

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 10/04; Petition 71/02
Session: Hundred and Nineteenth Regular Session (23 February – 12 March 2004)
Title/Style of Cause: Fadia Aucar Daccach v. Ecuador
Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalo, Freddy Gutierrez Trejo, Florentin Melendez, Paulo Sergio Pinheiro.
Dated: 26 February 2004
Citation: Aucar Daccach v. Ecuador; Petition 71/02, Inter-Am. C.H.R., Report No. 10/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On February 4, 2002, the Inter-American Commission on Human Rights (hereinafter, “the Commission” or “the Inter-American Commission”) received a petition lodged by Fadia Aucar Daccach (hereinafter, “the petitioner”) against the Republic of Ecuador (hereinafter, “the State” or “Ecuador”) alleging violation of her right to the enjoyment and ownership of her private property. The petitioner claims that her right to property has been infringed by the refusal of the Registrar of the Real Estate Registry of the Canton of Guayaquil to register a title deed acquired in a court auction, despite two judgments so ordering, respectively, by the Court of Constitutional Guarantees and the Constitutional Court, in violation of Article 21 of the American Convention on Human Rights (hereinafter, “the Convention” or “the American Convention”). The State argued the failure to exhaust domestic remedies.

2. In this report, the Commission examines the information received and, in accordance with the American Convention, concludes, without prejudging the merits of the matter, that the petition meets the requirements set forth at Article 46 of said instrument. Therefore, the Commission decides to declare the case admissible, to notify the parties of its decision, and to proceed with the analysis of the merits of the allegations with respect to Article 21 of the American Convention. Furthermore, the Commission, will examine, *motu proprio*, if a possible violation exists of Articles 8, and 25(3) of the American Convention in conjunction with the generic obligation to respect and guarantee rights, set forth in Article 1(1) of the American Convention, given that those articles are implied in the description of the allegations contained in the petition, despite the fact that the petitioner does not mention them explicitly. Finally, the Commission decides to notify the parties and to publish this report in its Annual Report.

II. PROCESSING BY THE COMMISSION

3. On February 4, 2002, the Commission received the petition sent by Ms. Fadia Aucar Daccach, and proceeded to register it as number P 71/02. On February 19, the Commission transmitted the petition to the Government of Ecuador with a deadline of two months to present its observations. On July 19, 2002, Ecuador responded to the allegations in the petition, and submitted that the petitioner had not exhausted the remedies available under domestic law. On August 28, 2002, the Commission transmitted the reply to the petitioner and requested it to submit its observations within 30 days. The State has not presented any further observations.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

4. In 1987, the petitioner instituted an auction proceeding against José Daccach Saman (Case No. 603/87). On June 7, 1991, the Judge of the Seventh Court for Civil Matters, Leonor Jiménez de Viteri, substituting for the Second Judge for Civil Matters in and for Guayaquil, awarded the petitioner, as sole bidder, a lot and building fronting on Av. 9 de October, Av. Quito, and Calle Hurtado, with real estate registry number 10-0001-001; as well as a property located on Calle Lorenzo de Garaicoa y Vélez, with real estate registry number 3-57-2. All the foregoing are situated in the city of Guayaquil, Guayas Province, in the Republic of Ecuador.

5. The petitioner states that the company, Jangers, S.A., whose legal representative is Ms. Gladys Rechuan de Daccach, purchased the aforementioned properties in an illegal sale that was carried out before the auction, in order to harm the credit of the petitioner. The petitioner claims that after the record of adjudication was registered, the legal representative of Jangers, S.A., acting as an injured third party, sought de facto remedies before the First Chamber of the Superior Court in and for Guayaquil, which the Panel of Judges of that chamber found inadmissible on January 13, 1992. However, on May 5, 1992, the same Panel of Judges of the First Chamber of the Superior Court in and for Guayaquil requested the Judge of the Seventh Court for Civil Matters to transmit to their offices Auction Proceedings No. 190/87 instituted by Fadia Aucar against José Daccach.

6. The petitioner says that as a result of the foregoing, the Registrar of the Real Estate Registry of the Canton of Guayaquil refused to register the record of adjudication of the properties obtained at the auction. Therefore, the petitioner filed an action for refusal of registration against this official (Case No. 632/92) with the Sixth Court for Civil Matters in and for Guayaquil. The petitioner explains that this is a special proceeding that may be instituted against the Registrar of the Real Estate Registry for refusal of registration, provided in Article 11 of the Registration Registry Act, pursuant to which once registration of a title has been ordered it is not open to appeal and the case is closed. On July 30, 1992, Mr. Joaquín López Barragán, the Judge of the Sixth Court, issued a judgment that favored the claim of the petitioner, as a result of which on August 5 of that year, the Registrar of the Real Estate Registry of the Canton of Guayaquil registered the record of adjudication on pages 176.817 to 176.880 of the Registry Book for 1992 after the title deed was formally registered by a notary public.

7. The Judge of the Sixth Court for Civil Matters in and for Guayaquil, on August 19, 1992 revoked the judgment that contained the order to register the record of adjudication. According to the petitioner, the revocation of the judgment violates Article 299 of the Ecuadorian Code of Civil Procedure, which says, "Once a judgment becomes *res judicata* it may not be altered by any of the parties...". The Registrar of the Real Estate Registry of the Canton of Guayaquil, Mr. César Moya Jiménez, cancelled the registration of the title deed on September 18, 1992.

8. The petitioner points out that the Judge of the Eleventh Court for Civil Matters, substituting for the Judge of the Sixth Court for Civil Matters in and for Guayaquil, Ms. Mercedes Bacilio de Baquerizo, in a resolution issued on July 23, 1993, nullified all the judicial acts performed by Judge Joaquín López Barragán on August 19, 1992, and held the decision of July 30, 1992 to be completely and absolutely valid and legally effective. Judge Mercedes Bacilio de Baquerizo was subsequently replaced and the new Judge of the Eleventh Court for Civil Matters, Dr. Carlos Zúñiga Romero, admitted an appeal against the resolution of nullification filed by Jangers S.A., which the petitioner described as illegal. The petitioner argues that under the Registration Registry Act, in the proceeding provided at Article 11 of the above-invoked Act, once registration of the title has been ordered it shall not be subject to appeal and the case is closed. On August 20, 1993, the Registrar of the Real Estate Registry of the Canton of Guayaquil, Mr. Fernando Tamayo Rigail, decided to suspend the effects of the nullification by reason of the existence of the appeal. On September 6, 1993 the petitioner filed suit for refusal of registration (No. 216/93) against the Registrar of the Real Estate Registry of Guayaquil and Gladys Reshuan de Daccach, which was assigned by lot to the First Chamber of the Superior Court of Justice in and for Guayaquil.

9. The appeal filed by Jangers, S. A. having been granted, the case was referred to the First Chamber of the Superior Court of Justice in and for Guayaquil. On October 11, 1994, the panel of this chamber found that the Judge of the Seventh Court for Civil Matters had exceeded his legal powers when he ordered the attachment and auction of properties that, supposedly, were not subject to the auction proceeding because the auction concerned the shareholders' equity of companies and not the assets that comprised their capital. Therefore, they nullified all the judicial acts performed in the case, which included cancellation of the registration of the record of adjudication for the auctioned properties.

10. On October 25, 1999, the petitioner, in the framework of the suit for refusal of registration No. 216/93, being heard by the First Chamber, filed a submission, in consequence of the appeal granted by the Eleventh Court for Civil Matters, arguing that the appeal filed by Jangers, S. A. had been presented with the exclusive aim of delaying and obstructing enforcement of the court order to register the properties acquired at auction by the petitioner. According to the petitioner, more than six years had passed since the last procedural act and the case had not progressed, and for that reason she requested the proceeding be declared abandoned.

11. On January 11, 2000 the petitioner provided to the First Chamber of the Superior Court of Justice in and for Guayaquil copies of several documents connected with the record of case 216/93, in order to replace them, since the record was lost at the office of the clerk of the First Chamber.

12. On September 8, 2000 the clerk-recorder of the First Chamber certified that, to that date, no motions had been presented in case 216/93 since the last motion dated January 9, 1997, and that more than two years had elapsed since then.

13. On November 29, 2000 the Judges of the First Chamber of the Superior Court of Justice in and for Guayaquil declared the case abandoned, in accordance with the law because it had remained thus for a period of two years from the date of the last submission filed by Gladys Reshuan de Daccach, as representative of the company Jangers, S. A., and, therefore, ordered the case closed.

14. On January 8, 2001 the petitioner filed a submission requesting the First Chamber to correct the error she considered the court to have made in declaring the action abandoned, when the request had been to declare only the proceeding abandoned, since abandonment at second instance has the effect that all the preceding decisions remain in force.

15. In response to the repeated refusal of the Registrar of the Real Estate Registry of the Canton of Guayaquil to register the record of adjudication, the Judge of the Eleventh Court for Civil Matters de Guayaquil, by a decision of May 28, 2001, ordered the Registrar immediately to comply with the instructions contained in the decision of July 23, 1993, which, it said, was res judicata. However, the Registrar refused to register it until the Eleventh Court for Civil Matters in and for Guayaquil notified him of the resolution on abandonment issued by the First Chamber of the Superior Court of Justice in and for Guayaquil.

16. The petitioner has two decisions of the Court of Constitutional Guarantees in her favor. In the first, No. 180-95-CP of September 6, 1995, the Court of Constitutional Guarantees found that the decision of the October 11, 1994, issued by the First Chamber of the Superior Court in and for Guayaquil, violated the right to property of Fadia Aucar Daccach, since in the course of normal processing the record of adjudication of property had been ratified and it had been ordered registered in the Real Estate Registry, and that order had become res judicata and been enforced after all the appeals interposed were rejected. Based on Article 140 of the Ecuadorian Constitution, which provides that all acts that violate the Constitution are null and void, and by the powers vested in it by Article 146(2) of the Constitution, the Court of Constitutional Guarantees held that the actions taken on May 5, 1992 and October 11, 1994 were unconstitutional. The second decision of the Constitutional Court, dated May 7, 1998, ordered compliance without delay with decision No. 180-95-CP.

B. Position of the State

17. In its reply of June 24, 2002, the State argued that the petitioners had not exhausted the available domestic remedies.

18. Article 46 of the American Convention provides that admission of a petition shall be subject to the requirement “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law”. The purpose of this requirement is to afford the State the opportunity to settle disputes within its own legal framework. Therefore, the State requests that the instant petition be declared inadmissible.

19. The State said that according to the report sent to the Office of the Attorney General by the Registrar of the Real Estate Registry of Guayaquil, the entry and the reference notes on pages 176.817 to 176.880 of the Registry Book for 1992 record that Dr. César Moya, the Registrar of the Real Estate Registry of the Canton of Guayaquil, refused to register the record of adjudication in favor of Ms. Fadia Aucar (Widow of Nogales).

20. The State explained that subsequently the Sixth Court for Civil Matters, by decision of August 19, 1992, nullified the order to register the notarized record of adjudication granted to Ms. Fadia Aucar and the Registrar canceled the entry made. Later by resolution dated July 23, 1993, the Eleventh Court for Civil Matters, substituting for the Sixth Court for Civil Matters in and for Guayas, nullified all the judicial acts following the decision of August 19, 1992, and, therefore, the enforceable decision of July 30, 1992 was rendered completely and absolutely valid and legally effective; Dr. Moya proceeded to register the resolution of nullification. This last decision, however, was not final because the appeal was granted by the decision of August 16, 1993.

21. The State pointed out that the First Chamber of the Superior Court, in a decision of November 29, 2000, declared the case abandoned in accordance with the law, basing its decision to that effect on Article 210 of the Organic Law of the Judiciary, which provides that barring a provision of law to the contrary, the Supreme Court, District Courts, and Superior Courts may, either sua sponte or at the request of a party, declare abandoned, in accordance with the law, those actions that have remained abandoned for a period of two years from the date of the last proceeding or of the last motion presented by any of the parties. The article goes on to say that said actions shall be closed once any precautionary or real measures ordered in the proceeding have been cancelled.

22. The decision in the suit to challenge the refusal of registration issued on February 21, 2002 by the Judge of the Eleventh Court for Civil Matters, substituting for the Judge of the Sixth Court for Civil Matters in and for Guayas, Carlos Coello Vera, found that since the action had been declared abandoned by the Superior Court pursuant to the express requirement contained in Article 210 of the Organic Law of the Judiciary, the precautionary measure annotated on August 20, 1993, on page 176.823 of the Real Estate Registry Book for 1992, suspending the effects of the resolution of nullification, was canceled, and an official communication should be sent to the Registrar of the Real Estate Registry notifying him of this order and the enforceable decision of the Superior Court.

23. The State concludes that the actions were extinguished pursuant to the law because they remained abandoned for the period of time prescribed in Article 397 of the Code of Civil Procedure or that provided in the aforementioned article of the Organic Law of the Judiciary. Accordingly, the abandonment ruling extinguishes the action and, consequently, the procedural acts that comprise it; therefore, the status quo ante was restored. Abandonment of the action has the same legal effect as dropping a suit, as Article 385 of the Code of Civil Procedure provides; in other words, the act of dropping a suit restores the situation to the way it was before the suit was filed.

24. The State holds that the abandonment having taken effect, the suit is deemed not filed and, therefore, it cannot be argued that the remedies under domestic law have been properly exhausted when, insofar as the laws of the State are concerned, the petitioner has requested abandonment of the action and must face the consequences that this act brings under Ecuadorian law. According to the State, in order to exhaust the remedies under domestic law in the instant case it would be necessary to file a new suit with the domestic courts, provided that the statute of limitations on the respective right has not run in accordance with the laws in force.

IV. ANALYSIS

A. The Commission's competence *ratione materiae*, *ratione personae*, *ratione temporis* and *ratione loci*

25. The petitioner is entitled under Article 44 of the American Convention to lodge petitions with the Commission, and the victim in the instant case is a person in respect of whom Ecuador undertook to observe and ensure the rights enshrined in the American Convention. Therefore, the Commission has *ratione personae* competence to examine the petition.

26. The IACHR has *ratione temporis* competence inasmuch as the sequence of events occurred from June 1988 onward, when the duty to respect the rights recognized in the American Convention was in force for Ecuador. Ecuador ratified the American Convention on December 28, 1977.

27. The Commission has *ratione loci* competence to hear the petition, since all of the alleged violations were committed within the jurisdiction of the Republic of Ecuador.

28. The Commission has *ratione materiae* competence because the petition alleges violations of Article 21 of the American Convention.

B. Other admissibility requirements

a. Exhaustion of domestic remedies

29. The petitioner argues that the decisions issued by the Constitutional Court and the Court of Constitutional Guarantees (Nos. 19-98-RA and 180-95-CP, respectively), exhausted the domestic jurisdiction.

30. The petitioner filed an extraordinary appeal with the Court of Constitutional Guarantees against the First Chamber for improper retention of auction proceeding 603/87; for having suspended the jurisdiction of the Seventh Court for Civil Matters; and for having canceled registration of the title deed. By decision 180-95-CP of September 6, 1995, the Court of Constitutional Guarantees ruled in her favor and held all the acts of May 5, 1992 and October 11, 1994 to be unconstitutional.

31. Subsequently, the petitioner filed an amparo action with the Constitutional Court for failure of compliance with resolution 180-95-CP. On May 7, 1998, the Second Chamber of the

Constitutional Court ordered compliance with resolution 180-95-CP, and required the President of the First Chamber of the Superior Court of Justice in and for Guayaquil immediately to return case No. 190-87 to the Seventh Court for Civil Matters in and for Guayas, so that the judge would comply with and enforce the decision of the superior court, in accordance with its ruling that the actions of May 5, 1992 and of October 11, 1994 were unconstitutional. The Registrar of the Real Estate Registry of Guayaquil, Fernando Tamayo Rigail, presented to the Second Chamber a submission by which he sought to avoid compliance with the order of the Court of Constitutional Guarantees. On January 6, 1999, the Constitutional Court considered the submission and ordered the Registrar of the Real Estate Registry del Canton of Guayaquil to register the record of adjudication of the auction sale within three days. The petitioner says that, to date, the Registrar has not carried out the order of the Constitutional Court.

32. The State, for its part, argues that the instant petition should be declared inadmissible for non-exhaustion of domestic remedies. The State holds that on November 29, 2000, the First Chamber of the Superior Court declared the suit to impugn the refusal of registration to be abandoned, and, therefore, the case has been extinguished together with all its procedural acts, thus restoring the status quo ante. Accordingly, the State says that it would be necessary for the petitioner to file a new suit before the Ecuadorian courts, provided that the statute of limitations on the respective right has not run.

33. Article 46(1) of the American Convention establishes prior exhaustion of domestic remedies as an admissibility requirement for petitions. In order for the Commission to determine if domestic remedies have been exhausted, the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective.[FN1]

[FN1] Inter-Am. Ct. H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987. Ser. C, N° 1, para. 88.

34. Article 46(2) provides that the requirement of prior exhaustion of domestic remedies 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.

35. On this point, it should be recalled that in Ecuador, following the constitutional reform of January 16, 1996, decisions of the Constitutional Court are legally binding on the parties or society as a whole, as appropriate. In reality, both by their formation and by their effects, these decisions constitute judgments since they are procedural acts that have the effect of res judicata and there is a coercive element in the event of non-compliance.[FN2] As the Second Chamber of the Constitutional Court emphasized to the Registrar of the Real Estate Registry of the Canton of

Guayaquil in its order of January 6, 1999, the Constitutional Court is the supreme organ of constitutional justice and control according to the Ecuadorian Constitution and Law. Its decisions are not appealable and must be obeyed by all State officials, government bodies, and natural and juridical persons. Therefore, the Registrar of the Real Estate Registry should have complied with decision 180-95-CP, issued by the Court of Constitutional Guarantees on September 6, 1995 and decision 19-98-RA issued by the Constitutional Court on May 7, 1998.

[FN2] See <http://www.tribunalconstitucional.gov.ec/naturaleza.asp>, last visited on February 13, 2003.

36. As the Commission has found in previous cases, the argument advanced by the State lacks substance[FN3]. The petition does not concern the decision of the First Chamber of the Superior Court of Justice of November 29, 2000, which held the suit to impugn the refusal of registration to be abandoned, but the failure of the State to enforce the two judgments of September 6, 1995 and May 7, 1998, which ordered the registration of the title deed for the properties acquired by the petitioner at auction on June 7, 1991. The two judgments of the Constitutional Court are the ones to be taken into consideration when it comes to examining the requirement to exhaust domestic remedies.

[FN3] See, IACHR, 2001 Annual Report, Report 84/01, Case N° 12.078, Ricardo Manuel Semoza Di Carlo (Peru), October 10, 2001:

1. The petitioner alleges that the judgment of the Fifth Civil Court of Lima of December 11, 1991, ordering his reinstatement in the National Police of Peru has not been effectively enforced, as the two aforementioned resolutions of December 28, 1995 and October 1, 1997, which ordered his reinstatement, were succeeded by the two said resolutions of December 29, 1995 and October 9, 1997, which again relieved Mr. Semoza Di Carlo of duty, without having been effectively reinstated in the National Police.

2. For its part, the State alleges that the appropriate step was for the petitioner to institute further legal proceedings in connection with the third resolution ordering his retirement.

3. The IACHR finds that the aforementioned argument of the State is without substance. In fact, the petition does not refer to the third resolution, of October 9, 1997, relieving Mr. Semoza Di Carlo of duty, but rather the ongoing failure to enforce the judgment of the Fifth Civil Court of Lima, of December 11, 1991, ordering his reinstatement. That order is the one to be taken into account in analyzing the requirement of exhaustion of domestic remedies.

4. The Commission therefore considers that the requirement of Article 46(1)(a) of the American Convention has been met.

See also, 1999 Annual Report, Report 75/99, Case No. 11.800, César Cabrejos Bernuy (Peru), May 4, 1999:

16. In his petition, the petitioner argues that the Constitutional and Social Chamber of the Supreme Court's decision of June 5, 1992, is binding and therefore no appeal is required to that end. Furthermore he maintains that he was reinstated and again relieved on December 28, 1995, and that although no appeal is required to give effect to a decision emanating from a decision handed down by the Supreme Court of Justice, the fact is the victim went before the Fifth Civil

Court in Lima and then the Superior Court to request compliance with the verdict and the Superior Court declared inapplicable the second administrative resolution that again ordered the victim's discharge.

17. Given the above, the petitioner claims that the National Police reinstated him to his position only to immediately relieve him of duty again, through a third resolution identical in content to the previous ones.

18. The State maintains that the petitioner should have filed another writ of amparo against the third resolution relieving him of duty.

19. The Commission found that "where a State claims that a petitioner has failed to discharge the requirement of exhaustion, the former bears the burden of indicating the specific remedies which remain available and effective".[3][1] [Citing IACHR, María Eugenia Morales de Sierra Case, Report No. 28/98, Case 11.625 (Guatemala), published in the 1997 Annual Report of the IACHR 1997, para. 28. See also, Article 37(3) of the Rules of Procedure of the IACHR and, for example, Inter-Am. Ct. H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987. Ser. C, No. 1., para. 88.] In the case in question, the State argues that in order to exhaust domestic remedies, the victim would have had to file a new writ of amparo against the third resolution relieving him of duty. The Commission finds this argument to be groundless. The petitioner's claim does not in fact refer to the third resolution relieving the victim of duty on March 26, 1997, but rather to the on-going failure to enforce the judgment of the Chamber of Constitutional and Social Matters of the Supreme Court of Justice handed down on June 5, 1992 ordering his reinstatement

20. Inasmuch as the State failed to fulfill its procedural duty to indicate the specific domestic remedies that remained available and effective for the victim to have the aforementioned June 5, 1992 judgment of the Supreme Court of Justice enforced, the Commission finds that this case falls under the exception set forth in Article 46(2)(a) of the Convention, which stipulates that the requirement to exhaust domestic remedies set forth in Article 46(1)(a) of the Convention is not applicable when "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".

March 26, 2005

37. In this context, inasmuch as the Ecuadorian State failed to fulfill its procedural duty to specify the domestic remedies that were available and effective for the alleged victim to enforce the judgments of the Constitutional Court of September 6, 1995 and May 7, 1998, the Commission finds that this case falls under the exception set forth in Article 46(2)(a) of the Convention, which stipulates that the requirement to exhaust domestic remedies set forth in Article 46(1)(a) of the Convention is not applicable when "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. Deadline for lodging the petition

38. As regards the admissibility requirement established in Article 46(1)(b) of the Convention that petitions are to be lodged within a period of six months from the date on which the victim was notified of the final judgment exhausting domestic remedies, the Commission finds that this requirement also does not apply in this case, since the exception to the requirement

of exhaustion set forth in Article 46(2)(a) applies, in the manner set forth in the previous paragraph, and the exception to the requirement concerning the deadline for lodging the petition also applies pursuant to Article 46(2).

39. The Commission, without prejudging the merits of the case, must add that failure to enforce a final judgment may constitute a continuing violation by States that persists as a permanent infraction of Article 25 of the Convention, which enshrines the right to effective judicial protection. Therefore, in such cases, the requirement regarding the deadline for lodging a petition, set forth in Article 46(1)(b) of the American Convention, is not applicable.

c. Duplication of proceedings and *res judicata*

40. The Commission understands that the subject of the petition is not pending in another international proceeding for settlement, nor is it substantially the same as one previously studied by the Commission or by another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) are also satisfied.

d. Nature of the allegations

41. The Commission considers that the facts alleged by the petitioners, *prima facie*, if proven and if there is no information to contradict them, tend to establish a violation of the right to private property protected by Article 21 of the Convention, a violation of the right to a fair trial protected by Article 8, and a violation of the right to judicial protection protected by Article 25, since the issue at hand is whether or not the alleged failure to enforce two judgments of the Constitutional Court of Ecuador, and, therefore, the failure to register the properties owned by the petitioner, constitutes a violation of the Convention on the part of the Ecuadorian State.

42. Based on the foregoing, although not asserted by the petitioner, in application of the principle *iuria novit curia*, the Inter-American Commission further believes that the facts described could also constitute violations of the rights to a fair trial and to judicial guarantees recognized in Articles 8 and 25 of the American Convention on Human Rights.

V. CONCLUSION

43. Based on the legal and factual arguments set forth above, the Commission concludes that the instant case meets the admissibility requirements provided in Article 46 of the American Convention, and, without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible with respect to Articles 1(1), 8, 21, and 25 of the American Convention.
2. To transmit this report to petitioners and the State.
3. To proceed with its analysis of the merits of the case.

4. To publish the instant report and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 26th day of February 2004. (Signed): José Zalaquett, President; Claire K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Evelio Fernández Arévalo, Freddy Gutiérrez Trejo, Florentín Meléndez, and Paulo Sérgio Pinheiro, Commission Members.