

**REPORT No. 73/17**  
**CASE 12.984**  
MERITS  
RAÚL ROLANDO ROMERO FERIS  
ARGENTINA  
JULY 5, 2017

**I. SUMMARY**

1. On 24 August 2001, the Inter-American Commission on Human Rights (hereinafter "the Commission", "the Inter-American Commission" or "the IACHR") received a petition lodged by Mariano Cuneo Libarona, Cristian Cuneo Libarona, José María Arrieta and Jorge Eduardo Alcántara<sup>1</sup> (hereinafter "the petitioner"). The petition alleged the international responsibility of the Republic of Argentina (hereinafter "the State", "the Argentine State" or "Argentina") for violations of personal liberty and due process in the context of criminal proceedings which began in 1999 against Raúl Rolando Romero Feris, (hereinafter the "alleged victim"), in the Province of Corrientes.

2. The State indicated that it bares no international responsibility in the present case, because the violations alleged by the petitioner were duly analyzed by the domestic judicial authorities. The State added that the criminal process against Mr. Romero was conducted in accordance with due process and disagreement with judicial decisions does not imply a violation of the rights alleged.

3. After analyzing the available information, the Commission concluded that the Argentine State is responsible for violating the rights to personal liberty, judicial guarantees and judicial protection established in Articles 7.1, 7.2, 7.3, 7.5, 7.6, 8.1, 8.2 and 25.1 of the American Convention, in relation to the obligations established in Article 1.1 of the same instrument to the detriment of Raúl Rolando Romero Feris.

**II. PROCEEDINGS BEFORE THE COMMISSION**

4. The proceedings of the case during the admissibility stage are detailed in Admissibility Report No. 4/15 of January 29, 2015.<sup>2</sup>

5. On February 4, 2015, the Commission notified the parties of the Admissibility Report. The IACHR also made itself available to the parties for a possible friendly settlement. On July 15, 2015, the petitioner expressed no interest in initiating a friendly settlement and requested that the substantive report be issued. The petitioner also reiterated the substantive allegations presented at the admissibility stage. On November 3, 2015, the IACHR sent the petitioner's communication to the State and granted the time limit established in the rules for submitting its observations on the merits. At the time of adoption of this report, the State has not submitted its observations on the merits.

**III. POSITION OF THE PARTIES**

**A. Position of the petitioner**

6. The petitioner alleged that the State is internationally responsible for prolonged preventive detention, lack of independence and impartiality and a lack of access to justice in the criminal proceedings begun in 1999 against Raúl Rolando Romero Feris, in the Province of Corrientes, for the offenses of fraudulent administration, unlawful enrichment, embezzlement, abuse of authority, fraud, and the embezzlement of public funds. The petitioner alleged that the charges were politically motivated in the context of the so-called "federal intervention" during 1999 when a party in opposition to his own was elected in

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<sup>1</sup> Subsequently Luis Alberto Feris became the sole petitioner.

<sup>2</sup> IACHR, Report No. 4/15, Petition 582-01, Admissibility, Raúl Rolando Romero Feris, Argentina, January 29, 2015.

Argentina. He added that he was subject to preventive detention between August 3, 1999 and September 11, 2002. Mr. Romero Feris argued, both before the IACHR and when invoking domestic remedies, that appointments of judicial authorities involved in his cases were politically motivated; that through multiple irregularities, judges and courts were specially set up to try his case for political ends. The criminal proceedings and the appeals filed in the cases on which the IACHR has documentation are set out in the Facts of the Case section.

7. With regard to the **right to personal liberty**, the petitioner alleged that Mr. Romero was subject to preventive detention between August 3, 1999 and September 11, 2002. He argued that the duration of the detention, three years and one month, was unreasonable in view of the fact that Law 24.390 on Preventive Detention Periods establishes a maximum period of two years for this type of precautionary measure. He indicated that although Mr. Romero questioned the length of his preventive detention, no action was taken in this regard.

8. With regard to the **right to judicial guarantees and judicial protection**, the petitioner alleged that the criminal trial against Mr. Romero did not comply with due process - because the State violated the principle of a natural judge through the irregular appointment of the First Instructing Magistrate dealing with his case. He added that this judge was appointed to the bench despite the fact that he was ranked in ninth place against other candidates for the position and that therefore there were eight better-qualified applicants before him.

9. In addition, the petitioner alleged that the composition of the Second Criminal Chamber in charge of his case was also irregular. He argued that this court was set up by the Federal Intervention Authority "in commission", contrary to the provisions of Article 142 of the Constitution of the Province. He maintained that said rule establishes that the court should be appointed by the Executive Branch with the agreement of the Senate. He indicated that despite challenging composition and recusing the judges of the Chamber, his request was rejected *in limine*. The petitioner pointed out that one of the judges of the Chamber, after convicting Mr. Romero, sent an email to various addressees - including the National Senate - in referring to the sentence issued and to the alleged victim in offensive terms, calling him a "shady character" and holding him responsible for "having plunged this Province into poverty and indigence."

10. He indicated that the Supreme Court of Justice of the Province of Corrientes, which also heard his case, was constituted in an irregular manner because five members of the tribunal should have cast a vote, and not three, as was the case in this judgment.

11. The Commission observes that from the remedies filed other arguments connected with the alleged lack of impartiality of the authorities judging the case emerge. Such arguments will be detailed in the section on the facts of the case.

12. The petitioner alleged that Mr. Romero filed various appeals challenging the aforementioned due process violations, indicating that remedies were not adequate or effective and failed to address the situation. He also claimed that his right to have the sentence reviewed as adversely affected by the National Supreme Court's decision on the inadmissibility of his claim.

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

13. The State indicated that it is not responsible for the violations alleged by the petitioner. It alleged that the criminal proceedings against Mr. Romero comported with due process and were carried out within a reasonable time.

14. The State indicated that each of the violations alleged by the petitioner were considered by the domestic courts, which fully analyzed the arguments and evidence presented. It argued that the mere fact that Mr. Romero is dissatisfied with the decisions taken by the domestic courts cannot be considered an infringement of the rights to judicial guarantees and judicial protection

15. The State added that the petitioner intends the Commission to act as a fourth instance. It argued that the IACHR cannot review judgments handed down by national courts acting within their jurisdiction and enforcing due process guarantees, as in the present case.

#### **IV. FACTS OF THE CASE**

##### **A. Regarding Mr. Romero Feris**

16. The IACHR notes that the petitioner submitted information on the various public offices held by Raúl Rolando Romero Feris. This was not contested by the State. In that regard, the petitioner indicated that Mr. Romero served in the following positions:

- President of the Argentine Rural Confederation in 1985
- Mayor of the capital city of the Province of Corrientes between 1991 and 1993
- Governor of the Province of Corrientes between 1993 and 1997
- Mayor of the capital city of the Province of Corrientes between 1997 and 1999<sup>3</sup>.

##### **B. Regarding Preventive Detention**

17. Mr. Romero was arrested on August 3, 1999, in the city of Corrientes following the issuance of a warrant for his arrest.<sup>4</sup> The IACHR does not have information on the circumstances of the detention or on the situation of Mr. Romero until 2001

18. In mid-2001, Mr. Romero's defense counsel requested the Instructing Magistrate No.1 to order his release,<sup>5</sup> pursuant to Article 1 of Law 24.390 on Preventive Detention Time Limits.<sup>6</sup> His defense counsel presented the following arguments:

Law 24.390, implementing Art.7.5 of the ACHR (Article 9), establishes in Art. 1 the *maximum* duration of preventive detention during trial. This does not mean that all preventive detention of less than two years *is reasonable*. In these circumstances – as happens in this case, the judges must order the immediate release of the detainee or prolong unreasonable detention thereby illegally depriving him of the right to liberty during criminal proceedings.<sup>7</sup>

(...)

Consequently, the maximum duration of the preventive detention provided for in Art. 1 of Law 24.390 does not necessarily represent a reasonable time for preventive detention. This maximum period establishes a limit that cannot be exceeded, but does not establish a period that must inescapably be fulfilled in every case for said detention to be considered reasonable.

(...)

Notwithstanding the fact precautionary detention's constitutional protections were never granted to our client, it is equally pertinent to point out that there is no flight risk or obstruction of justice risk in the case of Raúl Rolando Romero Feris.<sup>8</sup>

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<sup>3</sup> Petition brief before the IACHR, August 24, 2001.

<sup>4</sup> Petitioner's Form, August 14, 2007.

<sup>5</sup> Release Petition. Annex to petitioner's communiqué of August 24, 2001.

<sup>6</sup> Article 1. Preventive detention shall not exceed two years, without a sentence. However, when the number of offenses attributed to the accused or the apparent complexity of the case prevents the issuance of a decision within the time limit indicated, this may be extended for one additional year, by a reasoned decision, which shall immediately be notified to the relevant superior court for appropriate control.

<sup>7</sup> Release Petition Annex to petitioner's communiqué of August 24, 2001.

<sup>8</sup> Release Petition Annex to petitioner's communiqué of August 24, 2001.

19. On August 1, 2001, Instructing Magistrate No. 1 rejected defense counsel's request and extended preventive detention issued against Mr. Romero for a period of eight months as from August 4, 2001.<sup>9</sup> The Magistrate held the following:

(...) according to the rules on conjoint offenses, [the sentence against Mr. Romero] would exceed 5 years, at a minimum, with a possible sentence of a maximum 25 years. Therefore the conclusion is: that the forecast of his sentence is exclusively taken into account as one aspect of the requirements relating to the reasonableness of preventive detention, which is an evaluation of flight risk. Both aspects are considered by the IACHR (...) and although on its own is not sufficient to assume it will occur, it is enough whenever other circumstances concur – these being the imminence of trials and the utterances of the accused himself in the sense of not subjecting himself to judicial authorities charged with deciding on his situation.<sup>10</sup>

20. The available information indicates that Mr. Romero was released on September 11, 2002, by decision of the Superior Court of Justice.<sup>11</sup> The petitioner indicated that in that decision the Superior Court ordered Mr. Romero's release on the grounds of the prolonged period of detention without a final judgment. The State did not dispute this information.<sup>12</sup>

21. According to public information, on May 10, 2016, Mr. Romero was arrested by "order of the Criminal Oral Court number 2 of Corrientes that consolidated sentencing in three cases against him for a term of twelve years imprisonment."<sup>13</sup> It was indicated that he should effectively serve seven years and seven months.<sup>14</sup>

### **C. Regarding the Criminal Proceedings against Mr. Romero Feris**

22. The facts relating to the criminal proceedings against Mr. Romero are not in dispute.

23. The petitioner indicated that in 1999 the Corrientes Judicial Workers' Union filed a complaint against Mr. Romero and other public officials before the Instructing Prosecutor's Office No. 1 of the City of Corrientes.<sup>15</sup> The complaint alleged Mr. Romero's liability for the crimes of fraudulent administration, unlawful enrichment, embezzlement, abuse of authority, fraud, and embezzlement of public funds, among other things.<sup>16</sup> All of them due to his alleged mismanagement as Mayor.<sup>17</sup>

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<sup>9</sup> Order 1251 of the Instructing Magistrate No.1 of Corrientes, August 1, 2001. Annex to petitioner's communiqué of August 24, 2001.

<sup>10</sup> Order 1251 of the Instructing Magistrate No.1 of Corrientes, August 1, 2001. Annex to petitioner's communiqué of August 24, 2001.

<sup>11</sup> Petitioner's Form, August 14, 2007.

<sup>12</sup> Petitioner's Form, August 14, 2007.

<sup>13</sup> Press Article "Corrientes: detienen a un ex gobernador" ("Corrientes: Ex Governor detained") published in *Clarín*, May 10, 2016.

<sup>14</sup> Press Article "Corrientes: detienen a un ex gobernador" ("Corrientes: Ex Governor detained") published in *Clarín*, May 10, 2016.

<sup>15</sup> Petition brief before the IACHR, August 24, 2001.

<sup>16</sup> Petition brief before the IACHR, August 24, 2001.

<sup>17</sup> Petition brief before the IACHR, August 24, 2001.

24. The IACHR notes that, on the basis of this complaint, more than fifty criminal investigations were opened against Mr. Romero Feris and other individuals. Likewise, according to the report submitted by the Argentine State in 2010, in three of them a final judgment has been reached.<sup>18</sup>

25. Below, the Commission will make its findings of fact in the light of the copies of the proceedings in its possession, relating to four criminal cases against Mr. Romero Feris and other individuals. The Commission further emphasizes that these documents do not fully clarify the chronology of the aforementioned proceedings in their entirety. Rather they relate to remedies filed specifically in connection with the alleged due process violations. In the context of these remedies, Mr. Romero Feris repeatedly argued that such due process violations - particularly the right to be tried by a competent, independent and impartial tribunal - were committed as a form of political persecution through the opening of criminal cases by judicial authorities appointed specifically for this purpose. Mr. Romero Feris constantly alleges in these remedies that the appointment of judicial authorities and the irregular assignments of jurisdiction were instrumental to this political persecution.

### **1. Case - SITRAJ-Corrientes On Complaint-Capital**

26. On July 27, 2000, Mr. Romero Feris's defense counsel filed motion for nullity with a subsidiary appeal with Instructing Magistrate No.1 of the City of Corrientes.<sup>19</sup> In that application, he alleged that the said judge had been appointed in an irregular manner thus violating the principle of a natural judge.<sup>20</sup> Defense counsel indicated that this judge was appointed to the bench despite the fact that he was ranked in ninth place against other candidates for the position and that therefore there were eight better-qualified applicants before him.<sup>21</sup> Defense council added that prior to his appointment as a judge, this individual held the position of adviser to the Ministerial Secretary General of the Provincial Government.<sup>22</sup> He also indicated that "the maneuver destined to creating a covered 'special tribunal', must be analyzed in context and as a first step," and that subsequently the rules on jurisdiction assignment were violated. Defense counsel pointed out in more detail that

Dr. Mario Payes –charged with deciding all proceedings against Raúl Rolando Romero Feris— had placed 9th in the Evaluation by the Council of Magistrates; at the moment of his nomination by the Executive Branch he held a position as advisor to the Ministry of Provincial Government; he had a negative public evaluation by the Magistrates' Association and the Bar Association; he was nominated by Perié, then in charge of the Executive Branch, who later as Senator cast the decisive vote in the "accord" demanded by the Provincial Constitution; the Superior Court of Justice flagrantly violated procedural rules relating to jurisdiction in terms of connection and precedence.<sup>23</sup>

27. On September 26, 2000, Instructing Magistrate No.1 rejected Mr. Romero's defense counsel's allegations.<sup>24</sup> On that occasion, the Instructing Prosecutor No.1 stated the following

(...) That regarding the appointment of judges and related proceedings, this issue is specially regulated by Article 142 of the Provincial Constitution and the law cannot limit powers

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<sup>18</sup> Report by the Judicial Branch of the Province of Corrientes. Annex to the Argentine State's communication on December 13, 2013.

<sup>19</sup> Nullity Appeal Motion with Subsidiary Appeal, July 27, 2000. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>20</sup> Nullity Appeal Motion with Subsidiary Appeal, July 27, 2000. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>21</sup> Nullity Appeal Motion with Subsidiary Appeal, July 27, 2000. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>22</sup> Nullity Appeal Motion with Subsidiary Appeal, July 27, 2000. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>23</sup> Nullity Appeal Motion with Subsidiary Appeal, July 27, 2000. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>24</sup> Order No. 1267 of the Instructing Magistrate No.1, September 26, 2000. Annex to the Petitioner's communiqué dated July 10, 2008.

attributed by the Constitution without any restriction. Therefore the Law Creating the Council of Magistrates does not impose on the Executive Branch the obligation to appoint the first candidate on the list, not even the first three.<sup>25</sup>

28. The Instructing Magistrate No.1 noted the following

(...) the undersigned understands, coinciding with the opinion of the Instructing Prosecutor No. 1, that the motion must be rejected.<sup>26</sup>

29. On May 24, 2001, Mr. Romero's defense counsel filed with Instructing Magistrate No.1 of Corrientes the exception of lack of jurisdiction and competence.<sup>27</sup> Regarding the appointment of said person as Instructing Magistrate No.1, his defense alleged the following

(...) there were a total of thirty-two candidates [for the post]. After an evaluation, the Council drew up "a list of the most qualified applicants" and stated ... that among them the first two achieved ... the highest level of excellence in the position; the third to fifth place candidates showed notable abilities; and the sixth to the tenth candidates showed sufficient merits for performance as a magistrate.<sup>28</sup>

30. On June 4, 2001, Instructing Magistrate No.1 of the City of Corrientes rejected the exceptions filed by defense counsel,<sup>29</sup> on the grounds of a previous decision of December 1999, in the framework of another case against Mr. Romero Feris regarding the Court's jurisdiction. It was stated as follows:

That, in the opinion of the undersigned, the exceptions of lack of jurisdiction and competence raised must be rejected (...). Applicant states that the judge in charge of this court lacks jurisdiction hear the case due to the attribution of "universal" competence. In this regard, it is necessary to bear in mind that the Superior Court of Justice, this Province's highest Court, when hearing this issue resolved on December 1999 (...) "1. To declare the competence and jurisdiction of the consolidated cases against the accused (...), in Instructing Court No.1 (...)", a decision that, to date, is definitive, and is based on the strict observance of the procedural rules governing subjective connection. Thus, it is beyond the competence of the undersigned to reexamine a decision of the Superior Court of Justice, which in any case should have been appealed before a higher court – a Federal Court – on the grounds of the guarantee of a natural judge.<sup>30</sup>

31. On June 7, 2001, defense counsel filed an appeal against that decision,<sup>31</sup> which the assignment of jurisdiction by said Judge was made irregularly and in breach of the rules of connection and

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<sup>25</sup> Order No. 1267 of the Instructing Magistrate No.1, September 26, 2000. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>26</sup> Order No. 1267 of the Instructing Magistrate No.1, September 26, 2000. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>27</sup> Brief of Exceptions, May 24, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>28</sup> Brief of Exceptions, May 24, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>29</sup> Order No. 989 of the Instructing Magistrate No.1 of Corrientes, June 4, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>30</sup> Order No. 989 of the Instructing Magistrate No.1 of Corrientes, June 4, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>31</sup> Appeal Motion, June 7, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

precedence.<sup>32</sup> Defense counsel requested that the appeal be granted and forwarded to the corresponding Criminal Chamber on the grounds of violation of constitutional guarantees, such as that of the natural judge.<sup>33</sup>

32. On June 20, 2001, the Criminal Chamber No. 2 of Corrientes issued a decision in which it decided "not to grant the appeal filed".<sup>34</sup> The Chamber upheld the decision of Instructing Magistrate No.1 of June 4, 2001. The Chamber stated the following:

(...) the magistrate has attributions, based on subjective connection and precedence, to hear the cases. This circumstance does not in any way infringe the guarantee of a natural judge as the appellants wrongly claim. (...) Also erroneous is defense counsel's statement alleging that the exemption of precedence for Instructing Court No.1 as established by decision of the Superior Court of Justice, converts the magistrate in charge of this court into a "special judge". This magistrate is operating within the framework established by the Superior Court in exercise of its inherent and exclusive superintendency functions. (...) There are no null and void procedural steps taken by the first instance judge, connected with his appointment.<sup>35</sup>

33. On July 18, 2001, defense counsel filed a *cassation* appeal before the Criminal Chamber No. 2,<sup>36</sup> requesting that its decision of June 20, 2001, be rescinded, and that the case be returned to the lower instance for a new substantive ruling.<sup>37</sup> Two days later, the Criminal Chamber No. 2 issued a decision declaring the *cassation* appeal inadmissible,<sup>38</sup> on the ground that "the resolution at issue is not specifically connected to the object of the appeal".<sup>39</sup>

34. On February 20, 2002, defense counsel filed a brief with Criminal Chamber No. 2, requesting that the proceedings be declared null and void on the grounds of the new composition of that court.<sup>40</sup> Defense counsel argued that:

The [three judges] appointed (...) cannot be considered as "natural judges" in this case, according to Article 18 of the National Constitution and Article 1 of the Code of Criminal Procedure, since their appointment as magistrates was effected in clear breach of Article 142 of the Constitution of the Province of Corrientes. (...) The fundamentals of this objection are that, when the appointment of the Magistrates for Judge of Criminal Chamber no. 2 (...) was made, the Executive Branch of the Province ... violated the constitution by appointing temporary judges at a time in which the Chamber of Senators was gathered in Extraordinary Sessions and was not in recess, thereby rendering such appointments null and void and arbitrary.<sup>41</sup>

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<sup>32</sup> Appeal Motion, June 7, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>33</sup> Appeal Motion, June 7, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>34</sup> Resolution 276 of Criminal Chamber No.2 of Corrientes, June 20, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>35</sup> Resolution 276 of Criminal Chamber No.2 of Corrientes, June 20, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>36</sup> Cassation Appeal, July 18, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>37</sup> Cassation Appeal, July 18, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>38</sup> Resolution No. 314 of Criminal Chamber No.2 of Corrientes, June 20, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>39</sup> Resolution No. 314 of Criminal Chamber No.2 of Corrientes, June 20, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>40</sup> Request for Annulment, February 20, 2002. Annex to the Petitioner's communiqué dated July 10, 2008

<sup>41</sup> Request for Annulment, February 20, 2002. Annex to the Petitioner's communiqué dated July 10, 2008

35. On February 22, 2002, Criminal Chamber No. 2 issued a resolution in which it "rejected *in limine*, the nullity claim regarding the composition of this Court, for being the inappropriate remedy to achieve that result, the claimants having had the opportunity to invoke all proper remedies."<sup>42</sup> The Chamber held the following:

(...) the claim at issue is not addressed at a procedural act within in this case, but rather at a political act by the Provincial Executive Branch, in the exercise of its own legal powers. (...) The argument of absolute nullity of this Court's composition is procedurally inadmissible due to the fact that the remedy is not appropriate to challenge the validity and/or constitutionality of actions by other branches of government for which there are other procedural remedies that can be invoked by those who seek nullification. (...) It should be noted that the only circumstances that would justify the lawful removal of a judge from hearing the case would consist of his patent incompetence established by recusing, excusing or inhibiting of the judge, which have not been brought up by the parties. At no time has there been an argument on the incompetence of this Tribunal nor do its members consider themselves to be so; there has been no recusation against them and there is no reason for them to excuse themselves and therefore any request for replacement is inappropriate.<sup>43</sup>

36. The Chamber also recommended that Mr. Romero's defense counsel "exercise remedies according substantive and procedural applicable constitutional rules in force, in order to avoid a misuse of jurisdiction and a delay in the proceedings."

37. On March 8, 2002, defense counsel lodged a *cassation* appeal against that decision.<sup>44</sup> On March 14, 2002, the Chamber declared the appeal inadmissible,<sup>45</sup> on the grounds that "the decision appeal did not represent a final judgment".<sup>46</sup>

38. On March 19, 2002, defense counsel filed a *recurso de queja* against the decision of the Superior Court of Justice of Corrientes,<sup>47</sup> requesting that the aforementioned resolution be rescinded and that the proceedings by Criminal Chamber No.2 be declared null and void.<sup>48</sup>

39. On May 7, 2002, the Superior Court of Justice of Corrientes issued a resolution stating:

The claimants allege that the appointment of the court's composition is unconstitutional and their competence to issue the decision violates the "natural and impartial judge" guarantee. They argue that a different court should have resolved the annulment and constitutionality request filed by the claimants. (...) The claimant explains the *prima facie* grounds for a direct remedy and its validity thus fulfilling its procedural burden. (...) In view of the fact that the filing of the *recurso de queja* suspends the decision impugned while not impeding the

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<sup>42</sup> Resolution No. 22 of Criminal Chamber No.2 of Corrientes, February 22, 2002. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>43</sup> Resolution No. 22 of Criminal Chamber No.2 of Corrientes, February 22, 2002. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>44</sup> Cassation Appeal, March 8, 2000. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>45</sup> Resolution No. 134 of Criminal Chamber No.2 of Corrientes, March 14, 2002. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>46</sup> Resolution No. 134 of Criminal Chamber No.2 of Corrientes, March 14, 2002. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>47</sup> *Recurso de queja*, March 19, 2002. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>48</sup> *Recurso de queja*, March 19, 2002. Annex to the Petitioner's communiqué dated July 10, 2008.



continuity of the proceedings – because it does not affect the court’s jurisdiction – the request is granted with a simple remittance back to the lower court.<sup>49</sup>

40. For this reason, the Court referred the proceedings to the Criminal Chamber No. 2 "so that it follows the proceedings established by law".<sup>50</sup> The IACHR does not have information on what the Chamber decided.

41. On April 25, 2002, defense counsel recused the members of the Criminal Chamber No. 2,<sup>51</sup> on the grounds of lack of impartiality in the dismissal of some testimony and documentary evidence presented by defense counsel.<sup>52</sup>

42. The next day the Criminal Chamber No. 2 issued a resolution declaring the recusation inadmissible.<sup>53</sup> The Chamber stated that the allegations were unconnected with the grounds for recusation under Article 59 of the Code of Criminal Procedure.<sup>54</sup>

43. On May 17, 2002, the Criminal Chamber No. 2 issued a conviction against Mr. Romero as the perpetrator for the offense of "breach of trust" to the detriment of the Public Administration.<sup>55</sup> The Chamber sentenced Mr. Romero to seven years' imprisonment and perpetual disqualification from holding public office.<sup>56</sup> The Chamber also upheld the civil against Mr. Romero and ordered him to pay to the Municipality of Corrientes the sum of \$8,790,900 Argentine pesos in compensation.<sup>57</sup>

44. On June 10, 2002, defense counsel filed a *cassation* appeal against the judgment issued by the Chamber.<sup>58</sup> On June 13, 2002, the Criminal Chamber No.2 of Corrientes issued a resolution granting the cassation remedy.<sup>59</sup> The Chamber summoned the parties to appear before the Superior Court of Justice.<sup>60</sup>

45. On February 18, 2003, defense counsel filed an appeal with the Superior Court of Justice,<sup>61</sup> indicating that three of the judges in the composition of that court had not been appointed in accordance with the procedure established by the Constitution of the Province.<sup>62</sup> Mr. Romero's defense added the following:

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<sup>49</sup> Resolution No. 32 of the Superior Court of Justice of the Province of Corrientes, May 7, 2002. Annex to the Petitioner’s communiqué dated July 10, 2008.

<sup>50</sup> Resolution No. 32 of the Superior Court of Justice of the Province of Corrientes, May 7, 2002. Annex to the Petitioner’s communiqué dated July 10, 2008.

<sup>51</sup> Informed Recusation, April 25, 2002. Annex to the Petitioner’s communiqué dated July 10, 2008.

<sup>52</sup> Informed Recusation, April 25, 2002. Annex to the Petitioner’s communiqué dated July 10, 2008.

<sup>53</sup> Resolution No. 346 of Criminal Chamber No.2 of Corrientes, April 26, 2002. Annex to the Petitioner’s communiqué dated July 10, 2008.

<sup>54</sup> Resolution No. 346 of Criminal Chamber No.2 of Corrientes, April 26, 2002. Annex to the Petitioner’s communiqué dated July 10, 2008.

<sup>55</sup> Cassation Appeal, June 10, 2002. Annex to the Petitioner’s communiqué dated July 10, 2008.

<sup>56</sup> Cassation Appeal, June 10, 2002. Annex to the Petitioner’s communiqué dated July 10, 2008.

<sup>57</sup> Cassation Appeal, June 10, 2002. Annex to the Petitioner’s communiqué dated July 10, 2008.

<sup>58</sup> Cassation Appeal, June 10, 2002. Annex to the Petitioner’s communiqué dated July 10, 2008.

<sup>59</sup> Resolution No. 493 of Criminal Chamber No.2 of Corrientes, June 13, 2002. Annex to the Petitioner’s communiqué dated July 10, 2008.

<sup>60</sup> Resolution No. 493 of Criminal Chamber No.2 of Corrientes, June 13, 2002. Annex to the Petitioner’s communiqué dated July 10, 2008.

<sup>61</sup> Request for Annulment, February 18, 2003. Annex to the Petitioner’s communiqué dated July 10, 2008.

<sup>62</sup> Request for Annulment, February 18, 2003. Annex to the Petitioner’s communiqué dated July 10, 2008.

(...) as a rule, the members of the Superior Court are appointed by the Executive Branch with the consent of the Senate (Article 142 of the Constitution of the Province of Corrientes). The power of the Executive Branch to fill vacancies with temporary judges is an exceptional circumstance connected with the appearance of vacancies during the Senate's recess. Whenever the Senate of the Province is in session, there are no grounds for the appointment of temporary judges. Having the appointment [of three of the judges making up the composition of the Superior Court] made during the Senate session, it requires the aforementioned bodies' consent; their appointment as temporary judges would only have been possible during the recess.<sup>63</sup>

46. On April 10, 2003, the Superior Court of Justice issued a resolution setting a hearing for April 14 of that year in order to proceed with the draw to establish the composition of the Court.<sup>64</sup>

47. On April 14, 2003, Mr. Romero's defense counsel filed a clarification request with the Superior Court of Justice of Corrientes on the above mention resolution.<sup>65</sup> It requested that the abovementioned three judges be removed and the exclusion of "all the professionals appointed temporarily and therefore unable to join the composition of an impartial tribunal to hear the nullification request" be taken into account at the moment of the draw."<sup>66</sup>

48. On May 7, 2003, the President of the Superior Court of Justice of Corrientes issued a resolution rejecting the clarification request,<sup>67</sup> on the grounds that there was no material error or omission requiring amendment of the resolution.<sup>68</sup> On May 14, 2003, defense counsel filed a request for reconsideration with the Superior Court of Justice stating the following:

(...) the request for clarification should have been resolved, not by temporary but by the permanent members of the Court, that is, the second instance judges having the accord of the Senate; in this case, the remedy was rejected by the President who lacks such attribution to reject according to Article 24 of the Organic Law.<sup>69</sup>

49. On June 2, 2003, the Attorney General of Corrientes submitted a brief to the Superior Court of Justice.<sup>70</sup> He indicated that defense counsel was correct because the resolution issued by the President of the Superior Court of Justice exceeded his authority according to domestic law.<sup>71</sup> In relation to the composition of the said Court, the Attorney General indicated the following:

(...) the nullification claim is valid, in as much as it involves the proceedings established in the Provincial Constitution for the appointment of judges, implying a breach of the guarantee to a natural judge and of the principle of inviolability of defense counsel at trial. (...) the exclusion of temporary judges is appropriate. In view of this, the draw should include any

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<sup>63</sup> Request for Annulment, February 18, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>64</sup> Clarification Request, April 14, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>65</sup> Clarification Request, April 14, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>66</sup> Clarification Request, April 14, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>67</sup> Resolution 3550 of the Superior Court of Justice of Corrientes, May 7, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>68</sup> Resolution 3550 of the Superior Court of Justice of Corrientes, May 7, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>69</sup> Motion for Reconsideration, May 14, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>70</sup> Opinion of the Attorney General of Corrientes to the Superior Court of Justice, June 2, 2003. Annex to Petitioner's communication dated July 2008.

<sup>71</sup> Opinion of the Attorney General of Corrientes to the Superior Court of Justice, June 2, 2003. Annex to Petitioner's communication dated July 2008.

legal judges appointed pursuant to the Constitution, with the exclusion of magistrates appointed temporarily (...)<sup>72</sup>

50. On June 11, 2003, the Superior Court of Justice of Corrientes issued a resolution rejecting the appeals filed by defense counsel.<sup>73</sup> The Superior Court of Justice indicated the following

The claimant alleges that the judges of the Court (Maldonado and Monzón) have not been appointed in accordance with the procedure established by the Constitution of the Province; the appointments were made when the Senate was in session and therefore the Executive Branch was impeded from appointing temporary judges.(...) It is thus indisputable that the Executive Power of the Province has formalized the appointment of three members of the Superior Court of Justice during the Senate's recess, filling the respective posts with temporary magistrates, and for a limited time. Such a decision constitutes a political act within the competence of that branch of government and therefore outside the jurisdiction of the judicial organs.<sup>74</sup>

51. Likewise, the Superior Court of Justice ordered the removal of the Prosecutor from this and all consolidated cases.<sup>75</sup> It stated the following:

In light of the change of position by the Deputy Prosecutor predicated on false grounds, this surprising attitude seriously affects the impartiality expected from the Public Ministry in the exercise of its jurisdictional functions even if they are not binding on the decisions of the Court.<sup>76</sup>

52. On June 26, 2003, defense counsel filed an extraordinary appeal with the Superior Court of Justice of Corrientes against the decision of June 11, 2003,<sup>77</sup> alleging that such decision violated various provisions of the Constitution of the Argentine Republic regulating the manner in which local magistrates are appointed.<sup>78</sup> Likewise, on August 7 and 22, 2003, defense counsel requested that the Superior Court of Justice decide on the issue of a new composition.<sup>79</sup>

53. On April 7, 2004, the Superior Court of Justice of Corrientes issued a judgment whereby (i) it declared the matter relating to the composition of the Superior Court of Justice to be moot; ii) rejected the appeals filed by defense counsel concerning the temporary judges and the appointment of Instructing Magistrate No.1.<sup>80</sup> The Superior Court of Justice offered the following grounds:

a) Regarding the nullity of the composition of the Tribunal raised by defense counsel: (...) at the date of appointment of temporary judges ... the legislative branch was in recess, with a self-proclaimed accidental majority of legislators present, without legal capacity to substitute or delegitimize that situation ...Art. 169 of the Code of Criminal Procedure

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<sup>72</sup> Opinion of the Attorney General of Corrientes to the Superior Court of Justice, June 2, 2003. Annex to Petitioner's communication dated July 2008.

<sup>73</sup> Decision No. 33 of the Superior Court of Justice, June 11, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>74</sup> Decision No. 33 of the Superior Court of Justice, June 11, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>75</sup> Decision No. 33 of the Superior Court of Justice, June 11, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>76</sup> Decision No. 33 of the Superior Court of Justice, June 11, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>77</sup> Extraordinary Appeal, June 26, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>78</sup> Extraordinary Appeal, June 26, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>79</sup> Request for Annulment, August 7, 2003. Annex to the Petitioner's communiqué dated July 10, 2008. Appeal for Reconsideration, August 22, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>80</sup> Judgment No. 23 of the Superior Court of Justice of Corrientes, April 7, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

provides that procedural acts shall be void where the provisions expressly prescribed are not observed, under penalty of nullity. In this case, the nullification requested refers to the mechanism for the appointing of magistrates. Unlike other provincial constitutions, Corrientes' Constitution does not provide for nullity in case of noncompliance with this aspect, and therefore rendering inapplicable the generic nullity of Art. 170 of the C.P.P. (...). It is thus indisputable that the Executive Branch of the Province formalized the appointment ... during the recess of the Senate, thus filling in the positions with temporary judges for a limited time.<sup>81</sup>

b) Regarding the violation of the principle of Natural Judge: the manner of objecting to the appointment through the request for nullity of the proceedings is based on non-justiciable issues whose resolution does not correspond to this High Court, being a matter of "political judgment" . The lack of the requirement of "Natural Judge: is a subjective and unreal assessment; and referring to a judge as "special" or "covered", borders on a lack of decorum towards the investiture of the bench. When using this expression there is no reference to the judge as a person, but to a Court or Judicial Organ created "ex post facto" for the special accidental or circumstantial trial for the case.<sup>82</sup>

c) Regarding the jurisdiction of Instructing Magistrate No.1: this jurisdiction was established by Resolution No. 177 of December 3, 1999, pursuant to standards for the most serious crimes (...) "the distribution of jurisdiction among judges does not depend on Art. 18 of the National Constitution, but on the respective procedural laws, the constitutional guarantees of not being removed from natural judges, and it is unrelated to issues concerning the distribution of jurisdiction over ordinary judges of the Nation or Provinces. Therefore the Court being the natural judge, its acts cannot be null and void.<sup>83</sup>

54. On April 26, 2004, defense counsel filed an extraordinary federal appeal with the Superior Court of Justice of Corrientes against the judgment of April 4, 2004,<sup>84</sup> requesting that the case be brought to the National Supreme Court of Justice, on the grounds that the Provincial Superior Court of Justice's composition was in violation of the legal provisions governing its operation.<sup>85</sup>

55. On September 15, 2004, the Superior Court of Justice of Corrientes issued a resolution in which it granted the extraordinary appeal and referred the case to the National Supreme Court of Justice.<sup>86</sup>

56. On October 31, 2005, the Attorney General of the Nation issued an opinion addressed to the Supreme Court, stating that there was no federal issue to be resolved in this case,<sup>87</sup> because it did not meet the requirements of autonomous grounds and federal subject matter.<sup>88</sup> Therefore, in his view this appeal filed by defense counsel was improperly granted by the Superior Court of Justice of Corrientes.<sup>89</sup>

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<sup>81</sup> Judgment No. 23 of the Superior Court of Justice of Corrientes, April 7, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>82</sup> Judgment No. 23 of the Superior Court of Justice of Corrientes, April 7, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>83</sup> Judgment No. 23 of the Superior Court of Justice of Corrientes, April 7, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>84</sup> Extraordinary Federal Appeal, April 26, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>85</sup> Extraordinary Federal Appeal, April 26, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>86</sup> Resolution No. 142 of the Superior Court of Justice of Corrientes, September 15, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>87</sup> Opinion of the National Attorney General, October 31, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>88</sup> Opinion of the National Attorney General, October 31, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>89</sup> Opinion of the National Attorney General, October 31, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

57. On February 13, 2007, the National Supreme Court of Justice issued a judgment stating that the appeal presented by defense counsel was inadmissible.<sup>90</sup> The IACHR notes that in addition to invoking Article 280 of the National Civil and Commercial Procedural Code, that judgment does not indicate the reasons why the appeal was declared inadmissible.

## **2. Case - Romero Feris Raúl Rolando and Zidianakis, Andrés for Embezzlement-Capital**

58. The IACHR observes that in this case, as in the previous case, Mr. Romero Feris' defense counsel filed a nullity and subsidiary appeal motion with Instructing Magistrate No.1,<sup>91</sup> which was rejected.<sup>92</sup> The Commission notes that the arguments put forward in both motion and its rejection are substantially similar to those in the previous case.

59. On September 7, 2001, defense counsel raised the exception of lack of jurisdiction and competence before the Instructing Magistrate No.1.<sup>93</sup> On March 18, 2004, Instructing Magistrate No. 6 declared the request inadmissible on the following grounds:

It should also be borne in mind that the question raised has already been settled by Honorable Superior Court of Justice in the case "*RECURSO DE QUEJA FOR DENIED CASSATION IN CASE NO. 5085 (38.707)*" "(...) resolution No. 107 dated August 08, 2001, which rejected the *recurso de queja* for denied cassation due to the absence of a federal question on "arbitrary judgment". CASE No. 38707 of this Court's registry is consolidated.<sup>94</sup>

60. On March 24, 2004, Mr. Romero Feris' defense counsel filed an appeal in which he indicated that the matter had not been given due consideration and requested that the case be dismissed.<sup>95</sup> Defense counsel also requested that the case be referred to the appropriate Criminal Chamber. Defense counsel added the following:

On the one hand, the cases have not been consolidated in the terms of Art. 40 of the Code of Criminal Procedure, and therefore the decisions issued in the consolidated cases - with the intervention of the same court for all the cases processed - are not operative, and therefore not executable in the case under study.<sup>96</sup>

61. On April 12, 2004, Instructing Magistrate No.1 issued an order rejecting the request for dismissal and ordered referral of the case to the Criminal Chamber No. 2 of the City of Corrientes.<sup>97</sup> The Judge indicated the following:

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<sup>90</sup> Judgment of the Argentine Supreme Court of Justice, February 13, 2007. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>91</sup> Nullity Motion with Subsidiary Appeal, July 27, 2000. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>92</sup> Order No. 1264 of the Instructing Magistrate No.1 of the City of Corrientes, September 26, 2000. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>93</sup> Motion on Exceptions, September 7, 2001. Annex to petitioner's communication of xxx, xxx.

<sup>94</sup> Order No. 182 of the Instructing Judge No. 6 of the Province of Corrientes, March 18, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>95</sup> Appeal Motion, March 24, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>96</sup> Appeal Motion, March 24, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>97</sup> Order No. 226 of the Instructing Magistrate No.1 of the City of Corrientes, April 24, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

As to the request for dismissal by defense counsel, (...), both the active and cognitive elements of the intention attributed to Romero Feris, as author of the offense of embezzling property, have been duly proven in the case (...).<sup>98</sup>

(...) Regarding the request for transfer to trial and for the record of the case, I have concluded to reject the motion of the defense on the basis that there is sufficient evidence in the file at the present procedural stage to support the remittal to trial, where a final decision will be made about the facts, the authorship and the evidence produced.<sup>99</sup>

62. On April 16, 2004, Mr. Romero Feris' defense counsel filed a motion for nullity and subsidiary appeal against the decision of Instructing Magistrate No.1.<sup>100</sup> On June 28, 2004, Instructing Magistrate No.1 rejected in all its parts the nullity motion and declared the subsidiary appeal inadmissible.<sup>101</sup> The Judge reasoned in the following way:

It should be borne in mind that the "Exception" is not a remedy available to the accused impede the basis of the criminal investigation. For this reason the accused cannot by way of exception divert the very foundation of the criminal investigation (...). There is no provision prescribing the nullity of the judicial order issued in the time and manner that it was (...) and I cannot detect the existence of a constitutional violation or injury to any right of the accused. Therefore I can conclude that there is no legitimate violation of the right to a defense and that the contested order is fully valid and carried out in accordance with express procedural norms of the Province, as well as the Constitution.<sup>102</sup>

63. On February 14, 2005, Criminal Chamber No. 2 issued three decisions, rejecting the appeal, and confirming the decision of March 18, 2004.<sup>103</sup>

64. On August 4, 2005, defense counsel recused the composition of Criminal Chamber no. 2,<sup>104</sup> on the following grounds:

The present recusation is based on the challenge to the Court's impartiality in the case-file: "ROMERO FERIS, RAUL ROLANDO; ORTEGA LUCIA PLACIDA; ISETTA, JORGE EDUARDO AND MAGRAN ALBERO ON/CRIMINAL CONSPIRACY - CAPITAL" Case No. 5014 that is before this same Chamber with the same composition. (...) the recusation in Case No. 5014 was based on the fact that the judges ... had advanced their opinion on matters that were closely related to the *thema decidendum* in that proceeding ... obviously, that the constitution of a single court means that, when challenged for its impartiality in a particular case, the effect pervades all the cases in which the contested Court intervenes (...)<sup>105</sup>

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<sup>98</sup> Order No. 226 of the Instructing Magistrate No.1 of the City of Corrientes, April 24, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>99</sup> Order No. 226 of the Instructing Magistrate No.1 of the City of Corrientes, April 24, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>100</sup> Motion for Nullity and Appeal, April 16, 2004.

<sup>101</sup> Decision No. 414 of the Instructing Magistrate No.1 of the City of Corrientes, June 28, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>102</sup> Decision No. 414 of the Instructing Magistrate No.1 of the City of Corrientes, June 28, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>103</sup> Decision No. 17 of Criminal Chamber No.2 of the City of Corrientes, February 14, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>104</sup> Recusation with Cause, August 4, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>105</sup> Recusation with Cause, August 4, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

65. On August 10, 2005, Criminal Chamber No. 2 rejected the recusation filed by defense counsel.<sup>106</sup> The Chamber stated the following:

Having analyzed the file (...) and having submitted similar arguments relating to the same accused - Raúl Romero Feris - , regarding similar situations as resolved in Decision No. 265 dated June 13, 2005, and given the subjective connection existing between the cases, it is now decided to revoke the decision adopted on 5-8-05, and consequently leaving without effect, the composition of the Court and the relevant draw.<sup>107</sup>

66. On December 20, 2005, Criminal Chamber No. 2 delivered judgment No. 139 by which Raúl Rolando Romero Feris was sentenced to five years' imprisonment and perpetual disqualification as co-perpetrator of the crime of embezzlement.<sup>108</sup>

67. On February 20, 2006, defense counsel lodged a cassation appeal.<sup>109</sup> Defense counsel requested nullification on the basis of the intervention of Judge Dr. Cintia Teresita Godoy Prats in the following terms:

The activity of Dr. Luis Godoy Prats, father of the Magistrate (...) as agent of the joint plaintiff in the case "FISCAL AGENT No. 2S / NOTITIA CRIMINIS-CAPITAL". Case Mp/33.509 referred to "above", even when consolidation of cases has not been decided, cannot be ignored due to subjective connection between those cases and the present one, as well as the rest in which Raúl Rolando Romero Feris under process (...). This connection, in light of the express provision of first part of Art. 40 of the Code of Criminal Procedure, demands the intervention of a single court – despite the lack of consolidation – meaning the same composition for all connected cases, regardless of their being consolidated or not.(...)<sup>110</sup>

68. On October 19, 2006, the Superior Court of Justice of Corrientes rejected the cassation appeal filed by defense counsel.<sup>111</sup> The Superior Court indicated the following:

As for the intervention in the trial by Judge Godoy Prats, I consider it completely valid because, as the following doctrinal opinion clarifies, when dealing with this issue (...), the second clause prohibits the intervention of two magistrates who are relatives in the same case within the established limitations (...).

(...)

Those filing the recusation have not shown that in these cases or in other connected cases, these members of the Chamber, related by close blood ties, have agreed to issue decisions against the accused, which is the reason to recuse them successfully.<sup>112</sup>

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<sup>106</sup> Order No. 382 of Criminal Chamber No.2 of Corrientes, August 10, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>107</sup> Order No. 382 of Criminal Chamber No.2 of Corrientes, August 10, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>108</sup> Cassation Appeal, February 20, 2006. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>109</sup> Cassation Appeal, February 20, 2006. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>110</sup> Cassation Appeal, February 20, 2006. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>111</sup> Judgment of the Superior Court of Justice of Corrientes, October 19, 2006. Annex to Petitioner's communication dated July 10, 2008.

<sup>112</sup> Judgment of the Superior Court of Justice of Corrientes, October 19, 2006. Annex to Petitioner's communication dated July 10, 2008.

69. On November 3, 2006, defense counsel filed an extraordinary appeal with the Superior Court of Justice of the Province of Corrientes against the decision issued on October 19, 2006.<sup>113</sup> Defense counsel argued that:

(...) the intervention of the challenged magistrate as a member of the court that convicted the defendant satisfied the requirement of a lack of subjective impartiality in the terms of Articles 18 of the National Constitution and Article 8.1 of the American Convention, on the grounds that their parent/child relationship with a previous magistrate of the same tribunal constituted a conflict of interest demanding withdrawal from the case (...).<sup>114</sup>

70. On February 20, 2007, the Superior Court of Justice of Corrientes decided not to grant the extraordinary appeal filed by defense counsel.<sup>115</sup> The Superior Tribunal established the following:

On the basis of the jurisprudential rule frequently mentioned by the Court "(...) that arbitrariness does not cover mere discrepancies between what was decided by the Judge and what was alleged by the parties ...", it is clear that defense counsel of the convicted Romero Feris, reiterates similar arguments in each one of their briefs in different instances; and when facing rejection of their criticism of the proceedings and legal decisions reached, they continue to insist on the existence of alleged breaches of the principles in the Constitution.<sup>116</sup>

(...)

Neither does defense counsel indicate which were the elements in the cassation decision that were omitted or that were resolved, or that when resolved, openly contradicted the applicable law or any of the other grounds (...).<sup>117</sup>

71. On March 5, 2007, defense counsel filed a *recurso de queja* with the National Supreme Court of Justice against the decision of the Superior Court of the Province of Corrientes,<sup>118</sup> in order to annul the sentence imposed on Mr. Romero Feris.<sup>119</sup>

72. On September 28, 2007, the Public Ministry, through the Public Prosecutor, requested that the National Supreme Court of Justice reject the *queja* filed by Romero Feris' defense counsel on the following grounds:

We are not dealing with a case where the intangibility of the actions subject to judicial decision has been affected, but rather we face different points of view on the adequacy of the type of participation in the crime of embezzlement, attributed to Romero Feris. Therefore, I consider that, (...) federal rights and guarantees are not affected here.

(...)

Clarifying the scope of Article 52, paragraph 11 of the Code of Criminal Procedure of Corrientes (does it cover the interventions of close relatives in cases connected by

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<sup>113</sup> Extraordinary Federal Appeal, November 3, 2006. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>114</sup> Extraordinary Federal Appeal, November 3, 2006. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>115</sup> Resolution of the Superior Court of Justice of Corrientes, February 20, 2007. Annex to Petitioner's communication dated July 10, 2008.

<sup>116</sup> Resolution of the Superior Court of Justice of Corrientes, February 20, 2007. Annex to Petitioner's communication dated July 10, 2008.

<sup>117</sup> Resolution of the Superior Court of Justice of Corrientes, February 20, 2007. Annex to Petitioner's communication dated July 10, 2008.

<sup>118</sup> *Recurso de Queja*, March 5, 2007. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>119</sup> *Recurso de Queja*, March 5, 2007. Annex to the Petitioner's communiqué dated July 10, 2008.



subjectivity?) Is a local law issue that, in principle, lacks sufficiency to be considered a federal case.<sup>120</sup>

(...)

In my view, the appellant does not demonstrate arbitrariness in the determination of responsibility (...) <sup>121</sup>.

73. On December 18, 2007, the National Supreme Court of Justice dismissed the *queja* filed by defense counsel, <sup>122</sup> indicating the following:

That the extraordinary appeal, the denial of which is the reason for this *queja*, is inadmissible (Article 280 of the Civil and Commercial Procedural Code of the Nation). (...) Therefore, after hearing the Public Prosecutor, the *queja* is rejected (...) <sup>123</sup>.

**3. Case - Romero Feris, Raúl Rolando; Isleta, Jorge Eduardo; Megrim, Manuel Alberto on / Embezzlement; Ortega, Lucia Placida on/ Embezzlement and use of false documents - Capital**

74. On March 9, 2001, defense counsel raised before Instructing Magistrate No. 1 of Corrientes the exception of lack of jurisdiction and competence, <sup>124</sup> on the ground that that the judge selection violated the guarantee of natural judge provided for by the Argentine Constitution. <sup>125</sup> The IACHR notes that the documents submitted by the petitioners do not include the decision on this remedy.

75. On August 6, 2001, defense counsel filed a recusation against the members of Criminal Chamber no. 2. <sup>126</sup> Defense counsel noted the following:

(...) the members of this Hon. Chamber, intervened during the instruction phase as Court of Appeal, therefore hearing in appeal the totality of the procedural steps during that stage in connection with the resolutions adopted by the Instructing Magistrate. Having confirmed the Indictment Order issued against our client, as well as confirming the corresponding Order to Proceed to Trial. <sup>127</sup>

76. On August 17, 2001, Criminal Chamber No. 2 declared the recusation inadmissible. <sup>128</sup> The Chamber stated the following:

The challenge must be declared inadmissible. In Art. 59 of the applicable code, governing the requirements for recusation establish that the party filing the recusation must state among other elements the grounds on which it is based [Art. 52 of the same applicable code]. The

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<sup>120</sup> Opinion of the Public Ministry, National Attorney General, September 28, 2007. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>121</sup> Opinion of the Public Ministry, National Attorney General, September 28, 2007. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>122</sup> Order of the Argentine National Supreme Court of Justice, December 18, 2007. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>123</sup> Order of the Argentine National Supreme Court of Justice, December 18, 2007. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>124</sup> Exceptions Motion, March 9, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>125</sup> Exceptions Motion, March 9, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>126</sup> Recusation with Cause, August 6, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>127</sup> Recusation with Cause, August 6, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>128</sup> Resolution No. 356 of Criminal Chamber No.2 of Corrientes, August 17, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

recusation filed (...) is inadmissible on the grounds that the presentation does not satisfy the aforementioned regulations. Invoking, de facto, a reason that is not foreseen as a cause of challenge in our legal system involves a disregard for the aforementioned procedural rules.<sup>129</sup>

77. On October 31, 2001, Criminal Chamber No. 2 delivered judgment No. 116, sentencing Mr. Romero to three years and six months in prison and seven years disqualification for perpetrating the offense of abuse of authority.<sup>130</sup> The Chamber also acceded to the civil action for damages by ordering Mr. Romero, jointly and severally, to pay the sum of 222,500 pesos.<sup>131</sup>

78. On November 27, 2001, defense counsel filed a cassation appeal against the judgment given by the Chamber,<sup>132</sup> requesting that the issue be to the Superior Provincial Court of Justice.<sup>133</sup> The IACHR notes that the documents submitted by the petitioners do not contain the decision on the appeal.

79. On February 6, 2002, defense counsel filed a nullity motion with the Superior Court of Justice of the Province of Corrientes,<sup>134</sup> on the grounds that all of the centered that the totality instructing activities and procedural steps carried out in the case by the then Instructing Magistrate No. 1 were illegal, in so far as his appointment violated the guarantee of due process and the principle of the natural judge.<sup>135</sup>

80. On February 12, 2002, the Attorney General of Corrientes submitted a brief to the Superior Court of Justice, stating:

In the opinion of this Office, the matter brought under consideration is an issue that must be dealt with through an independent proceeding from the main one (see Article 173, last paragraph, 483 of the Code of Criminal Procedure), and therefore it is incumbent on your Superior Court to order the separation of this motion for nullity and to establish a new proceeding, with the main case continuing its proper course.<sup>136</sup>

81. On February 20, 2003, defense counsel filed a motion for annulment with the Superior Court of Justice of Corrientes,<sup>137</sup> requesting the composition of the Superior Court of Justice with corresponding new legal members.<sup>138</sup> In view of the fact that judges Elpidio Monzón and Clemente Maldonado had not been appointed in accordance with the procedure established by the Constitution of the Province. Defense counsel argued that:

The situation creates a legal problem, subject to the sanction of absolute nullity. The legal situation created by the appointment of the indicated judges without respecting the

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<sup>129</sup> Resolution No. 356 of Criminal Chamber No.2 of Corrientes, August 17, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>130</sup> Sentence No. 116 of Criminal Chamber No.2, October 31, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>131</sup> Sentence No. 116 of Criminal Chamber No.2, October 31, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>132</sup> Appeal, November 27, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>133</sup> Appeal, November 27, 2001. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>134</sup> Nullity Motion, February 6, 2002. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>135</sup> Nullity Motion, February 6, 2002. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>136</sup> Opinion of the Attorney General of Corrientes, February 12, 2002. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>137</sup> Nullity Motion, February 20, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>138</sup> Nullity Motion, February 20, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

procedure established by the Provincial Constitution violates the guarantee of the natural judge and the principle of inviolability of defense counsel at trial (...) <sup>139</sup>.

82. On April 10, 2003, due to Judge Carlos José Simonelli's disqualification, the Superior Court of Justice issued a resolution ordering that a "draw for the composition of the Superior Court of Justice" <sup>140</sup> be made. On April 14, 2003, defense counsel filed a clarification motion in the following terms:

(...) the hearing was arranged (...) in order to carry out the draw for the composition of the Superior Court, in view of Dr. Liberato Carlos José Simonelli's self-disqualification. The abovementioned resolution omits a decision on the composition in response to the request made regarding Drs. Elpidio Monzón and Clemente Maldonado. Therefore we request clarification of the resolution in light of the fact that the draw for April 14, 2003, must also respond to the request for removal expressly formulated by defense counsel at the moment of filing the nullity motion. This is so on the grounds that, obviously, Drs. Elpidio R. Monzón and Clemente Maldonado cannot be involved in the deliberation and resolution of the challenge against their role as temporary judges. <sup>141</sup>

83. On April 28, 2003, the Attorney General of Corrientes presented a brief to the Provincial Superior Court of Justice stating the following:

(...) with regard to the composition of the Tribunal to resolve the issues raised in the pleadings (...), it is obviously appropriate for those who are temporary judges to exclude themselves, since they cannot resolve the issue that involve themselves and where they are being challenged. Therefore, the draw must exclude temporary judges. <sup>142</sup>

84. On June 18, 2003, the Superior Court of Justice of Corrientes issued a resolution rejecting the nullity and clarification motions of defense counsel. <sup>143</sup> The Superior Court argued that:

As has already been stated when resolving similar requests in other cases, it is indisputable that the Executive Branch of the Province has formalized the appointment of three members of the Superior Court during the recess of the Senate, covering the respective positions with temporary judges for a limited time (Article 142 of the Constitution of the Province). Such a decision constitutes a political act pertaining to that branch of government and therefore outside the jurisdiction of the judicial branch(...) <sup>144</sup>.

85. On July 3, 2003, defense counsel filed an extraordinary federal appeal with the Superior Court of Justice. <sup>145</sup> Defense counsel stated the following:

It is important to highlight, first of all, the patent contradiction incurred by the Superior Court, since, on the one hand, it argued that the issued posed by this defense is of a non-justiciable nature and, on the other, it addressed the merits of the issue when rejecting the motion. (...) in the same sense, in as much as the impugned decision considers as "non-

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<sup>139</sup> Nullity Motion, February 20, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>140</sup> Clarification Application, April 14, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>141</sup> Clarification Application, April 14, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>142</sup> Opinion of the Attorney General of Corrientes, April 28, 2003. Annex to the Petitioner's communiqué dated July 10, 2008

<sup>143</sup> Resolution No. 35 of the Superior Court of Justice of Corrientes, June 18, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>144</sup> Resolution No. 35 of the Superior Court of Justice of Corrientes, June 18, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>145</sup> Extraordinary Federal Appeal, July 3, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

justiciable" the submission of this defense linked to the violation of the constitutional guarantee of the right to a defense in court, it constitutes a violation of Articles 8 and 25 of the American Convention on Human Rights.<sup>146</sup>

86. On March 16, 2004, the Superior Court of Justice of Corrientes declared the issue of the composition of the Superior Court of Justice moot,<sup>147</sup> indicating the following:

[In accordance with] duly notified Decree No. 10.641 of November 20, 2003, pursuant to which a new composition of this Court is announced, (...) [the] Public Prosecutor's Office establishes that the extraordinary appeal must be rejected, since the matter has become moot. (...) The pleading of the defense has indeed become moot, and therefore a decision must be made in that sense and the second instance proceedings must continue.<sup>148</sup>

87. On September 9, 2004, defense counsel filed an extraordinary federal appeal requesting that the case be referred to the Supreme Court of Justice of the Nation.<sup>149</sup>

88. On May 31, 2005, the Superior Court of Justice of Corrientes declared the appeal inadmissible.<sup>150</sup> The Superior Court held the following:

it appears that defense counsel questions the decision of this Court, based on reasons of fact, evidence and law unrelated to the federal remedy. The viability of the extraordinary appeal requires, in the case of arbitrariness, the demonstration of an unequivocal departure from the law or an absolute lack of reasoning (...). Consequently, in view of the absence of such circumstances, the remedy is incapable enabling the requested review, which is reserved for the discussion and final decision of federal issues that are not apparent from the pleadings.<sup>151</sup>

89. On June 14, 2005, defense counsel filed a *recurso de queja* with the Nation Supreme Court of Justice against the resolution of May 31, 2005.<sup>152</sup> The following day, defense counsel also filed an extraordinary federal appeal recusing the judges of that court, on the following grounds:

The main argument of this recusation is that the aforementioned judges participated in the decision of May 31, 2015] that in Section No. 2 is subject to question; and obviously, in order to guarantee the right to a double instance, the same judges cannot hear and rule on the extraordinary federal remedy that is pleaded herein; this reiterate is basic and elemental to ensure the right to a double instance that must be observed in criminal proceedings as a "minimum guarantee" for "every person charged with crime" (...).<sup>153</sup>

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<sup>146</sup> Extraordinary Federal Appeal, July 3, 2003. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>147</sup> Resolution No. 29 of the Superior Court of Justice of Corrientes, March 16, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>148</sup> Resolution No. 29 of the Superior Court of Justice of Corrientes, March 16, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>149</sup> Extraordinary Federal Appeal Motion, September 9, 2004. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>150</sup> Resolution No. 64 of the Superior Court of Justice of Corrientes, May 31, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>151</sup> Resolution No. 64 of the Superior Court of Justice of Corrientes, May 31, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>152</sup> *Recurso de queja* with the National Supreme Court of Justice, June 14, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>153</sup> Extraordinary Federal Appeal Motion and Recusation, June 15, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

90. On September 14, 2005, the Superior Court of Justice of Corrientes rejected the appeal on the following grounds:

That an appeal has been brought before this Court and in view of the fact that the a final sentence has been issued in the case, the remedy must be rejected *in limine* on the grounds that the proceedings are finished and refer the matter to the Court for carrying out the sentence. (...) "Due to the specific characteristics of the cassation appeal, it is admissible when exercised against final decisions on the merits. The law specifically refers to situations prior to the sentencing, but that because of the contents of the resolution have the procedural effects of *res judicata* (...)"<sup>154</sup>  
(...)

The recusation of the Supreme Court judges, filed after the issuance of a ruling, is inadmissible and must be rejected outright; otherwise, an untimely and legally baseless recusation would become an inadmissible subterfuge to ensure that any regularly issued decision could be reversed by other judges, thus subverting the supreme character that the constitution attributes to the court."<sup>155</sup>

91. On September 23, 2005, defense counsel filed a *recurso de queja* with the National Supreme Court of Justice,<sup>156</sup> arguing that:

In the first place, it is obvious that the decision appealed is null and void because the composition of the Superior Court, when issuing it, violated of the legal provisions governing its operation. The Organic Law of the Administration of Justice of the Province of Corrientes (...) establishes the following: "Art. 20.- The Superior Court of Justice shall be composed of five Members. In order to function the Court requires the presence of three of its members, but will only take decisions by absolute majority of all of its members; (...) However, the Superior Court's judgment (...) impugned in this extraordinary appeal was signed only by three of the five judges composing said court, and without a decision on composition pursuant to Decree Law 26/00."<sup>157</sup>

92. On November 30, 2006, the National Attorney General issued an opinion addressed to the Supreme Court of Justice of Argentina in which he concluded that there is no real challenge to the reasoning of the judgment appealed by defense counsel.<sup>158</sup> The Attorney General alleged the following:

The extraordinary appeal (...) does not meet the requirement of adequate grounds (...). Notwithstanding this, the applicant fails to demonstrate what damage has been caused by the alleged violation of the rules of court composition. In fact, the decision of the Superior Court rejecting the appeal was signed by three members of the court, without dissent. The applicant fails to show what would have been the outcome had the court been composed of five members, as he maintains that it should legally have been. (...) At the moment of explaining the grounds of his extraordinary appeal, there is also no evidence, on the part of defense counsel, that this is a reasoned challenge to the contested decision.(...)<sup>159</sup>

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<sup>154</sup> Resolution No. 131 of the Superior Court of Justice of Corrientes, September 14, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>155</sup> Resolution No. 131 of the Superior Court of Justice of Corrientes, September 14, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>156</sup> *Recurso de Queja* before the National Supreme Court, September 23, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>157</sup> *Recurso de Queja* before the National Supreme Court, September 23, 2005. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>158</sup> Opinion of the National Attorney General, November 30, 2006. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>159</sup> Opinion of the National Attorney General, November 30, 2006. Annex to the Petitioner's communiqué dated July 10, 2008.

93. On March 20, 2007, the National Supreme Court of Justice issued a judgment declaring the extraordinary appeal submitted by defense counsel inadmissible.<sup>160</sup> The Supreme Court stated the following:

That the extraordinary appeal, the denial of which gave rise to the *recurso de queja*, is inadmissible (Article 280 of the Civil and Commercial Procedural Code of the Nation). (...) Therefore, it is dismissed. (...) Notified to the parties and archived.<sup>161</sup>

#### **4. Case – Intervention Commissioner of the Municipality of the City of Corrientes, Juan Carlos Zubieta on / Complaint**

94. On July 24, 2000, defense counsel filed a motion for annulment with a subsidiary appeal against the decisions handed down in the case by Instructing Magistrate No.1 of Corrientes,<sup>162</sup> due to the irregular appointment of said judge for being placed ninth in the process of selection for the position of judge. Likewise, it was alleged that the rules on precedence were violated when designating Instructing Magistrate No.1 to oversee all cases against Mr. Romero Feris<sup>163</sup>.

95. In its pleadings, defense counsel stated as follows:

Dr. Mario Payes –charged with deciding all proceedings against Raúl Rolando Romero Feris— had placed 9th in the Evaluation by the Council of Magistrates; at the moment of his nomination by the Executive Branch he held a position as advisor to the Ministry of Provincial Government; he had a negative public evaluation by the Magistrates' Association and the Bar Association; he was nominated by Perié, then in charge of the Executive Branch, who later as Senator cast the decisive vote in the "accord" demanded by the Provincial Constitution; the Superior Court of Justice flagrantly violated procedural rules relating to jurisdiction in terms of connection and precedence.<sup>164</sup>

96. On August 18, 2000, the Instructing Prosecutor No. 1 submitted a pleading to the Judge in which he rejected the claim of nullity filed by defense counsel.<sup>165</sup> The Prosecutor argued that:

That the argument of the defense refers to political and procedural issues, in an attempt to portray His Honor as a "Special Judge", as if our position had been created for the sole purpose of trying all the case of administrative corruption under study before and after the removal of the then Governor and Vice Governor of the Province, and of the Mayor of the City of Corrientes<sup>166</sup>.

(...)

That, regarding the appointment of the judges and its procedure, this matter is specifically regulated by Art. 142 of the Constitution of the Province of Corrientes, and therefore a statute cannot limit the attributions that the constitution establishes without restriction.

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<sup>160</sup> Judgment of the National Supreme Court of Justice, May 20, 2007. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>161</sup> Judgment of the National Supreme Court of Justice, May 20, 2007. Annex to the Petitioner's communiqué dated July 10, 2008.

<sup>162</sup> Nullity Motion with Subsidiary Appeal, July 24, 2000. Annex to petitioner's communiqué of August 24, 2001.

<sup>163</sup> Nullity Motion with Subsidiary Appeal, July 24, 2000. Annex to petitioner's communiqué of August 24, 2001.

<sup>164</sup> Nullity Motion with Subsidiary Appeal, July 24, 2000. Annex to petitioner's communiqué of August 24, 2001.

<sup>165</sup> Opinion of the Instructing Prosecutor No. 1 of Corrientes, August 18, 2000. Annex to petitioner's communiqué of August 24, 2001.

<sup>166</sup> Opinion of the Instructing Prosecutor No. 1 of Corrientes, August 18, 2000. Annex to petitioner's communiqué of August 24, 2001.

Thus the law creating the Magistrates Council does not impose on the Executive Branch the obligation to appoint neither the first nor even the first three candidates on the list.<sup>167</sup>

(...)

What has been expressed above is sufficient to reject the Nullity Motion pursuant to Art. 170, section 2 of the Code of Criminal Procedure, but it is necessary to examine further into defense counsel's brief in order to uncover this attempted dilatory maneuvering.<sup>168</sup>

97. On April 5, 2001, Instructing Magistrate No.1 of Corrientes rejected the motion for annulment.<sup>169</sup> The Judge argued that:

(...) I must state that in addition to the fact that the appointment of the undersigned was carried out in accordance with the constitution (Article 142 of the Constitution of the Province of Corrientes), the appointment of judges is exclusive to the competence of political branches, and its regular exercise is supervised by other instruments, such as those corresponding to constitutional procedural law: autonomous action of unconstitutionality, for example.<sup>170</sup>

(...)

The Hon. Superior Court of Justice (...) has decided (...) to assign the consolidated cases against the accused Raúl Rolando Romero Feris to Instructing Court No.1. This decision, to date, stands final and consented. (...) Therefore, it is beyond the competence of the undersigned to reexamine a decision by the Superior Court which in any case should be subject to a remedy before a Higher Federal Court since (...)<sup>171</sup>.

98. Defense counsel filed an appeal against that decision, alleging the following:

The nullity motion filed was addressed at all the procedural acts performed by the Instructing Magistrate and the nullity invoked against the violation of the constitutional guarantee of the Natural Judge. (...) The modalities and irregularities in the appointment process and non-observance of the rules in the appointment and precedence make Magistrate Payes a Special Judge and therefore this last circumstance makes all procedural acts null and void.<sup>172</sup>

99. On May 31, 2001, Criminal Chamber No. 2 issued a decision rejecting the appeal.<sup>173</sup> Likewise, the Chamber upheld the resolution of April 5, 2001, of Instructing Magistrate No.1.<sup>174</sup> The Chamber held the following:

It is important to bear in mind, with regard to these issues, that the appellant has already appeared before the Superior Court of Justice and obtained a negative response to his claims. Another obstacle for the lower court to rule on the nullities.<sup>175</sup>

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<sup>167</sup> Opinion of the Instructing Prosecutor No. 1 of Corrientes, August 18, 2000. Annex to petitioner's communiqué of August 24, 2001.

<sup>168</sup> Opinion of the Instructing Prosecutor No. 1 of Corrientes, August 18, 2000. Annex to petitioner's communiqué of August 24, 2001.

<sup>169</sup> Resolution No. 615 of the Instructing Magistrate No.1 of Corrientes, April 5, 2001. Annex to petitioner's communiqué of August 24, 2001.

<sup>170</sup> Resolution No. 615 of the Instructing Magistrate No.1 of Corrientes, April 5, 2001. Annex to petitioner's communiqué of August 24, 2001.

<sup>171</sup> Resolution No. 615 of the Instructing Magistrate No.1 of Corrientes, April 5, 2001. Annex to petitioner's communiqué of August 24, 2001.

<sup>172</sup> Appeal Motion. Annex to petitioner's communiqué of August 24, 2001.

<sup>173</sup> Decision No.125 of Criminal Chamber No.2, May 31, 2001. Annex to petitioner's communiqué of August 24, 2001.

<sup>174</sup> Decision No.125 of Criminal Chamber No.2, May 31, 2001. Annex to petitioner's communiqué of August 24, 2001.

(...)

It should not be forgotten, on the other hand, that by virtue of Art. 3, *in fine*, of Law No. 25.236, on the Federal Intervention of the Province of Corrientes, a temporary status was imposed on the members of the judicial branch. As a result, the removal of some magistrates and judicial officials was legitimized, while the rest were tacitly confirmed by Law No. 25343, which exempts the Judiciary from the extension of the intervention.<sup>176</sup>

100. On June 14, 2001, defense counsel filed a cassation appeal before the Criminal Chamber No.2.<sup>177</sup> In that appeal, it added that "it is crystal clear an objective definition in the biased pronouncements that the Magistrate maintains with tenacious anger that sinks its roots in strong political content and that is undoubtedly obvious to the detriment of the impartiality that must characterize the judge." The next day, the Criminal Chamber No.2 decided to declare the appeal inadmissible.<sup>178</sup> The Chamber argued that:

We consider that the appeal brought before this court is inadmissible (Arts. 469 and 480, first para Code of Criminal Procedure) due to the fact that the resolution at issue is not specifically intended as an object of an appeal of this kind (Article 494 Code of Criminal Procedure).<sup>179</sup>

101. In light of this decision, Mr. Romero's defense filed a *recurso de queja*.<sup>180</sup> On August 14, 2001, the Superior Court of Justice rejected the *queja* due to the "lack of a federal question".<sup>181</sup> The Superior Court indicated the following:

The lack of requirement of a "Natural Judge" is a subjective assessment, devoid of reality, and the treatment of the Judge with the qualifications of "Special" and "covered", border on the lack of decorum towards the bench. (...)

There is no violation of the general and subsidiary rules on precedence either, which are the exclusive responsibility of this Superior Court, such as the power to extend, reduce or excuse the involvement of the Judge, without affecting the guarantee of the "Natural Judge", since it only has as its foundation and consequence a better division of labor and administration of justice. Being that these decisions are final, and all legal deadlines for opposition have expired, it is impossible for the parties to modify at their will, the principals that protect legal certainty(...).<sup>182</sup>

## V. ANALYSIS OF THE MERITS

102. In light of the positions of the parties and the established facts, the Commission will carry out its legal analysis offering its view, first of all, on the preventive detention of Mr. Romero Feris and, second, on the alleged violations of due process and the effectiveness of the remedies filed to challenge such alleged violations.

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[... continuation]

<sup>175</sup> Decision No.125 of Criminal Chamber No.2, May 31, 2001. Annex to petitioner's communiqué of August 24, 2001.

<sup>176</sup> Decision No.125 of Criminal Chamber No.2, May 31, 2001. Annex to petitioner's communiqué of August 24, 2001.

<sup>177</sup> Cassation Appeal, June 14, 2001. Annex to petitioner's communiqué of August 24, 2001.

<sup>178</sup> Resolution No. 242 of Criminal Chamber No.2. Annex to petitioner's communiqué of August 24, 2001.

<sup>179</sup> Resolution No. 242 of Criminal Chamber No.2. Annex to petitioner's communiqué of August 24, 2001.

<sup>180</sup> *Recurso de queja*, June 21, 2001. Annex to petitioner's communiqué of August 24, 2001.

<sup>181</sup> Decision No. 111 of the Superior Court of Justice of Corrientes, August 14, 2001. Annex to petitioner's communiqué of August 24, 2001.

<sup>182</sup> Order No. 111 of the Superior Court of Justice of Corrientes, August 14, 2001. Annex to petitioner's communiqué of August 24, 2001.



**A. Right to Personal Liberty and the Presumption of Innocence in connection with the Preventive Detention of Mr. Romero Feris (Articles 7.1, 7.2, 7.3, 7.5, 7.6<sup>183</sup> and 8.2<sup>184</sup> of the American Convention)**

**1. General Observations on Preventive Detention**

103. The Commission and the Court have pointed out that preventive detention is limited by the principles of legality, presumption of innocence, necessity and proportionality.<sup>185</sup> Likewise, it has indicated that it is a precautionary and not a punitive measure<sup>186</sup> and is the severest that can be imposed on an accused and should only be imposed in exceptional cases. In the view of both organs of the Inter-American system, the rule should be the freedom of the accused while their criminal responsibility is being determined.<sup>187</sup>

104. The Court and the Commission have emphasized that the personal characteristics of the alleged perpetrator and the seriousness of the alleged offense are not, in themselves, sufficient justification for preventive detention.<sup>188</sup> Regarding the reasons that may justify preventive detention, the organs of the System have interpreted Article 7.3 of the American Convention as meaning that indications of responsibility are a necessary but not sufficient condition for imposing such a measure. In the words of the Court

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<sup>183</sup> Article 7 of the American Convention establishes, so far as is relevant, the following:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment
- (...)
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
- (...)
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

<sup>184</sup> Article 8.2 of the American Convention establishes, where relevant, the following: Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law (...)

<sup>185</sup> IACHR. Report on the Use of Pretrial Detention in the Americas. OEA/Ser.L/V/II. December 30, 2013, para. 20; I/A Court H.R. *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 67; I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, para. 106; *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 197; and *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 74.

<sup>186</sup> I/A Court H.R. *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 77.

<sup>187</sup> IACHR. Report on the Use of Pretrial Detention in the Americas. OEA/Ser.L/V/II. December 30, 2013, para. 21. I/A Court H.R. *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 67; *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 196; and *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 74.

<sup>188</sup> IACHR. Report on the Use of Preventive Detention in the Americas. OEA/Ser.L/V/II. December 30, 2013, para. 21; I/A Court H.R. *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 69; *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, para. 106; *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 75; and *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 180.

(...) there must be sufficient evidence to allow reasonable supposition that the person committed to trial has taken part in the criminal offense under investigation.<sup>189</sup> Nevertheless “even in these circumstances, the deprivation of liberty of the accused cannot be based on general preventive or special preventive purposes, which could be attributed to the punishment, but [...] based on a legitimate purpose, which is: to ensure that the accused does not prevent the proceedings from being conducted or elude the system of justice<sup>190</sup>.

105. Accordingly, any decision by which the right to personal liberty is restricted through the imposition of preventive detention must contain a sufficient and individualized statement of reasons for assessing whether such detention is in conformity with the conditions necessary for its application.<sup>191</sup>

106. On the other hand, Article 7.5 of the American Convention imposes time limits on the duration of preventive detention and, consequently, on the powers of the State to protect the purposes of the process by means of this type of precautionary measure. As the Inter-American Court has indicated, “when the duration of preventive detention exceeds a reasonable time, the State can restrict the liberty of the accused by other measures that are less harmful than deprivation of liberty by imprisonment and that ensure his presence at the trial.”<sup>192</sup> The Court has indicated that even if there are grounds for keeping a person in preventive detention, the period of custody should not exceed a reasonable time.<sup>193</sup>

107. As regards the need for a periodic review of the grounds for preventive detention and its duration, the Court has indicated that

(...) a preventive detention or imprisonment must be subject to periodic review, so that it does not continue when the reasons for its adoption cease to exist (...). Whenever it appears that preventive detention does not satisfy these conditions, release must be ordered, notwithstanding that the said trial is still ongoing<sup>194</sup>.

108. In addition to its effects on the exercise of the right to personal liberty, both the Commission and the Court have indicated that the improper use of preventive detention may have an impact on the principle of presumption of innocence set forth in Article 8.2 of American Convention. In this respect, they have emphasized the importance of the criterion of reasonableness, since keeping a person deprived of his liberty beyond a reasonable time for the fulfillment of the purposes justifying his detention would in fact amount to an anticipated penalty.<sup>195</sup>

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<sup>189</sup> I/A Court H.R. *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 111. Citing, *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 101 and *Case of Servellón García et al. v. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 90.

<sup>190</sup> I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. Para. 111. Citing: *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 103; and *Case of Servellón García et al. v. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 90.

<sup>191</sup> IACHR. Report on the Use of Preventive Detention in the Americas. OEA/Ser.L/V/II. Doc. 46/13. December 30, 2013. Para. 21.

<sup>192</sup> I/A Court H.R. *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206. para.120.

<sup>193</sup> I/A Court H.R. *Case of Argüelles et al. v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment of November 20, 2014. Series C No. 288, para. 122.

<sup>194</sup> I/A Court H.R. *Case of Argüelles et al. v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment of November 20, 2014. Series C No. 288, para. 122, para.121.

<sup>195</sup> IACHR. Report No. 2/97, Case 11.205, Merits, Jorge Luis Bronstein and others, Argentina, March 11, 1997, para. 12; IACHR. Third Report on the Situation of Human Rights in Paraguay, OEA/Ser./L/VII.110. Doc. 52, adopted on March 9, 2001. Cap. IV, para. 34. See also: I/A Court H.R. *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 69; I/A Court H.R. *Case of Acosta Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 111; I/A Court H.R. *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 180; I/A Court H.R. *Case of the "Juvenile Reeducation Institute" v. Paraguay..* Judgment of [continues ...]

109. In the words of the IACHR, the unreasonable delay in preventive detention:

In addition, the risk of inverting the presumption of innocence increases with an unreasonably prolonged preventive incarceration. The guarantee of presumption of innocence becomes increasingly empty and ultimately a mockery when preventive imprisonment is prolonged unreasonably, since presumption notwithstanding, the severe penalty of deprivation of liberty which is legally reserved for those who have been convicted, is being visited upon someone who is, until and if convicted by the courts, innocent.<sup>196</sup>

(...)

If the State is able to justify further holding of the accused in preventive incarceration, based on the suspicion of guilt, then it is essentially substituting preventive detention for the punishment.<sup>197</sup>

110. Respect for the right to the presumption of innocence also requires that the State should substantiate and demonstrate, clearly and with reasons, according to the merits of each specific case, the existence of valid requirements for the imposition of preventive detention.<sup>198</sup> Consequently, the principle of presumption of innocence is also violated when preventive detention is imposed arbitrarily; or when its application is essentially determined, for example, by the type of offense, the likelihood of the penalty or the mere existence of reasonable evidence implicating the accused.<sup>199</sup>

111. Finally, the right established in Article 7.6 of the American Convention is not fulfilled by the mere formal existence of the available remedies. Such remedies must be effective, as their purpose under Article 7.6 is to obtain a prompt decision "on the legality [of] arrest or detention" and, if they were illegal, to obtain without delay, an order for release.<sup>200</sup>

## 2. Analysis of the Present Case

112. First, as regards the legality of the preventive detention, the Commission observes that Mr. Romero Feris was held in preventive detention between August 3, 1999 and September 11, 2002, that is, for three years, one month and eight days. As established in the evidence, according to the law on the duration of preventive detention, the maximum period is two years and, only in certain circumstances and by a well-founded decision, can this time be extended for a further year.

113. In this regard, the IACHR notes that an August 1, 2001 decision extended Mr. Romero Feris' preventive detention for eight months. It follows from the foregoing that: (i) Mr. Romero Feris was deprived of his liberty for one month and eight days in addition to the legal maximum of two years, with the one year extension; and (ii) that Mr. Romero Feris was deprived of his liberty for five months over and above the time set for his detention. Consequently, the length of Mr. Romero Feris' preventive detention failed to comply with the terms established in applicable legislation.

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[... continuation]

September 2, 2004. Series C No. 112, para. 229; I/A Court H.R. *Case of Suárez Rosero v. Ecuador*. Judgment of November 12, 1997. Series C No. 35, para. 77.

<sup>196</sup> IACHR. Report No. 12/96. Argentina. Case 11.245. March 1, 1996, para. 80.

<sup>197</sup> IACHR. Report No. 12/96. Argentina. Case 11.245. March 1, 1996, para. 114.

<sup>198</sup> I/A Court H.R. *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 144.

<sup>199</sup> IACHR. Report on the Use of Preventive Detention in the Americas. OEA/Ser.L/V/II. December 30, 2013. Para. 137.

<sup>200</sup> I/A Court H.R. *Case of Suárez Rosero v. Ecuador*. Merits. Judgment of November 12, 1997. Series C No. 35. Para. 63.

114. Secondly, as regards the basis for his preventive detention, the Commission does not have in the file the initial order establishing this precautionary measure and it is therefore not possible to comment on whether or not such a statement of reasons is in accordance with the American Convention. However, the IACHR does have the reasoning in the Instructing Magistrate No.1's decision of August 1, 2001, which decided to extend Mr. Romero Feris' preventive detention. This order indicates that the preventive detention ought to be maintained and extended taking into account that Mr. Romero Feris might receive a sentence of up to 25 years. Two other reasons are also given: (i) the imminence of the trials; and (ii) Mr. Romero Feris' statements on the lack of independence and impartiality of the judicial authorities. Based on these elements, the Instructing Magistrate No. 1 presumed the danger of "a flight risk".

115. It is clear from the standards described above that preventive detention can only be based on procedural purposes such as a flight risk or the obstruction of court proceedings; and that such purposes must be established individually in the light of the specific circumstances of the accused person. In addition, the organs of the System have clearly indicated that any potential sentence cannot be an element in determining the flight risk, as this is contrary to the presumption of innocence.

116. On the other hand, the IACHR finds that the other two considerations made by the judge refer to elements of the criminal proceedings themselves. The IACHR considers that the holding of public hearings or trials, which are stages of any proceedings, cannot justify preventive detention because, in practice, such a precautionary measure would constitute the rule and not the exception. Likewise, filing appeals in order to question the independence or impartiality of the judicial authorities in charge of assessing the facts, is a right of all persons subject to criminal proceedings. The filing of appeals in the context of a criminal proceeding must not in any way adversely prejudice the accused or be a justification for maintaining preventive detention. Consequently, the maintenance and extension of Mr. Romero Feris' preventive detention was arbitrary and in violation of the principle of the presumption of innocence. Furthermore, since it was based on grounds incompatible with the American Convention, the decision of August 1, 2001, in which Mr. Romero Feris' request for release was considered, did not constitute an effective remedy to challenge deprivation of liberty.

117. In light of the foregoing considerations, the Commission concludes that the State violated the rights to personal liberty and to the principle of presumption of innocence established in Articles 7.1, 7.2, 7.3, 7.5, 7.6 and 8.2 of the American Convention, in relation to Article 1.1 of the same instrument, to the detriment of Raúl Rolando Romero Feris.

**B. Rights to Judicial Guarantees and Judicial Protection in connection with the criminal proceedings against Mr. Romero Feris (Articles 8.1<sup>201</sup> and 25.1<sup>202</sup> of the Convention)**

**1. General Observations on the right to be tried by a competent, independent and impartial tribunal**

118. Article 8.1 of the Convention enshrines the right to be tried by "a competent tribunal (...) established by law." In this way, individuals "have the right to be tried by ordinary courts of law according to legally established procedures".<sup>203</sup> The State must not create courts that fail to apply duly established

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<sup>201</sup> Article 8.1 of the American Convention establishes, so far as is relevant: 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>202</sup> Article 25 of the American Convention establishes, so far as is relevant: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

<sup>203</sup> I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, para. 75.

procedural rules and replace the jurisdiction that is normally attributed to ordinary courts. This seeks to prevent individuals from being tried by special or *ad hoc* tribunals.<sup>204</sup>

119. With regard to the principle of judicial independence, the organs of the Inter-American System have indicated that it is an inherent requirement of a democratic system and a fundamental prerequisite for the protection of human rights.<sup>205</sup> Both the Commission and the Court have interpreted the principle of judicial independence as incorporating the following minimum tenets: a proper appointment's process, tenure in office and guarantee against external pressure.<sup>206</sup>

120. The right to be judged by both competent and independent authority underlines the importance of establishing by law a process of selection and appointment with the purpose of selecting and appointing the members of the judiciary based on merit and professional capacities.<sup>207</sup> These procedures must establish objective selection and appointment criteria.<sup>208</sup> The IACHR has pointed out that public competitive and merit examinations, using methods such as examinations, make possible an objective assessment and qualification of the professional capacity and merits of the candidates for the positions.<sup>209</sup>

121. The right to be tried by an impartial authority demands that the intervening authority approach the facts of the case free from prejudice, and offering sufficient guarantees of an objective nature, so as to remove any doubts that the accused or society might have regarding any lack of impartiality.<sup>210</sup> In that sense, personal or subjective impartiality is presumed unless there is evidence to the contrary.<sup>211</sup> The so-called objective test consists in determining whether the authority which carried out the judicial functions provided convincing evidence to eliminate legitimate fears or well-founded suspicion of bias.<sup>212</sup> The Inter-American Court has emphasized the importance of the recusation of judges as a remedy to challenge their impartiality.<sup>213</sup>

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<sup>204</sup> I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, para. 75.

<sup>205</sup> IACHR, Report on the Merits 12. 816, Report No. 103/13, November 5, 2013, para. 112. Citing see, UN Human Rights Committee. General Comment No. 32, CCPR/C/GC/32, August 23, 2007, para.19. See in this sense, cf. Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 30. See also, IACHR, Democracy and Human Rights in Venezuela, III. Independence and Separation of Public Powers, December 30, 2009. para. 80.

<sup>206</sup> IACHR, *Report on the Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*, December 5, 2013, paras. 56, 109 and 184, I/A Court H.R. *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 191.

<sup>207</sup> IACHR, *Report on the Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*, December 5, 2013, recommendation 6.

<sup>208</sup> IACHR, *Report on the Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*, December 5, 2013, recommendation 6.

<sup>209</sup> IACHR, *Report on the Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*, December 5, 2013, recommendation 6.

<sup>210</sup> I/A Court H.R. *Case of the Constitutional Court v. Peru*. Merits, Reparations and Costs. Judgment of January 31, 2001. Series C No. 71, para. 73.

<sup>211</sup> IACHR, *Report on the Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*, December 5, 2013, para. 201.

<sup>212</sup> IACHR, *Report on the Guarantees for the Independence of Justice Operators. Towards Strengthening Access to Justice and the Rule of Law in the Americas*, December 5, 2013, para. 201.

<sup>213</sup> I/A Court H.R. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paras. 59-67 and 253.

122. According to Article 25 of the Convention, States must provide an adequate and effective remedy against violations of the rights established in the Convention, in the Constitution and in the law.<sup>214</sup> In this sense, the State must ensure the existence of simple, rapid and effective remedies so that any individual subjected to criminal proceedings may challenge the competence, independence and impartiality of the judicial authorities hearing the case.

## 2. Analysis of the Present Case

123. The Commission observes that in the context of the four criminal cases described in the facts of the case, Mr. Romero Feris' defense counsel filed a series of remedies challenging different aspects relating to the competence, independence and impartiality of the judicial authorities conducting criminal proceedings against him. When exercising these remedies, Mr. Romero Feris argued that these violations had a political dimension according to which those hearing his cases had been appointed in an irregular manner with the express purpose of ensuring his persecution throughout the criminal proceedings.

124. The Commission observes that the questions raised in these remedies can be summarized as follows: (i) challenge of the appointment of Instructing Magistrate No.1 due to the fact that he was placed ninth in the list of candidates for the corresponding competitive selection process; (ii) challenge to the application of the rules of jurisdiction that led to Instructing Magistrate No.1 hearing the case; (iii) challenge to the composition of Criminal Chamber No. 2 and of the Superior Court of Justice, because some of its members had been appointed temporarily by the Executive, despite the fact that the Senate was not in recess, as established by Article 142 of the Provincial Constitution; (iv) challenge to the involvement of a member of Criminal Chamber No. 2 for having close family ties with another judge participating in other cases against Mr. Romero Feris; (v) recusation against members of the Criminal Chamber No. 2 for having reviewed some steps taken during the instructing phase in the same cases; and (vi) challenge against the Superior Court of Justice, for a ruling adopted by only three of its five members, notwithstanding that the Organic Law of the Administration of Justice states that such decisions should be taken by absolute majority of all its members.

125. In general terms, the Commission notes that in order for a judicial remedy to be effective in challenging competence, independence and impartiality of courts, States must ensure that such remedies are not resolved by the same authority whose competence, independence and impartiality are subject to challenge. In the present case, the Commission observes that several of the remedies filed were heard, at least initially, by the authority that had been challenged. This fact alone could lead the Commission to conclude that those remedies were not effective. However, given that these remedies were frequently exercised in connected with other remedies that were themselves reviewed by higher courts, the Commission does not have sufficient elements to establish a violation of the American Convention for this reason alone.

126. Notwithstanding the foregoing, the IACHR make a finding on each of these points in light of the right to be tried by a competent, independent and impartial authority, taking into account the decisions of the domestic judicial authorities within the framework of the remedies filed by Mr. Romero Feris' defense counsel.

127. Firstly, as regards the challenge to the appointment of Instructing Magistrate No.1, which counsel considered as a politically motivated appointment (as a "covered" judge) despite the fact of being placed number nine in the list of candidates of the competitive selection process for his appointment, the judicial authorities rejected that challenge on the grounds that the domestic legislation did not impose the obligation to appoint "neither the first, nor even the third candidate on the list".

128. With respect to the right to a competent authority, the Commission notes that this analysis refers to domestic legislation, and therefore it is not pertinent to analyze it since the legal obligation to

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<sup>214</sup> I/A Court H.R. *Case of Castillo Páez v. Peru*. Merits. Judgment of November 3, 1997. Series C No. 34, para. 82; *Case of Claude Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 131, and *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 6, 2008. Series C No. 184, para. 78.

appoint judges according to the aforementioned placements is not regulated. However, in terms of the right to an independent and impartial authority, the Commission reiterates the importance of clear rules for the appointment of judges; and that such appointment processes be strictly observed and that they follow criteria based on merit. The Commission considers that the existence of a competitive selection process on its own does not guarantee the suitability and independence of the members of the judiciary if the appointment is not based on the results of such a competitive process. In that sense, the appointment of a candidate placed ninth in a competitive selection process must be evaluated with special caution.

129. In this regard, the IACHR observes that Mr. Romero Feris, in addition to invoking the lack of a legal obligation to appoint the candidates placed in the first positions of the competitive selection process, did not receive any other explanation of the grounds on which the challenged Magistrate was selected, despite the result of said selection process; other channels to challenge the situation were not pointed out to him either. Neither was there an answer to his argument on the political dimension to the appointment and its irregularities. The lack of a substantial response to the issues raised by Mr. Romero Feris and their connection with a political dimension, is even more problematic, in light of the fact that Instructing Magistrate No.1, whose appointment and precedence was challenged through these remedies, heard not one but four criminal cases on which the IACHR has information.

130. Secondly, as regards the challenge to the application of the rules of jurisdiction that assigned competence to Instructing Magistrate No.1 to hear the criminal cases, the petitioner alleged that said Judge was exempted from hearing other cases so that he could hear all the cases relating to Mr. Romero Feris. On this point, the Commission considers that, in principle, it is incumbent on the States to establish the rules on jurisdiction and competence for its judiciary and to apply them in specific cases. Non-compliance with such rules by the domestic authorities may result in a violation of the right to be tried by a competent authority. The Commission observes that at different stages the judicial authorities ruled on the matter upholding the decisions by invoking the corresponding legal grounds but without providing an answer to the petitioner's challenge on this issue. An explicit answer regarding the application of these rules was particularly relevant, in light of the doubts hanging over the appointment of Instructing Magistrate No.1, placed ninth in his competitive selection process, as already indicated above.

131. In the third place, the challenge to the composition of Criminal Chamber No. 2 and of the Superior Court of Justice, whose members were appointed temporarily by the Executive, is at issue, in light of the allegation that the Senate was not in recess, as required by Article 142 of the Provincial Constitution. In this regard, the Commission observes that this challenge was repeatedly raised within the framework of all cases initiated against the alleged victim. The consistent answer provided to Mr. Romero Feris was that the appointment of the members of these collegiate bodies was an act of the Executive Branch and, therefore, exempt from judicial control. Only once was he informed that the Senate was in recess at the time of one of the appointments. The Commission observes that even the Attorney General of Corrientes acknowledged the arguments of Mr. Romero Feris's defense counsel and indicated that in light of the principal of the natural judge, any temporary judges should be removed from the cases. Due to this opinion, the said Attorney General was removed from his position.

132. The Commission does not have the elements at its disposal to establish whether members of the Criminal Chamber No. 2 and of the Superior Court of Justice were or were not appointed according to Article 142 of the Provincial Constitution. However, the Commission considers that the absence of a clear ruling refraining on whether the appointment of judicial authorities complied with the legal and constitutional requirements, on the grounds that such appointment is within the sphere of another branch of government beyond judicial review, violates the right to judicial protection, in connection with the right to trial by a competent, independent and impartial authority.

133. Fourthly, as regards the challenge to the involvement of a Magistrate from Criminal Chamber No. 2 with close family ties another judge participating in cases against Mr. Romero Feris, the Commission observes that this was rejected by the Superior Court of Justice, on the grounds that recusation requires that the chamber members with close family ties must have issued contradictory or contrary decisions against the accused, which was not the case. This requirement, however, is not provided for in the legislation regulating

the grounds for recusation in subsection 11 of Article 52 of the Code of Criminal Procedure establishing that "whenever in the case there is past or current intervention as judge of any relative within the second level of consanguinity ". Subsequently, when Mr. Romero Feris' defense counsel sought to challenge this issue through a federal remedy, the opinion of the Prosecutor in the sense that the interpretation of Article 52 subsection 11 of the Code of Criminal Procedure of Corrientes was not relevant, prevailed.

134. It follows from the foregoing that, at the provincial level, Mr. Romero Feris was told that the challenge could not proceed on the basis of requirement not contemplated by the law; meanwhile, at the federal level, he was told that the interpretation of that rule had no sufficient federal relevance. In this regard, the Commission considers that Mr. Romero Feris did not have access to an effective remedy to challenge the impartiality of the aforementioned magistrate.

135. Fifthly, with regard to the recusation against members of Criminal Chamber No.2 that had reviewed some procedural steps in the instruction phase, it was rejected on the grounds that this circumstance was not foreseen as a ground for challenge in domestic law. The Commission recalls that in the *Case of Herrera Ulloa v. Costa Rica*, the Court stated that the same magistrates composing the Chamber where more than one remedy related to the same case has been filed, and such magistrates analyzing the merits and not only the procedural issues, violates the requirement of impartiality established in Article 8.1 of the American Convention.<sup>215</sup>

136. The Commission lacks sufficient elements to establish specifically which were the decisions reviewed by Criminal Chamber No.2 in connection with the instruction stage. In that regard, the Commission is not in a position to determine whether they were sufficiently relevant to the merits of the case so as to be able to establish whether a violation of the right to be tried by an impartial tribunal took place as a result. However, the Commission considers that the manner in which the appeal was decided, solely on the grounds of the requirements for recusation in the domestic legislation, leads to the conclusion that the remedy was ineffective in establishing whether or not the guarantee of impartiality had been compromised by the decisions taken by the Chamber at different stages of these proceedings.

137. Sixth is the challenge against the Superior Court of Justice for having reached a decision with the participation of only three of its five members, even though Article 20 of the Organic Law on the Administration of Justice provided that decisions should be reached by absolute majority of all its members. In this regard, the IACHR observes that the National Attorney General issued an opinion in which he acknowledged that the decision was adopted by only three members of the Superior Court. Despite this, the Attorney General indicated that in view of the fact that the decision had been unanimous and without dissent, there was no clear demonstration of how this had affected Mr. Romero Feris. For its part, the Supreme Court of Justice declared inadmissible the *recurso de queja* filed on the basis of this allegation without further reasoning beyond reliance on Article 280 of the National Civil and Commercial Procedural Code.

138. The Commission reiterates that the right to be tried by a competent authority is related to strict compliance with the procedures legally established for such a trial, which has particular relevance concerning criminal proceedings. Notwithstanding the foregoing, the IACHR does not have sufficient elements to decide on this issue.

139. By virtue of the observations in this section, the Commission concludes that during the criminal cases against Mr. Romero Feris, his defense filed, on a number of occasions and in different appeals a series of challenges relating to the right to be tried by a competent, independent and impartial tribunal. Despite this, the challenges were rejected on grounds based on generic invocations of the law or the inadmissibility of the remedy used. However, it is a common theme in the documentation reviewed by the IACHR that Mr. Romero Feris did not have access to an effective judicial response to his right to be tried by a competent, independent and impartial authority. He did not receive a concrete response to his challenges

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<sup>215</sup> I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, paras. 174-175.



nor did the judicial authorities clarify the appropriate avenues for raising such issues. Relying on effective remedies to challenge the competence, independence and impartiality of the judicial authorities dealing with his case was of special relevance, taking into account that Mr. Romero Feris complained that judicial authorities hearing his case had been appointed in violation of the proceedings established by the Constitution and the law, with the purpose of deciding the cases against him in a specific political context.

140. Accordingly, the IACHR concludes that the State of Argentina violated to the detriment of Mr. Romero Feris: (i) the right to judicial protection established in Article 25.1 of the Convention in relation to the right to be tried by a competent authority established in Article 8.1 of the same, regarding the recusation of the composition of Criminal Chamber No. 2 and the Superior Court of Justice; (ii) the right to judicial protection established in Article 25.1 of the Convention in relation to the right to be tried by an impartial tribunal established in Article 8.1 of the same instrument, as regards the recusation of a magistrate in Criminal Chamber No.2 for having a family member involved in connected cases ; (iii) the right to judicial protection established in Article 25.1 of the Convention in relation to the right to be tried by an impartial tribunal established in Article 8.1 of the same instrument, as regards the recusation of members of Criminal Chamber No.2 involved in the review of procedural steps during the instruction phase of the proceedings; and (iv) the right to be tried by a competent tribunal in accordance with lawfully established procedures and the right to judicial protection enshrined in Articles 8.1 and 25.1 of the Convention, as regards the challenge against the Superior Court of Justice, for adopting a decision with only three of its five members in violation of the Organic Law of the Administration of Justice.

## **VI. CONCLUSIONS**

141. Based on the foregoing considerations of fact and law, the Inter-American Commission concludes that the Argentine State is responsible for violating the rights to personal liberty, judicial guarantees and judicial protection established in Articles 7.1, 7.2, 7.3, 7.5, 7.6, 8.1, 8.2 and 25.1 of the American Convention, in relation to the obligations established in Article 1.1 of the same instrument, to the detriment of Raúl Rolando Romero Feris

## **VII. RECOMMENDATIONS**

142. Based on the above findings

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF ARGENTINA**

1. Fully repair the human rights violations declared in this report against Mr. Raúl Rolando Romero Feris, both materially and immaterially, including fair compensation

2. Take the necessary measures to ensure the non-repetition of the violations declared in the present report. In particular, the State must adopt administrative or other measures to ensure strict compliance with the maximum legal term for preventive detention, as well as providing adequate grounds for ordering it, in the light of the standards developed in this report

3. In addition, the State must ensure the availability of adequate and effective mechanisms to enable persons subjected to criminal proceedings to challenge, in a simple and rapid manner, the competence, independence and impartiality of the judicial authorities.