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Title/Style of Cause: Lucio Orlando Ortuño Rivas v. Bolivia
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, Freddy Gutierrez.
Dated: 23 July 2007
Citation: Ortuño Rivas v. Bolivia, Petition 362-03, Inter-Am. C.H.R., Report No. 18/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)

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I. SUMMARY

1. On May 19, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by Mrs. Aurora Rivas Vda. de Ortuño (hereinafter “the petitioner”), alleging violations committed with respect to her son, Lucio Orlando Ortuño Rivas (hereinafter “the alleged victim”) and claiming the responsibility of the Republic of Bolivia (hereinafter “the State” or “the Bolivian State”) for noncompliance with the ruling handed down by the Second Social and Administrative Chamber of the Superior Court of Justice of La Paz on October 22, 2001, and upheld by the Constitutional Court on January 21, 2002.

2. The petitioner claims that the State is responsible for violating the rights enshrined in Articles 24 and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles II and XVIII of the American Declaration of the Rights and Duties of Man (hereinafter “the Declaration” or “the American Declaration”) with respect to the alleged victim and his next-of-kin for the noncompliance of a judgment that ordered the Naval Academy: (a) to begin expanded proceedings under the Criminal and Military Codes, and the relevant Regulations, against the perpetrators and joint perpetrators of the violations suffered by the appellant Orlando Ortuño Rivas, and their accomplices; (b) to guarantee that Lucio Orlando Ortuño Rivas will be allowed to remain in the military once redress has taken place; and (c) to reimburse his medical bills, subject to the presentation of the corresponding invoices. This decision arose from complaints lodged before the domestic courts by the petitioner regarding the physical and psychological mistreatment suffered by the alleged victim at the Naval Academy, as a result of which he suffered serious physical and psychological injuries. The petitioner states she exhausted the domestic remedies provided under Bolivian law

with the filing of the amparo, which was decided in the alleged victim's favor by the Second Social and Administrative Chamber of the La Paz Superior Court of Justice.

3. The Bolivian State alleges that the petitioner and the alleged victim have not exhausted the available domestic legal remedies, since the investigations that the Vice-Minister of Justice asked the Attorney General of the Republic to perform in connection with the observance of constitutional judgments 72/2002-R (January 21, 2002) and 028/2004-R (January 6, 2004) have not yet concluded. The State also points to the complainant's right to lodge an appeal against Supreme Court of Military Justice Supreme Deed No. 7/2004, which ruled inadmissible an annulment remedy filed by the Public Prosecution Service (MP) and ruled groundless the appeal for reversal lodged by the petitioner against the first-instance judgment of the Military Tribunal that acquitted those individuals accused of the alleged offenses of "mistreatment of subordinates" and "bodily harm." In consideration whereof, the State asks the Commission to declare the petition inadmissible pursuant to Article 46(1)(a) of the American Convention.

4. After analyzing the position of the parties, the Commission concludes that it is competent to decide on the claim and that the case is admissible pursuant to Articles 46 and 47 of the American Convention. Consequently, the Commission decides to inform the parties, to publish this report on admissibility, and to include it in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

5. On May 19, 2003, the Commission received a petition lodged by Mrs. Aurora Rivas Vda. de Ortuño against the Republic of Bolivia on behalf of her son, Lucio Orlando Ortuño Rivas, and his next-of-kin.

6. The Commission registered the petition as No. 362/03 and, on October 14, 2004, forwarded the relevant parts to the State in compliance with Article 30(3) of its Rules of Procedure.

7. On December 23, 2004, the Bolivian State requested a 60-day extension of the deadline for submitting its report on the case.

8. On March 4, 2005, the Commission granted the State a 30-day extension.

9. On May 6, 2005, the Commission received the comments submitted by the State regarding this petition.

10. On May 16, 2005, the Commission forwarded the relevant parts of the information furnished by the State to the petitioner.

11. On July 6 and 11, 2005, the Commission received comments from the petitioner, which were forwarded to the State on July 21, 2005.

12. On October 13, 2005 the Commission received a second report from the State of Bolivia, which was forwarded to the petitioner on October 19, 2005.

13. On December 13, 2006, the IACHR asked the petitioner to submit updated information.
14. On January 22, 2007, additional information was received from the petitioner, which was forwarded to the State on February 20, 2007.

III. POSITIONS OF THE PARTIES

A. Petitioner

15. It is claimed that the Republic of Bolivia violated Lucio Orlando Ortuño Rivas's right to equality before the law and to judicial protection, as enshrined in the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights by failing to implement a judgment handed down in his favor.

16. The petitioner reports that on December 7, 2000, her son Lucio Orlando Ortuño Rivas decided to enter the Naval Academy, at which time he enjoyed good physical and intellectual health.

17. She claims that because of racism[FN1] in the military exercises carried out at the Naval Academy, a group of officials and upper-class cadets administered beatings to her son, claiming that he did not do the exercises correctly, that he was a lazy cadet,[FN2] that he wasn't interested in marching and, because of that, his squadron was frequently punished on his account.[FN3] She reports that as a result of these beatings handed out in February and March 2001, her son was hospitalized for cervical lordosis and other injuries.[FN4]

[FN1] Opinión newspaper of 27/17/2003: "Discrimination cadet not reinstated at Academy despite court rulings. Aurora Rivas, the cadet's mother, said that although former Commander of the Navy Adm. Jorge Badani ordered the prosecution of cadets Boris Michel Calle, Walter Alpira Benítez, Gonzalo Mercado Mayta, and Douglas Rioja Paredes for inflicting wounds of varying degrees of severity on her son, in addition to the psychological harm caused by their systematic campaign of racial discrimination against him, the school has not corrected its mistakes."

La Prensa newspaper of 02/01/2005: "Army to pioneer indigenous cadets on scholarships. [...] However, the cause of greatest concern at the moment is the racial discrimination that is so deeply rooted not only within the military, but in Bolivian society as a whole. One previous case involved a dark-skinned cadet who had to drop out of Naval Academy because of the racism and discrimination of his classmates, who nicknamed him "Eight Ball" (the cadet in question is dark skinned and heavily built; they called him "Eight Ball" because, in their opinion, he looked like one). This incident took place in 2000."

[FN2] Information contained in the confession statements given by those charged with mistreatment of subordinates and bodily harm; the cadets acknowledged that the words "scum," "biped," "black," and "priest" are frequently used in military slang.

[FN3] Statement given by Julio Walter Alpire Benítez, one of the accused cadets, recorded in the confession statement dated May 22, 2002.

[FN4] See: decision of the 4th Sentencing Court of the La Paz Superior District Court, judgment 18/2006 of October 23, 2006, in which it was established as proven fact that the degrading treatment and physical abuse inflicted on Lucio Orlando Ortuño Rivas “was so intense as to cause a severe wound to his neck: he suffered a fracture behind the petrous portion of the right temporal bone and was unable to move his neck, along with serious injuries to other parts of his body, such as his knees and testicles.”

18. Because of this situation the petitioner filed an amparo before the Second Social and Administrative Chamber of the La Paz Superior Court of Justice. Its ruling which was given in her son’s favor[FN5] was upheld on consultation by the Constitutional Court.[FN6] The Constitutional Court admitted the constitutional amparo and upheld the decision of the Superior Court of the La Paz Judicial District, ordering: (a) to initiate an extensive proceeding under the Criminal and Military Codes, and the relevant Regulations, against the perpetrators joint perpetrators and accomplices of the violations suffered by the appellant Orlando Ortuño Rivas; (b) to guarantee that Lucio Orlando Ortuño Rivas will be allowed to remain in the military once rehabilitation has taken place; and (c) to reimburse his medical expenses, subject to the presentation of the corresponding invoices.[FN7]

[FN5] See: decision of the Second Social and Administrative Chamber of the La Paz Superior Court of Justice, in judgment No. 53/01 SSA II of October 22, 2001.

[FN6] See: decision of the Constitutional Court in judgment No. 72/2002-R/ of January 21, 2002.

[FN7] See: decision of the Superior Court of the La Paz Judicial District, judgment No 53/01-SSAII, Second Social and Administrative Chamber of La Paz, October 22, 2001, pp. 147 to 149, upheld by the Constitutional Court in constitutional judgment No. 72/2002-R, “Aurora Rivas Vda. de Ortuño on behalf of Lucio Orlando Ortuño Rivas v. Jorge Badani Lenz, Commanding Officer of the Navy, and Gonzalo Daza Gonzáles, Director of the Naval Academy, re: constitutional amparo, January 21, 2002, Sucre, La Paz.”

19. She reports that to date, the judgment of the Constitutional Court has not been enforced, due to the continuation of discriminatory attitudes within the Naval Academy. She states that on account of the actions taken to enforce her son’s rights, the Naval Academy began a series of investigations and inquiries against her and against her son for falsification of documents, which were used as a pretext to expel the alleged victim from the military and avoid complying with the decision handed down in his favor.[FN8] The petitioner states that because of the noncompliance with the court rulings issued on behalf of her son, she has had to meet all his medical expenses, even though he still needs surgery on his testicles and nose and treatment for the hearing loss caused by the beatings he received.[FN9] The petitioner claims that instead of complying with the court orders, the Naval Academy took reprisals against them, accusing them of the crimes of material falsehood, nonmaterial falsehood, and use of falsified documents[FN10] in the certification of her son’s birth upon his entry to the Naval Academy, and in the falsification of a hospital bill.

[FN8] See: Constitutional Court, constitutional deed 25/2003-O in complaint regarding noncompliance with judgment 0072/2002-R of January 21, 2002. In that judgment the Admissions Commission of the Constitutional Court asked the commanding officer of the Navy and the director of the Naval Academy to report on the implementation of the judgment of January 21, 2002. Deed 25/2003-O reports that the director of the Naval Academy said that “(b) by means of document SG 077/02 Div. Pers. 020/01, Cadet Ortuño, through the appellant, was invited to rejoin the Navy and, without meeting academic requirements, was promoted to the next higher course, appearing in all daily military dispatches. Recently, in the mid part of this year [2003], he was expelled from the military on other serious grounds, after it was discovered that the birth certificate that he used to register as a cadet had been altered to delete two years from his original age; thus, at the time of his candidacy, he was not of the requisite age for admission. In addition, he had presented a false sworn statement regarding his unmarried status, when the cadet had contracted marriage two years before his candidacy. (c) As regards the payment of their medical expenses, the appellants spared no effort in obtaining illicit economic benefits by falsifying invoices from private clinics that do not provide medical services in the specialties indicated on the invoices.”

[FN9] Request for Expansion of Formal Charge lodged by the petitioner on April 25, 2005, with the Public Prosecution Service attached to the Financial Economic Division, referring to April 2005 medical certificates Nos. 1074107, 1074108, 1074109, 1072905, and 1072906, certifying that Cadet Lucio Orlando Ortuño was diagnosed with right-side rhinosclerosis with Grade I and Grade II deviation of the septum, chronic frontal sinusitis, contraction of the sternocleidomastoid muscle, chronic cervical lordosis of the neck, chronic pharyngoamygdalitis, hypoacusia in the left and right ears, sprained cervix, hydrocele of the right testicle, acute orchiepididymitis, neurosensory hypoacusia, and behavioral and personality trauma.

[FN10] See: reference #7 of this Report, referring to the Public Prosecution Service’s dismissal of the formal charge against the petitioner and her son in case no. 5798, in which Mrs. Aurora Rivas and Cadet Lucio Ortuño were accused of the crime of nonmaterial falsehood and use of falsified documents (birth certificate); and the formal charges in case No. PTJ 663/04, whereby the petitioner was accused of the crime of nonmaterial falsehood and use of falsified documents, involving the forgery of an invoice issued by the Santa Fe Clinic.

20. The petitioner claims that in July 2006, she and her son were acquitted in the proceedings brought by the attorney of the Bolivian Navy for the crimes of material falsehood, nonmaterial falsehood, and use of falsified documents,[FN11] which indicates the attitude of persecution and discrimination that the institution has displayed toward her and her son.

[FN11] See: National Public Prosecution Service, La Paz District Prosecutor’s Office, Resolution No. 81/06, July 20, 2006, ordering the acquittal of Aurora Carmen Rivas vda. De Ortuño and Lucio Orlando Ortuño Rivas in the proceedings brought against them for material falsehood, nonmaterial falsehood, and use of falsified documents on the grounds that “there is insufficient evidence to allow the undersigned Prosecutor to bring charges, in accordance with Art. 323 (3) of the Code of Criminal Procedure.”

21. She states that on April 8 and June 25, 2002, the amparo court urged the commanding officer of the Navy and the director of the Naval Academy to comply with the constitutional resolutions and to refer the case documents to the Public Prosecution Service for the corresponding criminal action. She also reports that on February 19, 2003, the prosecutor adopted a resolution rejecting a complaint lodged by the petitioner against the commanding officer of the Navy and the director of the Naval Academy for the alleged offense of disobeying resolutions in habeas corpus and constitutional amparo proceedings, arguing that there was insufficient evidence on which to ground an accusation since, in his opinion, the incident did not take place and ordering the proceedings to be sent to the archive. The petitioner reports that she challenged this decision on March 21, 2003. On June 20, 2003, the petitioner lodged a complaint with the amparo court for noncompliance with resolution 374/02, which ordered the conveyance to the Public Prosecution Service of the case documents necessary to prosecute the respondents for the crimes of contempt and disobedience.

22. On November 7, 2003, the petitioner presented the Constitutional Court with a report of noncompliance with judgment 72/2002. In that filing, the petitioner requested that “compliance be given to Art. 118 of the Organic Law of the Armed Forces, in order to guarantee her son the treatment he requires, give him the immediate rank, and enable provision of the benefits owed to him by law. She also asked that the respondent authorities be urged to assume the costs of the operations and treatment her son immediately requires, as ordered by the final part of paragraph (3) of the amparo court’s resolution 53/01.”[FN12] In compliance with this deed, on December 19, 2003, the Constitutional Court ordered the La Paz Superior Court to instruct the respondent authorities, within the following ten days, to cover the amounts of the invoices submitted by the petitioner in reference to the cost of the emergency rehabilitation arising from the incidents underlying the remedy.[FN13]

[FN12] See: Constitutional Court, constitutional deed 25/2003-O: complaint of noncompliance with judgment 0072/2002-R of January 21, 2002.

[FN13] Ibid. In Section II of the “Grounds” chapter of Resolution 25/2003-O, the Court analyzed the level of compliance with judgment SC0072/2002-R of January 21, 2002, finding that:

III. 2. The expanded proceedings ordered in the judgment against Julio Walter Alpire Benitez, Boris Gabriel Michel Calle, [...] Gonzalo Mercado Maita, and Douglas Rioja Paredes were processed by the Permanent Court of Military Justice on October 22, 2003, which handed down an acquittal [...] regarding which the remedies provided for in law can be filed; consequently, the respondents complied with the first instruction set out in the judgment issued in this remedy.

III. 3. With reference to Orlando Ortuño Rivas’s remaining at the Naval Academy, it should be noted that the scope of the constitutional resolutions issued in this remedy hold true as long as the individual in question meets and complies with the regulations and requirements governing entry to and continued presence at the institution. However, noncompliance on the part of the respondent bodies cannot be argued when the individual represented by the appellant was dismissed from the Military Academy on the decision of the Superior Council when it was shown, subsequent to the remedy, that he failed to meet the entry requirements, in that he had contracted marriage prior to his admission to the Academy and had adulterated the date on the

birth certificate he presented during the admission process, which can be seen in the documentary evidence of the corresponding administrative procedure that was pursued [...].

III. 4. Finally, with respect to the expenses incurred [...] it can be seen that the respondent authorities partially failed to comply with the resolutions set out in this remedy in that they did not cover the expenses incurred by the appellant in the rehabilitation of the individual represented by the person making the claim; and while verifying the authenticity and legality of the invoices is a matter of official responsibility, in no circumstance may that process be prolonged and thereby undermine the effectiveness of the rulings adopted under constitutional jurisdiction.

23. Additionally, in a judgment of January 6, 2004, the Constitutional Court ordered the annulment of the resolution of October 27, 2003, handed down by the First Civil Chamber of the Superior Court of the La Paz Judicial District, and the referral of the case documents in order to resolve the objection lodged by the petitioner against the February 19, 2003, rejection of her complaint against the commanding officer of the Navy and the director of the Naval Academy for the alleged offenses of disobeying resolutions in habeas corpus and constitutional amparo proceedings (supra paragraph 21).[FN14]

[FN14] See: Constitutional Court of Bolivia, constitutional judgment 0028/2004-R, in review of Resolution 38/03 of October 27, 2003, pp. 122 to 123, issued by the First Civil Chamber of the Superior Court of the La Paz Judicial District, in the constitutional amparo proceedings filed by Aurora Rivas de Ortuño on her own behalf and as the representative of Lucio Orlando Ortuño Rivas v. Corina Machicado Alarcón, La Paz District Prosecutor, claiming violation of their rights of juridical security and legal defense. Sucre, January 6, 2004.

24. The additional information presented by the petitioner indicates that in judgment No. 18/2006 of October 23, 2006, the Fourth Court of the La Paz Judicial District found in the proven facts that “noncompliance with the judgment continued and continues to date,” on the grounds that “the offense of noncompliance with resolutions in habeas corpus and constitutional amparo proceedings continues since the health of Lucio Orlando Rivas Ortuño has not been restored,” finding the former commanding officer of the Navy and the former director of the Naval Academy guilty of the crime of disobeying resolutions in habeas corpus and constitutional amparo proceedings. The Fourth Court decided to punish the former commanding officer of the Navy and the former director of the Naval Academy with prison terms of two years, but it applied in their favor the judicial pardon provided for in Article 368 of the Code of Criminal Procedure on the grounds that the offense was committed on behalf of a corporate body and ruling that redress of the damage caused was consequently the responsibility of the Naval Academy, along with the trial costs. As of the drafting of this report, the Commission has no additional information indicating the Naval Academy’s compliance with the judgments handed down on behalf of the alleged victim.

25. In light of the facts described above, the petitioner holds that the Bolivian State is responsible for failing to ensure the execution and observance of courts’ rulings, and she believes

that the incidents described constitute violations of the rights enshrined in Articles 1, 24, and 25 of the American Convention on Human Rights, together with violations of Articles II (right to equality before law) and XVIII (right to a fair trial) of the American Declaration of the Rights and Duties of Man, in that the situation did not arise because disciplinary offenses were committed (as the Naval Academy maintains) but because the cadets were racists and actively discriminated against her son on account of his dark skin color and because they believed he was incapable of meeting military standards.

26. The petitioner holds that in consideration of the foregoing claims, the petition meets the admissibility requirements set out in Article 46 of the American Convention regarding the exhaustion of domestic remedies.

B. State

27. The reports submitted by the State request the petition to be declared inadmissible for not complying with the admissibility requirements. The State reports indicate that there are three remedies pending for exhaustion by the petitioner:

The investigation that the Vice-Minister of Justice asked the Attorney General of the Republic to perform on December 15, 2004, regarding compliance with constitutional judgments 72/2002-R (January 21, 2002) and 028/2004-R (January 6, 2004); and the report that the Supreme Court of Justice was requested to prepare.

The right of the complainant to lodge an appeal against Supreme Deed No. 7/2004, in which the Supreme Court of Military Justice decided to acquit the accused, pursuant to the Constitutional Court Law (No. 1836).

The criminal action taken against the alleged victim and the petitioner for the crimes of nonmaterial falsehood and use of falsified documents.

28. The Bolivian State concludes that the petition is inadmissible because it does not meet the requirements established in the Commission's Rules of Procedure.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

29. The petitioner has *locus standi* for presenting petitions, in accordance with Article 44 of the Convention. The petition identifies, as the alleged victims, individuals whose rights under the Convention the Republic of Bolivia has agreed to respect and ensure. As regards the State, Bolivia has been a state party to the American Convention since July 19, 1979, when it deposited the corresponding instrument of ratification. The petitioner describes acts or omissions that can be directly ascribed to the State. The Commission therefore believes it is competent *ratione personae*.

30. The Commission is competent *ratione temporis*, since the incidents alleged in the petition occurred when the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State.

31. The Commission has competence *ratione loci* to hear the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party.

32. As regards competence *ratione materiae*, the IACHR notes that the petitioner holds that the State violated the rights enshrined in Articles 24 and 25 of the American Convention on Human Rights and in Articles II and XVIII of the American Declaration, with respect to the alleged victim and his next-of-kin.

33. In this regard the Commission reiterates that once the Convention has come into force for a State, the Convention and not the Declaration becomes the primary source of law applicable by the Commission.[FN15] Thus, the right to equality before the law (Article II) and the right to a fair trial (Article XVIII) enshrined in the Declaration are subsumed by the provisions that protect those rights in Articles 24 and 25, respectively, of the Convention. Consequently, as regards those violations of the Declaration, the Commission shall make exclusive reference to the terms of the Convention.

[FN15] IACHR, Report N° 3/01 (Admissibility), Case 11.670, Amilcar Menéndez, Juan Manuel Caride et al. (Social Security System), Argentina, January 19 2001, paragraphs 41 et seq.

34. In the case at hand, the Commission believes it has competence *ratione materiae* regarding the claimed alleged violations of the right to judicial protection under Article 25 of the American Convention and the right to equal protection under Article 24.

B. Admissibility requirements

1. Exhaustion of domestic remedies

35. The petition addresses the Naval Academy's noncompliance with the court rulings issued by the Second Social and Administrative Chamber of the Superior Court of Justice of La Paz on October 22, 2001, and upheld on consultation by the Constitutional Court in a judgment of January 21, 2002. The petitioner holds that the decision should have been executed automatically and that, consequently, it was not the responsibility of the complainant to begin another action or pursue another remedy in order to request its implementation. However, in order to challenge the noncompliance of the decision, the petitioner filed a criminal suit for contempt in order to punish those officials who refused to abide by the orders of the amparo judges.

36. The State maintains that domestic remedies have not been exhausted on account of the three actions, listed in paragraph 28 of this report, which are still pending resolution. The Commission has consistently maintained that a State wishing to argue non exhaustion must meet

the burden of proving that there are still domestic remedies to be exhausted and that those remedies are adequate and effective.[FN16]

[FN16] IACHR, Report N° 60/03 (Admissibility), Petition 12.108, Marcel Claude Reyes et al., Chile, October 10, 2003, paragraph 51; IACHR, Annual Report 2000, Report N° 2/01, Case 11.280, Juan Carlos Bayarri, Argentina, January 19, 2001, paragraph 30.

37. The IACHR believes that the State's arguments are groundless since these actions are independent of the failure to execute the amparo judgments issued by the Bolivian domestic courts and described in paragraph 25 of this report. Thus, the IACHR reiterates that the adequate and effective remedy for asserting the rights of the alleged victims in this case under Bolivian law is the constitutional amparo enshrined in the national Constitution[FN17] that was resolved in their favor. In this case, the amparo suit was filed by the petitioner, argued, and decided on by the competent courts in two separate instances. The exhaustion of the action was confirmed with the decision of the Constitutional Court approving the reviewed resolution adopted by the Second Social and Administrative Chamber of the Superior Court of the La Paz Judicial District.

[FN17] Article 19 of the Constitution of Bolivia provides as follows:

In addition to the right of habeas corpus established in the preceding article, there shall be a recourse of amparo against illegal acts or undue omissions by public officials or private individuals that restrict, deny, or threaten to restrict the rights and guarantees of persons recognized in this Constitution and in law.

A writ of amparo may be entered by the person believing himself to be aggrieved or by another person on his behalf, with sufficient power of attorney, before the Superior Courts of the department capitals and before District Judges in the provinces, and shall be processed in a very summary fashion. The Public Prosecution Service may also enter a writ of amparo on an ex officio basis when the affected individual has not done so or cannot do so.

The authority or person against whom the writ is filed shall be summoned in the form specified in the preceding article in order to provide information and present, if applicable, the action taken on the alleged event, within a maximum of 48 hours.

The final ruling shall be handed down at a public hearing immediately upon receipt of the testimony of the accused, and failing that, it shall be given on the basis of evidence offered by the person filing the claim. The judicial authority shall examine the competence of the public official or the acts of the private individual, and should he find the accusation to be true, shall grant the amparo requested, provided there is no other means or legal recourse for the immediate protection of the rights and guarantees that have been restricted, suppressed or threatened. That authority shall submit, ex officio, its ruling to the Supreme Court of Justice within 24 hours, for review.

The prior rulings of the judicial authority and the final decision granting amparo shall be carried out immediately and without observations, and in case of resistance, the provisions of the preceding article shall apply.

38. Additionally, on November 7, 2003 the petitioner interposed a noncompliance memorandum of the 72/2002 Sentence before the Constitutional Tribunal which was ruled in her favor, decision which has not being execute yet.

39. Consequently, the Commission concludes that the petitioner in the case at hand did exhaust the adequate and effective remedy available to her for righting the violated legal situation, thereby meeting the terms of Article 46(1)(a) of the American Convention and Article 31 of the Commission's Rules of Procedure.

2. Filing period

40. As regards the requirement set forth in Article 46(1)(b) of the Convention – that a petition must be lodged within six months from the date on which the alleged victim was notified of the final judgment exhausting domestic remedies – the Commission reiterates its doctrine whereby:

noncompliance with an unappealable judgment constitutes a continued violation by States that persists as a permanent infraction of the right to effective judicial protection established by Article 25 of the Convention. Therefore, in such cases, the requirement concerning the deadline for the submission of petitions stipulated in Article 46(1)(b) of the American Convention need not be observed.[FN18]

[FN18] IACHR, Report N° 89/99 (Admissibility), Case 12.034, Carlos Torres Benvenuto et al., Peru, paragraphs 22 and 23; IACHR, Report N° 75/99 (Admissibility), Case 11.800, Cabrejos Bernuy, Peru, paragraph 22; and IACHR, Report N° 85/01 (Admissibility), Case 12.084, Workers of the Metropolitan Municipality of Lima and the Municipal Services Company of Lima, Peru, October 10, 2001.

40. Pursuant to the above, the requirement regarding the timeliness of the petition set out in Article 46(1)(b) of the American Convention is not applicable in the case at hand, in which the IACHR is being asked to analyze the alleged ongoing failure to execute decisions handed down by the Second Social and Administrative Chamber of the Superior Court of Justice of La Paz, on October 22, 2001, and upheld on consultation by the Constitutional Court in a constitutional judgment of January 21, 2002. In this connection, the Commission believes that the petition at hand was lodged within a reasonable time, pursuant to Article 32 of its Rules of Procedure, the content of which is equivalent to that of Article 38 of the Regulations in force at the time the complaint was lodged.

3. Duplication of proceedings and res judicata

41. The file for the instant case contains no information to indicate that the matter at hand is pending in any other international settlement proceeding or has been previously examined by the Inter-American Commission.

4. Characterization of the alleged facts

42. Article 47(b) of the Convention states that the Commission shall declare inadmissible any petition or communication that “does not state facts that tend to establish a violation of the rights guaranteed by this Convention.” The Commission believes that facts described by the petitioners in Section III of this Report could, *prima facie*, tend to establish violations of Article 25(2)(c) of the American Convention, in conjunction with the obligations set forth in Article 1(1) thereof. Therefore, and without prejudging the merits of the case, the Commission finds that the noncompliance with the court orders handed down by the domestic courts in support of ensuring that judicial decisions are obeyed and implemented could tend to establish a violation of Article 25 of the American Convention.

43. Furthermore, the Commission believes the petitioner’s claim that the noncompliance with the court rulings is related to the continued existence of a discriminatory attitude demands a rigorous examination and describes a situation that could tend to establish a violation of the rights protected by Article 24 of the American Convention, in conjunction with the nondiscrimination clause included in Article 1(1) thereof. The Commission will therefore defer its analysis of those allegations until it reaches a decision on the merits of the case.

44. The Commission believes that the petitioners’ claims set out facts that, if proven true, could tend to establish a violation of the right to judicial protection enshrined in Articles 24 and 25(2)(c) of the American Convention, along with the obligation to respect rights set out in Article 1(1) thereof. Consequently, the IACHR concludes that the case is admissible pursuant to the provisions of Article 47(b). Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

V. CONCLUSIONS

45. The Commission concludes that the case is admissible and that it has competence to examine the claims lodged by the petitioner regarding the alleged violation of Articles 24 and 25(2)(c) of the Convention, in conjunction with Article 1(1) thereof, in accordance with the requirements set out in Articles 46 and 47 of the American Convention.

46. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible as regards Articles 24 and 25(2)(c) of the American Convention, in conjunction with Article 1(1) thereof.
2. To give notice of this decision to the State and to the petitioner.
3. To begin its processing of the merits of the case.
4. To publish this decision and to include it in its Annual Report, to be presented to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of July, 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 Freddy Gutiérrez, Commissioners.