

WorldCourts™

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 10/05; Petition 380/03
Session:	Hundred Twenty-Second Regular Session (23 February – 11 March 2005)
Title/Style of Cause:	Rafael Ignacio Cuesta Caputi v. Ecuador
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Jose Zalaquett, Evelio Fernandez Arevalos, Freddy Gutierrez (dissent), Florentin Melendez.
Dated:	23 February 2005
Citation:	Cuesta Caputi v. Ecuador, Petition 380/03, Inter-Am. C.H.R., Report No. 10/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANT: Xavier A. Flores Aguirre and Jorge Sosa Mesa
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 May 23, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by Mr. Xavier A. Flores Aguirre and Mr. Jorge Sosa Mesa (hereinafter the “Petitioners”) on behalf of Mr. Rafael Ignacio Cuesta Caputi (hereinafter “Mr. Cuesta Caputi” or the “alleged Victim”), the news director of the Guayaquil office of the television channel Canal TC-Televisión. The complaint alleges violations by the State of Ecuador (hereinafter “the State” or “Ecuador”) of Articles 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), and 25 (Right to Judicial Protection) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in conjunction with the overall obligations enshrined in Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Mr. Cuesta Caputi.

2. The Petitioners allege that the State violated Mr. Cuesta Caputi’s rights under Articles 8 and 25 by extending the initial investigatory stage (etapa de sumario) of the judicial proceedings related to a mail bomb attack on Mr. Cuesta Caputi on February 16, 2000 far beyond the legal limit under Ecuadorian law, by failing to advance beyond this preliminary proceedings stage, to pursue all lines of investigation, and to carry out judicial orders. The Petitioners also allege that the State violated the right to freedom of expression under Article 13. In this regard, the Petitioners argue that the mail bomb attack was a reprisal for Mr. Cuesta Caputi’s work as a journalist.

3. The State argues that the petition is inadmissible because the alleged Victim has failed to exhaust his domestic remedies before bringing the case to the Commission. In this respect, the

State argues that the Petitioner could have sought the recusal of the presiding judge (through a juicio de recusación) and that the remedy of appeal for a writ of error (recurso de casación) was also available. The State concludes that because the Petitioners have failed to exhaust all domestic remedies, the Commission may not admit the case, and so the State need not present any argument on the merits.

4. After reviewing the positions of the parties in light of the admissibility requirements set out in the Convention, and without prejudging the merits of the matter, the Commission decided to declare the petition admissible with respect to Articles 1(1), 5, 8, 13, and 25 of the American Convention, to transmit this Report to the Parties, to continue with the analysis of the merits of the case, and to publish this Report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

5. The Commission received the petition and its two annexes on May 23, 2003. On May 23, 2003, the Commission acknowledged receipt of the petition and designated it with petition No. P-380-03. On June 12, 2003, the Commission forwarded the pertinent parts of the petition to the State, which was given two months to submit its response.

6. In a letter received on June 18, 2003, the Petitioner submitted a request for an admissibility hearing during the next meeting of the Commission. The Commission denied the request.

7. On September 26, 2003, the Commission received the State's response to the petition. The Commission acknowledged receipt of the response on October 7, 2003. On October 8, 2003, the Commission forwarded the State's response to the Petitioner.

8. On September 30, 2003, the Commission received an amicus curiae brief from the Guayaquil Journalists' Association and the Plenipotentiary Embassy in Ecuador of the International Parliament for Safety and Peace of Palermo, Italy in support of the petition. The Commission acknowledged receipt of the brief and transmitted it to the two parties on November 17, 2003.

9. The Petitioners submitted their reply to the observations of the Government of Ecuador on the original petition. The reply was dated November 7, 2003, and was received on November 10, 2003.

10. On February 12, 2004, the Petitioners submitted news clippings intended to demonstrate the continued violations of freedom of the press and of freedom of expression that were allegedly occurring throughout the country.

11. In a letter dated May 24, 2004, and transmitted on June 10, 2004, the Commission acknowledged receipt of the Petitioners' communications dated November 7, 2003 and February 12, 2004. In the same letter, the Commission stated that it had transmitted the communications to the State and had solicited observations in reply within a timeframe of one month. On June 10,

2004, the Commission transmitted the additional information submitted by the Petitioner to the State and asked the State to submit its observations within one month of the date of transmission. The State has not submitted any further observations since the submission of the Petitioners' observations on the Government of Ecuador's reply to the Commission.[FN1]

[FN1] The Petitioners sent letters dated October 20, 2004, December 14, 2004, and January 13, 2005 directed to various personnel of the Commission's Secretariat. In these letters, the Petitioners noted the lack of response from the State since June 10, 2004, when the Petitioners' most recent observations were transmitted to the State, and called for the adoption of an admissibility report during the Commission's next period of sessions.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

12. The Petitioners argue that the claims in the petition are admissible on the basis that there has been unwarranted delay in rendering a final judgment as contemplated in Article 46(2)(c) and that the complaint states facts that tend to establish violations of Articles 1(1), 8, 13, and 25 of the American Convention. In support of these arguments, the Petitioners provide a description of the circumstances underlying Mr. Cuesta Caputi's complaints.

13. According to the petition, Mr. Cuesta Caputi was the news director of the Guayaquil office of the television channel Canal TC-Televisión (Channel 10).

14. The petition states that on January 21, 2000, the Republic of Ecuador experienced a coup d' etat carried out by members of certain indigenous political movements and members of the national armed forces. Dr. Gustavo Noboa Bejarano, who to that point was vice-president, ascended to power as a result of the coup. The petition contends that on that day, the alleged Victim and an associate, Mr. Jaime Jairala Vallazza, conducted a live television transmission in which they criticized the coup as a threat to the country's democratic stability. The petition states that during the transmission, the station received an anonymous telephone call warning that someone "should shut Rafael Cuesta up or that they would [shut him up]" and that this threat should be taken seriously. The Petitioner states that on the same day, another anonymous phone call was received by the channel's offices in Quito, with the difference being that the call to the Quito office involved a threat to bomb the Quito office.

15. According to the Petitioners, during the first days of February, 2000, a person identifying himself as Luis Ortíz called the office of Mr. Jairala Vallazza. The caller said that he was calling to negotiate a deal whereby he would sell a videocassette to the channel that would show the individuals the caller claimed were the coup's primary plotters planning the coup to overthrow the then-president of the Republic, Dr. Jamil Mahuad Witt. Mr. Jairala Vallazza's office directed the caller to Mr. Cuesta Caputi's telephone number, since he, as the channel's news director, would be the person who would be able to handle the call.

16. According to the petition, on February 4, 7 and 14, the caller contacted Mr. Cuesta Caputi on both his office and cellular phones. The petition states that the caller identified himself as a private investigator and stated that he wanted the images exhibited for the good of the country. According to the Petitioners, Mr. Cuesta Caputi told him that it was not the channel's policy to buy videos, but that if the caller wanted to send the video anyway, he could do so. According to the petition, on February 14, 2000, Mr. Cuesta Caputi received a call, with the caller stating that the video would arrive on February 16th in the morning, via the package service Semería.

17. The Petitioners state that on February 16, 2000, Mr. Cuesta Caputi sent the channel's messenger, Mr. Pedro Toaza Ochoa to pick up the package, which was a yellow manila envelope, with the sender listed as "Gustavo Méndez."

18. The petition states that when Mr. Cuesta Caputi received the package, he opened it and found a videocassette inside within a cassette box. According to the petitioners, as he was walking toward the door of his office on his way to another office where the VHS player was located, Mr. Cuesta Caputi removed the videocassette from its box; it was at this point that the videocassette exploded. The petition states that Mr. Cuesta Caputi was subsequently rushed to the hospital by his colleagues. Mr. Cuesta Caputi suffered multiple injuries caused by bomb fragments in his hands, face, thorax and abdomen. He was treated at Clinica Guayaquil, where he had to stay the night for observation.

19. According to Petitioners, that same afternoon, Mr. Jairala Vallazza was contacted by unknown individuals who put him in touch with a male subject claiming to represent the perpetrators of the attack and demanding that Mr. Cuesta Caputi and another employee leave the Channel. The petition states that during this conversation, the subject threatened Mr. Jairala Vallazza that the second attack would be during a live transmission and that the third would blow up the station's antennas.

20. According to Petitioners, on February 17, 2000, Dr. Santiago San Miguel Treviño, the District Prosecutor for Guayas and Galápagos, presented a formal request (excitativa fiscal) for the opening of criminal proceedings, basing the request on the news of the attack published in the daily newspapers "Expreso" and "El Telégrafo." The petition states that on that same day, agents of the Judicial Police began their investigation at the crime scene.

21. According to Petitioners, on February 18, 2000, Dr. Edgar Salazar Vera, the 10th Penal Judge of Guayas, subrogate of the 7th Penal Judge of the same province, decreed the opening of the judicial process (auto cabeza de proceso). The Judge ordered various procedural actions to be carried out, including the taking of depositions (declaraciones) by the alleged Victim and witnesses, requesting Mr. Cuesta Caputi's medical records, and visiting the office of Channel 10.

22. The petition states that on July 7, 2000, the Judge, considering the period for the preliminary stage of the proceedings expired, declared the conclusion of that stage of the inquiry. Petitioners state that the Judge sent these decrees to the prosecutor's office, so that the prosecutor would deliver his opinion within six days. Petitioners claim that on August 16, 2000, the prosecutor, Mr. Mazzini Plaza, delivered the opinion requested by the Judge, concluding that the investigation to that point had been insufficient, and requesting a re-opening of the summary

stage of the investigation to carry out a number of crucial investigative steps that had yet to be completed.

23. According to the petition, on August 30, 2000, the 5th Penal Judge of Guayas ordered the reopening of the preliminary stage of the proceedings for a period of 10 days. The Petitioners state in the petition and subsequent communications that the investigation is still in the preliminary stage and that no investigative actions have been ordered since April of 2002.

24. The Petitioners assert that the facts alleged tend to establish a violation of the American Convention and that, with regard to the issue of the exhaustion of domestic remedies, there has been an unwarranted delay in rendering a final judgment in the case, rendering the petition admissible under Article 46(2)(c).

25. The Petitioners assert that there has been an unwarranted delay because the case had been under investigation for a period of approximately three years and three months at the time of the petition, despite the limit of 60 days imposed on the preliminary investigative stage by Ecuadorian law. During this time, the Petitioners argue, the authorities failed to identify even the existence of a crime, much less identify the perpetrators, accomplices, and accessories after the fact.

26. As regards the first of the remedies that the State proposes that the alleged Victim has failed to exhaust, the Petitioners argue that a recusatory challenge (*juicio de recusación*) is not a “remedy” within the meaning of Article 46(1)(a). The Petitioners claim that this is the case because a remedy within the meaning of the Convention is an appeal presented before the same judge or tribunal or the immediately superior judge or tribunal. Since a recusatory challenge under the Ecuadorian Code of Civil Procedure (which acts as a supplement to the rules of criminal procedure) is argued before another judge of the same class as the judge being challenged through a separate action, the Petitioners contend that this challenge falls outside the meaning of the word “remedy.” Further, Petitioners argue, recusal would not have automatically fixed the investigative omissions that occurred in the case; a new judge would have simply taken the case, and, in addition to the added delays that such a change would imply, there would be no guarantees that the new judge would handle the case any more efficiently than the old or deal with the omissions in a reasonable manner.

27. As regards the second of the remedies that the State alleges that the Petitioners failed to exhaust, the Petitioners argue that the remedy of appeal for a writ of error (*recurso de casación*) is entirely inappropriate to this case given the stage of the proceedings. The Petitioners argue that the case remains in the preliminary investigative stage, and so an appeal could not even be taken under Ecuadorian law because the requirement of a decision would not even be met. The Petitioners note that for a remedy to be exhaustible, it must currently be an option. Such is not the case here, they argue.

28. With respect to the merits of the complaint, the Petitioners argue that the State violated Mr. Cuesta Caputi’s rights under Articles 8, 13, and 25 of the American Convention, in conjunction with Article 1(1) of the Convention.

29. Finally, the Petitioners note that the response of the State is technically extemporaneous because the State exceeded the time allotted to provide a response to the petition by over one month. The Petitioners note that the Inter-American Court has stated that an extemporaneous pleading of a failure to exhaust all domestic remedies may be understood as a tacit renunciation of the rule.[FN2]

[FN2] See, e.g., *Mayagna (Sumo) Awas Tingni Community Case*, Judgment of Feb. 1, 2000, Preliminary Objections, Inter-Am. Ct. H.R. (Ser. C) No. 66, paras. 53-54 (2000).

B. Position of the State

30. Except for a statement that the case is now in the intermediate stage—the preliminary investigative stage having been closed—the State does not contest the basic issues of fact set forth in the petition. However, the State argues that the Petitioner’s claims are inadmissible. The State bases its contention on the ground that domestic remedies have not been exhausted and on the ground that the petition fails to characterize a violation of Article 8 of the American Convention.

31. First, Ecuador submits that the alleged Victim has not exhausted the domestic remedies available to him. In this regard, the State argues that Mr. Cuesta Caputi had the option of initiating a challenge (*juicio de recusación*) to the judge that had allegedly committed the violation, asking him to recuse himself from the case. In this respect, Ecuador cites article 871, section 10 of the Code of Civil Procedure (which it claims supplements the Criminal Code), which states:

Art. 871: A judge, whether part of a tribunal or in his own court, may be recused by any of the parties and shall be separated from the case in any of the following instances:

...

10. Failing to carry out the requisite steps in a period that is three times the amount of time dictated by law.[FN3]

[FN3] Ecuadorian Code of Civil Procedure, art. 871(10).

32. Here, the State argues, the period to issue a ruling was 10 days, starting from the end of the period for allegations and pleadings, to which one additional day should be added for every 100 pages in the final opinion in the process. The State thus argues that because the Petitioner failed to initiate a challenge to the Judge, the Petitioner cannot be considered to have exhausted all domestic resources in the proceeding.

33. The State also argues that the Petitioners could take an appeal for a writ of error (*recurso de casación*). The State argues that this resource is appropriate whenever a judge or tribunal has erred in a matter of either substantive law or procedure (in *iudicando* or in *procedendo*), as the Supreme Court could vacate the judgment.

34. The State argues that in this case it has thus proven that internal judicial resources exist to resolve the Petitioner's complaint. The State argues that it has complied with the requirement of the Inter-American Court that: "if a State which alleges non-exhaustion proves the existence of specific domestic remedies that should have been utilized, the opposing party has the burden of showing that those remedies were exhausted or that the case comes within the exceptions of Article 46(2)."[FN4] Thus, the State argues that the Commission should follow Article 47 and declare the petition inadmissible because one of the requirements of Article 46—namely, the exhaustion of internal judicial remedies—is not met.

[FN4] *Velásquez Rodríguez v. Honduras*, *supra* note 2, at para. 60.

35. Second, the State argues that it has not violated Article 8's "reasonable time" guarantee. In this regard, the State first argues that the principle of "reasonable time" has as its purpose the goal of ensuring that those accused of crime are afforded a speedy trial and do not have the accusations hanging over them for them for a long period of time. Here, if there had been a delay in the administration of justice by the judicial organs, the State argues, that would fall under "withholding of justice" (*denegación de justicia*).

36. As regards the "reasonable time" guarantee, the State also argues that the measures taken to date are all that it can reasonably be expected to perform given the nature of the case and the State's limited resources. In this respect, the State cites a decision of the European Court of Human Rights, which states that the reasonableness of a time period should be evaluated in its own specific context and that there do not exist general criteria of universal validity, as such a determination is a question of fact.[FN5] Thus, the State argues, in jurisprudence, a precise quantum has not been fixed for the duration of the process, but rather the criteria for "reasonableness" should be established on an *ad hoc* basis given the nature of each concrete case. The State argues that the time the State has utilized in processing the case is within the limits of reasonableness established by the Court and the Commission.

[FN5] *Stogmuller v. Austria*, Eur. Ct. H.R. (Nov. 11, 1969).

37. Thus, the State concludes that the petition fails to meet the requirements for admissibility established in the American Convention and the Rules of Procedure of the Commission, and so requests that the Commission declare the petition inadmissible. In consequence, the State considers it unnecessary to present further arguments on the merits of the case.

IV. ANALYSIS OF THE ISSUE OF ADMISSIBILITY

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

38. The Petitioners have *locus standi* to submit petitions to the IACHR, in accordance with Article 44 of the Convention. Article 44 states that “[a]ny person or group of persons . . . may lodge petitions with the Commission containing denunciations or complaints of violations of this Convention by a State Party.” The petition identifies as the alleged victim Mr. Cuesta Caputi, an individual person, whose rights under the Convention the State of Ecuador is committed to respect and ensure. The Commission notes that Ecuador is a State party to the American Convention, having ratified it on December 28, 1977. The Commission therefore has competence *ratione personae* to study the petition.

39. The Commission has competence *ratione loci* to take cognizance of the petition, since it alleges violations of rights guaranteed by the American Convention that purportedly occurred in the territory of a State party.

40. The Commission has competence *ratione temporis*, since the events alleged in the petition took place at a time when the duty to respect and ensure the rights enshrined in the Convention was in force for the State.

41. Finally, the Commission has competence *ratione materiae*, since the petition alleges violations of human rights protected by the American Convention.

42. Accordingly, the Commission finds that it is competent to address the claims raised in the petition.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

43. The Commission and the Court have repeatedly insisted on their reinforcing and complimentary status within the Inter-American system of protection of human rights. This status is reflected in Article 46(1)(a) of the Convention, which permits States parties to decide cases within their own legal framework, before there is need for recourse to an international proceeding.

44. Article 46(1) of the American Convention states:

1. 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[.][FN6]

[FN6] American Convention on Human Rights, 1144 U.N.T.S. 123, art. 46(1) (1969) (hereinafter “American Convention”).

45. The State must present an objection in a timely manner in order for the objection to be valid; if it does not, the State concerned is presumed to have tacitly forfeited any such protest.[FN7] In its communication received by the Commission on September 26, 2003, the State alleges that the Petitioners do not meet the requirement of prior exhaustion of domestic remedies set out in Article 46(1)(a) of the American Convention. The communication was received over three months after the Commission’s communication to the State requesting that the State’s observations on the petition be submitted within two months, in keeping with the Commission’s Rules of Procedure.[FN8] The delay of more than three months in submitting the response allows the Commission to consider the exception of failure to exhaust as untimely.[FN9] However, in light of the State’s subsequent response, and for the sake of clarity on the issue of unwarranted delay, the Commission in this case, shall not apply the said presumption and shall expressly issue an opinion on the issue of the requirement of the exhaustion of domestic remedies.[FN10]

[FN7] See, e.g., *Mayagna (Sumo) Awas Tingni Community Case*, Judgment of Feb. 1, 2000, Preliminary Objections, Inter-Am. Ct. H.R. (Ser. C) No. 66, paras. 53-54 (2000); *Jara Oñate v. Chile*, Inter-Am. C.H.R. Report No. 31/031, Petition 12.195, Admissibility, para. 35 (Mar. 7, 2003).

[FN8] Article 30(3) of the Rules of Procedure provides:

The State shall submit its response within two months counted from the date the request is transmitted. The Executive Secretariat shall evaluate requests for extensions of this period that are duly founded. However, it shall not grant extensions that exceed three months from the date of the first request for information sent to the State.

Rules of Procedure of the Inter-Am. C.H.R., art. 30(3) (Dec. 8, 2000), available at http://www.cidh.oas.org/basic_eng.htm.

[FN9] See *Mayagna (Sumo) Awas Tingni Community Case*, supra.

[FN10] See *Luisiana Rios v. Venezuela*, Inter-Am. C.H.R. Report No. 6/04, Petition 4109/2002, Admissibility, para. 58 (Feb. 27, 2004).

46. Article 46(2)(c) of the American Convention states:

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

...

c. there has been unwarranted delay in rendering a final judgment under the aforementioned articles.[FN11]

[FN11] American Convention, supra note 10, at art. 46(2) (1969).

47. In this case, Petitioners argue that there has been such an “unwarranted delay,” thus making the requirement of the exhaustion of domestic remedies inapplicable. Thus, the question of whether the exhaustion of domestic remedies requirement applies in this case turns on whether such an “unwarranted delay” has occurred.

48. The Commission does not have specific standards on the amount of time that constitutes "unwarranted delay." Rather, the Commission evaluates the circumstances of the case and makes a case-by-case assessment of whether an unwarranted delay has occurred. As a general rule, The Commission finds that "a criminal investigation should be carried out promptly to protect the interests of the victim and to preserve evidence." [FN12] In determining whether or not an investigation has been "prompt," the Commission considers a number of factors, including: the amount of time elapsed since the crime occurred, whether the investigation has advanced beyond a preliminary stage, the actions of the authorities, and the complexity of the case. [FN13]

[FN12] *Servellón García v. Honduras*, Inter-Am. C.H.R. Report No. 16/02, Petition 12.331, Admissibility, para. 31 (Feb. 27, 2002).

[FN13] See, eg, *id.*, paras. 22-33; *Victor Manuel Oropeza v. Mexico*, Inter-Am. C.H.R. Report No. 130/99, Petition 11.740, paras. 30-32.

49. In the present case, five years have elapsed since the incident occurred and the investigation began. The investigation has still not advanced beyond the preliminary stages, despite the fact that Ecuadorian law provides that the preliminary investigative stage must be completed within a period of 60 days. Moreover, according to the Petitioners, the State has failed to pursue some lines of inquiry that have been well publicized. Finally, the case does not appear to be a particularly complex one, given that there is only one victim, the motives appear to be clear, and, according to the allegations made by the Petitioners and not denied by the State, there is evidence available to attempt to identify the perpetrators. Under these circumstances, the Commission considers that five years should have been more than enough time for the State to have identified the perpetrators, initiate proceedings, and punish those responsible.

50. Thus, without prejudice to the future disposition of the Commission on the merits of the case, the Commission finds that there has been an unwarranted delay in rendering a final judgment within the meaning of Article 46(2)(c). As to the prejudice issue, it is important to recall that:

The invocation of exceptions to the requirements of Article 46 is closely linked to the examination of the substance of possible violations of rights enshrined therein, particularly the guarantees relative to access to justice. Nonetheless, given its nature and purpose, the review under Article 46(2) is autonomous vis á vis the substantive norms of the Convention. The determination as to whether the exceptions to the requirement of exhaustion of domestic remedies apply in a given case requires an analysis of the claims raised in advance of and apart from the determination of the merits of the case, and according to a standard distinct from the

one used to determine whether the State bears responsibility for the violation of the rights to judicial protection or guarantees set forth in the Convention. The causes that have impeded the exhaustion of domestic remedies, and the consequences thereof, shall be analyzed to the extent appropriate when the Commission examines the merits of this case.[FN14]

[FN14] Carlos Saúl Meném v. Argentina, Inter-Am. C.H.R. Report No. 3/03, Petition 12.257, Admissibility, para. 36 (Feb. 20, 2003).

51. Because the facts of this case fall within the ambit of article 46(2)(c)'s "unwarranted delay" standard, article 46(1)(a)'s requirement of the exhaustion of domestic remedies does not apply. The Commission need not consider the other remedies invoked by the State since it has determined that there has been an unwarranted delay in rendering a final judgment in this case.

2. Deadline for submission of the petition to the Commission

52. Article 32(2) of the Rules of Procedure of the IACHR provides that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission, bearing in mind the date of the alleged violation and the circumstances of each case.[FN15]

[FN15] Rules of Procedure of the Inter-Am. C.H.R., supra note 12, at art. 32(2) (Dec. 8, 2000).

53. The instant petition was lodged with the Commission on May 23, 2003, some 14 months after the last action taken by the Ecuadorian judiciary. The Commission considers that it was reasonable for the Petitioners to wait for a period of just over a year in order to see how the investigation would develop. When they did not observe significant progress with the investigation during this time, they filed the petition with the Commission. Therefore, the Commission finds that the petition was lodged within a "reasonable period of time" and so meets the requirements with regard to timeliness established in Article 32(2) of the Rules of Procedure.

3. Duplication of proceedings

54. Article 46(1)(c) of the Convention provides that admissibility of a petition by the Commission requires that the subject of the petition or communication is not pending in another international proceeding for settlement. Article 47(d) of the Convention also stipulates that the Commission shall declare inadmissible any petition that is substantially the same as one previously studied by the Commission or by another international organization.

55. From the statements of the parties and the documents in the file, it does not appear that the petition is pending in any other international proceeding or forum, or that it is substantially the same as any previously studied by the Commission or by another international organization.

The Commission therefore considers that in the instant case, the requirements for admissibility in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Colorable claim

56. For purposes of admissibility, the Commission must determine whether the facts stated in the petition tend to establish a violation of rights set forth in the American Convention, as provided for in Article 47(b), or whether the petition must be dismissed as “manifestly groundless” or “obviously out of order” under Article 47(c).[FN16] Article 27 of the Commission’s Rules of Procedure mandates that petitions state facts “regarding alleged violations enshrined in the American Convention on Human Rights and other applicable instruments.”[FN17] Article 34(a) of the Commission’s Rules of Procedure requires the Commission to declare a petition inadmissible when it does not state facts that tend to establish a violation of the rights referred to in Article 27 of the Rules.[FN18]

[FN16] American Convention, *supra* note 10, at art. 47(c) (1969).

[FN17] Rules of Procedure of the Inter-Am. C.H.R., *supra* note 12, at art. 27.

[FN18] *Id* at art. 34(a).

57. The standard by which to assess whether the requirements of Article 47(b)-(c) of the Convention are met differs from the one applied to decide the merits of the Petition. The Commission’s evaluation at this point is *prima facie* and does not seek to establish whether a violation of the American Convention has occurred, but rather whether the Petition states facts that tend to establish a potential or apparent violation of a right guaranteed by the Convention. As noted in Section IV.b, *supra*, this evaluation does not imply any prejudgment or advance opinion on the Petition’s merits.[FN19]

[FN19] See, e.g., Rules of Procedure of the Inter. Am. C.H.R., arts. 30(6), 37, 42-43.

58. The Commission finds that the allegations of the Petitioners related to a bomb attack against Mr. Cuesta Caputi and the failure of the State to identify, prosecute, and eventually punish those responsible for this act, if proven, could tend to characterize a violation of Articles 8 and 25 read in conjunction with Article 1(1) of the Convention. The Commission also considers that the allegations presented by the Petitioners tend to characterize a violation of the right to freedom of expression under Article 13 because, according to the Petitioners, Mr. Caputi was attacked in retaliation for opinions and information he had expressed during television broadcasts. Additionally, the Commission considers that these acts and omissions could also tend to characterize a violation of Article 5 (right to humane treatment) of the Convention. Thus, it declares the petition admissible in relation to Article 5 by application of the *iura novit curia* principle. Therefore, without prejudice to the merits of the case, the Commission finds that the requirements of Article 47(b) and (c) of the American Convention have been met.

V. CONCLUSIONS

59. The Commission considers that it has competence to take cognizance of this petition and that it is admissible regarding the requirements for admissibility contained in Articles 46 and 47 of the American Convention on Human Rights, and regarding the alleged violations of Articles 5, 8, 13, and 25 of the American Convention in conjunction with the general obligations enshrined in Article 1(1).

60. On the basis of the aforementioned arguments as to facts and law, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible regarding the alleged violations of Mr. Rafael Ignacio Cuesta Caputi's rights protected by Articles 5, 8, 13, 25, and 1(1) of the American Convention;
2. To notify the parties of this decision;
3. To continue with the examination of the case; and
4. To make public this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 23rd day of the month of February, 2005. (Signed) Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners José Zalaquett, Evelio Fernández Arévalos, Freddy Gutiérrez (dissent) and Florentín Meléndez.