

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 7/07; Petition 474-03
Session: Hundred Twenty-Seventh Session (26 February – 9 March 2007)
Title/Style of Cause: Oswaldo Jose Colmenares Mujica, Marisol del Carmen Mujica and Mayerling del Carmen Colmenares v. Venezuela
Doc. Type: Decision
Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Second Vice-President: Victor Abramovich;
Commissioners: Evelio Fernandez Arevalos, Sir Clare K. Roberts, Paulo Sergio Pinheiro.
Commissioner Freddy Gutierrez, a Venezuelan national, did not participate in the deliberations and voting on this report, in accordance with Article 17.2.a of the Commission's Rules of Procedure.
Dated: 28 February 2007
Citation: Colmenares Mujica v. Venezuela, Petition 474-03, Inter-Am. C.H.R., Report No. 7/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by: APPLICANT: Luis Aguilera
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I. SUMMARY

1. On June 26, 2003, the Inter-Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition filed by Marisol del Carmen Mújica (hereinafter “the petitioner”) assisted by Mr. Luís Aguilera, General Secretary of the Human Rights, Justice, and Peace Commission of Aragua State (hereinafter the “petitioner’s representative”), on behalf of Mrs. Mújica’s son, Oswaldo José Colmenares Mújica (deceased), Mrs. Mújica herself and her daughter Mayerling del Carmen Colmenares, alleging responsibility on the part of the Bolivarian Republic of Venezuela (hereinafter “the State” or “the Venezuelan State”) for the extrajudicial execution of 17-year-old Oswaldo José Colmenares Mújica on June 6, 2002 and acts of harassment against the other members of the Mújica Colmenares family identified in this paragraph.

2. The petitioner and her representative maintain that the facts reported constitute violations of various provisions of the American Convention on Human Rights (hereinafter the “American Convention”): the right to life (Article 4), the right to humane treatment (Article 5), the right to a fair trial (Article 8) and the right to judicial protection (Article 25), consistent with the general obligation provided under Article 1(1) of that instrument.

3. As of the date of this report, the State has not submitted observations regarding the admissibility of this petition.

4. After analyzing the positions of the parties, the Commission concluded that it was competent to rule on the complaint submitted by the alleged victims and that the case was admissible in the light of Articles 46 and 47 of the American Convention. Consequently, the Commission decided to notify the parties, to make this Admissibility Report public, and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

A. Petition

5. On June 26, 2003, the Commission received a petition submitted by Mrs. Marisol del Carmen Mújica and her representative, Mr. Luís Aguilera, General Secretary of the Human Rights, Justice, and Peace Commission of Aragua State, representing the deceased minor child Oswaldo José Colmenares Mújica and members of his family, Marisol del Carmen Mújica (mother) and Mayerling del Carmen Colmenares (sister), and proceeded to enter the petition as number P-474/03.

6. On May 17, 2006, the IACHR sent the relevant sections of that petition to the State in accordance with Article 30(2) of the Rules of Procedure of the IACHR, allowing a period of two months for the State to submit its observations.

7. As of the date of this report, the Commission had not received any response from the State regarding the petition.

III. POSITIONS OF THE PARTIES

A. The Petitioners

8. The petitioner and her representative assert that on June 6, 2002 at approximately 10:30 a.m., the officers of the Aragua police force executed the 17-year-old minor, Oswaldo José Colmenares Mújica, in an area nearby his residence. As noted in the case file, at that time the young Colmenares was sitting down in the company of three other citizens “when they were approached by a Police Squad belonging to the Security Force of San Mateo Police Headquarters, Aragua State, made up of the officers, STGDO Miguel Ángel Ojeda and first Corporal Ochoa Simón, from the LUV-206 unit.” The petition states that when the young men saw these officers, they dispersed and started to run away, the adolescent Oswaldo José Colmenares Mújica entered a wooded area in the upper section of the Sector, and was pursued by Officer Miguel Ángel Ojeda. The petitioners report that this officer caught up with the adolescent in the upper section of the area and shot him with his regulation weapon in the upper part of the leg. The young man asked him not to shoot because he was already wounded. The petition states that despite this and even though the young man had already submitted and was defenseless, the officer fired three more times at Oswaldo José Colmenares Mújica, hitting him in various parts of the body and causing almost instantaneous death. The petitioners report that

subsequently the police placed a revolver type firearm at the site of the occurrence in an effort to justify the action based on a supposed confrontation with a victim who was resisting arrest.

9. In response, his mother, the petitioner Marisol del Carmen Mújica, began proceedings before the Investigations Corps, a police report and on-site inspection having been recorded on the same day. The petition reports that on November 12, 2002, the Scientific, Penal, and Criminal Investigations Corps sent the procedural record for file G-011-197 to the Eight Prosecutor's Office; it was later forwarded to the 15th Prosecutor's Office of the Judicial District of Aragua State with jurisdiction over minors, which accepted the file on January 29, 2002. The petitioners report that the file stayed with the latter Prosecutor's Office for one year and eight months without any final proceeding before the Supervisory Court.

10. The petition states that in July 2003 Mayerling del Carmen Colmenares, daughter of the petitioner, along with their representative, Mr. Aguilera, went to the offices of the 15th Prosecutor's Office of the Public Prosecutor's Office in order to review the status of the case relating to the death of Oswaldo José Colmenares Mújica. The petition alleges that at that time the Public Prosecutor's Office denied Mayerling del Carmen Colmenares and her representative the opportunity to read the file, arguing that it considered the only victim in the case to be the petitioner, the mother of the deceased. The petitioner reports that the file before the 15th Prosecutor's Office shows that on June 19, 2002 she assigned to Mr. Aguilera the defense of her rights and interest in acting in the case relating to the death of her son Oswaldo Colmenares.

11. In addition, the petition indicates that on July 29, 2003 the petitioner and her representative filed a complaint with the Aragua State Superior Prosecutor's Office and the Attorney General of the Republic because they had been denied review of the file, denouncing as well the partiality of the 15th Prosecutor of the Judicial District of Aragua State. In the complaint, they sought disqualification of the Prosecutor based on the belief that his actions were negligent given that as of August 2003 the necessary steps had not been taken to order the accused, who had been summoned five times, to appear to make a statement.

12. On August 17, 2004, after one year and eight months, the 15th Prosecutor of the Aragua State Public Prosecutor's Office sought to prosecute Miguel Ángel Ojeda for committing the crimes of Qualified Homicide as provided and sanctioned under Article 408(1) of the Venezuelan Penal Code, to the detriment of the adolescent Oswaldo José Colmenares Mújica, simulation of a punishable offense, under Article 240 of the same code, to the detriment of the administration of justice, and improper use of a firearm, under Article 282 of the same case to the detriment of the public order, and the opening of the oral and public proceeding was declared. The petitioner and her representative complain that the oral hearing was postponed on three occasions and was finally held six months after the opening of the proceeding.

13. A preliminary hearing was held on February 23, 2005 during which the First Instance Judge for Criminal Matters of the Aragua State Judicial Circuit "fully allowed" the indictment submitted by the Prosecutor's Office, and began the criminal trial against the police officer for the crimes of qualified homicide, simulation of a punishable act and improper use of a firearm. They complain, however, that the court did not order preventive detention of the accused nor that he be separated from his position, because it felt that "the defense and the accused himself have

always been available for the proceeding and have appeared in response to summons issued by the State.” They report that the Judge imposed a preventive measure that consisted of the accused’s submitting to control and surveillance, reporting on work done, and appearing every 30 days.

14. They report that, after the preliminary hearing, they were informed on March 9, 2005 that the case was assigned the name N. 4C-4895-04 and referred to the Third Trial Court of Judge Carina Gimón, who ceased to hear the case because she had been removed from her position as provisional judge. The petitioner and her representative complain that the action of the Third Trial Court has been inefficient in that the selection of the lay members of the mixed court (escabinos) has been postponed six times. The petitioner and her representative maintain that the exception relating to the exhaustion of domestic remedies is applicable in this case because to date, that is, more than four years after the events that are the subject of the complaint, the case remains in an intermediate stage (trial) and those responsible for the death of the young Oswaldo José Colmenares Mújica have not been punished.

15. In addition, the petitioner and her representative state that since the filing of the complaint relating to the death of Oswaldo José Colmenares Mújica in the domestic jurisdiction, she and her family have been subjected to acts of harassment. She states as follows: “from the start of our ordeal to denounce the execution of my son wherever they see us they gesture as if they want to kill us. On March 12, 2003 two pairs of motorcycle police passed by in front of my house; my daughter was on the porch and when they saw her they called her a snitch and gestured at her as if with a pistol indicating they wanted to kill her (illegible); later they went by again with their pistols in hand; thank God, my daughter had shut herself up in the house, but she could see them from the window.”

16. Given the circumstances under which the death of Oswaldo José Colmenares Mújica occurred, the lack of judicial clarification of the events surrounding that death, and subsequent acts of harassment and intimidation against the alleged victims identified in this report, as well as the undue delay in the criminal proceeding, the petitioner and her representative are seeking to have the case declared admissible for alleged violations of the rights to life, humane treatment, a fair trial, and judicial protection contained in Articles 4, 5, 8 and 25, consistent with the obligations under Article 1(1) of the American Convention.

B. The State

17. The Commission has not received a response from the State regarding the admissibility of the petition despite having been duly notified.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Preliminary issues

18. The IACHR notes that the State has not responded to the allegations made by the petitioner nor has it questioned the admissibility of the petition. The IACHR wishes to underline the fact that Venezuela undertook various international obligations within the framework of the

American Convention on Human Rights, including those established in Article 48(1)(a) of the Convention, which stipulates that: "when the Commission receives a petition or communication it shall request information from the government of the state indicated as being responsible for the alleged violation This information shall be submitted within a reasonable period The Commission may request the states concerned to furnish any pertinent information. The Convention, therefore, requires States to provide the information requested by the Commission in the processing of an individual case."[FN2]

[FN2] See, for example, IACHR No. 129/01, Case 12.389, Admissibility, Jean Michel Richardson, Haiti, December 3, 2001, paragraph 11.

19. The Commission also wishes to point out that the information it sought would presumably allow it to reach a decision in a case submitted for its consideration. The Inter-American Court of Human Rights has indicated that the cooperation of States is an essential obligation in international proceedings in the inter-American system:

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the cooperation of the State.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.[FN3]

[FN3] I/A Court H.R., Velásquez Rodríguez Case, Series C, No. 4, Judgment of July 29, 1988, paragraphs 135-36.

20. The IACHR and the Inter-American Court of Human Rights have also indicated that "the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a manner of law."[FN4] The Commission thus reminds Venezuela that it is required to cooperate with the organs of the inter-American human rights system, so that they can achieve optimum performance of their functions in seeking to protect human rights.

[FN4] *Idem*, paragraph 138; and IACHR, Report No. 28/96, Case 11.297, Guatemala, October 16, 1996, paragraph 45.

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

21. The petitioner and her representative have locus standi to submit petitions under Article 44 of the Convention. The petition identifies the alleged victims as individuals whose rights the Bolivarian Republic of Venezuela has undertaken to respect and guarantee within the framework of the Convention. With respect to the State, Venezuela has been a State Party to the American Convention since August 9, 1977. The petitioner and her representative report acts or omissions directly attributable to the State. The Commission thus feels that it has competence *ratione personae*.

22. The Commission has competence *ratione materiae* in that the petition alleges violations on the part of the State affecting the human rights of the alleged victims, which rights are protected by the American Convention.

23. The Commission has competence *ratione temporis*, in that the facts alleged in the petition occurred when the requirement to respect and guarantee the rights established in the Convention was in effect for the State.

24. The Commission has competence *ratione loci* to hear the petition in that it alleges violations of rights guaranteed by the American Convention that occurred within the territory of a State Party to the Convention.

C. Exhaustion of domestic remedies

25. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission to be admissible in accordance with Article 44 of the Convention, domestic remedies must have been sought and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to hear the alleged violation of a protected right and, if appropriate, to resolve it before it is heard by an international body.

26. The prior exhaustion requirement applies when within the domestic system there are remedies effectively available that are adequate and effective to remedy the alleged violation. In this respect, Article 46(2) provides that the requirement does not apply when domestic law does not provide due legal process for protection of the right in question or if the alleged victim had no access to the remedies within domestic jurisdiction, or if there is undue delay in the decision in such remedies. As indicated in Article 31 of the Commission's Rules of Procedure, when the petitioner alleges one of these exceptions, it is up to the State to demonstrate that the domestic remedies have not been exhausted, unless this is clearly inferred from the case file.

27. The principles of international law, reflected in the precedents established by the Commission and the Inter-American Court, indicate, first, that the respondent State may expressly or tacitly decide not to invoke that rule.[FN5] Secondly, the exception regarding a failure to exhaust domestic remedies, in order to be timely, must be presented in the early stages of the proceeding before the Commission; in the absence thereof the assumption is that the interested State has tacitly decided not to make avail itself of that exception.[FN6] Thirdly, in accordance with the burden of proof applicable in this area, the State alleging a failure to exhaust domestic remedies must indicate which domestic remedies must be exhausted and provide

evidence of their effectiveness.[FN7] Consequently, if the State in question fails to present allegations regarding this requirement in a timely manner it shall be considered to have waived the right to claim a failure to exhaust domestic remedies and thus to meet its burden of proof.

[FN5] IACHR, Report No. 69/05, Petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, para. 42; I/A Court H.R., Ximenes Lopes. Preliminary Objections. Judgment of November 30, 2005. Series C, No. 139, para. 5; I/A Court H.R.. Moiwana Community Case. Judgment of June 15, 2005. Series C, No. 124, para. 49; and I/A Court H.R., Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C. No. 118, para. 135.

[FN6] I/A Court H.R., Mayagna Community (Sumo) Awas Tingni Case. Preliminary Objections. Judgment of February 1, 2000. Series C, No. 66, para. 53; Castillo Petruzzi et al. Case. Preliminary Objections. Judgment of September 4, 1998. Series C, No. 41, para. 56; and I/A Court H.R., Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C, No. 25, para. 40. The Commission and the Court have established that “the early stages of the procedure” must be understood to mean “the admissibility stage of the procedure before the Commission, in other words, before any consideration of the merits [...]”. See, for example, IACHR, Report No. 71/05, Petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, citing the I/A Court H.R., Case of Herrera Ulloa. Judgment of July 2, 2004. Series C, No. 107, para. 81.

[FN7] IACHR, Report No. 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral et al. (persons living with HIV/AIDS), Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., Mayagna Community (Sumo) Awas Tingni Case. Preliminary Objections, supra note 6, para. 53; Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C, No. 50, para. 33; and Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C, No. 40, para. 31.

28. In the instant case, the State has not responded to the initial petition and thus has tacitly decided not to file an objection based on a failure to exhaust domestic remedies. For her part, the petitioner and her representative argued the existence of undue delay in the context of the criminal process and the resulting admissibility of the exception under Article 46(2)(c) of the American Convention.

29. To analyze compliance with the requirement to exhaust domestic remedies, the Commission must determine which is the appropriate remedy to be exhausted according to the circumstances, this being understood to mean the remedy that could resolve the violated legal status. In cases of presumed arbitrary deprivation of the right to life, regardless of whether the perpetrators are agents of the state or private individuals, the appropriate remedy is an investigation and criminal proceeding initiated ex officio by the State to identify and punish those responsible.

30. With respect to undue delay, the Commission assesses the circumstances and performs a case-by-case evaluation to determine whether there has been undue delay. As a general rule, the Commission determines that “a criminal investigation must be undertaken promptly in order to

protect the interests of the victims and preserve the evidence.”[FN8] In order to determine whether the investigation has been undertaken “promptly,” the Commission considers a series of factors such as the time elapsed since the crime was committed, whether the investigation has gone beyond the preliminary stage, the measures taken by the authority, and the complexity of the case.[FN9]

[FN8] IACHR, Report No. 16/02, Petition 12.331, Admissibility, Honduras (Servellón García), para. 31 (February 27, 2002).

[FN9] Víctor Manuel Oropeza v. México, IACHR, Report No. 130/99, Petition 11.740, paras. 30-32.

31. The Commission notes that this case is not particularly complex, given that it involves a single victim executed under circumstances in which a police officer has been identified as the party allegedly responsible. In addition, the Commission notes that the case relating to the death of the adolescent Oswaldo José Colmenares Mújica on June 6, 2002 is in the intermediate state (criminal trial), and one person has been charged with the commission of the crime of Qualified Homicide as established and sanctioned under Article 408(1) of the Venezuelan Penal Code, simulation of a punishable act, under Article 240 of the same code, to the detriment of the administration of justice, and improper use of a firearm, Article 282 of the same code, to the detriment of the public order.

32. The petitioner and her representative maintain that in the course of the proceedings in the case there have been numerous unjustified delays: On August 17, 2004, after one year and eight months, the 15th Prosecutor of the Aragua State Public Prosecutor’s Office sought to prosecute a police officer in accordance with Articles 408(1) and 240 of the Venezuelan Penal Code, declaring the opening of the oral and public trial.[FN10] The petitioners claim that the hearing was postponed three times and was finally held six months after the opening of the proceeding. On February 23, 2005 a preliminary hearing was held[FN11] in which the Court of First Instance in criminal matters of the Judicial Circuit of Aragua State “fully admitted” the indictment filed by the Prosecutor’s Office, and consequently initiated the criminal trial against the police officer for the crimes of qualified homicide, simulation of a punishable act, and improper use of a firearm. The petitioner and her representative maintain their position regarding undue delay in the case under review, which added to the State’s failure to respond allows for the presumption that the oral and public trial has still not taken place in accordance with the periods established by law.[FN12]

[FN10] See Organic Code of Criminal Procedure, Article 321. Duration. The Public Prosecutor’s Office shall seek to conclude the preparatory procedure with the diligences the case requires. When six months have passed since the identification of the accused, the accused may ask the supervisory judge to establish a prudential period of time for concluding the investigation. Once that period has passed, the Public Prosecutor’s Office must, within the next thirty days, submit the indictment or seek to dismiss.

[FN11] See Organic Code of Criminal Procedure of Venezuela, Article 330. Preliminary hearing. When the indictment has been submitted, the judge shall summon the parties to an oral hearing, which must be held within a period of no less than ten days and no more than twenty days. The victim may, within a period of five days from notice of the summons, join the prosecutor's indictment or submit their own accusation in accordance with the requirements under Article 303.

[FN12] It is important to note that Article 334 of the Organic Code of Criminal Procedure of Venezuela establishes the following procedure for conducting the oral and public trial: Article 334. Proceeding opening the trial. The decision whereby the judge admits the indictment shall be issued before the parties and shall include the identification of the accused, the precise description of the action that is the subject of the trial, and the legal definition thereof. This same proceeding shall issue the order to open the oral and public trial; the summons to the parties so that, within a period of five days, they will appear before the trial judge; and the instructions to the clerk to send the competent court the documentation of proceedings and objects that were seized. This proceeding cannot be appealed. Also, Article 344. Formation of the court. Summons establishes certain time periods for the trial: "The court shall be formed in accordance with the provisions of this Code. The presiding judge shall indicate the date for holding the public hearing, which must take place no sooner than 15 days and no later than 30 days after receipt of the proceedings, in the case of a single person or mixed court; or no sooner than 30 days or later than 45 days, in the case of a jury trial. In addition, it must indicate the name of the judges who shall make up the court and shall order a summons to the hearing for all those who must be present therein. The accused must be summoned at least ten days prior to the date the hearing is held.

33. Taking the above factors into account, the Commission considers that in this case there has been an undue delay in the criminal investigation and, consequently, the petitioners are relieved of the requirement to exhaust domestic remedies under Article 46(2)(c) of the American Convention.

34. The Commission reiterates that invoking the exceptions to the rule on exhaustion of domestic remedies established in Article 46(2) of the Convention is closely tied to the determination of possible violations of certain rights enshrined therein, such as guarantees on access to justice. However, Article 46(2) of the American Convention, based on its nature and purpose, is a rule with autonomous content as it relates to the substantive rules of the Convention. Therefore, the determination of whether the exceptions to the exhaustion of domestic remedies rule in that provision are applicable to the case in question must be made prior to and separate from the analysis of the merits of the case, in that it depends on a different standard of evaluation from that used to determine violations of Articles 8 and 25 of the Convention. It should be made clear that the causes and effects that have prevented the exhaustion of domestic remedies in this case will be analyzed as relevant in the report the Commission adopts regarding the merits of the dispute, in order to determine whether there are actually violations of the American Convention. Taking into account the procedural delay reported and the absence of specific and concrete information indicating that available and effective domestic remedies were not exhausted, the Commission feels that there is sufficient

evidence to relieve the petitioner and her representative of the requirement on prior exhaustion of domestic remedies pursuant to Article 46(2)(c) of the American Convention.

D. Deadline for submission of the petition to the IACHR

35. Pursuant to the provisions of Article 46(1)(b) of the Convention, in order for a petition to be admitted, it must be submitted within six months of the date on which the complainant was notified of the final decision handed down domestically. The six months rule guarantees certainty and legal stability once a decision has been adopted.

36. Under Article 32(2) of the IACHR Rules of Procedure, in cases where exceptions to the prior exhaustion of domestic remedies rule are applicable, the petition must be submitted within a reasonable amount of time in the judgment of the Commission. In accordance with this article, in its analysis the Commission “shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.”

37. With respect to the petition under review, the Commission has established that the exception to the exhaustion of domestic remedies is applicable under Article 46(2), and thus must assess whether the petition was submitted within a reasonable amount of time according to the specific circumstances of the situation submitted for its consideration. In this respect, the IACHR notes that the original petition was received on June 26, 2003. The incidents reported in the petition began on June 6, 2002 and to date there has been no conclusion in the domestic judicial proceeding nor has culpability been determined. Consequently, the IACHR feels that the submission was submitted within a reasonable amount of time.

E. International duplication of procedures and res judicata

38. The statements made by the petitioner and her representative do not indicate that the petition is pending before any international proceeding or forum or that it is substantially similar to another case previously examined by the Commission or another international body. Therefore, the Commission feels that the instant case has met the admissibility requirements established in Articles 46(1)(c) and 47(d) of the Convention.

F. Characterization of the facts

39. For purposes of admissibility, the IACHR must determine whether the facts related in the petition tend to establish a violation of rights established in the American Convention, as required by Article 47(b), or whether the petition, in accordance with Article 47(c), must be rejected as “manifestly groundless” or “obviously out of order.”

40. The petitioner has made allegations that, if proven true, could constitute violations of the right to life (Article 4), to humane treatment (Article 5), to a fair trial (Article 8) and to judicial protection (Article 25), consistent with the general obligation established in Article 1(1) of the Convention, and that are not “manifestly groundless” or “obviously out of order.” In addition, in accordance with the general principle of international law, *iura novit curia*, which provides the power to apply all the relevant legal provisions, even though they may not have been invoked by

the parties[FN13], the IACHR considers that the facts alleged by the petitioner and her representative could be characterized as violations of Article 19 (rights of the child) of the American Convention. Therefore, without prejudging the merits of the case, the Commission feels that the requirements established under Articles 47(b) and (c) of the American Convention have been met.

[FN13] IACHR, Report No. 38/96, Case 10.506 – Argentina, October 15, 1996.

V. CONCLUSIONS

41. The Commission feels that it is competent to hear the instant case and that the case is admissible in light of the admissibility requirements established in Articles 46 and 47 of the American Convention on Human Rights and with respect to the alleged violations of Articles 4, 5, 8(1), 19 and 25 of the American Convention as they relate to Article 1(1) of the same instrument, to the detriment of Oswaldo José Colmenares Mújica, Marisol del Carmen Mújica, and Mayerling del Carmen Colmenares.

42. Based on the factual and legal arguments presented above, and without prejudging the merits of the matter,

THE INTER-COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare that this petition is admissible with respect to the alleged violations of rights protected by Articles 4, 5, 8(1), 19 and 25 of the American Convention as they relate to Article 1) of the same instrument.
2. To notify the parties of this decision.
3. To continue the examination of the case.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 28th day of the month of February, 2007.
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and Paulo Sérgio Pinheiro, Commissioners.