

WorldCourts™

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 39/06; Petition 73-03
Session:	Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause:	Carlos Rafael Alfonzo Martinez v. Venezuela
Doc. Type:	Decision
Decided by:	President: Evelio Fernandez Arevalos; First Vice-President: Paulo Sergio Pinheiro; Second Vice-President: Florentin Melendez; Commissioners: Clare K. Roberts, Paolo Carozza, Victor E. Abramovich. Commissioner Freddy Gutierrez, of Venezuelan nationality, did not participate in the deliberations or the vote on this report, in accordance with Article 17.2.a of the IACHR's Rules of the Procedure.
Dated:	15 March 2006
Citation:	Alfonzo Martinez v. Venezuela, Petition 73-03, Inter-Am. C.H.R., Report No. 39/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by:	APPLICANT: Hector Faundez Ledesma
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 January 22, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) received a denunciation from Mr. Héctor Faúndez Ledesma (hereinafter “the petitioner”) against the Bolivarian Republic of Venezuela (hereinafter “the State” or “the Venezuelan State”) in which violation is alleged of the rights of Mr. Carlos Rafael Alfonzo Martínez, of Venezuelan nationality, identity card No. 3716248, Division General of the Venezuelan General Guard (hereinafter “the alleged victim”) enshrined in Articles 7, 5, 8, 25, and 13, in connection with Article 1.1 and 2, all of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”).

2. The petitioner indicates that Mr. Alfonzo was unlawfully and arbitrarily detained by State agents, suffered inhumane treatment, in that he was threatened, and was subsequently tried without the due guarantees. It is also alleged that he was prevented from contacting the media. With regard to exhaustion of remedies, he indicates that remedies have been exhausted through petitions for habeas corpus, with which, he indicates, the State has not complied. For its part, the States alleges that the alleged victim was arrested in flagrante delicto, that he has not suffered inhumane treatment, and that the due guarantees have been upheld in the criminal proceedings brought against him. With regard to domestic remedies, the State indicates that these are being pursued fully and, in consequence, the petitioner would have to await their resolution before taking the matter to the international authority.

3. Having examined the positions of the parties, the Commission concludes that it has competence to consider the petition presented by the alleged victims and that the case is admissible under Articles 46 and 47 of the American Convention. Consequently, the Commission decides to notify the parties, publish this admissibility report, and include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. On January 22, 2003, the petitioner filed the denunciation, which was registered by the Commission on January 24, 2003, as number P-073/2003. On January 28, 2003, the petition was transmitted to the State for it to forward its observations thereon, pursuant to Article 30 of the Commission's Rules of Procedure. On March 28, 2003, the State presented its observations.

5. On March 3, 2004, the State submitted additional information regarding the status of the criminal proceedings against the alleged victim. The petitioner did not present observations regarding either of the two notes from the State, although they were duly forwarded.

A. Request for precautionary measures

6. On January 8, 2003, Mr. Héctor Faúndez Ledesma requested that the Commission request precautionary measures on behalf of Mr. Carlos Rafael Alfonzo Martínez. On January 13, 2002, the Commission requested the Venezuelan State to adopt the following measures: 1. To comply immediately with the writ of habeas corpus or release order for General Carlos Alonso Martínez, issued on December 31, 2002, by the 18th Court of Review of the Caracas Metropolitan Area Criminal Judicial Circuit; 2. To ensure the humane treatment of General Carlos Alonso Martínez and of his family, in accordance with Article 5 of the American Convention; and 3. To take all measures necessary to guarantee General Carlos Alonso Martínez the full exercise of his civil rights and judicial guarantees.

7. On June 13, 2004, the petitioner again approached the Commission to request precautionary measures owing to the refusal by the judicial authorities to transfer the alleged victim to a hospital, in view of the alleged victim's state of health after 18 months' detention with osteoporosis and gastritis. The Commission did not request these measures.

III. POSITIONS OF THE PARTIES

A. The petitioners

8. The petitioner states that on December 30, 2002, Mr. Carlos Rafael Alfonzo Martínez was arrested by agents of the Intelligence and Prevention Services Office (DISIP) without a warrant and without being informed of the reasons for his arrest or on whose authority it had been ordered, and that he was not brought before the courts within the period stipulated in law.

9. He indicates that, on that day, he was taken to Fort Tiuna by officers in civilian clothing, where he was detained in the garrison housing which, as an active National Armed Forces

officer, he had been assigned on garrison grounds. After his arrival there, his cell phone was taken away. It was returned to him some days later, blocked and monitored.

10. According to the petitioner, in the initial days of his detention, Mr. Carlos Alfonzo was unable to communicate with his attorneys. He asserts that he was visited by General Jorge García Carneiro, Commander of the Caracas Garrison, who threatened him verbally with physical violence, aggression that was prevented by the officers who had custody of the alleged victim.

11. With regard to domestic remedies sought, the petitioner states that on the day of his arrest, attorneys Cindy Cartusciello, Manuel Barral, Carlos Roa, Guillermo Heredia, and Juan Carlos Gutiérrez applied for a writ of habeas corpus for the detainee. Said application was admitted by the 18th Court of Review of the Caracas Metropolitan Area Criminal Judicial Circuit, which ordered his immediate release from his place of detention.

12. The petitioner indicates that the Venezuelan authorities did not comply with said judgment, specifically the Minister of Defense, who refused to receive the order for Mr. Alfonzo's release, and the officials of the military compound where Mr. Alfonzo was held who, although they had received the order, refused to comply with it.[FN2] He also indicates that the precautionary measures requested by the Commission were not adopted by the Supreme Court of Justice in a January 21, 2003 decision, in which it ordered another 30 day's detention of the alleged victim, during which time, the Attorney General would be able to accuse him of another offense and request the corresponding preliminary hearings to establish probable cause.

[FN2] According to the petitioner, during the December 15, 2002 broadcast of the Aló Presidente program, President Chávez publicly announced that he had ordered armed forces members not comply with any judicial order contravening his express instructions.

13. In his legal arguments, the petitioner sets out the constitutional provisions regarding prosecution of National Armed Forces generals, the right to personal liberty and to due process; the international human rights treaties ratified by the State; and compliance with the decisions of the international bodies.[FN3]

[FN3] Articles 266.3, 44.1, 44.2, 44.5, 49.1, 23, and 31.

14. With regard to whether the facts tend to establish violations of the American Convention, the petitioner indicates that the State violated Article 7 of the Convention, as Mr. Alfonzo was arrested without regard to the constitutional and legal provisions, and without duly informing him of the reasons for his arrest and the charges against him. Neither was he brought before a judge or judicial official, and although he was able to apply for a writ of habeas corpus, when it was granted, the respective authorities did not comply with it. The petitioner indicates that the Supreme Court of Justice did not provide grounds for its decision to continue to hold the alleged victim in custody.

15. With regard to Article 5 of the Convention, he alleges that the alleged victim was subject to cruel, inhuman, and degrading treatment, as he was threatened by General Jorge García Carneiro, in whose custody he was subsequently held and, in addition, that he was prevented from communicating with his family.

16. With regard to the alleged violation of Article 13 of the Convention, he states that the restriction of freedom of expression imposed by the Supreme Court of Justice was incompatible with the restrictions permitted under the Convention, as there is no provision for such restriction in the legislation, nor did it fulfill any legitimate purpose.

17. Lastly, with regard to Articles 8 and 25 of the Convention, the petitioner indicates that Mr. Alfonzo's due guarantees were not upheld during his hearing, that he was presumed guilty of an unidentified offense, that in the initial weeks he was unable to communicate with his attorneys, and that he had no access to effective remedies owing to the public authorities' lack of independence. He also alleges violation of Article 25.2 of the Convention as the authorities failed to comply with the writ of habeas corpus.

18. The petitioner has not updated the information regarding the progress and status of the criminal proceedings against the alleged victim, nor of the domestic remedies subsequently sought.

B. The State

19. The Venezuelan State argues that the petition is inadmissible owing to what it describes as: "failure to meet requirements of form" and "false factual basis, inadequate substantiation, and erroneous legal interpretation."

20. With regard to the requirements of form, the State alleges failure to comply with Article 46.1.d of the Convention, as the petitioner did not specify the nationality, profession, domicile, and signature of the person or persons or the legal representative of the entity lodging the petition.

21. With regard to the false factual basis, erroneous legal interpretation, and inadequate substantiation, the State indicates the Mr. Alfonzo was apprehended in the act of committing the crimes of failure to perform activities in security areas; abandonment of command; and public incitement to rebellion,[FN4] which is why he was not shown the warrant for his arrest.

[FN4] The State bases this assertion on the police records of the arrest signed by Chief Inspector William Uribe Narváez of the DISIP's Motorized Command Division. These records indicate that the petitioner was holding in his hand "a microphone that he was using to address a crowd of people, and was instigating those present, urging them to rebel, among other things, indicating to a National Guard contingent that they join the strike against the legitimately established authorities, encouraging them to force the President of the Bolivarian Republic of Venezuela from office by undemocratic means.

22. The State asserts that the alleged victim entered Military Police headquarters the same day, where he was given a forensic medical examination. It indicates that subsequently, within 48 hours, he was placed under house arrest[FN5] and that the Attorney General's Office notified the Supreme Court of Justice of this. With regard to Mr. Alfonzo's inability, alleged by the petitioner, to communicate with his family and attorneys, the State affirms that at 5:15 p.m. on the day of the arrest, the alleged victim was able to communicate with them.[FN6] Nonetheless, the State acknowledges, as the Supreme Court of Justice had also concluded, that "this basic constitutional right of the petitioner was violated."

[FN5] Under Article 200 of the Political Constitution, as he is a high government official.

[FN6] The State's evidence for this is the minutes taken by the agents who arrested Mr. Alfonzo and the minutes taken by Public Defender's Office officials.

23. With regard to the failure to comply with the writ of habeas corpus and the obligation to bring the detainee before the courts, the State claims that, under the Political Constitution, the sole body competent to hear a case of high officials apprehended in flagrante delicto is the Full Chamber of the Supreme Court of Justice, which in fact rendered its judgment in this connection in a decision of January 21, 2003.

24. The State alleges that the petitioner has not exhausted domestic remedies in connection with the violation of the "petitioner's constitutional right to remain in contact with his family, attorney, or person of trust," as there has been no recourse to any domestic legal mechanism to establish the responsibility of the public officials who violated his right.

25. With regard to the right to personal liberty, the State indicates that the petitioner applied for a writ of habeas corpus on December 30, 2002, with the 18th Court of Review of the Caracas Metropolitan Area Criminal Judicial Circuit, and that this was issued on December 31, 2002. The State asserts that the Supreme Court of Justice overturned this decision in a January 21, 2003 decision.[FN7]

[FN7] This statement is based on the fact that the Full Chamber of the Supreme Court of Justice had competence to establish the lawfulness of detention of high government officials.

26. The State indicates that the alleged victim did not suffer inhumane treatment, as may be seen from the minutes taken on the day of the arrest.

27. In its reply of March 28, 2003, the State indicates that the petitioner would have to await the conclusion of criminal proceedings if domestic remedies are to be exhausted.

28. Subsequently, in a note of March 3, 2004, in which the State reports on action taken as part of the criminal proceedings, it indicates that on December 30, 2002, the alleged victim instituted proceedings for human rights violations, proceedings which, as of the date of said note, had not yet concluded. With regard to said investigation, the State alleges that neither Mr. Alfonzo nor his family had appeared to testify and that the remedies sought by Mr. Alfonzo were being fully pursued.

IV. ADMISSIBILITY

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

29. Under Article 44 of the American Convention, the petitioner has the right to present denunciations to the Commission on behalf of the alleged victim indicated in the petition. With regard to the State's contention that the formal requirements have not been met (*supra* 20), the Commission notes that the petitioner provided the information necessary to identify and single out the alleged victim, and the possible lack of some very specific information has not jeopardized the State's ability to defend itself or its legal certainty. Both the Commission and the Court have repeatedly indicated that the procedural system is a means of obtaining justice and that that this cannot be sacrificed in concession to mere formalities.[FN8] Therefore, the Commission has competence *ratione personae* to consider it. The State ratified the American Convention on August 9, 1977.

[FN8] I/A Court H.R., Cayara Case. Preliminary Objections. Judgment of February 3, 1993. Series C No. 14, para. 42. IACHR, Admissibility Report No. 44/01, Case 11.016, Emilio Moisés and Rafael Samuel Gómez Paquiyaury (Peru). March 5, 2001, para. 27.

30. The Commission has competence *ratione loci* to consider the petition as in it are alleged violations of rights enshrined in the American Convention that would have taken place within the territory of a State Party to said treaty. The Commission also has competence *ratione temporis*, as the obligation to respect and guarantee the rights enshrined in the American Convention was in force on the date on which the facts alleged in the petition would have occurred.

31. With regard to competence *ratione materiae*, the Commission notes that the petitioner alleges violations of the right to personal liberty (Article 7); personal integrity (Article 5); judicial guarantees (Article 8); judicial protection (Article 25); and freedom of expression (Article 13), all of the American Convention, in connection with Articles 1.1 and 2 thereof.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

32. Article 46.1 of the American Convention establishes as a requirement for admissibility of a denunciation the prior exhaustion of the domestic remedies of the State in accordance with generally recognized principles of international law.

33. A review the information presented by the parties and the decisions taken in the criminal proceedings in parallel to processing by the Commission indicates that the judicial actions taken in this case were:

34. On December 30, 2002, Mr. Alfonzo lodged a denunciation with the Attorney General's Office the alleged violation of his human rights by the agents who arrested him. On March 3, 2004, the State reported that an investigation was fully under way and that, as a result, domestic remedies had not been exhausted.

35. For their part, on December 30, 2002, the alleged victim's defense attorneys applied for a writ of habeas corpus, which was granted on December 31, 2002, by the 18th Court of Review of the Caracas Metropolitan Area Criminal Judicial Circuit. This court ordered that any measure depriving Mr. Alfonzo of or restricting his liberty be set aside and, therefore, his immediate release from his place of detention. The same day, the Attorney General informed the Full Chamber of the Supreme Court of Justice that said 18th Court had ordered the detainee's release within the constitutional period, as he was a high armed forces officer. On January 1, 2003, Mr. Alfonzo's defense attorneys applied for another writ of habeas corpus, which was declared res judicata by the 34th Criminal Court of Review of the Caracas Metropolitan Area Judicial Circuit. On January 21, 2003, the Supreme Court of Justice sitting in plenary rendered its judgment in this matter, vacating the habeas order and ordering that Mr. Alonzo remain under house arrest under Military Police custody for 30 days, during which time the Attorney General would be able to accuse him of perpetrating sanctionable offenses. This decision also prohibited Mr. Alfonzo from having contact with the media.

36. On February 28, 2003, the Attorney General instituted proceedings with the Full Chamber of the Supreme Court of Justice for the crimes of public incitement to rebellion, failure to carry out activities in security areas, and abandonment of command.[FN9] He also requested Mr. Alfonzo's preventive detention.

[FN9] This last offense is established in the Military Penal Code. The other two are common crimes.

37. In a decision of March 19, 2003, the Full Chamber of the Supreme Court of Justice admitted the case and set the public hearing for March 27, 2003. It did not rule on the preventive detention measure requested by the Attorney General, and indicated that, while it was considering the matter, the measures adopted in the January 21, 2003 decision would remain in effect.

38. On May 15, 2003, the Full Chamber of the Supreme Court of Justice found probable cause. On May 19, 2003, the Attorney General requested application of abbreviated proceedings as this was an *in flagrante delicto* case.

39. On July 1, 2003, the Full Chamber of the Supreme Court of Justice decided that the abbreviated procedure would be used to try the alleged victim as he had been apprehended *in flagrante delicto*, and established certain deadlines as the case pertained to a high armed forces officer.

40. On August 5, 2003, the Full Chamber of the Supreme Court of Justice declared itself incompetent to continue to consider the matter, and referred it to the regular criminal courts based on the fact that the case no longer pertained to a high official with special privileges owing to the disciplinary sanction of expulsion imposed on Mr. Alfonzo by the President of the Republic on June 19, 2003. In that decision, said Court sitting in plenary ordered that Mr. Alonzo remain in custody without rendering a decision on the Attorney General's application for preventive detention.

41. On August 15, 2003, the 17th Court of Review of the Caracas Metropolitan Area Criminal Judicial Circuit notified the Attorney General's Office that it had to file charges by September 2, 2003, the date of the hearing. The prosecutors assigned filed charges on August 26, 2003.

42. On September 1, 2003, the accused's defense attorneys applied to the 17th Court of Review of the Caracas Metropolitan Area Criminal Judicial Circuit for all measures taken to be set aside, arguing the ongoing violation of fundamental rights throughout the process, i.e., the right to be informed of the charges, failure to respect the *non bis in idem* principle, failure to comply with the writ of habeas corpus, and the right to self-defense owing to the late filing of charges by the Attorney General's Office. Said court decided to render its decision at the opening of oral arguments.

43. The accused did not attend the hearing and, therefore, on September 9, 2003, the 17th Court of Review of the Caracas Metropolitan Area Criminal Judicial Circuit decided to transfer him from his home to the National Prison for Accused Armed Forces Members. The accused's defense attorneys lodged an appeal against this decision on September 11, 2003, based on the fact that, at the time of the transfer, he was not an armed forces member. This application was considered by the 10th Court of Appeals of the Caracas Metropolitan Area Criminal Judicial Circuit. The Attorney General's Office objected to the magistrates of this court, as it was impossible to submit evidence. This application was admitted by the 7th Court of Appeals of the Caracas Metropolitan Area Judicial Circuit, and a hearing was set to consider the appeal against the decision to transfer.

44. On October 27, 2003, the defense attorneys decided to withdraw the appeal regarding the transfer of the accused, arguing that their client had a well-founded fear that a decision would be taken in contravention of the *no reformatio in peius* principle.

45. The alleged victim's defense attorneys filed two objections with 17th Court of Review of the Caracas Metropolitan Area Criminal Judicial Circuit, both of which were declared

inadmissible. On November 26, 2003, they filed a petition for amparo (petition for constitutional relief) against the decision not to admit the objections. On January 12, 2004, said petition was declared inadmissible by the 3rd Court of Appeals of the Caracas Metropolitan Area Criminal Judicial Circuit, which considered that the objections were time-barred.

46. On November 26, 2003, the defense filed an amparo petition against the court's decision to defer its decision regarding the application to set aside (*supra* 41) to the opening of oral arguments. On January 21, 2004, the 9th Court of Appeals of the Caracas Metropolitan Area Criminal Judicial Circuit declared itself incompetent to consider the amparo petition as it was a judicial decision taken by an authority of equal rank, and referred it to the competence of the Constitutional Court of the Supreme Court of Justice.

47. The 17th Court of Review of the Caracas Metropolitan Area Criminal Judicial Circuit set a hearing for January 27, 2004. The accused, who was now being held in the National Prison for Accused Armed Forces Members, refused to appear. Accordingly, the hearing was postponed until March 1, 2004. On January 29, 2004, the alleged victim's defense attorneys requested the plenary of the Supreme Court of Justice to take over the case. Said Court decided to refer the case to the competence of the 28th Judge of Review of the Caracas Metropolitan Area Criminal Judicial Circuit.

48. On August 9, 2004, the alleged victim was found guilty of the offense of violating security areas, and sentenced to five year's imprisonment. He was acquitted of the other offenses. In the same decision, he was given probation in view of the state of his health. Both the Attorney General's Office and the defense appealed the judgment.

49. The matter was assigned to the 2nd Chamber of the Appeals Court of the Criminal Judicial Circuit of the Caracas Metropolitan Area Judicial District. This chamber acquitted the alleged victim. The Attorney General's Office appealed to have the verdict overturned, which was so decided on May 20, 2005 by the Legal Interpretation Chamber [Sala de Casación] of the Supreme Court, which overturned the Appeals Court judgment and referred the matter to the competence of the 4th Chamber of the Court of Appeals of the Criminal Judicial Circuit of the Caracas Metropolitan Area Judicial District which, on July 11, 2005, issued a judgment upholding the sentence of the court of first instance. A fresh appeal was lodged against this judgment. A decision thereon is now pending in the Legal Interpretation Chamber.

50. With regard to the right of personal liberty, there is no disagreement among the parties regarding the exhaustion of the habeas corpus remedy, for which a petition was filed on December 30, 2002, and a decision issued on December 31, 2002. Even in view of the failure to comply with the order to release Mr. Alonzo, justified by the State itself as incompetence on the part of the court, relief was again sought the next day before another judicial authority. The Commission notes that the disagreement on this point relates to the authority the court had to decide this matter and, therefore, whether the State erred in failing to comply with the habeas corpus writ, which is question for the merits. For purposes of admissibility, clearly, remedies in this area have been exhausted.

51. With regard to the State's contention that a final determination has not been made in the criminal proceedings, the Commission reiterates that in determining the reasonableness of the deadlines, each specific case must be considered with regard to its particular circumstances.

52. The abbreviated procedure was used in the alleged victim's case as, according to the judicial authorities, he had been apprehended in flagrante delicto. The criminal proceedings have lasted a total of three years and one month and, since July 2005, there has been no judicial action as, since that date, the case has been in the Legal Interpretation Chamber of the Supreme Court of Justice, without having been resolved. It should be noted that the Constitutional Court of the Supreme Court of Justice considered that the Legal Interpretation Chamber had competence to decide whether to set aside and to render a judgment regarding the amparo petition subsequently filed by the defense in September 2003, which indicates that decisions on these remedies have been pending since that date. In view of these circumstances and that, in addition, the crime allegedly committed by Mr. Alfonzo is not so complex as to justify the delay in this case, the Commission considers applicable the exception of unwarranted delay in rendering a final judgment enshrined in Article 46.2.c of the Convention.

53. The IACHR reiterates that invocation of the exceptions to the rule of exhaustion of domestic remedies established in Article 46.2 of the Convention is closely linked to determination of possible violations of certain rights enshrined therein, such as the guarantees of access to justice. However, Article 46.2 of the American Convention, by its nature and topic, is an autonomous provision vis-à-vis the substantive provisions of the Convention. Therefore, it must be determined whether the exceptions to the exhaustion of domestic remedies rule established in said Convention apply to the case in question prior to and independently of the consideration of the merits, as such determination is subject to an evaluation standard other than that used to establish violation of Articles 8 and 25 of the Convention. It should be noted that the pertinent aspects of the causes^[FN10] and effects that have prevented exhaustion of domestic remedies in this case will be examined, where relevant, in the report on the merits adopted by the Commission in order to determine whether they in fact constitute violations of the American Convention. For the foregoing reasons, the Commission considers that there are sufficient grounds to exempt the petitioner from the requirement of prior exhaustion of domestic remedies, pursuant to Article 46.2 of the American Convention.

[FN10] In particular, those pertaining to the use of remedies of Venezuelan criminal procedural legislation by the alleged victim's defense attorneys.

2. Deadline for lodging the petition

54. Article 46.1.b of the Convention indicates that admission of petitions is subject to the requirement of presentation within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. In view of the above considerations, the Commission considers that, with regard to the habeas corpus writ, this requirement has been met and, with regard to the criminal proceedings, the six month period

does not apply, as it has been determined that an exception will be made to Article 46.2.c of the Convention.

3. Duplication of proceedings in another international proceeding for settlement and res judicata

55. Article 46.1.c provides that admission of petitions is subject to the requirement that the subject of the petition “is not pending in another international proceeding for settlement,” and Article 47.d of the Convention stipulates that the Commission will not admit a petition or communication that is substantially the same as one previously studied by the Commission or by another international organization. Based on the available information, there is no evidence in this case of the existence of either of these two circumstances that would determine inadmissibility.

4. Characterization of the alleged facts

56. Article 47.b of the Convention provides that the Commission shall find inadmissible a petition or communication lodged that “does not state facts that tend to establish a violation of the rights guaranteed by this Convention.”

57. The evaluation standard for these points of law differs from that required to decide the merits of a denunciation. The Commission must make a prima facie evaluation to consider whether the petition establishes an apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation. Such an evaluation is summary and does not imply prejudgment or constitute an early decision on the merits.

58. The Commission considers that the facts alleged by the petitioner regarding the occasion of his arrest and the subsequent action by the authorities may constitute violations of Articles 7.2, 7.3, and 7.4 of the Convention.

59. With regard to the alleged facts regarding failure to comply with the habeas corpus order and the time taken by the Supreme Court of Justice to render its judgment regarding the lawfulness of the arrest, the Commission considers that these may constitute violations of Articles 7.5, 7.6, and 25 of the Convention.

60. In addition, if it is established that the exceptional preventive detention measure authorized by the domestic courts was unjustified on grounds of necessity and proportionality, this may constitute a violation of Article 7.3 of the Convention, owing to the length of time it has remained in effect.

61. If the facts alleged by the petitioner are established regarding the verbal threats made by the authorities who had custody of the alleged victim, they may constitute violations of his mental and moral integrity, as may the impotence that ensued from the eventual refusal on the part of the authorities to comply with the order for his release.

62. With regard to the facts regarding lack of communication with Mr. Alonzo's family and attorneys, the Commission notes that these may constitute violation of Article 8.2.d of the Convention. The Commission also notes that different judicial authorities were requested to hear the alleged victim's case, requests that were subsequently denied repeatedly during the criminal proceedings, and that although they had referred the matter to the competence of other judicial authorities, some judicial authorities continued to take decisions regarding the liberty of the detainee. Such situations may constitute violations of Article 8.1 regarding the guarantee of being tried by a court previously established by law (*juez natural*) and the guarantee of independence and impartiality.

63. With regard to prevention from contact with the media throughout the process, the Commission considers that this may constitute an unjustified restriction of the alleged victim's freedom of expression, in violation of Article 13 of the Convention.

V. CONCLUSIONS

64. The Inter-American Commission concludes that it has competence to hear this case and that the petition is admissible under Articles 46 and 47 of the American Convention. Therefore, and without prejudice to the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find this case admissible with regard to the alleged violations of the rights enshrined in Articles 7, 5, 8, 25, and 13, in relation to Article 1.1 of the American Convention.
2. To notify the parties.
3. To continue its consideration of the merits, and
4. To publish this decision and to include it in the Annual Report of the IACHR to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 15th. day of the month of March, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Paolo Carozza and Víctor E. Abramovich, Commissioners.