procedure “because the case was of no interest to the Court.” Against that decision, she filed a motion for reconsideration of dismissal of appeal, which was rejected on June 30, 1999. She claimed that she was deprived of her right to appeal to a higher court.

---

\(^{13}\) The petition was lodged by Osvaldo Isaías Migueles and Adolfo Raggio.

\(^{14}\) The petition was lodged by Mrs. María Marta Susana Abalo, represented by Mr. Eugenio Raúl Zaffaroni, who, in a communication received on July 17, 2007, informed the Commission of Mrs. Abalo’s death and stated that he was unable to continue his representation in the case. He also said that, at the request of the alleged victim’s mother, Messrs. Carlos Varela Álvarez and Alberto Bovino would be the petitioners in the complaint before the Commission.
because none of the courts analyzed whether or not the judgment that convicted her was arbitrary; “one tribunal did not examine it because it considered that [the arguments] dealt with matters of fact, and the other because apparently it simply did not wish to do so.”

8. María Alejandra Torres (Province of Buenos Aires)

41. The petition was received on March 7, 2000. The petition states that the alleged victim was accused of and sentenced to 11 years in prison for the homicide of her two-year-old son, Facundo, on August 4, 1997. It holds that her fair-trial guarantees were not observed given that she was not permitted to introduce evidence that would have led to her acquittal, that, her right to be presumed innocent was not respected and, moreover, she claims that she was not permitted to appeal against the conviction issued by the 29th Oral Tribunal for Criminal Matters in and for Buenos Aires. The petition says that the alleged victim filed a motion for cassation against the conviction, which was not admitted because that remedy does not allow the review of evidence. She filed an appeal against that decision with the National Cassation Chamber for Criminal Matters, which was also denied. Subsequently, she attempted an extraordinary appeal against the conviction, which was refused because it was brought against the judgment at first instance and not against the appellate court’s decision. Finally, the petition states that the alleged victim filed a motion for reconsideration of dismissal of appeal to the Supreme Court of Justice of the Nation, which, in a ruling of October 14, 1999, upheld the decision and denied the extraordinary appeal as erroneously presented.

9. César Alberto Greco (Province of Buenos Aires)

42. The petition was received at the offices of the OAS in Buenos Aires on April 14, 2000. The petition states that Mr. Greco was charged as an accomplice in a robbery of merchandise from a commercial establishment in Buenos Aires. It adds that in the evening of the day on which the crime was committed he was detained in the company of another individual and claimed in his defense that he knew nothing about any robbery since he had only been hired to transport goods. The Sixth Oral Tribunal for Criminal Matters in and for the Federal Capital sentenced Mr. Greco to five months in prison as an accomplice in an attempted robbery, with the sentence suspended during probation. The petitioner says that Mr. Greco was innocent and that, in securing the conviction, the court relied exclusively on circumstantial evidence in spite of the existence of procedural measures that disproved it. A motion for cassation was presented against the conviction which, according to the petitioner, was refused by the National Cassation Chamber for Criminal Matters “without any sort of explanation” and notified on October 15, 1999. The petitioner states that it did not appeal to the Supreme Court of Justice of the Nation because an extraordinary appeal was completely useless for obtaining relief for the alleged violation, given that it would have been flatly rejected under Article 280 of the Code of Civil and Commercial Procedure.

10. Alberto José Ricciardi (Province of Buenos Aires)

43. The petition was received at the then-offices of the OAS in Buenos Aires on May 11, 2000. It states that the 15th Oral Tribunal for Criminal Matters in and for Buenos Aires sentenced Mr. Ricciardi to four years imprisonment and disqualified him from practicing the law for the crime of procedural fraud in the form of falsification of a private document in a proceeding of a commercial nature in which he was involved as a defense counsel before the Commercial Chamber. A motion for cassation presented against the conviction was denied on November 25, 1999, on the grounds that it was “erroneously granted.” Subsequently, the petitioner attempted an extraordinary appeal against the

---

15 The petition was lodged by Ana María Gorino.
16 The petition was presented by the Public Defenders Office before the Federal Oral Courts.
17 The petition was lodged by Carlos A. Cony Fernández Mader.
conviction, which was refused on April 3, 2000. The petitioner claims that the higher court denied his appeals without examining the matter, thus violating the alleged victim’s right to a two-tier judicial procedure, as envisaged in the American Convention.

11. **Julio César Ramón del Valle Ambrosio (Province of Córdoba)**

44. The petition was received on July 10, 2000. It states that Mr. Julio César Ramón del Valle Ambrosio was the victim of a violation of fair-trial guarantees in a judicial proceeding instituted against him and 12 other people in the province of Córdoba for aggravated fraud consisting of obtaining and using for personal ends loans granted by various financial institutions to the company “Solares SRL.” The petitioners say that The Ninth Chamber for Criminal Matters in and for the Province of Cordoba sentenced him on December 23, 1997, to three years and six months in prison as an accomplice in the crime. A motion for cassation was filed against that decision but rejected on the grounds that it was formally inadmissible as it was not adequately substantiated. Subsequently an extraordinary appeal was filed that was also denied as formally inadmissible since, in the opinion of the court, the sentence was not arbitrary. Finally, the petitioner filed a motion for reconsideration of dismissal of appeal with the Supreme Court of Justice, which denied it on March 21, 2000, under Article 280 of the Code of Civil and Commercial Procedure.

12. **Fabio Walter Romero (Province of Buenos Aires)**

45. The petition was received at the then-offices of the OAS in Buenos Aires on June 23, 2000. The petition states that Mr. Romero was tried and convicted by the Sixth Oral Tribunal for Criminal Matters in and for the Federal Capital and given a probationary sentence of two months in prison, which was suspended. A motion for cassation filed against the sentence was denied with the argument that the judgment was not arbitrary and, therefore, the appeal presented was out of order. The petition also states that an extraordinary appeal was denied, as was a motion for reconsideration of dismissal of appeal filed with the Supreme Court of Justice. Notice of the denial of the latter motion was served on December 23, 1999.

46. The petitioner claims that the system of procedural laws denies the possibility of review required by the American Convention inasmuch as it regards the motion for cassation as a restricted precautionary measure that concerns matters of form. Furthermore, the petition states that in the practice of the courts not only are matters concerning the facts and evidence left out of the orbit of the review, but very often in their interpretations, it is argued that the errors of lower courts are based on discrepancies over the weighing of evidence, when in reality the accused’s defense is claiming an infringement of the right to be presumed innocent, as in the case of Fabio Walter Romero, who never managed to have his sentence reviewed by a higher court.

13. **Carlos Eduardo Domínguez Linares (Province of Córdoba)**

47. The petition was received at the then-offices of the OAS in Buenos Aires on September 19, 2000. It states that Mr. Domínguez Linares was the victim of a violation of fair-trial guarantees in a judicial proceeding instituted against him and 12 other people in the province of Córdoba for aggravated fraud consisting of obtaining and using for personal ends loans granted by various financial institutions to the company “Solares SRL.” The petition says that The Ninth Chamber for Criminal Matters in and for the Province of Cordoba sentenced him to three years and six months in prison as an accomplice in the crime.

---

18 The petition was lodged by Gonzálo Eduardo Rúa, María Isabel Rúa, and Ramiro Hernán Rúa.
19 The petition was presented by the Public Defenders Office before the Federal Oral Courts.
20 The petition was lodged by Gonzálo Eduardo Rúa, María Isabel Rúa, and Ramiro Hernán Rúa.
A motion for cassation was filed against that decision but rejected on the grounds that it was not adequately substantiated. Subsequently he filed an extraordinary appeal that was denied as formally inadmissible since, in the opinion of the court, the sentence was not arbitrary. Finally, the petitioner filed a motion for reconsideration of dismissal of appeal with the Supreme Court of Justice, which denied it on March 21, 2000, under Article 280 of the Code of Civil and Commercial Procedure. They claim that his right to have the sentence reviewed by a higher court was violated, in violation with Articles 8 and 25 of the American Convention.

### Miguel Félix Hidalgo (Province of Buenos Aires)

The petition was received at the then-office of the OAS in Argentina on September 20, 2000. The petition says that on December 17, 1998, the 7th Oral Tribunal for Criminal Matters in and for the Federal Capital sentenced the alleged victim to life imprisonment and the payment of complementary legal claims for the crime of aggravated murder (committed with premeditation) of an 16-year-old child. The petition says that in the course of the proceedings his fair-trial guarantees were violated because certain testimony and evidence that were favorable to him and demonstrated his innocence were not considered; thus, the petition claims that the sentence was arbitrary and lacked foundation. The petition also claims that the alleged victim was discriminated against during the proceeding in comparison to the treatment offered to others tried for murder, which, in his opinion, had to do with the fact that he was a policeman. Furthermore, the petition says that the right to appeal the judgment to a higher court was infringed given that the motion for cassation that he filed against the sentence was rejected for failure to meet requirements of form. Subsequently, the alleged victim filed an extraordinary appeal which, he says, was refused as the subject of the appeal was not a federal matter and because it lacked independent grounds. Finally, he filed a motion for reconsideration of dismissal of appeal which was denied on March 14, 2000, by the Supreme Court of Justice under Article 280 of the Code of Civil and Commercial Procedure. He was notified of the last decision on March 20, 2000. The petition alleges that the State violated Articles 7, 8, 24, and 25 of the American Convention against Mr. Miguel Felix Hidalgo.

### Enrique Luis Saccella (Province of Buenos Aires)

The petition was received on December 29, 2000. The petitioners say that the Argentine State violated Mr. Saccella’s right to a fair trial recognized at Article 8 of the American Convention. They say that he was falsely accused of sexually abusing his partner’s daughter and that his trial was flawed from the outset with false testimony, his defense attorney was prevented from questioning witnesses, and not all the evidence presented by the defense was taken into consideration. They added that the proceeding was instituted in February 1996 by the girl’s aunt and ratified that month by the girl’s mother, who retracted her accusation a month later. They say that nonetheless, in November 1997, Enrique Luis Saccella was put on trial for the crime of sexual abuse, which was confirmed in March 1998 by the Chamber of Criminal and Correctional Appeals in and for the Federal Capital. On February 10, 1999, the case was referred to the 12th Oral Tribunal for Criminal Matters in and for the Federal Capital and on June 1, 2000, the alleged victim was given a suspended sentence of three years in prison for the crime of sexual abuse. They say that the defense filed a motion for cassation and an extraordinary appeal, which were both refused in a ruling dated June 26, 2000. As a result, a motion for reconsideration of dismissal of appeal was presented and dismissed by the National Cassation Chamber for Criminal Matters in October 2000. In turn, a motion for reconsideration of dismissal of appeal was presented to the Supreme Court of Justice and likewise rejected. Accordingly, they say that no higher court reviewed his case.

### Leandro Parpaglione (Province of Buenos Aires)

---

21 The petition was lodged by Miguel Félix Hidalgo, Camilo Eduardo Pereyra, and Alejandro Faini.

22 The petition was lodged by Enrique Luis Saccella and Alberto Paglilla.
50. The petition was received on March 8, 2001. The petition states that Mr. Parpaglione was arrested on February 24, 1999, after allegedly shooting his wife Nora Liliana García several times, severely wounding her in the chest, abdomen, and left hand. In the course of the preliminary investigation and during the trial the petitioner denied his responsibility in the facts and said that he had suffered a memory lapse and only recalled the moments prior to the alleged attack and then finding himself handcuffed in the offices of the 22nd Police Precinct in the Federal Capital. Consequently, the alleged victim was ordered to undergo a psychological evaluation, which concluded that Mr. Parpaglione suffered from bouts of amnesia as a result of depression and that at the time of the incident his emotional faculties were violently disturbed. On July 2, 2001, the petitioner was sentenced to eight years in prison for attempted aggravated homicide. The petition notes that in the course of the investigation several tests were omitted that would have helped to demonstrate the petitioner’s innocence.

51. Furthermore, it mentions that he was held in pretrial detention for longer than two years, and that his court-appointed defender did not present any motions for his freedom and ultimately “left his defense,” which made it necessary for Mr. Parpaglione to present briefs and petitions that the court refused to examine as they were not submitted by a lawyer.

52. About the court-appointed defender, he adds that shortly before the trial, a defender who was on leave was designated to his case, so it was taken by another defender who only visited him in jail on one occasion to discuss the case without achieving a deep knowledge on it.

53. The petitioner says that he filed an appeal with the National Cassation Chamber for Criminal Matters against the sentence of the Sixth Oral Tribunal for Criminal Matters in and for the Federal Capital, requesting the vacation of the entire proceedings. The appeal was examined by the Fourth Court of the Chamber which denied it on June 18, 2002, because it considered it unfounded. Subsequently, the petitioner’s defense counsel filed an extraordinary appeal which was ruled inadmissible because it did not concern a federal matter. Finally, toward the end of the September 2002, Mr. Parpaglione lodged an appeal with the Supreme Court of Justice, which was rejected on October 7, 2003.

54. The main submission of the petitioner is that owing to excessive formalities in the appeals, Mr. Parpaglione’s right to have his sentence substantively reviewed by a higher court was violated. The petitioner alleges the violation of Article 8.2.h of the American Convention in connection with articles 5, 7 and 24 of the same instrument.

17. Jaime Amado Burgos (Province of Jujuy)

55. The petition was lodged on May 10, 2001. The petition states that Mr. Jaime Amado Burgos, a Bolivian citizen and resident, was deprived of his liberty based on a complaint made by telephone against him to the National Gendarmerie. According to the petition, the alleged victim entered Argentina from Bolivia on September 26, 1997, and that shortly after clearing customs Gendarmerie personnel arrested him, searched his vehicle, and found two packages of cocaine. The petitioners say that the officials did not have a court order to arrest him or to search the automobile.

56. The petition adds that on April 22, 1999, Mr. Burgos was sentenced to five years in prison for drug trafficking by the Federal Oral Tribunal in and for Jujuy. The petitioners claim irregularities in the conviction, such as, for example, the refusal of the court to take contradictory testimonies into account and problems with expert analyses of evidence. A motion for cassation was filed and rejected on

23 The petition was presented by Leandro Héctor Parpaglione, represented by the Public Defender’s Office before the Federal Oral Courts.

24 The petition was presented by Jaime Amado Burgos and Jorge Ramón López Peña.
formal grounds without considering the merits of the case. An extraordinary appeal was presented against that rejection, which likewise was refused on March 7, 2001, by the Argentine Supreme Court. The alleged victim claims that owing to excessive formalities in admitting the motion for cassation and extraordinary appeal, the State of Argentina denied him his right to have his sentence reviewed by a higher court. Specifically, the petition claims violations of Articles 8(2)(h), 8(2)(f), 7, 24, 29, and 30.

18. Gustavo Rainieri (Province of Buenos Aires)

57. The petition was received on June 15, 2001. On the date that the petition was received, Gustavo Rainieri was in detention, having been sentenced on October 19, 2000, to five years and six months in prison for the crime of theft aggravated by the use of firearms by the 25th Oral Tribunal in and for the Federal Capital. Mr. Rainieri’s court-appointed defender filed a motion for cassation against the sentence for violations of his fair-trial guarantees, his right to be presumed innocent, and the principle of non bis in idem. The petitioner notes that the motion for cassation was rejected on November 9, 2000, with the argument that the lower court errors alleged by the defense referred to aspects that fell outside the scope of a motion for cassation concerning as they did the appraisal of evidence and identification of the appropriate penalty, both things at the trial court's discretion and not subject to review in a court of cassation. Furthermore, the court-appointed defender filed a motion with the 25th Oral Tribunal requesting that it modify the way in which it had calculated Mr. Rainieri’s sentence and that the provision on the basis of which the sentence had been calculated (Article 24 of the Criminal Code) be declared unconstitutional because it violated the principle of equality and the presumption of innocence. The motion was turned down on December 15, 2000. A habeas corpus petition was filed with the same tribunal for the same purpose and likewise refused on February 16, 2001. Thus, the alleged victim claimed that his right to a two-tier judicial procedure enshrined in Article 8(2)(h) of the Convention as well as his right to a fair trial in general were violated.

58. The petitioner argues that Article 24 of the Criminal Code, which provides that the number of days calculated for pretrial detention is more onerous in the case of a sentence under the reclusión regime (imprisonment under harsher conditions) than for a sentence under the prisión regime (imprisonment under ordinary conditions), violates the American Convention, since the criminal law consolidation process (Law 24660 of 1996), effectively tacitly abolished the reclusión regime, given that the process introduced undifferentiated enforcement of sentences under the two regimes, which is significant because the conceptual difference between prisión and reclusión was founded precisely on the conditions in which the sentence was enforced. Therefore, it is illogical for provisions to subsist that maintain the negative effects of that distinction and infringe the right to liberty. The petition alleges violation of Articles 5, 6, 7, 8, 9, 11(1), 23, and 24 of the American Convention.

19. Alejandro Alcides Sánchez (Province of Buenos Aires)

59. The petition was lodged on August 24, 2001. According to the petition, Mr. Alejandro Alcides Sánchez was the victim of several violations of his fair-trial guarantees during his criminal trial for the crime of sexual abuse, which resulted in a three-year prison sentence to be served in full. The petition states that the alleged victim was working as an electrician at a kindergarten and was accused of sexually abusing a four-year-old boy. The petitioners claim that serious violations of due process were committed in the proceeding, such as distortion of testimonies and disregard of certain evidence, such as the visual inspection and clinical examination, and they attribute those irregularities to the fact that the court examining the case had the preconceived idea of convicting Mr. Sanchez because of his marginalized social status and lack of education.

25 The petition was presented by the Public Defenders Office before the Federal Oral Courts.
26 The petition was lodged by Gonzálo Eduardo Rúa, María Isabel Rúa, and Ramiro Hernán Rúa.
60. The petitioners filed a motion for cassation against the conviction, which was rejected on June 23, 1999. Subsequently, they entered a motion for reconsideration of dismissal of appeal before the National Cassation Chamber for Criminal Matters, which was denied in a judgment returned on December 22, 1999. And extraordinary appeal was filed against the latter decision, which was likewise refused by the Third Court of the National Cassation Chamber on June 5, 2000. Finally, the petitioners filed a motion for reconsideration with the Supreme Court of Justice, which was denied and notified on March 2, 2001.

61. The petitioners say that the alleged victim’s right to a trial by an independent and impartial tribunal was violated. They also hold that his right to a two-tier judicial procedure was infringed given that the motion for cassation and the subsequent appeal for reconsideration and extraordinary appeal where turned down on formal grounds based on the rule that the court of cassation cannot question the first instance court’s assessment of evidence. The Supreme Court dismissed the appeal only by the invocation of Article 280 of the Code of Civil and Commercial Procedure that “authorizes to reject the motion discretionally.”

20. Carlos Roldán and Óscar Franco (Province of Buenos Aires)

62. The petition was received at the then-office of the OAS in Argentina on September 14, 2001.²⁷ The petitioner claims violations of the rights to a two-tier judicial procedure, to be presumed innocent, to a defense at trial, and to be tried within a reasonable time.

63. The petition states that on November 2, 1999, the Second Oral Tribunal for Criminal Matters in and for the Federal Capital convicted Carlos Roldán and Óscar Franco and handed them a suspended sentence of eight months in prison after finding them guilty of the crime of fraud through the use of false private documents, infringing several different statutory provisions. Their defense counsel’s filed a motion for cassation against that ruling on the grounds that it was arbitrary since it failed to address substantive submissions made by the defense and because there was an inversion of the burden of truth, thereby infringing the principle of innocence. They add that the conviction was based not on direct evidence but on circumstantial evidence and that the existing presumptions fell short of the standard of proof. They say that the tribunal mentioned in the judgment that the accused were unable to demonstrate how the money came to be in their hands.

64. They also say that the motion for cassation was not admitted because the arguments put forward basically came down to disagreement with the tribunal’s assessment of the evidence in taking as proven the materiality of the offense and the participation of the convicted men therein, which authority, according to the tribunal, is not subject to oversight in a court of cassation. The defense then presented a motion for reconsideration of dismissal of appeal to the National Cassation Chamber for Criminal Matters, which was unsuccessful. Subsequently they filed an extraordinary appeal with the same chamber, which was also denied. Finally, a motion for reconsideration lodged with the Supreme Court of Justice was denied for failure to meet formal requirements. The petitioner says that the arbitrary way in which all the remedies seeking a review of the conviction were treated was described in detail.

65. Finally, the petitioner claims that given that the criminal trial of the alleged victims began in 1993 and that the Supreme Court of Justice did not issue its judgment rejecting the motion for consideration presented until April 3, 2001, the right to be tried within a reasonable time had also been violated.

²⁷ The petition was presented by the Public Defenders Office before the Federal Oral Courts. In communications received in September 2007, Messrs. Roldán and Franco advised that they had revoked the representation of the Public Defender’s Office; since then they have been represented by Mr. Leandro Héctor Parpaglione.
21. **Pablo Rafael Galván (Province of Buenos Aires)**

The petition was received on December 3, 2001. The petition states that the alleged victim was arrested on April 7, 1996, by the Province of Buenos Aires Police and sentenced to 18 years and six months in prison for the crime of murder. His two brothers were also tried for the crime; one of them was acquitted and the other convicted and sentenced to 18 years in prison for murder. In the judicial proceeding at the domestic level, Mr. Galván’s defense counsel claimed that the homicide had been committed in self-defense and in circumstances in which all those involved, including the deceased, were inebriated, a fact that the court had interpreted as an aggravating circumstance, not extenuating one, as the defense had argued. Mr. Galván’s defense filed a motion for cassation against the conviction. The petitioner notes that the motion was denied by the Criminal Cassation Tribunal in and for the Province of Buenos Aires on February 23, 1999, without addressing the errors of the lower court alleged by the defense; its refusal was for purely formal reasons, such as the fact that in filing the motion the defense counsel should have enclosed a photocopy of the declaration of intent to appeal made to the trial court. A motion for reversal or annulment brought against that ruling was also rejected. Several extraordinary appeals were also filed with the Supreme Court of Justice of the Province of Buenos Aires and, at last instance, a special federal appeal was lodged with the Supreme Court of Justice of the Nation, the argument in each case being that the court of cassation should not be allowed to deny a remedy designed to ensure the right to a two-tier judicial procedure on a mere formality, coupled with the fact that the copy that was requested was contained in the record of the proceedings at first instance. On May 30, 2001, the Supreme Court of Justice of the Nation denied the last appeal, which ruling was notified on June 4, 2001.

In a communication dated March 6, 2009, the petitioners said that the length of the sentence had been miscalculated and counted as concluding on November 5, 2009. Upon noticing the error, the petitioners brought a number of judicial actions with the result that on December 1, 2008, the Departmental Court of Morón ruled on the revised calculation of the sentence, determined that the sentence had expired on July 13, 2008, and ordered the immediate release of Mr. Galván. The petitioners claim that the alleged victim was unlawfully deprived of his liberty from July 13, 2008, to December 1 of that year. The petition states the violation of Article 8.2.h of the American Convention in connection with 7, 24, 1.1 and 2 of the same instrument.

**B. POSITION OF THE STATE**

It is worth recalling that the Commission forwarded to the State the pertinent parts of the petitions of Marcelo Darío Posadas, Christian Walter Mutuverria, and Oscar Raúl Gorigoitia prior to its joinder decision of December 17, 2003. That is why there are specific observations on the part of the State with respect to those three petitions and, following the joinder, general comments on the 21 petitions that are the subject of this report.

**1. Marcelo Darío Posadas (Province of Buenos Aires)**

The State claimed that the alleged victim was appointed a public defender and that there was nothing in the record to show that he requested a different defender or that a complaint was made against the defender for failure to perform his duties. Furthermore, the State holds that the judgment is clear and shows that the criminal responsibility of the accused was accredited in the proceedings.

In addition, the State says that the fact that the curative security measure was not
ordered because it was allegedly required to treat his drug addiction did not entail a worsening of the conditions of detention. The State added that the alleged victim was examined by doctors on several occasions and no reference was ever made to a drug addiction that required treatment. It noted that there is no record of any habeas corpus petition having been presented in that regard.

71. As regards the denial of the appeals filed by the alleged victim’s counsel, the State said that the fact that cassation had been refused on the grounds that it entailed a reassessment of evidence did not necessarily mean that the ruling was arbitrary. The State claims that the petitioner’s intention is for the Commission to act as a fourth instance for the review of judicial decisions.

2. **Christian Walter Mutuverria (Province of Buenos Aires)**

72. The State said that the 19th Oral Tribunal tried Mr. Mutuverria in two proceedings in which he was charged and found guilty of the theft of two automobiles in two separate incidents. The State claimed that Mr. Mutuverria’s petition to the Commission did not describe facts that would amount to violations of human rights recognized by the Convention and that it reiterated situations that were settled in the domestic jurisdiction, such as the reduction of the sentence; therefore, the petitioner sought to turn the Commission into an appellate court. The State added that the petition did not indicate that there had been any violation of fair-trial guarantees in the judicial proceeding, but that he disagreed with the conviction. Thus, as regards the evidence, the State mentioned that the court examining was entitled not to admit any that it considered manifestly inadmissible. It explained that in the cassation ruling the court examined and rejected each of the lower court errors alleged by the appellant; that cassation was not the suitable remedy for challenging the constitutionality of Decree Law 6582/58; and that questions as to fact and evidence lie beyond the scope of a motion for cassation.

73. In communications dated September 5, 2000, and July 23, 2001, the State reiterated its arguments and underscored that Mr. Mutuverria had regained his freedom on December 24, 1996.

3. **Óscar Raúl Gorigoitia (Province of Mendoza)**

74. The State said that the police vehicle occupied by Oscar Raúl Gorigoitia and another policeman joined a chase involving several police vehicles. As a result of the chase the youth Hugo Alejandro Gómez Romagnoli was fatally wounded and, according to the record of the criminal proceeding, Mr. Gorigoitia had fired two or three shots, one of which struck the Gómez Romagnoli youth.

75. The state added that as a result of the foregoing, the Government of the Province of Mendoza was sentenced to pay the mother of the Gómez Romagnoli youth the sum of 195,000 pesos. The State held that the evidence given was “overwhelming” in confirming that Gorigoitia acted knowingly and was aware of the potential consequences of his actions. The State claimed that the alleged victim’s defense counsel did not comply with the procedural formalities that required that the motion be stringently founded. Thus, the State requested that the Commission declare the petition inadmissible as it simply concerned the discrepancy of the alleged victim with the judgment that convicted him.

76. In a communication dated August 11, 2003, the State reiterated the request that that the petition be declared inadmissible.

4. The 21 joined petitions Marcelo Dario Posadas, Alberto José Ricciardi, Alejandro Alcides Sánchez, Carlos Eduardo Domínguez Linares, Carlos Osmar Barraza, Carlos Roldán and Oscar Franco, César Alberto Greco, Christian Walter Mutuverria, Enrique Luis Saccella, Fabio Walter Romero, Gustavo Rainieri, Jaime Amado Burgos, José Ángel De Priete, Julio César Ramón Del Valle Ambrosio, Leandro Parpaglione, María Alejandra Torres, María Marta Susana Abalo, Miguel Félix Hidalgo, Oscar Raúl Gorigoitia, Osvaldo Isaías Migueles, and Pablo Rafael Galván
On September 6, 2007 at a working meeting in which the petitioners said that there were two main aspects to be negotiated—(a) statutory amendments connected with the right to a two-tier judicial procedure; and (b) the situation and reparation or remediation of the individual cases—the State reported the creation by the executive branch of a Commission to Reform the Code of Criminal Procedure by Decree 115/07. With respect to reparations, the state said that each petition would be examined separately because they were different and involved different provinces of the Argentine nation.

At a working meeting on October 11, 2007, the petitioners said that although the draft amendments to the Code of Criminal Procedure of the Nation included several of the proposals, they only applied to federal crimes and not yet to the provinces, and that they did not include minimum rules on cassation. The representatives of the State said that a meeting was held with the Federal Board of Courts to assess the possibility of applying the national proposal on appeals to the provinces but that agreement had not yet been reached on the subject. The State reiterated its willingness to reach a friendly settlement agreement.

On March 11, 2008, the parties held a working meeting in the context of the 131st regular session of the IACHR. At that meeting, the State said that the draft framework law to establish rules concerning Article 8(2)(h) of the American Convention was under examination. The State also said that as there were differences between the joined petitions it would have to analyze the legal merits of each case and decide the State’s position with respect to the various requests.

In a note dated December 17, 2008, the State informed the Commission that several meetings had been convened with the petitioners with a view to reaching agreement on a draft law that would ensure effective application of the guarantee recognized at Article 8(2)(h) of the American Convention in accordance with international standards, with a view to ensuring the non-repetition of cases such as those that had purportedly given rise to this petition. The State added that the final text of the preliminary draft, together with the last comments made by the petitioners, was forwarded to the Secretariat for Human rights of the Ministry of Justice, Security, and Human Rights so that it might be conveyed to the relevant organs responsible for such matters.

In the same note, the State said that it had conducted an analysis of the legal merits of the various joined petitions and, in that regard, noted with respect to the reparations claims presented by the petitioners that in the majority of cases there was a manifest disproportionality with international standards and, therefore, all contents concerning compensation should be eliminated from the proceeding. Furthermore, the State said that although a number of submissions concerned claims based on the violation of other rights envisaged in the Convention, it was the State’s understanding that petition 828-01 and the resulting dialogue opened between the parties would be confined to matters connected with Article 8(2)(h) of the Convention. Finally, the State said that the arguments of some of the alleged victims concerning their innocence lay outside the scope of the Commission's analysis.

IV. ANALYSIS OF ADMISSIBILITY

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

The petitioners in the 21 joined petitions in this report have standing under Article 44 of the American Convention to lodge petitions with the Commission. The petition names as alleged victims individuals in respect of whom the State undertook to observe and ensure the rights recognized in the American Convention. As to the State, the Commission notes that Argentina has been a state party to the Convention since September 5, 1984, when it deposited its instrument of ratification. Therefore, the Commission is competent ratione personae to examine the petition.
83. The Commission has competence *ratione loci* to examine the petition since the latter alleges violations of rights protected under the American Convention which took place within the territory of a State party thereto. The IACHR is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention had already entered into force for the State as of the date that the facts alleged in the petition. Finally, the Commission has competence *ratione materiae* because the petition alleges violations of human rights enshrined in the American Convention.

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

1. **Exhaustion of domestic remedies**

84. Article 46(1)(a) of the American Convention provides that admission of petitions lodged with the Inter-American Commission shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve them before they are taken up in an international proceeding.

85. Having analyzed each of the joined petitions, the Commission notes, as description of the facts therein shows, that, with the exception of Osvaldo Isaías Migueles, each of the alleged victims filed a motion for cassation against their convictions and, in most cases, also presented extraordinary appeals.

86. With respect to the case of Mr. Migueles, the Commission notes that the alleged victim’s defense counsel filed a motion claiming inapplicability of law with the Supreme Court of Justice of Buenos Aires, which was denied; it subsequently lodged an extraordinary appeal, which was also refused, and finally filed a motion for reconsideration of dismissal of appeal, which the Supreme Court of Justice rejected on March 17, 1998. Although he did not file a motion for cassation against the conviction, the Commission considers that, given the arguments concerning the ineffectiveness of that remedy, Mr. Migueles’ case qualifies for the exception to the rule of prior exhaustion of domestic remedies contained in Article 46(2)(a) of the American Convention.

87. In conclusion, the Commission finds with respect to all the other petitions that the alleged victim exhausted the appropriate remedies provided under domestic law for criminal matters. Therefore, the Commission considers that the requirement of prior exhaustion of domestic remedies contained in Article 46(1) of the American Convention has been met.

2. **Time limit for lodging the petition**

88. Under Article 46(1) of the Convention, for a petition to be admitted it must be filed within the stipulated period, that is, six months from the date on which the party alleging violation of their rights was notified of the final judgment adopted at the national level.

89. Based on its analysis, and as the information contained in the section on the positions of the parties shows, the Commission finds that all of the petitions were lodged within the time limit stipulated by the Convention, thus satisfying the requirement set forth in Article 46(1)(b) of that instrument.

3. **Duplication of procedures and international res judicata**
90. Article 46(1)(c) of the Convention provides that admission of a petition is subject to the requirement that the matter “is not pending in another international proceeding for settlement,” and Article 47(d) stipulates that the Commission shall not admit a petition which “is substantially the same as one previously studied by” it “or by another international organization.” The parties have not alleged any of the circumstances that would give rise to inadmissibility in any of the 21 petitions on the consideration, and nor do they occur in the proceedings.

4. Characterization of the alleged facts

91. Article 47(b) of the American Convention declares inadmissible those petitions that do not state facts that tend to establish a violation of the rights guaranteed in the Convention. In the present case, it is not for the Commission at this stage of the proceedings to decide whether or not the alleged violations of the American Convention actually took place. The IACHR made a prima facie evaluation and determined that the petition sets forth allegations which, if proven, could tend to establish possible violations of the rights guaranteed by the Convention.

92. Neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly 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 or could be established as having been violated, if the facts alleged are sufficiently proven.

93. The Commission notes that corresponds to define the scope of the rights enshrined in Articles 8 and 25 of the Convention, especially regarding the scope of Article 8.2.h., and its application to the particular circumstances of the case, in the merits stage. Based on the information and submissions presented by the petitioners, the Commission notes that the common argument in all the petitions is that the alleged victims were not afforded a substantive review of their convictions by a higher court, in spite of invoking the remedies available under domestic law for that purpose. Furthermore, the rules governing the motion for cassation in the majority of Argentine procedural codes are based on a prohibition against altering the facts set by the court that issued the judgment because they do not accept the possibility of the reassessment in a cassation hearing of the evidence on which the judgment was founded, thus limiting appellate oversight of the decision exclusively to questions of law. It was also claimed that the review by the Supreme Court of Justice of the Nation under an extraordinary appeal is limited by Article 280 of the Code of Civil and Commercial Procedure, which leaves the review of cases entirely at the whim of the Supreme Court without need for the latter to reason its reasons.

94. Based on the foregoing, the IACHR considers that the allegations made by the alleged victims could characterize violations of the right enshrined in Article 8(2)(h) of the American Convention, taken in conjunction with Articles 1(1) and 2 of that instrument. Furthermore, based on the submissions of a number of petitioners regarding, inter alia, alleged shortcomings in the criminal public defender service, refusal to admit evidence, wrongful application of the law, violation of the right to personal liberty, the Commission has decided that in the merits stage it will examine the alleged violations of Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention, in connection with Article 1(1) (duty to respect and ensure rights) and 2 (duty to adopt provisions under domestic law) thereof.

95. Additionally, the Commission will examine in the merits stage the alleged violation of Article 5 (to humane treatment) relative to the petition of Mr. Marcelo Dario Posadas.

96. The Commission also concludes that it does not have sufficient information or evidence from which to infer alleged violations by the Argentine State of the other rights invoked by the
petitioners, contained in Articles 6, 9, 11, 23, 24, 29, and 30. Accordingly the Commission has decided to declare the petition inadmissible in those regards.

V. FINAL CONSIDERATIONS

97. The Commission has decided that in the merits stage it will continue to examine the petitions by the province in which the alleged violations are said to have occurred. Therefore, the Commission hereby decides to separate the petitions and process them as follows:

1. Alberto José Ricciardi, Alejandro Alcides Sánchez, Carlos Osmar Barraza, Carlos Roldán, Oscar Franco, César Alberto Greco, Christian Walter Mutuverria, Enrique Luis Saccella, Fabio Walter Romero, Gustavo Rainieri, José Ángel De Priete, Leandro Héctor Parpaglione, Marcelo Dario Posadas, María Alejandra Torres, María Marta Susana Ábalo, Miguel Félix Hidalgo, Osvaldo Isaiás Migueles, and Pablo Rafael Galván in the same record;

2. Julio César Ramón del Valle Ambrosio and Carlos Eduardo Domínguez Linares in the same record;

3. Óscar Raúl Gorigoitia in a separate record; and


VI. CONCLUSIONS

98. The Commission concludes that it is competent to examine the instant case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention.

99. Based on the arguments of fact and law given above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the case admissible for the purposes of examination of the alleged violations of Article 8(2)(h) of the American Convention in connection with Articles 1(1) and 2 of said treaty.

2. Furthermore, based on the submissions of a number of petitioners, the Commission has decided that in the stage on merits it will examine the alleged violation of Articles 5, 7, 8, and 25 of the same instrument.

3. Also decides that on the merits stage will analyze the alleged violation of Article 5, concerning the petition of Mr. Marcelo Dario Posadas.

4. To declare the case inadmissible in relation to Articles 6, 9, 11, 23, 24, 29, and 30 as invoked by certain petitioners.

5. To separate the petitions that comprise the petition under consideration, join them by province of the Argentine State in which the alleged facts occurred, and proceed with its analysis of the merits of the cases in that way.

6. To notify the State and the petitioners of this decision.
7. To publish this decision and include it in the Annual Report to be presented to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 11th day of July 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Rose-Marie Belle Antoine, Felipe González, Dinah Shelton and Rodrigo Escobar Gil, Commissioners.