

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 58/07; Petition 1101-05
Session: Hundred Twenty-Eighth Session (16 – 27 July 2007)
Title/Style of Cause: Gabriel Orlando Vera Navarrete v. Peru
Doc. Type: Decision
Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Second Vice-President: Victor Abramovich;
Commissioners: Evelio Fernandez Arevalos, Clare K. Roberts, Freddy Gutierrez.
Dated: 25 July 2007
Citation: Vera Navarrete v. Peru, Petition 1101-05, Inter-Am. C.H.R., Report No. 58/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)

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I. SUMMARY

1. On May 24, 2005 the Inter-American Commission on Human Rights (hereinafter “the Commission”, “the Inter-American Commission” or “the IACHR”) received a petition lodged by Gabriel Orlando Vera Navarrete on his own behalf (hereinafter “the petitioner,” or “the alleged victim”), who alleges that the Republic of Peru (hereinafter “Peru”, “the State,” or “the Peruvian State”) bears international responsibility for the unduly long time that the alleged victim says that he has been held in preventive custody.

2. The petitioner claims that the Peruvian State is responsible for violation of Articles 7 (right to personal liberty) and 8 (right to a fair trial) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”). Furthermore, without citing a specific provision in the aforesaid international instrument, the petitioner alleges violation of the principle of freedom from ex post facto criminal laws. The petitioner also alleges violation of Articles 9 and 14 of the International Covenant on Civil and Political Rights. With respect to exhaustion of remedies under domestic law, the petitioner claims to have attempted all the remedies that were available to him for reparation of his rights.

3. As of this writing, the Peruvian State, for its part, has not presented any observations it might have deemed pertinent with respect to the petitioner's complaint.

4. In the instant report, the Commission concludes that, in keeping with the requirements provided in Articles 46 and 47 of the Convention, the petition is admissible as regards the right to personal liberty, the right to a fair trial, freedom from ex post facto laws, and the right to judicial protection enshrined, respectively, in Articles 7, 8, 9, and 25 of the American

Convention, taken together with the general obligation to respect and ensure rights set forth in Article 1(1), as well as the duty to adopt domestic legal provisions pursuant to Article 2, of the aforesaid international instrument, to the detriment of Mr. Miguel Orlando Vera Navarrete. Furthermore, the Commission decided to notify the parties of its decision and publish this report in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. The petition, dated April 5, 2005, was presented to the Commission on May 24, 2005. On October 11, 2005, the petitioner submitted additional information in connection with the object of the complaint.

6. In a communication of October 4, 2005, the IACHR began processing this petition and transmitted the pertinent portions to the Peruvian State, giving it two months to reply, in keeping with Article 30(3) of its Rules of Procedure.

7. On December 13, 2005, the Peruvian State requested an extension of the deadline to submit its comments on the petition; on January 10, 2006, the Commission granted the extension requested and gave the State 30 days.

8. On October 12, 2006, the petitioner conveyed further information to the Commission, receipt of which the IACHR duly confirmed on November 15, 2006. The Commission relayed the information submitted to the Peruvian State and gave it one month to present comments.

9. On December 18, 2006, the Peruvian State requested the Commission to grant it a second extension to present appropriate observations on the petitioner's complaint. In that connection, in a communication dated January 8, 2007, the IACHR proceeded to grant the extension requested for a period of 30 days.

10. On April 23, 2007, the petitioner presented additional information to the Commission, which the latter duly proceeded to transmit to the State in a communication of June 11, 2007.

III. POSITIONS OF THE PARTIES

A. The petitioner

11. In order to put the facts that comprise the object of his complaint into context, the petitioner mentions in his original petition presented to the IACHR on May 24, 2005, that since 1980, the Peruvian State has been dealing with an internal conflict started by the terrorist groups, Sendero Luminoso ("Shining Path") and Movimiento Revolucionario Túpac Amaru (MRTA), which, through use of arms, had spread terror and death among the Peruvian population. The petitioner claims that in combating these insurgent groups the State consistently acted in observance of the law and the rights of the citizenry. In this connection, the alleged victim says that he played an active role as a member of the Peruvian armed forces during the aforementioned period.[FN1]

[FN1] Original petition filed by Mr. Gabriel Orlando Vera Navarrete. Facts, Section 2(a), April 5, 2005.

12. The petitioner alleges that the Peruvian State deactivated the National Intelligence Service and “politicized” the work of intelligence agents, as a result of which the petitioner was a victim of persecution and imprisonment at the hands of the State. The petitioner says that there was manipulation of judicial officials who, in accordance with government instructions, allegedly issued political and subjective decisions for the sole purpose of keeping the alleged victim deprived of liberty, in flagrant violation of his human rights.

13. The petitioner says that he was indicted in a series of criminal proceedings instituted against him, in which he says a preventive custody order was issued for him. Indeed, the petitioner states that on April 7, 2001, the Fifth Special Criminal Court of Lima issued a warrant for his arrest and opened criminal proceedings against him and other accused persons for the crime of aggravated homicide. He further contends that on April 14, 2001, he voluntarily turned himself over to the appropriate judicial authority and has been held in preventive custody ever since. The petitioner alleges that, while in detention, on October 4, 2002, the Second Special Criminal Court of Lima, opened another criminal prosecution against him and other accused persons for the crime of aggravated homicide; subsequently, on January 24, 2003, the First Special Criminal Court of Lima, instituted another criminal trial against the same persons charged in the previous proceedings, for the same crime, and issued a detention order. The petitioner adds that, furthermore, on February 14, 2003, the Second Special Criminal Court of Lima, opened another trial against the same accused for the same crime, and issued an order for their detention (case file No. 01-2003).

14. The petitioner says that, as of the date of this report, he has been deprived of liberty in preventive custody since April 14, 2001; that is, more than 72 months (six years).

15. The petitioner adds that, in view of his protracted confinement under preventive custody, he filed a habeas corpus petition on April 15, 2004, with the Reviewing Judges [Jueces Sustanciadores] of the First, Second, and Fifth Special Criminal Courts of Lima. He mentions that this application was refused on the grounds that the criminal proceedings against the applicant allow for periods of detention determined by domestic law and that no irregularities have been committed. Subsequently, the Second Specialized Criminal Chamber for Trials of Defendants at Liberty of the Superior Court of Justice of Lima, in a ruling of May 10, 2004, rejected the habeas corpus petition. Lastly, the petitioner attaches as an annex to his petition the judgment of December 9, 2004,[FN2] of the Constitutional Court of Lima, which ruled that the habeas corpus petition presented by the alleged victim on April 15, 2004, was without merit.

[FN2] Ibid., note 1.

16. The petitioner says that at the time the criminal proceedings against him were instituted Article 137 of the Criminal Procedural Code of Peru was in force. That article provides a maximum time limit of nine months for preventive custody. In this connection, he says that when that period had elapsed he applied for his release by means of a motion to change the detention order. However, he says that his application was denied pursuant to law 27553 of November 13, 2001,[FN3] which amended Article 137 of the Criminal Procedural Code and set a maximum time limit for preventive custody of nine months in ordinary cases and of 18 months in special cases. The petitioner claims that this law, which was unfavorable for the decision on his personal liberty, was applied retroactively in his case, in violation of generally accepted provisions of international and domestic law.[FN4] The petitioner says that the Fifth Special Court of Lima held that his trial was of a “complex nature” and, therefore, the 18-month time limit provided by law 27553 of 2001 applied.

[FN3] The petitioner says that Law 27553 amended Article 137 of the Criminal Procedural Code and broadened Article 202 of the Code of Criminal Procedure. In particular, he says that Article 1 amends Article 137 of the Criminal Procedural Code in the following terms: Article 137.- The detention shall not exceed nine months in an ordinary proceeding or 18 months in a special proceeding, provided that the requirements set down at Article 135 of the Criminal Procedural Code are met [...].”

[FN4] In this connection, the petitioner says that Article 6 of the Code of Criminal Procedure provides, "The applicable criminal law is that which is in force when the punishable act is committed and in all circumstances the rule most favorable to the accused must be applied in the event of a contradiction as to time in criminal laws.”

17. Furthermore, the petitioner mentions that the case law of the Constitutional Court of Peru provided that the maximum length of time that a person could be detained without a conviction was 36 months.[FN5]

[FN5] Constitutional Court of Lima. Proceeding No. 2915-2004-HC/TC-LIMA. Case of Federico Tiberio Berrocal Prudencio. November 23, 2004. Para. 35(b).- “On the other hand, we have the maximum time limit applicable to the crimes of illicit drug trafficking, terrorism, espionage, and other proceedings of a complex nature being continued against more than 10 accused, in which the injured parties are a like number of persons, or the state, in which case the maximum time limit is 36 months [...].”

18. Consequently, the petitioner holds that said time limit has been exceeded in his criminal trial in the domestic jurisdiction since, by the time the petition was lodged with the Commission he had been in preventive custody without a conviction for 48 months. He adds that in ruling on his case in the aforesaid judgment of December 9, 2004, the Constitutional Court of Peru found that, in order to calculate the maximum detention time limit, consideration should be given, not only to the detention order issued in the earliest proceeding, but also the detention orders issued in each of the other proceedings against the accused.[FN6]

[FN6] Constitutional Court of Lima. Proceeding No. 2798-2004-HC/TC-LIMA. Case of Orlando Vera Navarrete, p. 10., para. 32. December 9, 2004.- “32. Therefore, this Court finds, with respect to determining if the maximum time limit for detention has been met, that the consequence of the joinder of the proceedings as ordered cannot be that only the detention order issued in the earliest proceeding should be considered; rather the detention orders issued in each of the proceedings against him must be considered.”

19. The petitioner says, in this regard, that the precautionary measure of preventive custody should last no longer than is necessary to accomplish the purposes of the judicial investigation. He holds that in his case this condition has not been met because, in the opinion of the courts, the alleged victim must serve out 36 months of detention in each proceeding in order for his application for release to succeed; in other words, it is not enough to have served out 36 months under the outstanding detention order in the oldest criminal proceeding but, rather, that the accused must complete 36 months in custody in each of the proceedings in which there is a detention order against him.

20. Furthermore, the petitioner says that on the December 21, 2004, Special Criminal Chamber “A” of the Superior Court ordered that all of the proceedings be joined before the Fifth Special Criminal Court in and for Lima (in case file No. 032-2001). He adds that, in light of this circumstance, there is no justification whatsoever for the period of preventive custody to be calculated separately in each proceeding because only one criminal proceeding subsists before the Fifth Special Criminal Court of Lima, with the result that the other detention orders are, therefore, secondary to the original order under which the alleged victim has been deprived of liberty since April 14, 2001.

21. The annexes to the petition shows that following the joinder of the proceedings, on December 22, 2004, the petitioner submitted an application for release, alleging excessive imprisonment without a conviction. That application was reportedly reiterated on January 4, 2005. On January 10, 2005, the application was denied by Chamber A of the Superior Court of Justice of Lima; appealed to the same Criminal Chamber on January 24, 2005, and rejected by it on January 25, 2005.[FN7]

[FN7] Special Criminal Chamber “A” of the Superior Court of Justice of Lima. Proceeding No. 028-2001-S-1. January 25, 2005.

22. The alleged victim says that he had served in the Peruvian Army for more than 20 years at the time of his detention in 2001, from which point he claims that, his pay was suspended in an "illegal and abusive manner,"[FN8] and that medical care has been withheld from him since October 2001. This situation has also placed his wife and two minor children at risk, since they are bereft of any economic support.

[FN8] Original petition filed by Mr. Gabriel Orlando Vera Navarrete. Facts, Section 2(e), April 5, 2005. The petitioner adds in a communication of November 29, 2005, that the actions of the Peruvian authorities in this regard violate Article 174 of the Peruvian Constitution of 1993, which provides, "Personnel of officer rank in the Armed Forces and the National Police shall have equal grades and honors, pay, and pensions. The law shall determine the equivalencies corresponding to career military or police personnel who do not hold officer rank or grade. In either case, the holders of the aforementioned rights may only be dispossessed of such rights by a court judgment." He adds that other members of the military who are on trial have continued to receive the appropriate pay.

23. On October 12, 2006, the petitioner submitted additional information in which he said that the Constitutional Court of Lima, in a judgment of December 9, 2004, indicated the obligation of the courts to order the release of Mr. Gabriel Orlando Vera Navarrete, once he had actually served 36 months without a final judgment in the proceeding. He added that despite this instruction from the Constitutional Court, the First Criminal Chamber had extended the detention order from 36 to 72 months.[FN9]

[FN9] Additional information submitted by the petitioner. October 12, 2006. Para. 13.

24. Based on the factual and legal arguments given above, the petitioner charges violation of his rights to personal liberty, a fair trial, and freedom from ex post facto laws recognized in Articles 7, 8, and 9 of the Convention.

25. As regards violation of the rule against retroactive application of criminal laws, the petitioner claims that the domestic criminal courts applied an unfavorable legislative amendment to Article 137 of the Criminal Procedural Code, which increased the maximum limit for preventive custody and caused him to remain deprived of liberty as a result of the aforesaid interpretations. For that reason, the petitioner argues that the criminal proceedings against him should be vacated, citing the unlawfulness of his detention in detriment to his right to liberty.

26. The petitioner says that each time the maximum time limit for preventive custody in the criminal proceedings against him expires or comes close to expiring, a fresh proceeding is illegally instituted, and his declaration of innocence and the evidence adduced in that regard are ignored. Indeed, the petitioner adds in a communication of April 20, 2007, that he has remained deprived of liberty at the Penal Facility for First-Time Defendants (formerly known as San Jorge Prison) for 72 months (six years) under a preventive custody order.[FN10]

[FN10] Additional information submitted by the petitioner. April 20, 2007. Paras. 1 and 2.

27. As regards fulfillment of admissibility requirements, the petitioner claims to have attempted all the judicial remedies that were available to him under domestic law to seek his release, but to no avail.

B. The State

28. In this section, the Inter-American Commission notes for the record that at the date of the instant report on admissibility of petition 1101-05 sub lite, lodged by Miguel Orlando Vera Navarrete, the Peruvian State had chosen not to present a response to the aforesaid petition, which was forwarded by a communication of October 4, 2005, or to submit observations on any of the information transmitted to it thereafter.

IV. ANALYSIS

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

29. The petitioner has standing under Article 44 of the American Convention to lodge petitions with the Commission on his own behalf inasmuch as he presents himself as an alleged victim in respect of whom the Peruvian State undertook to observe and ensure the rights recognized in the American Convention. Peru has been a party to the American Convention since July 28, 1978, when it deposited its instrument of ratification. Thus, the Commission has *ratione personae* competence to examine the petition.

30. The Commission is also competent *ratione loci* to consider the petition since it alleges violation of rights protected by the American Convention which are said to have taken place within the jurisdiction of the State. The Inter-American Commission is competent *ratione temporis* to examine the complaint because the obligation to observe and ensure the rights protected in the American Convention was already binding upon the State at the time the events described in the petition are alleged to have occurred.

31. Finally, the Commission has *ratione materiae* competence to take up the instant case because the petition alleges violations of human rights protected by the American Convention. As to the alleged violations of the International Covenant on Civil and Political Rights, the Commission notes that it is not empowered by said instrument to apply it in exercise of its authority under the individual petitions system and, therefore, finds that it lacks *ratione materiae* jurisdiction to make a decision thereon.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

32. Article 46(1)(a) of the American Convention provides that admission of petitions lodged with the Inter-American Commission in keeping with Article 44 of the Convention shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This rule is

designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve them before they are taken up in an international proceeding.

33. Of the generally recognized principles of international law referred to in the rule of exhaustion of domestic remedies and reflected in the precedents set by the Inter-American Commission and Court, the foremost principle is that the respondent State may expressly or tacitly waive invocation of this rule.[FN11] Secondly, in order to be timely, the objection that domestic remedies have not been exhausted should be raised during the first stages of the proceeding or, to the contrary, it will be presumed that the interested State has waived its use tacitly.[FN12] Thirdly, in keeping with the burden of proof, the State that alleges non-exhaustion must indicate which domestic remedies should be exhausted and provide evidence of their effectiveness.[FN13] Consequently, if the State concerned does not present arguments on this requirement in a timely manner, it shall be assumed that it has waived the right to allege failure to exhaust domestic remedies and, therefore, to discharge the burden of proof incumbent on it.

[FN11] IACHR, Report 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., Case of Moiwana Community. Judgment of June 15, 2005. Series C, No. 124, para. 49; and I/A Court H.R., Case of Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C, No. 118, para. 135.

[FN12] I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community. Preliminary Objections. Judgment of February 1, 2000. Series C, No. 66, para. 53; I/A Court H.R., Case of Castillo-Petruzzi. Preliminary Objections. Judgment of September 4, 1998. Series C, No. 41, para. 56; and I/A Court H.R., Case of Loayza-Tamayo. Preliminary Objections. Judgment of January 31, 1996. Series C, No. 25, para. 40. The Commission and the Court have held that "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 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, which cites, I/A Court H.R., Case of Herrera Ulloa. Judgment of July 2, 2004. Series C, No. 107, para. 81.

[FN13] Cfr. IACHR, Report 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., Case of the Mayagna (Sumo) Awas Tingni Community. Preliminary Objections, supra, para. 53; Case of Durand and Ugarte. Preliminary Objections. Judgment of May 28, 1999. Series C, No. 50, para. 33; and Case of Cantoral-Benavides. Preliminary Objections. Judgment of September 3, 1998. Series C, No. 40, para. 31.

34. Based on information from the petitioner in the record of this petition, the Commission finds that Mr. Vera Navarrete filed a habeas corpus petition on April 15, 2004, requesting his immediate release on the ground that the time limit for preventive custody under Article 137 of the Criminal Procedural Code of Peru had been met. On April 27, 2004, that remedy was refused by the Forty-Second Criminal Court in and for Lima. Subsequently, on appeal, the Second

Specialized Criminal Chamber for Trials of Defendants at Liberty of the Superior Court of Justice of Lima rejected the habeas corpus petition in a ruling of May 10, 2004.

35. In view of this situation, the petitioner filed a motion for reconsideration of dismissal of appeal with the Constitutional Court against the aforesaid judgment of the Superior Court of Justice of Lima. In a judgment of December 9, 2004, the Constitutional Court of Lima (the court of last resort) ruled that the habeas corpus petition presented by the alleged victim on April 15, 2004, was without merit.

36. The aforementioned ruling of the Constitutional Court denotes that four proceedings were initiated against Mr. Vera Navarrete:

- Proceeding No. 03-2003: Opened before the First Special Criminal Court, with a detention order dated January 24, 2003. In its ruling, the Constitutional Court indicated that the detention time limit would expire on January 24, 2006.

- Proceedings Nos. 44-2002 and 01-2003: Opened before the Second Special Criminal Court in and for Lima, with detention orders dated October 4, 2002 and February 14, 2003, respectively. In its ruling, the Constitutional Court indicated that the detention time limits for the aforesaid proceedings would expire on October 4, 2005, and February 14, 2006.

- Proceeding No. 32-2001: Opened before the Fifth Special Criminal Court, with a preventive custody order dated April 14, 2001. In its ruling, the Constitutional Court noted that the aforementioned proceeding was declared of a complex nature, and the detention order of July 24, 2004, was extended to the maximum time limit permitted by Article 137 of the Criminal Procedural Code.

37. Furthermore, the ruling mentions that by decision dated July 18, 2003, proceedings Nos. 01-2003 and 03-2003 were ordered joined to the case file of proceeding No. 44-2002 and that, subsequently, by decision of December 21, 2004, proceeding No. 44-2002 was joined to proceeding No. 32-2001 before the Fifth Special Criminal Court.[FN14]

[FN14] Constitutional Court, Motion for Reconsideration, Judgment of December 9, 2004.

38. In this connection, it should be noted that the Constitutional Court rejected the habeas corpus petition, expressly mentioning in the relevant part of its ruling that,

[...] The determination as to the maximum time limit for detention in the case must be made in accordance with the right to a reasonable time in detention. Furthermore, as this Court has already found, it is not possible in abstract to set a single time limit, such that upon its expiry provisional imprisonment could be reputed to be unreasonable. That would amount to assigning an objective and incontrovertible uniformity to criminal proceedings, a circumstance utterly foreign to the serious and delicate task of assessing the possible criminal liability of the individuals accused of committing a wrongdoing. [Case file No. 2915-2004-HC/TC].

It should be borne in mind that each of the proceedings opened against the appellant is complex, given the number of defendants and victims. Accordingly, the detention time limit in each of them separately, in accordance with Article 137 of the Criminal Procedural Code, is the maximum permitted by law. [...]

Therefore, this Court finds, with respect to determining if the maximum time limit for detention has been met, that the consequence of the joinder of the proceedings as ordered cannot be that only the detention order issued in the earliest proceeding should be considered; rather the detention orders issued in each of the proceedings against him must be considered.

39. For his part, in view of the joinder of the proceedings before the Fifth Special Criminal Court ordered on December 21, 2004, by decision No. 250 of Special Criminal Chamber “A” of the Superior Court of Justice of Lima, on January 4, 2005, the petitioner submitted an application for release on the ground of excessive imprisonment without a conviction. That application was denied on January 10, 2005, by the Special Criminal Chamber “A” of the Superior Court of Justice of Lima by means of a decision dated January 10, 2005. Subsequently, on January 24, 2005, the alleged victim challenged that decision in an appeal that was declared inadmissible in a ruling of January 25, 2005.[FN15] Faced with this situation, Mr. Vera Navarrete filed a motion for reconsideration of dismissal of appeal against the aforementioned decision of January 25, 2005, which was granted on February 18, 2005, by the Special Criminal Chamber “A” of the Superior Court of Justice of Lima, which ordered that the proceedings be referred to the Supreme Court Justice.[FN16]

[FN15] Special Chamber “A” of the Superior Court of Justice of Lima, Case 028-2001 “S-1”, Decision of January 25, 2005.

[FN16] Special Chamber “A” of the Superior Court of Justice of Lima, Case 028-2001 “S-1”, Decision of February 18, 2005.

40. On February 7, 2005, the petitioner filed a motion with the Fifth Special Criminal Court of Lima, which is hearing the aforesaid joined proceedings, in which he requested his release, alleging excessive imprisonment without a conviction. According to information provided by the petitioner, that motion was denied by a judgment rendered on February 11, 2005, by the Fifth Special Criminal Court.

41. For its part, the Commission notes that in this case the State refrained from presenting arguments alleging that the petition failed to fulfill admissibility requirements, on which basis the Commission finds that the State has tacitly waived the right to plead that defense.

42. In light of the foregoing information and in order to examine if the petition has met the requirement of prior exhaustion of domestic remedies, the Commission finds that it is appropriate to bear in mind, first, that although the petitioner filed a series of motions in different domestic judicial proceedings, the results of which were negative as far as his claims were concerned, the remedy deemed suitable in the instant case to dispute the legality of the allegedly excessive period of detention is habeas corpus. Said remedy was seemingly denied to him at last

instance on the ground that the detention orders in the different proceedings brought against him should be counted separately, notwithstanding that those proceedings were ordered joined in a single case file. In this regard, the IACHR considers it necessary to point out that the interpretation adopted by the Constitutional Court in its judgment of December 9, 2004, created a procedural impact in the determination of Mr. Vera Navarrete's situation, in the sense that the decisions adopted on all the subsequent motions brought by him were founded, generally speaking, on the considerations expressed by the said Court.

43. In sum, the Commission notes from the information at its disposal that the petitioner filed a habeas corpus petition to secure his release, which was denied at last instance in the judgment of the Constitutional Court of December 9, 2004, having considered the joinder of the proceedings instituted against the alleged victims. The State, for its part, did not invoke non-fulfillment of the requirement at Article 46(1)(a) of the American Convention, and therefore, the Commission finds that said requirement is met.

2. Timeliness of the petition

44. Article 46(1)(b) of the Convention provides that, in order to be admissible, a petition must be lodged within six months of the date when the complaining party has been notified of a final decision handed down at the national level.

45. In the instant case, the Commission notes that the judgment of the Constitutional Court that decided the habeas corpus petition at last instance was issued on December 9, 2004 and notified on February 10, 2005, and that the petition against the Peruvian State was lodged with the Commission on May 24 of the same year. Furthermore, the State chose not to present arguments regarding the admissibility of the complaint. Accordingly, the Commission concludes that the requirement in the Convention in this regard is fulfilled.

3. Duplication of proceedings and res judicata

46. Article 46(1)(c) of the American Convention provides that admission of a petition is subject to the requirement that the matter "is not pending in another international proceeding for settlement," and Article 47(d) stipulates that the Commission shall not admit a petition which "is substantially the same as one previously studied by" it "or by another international organization." In the present case, the parties have not claimed and the proceedings do not indicate the existence of either of these circumstances of inadmissibility. In this connection, the IACHR finds that there is nothing in the record to suggest that the subject matter of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by it or by another international organization. Therefore, the Commission finds that the requirements set forth in the aforementioned articles have been met.

4. Nature of the allegations

47. As the Commission has held in other cases, it is not appropriate for it at this stage of the proceedings to determine whether or not the American Convention has been violated. For the purposes of admissibility, the IACHR simply has to determine if the arguments set out in the

petition state facts that could tend to establish a violation of the American Convention, as required under Article 47(b) thereof, and whether the petition is "manifestly groundless" or "obviously out of order," as paragraph (c) of the same Article provides. The standard by which to assess these extremes is different from the one needed to decide the merits of a petition. At this stage the IACHR must perform a summary prima facie evaluation that does not imply any prejudgment or advance opinion on the merits of the petition. By establishing two clearly separate phases -one for admissibility and the other for the merits- the Commission's own Rules of Procedure reflect the distinction between the evaluation the Commission must make to declare a petition admissible, and the evaluation required to determine the responsibility of the State.

48. In the instant case, the petitioner alleges violation by the Peruvian State of the rights to personal liberty and a fair trial recognized in Articles 7 and 8 of the American Convention, respectively. Furthermore, without citing a specific provision in the aforesaid international instrument, the petitioner alleges violation of the principle of freedom from ex post facto criminal laws.

49. At the time of this writing, the State had refrained from presenting comments on the instant complaint. The Commission observes that the criminal process against the alleged victim is referred to actions connected to the claimed participation in the self-named Grupo Colina, even in cases of forced disappearance, as La Cantuta case, among others.

50. According to the information available, on April 15, 2004, the petitioner filed a habeas corpus petition with the First, Second, and Fifth Special Criminal Courts of Lima in order to secure his release with the argument that the maximum time limit for preventive custody had allegedly expired. That petition was decided at last instance by the Constitutional Court in a judgment handed down on December 9, 2004, which declared that the petition was without merit.

51. The Commission notes that, in order to calculate the maximum detention time limit in this case, the Constitutional Court held that it was necessary to give consideration to each of the detention orders issued in each of the other proceedings against Mr. Vera Navarrete and that the consequence of the joint of the proceedings could not be that only the detention order issued in the earliest proceeding should be considered but, rather, that the detention orders issued in each of the proceedings against him should be considered separately.[FN17] The Constitutional Court also considered that even if the maximum detention time limit expired, it could be extended in the event of a delay in the proceeding attributable to the accused should he undertake "an obstructionist defense that undermines the swiftness and success of justice." [FN18]

[FN17] Constitutional Court of Lima. Proceeding No. 2798-2004-HC/TC-LIMA. Case of Orlando Vera Navarrete. December 9, 2004.

[FN18] Constitutional Court of Lima. Proceeding No. 2798-2004-HC/TC-LIMA. Case of Orlando Vera Navarrete. December 9, 2004.

52. With regard to the foregoing, the Commission believes that it should mention that the facts in the instant petition have to do fundamentally, though not exclusively, with the length of the time limit on the preventive custody in which Mr. Miguel Orlando Vera Navarrete is being held. Based on the aforementioned information, at the time of this writing the alleged victim had been held under a preventive custody order for more than 72 months without a criminal conviction issued to put an end to his accused status.

53. In that sense, the Commission finds, in particular, that the petition basically raises questions regarding interpretation of Article 7(5) of the American Convention, which recognizes the right to personal liberty and provides, “Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial”; in addition with Article 8(2) of the Convention, which states the right to be presumed innocent, from which the state obligation of non-restriction of personal liberty is derived, over the strictly necessary limits to grant that the detained will not avoid the development of the efficient investigations and that he will not avoid action of justice.

54. Thus, in light of the facts described in petition, the Commission finds that the petitioner has formulated allegations that are neither “manifestly groundless” nor “obviously out of order” and that, if found to be true, could constitute violations of Articles 7, 8, 9, and 25 of the American Convention, respectively, in conjunction with Articles 1(1) and 2 of that international instrument. Accordingly, the IACHR considers that the petition meets the requirements contained in Article 47(b) thereof. It should be added, that the foregoing is based on the understanding that the allegations in connection with Articles 8, 9, and 25 bear relation to the reasons and duration of the preventive custody, which is the sole object of this petition.

V. CONCLUSION

55. The Commission concludes that the case is admissible and that it is competent to examine the complaint presented by the petitioner with regard to the alleged violation of Articles 7, 8, 9, and 25 of the American Convention, taken together with the obligations under Articles 1(1) and 2 thereof. Based on the factual and legal arguments given above and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant petition admissible with regard to the alleged violation of Articles 7, 8, 9, and 25 of the American Convention, taken in conjunction with the obligations under Articles 1(1) and 2 thereof.
2. To transmit this report to the petitioner and the State.
3. To proceed with its analysis of merits in the case.
4. 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 25th 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, Clare K. Roberts and Freddy Gutiérrez, Commissioners.