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File Number(s): Report No. 12/97; Case 11.427
Title/Style of Cause: Victor Rosario Congo 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
Citation: Rosario Congo v. Ecuador, Case 11.427, Inter-Am. C.H.R., Report No. 12/97, OEA/Ser.L/V/II.98, doc. 6 rev. (1997)
Represented by: APPLICANT: Martha Sanchez de Rodriguez
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I. BACKGROUND

A. Context

1. On November 9, 1994, the Inter-American Commission on Human Rights received a complaint against the Ecuadorian State in which it is alleged that Mr. Víctor Rosario Congo died as result of mistreatment and attacks by agents at the Social Rehabilitation Center in Machala, Ecuador. The events occurred within a context of numerous attacks and mistreatment that had been committed against the prisoners. According to reports by the officials themselves at the Machala Social Rehabilitation Center, prison conditions were deplorable and strong pressure was exerted on the inmates not to report the irregularities. Sometimes the prisoners bore marks indicating that they had been physically mistreated. Preferential treatment was given, especially on visiting days. An investigation was under way concerning guards at the penitentiary smuggling in alcohol and drugs and then using them to bribe the prisoners.

B. Facts

2. According to the complaint, it is alleged that on September 14, 1990, Víctor Rosario Congo, a prisoner at the Machala Social Rehabilitation Center who was mentally ill, was assaulted with a garrote by guards at the Rehabilitation Center, causing him serious injury. Despite his condition, the prisoner was stripped naked, placed in solitary confinement, and denied medical care.

3. The petitioners state in their complaint that on October 2, 1990, medical examiners from the office of the District Attorney confirmed the condition of the prisoner, stating in their report

that he had welts on his body caused by flaying and a contusion that was dirty and caked with mud. On October 18, 1990, the Third Transfer Agent in El Oro requested that prisoner Congo be moved to a hospital; however, there was no immediate response to this request. On October 24, 1990, Víctor Rosario Congo was transferred to the Men's Social Rehabilitation Center in Guayaquil, and the next day, October 25, 1990, he was moved to Luis Vernaza Hospital, where he died a few hours later.

4. Prior to the death of Víctor Rosario Congo, nongovernmental organizations had requested, through various avenues, that he be moved to a hospital so that he could receive proper medical care.

C. Documents accompanying the complaint

C.1. Report of the Third Transfer Agent at El Oro:

5. The report of October 8, 1990, prepared by the Third Transfer Agent at El Oro and addressed to the Fiscal Judge of El Oro, refers to his participation in a meeting at the Machala Social Rehabilitation Center attended also by Dr. Martha Sánchez de Rodríguez, Executive Secretary of the El Oro Commission on Human Rights, Dr. Luis Chuchuca Pasiche, Governor of the Province of El Oro, Dr. Reinaldo Montaña, Chief Justice of the Superior Court of Machala, and Alberto Soriano, Director of the Machala Social Rehabilitation Center. At this meeting Dr. Sánchez announced that there was a special case in Cell No. 12 of the Rehabilitation Center, namely that of Mr. Congo, and specifically requested that the cell be visited.

6. In response to this announcement, the Director of the Machala Social Rehabilitation Center reported at that same meeting that, as far as the Congo case was concerned, appropriate legal steps had already been taken regarding an attack by one of the guards, Walter Osorio, against Mr. Congo. He indicated that the case was in the hands of the judicial system and that Mr. Rosario Congo had already received medical treatment.

7. The participants at the meeting took a tour inside the Machala Social Rehabilitation Center and concluded that:

...(3) in Cell No. 12 we observed the situation of prisoner Congo, who appeared to be mentally ill and suffering from a head wound which, according to versions given by several of the inmates, had been inflicted by guard Osorio. He was naked and had been in the cell for three months...

8. In the conclusion of this report, the Third Transit Agent at El Oro made the following statement:

In regard to the irregularity that I was able to observe personally, namely the case of Mr. Rosario Congo, in light of this prisoner's well-known mental condition, he should be placed in a psychiatric facility for rehabilitation, where he can also receive medical care...

C.2. Requests for Transfer

9. In a written document submitted by attorney Martha Sánchez de Rodríguez, Executive Secretary of the El Oro Diocesan Commission on Human Rights on September 28, 1990, it was reported to the El Oro Fiscal Judge that Mr. Víctor Amable Rosario Congo was a prisoner accused of robbery and that, according to investigations and what had been observed, he is suffering from dementia, which means that he cannot be charged for the crime. She went on to state that the prisoner had been attacked and tortured by prison guards. Dr. Sánchez requested that Mr. Rosario Congo be evaluated immediately by a medical examiner and that the case be investigated with a view to determining the responsible parties.

10. The petition containing the request for psychiatric evaluation of the accused was referred on September 20, 1990, to the Second Criminal Judge of El Oro, who was familiar with the criminal cases against him.

11. Dr. María Teresa Bernal, Second Transit Agent at El Oro, sent a letter to the Second Police Commissioner of Machala at the end of September[FN1] ordering a medical evaluation of Víctor Rosario Congo as part of the investigation of the alleged attacks and torture that the victim had suffered at the hands of one of the guards of the Machala Social Rehabilitation Center.

[FN1] The file indicates that the communication addressed to the IACHR was sent at the end of September 1990. However, the exact date on the copy of this letter is illegible.

C.3. Medical Evaluation

12. In October 1990 Víctor Amable Rosario Congo was evaluated by medical experts José R. Santacruz and Wilmer Riofrío R., who reported as follows:

(i) The subject is an adult approximately 50 years old who at the time of the medical examination was ambulatory and lucid but disoriented as to time and space. During the interview he was ... unkempt and only partially clothed, dressed only in a dirty mud-streaked T-shirt. Assistance was required to keep the patient from disrobing completely. His attitude was totally absurd and infantile and his actions were erratic and aimless.... Physical examination of the patient revealed a partially healed contusion 6 cm long on his scalp in the rear left parietal region, going from the front to back. The wound was dirty and caked with mud. On his elbows there were several welts ranging between 0.5 and 1.0 cm in diameter caused by flaying, some of them already in the form of healed scars and others in the process of healing. On his right knee there were several scrapes, some of them infected and others already healed.

(ii) The medical experts concluded: "The signs observed in the patient during the course of the medical examination, coupled with his overall demeanor, are indicative of a psychiatric condition bordering on psychosis (insanity). The etiology of this condition may be related to his current experience. This would place his diagnosis among the so-called prison-related psychoses, including Ganser's syndrome, which tend to improve notably with a change of environment. For this reason we suggest that he be transferred to a psychiatric facility. Because of the lesion on his head, probably the result of a heavy blow inflicted by a hard object, he is considered to be

incapacitated and unable to work for seven days from the date on which it occurred, assuming that there are no complications."

C.4. Transfer of Víctor Rosario Congo

13. The Director of the Machala Social Rehabilitation Center sent a communication on October 8, 1990, requesting the National Director of Social Rehabilitation to authorize the transfer of Víctor Rosario Congo to the Guayaquil Men's Social Rehabilitation Center so that he could receive medical care. This request was referred to the Second Criminal Judge of El Oro on September 20, 1990.

14. On October 23, 1990, the Second Criminal Judge of Machala, in a communication addressed to the Director of the Machala Social Rehabilitation Center, ordered the transfer of Víctor Rosario Congo to the Lorenzo Ponce Psychiatric Hospital in the city of Guayaquil so that he might undergo the prescribed psychiatric treatment. On October 24, 1990, the prisoner was moved to the Psychiatric Hospital, where he was refused admission, following which he was taken to the Luis Vernaza Hospital, where he was also refused admission. He was left at the Men's Social Rehabilitation Center in Guayaquil, and on the next day, October 25, 1990, he was admitted to the Luis Vernaza Hospital, where he died a few hours later.

15. From the autopsy performed on Víctor Rosario Congo it was determined that the causes of death had been degree III malnutrition and dehydration leading to cardiopulmonary insufficiency.

D. Alleged violations

16. Based on the facts contained in the complaint, it is alleged that the victim's rights to life, personal integrity, and judicial protection were violated, which are covered by Articles 4, 5, and 25 of the American Convention on Human Rights. When Víctor Rosario Congo was attacked by one of the guards at the Social Rehabilitation Center where he was detained and suffered a contusion on his head as a consequence thereof, he failed to receive proper medical care. Moreover, despite the fact that he was suffering from mental illness, he was not given psychiatric treatment. When he was finally transferred to another facility in order to receive care, it was already too late and he died. These violations of the rights of Víctor Rosario Congo took place when he was in the custody of authorities at a detention center in Ecuador.

II. PROCEDURE BEFORE THE COMMISSION

17. The complaint concerning the alleged abuse and death of the victim Víctor Rosario Congo was presented to the Commission on November 9, 1994, together with supporting documentation such as the medical evaluation of the victim, in which it was determined that he was suffering from a prison-related psychosis and, in addition, that he had a contusion on his head. In light of the foregoing, the medical examiners recommended that Mr. Rosario Congo be transferred to a psychiatric facility.

18. In addition to the initial petition, the file included a copy of the communications sent by attorney Martha Sánchez de Rodríguez, Executive Secretary of the El Oro Diocesan Commission on Human Rights, denouncing the abuse to which Mr. Rosario Congo had been subjected and stressing the urgent need for him to be moved to a specialized medical facility.

19. Other documentation included two articles from the newspaper "El Correo," the first with the heading "Guard Almost Kills Prisoner: Dying Inmate Confined in Pestilent Dungeon," dated Saturday, September 29, 1990, and the other, "Prisoner Dies, Wounded by Guard," dated October 29, 1990. These articles denounce the situation of Mr. Rosario Congo, reporting how he had been brutally beaten by one of the prison guards and then placed in solitary confinement without water or light and obliged to attend to his biological needs in the same area where he slept, without any intercession on the part of prison authorities. As a consequence of this, Mr. Rosario Congo died. Several government authorities sharply criticized and accused of complicity for not having intervened in time.

20. On February 15, 1995, the Commission transmitted the file corresponding to the complaint to the State of Ecuador and gave it 90 days in which to respond. In that same communication the Commission asked the State to provide any element of judgment that might enable it to determine whether or not all recourse to internal jurisdiction had been exhausted in Case 11.427.

21. On May 29, 1995, the State of Ecuador responded to the Commission and presented documentation in the case of Mr. Rosario Congo. Among the documents submitted were:

- (i) Copy of the autopsy report for Mr. Rosario Congo, stating that it had been established that the causes of death were degree III malnutrition and dehydration.
- (ii) Copy of a note dated September 28, 1990, sent to the Director of Machala Rehabilitation Center by the physician assigned to that detention center, recommending that the accused be transferred to a specialized facility because of his mental problems.
- (iii) Attestation that Walter Osorio, the guard who allegedly attacked Víctor Rosario Congo, had resigned from his post on November 28, 1990.
- (iv) Copy of a police report dated May 1, 1995, on the investigation into the death of Víctor Rosario Congo. The report refers to steps taken by the police, such as interviews of the present and former Director of the Machala Rehabilitation Center, as well as other persons who had had direct contact with the patient during the final days before his death.

(a) In the interview with the current Director of the Machala Social Rehabilitation Center, Dr. Wilmer Riofrío, this official stated that when the events took place he was serving in the capacity of physician at that facility and that they had occurred at a time when the center's officials were in a meeting with officials from other centers throughout the country. Furthermore, he stated that, according to what he had heard, prisoner Víctor Rosario Congo was already suffering from mental illness prior to the date when he was beaten by guard Walter Osorio.

(b) In the interview with the former Director of the Machala Social Rehabilitation Center, Francisco Alberto Soriano, this official insisted that Víctor Rosario Congo had already been suffering from the condition known as Ganser's syndrome, which is not uncommon among

prisoners, for one to three months prior to his confinement. He did not attempt to excuse the actions of guard Walter Osorio and said that he had attempted to give the prisoner humane treatment, which was why he had been placed in solitary confinement. In addition, he had requested that the prisoner be transferred to a psychiatric hospital and the actions of the guard had been denounced in a report to the National Director of Social Rehabilitation in Quito.

According to Francisco Soriano, the blow inflicted on the aforementioned prisoner by guard Osorio could have affected his mental state, by somewhat aggravating his condition, and led in the long run to his death. He added that in any case the guard who struck him had resigned the month after the prisoner's death. He claimed, moreover, that he had not been receiving adequate support from the National Bureau for the work that needed to be done, and it was for this reason that he himself had transferred the prisoner to Guayaquil. In fact, the authorization from Quito had arrived two days after the prisoner's death.

(c) In addition, some of the records had been reviewed at Luis Vernaza Hospital where the victim died, including his clinical history, the causes of death, the dates of his admission and discharge, etc. At the Machala Social Rehabilitation Center information was gathered on the psychiatric evaluations and the reports filed regarding the attacks on Mr. Rosario Congo by guard Walter Osorio.

(d) By way of conclusion, the police report established that:

- Prisoner Víctor Rosario Congo had died as a result of III degree malnutrition and dehydration and cardiopulmonary insufficiency on October 25, 1990, at Luis Vernaza Hospital in Guayaquil.
- There are serious presumptions that guard Walter Arturo Osorio Marca was involved as the perpetrator of the scalp wound suffered by prisoner Víctor Rosario Congo.
- Prior to being wounded by guard Osorio, prisoner Víctor Rosario Congo already suffered from a mental condition known as Ganser's syndrome.

22. The State's reply was sent to the petitioners on June 19, 1995, and they were given 45 days in which to submit their comments.

23. On June 20, 1995, the State provided the Commission with additional information from the Ministry of State and Policy, including reports and findings from the investigations into the death of Víctor Rosario Congo. Their covering report, dated May 11, 1995, indicates that:

(i) Effective July 25, 1990, Víctor Rosario Congo was interned as a prisoner at the Machala Social Rehabilitation Center by order of the Second Criminal Judge of El Oro in connection with Criminal Cases N° 209-90, for robbery, and No. 205-90, also for robbery. In September 1990 he began to suffer from disturbed mental faculties and for this reason was transferred to solitary confinement. The prisoner was beaten by guard Walter Osorio one night when the former attempted to take him hostage and he eventually lost control, at which point, claiming that it had been necessary to restore calm among the prisoners, he struck him on the head, producing a contusion. The police report goes on to add information about the medical evaluation of the prisoner and the need for him to be transferred to a specialized facility. It also states that,

according to the information obtained on autopsy, grade III malnutrition and dehydration were what had caused the death of Víctor Rosario Congo.

(ii) In its conclusions the report states that the investigations led to the findings that Víctor Rosario Congo had indeed been beaten by one of the guards at the Rehabilitation Center despite the fact that he had been suffering from mental illness, and also that his being kept in solitary confinement and denied adequate medical treatment in his wounded and disoriented state was the result of negligence on the part of the responsible authorities.

24. On June 27 the relevant portions of the additional documents which had been submitted to the State were passed on to the petitioners, who were given 45 days in which to submit their reply to the Commission.

25. On October 26, 1995, the request for information from the petitioners was reiterated, and this information was again requested on May 10, 1996, inasmuch as it had not yet been provided.

26. On July 10, 1996, the Commission received a response from the petitioners pointing out that the police report had erred by not mentioning that court officials were aware of the situation of Víctor Rosario Congo at the Machala Rehabilitation Center. In addition, the petitioners insisted that the case of Mr. Rosario Congo was a matter of a death occurring in custody arising from a blow to the prisoner and subsequent lack of timely medical care due to his detention in solitary confinement.

27. The petitioners asserted that the investigations conducted by the police and the actions taken in regard to the death of Víctor Rosario Congo were indicative of pressure to close the investigation into the cause of death. They said that there had been irregularities in connection with the procedures followed and the documents submitted, such as:

after a careful analysis of the forensic practices and the procedures that were followed prior to the postmortem examination, it is observed that there were unjustified delays in these procedures and that they had not been adequately performed.

According to the date on the autopsy report, the procedure was performed two days after the death of Víctor Rosario Congo according to the date on the report thereof, and no time has been indicated. The postmortem examination had been too cursory and insufficient information had been given. The decision regarding the cause of death was rushed. There is no mention of whether or not organ samples were taken for pathological analysis....

Inasmuch as there had been an earlier case of violence which had been legally proven, there was reason to question whether or not the death of Víctor Rosario Congo was due to natural causes. Such circumstances required that forensic tests be conducted immediately and the results systematically compiled so that they could serve as key evidence in any later investigation, but this scenario had not been taken into account.

28. On July 10, 1996, the Commission sent the relevant portions of the foregoing communication to the State of Ecuador.

29. On September 4, 1996, the State submitted its response to the Commission, which included documents concerning the detention of Víctor Rosario Congo and his subsequent death

but did not state anything new in regard to the documentation previously added to the case on file with the Commission. On November 7, 1996, the State acknowledged receipt of this communication.

III. CONSIDERATIONS REGARDING ADMISSIBILITY

30. During its 95th Regular Session, held from February 24 to March 14, 1997, the Commission gave its opinion on the admissibility of Case 11.427.

III.1. Jurisdiction of the Commission

31. Having seen the background documentation and the procedures followed in processing the complaint, as outlined above, the Commission considered the admissibility of the case based on the following criteria:

32. The Commission may hear a case submitted to it for consideration when and if, *prima facie*, it meets the formal requirements of admissibility set forth in Article 46 of the Convention and Article 32 of the Regulations of the Commission.

33. By virtue of *ratione loci*, the Commission is empowered to hear petitions regarding violations of human rights that affect a person who is subject to the jurisdiction of a Signatory Party to the American Convention. The fact that the events cited in the complaint took place within the territory of the Republic of Ecuador, which has been a Signatory Party to the Convention since December 28, 1977, allows the Commission to hear the case of Víctor Rosario Congo.

34. *In casu*, the complaint presented by the petitioners refers to events associated with presumed violations of the rights of Víctor Rosario Congo to life, physical integrity, and judicial protection--rights covered by Articles 4, 5, and 25 of the American Convention on Human Rights--by reason of which it falls within the jurisdiction, *ratione materiae*, of the Commission pursuant to Articles 44 and 47(b) of the foregoing international instrument.

35. The Commission considers that there is no reason to admit the allegation that the complaint is manifestly unfounded, since the petitioners have demonstrated that the presumed violation is imputable to a body or to agents of the State, in accordance with the terms of Article 47(c) of the Convention. In the paragraphs regarding analysis of the exhaustion of all means of internal recourse, it has been indicated that the presumed violations would be the result of actions or omissions on the part of officials of the Penitentiary System and the Judiciary of Ecuador.

III.2. Exhaustion of all means of internal recourse

36. The question of exhaustion of all means of recourse to internal jurisdiction is covered in Article 46, 1(a) and (b) of the American Convention, transcribed below:

1. In order for a petition or communication presented in accordance with Articles 44 or 45 to be admitted by the Commission, it shall be required that:

a. All recourse to internal jurisdiction has been exercised and exhausted, in accordance with generally recognized principles of International Law;

b. The petition has been presented within six months from the date on which the party whose rights presumably have been violated has been notified of a final decision.

37. The American Convention on Human Rights also allows, in its Article 46.2, for three exceptions to the requirement to exhaust all internal recourse, as follows:

2. 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.

38. Article 37 of the Regulations of the Commission adds the following proviso: "When the petitioner contends that he is unable to prove exhaustion as indicated in this Article, it shall be up to the state against which this petition has been lodged to demonstrate to the Commission that the remedies under domestic law have not previously been exhausted, unless it is clearly evident from the background information contained in the petition. In this same vein, the Inter-American Court made the following statement in its preliminary exceptions in the case of Velásquez Rodríguez: "...the state claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective." [FN2] Thus, following the principle of *onus probandis incumbit actoris*, the State has the obligation to prove that not all recourse has been exhausted, or failing that, to indicate which means of recourse need to be exhausted, or why they have not taken effect.

[FN2] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of June 26, 1987, paragraph 88, page 38.

39. In its handling of the present case, the State of Ecuador has not contested *expressis verbis* that internal recourse has already been exhausted. On the other hand, it reported to the Commission on the result of investigations conducted by competent authorities in 1995--that is to say, five years after the alleged events that are the subject of the complaint took place. The Commission shall therefore take it upon itself to indicate the steps that have been taken to exhaust all means of recourse to internal legislation based on the information provided by the parties.

40. In her document dated November 20, 1990, attorney Martha Sánchez, representing Víctor Rosario Congo, requested the Second Criminal Judge of El Oro to order a psychiatric evaluation of the accused, in light of the fact that he was suffering from a mental condition, for the purpose

of precisely determining that Mr. Rosario Congo was indeed mentally ill, and to order his transfer to a psychiatric facility.

41. In the absence of a response, on September 28, 1990, attorney Sánchez went before the Fiscal Judge and claimed that Víctor Rosario Congo had been "violated and tortured by one of the guards at the Rehabilitation Center," and therefore asked the judge to intercede and give the order that Mr. Rosario Congo be examined. She also asked that a corresponding investigation be conducted to determine who was responsible for the attacks suffered by Víctor Rosario Congo.

42. According to the complaint, Dr. Sánchez told the Fiscal Judge that she had previously filed a petition with the Second Criminal Judge, who was hearing the criminal cases against Víctor Rosario Congo, requesting that he order a psychiatric evaluation of the accused, and that no response had been received. She was therefore "asking for his intercession to oblige the Second Criminal Judge to evacuate the procedure requested in the petition."

43. As a result of this petition, Dr. Maria Teresa Bernal, the Second Fiscal Judge of El Oro, was authorized to order an investigation of the attacks on Víctor Rosario Congo; as a first step, the judge ordered a medical evaluation by medical examiners from the Office of the State Attorney General and from the Machala Rehabilitation Center itself. Although the medical evaluation was done, there is no record of the corresponding investigation having been initiated with a view to punishing the responsible parties.

44. The State of Ecuador has not responded specifically in this regard, completely overlooking the excessive lapse of five years that have passed since the complainants requested an investigation of the alleged events and the absence of any judicial action. Meanwhile, the report that the State had sent to the Commission on an investigation conducted between February and May 1995 had also failed to explain the unjustified delay in the administration of justice, such explanation being required in the event of an exception to the prior exhaustion of all means of internal recourse pursuant to Article 46.2(c) of the Convention and Article 37.2(c) of the Regulations of the Commission.

45. In the hypothesis that all internal means of recourse had not been exhausted, the Commission nevertheless considered that since September 14, 1990, the date of the attack on Víctor Rosario Congo, much time had passed without any decision having been reached in regard to the means of recourse mentioned, which constitutes not only a delay on the part of the judicial system but also a denial of justice.

46. The Inter-American Court of Human Rights has indicated the following: "...when certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the lack of due process of law, not only is it contended that the victim is under no obligation to pursue such remedies, but, indirectly, the state in question is also charged with a new violation of the obligations assumed under the Convention. Thus, the question of domestic remedies is closely tied to the merits of the case." [FN3] However, the interposition of internal recourse in the case of Víctor Rosario Congo was to no avail, and this placed the victim in a position of defenselessness, which is why the Commission should hear the

present case within the framework of the exception to the rule of prior exhaustion of means of internal recourse.

[FN3] Ibid., paragraph 91, p. 40.

47. The Commission considers that at this stage of analysis the question of failure to exhaust the internal means of recourse is related to the central issue, inasmuch as the complainants charge that there was an absence of judicial protection with regard to the infringed rights of Víctor Rosario Congo. For this reason, the Commission, citing the exception to Article 46.2 (c) on the exhaustion of means of internal recourse, will proceed with the case and will issue its findings in due course on the substance of the question raised.

III.3. Filing of the petition within the period specified in the Convention

48. With regard to the time lapse (*ratione temporis*), the Convention indicates, in Article 46(b), read in conjunction with Article 38 of the Regulations of the Commission, that the petition should be presented within six months from the date on which the petitioner was notified of the content of the final decision (*res judicata*).

49. The Commission considers that the period of six months specified in Article 38(1) of the Regulations of the Commission for the presentation of a complaint before the Commission, starting from the date on which the party whose rights were presumed to have been violated has been notified of the final decision, does not apply, inasmuch as the case falls under the exception provided for in Article 37.2(c) of the Regulations of the Commission, which indicates as follows:

The provisions regarding the exhaustion of means of internal recourse shall not apply when:

c. There has been an unjustified delay in the decision regarding said means of recourse.

50. In such circumstances, Article 38.2 of the Regulations establishes that it shall be "a reasonable period of time," in the opinion of the Commission, starting from the date on which the presumed violation of rights occurred, taking into account the circumstances in each specific case. In light of the foregoing considerations, the Commission does not disqualify itself from hearing the present case.

III.4. Duplication of procedures at the international level

51. The Commission concludes that the case of Víctor Rosario Congo is not pending any other procedure at the international level, since no exception has been invoked by the parties, nor can such be deduced from the antecedents given in the petition. Nor does the subject of this complaint duplicate that of any petition previously resolved by the Commission or any other international body as per the terms of Article 47(d) of the Convention and Article 39.1(a) and (b) of the Regulations, and accordingly the Commission does not disqualify itself for this reason from hearing the present complaint.

IV. OFFER OF A FRIENDLY SETTLEMENT

52. The Commission considers that the events which are the subject of the complaint, are susceptible to being resolved through application of the procedures for friendly settlement indicated in Article 48 (1.f) of the Convention and in Article 45 of its Regulations, and for this reason it places itself at the disposal of the parties with a view to seeking a friendly settlement of the matter based on respect for human rights.

53. Taking the foregoing considerations into account,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

AGREES:

54. To declare that Case 11.427, Víctor Rosario Congo, is admissible.

55. To place itself at the disposal of the parties with a view to seeking a friendly settlement of the matter based on the respect for human rights, as recognized in the American Convention. To this end, the parties should manifest to the Commission their intention to initiate the procedures for amicable solution within 30 days following notification of the present report.

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