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File Number(s):	Report No. 37/06; Petition 562-03
Session:	Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause:	Sebastian Echaniz Alcorta and Juan Victor Galarza Mendiola 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, a Venezuelan national, did not participate in the deliberations and voting on the present report, in conformity with Article 17.2.a of the Commission’s Rules of Procedure.
Dated:	15 March 2006
Citation:	Echaniz Alcorta v. Venezuela, Petition 562-03, Inter-Am. C.H.R., Report No. 37/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by:	APPLICANTS: Josefa Agudo Manzisor, Marino Alvarado and Jose Ramon Ortuondo
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## I. SUMMARY

1. On November 26, 2002, the Inter-American Commission on Human Rights (hereinafter referred to as “the Commission” or “IACHR”) received a complaint filed by Josefa Agudo Manzisor, Marino Alvarado, and José Ramón Ortuondo (hereinafter referred to as “the petitioners”) against the State of Venezuela (hereinafter referred to as “the State” or “the State of Venezuela”) for the alleged illegal deportation of their client, Mr. Juan Víctor Galarza Mendiola (hereinafter referred to as “the alleged victim” or “Mr. Galarza”) of Basque origin and a Spanish national, deported from the Bolivarian Republic of Venezuela to Spain on June 2, 2002. On June 9, 2003, the Commission received a petition filed by the same petitioners against the State of Venezuela for the alleged illegal deportation of their client Mr. Sebastián Echaniz Alcorta (hereinafter referred to as “the alleged victim” or “Mr. Echaniz”) of Basque origin and a Spanish national, deported from Venezuela to Spain on December 16, 2002, holding the State of Venezuela liable for said deportation. On March 17, 2004, the Commission informed the parties of its decision to join and process the two complaints together in conformity with the provisions of Article 40.2 of its Rules of Procedures and to proceed with the processing of both complaints under case file No. P562/03.

2. The petitioners claim that the deportations of Messrs. Galarza Mendiola and Echaniz Alcorta took place without due process of law and therefore constitute violations of various provisions of the American Convention on Human Rights (hereinafter referred to as “the

American Convention”): right to personal integrity (Article 5), right to personal freedom (Article 7); right to due process (Article 8); protection of honor and decency (Article 11); freedom of movement and residence (Article 22.6 and 22.8), equality before the law (Article 24); and judicial protection (Article 25), in keeping with the general obligation of respect and guarantee provided for in Article 1.1 of the above-mentioned agreement. The complaint was later expanded by the petitioners to include allegations of violations of the right to protect a family as enshrined in Article 17 of the American Convention.

3. As for the State, by means of two communications it reported on the domestic steps that had been taken leading to the order for the immediate departure from Venezuelan territory of Messrs. Galarza y Echaniz, alleging that they were in Venezuela illegally and that their presence could disrupt domestic law and order and jeopardize Venezuela’s international relations. The State does not dispute compliance with the requirements of admissibility.

4. After reviewing the positions of the parties, the Commission concluded that it was competent to rule on the complaint presented by the alleged victims and that the petition was admissible by virtue of Articles 46 and 47 of the American Convention. As a consequence, the Commission decided to notify the parties and publish the present Report of Admissibility and include it in its Annual Report.

## II. PROCEEDINGS BEFORE THE COMMISSION

5. On November 26, 2002, the Commission received a petition against the State of Venezuela in behalf of Juan Víctor Galarza Mendiola, of Basque origin and a Spanish national. This petition was registered under number P-4601/02. On June 9, 2003, the Commission received a second petition against the State of Venezuela in behalf of Sebastián Echaniz, of Basque origin and a Spanish national. This petition was registered under number P562/02.

6. On March 17, 2004, the IACHR transmitted the relevant parts of this petition to the State, in conformity with Article 30.2 of IACHR’s Rules of Procedure, with a two-month time-limit to submit its observations. On the same date, the Commission informed the parties of its decision to join and process both petitions together in conformity with the provisions set forth in Article 40.2 of its Rules of Procedure and to proceed with the processing of both petitions under procedural series No. P562/03.

7. On May 20, 2004, the IACHR received from the State a report-response to the petition. The State’s observations were transmitted to the petitioners on May 21, 2004. The petitioners submitted their observations on the State’s response on June 8, 2004, and these observations were transmitted to the State on July 2, 2004, with a one-month time-limit to make any observations it considered pertinent.

8. On June 16, 2005, the IACHR received additional information from the petitioners, which was transmitted to the State on July 20, 2005 with a one-month time-limit to present its observations.

9. On August 25, 2005, the Commission received additional observations from the State and transmitted them to the petitioner on September 8, 2005. On September 28, the Commission received a response from the petitioners regarding the observations made by the State, and these observations were transmitted to the State on September 30, 2005 so that it could present its observations. On November 2, the State requested an extension from the IACHR, which was granted for 30 days. On November 4, 2005, the IACHR received additional information from the petitioners and sent it to the State on November 16, 2005. At the date of the present report, the IACHR has not received any further observations from the State.

### III. POSITIONS OF THE PARTIES

#### 1. Position of the petitioners

10. The petitioners report that, on May 31, 2002, Mr. Juan Víctor Galarza Mendiola, a Spanish national residing in Venezuela,[FN2] was arrested arbitrarily and illegally in the parking lot of his home located in Valencia, state of Carabobo, Venezuela, when he was with his wife and two-year-old daughter, both Venezuelan nationals. The arrest was made by six officers wearing jackets that identified them as officers of the Intelligence and Prevention Service Department (Dirección de los Servicios de Inteligencia y Prevención—DISIP), who encircled them and pointed their guns at them. They reported that, without showing him any arrest warrant or explaining the causes of the arrest, the officers took Mr. Galarza, informing his wife that he would be taken to DISIP headquarters in the locality of Naguanagua in the same state. They claimed that Galarza had been living 12 years in Venezuela, was married with a Venezuelan citizen, had recently renewed his visa and was totally legal in line with the immigration regulations governing Venezuela.

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[FN2] In the case file submitted to the Commission there is a copy of the passport of the alleged victim, with the stamp of renewal for resident immigration status expiring on September 13, 2006.  
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11. They report that, in view of this situation, Mrs. Galarza filed a complaint with the Office of the People's Human Rights Ombudsman of Carabobo. They report that afterwards Ms. Galarza and her attorney went to DISIP headquarters in Naguanagua where they were informed that Mr. Galarza was not there but at DISIP headquarters in Caracas. They point out that when they went to the above-mentioned headquarters, they were refused the right to see the arrested person until the following day, indicating that he was enjoying good health and that he was in that establishment by order of the Bureau of Alien Affairs to examine his papers.

12. They report that, on June 1, 2002, Galarza was briefly visited by his attorney and wife. This visit took place in the presence of DISIP officers despite the express request addressed to the competent authorities that he be granted a confidential conversation with his attorney.

13. The petitioners indicate that Galarza complained that during his confinement at DISIP headquarters he was visited by a Spanish Embassy official who threatened him, spoke to him in

Euskera and told him that if he did not find the six ETA members being sought by the Spanish authorities, they would take him (sic).

14. They claim that during the period of his confinement in Venezuela, he was interrogated with the participation of Spanish police officers. They claim that for the 72 hours Mr. Galarza was held at DISIP, he was the victim of physical and psychological abuse: he was kept in a cell with the light turned on, depriving him of rest and sleep, he was not given any food and he was repeatedly insulted.

15. The petitioners affirm that, on the same day of Mr. Galarza's arrest, the People's Human Rights Ombudsman took cognizance of the situation and that, on June 1, 2002, through his attorneys, he filed a motion for the issuance of a writ of habeas corpus with the Sixth Control Trial Court functioning at that time in the Criminal Judicial Circuit of the Metropolitan Area of Caracas, and the motion was ruled to be in order and notified on the same day, June 1, leading to a preliminary investigation by Judge Yadira Alfonso Hernández.

16. They claim that, despite the motion filed for a writ of habeas corpus, on June 2, 2002, Mr. Galarza was transferred to the Bureau of Identification and Alien Affairs of the Immigration and Aliens Department (Dirección de Identificación y Extranjería, Departamento de Inmigración y Extranjería—DIEX), transferred and escorted by Spanish and DISIP police officers to the airport of Maiquetía and, against his will, deported at night on that same day to Spain via the Spanish airline Iberia. They argue that by this procedure, the State violated Mr. Galarza's right to being guaranteed due process of law and the right to defend himself by deporting him before the motion for issuance of a writ of habeas corpus filed in his behalf had been ruled upon. According to the information that was presented, the protection measure (habeas corpus) was ruled inadmissible on June 7, 2002 by the Sixth Control Trial Court operating at that time in the Judicial Criminal Circuit of Caracas and that ruling was upheld on June 9 of that same year by the Appeals Court of the Judicial Criminal Circuit Court of the Judiciary District of the Metropolitan Area of Caracas, by virtue of the fact that there were no grounds on which to make a decision.

17. As for the State's assertion that Mr. Galarza had been deported on May 31, that is, before the filing of a motion for the issuance of a writ habeas corpus in his behalf, the petitioners claim that, although the DIEX paper ordering the deportation is dated May 31, 2002, Mr. Galarza was in fact deported arbitrarily on Sunday, June 2, 2002.

18. The petitioners question the State's claim that Mr. Galarza was illegally staying in Venezuela, pointing out that the evidence filed in the Commission (copy of the identity card, residence permit, and Spanish passport) shows that he was legally staying in Venezuela. As a result, they alleged that Article 34 of the Aliens Act was not applicable.[FN3] Finally, the petitioners argue that, regardless of the legal status of the alleged victim, the State of Venezuela violated the international principle of non-refoulement. They indicated that Mr. Galarza was a person politically persecuted in his country of origin by virtue of his activities for the benefit of the Basque people and that his life and personal integrity would be in danger if he was deported to Spain and that Venezuela could have taken international steps to relocate him in a country other than Spain where his life and personal integrity would not have been in jeopardy. In

addition, they reported and pointed out that the State has not presented any document specifying that the Spanish Government had made a formal request for extradition or any request for preventive detention to extradite Mr. Galarza.

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[FN3] Article 34 of the Aliens Act of July 17, 1937 provides for the following:

Article 34. The authorities of the Republic shall adopt the necessary measures to prevent the entry of any inadmissible alien into the national territory, in accordance with Article 32, or shall order immediate departure if said alien has entered the country, issuing for this purpose the measures that might be necessary.

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19. The petitioners argue that, of the documents presented by the State, it is evident that the order for Mr. Galarza's immediate departure from the country issued by the Bureau of Identification and Alien Affairs was infringing the Aliens Act itself. According to this law, the procedure for deporting an alien should be ordered by the President of the Republic, ratified by the Ministry of Foreign Affairs and published in the Official Register.[FN4] The petitioners observe that this documentation was never provided by the State.

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[FN4] Article 40 of the Aliens Act provides for the following:

Article 40. Deportation shall take place on the basis of a Decree issued by the President of the Republic, ratified by the Minister of Domestic Affairs and shall be published in the Official Register of the United States of Venezuela.

Single paragraph. In this Decree a time-limit of three to thirty days shall be set for the deportee to leave the Country.

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20. Furthermore, they report that Galarza's family was not duly notified of his deportation. They point out that the family was informed that Mr. Galarza had been deported to Spain from Spanish news. The petitioners claim that the illegitimate deportation of Mr. Galarza led to considerable material and moral damages as he had a thriving business in Venezuela and a stable family life. They claim that this situation affected the family, which was forcibly broken up, economically disrupted and his young daughter deprived of the presence of her father for no legal cause. They claim that Galarza's deportation implied that he would spend several years in jail in difficult conditions.[FN5]

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[FN5] The historical background to the cases is as follows: the petitioners reported that Galarza was arrested in Spain in July 1985; the National Assembly conducted two trials against him, one for assassination, for which he was acquitted and released on probation, and the other for the crime of collaborating with the ETA Bizkaia Commando, for which he was convicted definitively by the Supreme Court of Spain and sentenced to six years of imprisonment and payment of a fine. Press clippings at the time point out that, on the date of the sentencing, the Galarza's whereabouts were unknown, and therefore the National Audience issues a warrant for his arrest and imprisonment in 1992 so that he would serve his prison sentence. It is pointed out

that upon arrival in Spain from Venezuela, Galarza was imprisoned in a penitentiary to serve his six-year sentence. The petitioners claim that he was allegedly tortured during this detention.

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21. They indicate that, after the events described above, the People's Human Rights Ombudsman filed a request for an investigation on how Galarza was deported. They point out that the Ordinary Offenses Department of the Attorney General's Office started investigations to determine irregularities on the part of the DIEX or the DISIP in the deportation of Mr. Galarza. On the date of the filing of the complaint with IACHR, the petitioners indicate that the investigation was at a standstill.

22. Regarding Sebastián Echaniz Alcorta, the petitioners reported that, on December 16, 2002, he was arbitrarily and illegally arrested at his work place located in the town of Choroni, state of Falcón, Venezuela.[FN6] They point out that the arrest was carried out by four civilian officials who were identified by various persons as members of the DISIP. They claim that, without any arrest warrant or any explanation of the causes for the arrest, they encircled and pointed their guns at Mr. Echaniz and took him in a car heading for parts unknown.

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[FN6] In the case file in the Commission there is a copy of the passport of the alleged victim, with the stamp of renewal of resident immigrant status, with January 25, 2007 as the date of expiry. In addition, in the Commission's case file there is a letter from the People's Human Rights Ombudsman addressed to the Ministry of Justice dated January 15, 2003, reasserting that the papers of citizen Echaniz Alcorta were valid in Venezuela at the time of his arrest.

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23. It was pointed out that, in view of this situation, his colleagues at work, wife and attorney filed a complaint with the People's Human Rights Ombudsman and contacted the DISIP to determine Sebastián Echaniz's whereabouts. They indicated that the latter denied having arrested him. The petitioners reported that they contacted the Minister of the Secretariat of the Office of the President, the Ministry of the Interior and Justice, and the Office of the Attorney General of the Republic regarding the destination of Mr. Echaniz, but were unsuccessful in their attempts.

24. Because of the absence of information on the whereabouts of Echaniz, on the same day, December 16, 2002, a motion for the issuance of a writ of habeas corpus was filed with Control Court 40 of the Criminal Circuit of the Metropolitan Area of Caracas. By means of the above-mentioned remedy, the Court was requested to act urgently because it was presumed that Mr. Sebastián Echaniz would be deported illegally and arbitrarily to Spain. The petitioners reported that, despite the urgency, the Court did not act and Sebastián Echaniz was deported to Spain on December 17. They claim that this rapid action violated due process of law, effective judicial protection and the principle of non-refoulement. Likewise, they report that the family of Sebastián Echaniz was not duly notified of his whereabouts or subsequent deportation from Venezuela. The relatives of Echaniz were apprised of his whereabouts and the procedures used through the Spanish news. The petitioners indicate that, in the case of Echaniz, the modus operandi used six months earlier with Mr. Galarza was being repeated in the case of Echaniz.

25. They report that the authorities kept the relatives and legal representatives of Mr. Echaniz uninformed, despite their many actions to obtain information. They report that Mr. Sebastián Echaniz was not given the opportunity to contact a lawyer nor was any explanation given about his arrest. The petitioners inform that they filed a request for investigation with the Office of the Attorney General of the Republic on how he was deported. They point out that this request did not receive any response.

26. Finally, the petitioners claim that the right to equality before the law of the alleged victims, Galarza and Echaniz, were infringed because they were denied the minimum guarantees of due process of law because they were aliens.

27. By virtue of the arguments in the proceedings, the petitioners claim violation of the right to personal integrity (Article 5), the right to personal freedom (Article 7), due process of law (Article 8), protection of one's honor and dignity (Article 11), freedom of movement and residence (Article 22.6 and 22.8), right to protect a family (Article 17), equality before the law (Article 24) and judicial protection (Article 25), in keeping with the general obligation set forth in Article 1.1 of the American Convention.[FN7]

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[FN7] Article 44 of the Constitution of the Bolivarian Republic of Venezuela provides for the following:

1. No person may be arrested or imprisoned without a judicial warrant, unless that person is caught in fraganti.
  2. Every arrested person has the right to contact his/her relatives, lawyer or person of trust, and the latter, in turn, are entitled to be informed of the place where the arrested person is being held; to be notified immediately about the causes for the arrest; and to report in writing in the case file the physical and psychological state of the arrested person, either personally or with the help of specialists.
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28. As for the exhaustion of domestic remedies, the petitioners indicated that, with the filing of a motion for issuance of a writ of habeas corpus, the only remedy available in Venezuela's domestic jurisdiction in cases of personal freedom, and the ruling that these remedies were inadmissible by virtue of the fact that they were ruled on after Messrs. Galarza and Echaniz had been deported, Venezuela's domestic remedies were exhausted in accordance with the requirements set forth in number 46.1.a, b, c, and d of the American Convention.

## 2. Position of the State

29. On May 20, 2004 and August 25, 2005, the IACHR received observations from the State. Regarding Juan Víctor Galarza Mendiola, the State reported that the People's Human Rights Ombudsman filed an appeal for constitutional protection with the Sixth Control Trial Court of the Judicial Criminal Circuit of the Metropolitan Area of Caracas. It was indicated that this judiciary body proceeded to open the corresponding preliminary investigation as stipulated by Article 41 of the Constitutional Law on the Protection of Constitutional Rights and Guarantees,[FN8] notifying the Attorney General of the Metropolitan Area of Caracas of this

action on June 3, 2002. In its response of August 25, 2005, the State also indicated that on June 4, 2002 the Ministry of Justice received a communication from the Director of the Bureau of Identification and Alien Affairs informing that the residency status of Mr. Galarza Mendiola had expired in 1996[FN9] and therefore the above-mentioned Director proceeded, on May 31, 2002, by virtue of his attributions and in conformity with the Constitutional Regulations of the Ministry of Interior and Justice, to order the immediate departure of Mr. Galarza from the country, as provided for in the second part of Article 34 of the Aliens Act.[FN10] From the annexes that were submitted, it was understood that, by means of letter 512 of the Bureau of Identification and Alien Affairs, Mr. Galarza's immediate departure from the country was ordered because it was considered that "he was in the country illegally and that his stay might disrupt domestic law and order and jeopardize the international relationships of the Republic and because this citizen had been definitively convicted, in the Kingdom of Spain, for violations defined and punishable by Venezuelan law." [FN11]

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[FN8] Article 41 of the Constitutional Law for the Protection of Constitutional Rights and Guarantees provides for the following:

Article 41. The request can be made by the injured party or by a person taking steps in his/her behalf, in writing, verbally or by telegraph, without the need for the assistance of a lawyer, and the judge when receiving it shall open up an inquest, immediately order the officer under whose custody the injured party is held to report, within twenty-four (24) hours, the causes for the imprisonment or restriction on the party's freedom.

The petitions referring to personal security shall be processed, whenever applicable, in accordance with the provisions of the present article. Official Register No. 34,060 of September 27, 1988.

[FN9] By means of Letter No. 481-02 of June 1, 2002, the Sixth Control Trial Court of the Judicial Criminal Circuit of the Metropolitan Area of Caracas requested the Director of the Bureau of Identification and Alien Affairs to report to the Trial Court within six hours at the most Mr. Galarza's legal status. In response to this request, on June 4, 2002, the Bureau of Identification and Alien Affairs (MIJ-DIEX No. 01869) reported that "at the time of receiving the request from the Intelligence and Prevention Services Department (DISIP), according to letter No. 930-02 dated May 31, 2002, it did not have the respective passport; nevertheless, the information was checked in its database."

[FN10] Articles 34, and 52 of the Aliens Act of July 17, 1937 provides for the following:

Article 34. The authorities of the Republic shall adopt the necessary measures to prevent the entry of any inadmissible alien into the national territory, in accordance with Article 32, or shall order immediate departure if said alien has entered the country, issuing for this purpose the measures that might be necessary.

Article 52. The refusal to admit and the deportation of aliens as provided for in the present law shall be deemed to be administrative actions or mere policy measures and do not prevent the deportation stipulated by the Criminal Code and that can only be ordered by virtue of a sentence issued by the competent courts, in accordance with proceedings of Venezuelan legislation.

[FN11] See Letter No. 512 of May 31, 2002 from the Bureau of Identification and Alien Affairs of the Ministry of the Interior and Justice that can be found in the case file of the proceedings with the IACHR.

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30. In addition, it was reported that, on June 4 of that same year, the Senior Attorney of the Ministry of Justice of this Judicial District was assigned to take cognizance of the appeal for protection on constitutional grounds and ruled that the appeal was inadmissible on June 7, 2002 in conformity with Article 6(3) of the Constitutional Law for the Protection of Constitutional Rights and Guarantees.[FN12] The State points out that the investigations regarding the arrest and deportation of Mr. Galarza are in a preparatory phase in the Ministry of Justice, where a series of steps are being taken such as “the request to the Graphology Department of the Scientific, Penal, and Criminal Investigation Corps regarding Expertise in Authenticity or Forgery of various documents of interest such as the passport, visa and identity card. Likewise, a letter was addressed to the Consul General of Spain in Venezuela requesting information about the issuance of the passport, [...]”. Finally, the State indicates that, on July 20, 2005, the Ministry of Justice summoned six officers of the Counter-Intelligence Division of the Intelligence and Prevention Service Department (DISIP) so that they would make declarations on Galarza’s arrest.

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[FN12] Article 6, subparagraph 3 of the Constitutional Law on the Protection of Rights and Constitutional Guarantees provides for the following:

Article 6. The appeal on constitutional grounds shall be admissible:

3) When the violation of the constitutional right or guarantee constitutes an evident irremediable situation, with the impossibility of restituting the juridical situation that was infringed.

By irremediable one means actions, that by the appeal on constitutional grounds, cannot bring back matters to the state they were in prior to the violation. Official Register No. 34.060 of September 27, 1988

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31. As for Mr. Sebastián Echaniz, the State presented information observing that, on December 16, 2002, the Bureau of Identification and Alien Affairs ordered the immediate departure of Mr. Echaniz from the country because it was deemed that the citizen “was in the country illegally and that his stay might disrupt domestic law and order and jeopardize the Republic’s international relations and because Trial Court No. 4 of the National Spanish Court System had convicted him of the major crime of assassination, as a result of his involvement in preliminary proceedings No. 7-83, for which he could incur a sentence of 7 to 10 years imprisonment.”[FN13]

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[FN13] See Letter No. 002 of December 16, 2002 of the Bureau of Identification and Alien Affairs of the Ministry of the Interior and Justice which can be found in the case file of the proceedings with the IACHR.

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32. Furthermore, the State reported that on that same December 16th, the attorney José Ramón Ortuondo filed with the Fortieth Control Trial Court of the Judicial Criminal Circuit of the Metropolitan Area of Caracas an appeal on constitutional grounds in his behalf, which was notified on that same day to the Attorney General of that Judicial District. It was indicated that,

on December 17 of that same year, it was sent to the Twenty-Fourth Attorney General of the Ministry of Justice so that he could be apprised of the appeal on constitutional grounds. On December 26, 2002, the appeal was declared inadmissible in conformity with Article 6.3 of the Constitutional Law on the Protection of Constitutional Rights and Guarantees.

33. Finally, in its response of August 25, 2005, the State indicated that on February 12, 2003, the Fifth Chamber of the Appellate Court rendered null and void the ruling declaring the inadmissibility of the appeal on constitutional grounds and sent the case file once again to the original jurisdictional body and ordering the gathering of information in compliance with the mandate set forth in Article 42 of the Constitutional Law on the Protection of Constitutional Rights and Guarantees. On August 6, 2004, the judiciary file was ruled upon, claiming that there were no grounds on which to take a decision because Echaniz Alcorta was granted safe-conduct and subsequently sent to Spain.

34. During the processing of the petition with the IACHR in regard to Messrs. Galarza and Echaniz, the State did not dispute compliance with the requirements for admissibility

#### IV. REVIEW OF JURISDICTION AND ADMISSIBILITY

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

35. The petitioners possess *locus standi* to submit petitions in conformity with Article 44 of the Convention. In the petition, the alleged victims are identified as individuals whose rights the Bolivarian Republic of Venezuela has pledged to respect and guarantee in the framework of the Convention. Regarding the State, Venezuela is a State party to the American Convention since August 9, 1977. The petitioner reports acts or omissions directly imputable to the State. The Commission therefore considers that it has jurisdiction *ratione personae*.

36. The Commission has jurisdiction *ratione materiae*, because the petition claims that the State has violated the human rights, protected by the American Convention, of the alleged victim.

37. The Commission has jurisdiction *ratione temporis*, because the events alleged in the petition took place when the obligation to respect and guarantee the rights envisaged in the Convention were in force for the State.

38. The Commission has jurisdiction *ratione loci* to be apprised of the petition because it alleges violations of the rights guaranteed by the American Convention which took place in the territory of a State party to this treaty.

1. Exhaustion of domestic remedies

39. Article 46.1 of the American Convention establishes, as a requirement for admissibility of a complaint, prior exhaustion of the remedies available under the domestic law.

40. The petitioners claim that the alleged victims were denied effective access to justice under domestic law because they were deported expeditiously without any opportunity to appear before a court or competent judiciary body that would rule on the legality of their arrest and subsequent deportation. Furthermore, they argue that they have exhausted domestic remedies with the filing of a motion for issuance of a writ for habeas corpus, the only remedy available and effective under Venezuelan domestic law in cases of personal freedom and that the motion was ruled to be inadmissible because the remedies were ruled upon after Messrs. Galarza and Echaniz had been deported.

41. As for the State, it did not raise the objection or propose in the first stage of the processing of the petitions that domestic remedies had not been exhausted. The State can expressly or tacitly waive its right to bring forth the matter of exhaustion of domestic resources. In this case, by not presenting, within the relevant time-limit, its objections regarding the exhaustion of domestic remedies, it has tacitly waived use of the objection that these remedies were not exhausted.

42. As a consequence, the Commission considers that the complaint complies with the requirements of admissibility set forth in Article 46 of the American Convention on Human Rights, since the State has tacitly waived its right to object that domestic remedies have not been exhausted.

## 2. Deadline for the presentation of petitions

43. In the petition being considered, the IACHR has concluded that the State of Venezuela tacitly waived its right to raise the objection that domestic remedies had not been exhausted; therefore Article 46.1.b of the American Convention is not applicable. Nevertheless, the provisions of the Convention requiring prior exhaustion of domestic remedies and the presentation of the petition within six months as of the date of the definitive ruling issued under domestic law are separate. Therefore, the Inter-American Commission should determine whether the petition being dealt with was submitted within a reasonable period of time. Regarding this, the IACHR observes that the petition regarding Mr. Juan Víctor Galarza Mendiola was submitted on November 26, 2002 for events that occurred in June 2002, with a ruling on the motion for issuance of a writ of habeas corpus on June 4, 2002. Regarding Mr. Sebastián Echaniz Alcorta, the Commission received the petition on June 9, 2003 for events that occurred on December 16, 2002 with the ruling on the motion for issuance of a writ of habeas corpus on December 26, 2002. By virtue of the above, the IACHR considers that the petitions were submitted within a reasonable period of time.

## 3. Duplication of proceedings and res judicata

44. From the statements made by the petitioners, there is no indication that the petition is pending in another international proceeding or forum or that it is substantially equal to another previously studied by the Commission or another international body. Therefore the Commission considers that, in the case of the proceedings, the requirements of admissibility have been complied with as stipulated in Articles 46.1.c and 47.d of the Convention.

#### 4. Characterization of the alleged events

45. In the present case, it does not pertain to the Commission at this present stage of the proceedings to determine whether the alleged violations of the articles of the American Convention of the alleged victim did take place or not. For the purpose of admissibility, the IACHR must decide whether the facts presented would, if proven, constitute possible violations of the Convention, as stipulated by Article 47.b of the American Convention and whether the petition is “manifestly unfounded” or “completely without merit” according to subparagraph (c) of the same article.

46. The criterion for evaluating these points is different from the one required to decide on the merits of a complaint. The IACHR must conduct a *prima facie* evaluation and determine whether the complaint substantiates the apparent or potential violation of a right guaranteed under the American Convention, not to establish whether said violation took place or not. The analysis that has to be conducted at this time simply requires a preliminary review that does not involve any prejudgment or early opinion on the merits of the dispute. The Commission’s Rules of Procedure, by establishing two clear stages, of admissibility and merits, reflects this distinction between the evaluation that the Commission must undertake for the purpose of declaring a petition admissible and the one required to determine whether a violation has taken place or not.

47. In the opinion of the Commission, the arguments set forth by the petitioners, if they are proven to be true, could point to violations to the right to personal integrity (Article 5), right to personal freedom (Article 7); right to due process (Article 8); protection of honor and decency (Article 11); right to protect a family (Article 17); freedom of movement and residence (Article 22.6 and 22.8), equality before the law (Article 24); and right to judicial protection (Article 25), in keeping with the general obligation envisaged in Article 1.1 of the above-mentioned instrument. Therefore, without prejudging the merits of the case, the Commission considers that the requirements of Articles 47.b and c of the American Convention have been met.

#### V. CONCLUSIONS

48. The Commission deems it is competent to examine the petition for a procedural decision and that it is admissible by virtue of the admissibility requirements stipulated in Articles 46 and 47 of the American Convention on Human Rights.

49. On the basis of the legal and factual arguments indicated above and without prejudging the substance of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare that the present petition is admissible in regard to the alleged violations of the rights protected by Articles 1, 5, 7, 8, 11, 17, 22, 24, and 25 of the American Convention.
2. To notify the parties of this decision.

3. To continue examining the case.
4. To publish this decision and include in its Annual Report 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.