

Institution: Inter-American Commission on Human Rights
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Title/Style of Cause: Bolivar Franco Comancho Arboleda v. Ecuador
Doc. Type: Decision
Decided by: Chairman: Ambassador John Donaldson;
First Vice Chairman: Dr. Carlos Manuel Ayala Corao;
Second Vice Chairman: Professor Robert Kogod Goldman
Members: Ambassador Alvaro Tirado Mejia, Dr. Oscar Lujan Fappiano, Dean Claudio Grossman, Dr. Jean Joseph Exume.
Dated: 12 March 1997
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I. SUMMARY

1. On November 8, 1994, a complaint was submitted to the Inter-American Commission on Human Rights alleging that Mr. Bolívar Franco Camacho Arboleda had been arrested on 7 October, 1989, and that, five years later, his legal situation remained unresolved. Five years and three months after his arrest, the charges against him were dismissed. Mr. Camacho Arboleda was released in February, 1995, and is seeking damages for having been arbitrarily deprived of his liberty for a period of 63 months. The petitioners maintain that there is no law or procedure in Ecuador to allow the recovery of such damages in this case.

II. FACTS

2. Mr. Camacho Arboleda, 25 years of age and a citizen of Ecuador, was arrested on 7 October, 1989, at about 4:00 p.m., by officers of Interpol for Santo Domingo de los Colorados. Mr. Camacho Arboleda was charged with the illegal possession of cocaine (amounting to 6 grams), and was brought before the Sixth Criminal Court of Pichincha, in Santo Domingo de los Colorados.

3. The Sixth Court formally requested the Second Criminal Court of Quito to have the seized drugs destroyed and to investigate the situation of the accused, but this request was not acted upon.[FN1]

[FN1] In the records of the IACHR, there is a copy of the communication sent on 6 April, 1992, to the Second Criminal Judge of Pichincha, by the Eleventh Criminal Judge of Pichincha, to which is attached the request for a chemical analysis of the drug and receipt of the investigatory

testimony and the psychosomatic examination of the accused, Camacho Arboleda, in connection with the criminal proceedings, so that the case could be handled in a timely manner.

4. After almost five years had elapsed, the judge issued a stay of proceedings, and the case was sent, under mandatory consultation, to the Second Division of the Superior Court of Quito, where 180 days passed without the issuing of any decision.

5. The petitioners point out that, despite their request for information from the competent authorities about the legal situation of Mr. Camacho Arboleda, the authorities failed to respond, nor did they expedite the process in any way.

6. On 24 January, 1995, the Superior Court of Quito dismissed the charges against Mr. Camacho Arboleda, and he was released in February of that year.

7. Mr. Camacho Arboleda is demanding damages for having been arbitrarily deprived of his liberty for more than five years (63 months). At the same time, he states that Ecuador has no law that would allow him to make effective his claim for compensation.

Documentary evidence:

8. In the record submitted to the Commission are copies of the following documents: the initial indictment, the provisional stay of proceedings, the application for revocation of the provisional stay of proceedings, and the confirmation of the judgment of dismissal. The pertinent portions of these documents are discussed below:

A. Investigative Report[FN2]

[FN2] The investigative report is included in the indictment.

9. On 11 October, 1989, the Deputy Head of Narcotics and Interpol for the city of Pichincha, in Santo Domingo de los Colorados, submitted before the Eleventh Criminal Judge of that city the Investigative Report NO. 012-SJI-SCD-89, in which the following facts are recorded:

Acting upon a confidential report that there were persons engaged in the illegal trafficking of cocaine base within the Santo Domingo Housing Cooperative, Interpol officers from that city went to these premises, where they observed an individual wandering about suspiciously. They followed that person and accosted him. They searched him, and found upon his person a portion of cocaine base in a small plastic pouch. The individual stated, under interrogation, that his name was Bolívar Franco Camacho Arboleda; he said that the drug was intended for delivery to a person on the same premises, but that that person had fled when he became aware of the presence of the police officers.

According to the investigative Report, when he made his statement at the Interpol office, Bolívar Camacho said that on a previous occasion he had bought two envelopes of cocaine base from a citizen by the name of José Sarmiento Jaramillo, and that subsequently, on two further occasions, he had bought drugs from Héctor N., alias “el Tito”. The second of those occasions was on Saturday, 7 October 1989 at about 3:00 p.m. It was on this date, at about 4:00 p.m., that Mr. Camacho was arrested by Interpol officers, as he was going to deliver the drug to an unknown citizen, who had fled the scene.

B. Initial Indictment

10. On 13 October, 1989, on the grounds that the facts recorded in the Investigative Report N° 012-SJI-SDC-89 constituted a investigable criminal offense, the Eleventh Criminal Judge of Pichincha issued an indictment and ordered that proceedings begin to determine the respective legal responsibilities. He cited the Public Attorney of the Eleventh Criminal District of Pichincha, Mr Germán Moya Mondragón, and Mr. Gregorio López Granizo, who was appointed to defend the person or persons who had committed the deeds under investigation, and Camacho Arboleda, José Sarmiento and Héctor N., alias “el Tito”, who stood accused in this affair, and ordered that these persons be held in preventive custody.

11. A Constitutional Order of Imprisonment was issued against Camacho Arboleda, who had been arrested, and the authorities were instructed to remove him to the State Prison for Men in the city of Quito. The indictment also provided that the following steps be taken:

- i) To obtain investigative testimony from the accused, and from all persons having knowledge of the facts.
- ii) To inform the accused persons of the indictment and all proceedings to date.
- iii) To conduct a psychosomatic examination of the arrested person, Bolívar Franco Camacho Arboleda, with the assistance of medical experts of the Office of the Attorney General. It also ordered that an examination be conducted on the substance, said to be cocaine base, that was seized from the accused, and which was sent to the Health Department of Pichincha by order N° 126-SJI-SDC-89. The Second Criminal Judge of Pichincha was asked[FN3] to see to these steps, and the corresponding instruction was sent to him, giving him a period of 10 days in light of the distance.
- iv) To ask the Head of the SIC to proceed with the arrest of the accused José Sarmiento and Héctor N., alias “el Tito”, and to bring them before the authorities.
- v) To inspect the site of the deeds, on Thursday 19 October, 1989 at 11:00 a.m., with the assistance of experts who were to be appointed and briefed shortly before the search.
- vi) To take all steps necessary to clarify the facts and complete the basis for the summary proceedings.

[FN3] By official request.

C. The Provisional stay of proceedings

12. On 28 June, 1994, the Eleventh Criminal Judge of Pichincha issued a provisional stay of proceedings, stating that during the summary proceedings he had received a petition sent to the Second Criminal Judge of Pichincha in which Camacho Arboleda gave testimony, maintaining that: “with respect to the indictment, I must clarify that the person who was said to have fled never did so; the person named José Sarmiento traffics in drugs in Santo Domingo, and gives money to Interpol. The information as to where the arrest took place is untrue: I was arrested in Santa Martha Street, while I was waiting for a bus. I was never found in possession of any drugs that was José Sarmiento. I was arrested with a young woman, whose name I never learned. When I was told what was happening, the Public Attorney was not present. It is true that I take drugs, but they never found a single gram on me...”.

13. A psychosomatic examination of Camacho Arboleda was performed, and confirmed that when he was arrested he did not have any drugs with him, since, as he stated, he had for some time been trying to give up taking drugs, although he had unfortunately fallen back into the habit from time to time. He also maintained that the drug noted in the report belonged to José Sarmiento, and that that person had apparently made arrangements with the police and they, in order to exonerate him, put the blame on Camacho Arboleda instead.

14. The report adds that the person examined had been a moderate and infrequent consumer of cocaine base, but that he appeared currently to have given up the habit, and that, while he insisted that the drug did not belong to him, the gross weight of cocaine base was six grams, which would not be considered an excessive amount for the use of a person such as he, at a time when he was taking drugs.

15. A chemical analysis and identification was performed by experts on the seized drug, and their expert report is part of the court record. They found the substance to be cocaine paste, and the substance was subsequently destroyed.

16. At the end of the summary hearing, the Public Attorney for the Eleventh Criminal District of Pichincha issued a statement in which he declined to bring accusations against the three suspects. In light of these aspects and the status of the proceedings, the Judge issued a Provisional Stay of Proceedings, on the grounds that:

FIRST: No substantiated cause has been produced to impugn the proceedings, and they are thus declared valid;

SECOND: The Police Report submitted by the Deputy Chief of Interpol provides the material evidence for the violation: the chemical analysis and identification of the seized substance, the report on the destruction of narcotics, and the psychosomatic examination performed on the person of Bolívar Franco Camacho Arboleda;

THIRD: With respect to the responsibility of the suspects José Sarmiento and Héctor N., alias “el Tito”, whom the police have not been able to arrest, despite the orders of the Court, no responsibility can be imputed to them, since the mere reference to them by the other suspect does not constitute sufficient proof. With respect to the suspect Bolívar Franco Camacho Arboleda, it is true that, as pointed out by the Public Attorney in his statement, the former Act to Control

Trafficking in Narcotics and Mind-altering Drugs did not criminalize the consumption of drugs; yet there is doubt as to whether the drug was actually seized from this suspect, or from José Sarmiento Jaramillo, who appears to be working with the police.

17. On these grounds, on the basis of Article 242 of the Criminal Procedures Code, a Provisional Stay order was issued, suspending proceedings against the three suspects Camacho Arboleda, José Sarmiento Jaramillo and Héctor N., alias “el Tito”. The Judge ordered this ruling to be submitted for consultation, and ordered that, since the only suspect being held was Camacho Arboleda, he should be set free as soon as the consultation was completed.

D. Application for revocation of the stay of proceedings

18. On 15 July, 1994, the Public Attorney of Pichincha, Dr. José García Falconi, requested the Second Division of the Superior Court of Justice of Quito to revoke the stay of proceedings issued by the Judge, and to issue an order to initiate plenary proceedings against the suspect. In his conclusions, the Attorney stated that there were solid legal grounds for investigating the violation, as follows:

- i) The physical evidence cited in the police report, which stated that there were 6 grams of cocaine being held in the Police warehouse;
- ii) The chemical analysis of the seized substance tested positively for cocaine, and
- iii) The certificate of destruction of the drug referred to.

19. The Public Attorney also noted that the decree refers only to the conclusions reached in the Police report, and the pre-trial statement given by the suspect, in which he accepts the circumstances of having acquired 6 grams of cocaine for his personal consumption, a drug that was sold to him on one occasion by José Sarmiento and on another by Héctor N., alias “el Tito”. In the investigatory testimony given by Camacho Arboleda, it is stated that he is a drug user, and that the person who supplies drugs in Santo Domingo de los Colorados is José Sarmiento.

20. Subsequently, the Public Attorney’s Office makes the following points of law:

- i) Art. 16 of the Code to the Drug Trafficking Control Act states that: no person may have in his possession, whether in his clothing or his effects, including in his home, office or place of work, or any other place under his responsibility, without legal authorization or prior medical prescription, any quantity of the narcotics and mind-altering drugs mentioned in List I part II of the Annex to this Act. The drugs mentioned in that Code (which was valid at the time of the events under investigation) included marijuana and cocaine;
- ii) Art. 27 of that code states: “By improper use of narcotic or mind-altering drugs is meant here their non-therapeutic use”. Art. 33 (c) states: “By illegal trafficking is meant any business transaction, possession or delivery of any kind of medications, narcotics and drugs undertaken contrary to the provisions of this Act.”
- iii) From the foregoing, we conclude that the law deems legal the possession of a personal dose, but only with respect to those persons who are under treatment with a drug, provided that the amount involved corresponds to a therapeutic dose, which is recorded in the respective medical prescription, signed by a doctor who is legally qualified to issue it.

21. The Prosecutor states that since there is proof of a crime being investigated and there are serious presumptions of responsibility against the suspects Camacho Arboleda, José Sarmiento Jaramillo and Héctor N., alias “el Tito”, to the effect that they are the authors of a crime of the kind cited in Art. 33 (c) of the Code to the Act to Control Trafficking in Drugs and Mind-Altering Substances, he has decided to charge them and asks that the stay of proceedings issued by the Judge be revoked, and instead that an order be given to launch a plenary hearing into the crime.

E. Revocation of the stay of proceedings

22. The provisional stay of proceedings issued in this case by the Judge of the Eleventh Criminal Court of Pichincha was revoked by the Division of the Superior Court, and plenary proceedings were initiated against the suspects; these proceedings were to be pursued to judgment with respect to Camacho Arboleda, while prosecution was suspended against the others, as fugitives.

F. Dismissal of charges

23. The Fifth Criminal Tribunal of Pichincha subsequently dismissed the charges against Camacho Arboleda, and ordered the respective consultation, for which reason the case came to the Second Division of the Superior Court of Quito, which in turn decided to confirm the ruling consulted on 24 January, 1995. The Second Division ruled that with respect to the responsibility of Camacho Arboleda, there was no solid proof that he had drugs, since in his investigatory testimony he denies that any such substance was found in his possession, and the police investigation report only constitutes a presumption that is not sufficient to find the suspect guilty, particularly in light of the fact that the pre-summary statement was not given before a representative of the Public Attorney’s Office and was not corroborated with other evidence during the plenary proceedings.

III. ALLEGED VIOLATIONS

24. The complaint alleges the violation of the right to personal liberty (Article 7) the right to a fair trial (Article 8), and the right to judicial protection (Article 25) as guaranteed in the American Convention on Human Rights.

IV. PROCEEDINGS BEFORE THE COMMISSION

25. The complaint was submitted on 8 November, 1994, and states the facts that Mr. Camacho Arboleda arrested in October 1989, accused of the illegal possession of cocaine, and that the proceedings had lasted more than 5 years, without any court decision as to his legal situation.

26. On 19 July, 1995, the Commission sent the pertinent portions of the complaint to the State of Ecuador, giving it a period of 90 days to submit its response, pursuant to Article 34 of the Commission Regulations. In that letter, the Commission asked the state that, together with

information pertaining to the facts, it should supply any element of judgment that would help the Commission to appreciate whether in the present case all remedies under domestic law had been exhausted.

27. On 10 October, 1995, the State of Ecuador sent its response, stating that the Second Division of the Superior Court of Quito had issued a ruling on 24 January, 1995, confirming the dismissal issued in favor of Camacho Arboleda, and that "... under the meaning of Art 401 of the Code of Criminal Procedures, the ruling has been carried out; and that pursuant to Art. 385 ff of that legislation, only the accused or the Tribunal itself may appeal to or order, respectively, the recourse of Revision."

28. With the same statement, the State submitted copies of the legal decisions that show the following procedural stages:

- i) The provisional stay of proceedings ordered by the Judge of the Eleventh Criminal Court of Pichincha was revoked by the Division of the Superior Court, which declared the plenary proceedings open.
- ii) The Fifth Criminal Tribunal of Pichincha later issued a dismissal in favor of Bolívar Franco Camacho Arboleda, ordering the respective consultation, for which reason the case came before the Second Division of the Superior Court of Quito, which in turn confirmed the ruling consulted on 24 January, 1995.
- iii) The Division confirmed the consulted ruling and decided that the reason for the delay in the proceedings was the negligence of the Second Criminal Judge of Pichincha, who failed to undertake the steps ordered insistently by the Eleventh Criminal Judge, and he was fined 30% of his basic salary.
- iv) On 26 January, 1995, the Second Criminal Judge of Pichincha appealed to have the penalty amended or revoked, claiming that the delay in the process was not his fault. This request was denied by the Second Division of the Superior Court of Quito on 15 February, 1995. For his part, the Second Criminal Judge of Pichincha appealed this ruling on 23 February 1995 to the Superior Court, on the grounds that it was unfair and illegitimate. On that day the Second Division of the Superior Court denied the appeal brought by the Second Criminal Judge of Pichincha, as contrary to law.

29. On 26 October, 1995, the States's response was acknowledged, and the pertinent portions were sent to the petitioners, giving them a period of 45 days to submit their observations.

30. On 23 November, 1995, the petitioners presented their reply to the response of the State, and argued as follows:

- i) The documentation sent by the State is correct, in that it demonstrates that Mr. Bolívar Camacho had been given a dismissal. What is incorrect is that the State says that Mr. Camacho could seek recourse of revision, an argument that does not make sense, since under Art. 385 of the Code of Criminal Procedures, it is only guilty sentences for which revision can be sought, and that is clearly not the case here.
- ii) The fact is that in Ecuador, only persons who have been found guilty and have subsequently been cleared through recourse of revision can seek compensation. Art. 21 of the

Ecuadorian Constitution provides that “When a verdict of guilty is amended or revoked by recourse of revision, the person who has suffered damages as a result of that verdict shall be rehabilitated and compensated by the State, as provided by Law.”

iii) For its part, Art. 392 of the Code of Criminal Procedures provides that “when the Supreme Court of Justice, accepting the recourse of revision, revokes or amends the verdict, the person unjustly found guilty shall be entitled to compensation...” The following articles of that Code set out the procedure for securing such compensation.

iv) On the other hand, Article 20 of the Ecuadorian Constitution provides that, “The State and other entities of the public sector shall be obliged to compensate private parties for any damages they may incur as a result of the public services or actions of its officials and employees in the performance of their duties.” Nevertheless, the petitioners point out that in Ecuador there is no law or regulation to give effect to this constitutional mandate, i.e. there is no procedure for claiming compensation.

v) In the specific case, Mr. Camacho Arboleda was damaged by the slowness of the courts and by the discriminatory provisions of the Narcotics Law, since he was detained for 63 months, i.e. 5 years and three months, and charges against him were subsequently dismissed.

vi) The petitioners point out that the State has not taken any action to remedy the 63 months that Mr. Camacho was unjustly detained. For his part, Mr. Camacho Arboleda has been unable to seek any administrative or judicial redress, since there is no such possibility in the country. In light of the impossibility of making any claim in this respect, it is thus impossible to exhaust domestic remedies, since for the purposes of the present case, these do not exist.

31. On 28 February, 1996, the Commission sent to the State the pertinent portions of the observations of the petitioners, giving it a period of 30 days to submit its response.

32. On 29 April, 1996, the State of Ecuador sent its response, which states the following:

i) From the documentation I am sending you, you will see that Bolívar Franco Camacho Arboleda was suspected of the crime of trafficking in narcotics; that a stay of proceedings was granted by the Eleventh Criminal Judge of Pichincha, located in Santo Domingo de los Colorados; that nevertheless, after consultation and prior drawing of lots, the Second Division of the Superior Court of that District revoked the stay and declared open the plenary stage; and the Fifth Criminal Tribunal dismissed the case, referring it back to the same Division in which it had been heard, and in principle confirming the dismissal verdict, in a ruling issued on 24 January 1995.

ii) From the contents of that verdict it arises that the Second Criminal Judge of Pichincha was commissioned to undertake chemical analysis and destruction of the narcotic substances, and he delayed in fulfilling these formalities, for which reason he was fined an amount of 30% of his basic salary.

iii) The case came before the Fifth Criminal Tribunal of Pichincha on 27 February, 1995. On these grounds, the State believes that the complaint of Bolívar Franco Camacho Arboleda is contrary to law, since at the time he complained to the Inter-American Commission on Human Rights, the case had already been resolved.

33. On 12 July, 1996, the Commission sent to the petitioners the pertinent portions of the State's response, and gave them a period of 45 days to reply.

34. On 6 August, 1996, the petitioners submitted their observations, in which they state their disagreement with the response of the State, with respect to the argument that the charges had been dismissed and a penalty of 30% of basic salary had been levied against the Second Criminal Judge for his procedural delays, and that the claim of Camacho Arboleda was contrary to law, since by the time he came to the Inter-American Commission on Human Rights the case had already been decided.

35. The petitioners then allege that, "In the first place, the complaint relating to Camacho Arboleda was brought before the Commission in November 1994, and the injured party was set free in February 1995. That is to say, when the complaint was brought, Mr. Camacho Arboleda was still detained. In the second place, it is strange to think that the case could be resolved by imposing a penalty on the Criminal Judge, money that will never be of any benefit to the injured party. By what authority will Camacho Arboleda be compensated for having been deprived of his liberty arbitrarily for 63 months, or does the State of Ecuador consider that because he has regained his liberty, it is absolved of any form of obligation for irregularities?"

V. CONSIDERATIONS OF ADMISSIBILITY

36. During its 95th Regular Session, held 24 February to 14 March, 1997, the Commission decided on the admissibility of case 11.515.

V.I Competence of the Commission

37. In light of the background and the handling of the complaint described in the preceding points, the Commission considered the conditions of admissibility of the case in the following terms:

38. The Commission may accept a case submitted for its consideration, provided that it meets, in a *prima facie* manner, the formal requirements for admissibility as stipulated in Article 46 of the Convention and Article 32 of the Commission Regulations.

39. Competence *ratione loci* empowers the Commission to receive petitions relating to violations of human rights that affect a person under the jurisdiction of a State Party to the American Convention. The fact that the events contained in the complaint occurred within the territory of Ecuador, which has been a State Party to the Convention since 28 December, 1977, means that the Commission may examine the case of Camacho Arboleda.

40. *In casu*, the complaint submitted by the petitioners refers to events that related to presumed violations of the right to liberty, the right to a fair trial and the right to judicial protection of Mr. Camacho Arboleda, which rights are contained in Articles 7, 8 and 25 of the American Convention on Human Rights, and they therefore fall within the competence *ratione materiae* of the Commission, pursuant to Articles 44 and 47 (b) of that international agreement.

41. The Commission considers that there are no grounds for claiming that the complaint is manifestly groundless or out of order, since the petitioners have demonstrated that the presumed

violation can be imputed to an agency or agents of the State, as provided in Article 47 of the Convention. In the paragraphs relating to the analysis of exhaustion of domestic remedies, it is noted that the presumed violations resulted from acts or omissions committed by officials of Ecuador's Judiciary.

V.2 Exhaustion of remedies under domestic law

42. In the course of proceedings under the present case, the State alleged failure to exhaust remedies under domestic law, and the Commission will therefore turn first to this requirement for admissibility.

43. The question of exhaustion of remedies available within the domestic jurisdiction is dealt with in Article 46. 1 (a) and (b) of the American Convention, as follows:

Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

- a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
- b) that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

44. The American Convention on Human Rights provides, in Article 46.2, three exceptions to the exhaustion of domestic remedies, as follows:

The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:

- a. the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law, or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

45. Article 37 of the Commission Regulations adds that "Where the petitioner maintains that it is impossible to prove the requirement stipulated in this Article, it is incumbent upon the State against whom the complaint is lodged to demonstrate to the Commission that domestic remedies were not previously exhausted, unless this is clearly evident from the documentation submitted in the petition". Similarly, the Inter-American Court has stated, in the preliminary exceptions to the Velásquez Rodríguez case, that "where a State alleges that remedies under domestic law were not exhausted, it is incumbent on the State to demonstrate the existence and effectiveness of the domestic remedies that ought to have been exhausted.[FN4]" Thus, consistent with the principle of *onus probandis incumbit actoris*, the State is obliged to show that such remedies have not been exhausted, or as appropriate, to show which remedies have yet to be exhausted, or why they were not effective.

[FN4] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgement of 26 June, 1987, para. 88, p. 38.

46. In the case of question, the State of Ecuador, in reporting on the most recent judicial actions, pointed out that domestic remedies had not been exhausted. It stated, "in this case, the Superior Court of Appeals of Quito, on January 24, 1995, had issued a decision confirming the acquittal of Mr. Camacho Arboleda, and, under Article 401 of the Code of Criminal Procedure, the acquittal is final" and "under Article 385 and subsequent articles of that code, only the person judged or the Court itself may appeal for, or officially order, respectively, a review."

47. In effect, the State of Ecuador states that charges against Camacho Arboleda were dismissed on 24 January, 1995, and that he was released in the month of February, 1995, but it omits to mention the period of five years that elapsed between the arrest of Mr. Camacho Arboleda and the final judgment of the Court, a period that represents an unwarranted delay in the administration of justice, as contemplated in the exception to prior exhaustion of domestic remedies contained in Article 46.2 (c) of the Convention, and Article 37.2 (c) of the Commission Regulations.

48. With respect to the victim's demand to recover compensation for damages caused by his five years of unjustified imprisonment, the State indicates that he did not exhaust the remedy of revision pursuant to Article 385 of the Code of Criminal Procedures. The petitioners, however, point to the impossibility of exhausting such remedy, since Article 385 only applies in the case of a verdict of guilty, which was not the situation in the case before us.

49. The Inter-American Court of Human Rights has stated the following in this respect: "...where exceptions to the rule of exhaustion of domestic remedies are invoked, such as the ineffectiveness of those remedies or the lack of due process of law, the effect is not only to absolve the injured party from the obligation to seek such remedies, but also, indirectly, to impute to the State concerned a further violation of its obligations under the Convention. Under these circumstances, the question of remedies under domestic law becomes a matter of substance." [FN5] As the petitioners maintain, resort to domestic remedies in the case of the Camacho Arboleda would be fruitless, since Ecuadorian legislation does not afford due process of law for the protection of the right or rights invoked, and this has the effect of depriving the victim of the ability to defend himself, which explains why the Commission must examine the present case.

[FN5] Ibid., para. 91, p. 40.

50. The Commission considers that at this stage of the analysis, the question of non-exhaustion of domestic remedies relates to the substance of the case, given that the plaintiffs allege the lack of domestic legislation that would give the victim access to a remedy to protect his rights. Consequently, on the basis of the exception in Article 46.2 (a) relating to the

exhaustion of remedies under domestic law, the Commission will continue its processing of the case and will in due course express itself on the substance of the complaint.

V.3 Submission of the petition within the time limits established by the Convention

51. With respect to the time limit (*ratione temporis*), as stated in Article 46 (b) of the Convention and Article 38 of the Commission's regulations, the petition must be submitted within a period of six months from the date on which the petitioner was notified of the content of the final judgment (*res judicata*).

52. The Commission considers that the six-month period following notification of final judgment, stipulated in Article 38 (1) of the Commission Regulations for submission of a complaint before the Commission, does not apply in the present case, in light of the exception contained in Article 37.2 (c) of the Commission Regulations, which provides as follows:

The provisions relating to the exhaustion of remedies under domestic law shall not apply where:

a. the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated.

53. In such circumstances, the Regulations provide in Article 38.2 that the time limit shall be set at "a reasonable period of time", from the date on which the presumed violation of rights occurred, to be determined by the Commission in accordance with the specific circumstances of the case.

54. For these reasons, the Commission is competent to hear the present case.

V.4 Duplication of procedures at the international level

55. The Commission notes that the case of Mr. Camacho Arboleda is not pending in another international proceeding for settlement, since such an exception has not been alleged by any of the parties, nor can it be deduced from the documentation submitted with the petition. Nor is the substance of this complaint substantially the same as one previously studied by the Commission or any other international body under Article 47 (d) of the Convention and Article 39.1 (a) and (b) of the Regulations. The Commission therefore is not prevented from hearing the present complaint.

VI. OFFER OF A FRIENDLY SETTLEMENT

56. The Commission considers that the events underlying the complaint are of the kind that may be resolved through application of the procedure for friendly settlement, provided in Article 48 (1.f) of the Convention and in Article 45 of its Regulations, for which reason it stands at the disposal of the parties with a view to reaching a friendly settlement of the matter on the basis of respect for human rights.

57. Taking the foregoing into account, the Inter-American Commission on Human Rights decides:

58. To declare the admissibility of case 11.515, concerning Mr. Bolívar Franco Camacho Arboleda.

59. To stand at the disposal of the parties in reaching a friendly settlement of the matter, on the basis of respect for the human rights recognized in the American Convention on Human Rights. To this end, the parties must indicate to the Commission their desire to initiate friendly settlement procedures, within thirty days after notification of this report.

60. To publish the present report on admissibility in the Annual Report to the General Assembly of the OAS.