Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 696/07; Petition 860-01
Session:	Hundred Twenty-Seventh Session (26 February – 9 March 2007)
Title/Style of Cause:	Segundo Rafael Cartagena Rivadeneira v. Ecuador
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, Freddy Gutierrez Trejo.
Dated:	9 March 2007
Citation:	Cartagena Rivadeneira v. Ecuador, Petition 860-01, Inter-Am. C.H.R., Report No. 696/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANT: Ramiro Avila Santamaria

I. SUMMARY

1. On December 19, 2001, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a petition against the State of Ecuador (hereinafter "the State") alleging that it violated, to the detriment of Segundo Rafael Cartagena Rivadeneira ("the alleged victim"), the following provisions of the American Convention on Human Rights (the "American Convention"): Article 4 (right to life), Article 5 (right to humane treatment); Article 8 (right to a fair trial); Article 25 (the right to judicial protection), and Article 26 (the right to progressive development), in combination with the obligations erga omnes established in articles 1(1) (obligation to respect right) and 2 (domestic legal effects); and the following provisions of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"). The petition was lodged by Maria Antonieta Jarrín Jarrín, wife of the alleged victim, who was represented by Ramiro Ávila Santamaría from the Human Rights Clinic of the Pontifica Universidad Católica del Ecuador (jointly, "the petitioners").

2. According to the petitioners, on March 22, 1996, Segundo Rafael Cartagena Rivadeneira, who was 70 at the time, went with his wife to the Carlos Andrade Marín Hospital ("the Hospital"), which is part of the Ecuadorian Social Security Institute ("IESS"). He was in severe pain, but had to wait 7 hours before being attended; then, after a misdiagnosis, he was sent home. He returned the following day, again in severe pain. Again, he was not treated with the urgency that his case required. Instead, hospital personnel ran several tests, but he died in the hospital while awaiting the test results. The petitioners report that the widow filed a complaint, but no one was punished as a result of the investigations nor was the widow compensated for the harm that

the petitioners allege was caused by the alleged victim's death. When two of the physicians were convicted but received what the petitioners considered to be a very light sentence, the petitioners filed an action seeking damages and injuries. The judge in the case claimed he did not have jurisdiction. The petitioners did not appeal, arguing that the ruling was not subject to appeal.

3. For its part, the State contends that the petition should be declared inadmissible on the grounds that it was not filed within the six-month time frame, that the remedies under domestic law were not pursued and exhausted, and that the facts alleged do not characterize possible violations of human rights.

4. After examining the positions of the parties in light of the admissibility requirements stipulated in Article 46 of the American Convention and Article 32 of the Commission's Rules of Procedure, the Commission finds the petition inadmissible because it does not comply with articles 46(1)(a) and 46(1)(b) of the American Convention. It also decides to notify the parties of its decision, to make this decision public and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING WITH THE COMMISSION

5. The original petition was received at the Inter-American Commission on Human Rights on December 19, 2001, and was classified as number P860-01. On February 21, 2002, the Commission acknowledged receipt of the petition and of the information sent on February 4 of that year. On April 15, 2002, the petitioners sent another communication to the Commission. On July 22, 2002, the Commission sent the petitioners a communication in which it requested additional information on the question of exhaustion of domestic remedies. The petitioners provided additional information on August 1, 2002, and then more information on August 28 of that year. The Inter-American Commission acknowledged receipt on September 6, 2002, and on September 20, 2002 received another communication from the petitioners.

6. On June 12, 2003, the IACHR asked the petitioners to send it the judgment in which the Fourth Criminal Court of Pichincha denied the suit for damages. The petitioners supplied that information on July 3, 2003. On July 17 of that year, the petitioners sent another communication, providing information on the court proceeding. On September 9, 2003, the petitioners forwarded a series of letters from Ecuadorian organizations requesting justice for the alleged victim's family. On October 1, 2003, the petitioners supplied the Commission with still more information. The Commission acknowledged receipt on December 2 of that year.

7. On January 14, 2004, the Inter-American Commission began the processing of this petition by sending a communication to the State in which it included the pertinent parts of the petition and solicited from the State any observations it might have. The State was given two months in which to respond, in keeping with Article 30 of the Commission's Rules of Procedure. The State requested an extension on March 15, which the Commission granted. It requested a second extension on April 28, 2004, sent its response on May 14 and additional information on June 18. The petitioners, for their part, sent additional information on July 2 and 6, 2004. They also sent a communication on September 30. The Commission requested the petitioners' observations on the information supplied by the State. On December 3, 2004, the petitioners

asked for an extension for purposes of its observations. The Commission acceded to that request on December 21, 2004.

8. On January 28, 2005, the Commission received the petitioner's observations and forwarded them to the State on March 2, 2005, with the request that it present any observations it might have within two months. The petitioners sent additional information on April 5, which the Inter-American Commission forwarded to the State on June 16, 2005, giving it one month in which to present its observations. On July 15, the Inter-American Commission sent the petitioners the information supplied by the State, giving them one month to reply. The petitioners submitted their observations on August 4, 2005 The State, for its part, presented its observations on August 9, 2005. Finally, on August 30, 2005, the Commission forwarded the petitioners' observations to the State, giving it one month in which to respond. Thus far that response has not been received. On September 1, 2005, the petitioners sent their observations. The petitioners' most recent communications were dated May 19 and August 3, 2006.

III. THE PARTIES' POSITIONS

A. The petitioners

9. The petitioners state that on March 22, 1996, Mr. Segundo Rafael Cartagena Rivadeneira went to the Carlos Andrade Marín Hospital, which is part of the IESS system, with sharp pain in the pelvic area. They contend that he initially went to the emergency department, but was not treated. He therefore went to the Outpatient Area, where again he was turned away because no appointments to see a doctor were available until May 1996. The petitioners contend that the alleged victim went back to the emergency department, where he waited for some 7 hours. He was finally seen by a substitute physician. According to the petitioners, he was given a cursory diagnosis of constipation and benign prostatic hypertrophy. Mr. Cartagena Rivadeneira was sent home with a catheter and a laxative. The following day, when his symptoms were unchanged and the pain was worse, Mr. Cartagena Rivadeneira went back to the same hospital and, after waiting around 45 minutes, was seen by a resident physician who told him that he was going to run some blood tests and take x-rays. While awaiting the results of the test, Segundo Cartagena Rivadeneira died there in the hospital as a result of peritonitis caused by a ruptured appendix.[FN1]

[FN1] The petitioners' January 28, 2005 communication states that "minutes later, Mr. Cartagena suffered a sudden heart attack and cardio-respiratory stoppage," and died a few steps from the bathroom in the Hospital"… The cause of death in the case of Mr. Cartagena was "peritonitis from a ruptured appendix."

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10. The petitioners allege that Mr. Cartagena Rivadeneira's death was caused by the negligence of the physicians who attended him, since the latter allegedly failed to recognize the symptoms of peritonitis and prescribed a catheter and a laxative to relieve his pain. The petitioners add that in their haste to cover up the cause of death, some of the physicians engaged in irregularities that same day.[FN2]

[FN2] Suspecting that Mr. Cartagena Rivadeneira's death was the result of negligence and having observed that all the information concerning the treatment and diagnosis of the patient's condition was on a form titled "Page 8", the victim's daughter took the page as evidence of what was done. The immediate reaction of the physicians present was to request that the police officer on duty in the hospital detain the daughter. The doctors forced relatives of the alleged victim to return "the page." February 14, 2005 communication from the petitioners, citing the testimony of Corporal José López Andrade, the police officer on duty at the hospital on the day of the alleged victim's death, Fourth Criminal Court of Pichincha, Case no. 29-1998, at 155 et al..

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11. The facts of this case were brought to the attention of the Ministry of Social Welfare of Ecuador, whose authorities ordered that a medical examination be conducted to identify the cause of death. The petitioners underscore the fact that the results of that examination revealed the incompetence of the attending physicians.[FN3] Furthermore, a criminal action was brought in which six physicians who in one way or another were linked to the facts in the case were indicted but not taken into custody. When the case finally went to trial on March 26, 1998, there were four defendants, and bail was set at 5,000,000 sucres.[FN4] In the final ruling, delivered on March 22, 1999, two of the defendants were convicted of manslaughter and sentenced to 8 days in prison and a fine of 100 sucres; the other two defendants were acquitted. [FN5] The defendants appealed the decision by filing a petition of cassation with the Supreme Court, which was denied on March 5, 2001,[FN6] almost two years later, in what the petitioners describe as an irregular proceeding.

[FN3] The medical report reads as follows:
The Hospital's Office of Chief of Emergencies has conducted the investigation and believes that the basic problem is the evaluation done by the attending physician on March 22, 1996, who did a very cursory diagnosis of simple constipation; the diagnosis was not that of a severe abdominal condition. Had the blood tests and x-rays been done that day and had the patient been kept under observation for future assessments by clinicians and/or surgeons, the case could have been handled differently.
Communication from Doctor Carlos Moscoso Tovar, Chief of the Hospital's Emergency and Observation Services. Medical report from the medication examination conducted on May 17, 1996.
[FN4] As stated in the communication of June 19, 2001, this would be the equivalent of US$ 200. .
[FN5] The petitioners observe that the amount of the fine would be less than one cent. Communication from the petitioners, dated December 19, 2001.
[FN6] This decision of March 5, 2001, states the following in chapter FOUR:
The Court accepts the opinion of the Deputy Prosecutor in this case. It is also important to note that the Criminal Court should also have applied the rule provided in Article 436 of the Code of Criminal Procedure, which criminalizes negligent conduct on the part of physicians who, out of carelessness or negligence, prescribe, dispense or supply medications that are dangerous to the patient's health. When the patient dies, the penalty for the crime is imprisonment for three to five

years. Thus, the Court did not apply the law correctly or fully, since the penalty should have been a minimum of three years to a maximum of five years, not what the Criminal Court set in the ruling being appealed. However, under Article 24, paragraph 13 of the Constitution of Ecuador, the court is not allowed to impose a harsher sentence on appeal. Therefore, ADMINISTERING JUSTICE IN THE NAME OF THE REPUBLIC AND BY AUTHORITY OF LAW, and in application of Article 382 of the Code of Criminal Procedure, the Second Criminal Chamber dismisses the petition of cassation on the grounds that it is out of order. Supreme Court of Justice – Second Criminal Chamber – Quito, March 5, 2001, at 6:00 p.m.

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12. The petitioners further allege that the law was not applied correctly or fully. They contend that the penalty should not have been a mere 8 days. It should have been between three and five years in prison. To make matters worse, the petitioners contend, no sentence was ever served because of a law passed on the occasion of the jubilee year.[FN7]

[FN7] Request by Patricio Miranda, Director of the Quito Men's Social Rehabilitation Center No. 3 (E) of March 29, 2001, under the Inmate Sentence Reduction Act. The Superior Court granted the request on March 30, 2001.

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13. The relatives of the alleged victim filed an oral summary suit in the same court that sentenced the convicted physicians. They were suing the Director General of the IESS for damages and injuries.[FN8] The petitioners contend that the suit was brought according to the letter of the law, which dictates that civil suits are to be filed with the court that issued the verdict in the criminal case.[FN9] They indicate that on September 21, 2001, the Chief Judge of the Fourth Criminal Court of Pichincha disqualified himself from the case for lack of jurisdiction, but did not explain why.[FN10]

[FN8] The petitioners point out that Article 20 of the Constitution provides that "The State is liable and required to compensate any private parties for any damages or injuries they sustain as a result of the deficient delivery of public services or the actions of its employees and officials in the performance of their functions." Communication from the petitioners dated December 19, 2001.

[FN9] Article 31 of the Code of Criminal Procedure in effect at the time provided that "in the case of a conviction, the suit for damages and injuries will not suspend execution of the judgment and will be heard by the Chief Judge of the Criminal Court, in a summary oral proceeding and in a separate file."

[FN10] The pertinent part of the notification reads as follows:

Since in the view of the undersigned the subject matter of the suit being brought is not the jurisdiction of this court, I DISQUALIFY MYSELF from hearing it. Let notification be given.

Notification from the Fourth Criminal Court of Pichincha, signed by Chief Judge Luis Costales Terán.

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14. The petitioners reformulated the legal analysis of the case and expanded their original complaint to include violation of articles 4, 5, 25, and 26 of the American Convention and of articles 1 and 10 of the Protocol of San Salvador, all in relation to the State's obligations erga omnes under articles 1(1) and 2 of the American Convention. In the amplified version of their petition, the petitioners are also asserting the precarious state of public health services in Ecuador at the time of the events in this case. They point out that "had the budget and physical and human resources been gradually increased, Mr. Cartagena would not have died and other people whose rights were violated subsequent to the victim's death would have been spared as well."[FN11]

[FN11] Communication from the petitioners, dated January 28, 2005.

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15. The petitioners allege that no resources were available to protect the violated rights. They are therefore asking the IACHR to allow the Article 46(2)(a) exception to the rule requiring exhaustion of domestic remedies. According to the petitioners, the remedies available were neither adequate nor suitable for protecting the rights violated in this legal situation. Because medical malpractice is not criminalized in Ecuador, the remedy would not be aimed at adequately compensating the victims.[FN12] They argue that there was no way to appeal the refusal by the Chief Judge of the Fourth Criminal Court to take up the case, which they contend was the last recourse within the domestic courts and which they exhausted.

[FN12] Communication from the petitioners, dated August 4, 2005.

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16. As for the timeliness of the petition, the petitioners argue that the criminal case and the action seeking damages are interdependent, since by law, one must have "a verdict in a criminal case in order to be able to file a civil action."[FN13] They contend that the six-month time frame should begin on September 21, 2001, the date on which the widow was denied a hearing on her suit for damages and injuries, which would have been the final judgment since it was not subject to appeal. The petitioners contend, therefore, that their petition was filed within the time period required under the Convention.

[FN13] Communication from the petitioners, dated August 4, 2005.

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17. The petitioners also point out that in the case before the Inter-American Commission judicial error has not been claimed nor has a review of the court proceedings been requested. They contend that the IACHR is authorized to take cognizance of alleged irregularities in domestic judicial proceedings that result in violations of due process or of any right protected under the American Convention.

18. Finally, the petitioners fault the State because the facts stated in the petition were alleged to have been committed by persons rendering public services and by the chief judge of the

criminal court, all agents of the State. They assert that the violation of the right to life of Mr. Cartagena Rivadeneira was not redressed and that his is not an isolated case, as cases like his occur repeatedly in Ecuador. Finally, they allege that the State has not taken the necessary measures and that the absence of adequate laws to prosecute facts such as those denounced in their petition obstructs the protection of the rights recognized in the American Convention.[FN14]

[FN14] Communication from the petitioners, dated August 4, 2005.

B. The State

19. The State begins by asserting that the petition was not lodged within the six-month time period stipulated in the Convention. It asserts that the petition was lodged with the Commission in January of 2004,[FN15] and that notification of the Supreme Court decision was on March 21, 2001; however, it later corrects itself as to the date on which the petition was lodged.[FN16] It also argues that the petition is inadmissible on the grounds that it does state facts that could tend to establish violations of the American Convention and that the requirement of prior exhaustion of domestic remedies was not fulfilled.

[FN15] Communication from the State, dated May 23, 2004.
[FN16] Communication from the State, dated July 13, 2005.

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20. As for the claim that negligence or medical malpractice is not criminalized, the State observes that "although we agree that medical negligence should be classified as a criminal offense, the State would contend that such negligence has never been supported or tolerated by the public authorities."[FN17] It adds that since medical negligence or malpractice is not criminalized, the judges on the Fourth Criminal Court of Pichincha classified the conduct of the physicians implicated in the death of Mr. Cartagena Rivadeneira as "unintentional homicide." So the State contends that the conduct of the judges in the criminal case in question was in keeping with the rules and judicial guarantees established in the Ecuadorian legal system. As for the suit filed for damages and injuries the State points out that the petitioners could have appealed the ruling under Article 73, paragraph 2 of the Code of Civil Procedure.[FN18] It therefore considers that the Inter-American Commission should declare the petition inadmissible on the grounds that the remedies under domestic law were not exhausted.

[FN17] Communication from the State, dated July 13, 2005.
[FN18] Article 73 of the Code of Civil Procedure reads as follows:
Once the suit is filed, the judge will review it to determine whether the legal requirements are met.
If the suit does not meet the requirements stipulated in the preceding articles the judge shall order plaintiff to provide what is missing or clarify the suit within three days; if plaintiff fails to do so,

the judge shall determine that the suit shall not be heard. Only the plaintiff can appeal that decision. The decision on appeal shall be final.

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21. The State contends that the Inter-American Commission is not competent to take up this case and decide it, since were it to do so it would be acting as a court of fourth instance. The State argues further that "the fact that the judgment delivered is not the one the interested party wanted does not mean that the rights recognized in the American Convention have been violated."[FN19] The State argues that the Commission does not have the authority to review decisions delivered by domestic courts simply because they (the petitioners) disagree with those decisions, which were delivered by the natural judges."[FN20]

[FN19] Communication from the State, dated July 13, 2005.
[FN20] Communication from the State, dated July 13, 2005.

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22. As for the suit brought for damages and injuries, the State observes the following:

Under Article 73, paragraph two of the Code of Civil Procedure, the plaintiff could have appealed the decision delivered by the Chief Judge of the Criminal Court in which he disqualified himself on the grounds that he did not have jurisdiction. Therefore, the petitioners did not comply with Article 46(1)(a) of the American Convention, which requires exhaustion of the remedies under domestic law before a petition can be filed with the Commission. In this case, the petitioners did exhaust the criminal avenue, but not the civil avenue.[FN21]

[FN21] Communication from the State, dated July 13, 2005.

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23. The State reasons that "the rule of prior exhaustion of domestic remedies is there to protect the interests of the State, as it gives the State the opportunity to settle matters attributed to it by its own means, before having to answer to an international body."[FN22]

[FN22] I/A Court H.R., In the matter of Viviana Gallardo et al., Resolution of November 13, 1981, paragraph 26.

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24. As to the timeliness of the petition, the State contends that one has to consider the two proceedings instituted in this case: the criminal case and the civil case. The State makes the point that the two are different in nature and should therefore be examined separately. In the criminal case, the cassation appeal was decided on March 5, 2001, and the decision notified on March 19, 2001. It is from that point that the clock begins to run on the six-month time period for filing with the Commission. The State alleges that the petition was not filed within the time period prescribed in Article 46(1)(b) of the American Convention. It also contends that the ruling in

which the judge disqualified himself claiming lack of jurisdiction was delivered on September 21, 2001, and notified on September 24, 2001. However, because this decision was not appealed, this avenue was not exhausted. Therefore, it cannot be factored into six-month time period, as the petitioners allege.

IV. ANALYSIS OF ADMISSIBILITY

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

25. The petitioners have locus standi to lodge petitions with the IACHR, pursuant to Article 44 of the American Convention which provides that "[a]ny person or group of persons … may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party." The Inter-American Commission observes that Ecuador has been a State party to the American Convention since December 28, 1977, the date on which it deposited its instrument of ratification. Therefore the Inter-American Commission is competent ratione personae to study the petition.

26. The IACHR is competent ratione loci to analyze the petition since it alleges violations of rights guaranteed by the American Convention, said to have occurred within the territory of a State Party. The Inter-American Commission is also competent ratione temporis, since the facts alleged in the petition occurred when the duty to respect and ensure the Convention-protected rights was already in effect for the State. Finally, it is competent ratione materiae, because the petition alleges facts that could constitute violations of human rights protected by the American Convention.

27. The Commission is, therefore, competent to take up and decide the present petition.

B. Exhaustion of domestic remedies and timeliness of the petition.

28. Under Article 46(1)(a) of the American Convention, for a petition or communication to be admissible, one of the requirements is "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." The purpose of this provision is to give the State in question the opportunity to resolve the situation within its own domestic framework before having to face international justice.

29. To clarify the dispute between the parties in the case as to the question of compliance with the requirement provided for in Article 46(1)(a), the Commission must first determine what the nature of the complaint is and what the proper remedy was to settle it in the domestic courts. The case concerns the death of Mr. Cartagena Rivadeneira and involves accusations of medical negligence, made against the physicians who attended him at a public hospital.

30. As for the responsibility of the public servants who committed the acts of negligence that resulted in the death of Mr. Cartagena Rivadeneira and the subsequent cover-up, the parties agree that criminal indictment was the proper course of action, however flawed the legal system may have been and however imprecise the charges against them were. This criminal case culminated

on March 5, 2001, when the Supreme Court of Ecuador denied the appeal, ruled that cassation was not the proper remedy, and ordered that the case be returned to the criminal court for execution of the sentence ordered in March 1999. The Supreme Court's ruling, which exhausted domestic remedies in this case, was notified on March 19, 2001, and the petition was filed with the Commission on December 19, 2001, after the six-month time period prescribed in Article 46.1.b of the American Convention.

31. The Commission must turn its attention to the suit that the widow of Mr. Cartagena Rivadeneira brought against the Director General of the IESS claiming a violation of Article 20 of the Constitution of Ecuador.[FN23] The suit for damages and injuries was filed on September 10, 2001, with the Fourth Criminal Court of Pichincha. That court delivered its ruling on September 21, 2001, wherein it states that it will not hear the case because it does not have jurisdiction.

[FN23] That article of the Constitution provides that: "The institutions of the State, those to whom it delegates State functions and its concessionaires are required to compensate private parties for any damages or injuries said parties sustain as a consequence of deficient performance of public services or actions on the part of their employees and officials in the performance of their functions." Article 95 of the 1998 Constitution of Ecuador provides that "any person, in his own right or as the lawful representative of a group, may bring a petition seeking amparo relief before the legally-designated judicial body, which shall hold a summary proceeding to address such petition. The latter will be filed seeking urgent measures directed at preventing, avoiding the materialization of or immediately remedying the consequences of an unlawful act or omission on the part of a public authority that violates or may violate any right recognized in the Constitution or in an international treaty or convention in force, and that poses an imminent threat of serious harm."

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32. The petitioners contend that Ecuadorian law at the time of that ruling did not make provision for appeals or petitions of amparo to challenge rulings of that nature, so that there were no remedies to exhaust.[FN24] They state further that the suit for damages and injuries is inseparable from the criminal case because no civil action could have been brought had it not been for the criminal case brought against the very same persons. However, the State points out that Article 73 of the Code of Civil Procedure in effect at that time allowed an appeal, which might have been a suitable remedy. That provision reads as follows:

Once the suit is filed, the judge will review it to determine whether the legal requirements are met.

If the suit does not meet the requirements stipulated in the preceding articles the judge shall order plaintiff to provide what is missing or clarify the suit within three days; if plaintiff fails to do so, the judge shall determine that the suit shall not be heard. Only the plaintiff can appeal that decision. The decision on appeal shall be final. When the case is not heard, the judge will order the documents that accompany it returned; no copy need be made. Any judge who fails to

comply with the duties prescribed in this article shall pay a fine of from one thousand to five thousand sucres.

[FN24] Communication from the petitioners of August 4, 2005.

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33. It is the Commission's view that the petitioners have not explained why they did not attempt a legal action in Ecuador to determine why the court refused to hear their appeal or even which court would have jurisdiction or which requirements the court deemed they had not met. By not pursuing the domestic remedies, they did not allow the Ecuadorian courts the opportunity to correct any problem with their suit; if the court's refusal of jurisdiction was done in error, it could have been set right by filing the appeal provided for in Article 73 of the Code of Civil Procedure, as the State indicates. Furthermore, the assertion that no remedy was possible was the petitioners' claim, but not what the law expressly states or what the jurisprudence of the Ecuadorian courts has been.

34. In any event, they should have put these questions to the Ecuadorian courts for a ruling before turning to the inter-American system of human rights. The failure to comply with the rule requiring prior exhaustion of domestic remedies is the fault of the petitioners, so that the exceptions allowed under Article 46(2) of the American Convention do not apply. Consequently, the other admissibility requirements under the American Convention need not be examined.

V. CONCLUSIONS

35. In this report, the Inter-American Commission has established that petition 860/01 does not satisfy the requirement provided for in Article 46(1)(a) of the American Convention. Consequently, the petition is inadmissible under Article 47(a) of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the petition inadmissible for failure to exhaust domestic remedies.
2. To notify the parties of this decision.
3. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 9th day of the month of March, 2007. (Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Freddy Gutiérrez Trejo, Commissioners.