Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 9/05; Petition 1/03
Session:	Hundred Twenty-Second Regular Session (23 February – 11 March 2005)
Title/Style of Cause:	Elias Gattass Sahih v. Ecuador
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez.
Dated:	23 February 2005
Citation:	Gattass Sahih v. Ecuador, Petition 1/03, Inter-Am. C.H.R., Report No. 9/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by:	APPLICANTS: Xavier A. Flores Aguirre, Francisco Toral Zeballos, Osvaldo Zavala-Giler and Francisco Marchan Cordovez

I. SUMMARY

1. On December 26, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition submitted by the Ecuadorian lawyers Xavier A. Flores Aguirre, Francisco Toral Zeballos, Osvaldo Zavala-Giler and Francisco Marchán Cordovez, (hereinafter "the petitioners"), invoking the international responsibility of the Republic of Ecuador (hereinafter, "the State" or "the Ecuadorian State") due to the fact that the State had revoked Mr. Gattass Sahih's immigrant visa without the requisite guarantees of due process.

2. The petitioners allege that the revocation of the visa without due process and the ensuing detention and criminal proceedings to deport him constituted a violation of the rights set forth in Articles 2, 7, 8, 22 and 25 of the American Convention on Human Rights (hereinafter, "the American Convention" or "the Convention"), pursuant to the obligations assumed by the State in connection with Article 1(1) of that instrument. With regard to the admissibility of the petition, the petitioners allege that the available and appropriate domestic remedies for the protection of the violated rights had been lodged and exhausted, to the detriment of Mr. Gatass Sahih. For its part, the State alleges that the petition is inadmissible and should be immediately filed, in that it does not fulfill the requirements for admissibility established in the American Convention and in the Rules of Procedure of the Commission.

3. In this report, the Commission analyzes information submitted in accordance with the American Convention and it concludes that the petition complies with the requirements for

admissibility set forth in Article 46 and 47 of the American Convention. Consequently, the Commission decides to declare the case admissible, to notify the parties of this decision, and to continue with the analysis of the merits relative to the alleged violations of Articles 2, 7, 8, 22 and 25 of the American Convention in breach of the State's obligations under Article 1(1) of the same instrument. In addition, the Commission decides to publish the report in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On April 22, 2003, the Commission transmitted the complaint concerning Mr. Elías Gattass Sahih to the Government of Ecuador and requested it to reply within 2 months. On September 26, 2003, the Commission received the response of the Government of Ecuador, dated September 25, 2003, to the allegations in the complaint. On October 5, 2003, the Commission transmitted the State's response to the petitioners with a request that any observations be presented within one month.

5. On November 7, 2003, the petitioners submitted their observations to the State's response to the petition, and on January 13, 2004, these observations were transmitted to the State with a request for any additional observations that the State deemed appropriate.Through a communication dated February 6,2004, the State presented its response to the further observations presented by the petitioner. On December 13, 2004, the petitioner submitted additional information and requested that the IACHR prepare the corresponding admissibility report.

III. POSITION OF THE PARTIES

A. The petitioners

6. The petitioners allege that Mr. Gattass Sahih --a Lebanese citizen-- arrived in Ecuador for the first time in 1985, and since then has worked in Ecuador as an engineer. On April 3, 1998 he married an Ecuadorian citizen, Leila Carvajal Erker, with whom he had a child, a daughter, born on May 21, 1999. On October 24, 2001, the Immigration Service (Dirección General de Extranjería) granted Mr. Gattass Sahih an indefinite visa, category VI, No. 6466-2001, which document attested to his lawful presence in the country. Subsequently, the petitioners allege that Mr. Gattass Sahih's wife, by letter, requested the Immigration Service to revoke her husband's visa. On November 22, 2001, the Consultative Council on Migration Policy (Consejo Consultivo de Política Migratoria) revoked the Category VI immigrant visa of Elías Gattass Sahih, who was not even notified of this administrative action.

7. The petitioners state that, as a consequence of the administrative revocation of Mr. Sahih's visa, the General Prefect of Police of Guayas (Intendente General de la Policía) on December 5, 2001 and pursuant to the ruling of the Consultative Council on Migration Policy (Consejo Consultivo de Política Migratoria), detained Mr. Sahih. On December 6, 2001, the General Prefect filed criminal deportation proceedings and, on December 7, 2001, summoned the parties to an oral hearing, pursuant to Article 25 of the Migration Law (Ley de Migración).[FN1]

[FN1] Article 25 of the National Migration Law of Ecuador states: "The General Prefect of Police in office, within the twenty-four hours following the preliminary investigation of criminal deportation proceedings, must summon the appointed representative of the Public Ministry, the foreigner, his court-appointed lawyer, if necessary, on the date and at the time set for that appointment, not to exceed a period of twenty-four additional hours, in order to hold the hearing to rule on the criminal deportation proceeding."

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8. In light of this situation, the petitioners state that, on December 9, 2001, Mr. Elías Gatass Sahih filed an application for amparo (enforcement of constitutional rights) before 20th Criminal Judge of Guayas against the ruling of the Council on Migration Policy and against the consequent criminal deportation proceedings. Mr. Sahih alleged that he had been deprived of the legal guarantees of due process during the substantiation of the administrative process that resulted in the revocation of his immigrant visa. The aforementioned court accepted the application for amparo and ordered provisional suspension of the effects of the contested proceeding, which resulted in the immediate release of Mr. Sahih. On December 10, 2001, the parties appeared at the hearing on the matter, but it was suspended by order of the 20th Criminal Judge of Guayas.

9. The petitioners allege that on January 22, 2002, the 20th Criminal Judge of Guayas rejected the application for amparo filed by Mr. Sahih. On January 29, 2002, the Judge granted the right to appeal the judgment denying the application for amparo and the case was sent up to the Constitutional Court. On June 7, 2002, the Third Chamber of the Constitutional Court (Tercera Sala del Tribunal Constitucional) confirmed, in all of its parts, the January 22, 2001 judgment of the 20th Criminal Judge of Guayas. The Constitutional Court established that Mr. Sahih could make use of his right to defense, submit the evidence he considered relevant, make observations and refutations, present allegations, and be assisted by a defense attorney in the oral hearing of the deportation proceeding (pursuant to Article 25 of the Migration Law).

10. With regard to the admissibility of this claim, the petitioners allege that the domestic remedies should be considered duly exhausted by the ruling of the Third Chamber of the Constitutional Tribunal dated June 7, 2002, which overturned the appeal filed by Mr. Sahih's attorneys with regard to the judgment that denied his application for amparo.

11. Furthermore, with regard to the State's observations in its response, the petitioners allege that Mr. Sahih did not present the remedy of habeas corpus because, as he was not detained at the time, it had not been necessary to bring said charges and that, for the purpose of his release, the application for amparo had been effective. With regard to the complaint of unconstitutionality, the petitioners allege that Ecuadorian legislation conceives of this remedy in such a manner as to be unavailable to the victim, for which reason they allege it cannot be exhausted.[FN2] Finally, with regard to complaint against the administrative decision (recurso contencioso administrativo), the petitioners stated that, according to the administrative legislation of the Republic of Ecuador, administrative jurisdiction does not cover "issues related to the discretionary authority of the administration."

[FN2] The petitioners allege that the jurisprudence of the Inter-American Commission itself on this matter has been expressed in connection with case No. 11,688 "Alan García Pérez versus Peru," in that the action of unconstitutionality "is conceived in such a manner as to be unavailable to the alleged victim, because he does not have active legal competence to do so." They add that in accordance with the implementing regulations of Article 277 of the Constitution of Ecuador the victim lacks legal competence, to wit:
Complaints of unconstitutionality may be lodged by:
1. The President of the Republic, in the cases covered by number 1 of Art. 276.
2. The National Congress, on the decision of a majority of its members, in the cases covered by numbers 1 and 2 of the same article.
3. The Supreme Court of Justice, following a decision of the full court, in the cases covered by numbers 1 and 2 of the same article.
4. The provincial councils or the municipal councils, in the cases covered by number 2 of the same article.
5. One thousand citizens who enjoy political rights, or any person with a favorable report of the Ombudsman regarding their origin, in the case of numbers 1 and 2 of the same article. The President of the Republic will request the opinion provided for in numbers 4 and 5 of the same article. The settlement provided for in number 6 of the same article can be requested by the President of the Republic, the National Congress, the Supreme Court of Justice, the provincial councils, or the municipal councils. The authority which number 3 of the same article refers to will be exercised at the request of the parties or the Ombudsman.
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12. Concerning the merits of the case, the petitioners allege that the aforementioned facts constitute a violation by the Ecuadorian State of the rights to personal liberty, legal guarantees, movement and residence, and judicial protection, as set out in Articles 7, 8, 22 and 25 of the American Convention, as well as its general obligation to guarantee the rights enshrined in the Convention, pursuant to Article 1(1), and the obligation to adopt domestic measures as provided for in Article 2.

B. The State

13. The State alleges that the petitioners' petition is inadmissible in view of the fact that domestic remedies have not been exhausted, adding that the Political Constitution of Ecuador establishes a number of institutions whose purpose is to oversee the rights of all the inhabitants of the Ecuadorian State.

14. In the first place, the State points out that Article 93 of the National Constitution authorizes every person who considers that he is being unlawfully deprived of his liberty to present a remedy of habeas corpus. In this regard Mr. Sahih never presented a remedy of habeas corpus even though, according to his allegations, he had been unlawfully detained.

15. Secondly, the State points out that the implementing regulations of Article 277 establish that any person, with a favorable report of the Ombudsman, may lodge a complaint of unconstitutionality. Consequently, the State holds that if Mr. Elías Gatass Sahih considers

himself affected by the actions of the Consultative Committee on Migration Policy, he should file a complaint of unconstitutionality.

16. Furthermore, the State points out that other national legislation exists that allows "every inhabitant" of the Republic of Ecuador to challenge administrative decisions by public authorities which they consider to be unlawful. In this connection, the State points out that the domestic legal structure provides for contentious proceedings against administrative decisions, empowering every individual to lodge a contentious remedy against the regulations, decisions, and resolutions of the public administration or of semipublic bodies, which are final and violate a right or the direct interest of the plaintiff.

17. Consequently, with respect to the application for amparo filed by Mr. Sahih, the State alleges that the petitioners filed the wrong claim by filing an application for amparo, since they did not comply with all the necessary requisites for this action to prosper. Nevertheless, this does not signify that the petitioners exhausted their domestic remedies. On the contrary, the State noted that other domestic remedies were available, as noted by the Constitutional Court.

18. The State indicates that, in order for an application for amparo to be admissible, the following elements must concur simultaneously:

a. There must exist an illegal act or failure to act on the part of a public authority.
b. This act or omission violates or could violate a right enshrined in the Constitution, an agreement or an international treaty that is in force.
c. There is the imminent threat of serious harm.

In this regard, the State pointed out that, in this case, the Third Chamber of the Constitutional Court considered that the administrative proceedings contested by Mr. Sahih were conducted in accordance with the law, which is why the application for amparo did not succeed. It emphasized, however, that the sentence of the Third Chamber expressly upheld the plaintiff's right to lodge the complaints he felt were relevant for defending his interests.

19. Furthermore, the State alleges that the petition is "groundless, unfounded and the facts expressed by the petitioners cannot be characterized as violations of the rights enshrined in the American Convention." The State points out that, pursuant to the regulations implementing Article 7 of the current Migration Law "the decision to grant, deny or revoke a visa is a sovereign and discretional authority of the executive branch, through the competent agencies." Similarly, Article 8 of that legislation states that the Consultative Council on Migration Policy is authorized to take cognizance of consultations related to rulings that deny or revoke immigrants' visas.

20. In this regard, the State alleges that the Consultative Council on Migration Policy made use of the sovereign and discretional authority of the executive branch. On the basis of Order No. 001775, signed by the Director General of Immigration Services and the President of the Consultative Council on Migration Policy, in which it was made known that the Council had revoked the Category 10-VI immigrant visa of Mr. Elías Gattass Sahih, the General Prefect of Police of Guayas issued the criminal deportation order against him, pursuant to the authority

vested in him under Article 23 of the Migration Law. He also noted the date and time of the oral hearing to which Mr. Gattass Sahih was summoned so that he may exercise his right to defend himself, and at which time he could present all the evidence he considered necessary to impugn the evidence against him, with the assistance of a defense lawyer or a court-appointed lawyer.

21. The State concluded that it considered that the petition was manifestly unfounded and did not set forth facts that characterize a violation of the fundamental rights protected in the international human rights instruments. Consequently, this petition does not fulfill the requirements established in the American Convention and the Rules of Procedure of the Commission, for which reason the State requested that the Commission declare it inadmissible and proceed to archive it immediately.

IV. ANALYSIS

22. The Commission now proceeds to analyze the admissibility requirements set out in the American Convention.

A. Competence

23. According to Article 44 of the American Convention, the petitioners are empowered, in principle, to lodge petitions with the Commission. In the petition, the presumed victim is an individual, for whom the Ecuadorian State has pledged to respect and guarantee the rights enshrined in the American Convention. Ecuador has been a State Party to the American Convention since December 28, 1977. Therefore, the Commission has jurisdiction ratione personae to examine the petition.

24. In addition, the Commission has jurisdiction ratione loci to take cognizance of the petition, inasmuch as it alleges violations of rights protected under the American Convention said to have taken place under the State's jurisdiction. The Commission has jurisdiction ratione temporis to study the claim because the obligation to respect and guarantee the rights protected under the American Convention was already binding upon the State on the date the facts alleged in the petition were said to have occurred. Finally, the Commission has jurisdiction ratione materiae because the petition denounces possible violations of human rights protected under the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

25. For the purpose of the admissibility of the petition lodged by the petitioners, Article 46(1)(a) of the American Convention requires "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." This rule was conceived in the interest of the State, as it seeks to dispense them from having to respond to an international body for actions imputed to them before having had the opportunity to remedy them by their own means.[FN3]

[FN3] See HRI Court, Decision in the matter of Viviana Gallardo et al, 13 November 1981, Series. A N° G 101/81, paragraph 26.

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26. In their original complaint[FN4], the petitioners alleged that the domestic remedies should be considered exhausted with the decision of the Third Chamber of the Constitutional Court dated June 7, 2002, which terminated the application for amparo submitted by Mr. Gatass Sahih. For its part, the State alleged that the petitioners' claim was inadmissible because the domestic remedy had not been duly exhausted[FN5], indicating that the petitioners had to exhaust the remedy of habeas corpus, the action of unconstitutionality and some administrative action, such as a contentious proceeding against an administrative decision.

[FN4] Original petitioners' complaint. Communication dated 26 December 2002.
[FN5] Written reply by the State. Communication dated 25 September 2003.

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27. In their observations to the State's response[FN6], the petitioners alleged that Mr. Sahih had resorted to exhausting the application for amparo because "he believed that this was the only action that allowed him to attack his legal problem at the root", regardless of whether the final outcome of the application had not been optimal. They added that the application for amparo is clearly appropriate, citing a ruling of the Constitutional Court in a similar case, dated after the decision that rejected Mr. Sahih's application for amparo, in which the rights of the petitioner were protected. In the opinion of the petitioners, in that ruling the Constitutional Court expressly establishes that in a proceeding to cancel or revoke a visa "the affected party should be guaranteed the elementary constitutional principles of the right to due process and the right to defense, which can hardly be exercised if there is a failure to notify of the administrative process and its outcome."[FN7]

[FN6] Additional observations of the petitioners. Communication dated November 7, 2003.
[FN7] Constitutional Court, Case N° 125-2002-RA, RO of December 12, 2002.

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28. In regard to the State's observations, the petitioners allege that Mr. Sahih did not exhaust the habeas corpus remedy because it would not have been useful to do so in view of the fact that he is not currently detained and that, for the purposes of his release, the application for amparo had been effective. With respect to the unconstitutionality proceedings, they pointed out that in accordance with Ecuadorian legislation, that legal remedy was not available to the victim. With regard to the contentious proceeding against an administrative decision, the petitioners stated that according to the administrative legislation of the Republic of Ecuador itself, administrative jurisdiction does not cover "issues related to the discretionary authority of the administration."

29. Based on the parties' aforementioned allegations, in this case the Commission must determine whether the decision of the Third Chamber of the Constitutional Court dated June 7, 2002 constitutes exhaustion of domestic remedy.

30. The Commission notes that the requirement of exhaustion of domestic remedies established in Article 46 of the American Convention refers to legal remedies that are available, appropriate, and effective for solving the presumed violation of human rights. The Inter-American Court has established that when, for factual or for legal reasons, domestic remedies are unavailable, the petitioners are exempted from the obligation of exhausting same.[FN8] The remedies the petitioners must exhaust are, therefore, those that are available and effective. If the exercise of the domestic remedy is such that, on a practical basis, it is unavailable to the victim, there is certainly no obligation to exhaust it, regardless of how effective in theory the action may be for remedying the allegedly infringed legal situation.

[FN8] HRI Court, Exceptions to the Exhaustion of Domestic Remedies (Article 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion HQ-11/90 of August 10, 1990, paragraph 17.

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31. Taking the above into account, the Commission notes that it was unnecessary to lodge a habeas corpus remedy because Mr. Sahih was currently not detained and his release had been ordered by the Court that dealt with the application for amparo. The Commission considers that in this case and for the purpose of his liberty, the application for amparo should be regarded as the effective remedy.

32. With regard to the unconstitutionality proceeding, the Commission notes that Article 277 of the Ecuadorian Constitution very specifically spells out which subjects are legally competent to lodge unconstitutionality proceedings, as well as the requirements for doing so. On the basis of that article, the Commission considers that Mr. Sahih did not have access to the domestic remedy of unconstitutionality which, according to the State, is the remedy that had to be exhausted. By not holding any of the positions specified in that article, the option open to him to acquire legal competence to lodge an unconstitutionality proceeding was to bring together another 1,000 citizens to join him in such action or to obtain a favorable opinion from the Ombudsman. This proceeding is not regulated by the Organic Law of the Ombudsman of Ecuador, which means that no regulations exist for the procedure and for the time periods for issuing such opinion. Furthermore, the State has not presented information on the effectiveness of unconstitutionality proceedings in other cases of individual petitions. This suggests that this domestic remedy is conceived in such a way that in practice it does not constitute a suitable remedy for the protection of Mr. Sahih's rights, since he lacked the legal competence to do so. Therefore, the unconstitutionality proceeding was not a domestic remedy that Mr. Sahih had to exhaust before turning to the Commission.

33. With regard to the contentious proceeding against administrative decision, the Commission notes that, pursuant to domestic regulations applicable to the administrative area, Mr. Sahih was legally unable to challenge the legitimacy of the revocation of his visa at administrative headquarters because the matter is covered by the discretionary authority of the administration, pursuant to Article 7 of Ecuador's Migration Law, and which is expressly excluded from administrative jurisdiction.[FN9]

[FN9] Article 6 of the Law on Contentious Proceedings against Administrative Decisions establishes that such proceedings are not applicable for: a) issues that, due to the nature of the originating acts or the matter to be examined, are within the discretionary authority of the administration.
For its part, the implementing regulations of Article 7 of Law N° 1897 on Immigration establishes that: "The executive branch, through the Immigration Department of the Ministry of Government, Religions, Police, and Municipalities, shall be responsible for the application and execution of the rules and procedures relating to foreign nationals, especially the granting of immigrant visas within and outside the country. The management and granting of non-immigrant visas will be the responsibility the Foreign Relations Ministry. The decision to grant, deny or revoke the visa of a foreign citizen, notwithstanding fulfillment of legal and regulation requirements, is a sovereign and discretionary power of the executive branch, through the competent agencies. (Amended by L-2001-46. RO 374: 23 July 2001).

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34. Moreover, the Commission considers that the analysis of which remedy or remedies must be exhausted in a given case to fulfill the provisions of Article 46 depends entirely on the nature of the arguments presented. The principal issue presented to the Commission in this petition is whether the State acted in violation of its obligations under the American Convention when it revoked Mr. Sahih's visa without notifying him of the substantiation of the given administrative procedure.

35. In this regard the Commission observes that the application for amparo had the purpose and effect of informing the State that the petitioners challenged the procedure carried out under Ecuador's Immigration Law and Migration Law with respect to the rights of the country's immigrants, and provided an opportunity to resolve the problem. Inasmuch as the core of the petitioners' claim is the inobservance of the guarantees of due process in the administrative procedure to revoke the immigrant visa, the remedy submitted aimed, firstly, to examine how the administrative procedure had been carried out and, secondly, to annul its effects. Moreover, the Commission's files show a similar case in Ecuador, where an application for amparo before the Constitutional Court was effective for defending legal guarantees in a case of the revocation of an immigrant's visa.

36. On the basis of the above, the Commission concludes that the procedure under analysis demonstrates that the State was cognizant of and able to solve the complaints now pending before the Commission. Accordingly, the IACHR establishes that, in this present case, the suitable remedy for the protection of Mr. Sahih's rights is the application for amparo, and that the domestic remedies were exhausted on June 7, 2002 with the judgment rejecting the application for amparo lodged by Mr. Gatass Sahih's attorneys. Therefore, this petition meets the requirement established in Article 46(1)(a) of the American Convention.

2. Term for submission of the petition

37. Article 46(1)(b) of the American Convention states that, for a petition or communication to be admitted by the Commission, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. The IACHR notes that the petition was lodged by the petitioners on December 26, 2002 and the appeal contesting the judgment of the 20th Criminal Judge of Guayas, who rejected the application of amparo lodged by Mr. Elías Gattas Sahih, was resolved by the Third Chamber of the Constitutional Court in a ruling dated June 7, 2002, of which Mr. Sahih was notified on June 25, 2002.

3. Duplication of proceedings and res judicata

38. The file of the petition does not contain any information suggesting that this matter is pending in another international procedure for settlement or that it had earlier been ruled on by the Inter-American Commission on Human Rights. Therefore, the IACHR concludes that the requirement established in Article 46(1)(c) of the American Convention has been met.

4. Characterization of the facts alleged

39. The State requested that the Commission archive the present petition pointing out that the latter "is manifestly groundless and unfounded and does not state facts that characterize a violation of the rights protected by the American Convention on Human Rights."

40. As the Commission has already stated in other cases, at this stage of the procedure it is not incumbent on the IACHR to establish whether or not a violation of the American Convention has occurred. For the purpose of admissibility, the IACHR must simply decide whether the allegations state facts that tend to characterize a violation to the American Convention, as provided for in Article 47(b), and if the petition is "manifestly groundless" or "obviously out of order," according to the paragraph (c) of the same article. The standard for evaluating these requirements is different from the standard for deciding the merits of the petition. In this stage, the IACHR must conduct a prima facie evaluation which involves a summary analysis that does not imply prejudgment of the merits or advance any opinion with regard thereto. Its own Rules of Procedure make the distinction between the evaluation the Commission must make to determine whether a complaint is admissible, and the examination required to determine State responsibility, by establishing two clearly separate stages, one for admissibility and the other for the merits of the petition.

41. The Commission considers that the petition addresses a number of issues related to the right of foreign citizens to the legal guarantees of due process in the procedures to revoke their migratory status. The analysis of the parties' allegations suggests that the facts alleged by the petitioners could characterize a violation of the rights to personal liberty, legal guarantees, movement and residence, and judicial protection enshrined in Articles 7, 8, 22 and 25 of the American Convention, along with the general obligation of the State to respect and guarantee the aforementioned rights, established in Article 1(1) of the Convention and to implement Article 2 of same. Inasmuch as the claim is not evidently groundless or out of order, the Commission considers that the requirements established in Articles 47(b) and (c) of the American Convention have been met.

42. The Commission concludes that it is competent to examine the case filed by the petitioners concerning the presumed violation of Articles 7, 8, 22 and 25, as well as 1(1) and 2 of the American Convention, against Elías Gatass Sahih, and that it is admissible, pursuant to Articles 46 and 47 of the American Convention.

V. CONCLUSION

43. The Commission concludes that it is competent to examine this matter and that the petition is admissible, pursuant to Articles 46 and 47 of the American Convention. On the basis of the aforementioned de facto and de jure arguments and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible in relation to the alleged violation of the rights enshrined in Articles 1(1), 2, 7, 8, 22 and 25 of the American Convention on Human Rights.
2. To notify the parties of this decision.
3. To continue to examine the merits of the case.
4. To publish this decision 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 Washington, D.C., on the 23 day February 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez.