

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 63/07; Petition 625-01
Session:	Hundred Twenty-Eighth Session (16 – 27 July 2007)
Title/Style of Cause:	Luis Fernando Astorga Gatjens, Oscar Guillermo Rivera Moya, Yanira Pessoa Peralta, Federico Montero Mejia and Otto Eduardo Lepiz Ramos v. Costa Rica
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:	27 July 2007
Citation:	Astorga Gatjens v. Costa Rica, Petition 625-01, Inter-Am. C.H.R., Report No. 63/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANT: the Center for Justice and International Law
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I. SUMMARY

1. On September 11, 2001, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission” or “the IACHR”) received a petition lodged by the Center for Justice and International Law, CEJIL (hereinafter “the petitioners”), denouncing the responsibility of the Republic of Costa Rica (hereinafter “Costa Rica” or “the State”) for the violation, with respect to Messrs. Luis Fernando Astorga Gatjens, Oscar Guillermo Rivera Moya, Yanira Pessoa Peralta, Federico Montero Mejía, and Otto Eduardo Lépiz Ramos (hereinafter “the alleged victims”), of Articles 5, 11, 22, 24, and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in conjunction with Article 1(1) thereof.

2. In their initial filing the petitioners claimed that although there are 311,554 people with various physical, mental, or sensorial disabilities in Costa Rica (representing 9.32% of the national population), there is an enormous discrepancy between their rights as protected by legislation and the reality and day-to-day experiences of most of these persons, who are “victims of the inaccessibility of the various services and social spheres that exist.” In this particular case, the alleged victims claim that they, along with the other disabled members of the population, have suffered exclusion and discrimination at the hands of the State of Costa Rica and that the State has failed to meet its obligation of implementing a public bus service with the requirements set out in the Law of Equal Opportunities for Persons with Disabilities (Law 7600, enacted on April 18, 1996) and its Regulations.

3. The State in turn asks that the Commission declare this petition inadmissible, believing that the petitioners do not describe incidents that tend to establish any violations of the rights guaranteed by the American Convention, as required by Article 47(b). The State also argues that at no time has it pursued actions that discriminate against individuals with disabilities, since it has carried out a series of actions to create special conditions so that such individuals can attain the maximum development of their personal potential. It further notes that the creation of conditions for the full enjoyment of all human rights is clearly a complex process that can invariably be improved, which is particularly true as regards rights that require states to adopt positive actions, as a result of which Costa Rica has assumed that commitment.

4. After analyzing the positions of the petitioners and of the State, the Commission decides that the case is inadmissible under Articles 46 and 47 of the American Convention. The Commission further resolves to publish this report in its Annual Report to the General Assembly of the OAS and to notify both parties of its decision.

II. PROCESSING BY THE INTER-AMERICAN COMMISSION

5. The Commission received the petition on September 11, 2001; it registered it as No. 625-01 and sent an acknowledgement of receipt to the petitioners on September 20, 2001.

6. On December 10, 2001, the Commission conveyed the relevant parts of the petition to the government of Costa Rica, for it to submit its comments within the following two months.

7. On January 14, 2002, the Commission received a communication from the Inter-American Institute on Disability (IID), requesting its inclusion as a co-petitioner in this petition.

8. On February 11, 2002, the Commission received the comments from the State of Costa Rica and, on that same date, forwarded the relevant parts to the petitioners for them to submit their comments within the following 45 days, along with any new or additional information.

9. On April 8, 2002, the petitioners sent the Commission their comments and information regarding the petition. On May 3, 2002, the Commission sent the State the relevant parts, along with a period of 45 days in which to return its comments.

10. On June 18, 2002, the Commission received the State's comments.

11. On January 30, 2003, the Commission received a communication from the petitioners asking the IACHR for a hearing at its 117th regular session, in order to submit arguments grounded on reliable evidence to demonstrate that the petition they lodged was in compliance with the admissibility requirements.

12. On February 12, 2003, the petitioners sent the Commission a communication requesting that a report on admissibility be adopted. On March 24, 2003, the Commission sent the State the relevant parts of the petitioners' communication, asking it to take the necessary steps for the Commission to have all the information on the case within the following 30 days.

13. On April 25, 2003, the Commission received a communication from the State submitting its comments and reiterating its position regarding the declaration of the petition's inadmissibility.

14. On May 14, 2003, the Commission forwarded the relevant parts to the petitioners for them to submit their observations within a period of one month.

15. On December 11, 2003, the Commission received a communication from the petitioners requesting that the Commission formally make itself available to the parties in order to begin friendly settlement proceedings. On January 26, 2004, the Commission acknowledged receipt of that communication.

16. On January 26, 2004, the Commission communicated with the State of Costa Rica, informing it that, at the petitioners' request, it had decided to make itself available to the parties with a view to reaching a friendly settlement of the matter and instructing it to take such steps as it deemed appropriate for the government to report back to the IACHR, within a period of one month, as to whether it was interested in embarking on the procedures set out in Article 48(1)(f) of the Convention.

17. On March 19, 2007, the Commission received a communication from the petitioners in which they submitted additional arguments in this case and requested the adoption of the corresponding report on admissibility, since the efforts begun in 2004 had been unable to arrive at a friendly settlement with the State. On that same date the petitioners were sent an acknowledgment of the receipt of their communication and, on March 28, 2007, the relevant parts were forwarded to the government for it to submit any comments it deemed appropriate within a period of one month.

18. On April 30, 2007, the State sent the Commission its comments on the information furnished by the petitioners. On May 2, the Commission acknowledged receipt of that communication.

19. On May 2, 2007, the Commission sent the petitioners the comments made by the State and asked them to submit their observations on them within the following 15 days.

III. POSITIONS OF THE PARTIES

A. Petitioners

20. The petitioners claim that the alleged victims Oscar Rivera Moya,[FN1] Luis Fernando Astorga Gatjens,[FN2] Federico Montero Mejía,[FN3] Yanira Pessoa Peralta,[FN4] and Otto Lépiz Ramos[FN5] are disabled persons who, like many other people with disabilities, require wheelchairs. This is a barrier to access to public transport, since there are no vehicles that meet the rules set out in the Law of Equal Opportunities for Persons with Disabilities (Law 7600) for guaranteeing access by the wheelchair-bound, and so, to reach their destinations, the alleged

victims suffer immensely in boarding, remaining on, and alighting from buses, with their personal integrity at constant risk, which restricts their right to freedom of movement.

[FN1] He suffers from severe after-effects of polio; he works as a translator, working from home given his inability to travel, which has kept him from securing a access to a permanent and stable job.

[FN2] A person with a physical disability caused by a traffic accident in 1996, on account of which his right leg was amputated at the hip. He is a human rights activist and a communicator.

[FN3] Disabled by an injury to his spinal cord at the age of 24, as a result of which both his legs were paralyzed.

[FN4] Disabled by the after-effects of polio, she needs the permanent support of a cane to walk.

[FN5] A disabled person whose brain was deprived of oxygen for a space of a few minutes at birth, causing cerebral palsy and on account of which he is unable to control his movements.

21. The petitioners report that on April 18, 1996, the Legislative Assembly of Costa Rica passed the Law of Equal Opportunities for Persons with Disabilities (Law 7600), which was published in the official journal La Gaceta, No. 102, on May 29 of that year. The petitioners state that the chief aim of the law is to ensure that persons with disabilities attain their maximum development, full social participation, and the exercise of the rights and duties set out in the nation's laws, and to ensure equal opportunities for that sector of the population in areas such as health, education, work, family life, recreation, sport, culture, and all other specified fields, thereby eliminating any form of discrimination against persons with disabilities and setting the legal and material foundations that will allow society to take the steps necessary to ensure equality of opportunities and nondiscrimination for such individuals.

22. The petitioners state that with reference to access to transportation, the law stipulates that to ensure mobility and security on public transport vehicles, technical measures intended to adapt them to the needs of disabled people must be put in place.[FN6] The law also states that in order to obtain permits and concessions for running public transportation services, operators must meet the requirements stipulated in the Law.[FN7]

[FN6] Law of Equal Opportunities for Persons with Disabilities. Article 45: "Technical measures."

[FN7] Law of Equal Opportunities for Persons with Disabilities. Article 46: "Permits and Concessions: To obtain permits and concessions to operate public transportation services, the beneficiaries of such contracts must submit their technical reviews, with the approval of the Ministry of Public Works and Transport, showing that they meet the measures set out in this Law and its Regulations."

23. The petitioners say that the Law's transitory provisions require the Ministry of Public Works and Transport to begin, immediately and using existing resources, the execution of the obligations contained in the Law and to complete them within a maximum of seven years.

24. The petitioners report that on March 23, 1998, the executive adopted Decree No. 26831-MP, regulating Law No. 7600, which stipulates the requirements and characteristics of public and collective transport.[FN8] They report that as a control mechanism to oversee compliance with those requirements, the Regulations provide for a process of Technical Review, to be carried out by the Department of the Ministry of Public Works and Transport, which is the agency responsible for ensuring compliance with the requirements.

[FN8] Article 165 of the Regulations: “Requirements and Characteristics of Public Collective Transport. (a) A minimum of two preferential seats, close to the access doors, duly labeled, along with the alighting bell in an easily accessible position and of a standard design so that the blind can be certain of its location; (b) Non-slip flooring material; (c) Elimination of devices that could hinder access upon boarding, such as turnstiles, barriers, etc. (d) Long-distance transportation services shall install a visual and audible information system to inform travelers of arrival at stations and stops with sufficient advance warning; (e) Entry and exit doors and steps must have a minimum width of 0.80 meters, the height of the first step above the road surface must be no more than 0.40 meters, and the floor of the vehicle may be low and allow easy access from the roadway, with sufficient space to allow access by a person in a wheelchair. Appropriate mechanical hydraulic devices for entry and egress, such as platforms or ramps, shall be fitted. These devices shall be located on at least one side door... All public transport vehicles shall allow persons with disabilities to board and to use the technical aids they need, including canes, crutches, wheelchairs, guide dogs, and other similar devices.”

25. The petitioners claim that irrespective of the provisions contained in the Law, the collective public transport system does not meet its obligation of ensuring its accessibility by persons with disabilities and that the State has not taken the steps necessary to force the transport concessionaires to meet those requirements: the Public Transport Council does not require buses to meet the accessibility requirements set out in Law 7600, thus violating their right to equality before the law as provided for in Article 33 of the Constitution of Costa Rica and Article 24 of the American Convention.

26. The petitioners claim that as a result of the noncompliance by the Public Transport Council (the agency of the Ministry of Public Works and Transport responsible for requiring that public transportation operators adapt their vehicles to the needs of persons with disabilities), on December 1, 2000, they filed an amparo suit against the Council with the Constitutional Chamber, arguing that the buses did not comply with the characteristics necessary for persons with disabilities to be able to use that public service in comfort and safety. In their filing they also argued that although the authorities responsible for public transport matters have taken steps to improve accessibility – such as removing the mechanical counters known as trompos – those measures have been insufficient. Finally they claim that the Public Transport Council does not require buses to meet the accessibility requirements set by Law No. 7600 and its Regulations, thereby violating the alleged victims’ basic rights such as that of equality before the law and freedom of movement.

27. Under that remedy the Constitutional Chamber asked the Public Transport Council of the Ministry of Public Works and Transport to issue a report, in which it argued that the contracts for the renewal of bus concessions were including a clause under which the concessionaires agreed to meet the demands of Law No. 7600, with which, as a part of the process of transformation and change underway within public transport, the steps necessary to meet the requirements set out in that law were being taken. They also noted that as the petitioners correctly stated in their submission, the deadline for implementing those measures had not yet fallen due,[FN9] and so they could not claim that their basic rights were being violated since the Administration was still within the period set by law for implementing the necessary changes and meeting the requirements. In its report, the Transport Council enclosed a draft copy of the concession contracts in which that clause was implemented.

[FN9] Law of Equal Opportunities for Persons with Disabilities, Transitory Article VI: “The Ministry of Public Works and Transport shall begin, immediately and using existing resources, the execution of the obligations contained in the Law and shall complete them within a maximum period of seven years.”

28. The petitioners state that in a resolution dated January 5, 2001, notified on March 10, 2001, the Constitutional Chamber of the Supreme Court of Justice handed down resolution No. 2001-00107 declaring the amparo filing to be ungrounded on the grounds that the respondent ministry had taken various steps to adapt the public transport service to the requirements of the law in question, through the concession renewal contracts, together with the fact that the ministry still had time to adapt the entire transport service prior to the year 2003.

29. Regarding that resolution, the petitioners state that the Costa Rican judiciary failed to meet its obligation of protecting the rights enshrined in the Convention in that its decision ignored the fact that the “assumed contract” submitted as evidence by the Public Transport Council of Ministry of Public Works and Transport was a draft – in other words, an unapproved model contract that had not been used or enforced and so represented a future expectation.

30. The petitioners further claim that in resolving the amparo filing the Constitutional Chamber did so in such a way that the judicial decision violated the plaintiffs’ human rights, citing as an example the fact that the Chamber, in the section titled “As a result of which,” revealed its opinion of the legal deadlines.[FN10] In addition, the petitioners claim that the decision of the Costa Rican court undermined the alleged victims’ human rights, thereby giving rise to international responsibility on the part of the State, particularly in that not only did the Chamber ignore the spirit of Law No. 7600 – the chief aim of which is for persons with disabilities to attain their maximum development, full social participation, and the exercise of the rights and duties set out in the nation’s laws – but that it also failed to analyze whether the measures adopted by the Ministry of Public Works and Transport were sufficient for guaranteeing the plaintiffs’ rights.

[FN10] Resolution No. 2001-00107 of the Constitutional Chamber of the Supreme Court of Justice: “As a result of which: ... Transitory Article VI of Law 7600 provides, very correctly, that the adaptation of public transport vehicles is to commence immediately after the enactment of the law and to conclude within a maximum of seven years.”

31. The petitioners state that the resolution makes it clear that the remedy filed was not effective for the plaintiffs’ interests, and so, its uselessness having been demonstrated, the State of Costa Rica incurred in a violation of Article 25 of the Convention in that, with the decision, the Chamber allowed the State to continue to ignore its obligation of ensuring that the operators of public collective transport abided by the law’s requirements. They also claim that since they have pursued the suitable and effective remedy offered by domestic jurisdiction and since there is no other channel available at the national level for defending their rights, they hold that domestic remedies have been exhausted, a fact expressly accepted and not contested by the State in its submission of April 24, 2003.

32. The petitioners state that on May 29, 2003, the seven-year deadline established by Law No. 7600 expired but that as of that date, buses guaranteeing effective access by persons with disabilities accounted for only a tiny number: as of June 2003, only two buses were accessible for disabled persons and, moreover, the State was beginning a policy of granting open extensions of the deadline for complying with the provisions for ensuring access by persons with disabilities.[FN11]

[FN11] Nación newspaper, Monday, September 1, 2003: “Companies given more time to adapt buses” http://www.nacion.com/ln_ee/2003/septiembre/02/pais9.html.

33. The petitioners report that as of March 2006 the State was not fulfilling its obligation of requiring public transport concessionaires to comply with the disability access rules; thus, three years after the deadline indicated in the Law for those obligations to be met and ten years after the enactment of the provision requiring the State to immediately begin execution of the provisions governing access to public transport by persons with disabilities, the rules were still not being enforced.

34. The petitioners claim that because of pressure from companies with concessions for operating urban public transport services, on October 9, 2006, the Legislative Assembly amended Law No. 7600 to extend the deadline for meeting the disabled access technical requirements until 2014.

35. The petitioners report that prior to that amendment, on June 28, 2006, 14 deputies filed a Facultative Legislative Constitutionality Consultation with the Constitutional Chamber of the Supreme Court of Justice regarding the bill “Amendments to the Law of Equal Opportunities for Persons with Disabilities” containing the addition of Article 46 bis[FN12] and Transitory Article VIII[FN13] of Law No. 7600. This consultation was intended to establish whether the bill amending Article 46 of Law No. 7600 and its Transitory Article VIII was in breach of Articles

33[FN14] and 22[FN15] of the national Constitution or international human rights protection instruments, particularly the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities.[FN16]

[FN12] “Article 46 bis: “Route buses. The Public Transport Council and the Ministry of Public Works and Transport (MOPT) shall not allow the use of route buses in the public transport service that were manufactured fifteen years ago or more. This deadline is not eligible for extensions. Neither may public transport route buses not duly equipped with accessibility features operate. To this end, the Public Transport Council and the MOPT will include in the corresponding technical review manuals, as of July 1, 2006, the accessibility features set out in this Law and its Regulations. The agency responsible for conducting the technical vehicle review shall verify compliance with the technical requirements by the entire public passenger transport fleet.”

[FN13] Transitory Article VIII: “For the purposes of Article 46 bis of this Law, as of July 1, 2006, all public transport service vehicles operating for the first time as buses under concessions or permits shall be equipped in accordance with the accessibility requirements, including a ramp or platform and the measurements of the access doors. All model 2007 vehicles and later must be fully factory-equipped or retrofitted with the equivalent technical features to ensure their functional suitability, safety, and accessibility. The following deadlines shall apply to vehicles providing the service prior to July 2006:

- a) Vehicles of model years 1996 to 1999 shall have until May 29, 2011, to be totally equipped.
- b) Vehicles of model years 2000 to 2006 shall have until May 29, 2014, to be totally equipped.

Holders of permits and concessions for route buses shall provide the Public Transport Council with annual reports on their progressive compliance with these obligations. In force as of its publication.”

[FN14] Article 33: “All persons are equal before the law and no discrimination whatsoever against human dignity shall be allowed.”

[FN15] Article 22: “All Costa Ricans may travel to and remain at any point in the Republic or outside of it, provided they are free of responsibility, and return when they choose. Requirements preventing their entry to the country may not be imposed on Costa Ricans.”

[FN16] Ratified by Costa Rica in 1999, Article 3(a) of which requires signatory states to ensure the right of equality on public transport.

36. The petitioners report that on August 4, 2006, in Resolution No. 2006-011344 and after conducting an analysis of the proposed amendment, the Constitutional Chamber stated that the measure established an extension of an additional eight years without the document containing any reasons to justify such an action, and that it set out no technical reasons that would justify leaving void of effect the exercise of a right of disabled people already recognized by law, thus rendering it unconstitutional by reason of breaking the principles of reasonableness. Finally, the consultation concluded that: “Article 2 flagrantly violates Article 33 of the Constitution and the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, which, according to Article 7 of the Constitution, has primacy over domestic

law, in that it denies persons with disabilities the basic right of access to public transport services.”

37. The petitioners report that in spite of the Constitutional Chamber’s decision, the Legislative Assembly passed the amendment of Transitory Article VIII of Law 7600, with certain modifications to the original text, which was published in the official gazette on November 27, 2006:

Law No. 8556, Article 1. To be added to Article 46 bis of Law No. 7600, Equal opportunities for persons with disabilities, of May 2, 1996; text to read:

Article 46 bis. Route buses. The Public Transport Council and the Ministry of Public Works and Transport (MOPT) shall not allow the use of route buses in the public transport service that were manufactured fifteen years ago or more; this deadline is not eligible for extensions.

Neither may public transport route buses not duly equipped with accessibility features operate. To this end, the Public Transport Council and the MOPT will include in the corresponding technical review manuals, as of July 1, 2006, the accessibility features set out in this Law and its Regulations. The agency responsible for conducting the technical vehicle review shall verify compliance with the technical requirements by the entire public passenger transport fleet.

Article 2. To be added to Transitory Article VIII of Law No. 7600, Equal opportunities for persons with disabilities, of May 2, 1996; text to read:

Transitory Article VIII. Following the enactment of Article 46 bis of this Law, all public transport service vehicles operating for the first time as buses under concessions or permits shall be equipped in accordance with the accessibility requirements, including a ramp or platform and the measurements of the access doors.

Holders of permits and concessions who are providing the service shall be given the following deadlines to meeting the equivalent technical requirements to ensure their functional suitability, safety, and accessibility.

- (1) The authorized fleet of model years 2007 and later shall be fully factory-equipped or retrofitted.
- (2) By the year 2007, fifteen percent (15%) of the authorized fleet.
- (3) By the year 2008, thirty percent (30%) of the authorized fleet.
- (4) By the year 2009, forty-five percent (45%) of the authorized fleet.
- (5) By the year 2010, fifty percent (50%) of the authorized fleet.
- (6) By the year 2011, sixty percent (60%) of the authorized fleet.
- (7) By the year 2012, seventy percent (70%) of the authorized fleet.
- (8) By the year 2013, eighty percent (80%) of the authorized fleet.
- (9) By the year 2014, one hundred percent (100%) of the authorized fleet.

The MOPT shall include, in the rules for the technical review of vehicles, standards to verify that holders of permits and concessions for route buses are meeting the obligations that guarantee the

functional suitability, safety, and accessibility of their service vehicles. In force as of its publication.

38. The petitioners state that with this amendment, the Costa Rican legislature established that the effective enforcement and implementation of the obligations set out in the Law was to take place 18 years after the commencement of the obligation incumbent on the Public Transport Council of the Ministry of Public Works and Transport of implementing the provisions contained in the Law.

39. On March 20, 2007, the petitioners sent the Commission information indicating that the study “Human Rights of Persons with Disabilities in Costa Rica”[FN17] determined that members of the disabled population were not being guaranteed real and effective access to basic services on account of the failure to implement policies on behalf of that sector of the population, again confirming that the State has not effectively enforced Law No. 7600 since its enactment.

[FN17] <http://www.cnree.go.cr/> “Human Rights of Persons with Disabilities in Costa Rica,” sponsored by the National Council for Rehabilitation and Special Education, 2004.

40. The petitioners maintain that the implementation of Law No. 7600 and its Regulations[FN18] has not been effective: it has been characterized by negligent omissions and violations of the deadlines originally established for the adaptation of public services geared toward the demands of the disabled population, all of which was tolerated and supported by the state authorities, as seen in the fact that at the end of the seven-year deadline established in the law, the number of buses capable of guaranteeing effective access by persons with disabilities and meeting the technical requirements was negligible and, worse still, after May 2003, the State continued to authorize the operation of collective public transport vehicles even though they did not provide the accessibility features required by law.

[FN18] In force since April 20, 1998.

41. The petitioners also report that in March 2006, the State was still not meeting that obligation, three years after the deadline stipulated in the Law; thus, in April 2006, only 8% of the bus fleet had been equipped to facilitate its use by persons with disabilities, a situation that was tolerated by the State.[FN19]

[FN19] www.nacion.com Sunday, April 30, 2006. San José, Costa Rica. “Buses, streets, and buildings in breach of disabled access law.”

42. Finally, the petitioners claim that with the enactment of Law No. 7600, the State of Costa Rica enshrined in law its commitment of eliminating all forms of discrimination against persons

with disabilities; however, instead of meeting that commitment, its attitude has been totally passive, as a result of which upon the arrival of the deadline for total compliance with the obligation, it granted an extension until the year 2014, thereby facilitating the continued violation of the rights of the alleged victims in this case and of persons with disabilities in Costa Rica. Additionally, the petitioners hold that the State's opinion that the facts set out in the petition do not tend to establish violations of the Convention is incorrect, since the State itself, in its submission of April 24, 2003, recognized that the level of implementation of the rules in question could have an impact on basic rights.[FN20]

[FN20] Communication sent by the State on April 24, 2003, paragraph 3. Characterization of the alleged facts, p. 3: "Although it is true that the development and level of implementation of the rules in question could possibly have an impact on such basic rights as those of equality and freedom from discrimination in a material sense... or on the rights of persons with disabilities... it is clear that a discussion about the violation of a fundamental right is separate from a discussion on the levels of compliance with a rule or a right in a strict legal sense."

B. State

43. The State, in its first reply dated February 20, 2002, said that it was not true that a series of measures – both legislative and executive in nature – had not been put in place so that persons with disabilities could enjoy public services, public transport in particular.

44. The State notes that it has entered into commitments to protect the rights of persons with disabilities: on the international stage, beginning in 1994 the country participated alongside Panama on the initiative to prepare the draft Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, and it was the first country to ratify that international instrument by means of Law No. 7948 of November 22, 1999. It also states that at the national level, Article 33 of the Constitution guarantees and protects those rights. The State says that irrespective of the legislation in question, the efforts made by the State to ensure the recognition of and respect for persons with disabilities can be seen in the Legislative Assembly's passage of Law No. 7600 and its Regulations, which set out a series of regulations that – in gradual stages – aim at fostering not only a shift in social culture, but also, as a practical derivative of that change in attitude and collective awareness, a process whereby infrastructure and basic services are to be adapted to the entire population of Costa Rica, without any inappropriate distinctions.

45. With specific reference to public transport, the State reports that many of the provisions of the Law and its Regulations have been met – such as the elimination of turnstiles, the establishment of reserved seats, and progress with the renewal of concessions – and that at the same time, not only are the legal requirements being met, since, as required by Transitory Article VI of the Law, steps have been taken to adapt public transport vehicles to the needs of persons with disabilities, before the maximum deadline set for the purpose by that transitory article.

46. The State says that prior to listing the progress made in connection with transport, a series of positive actions adopted by the National Council for Rehabilitation[FN21] on behalf of the disabled population must be listed, such as:

(a) The year 2000 drafting of a report by the Council's Executive Directorate, with the participation of 49 public institutions and 17 municipalities and district councils, regarding the implementation of Law No. 7600.

(b) The publication in the official journal La Gaceta, of Presidential Guideline No. 27, setting out the actions to be taken over the following ten years in order to uphold the human rights of persons with disabilities.

(c) In the area of education:

* The guideline published by the Ministry of Public Education for the inclusion of course contents dealing with disability in preschool, primary, and secondary curricula.

* In the year 2001 the first steps were taken for the inclusion, in the budget of the Ministry of Public Education, of payments for sign-language (LESCO) interpreters.

(d) In the labor area:

* The Ministry of Labor designed an institutional policy on disabilities pursuant to the provisions of Transitory Article IV of Law No. 7600.[FN22]

* Organization of various events to promote the employment of persons with disabilities.

* Start of a cycle of training for public officials, providing them with training on disability issues.

* Conversion of various documents into Braille to uphold the right of information of visually impaired members of the population.

(e) Urban development:

* With reference to architectural barriers, the law set a deadline of ten years for constructed areas to be adapted to the needs of persons with disabilities, based on the observable fact that very few buildings, if any, actually met the requirements contained in the technical standards.

* Several institutions (ministries, hospitals and clinics, autonomous agencies) have marked out the parking spaces required by the law for vehicles driven by persons with disabilities.

(f) Other achievements:

* The adoption of voting regulations for disabled persons, and an instruction leaflet for members of electoral committees and voters.

* In February 2000, the National Rehabilitation Center presented the "Project for Decentralizing and Increasing the Coverage of Rehabilitation by Level of Rehabilitation Attention at Three Levels."

[FN21] The National Council for Rehabilitation and Special Education (CNREE) is the public agency responsible for disability issues in Costa Rica. It is charged with directing general

policies for rehabilitation and special education, in coordination with the Ministries of Public Health, Public Education, Labor, and Social Security, and for the planning, promotion, organization, creation, and oversight of rehabilitation and special education programs and services for people with physical or mental handicaps in all sectors of the country. (Law 5347, Creation of the National Council for Rehabilitation and Special Education.)

[FN22] Transitory Article IV: “The Costa Rican Social Security Fund and the National Insurance Institute shall commence, immediately and using existing resources, the execution of the obligations set out in this law and complete the same within a maximum period of seven years.”

47. The State says that before indicating the steps taken by the Ministry of Public Works and Transport to enforce Law 7600, it must note that the process of adapting public transport to the needs of persons with disabilities involves not also the State, but also those private citizens with rights acquired under actions of the Administration; because of this, the State must comply gradually with Law No. 7600 and its Regulations, in line with the legality that must govern its actions and the due process applicable to noncompliant concessionaires, since failure to do so could lead to a breach of the Constitution in that the Administration is forbidden to revoke by its own actions undertakings into which it has entered and that grant subjective rights to private individuals, which is a restriction on the power to repeal or amend administrative actions and, should there be a justification for such repeal, it may not take place arbitrarily.

48. The State reports that Chapter V of la Law No. 7600[FN23] establishes a series of provisions to be observed in order to ensure proper access to public transportation vehicles by disabled members of the population; this began with the publication of Executive Decree 28119-MOPT on September 30, 1999, (regarding the placement of turnstile mechanical counters) and Executive Decree No. 28337-07-MOPT (regulations on policies and strategies for the modernization of fare-collecting public passenger transport using urban buses in the San José metropolitan area and adjacent zones), published in January 2000. This decree orders the implementation of technologies to allow the rational use of the available space within each vehicle, in order to maintain an appropriate ratio between cost and unit use. Thus, in pursuit of transport reorganization, the selected deadline was divided into two phases: an operational transition phase of up to three years, and a second phase for a process of consolidation to cover the fourth year. During these phases, investments and improvements to the service are to take place, since Law No. 7600 gave the Ministry of Public Works and Transport until May 29, 2003, to complete its tasks, with which it is expected that the guidelines will be met five months ahead of schedule.

[FN23] Chapter V: “Access to means of transportation.”

49. With respect to the renewal of bus concessions, the State reports that it has included in the corresponding contracts the obligation of transport operators to meet the terms of Law No. 7600; and, since they express obligations contained in a contract, failure to abide by them can lead to a cancellation process for rescinding the operating rights as awarded. It also reports that

the General Directorate of Traffic Police has remained vigilant in verifying the elimination of restrictions to access on public transport vehicles.

50. The State reports that for the 2001 fiscal year, the Public Transport Council assigned funds for the construction of access ramps for the disabled in its buildings and, for the 2002 financial year, it has budgeted another amount of money for the same purpose; these actions indicate its commitment toward adapting not only the transportation service but the entire institutional infrastructure, for the benefit of persons with disabilities.

51. The State claims that the petitioners cannot argue that they were denied access to justice or that the amparo suit they filed was not effective since several individuals who at a given point in time believed their rights to have been violated filed suits with the courts, which not only provided them with an effective remedy but, in ruling, declared some of the filings admissible. Some examples of this are the following:

(a) Resolution No. 2000-03205, admitting the amparo filed by a group of disabled persons against the Supreme Court of Justice itself, arguing that there were a large number of steps at its main entrance, hindering access by individuals with restricted mobility.

(b) Resolution No. 2000-07085, in which the Constitutional Chamber admitted an amparo suit filed against the Joint Social Assistance Institute, because its offices were difficult for citizens in wheelchairs to access.

(c) Resolution No. 1998-06732, in which the Constitutional Chamber, in accordance with Law No. 7600, required television companies and firms belonging to the national cultural radio and television system to deploy the technical and human resources to comply with the law, in that the person who filed the amparo was deaf and the television stations' programming did not provide subtitles or sign-language interpreters to enable the hearing impaired to understand.

52. The State notes that the Constitutional Chamber ruled on the alleged victims' amparo filing in line with the rule that, in consideration of progressive development, budgetary constraints, and the limitations of legality, the transformation is to begin immediately but with existing resources and that there is a deadline for its completion; the Chamber thus determined that the actions already begun covered the reasonably necessary measures and that it was not yet time to assess whether the process was incomplete since the deadline had not yet passed. In its judgment it said that: "the filed remedy was premature and must therefore be dismissed." [FN24] The State further notes that in resolving the amparo suit the Constitutional Chamber acted within the scope of its competence and due judicial guarantees, and that the reasoning used met with the internal logic of the judicial remedy and with the necessary grounding of judgments in accordance with the principles of reasonableness and proportion; thus, the remedy was ideally suitable for determining whether their basic rights were violated or not, thereby complying with Article 25(1) of the Convention; on that occasion, however, the Court decided that the alleged victims were not in the right and there no violation had been committed.

[FN24] Ruling No. 2001-00107, issued by the Constitutional Chamber of the Supreme Court of Justice on January 5, 2001.

53. In consideration of the above, the State maintains that the violation of the right of equality and nondiscrimination claimed by the petitioners does not exist, since the judiciary has been open to claims lodged by disabled persons and these have been admitted: when the courts have found that the plaintiffs were right in their claims, they have so ruled and they have ordered both the State and private citizens to take the steps necessary to restore the affected rights, which was not the case in the suit filed by the alleged victims.

54. In its communication of April 30, 2007, the State presented new arguments regarding the petition, reporting that in the facultative legislative consultation regarding the constitutionality of the proposed “Amendment of the Law of Equal Opportunities for Persons with Disabilities” containing the addition of Article 46 bis, lodged with the Constitutional Chamber by fourteen members of the Legislative Assembly, the Court gave judgment on a draft law that was not the version finally adopted; it should be noted that the Resolution of the Constitutional Chamber was simply the resolution of the consultation, which in this case is not binding[FN25] on the Legislative Assembly’s decision.

[FN25] Law of Constitutional Jurisdiction. Article 101. “The Chamber shall resolve the consultation within one month of its receipt and, in so doing, shall rule on the issues or reasons consulted or on any other matters it deems relevant from the constitutional point of view. The Chamber’s resolution shall only be binding to the extent that it establishes unconstitutional procedures in the bill referenced by the consultation. In any event, the ruling shall not preclude the possibility of questioned provisions subsequently being challenged through constitutional oversight mechanisms.”

55. In consideration of the above, the State maintains that the petitioners have not exhausted domestic remedies, since Although they filed an amparo suit in the year 2000, it was not lodged at the appropriate juncture in the procedure since the deadline for resolving the State’s alleged noncompliance had not yet passed. The State further claims that the petitioners have not exhausted domestic remedies because since the passage of the amendment to Law No. 7600 and its publication in the Official Journal on November 27, 2006, a period of some five months has passed, during which the alleged victims have taken no steps to file the appropriate and effective remedies, such as amparo and unconstitutionality suits, which are ideal channels for determining whether the amendments made to Costa Rica’s disability legislation are in breach of any constitutional provision or any international human rights protection mechanism.

56. The State believes it has clearly met both its negative obligations, since at no time has it taken actions that discriminate against persons with disabilities, and its positive obligations, in that it has taken a series of steps to create special conditions so that such individuals can achieve the maximum development of their personal potential. The State further notes that the positive measures that it must adopt in order to progressively comply with the rights of a particular group within it that requires special attention cannot be fully put into practice immediately, nor exactly in the way that the ideal demands. This does not, however, mean that the State is passive or

negligent in their implementation; rather, it must seek out the way to make progress within the constraints of its possibilities and objective realities.

57. Finally, the State requests that the Commission declare that the petition is inadmissible, in compliance with Article 47(b) of the Convention and 34.a of the Commission's Rules of Procedure, in that it does not set out facts that tend to establish a violation of the rights protected by that instrument; that it should also be rejected for not meeting the provisions of Article 46(1)(a), since domestic remedies have not been exhausted; and that it should also be rejected for not meeting the terms of Article 46(1)(b) of the Convention and Article 32 of the Commission's Rules of Procedure, since petitions must be lodged within six months from the date on which the alleged victim of a rights violation was notified of the final judgment in his case which, in the matter at hand, was not met, in that the amparo remedy filed was resolved on January 5, 2001, and notice of it was given on March 10 of that year, and the communication with the Commission is dated September 11, 2001, a delay longer than the one allowed for in the rules.

IV. ANALYSIS

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

58. The petitioners are entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. With reference to the State, the Commission notes that Costa Rica has been a state party to the American Convention since April 8, 1970, when it deposited its instrument of ratification. The Commission therefore has competence *ratione personae* to examine the complaint.

59. The Commission has competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto. The IACHR also has competence *ratione temporis* since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred. Finally, the Commission has competence *ratione materiae* since the complaint describes violations of human rights protected by the American Convention.

B. Other Requirements for Admissibility

1. Exhaustion of domestic remedies

60. Article 46(1)(a) of the American Convention states that, for a complaint lodged with the Inter-American Commission to be admissible under Article 44 of the Convention, the remedies available under domestic law must have first been pursued and exhausted in accordance with generally recognized principles of international law. This requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, to resolve it before it is brought before an international venue.

61. The prior exhaustion requirement applies when the national system does in fact offer available resources that are adequate and effective for remedying the alleged violation. Thus, Article 46(2) stipulates that the requirement need not be observed if domestic legislation does not afford due process of law for the protection of the right in question, if the alleged victim was denied access to the remedies offered by domestic law, or if there was an unwarranted delay in issuing judgment on those remedies. As stated in Article 31 of the Commission's Rules of Procedure, when the petitioner invokes one of those exceptions, it falls to the State to demonstrate that the domestic remedies have not been exhausted, unless it is clearly evident from the record.

62. As indicated by the principles of international law, reflected in the precedents set by the Inter-American Commission and Court, first, the respondent State may expressly or tacitly waive the right to invoke this rule.[FN26] Second, the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings before the Commission, lest a tacit waiver of the State's right to invoke the objection be presumed.[FN27] Thirdly, in accordance with how the burden of proof applies, a State that alleges non-exhaustion must indicate which domestic remedies should be exhausted and provide evidence of their effectiveness.[FN28] Therefore, if the State does not present timely claims regarding this exception, it is deemed to have waived its right to argue the non-exhaustion of domestic remedies and consequently to satisfy the corresponding burden of proof.

[FN26] See: IACHR, Report No. 69/05, Petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, paragraph 42; I/A Court H. R., Ximenes Lopes v. Brazil, Preliminary Objections, Judgment of November 30, 2005, Series C No. 139, paragraph 5; I/A Court H. R., Case of the Moiwana Community v. Suriname, Judgment of June 15, 2005, Series C No. 124, paragraph 49; and I/A Court H. R., Case of the Serrano Cruz Sisters v. El Salvador, Preliminary Objections, Judgment of November 23, 2004, Series C No. 118, paragraph 135;

[FN27] See: I/A Court H. R., The Mayagna (Sumo) Awas Tingni Community Case, Preliminary Objections, Judgment of February 1, 2000, Series C No. 66, paragraph 53; Castillo Petrucci Case, Preliminary Objections, Judgment of September 4, 1998, Series C No. 41, paragraph 56; and I/A Court H. R., Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C No. 25, paragraph 40. The Commission and the Court have said that "an early stage in the proceedings" is to be understood as meaning "the admissibility stage of proceedings before the Commission: that is, before any examination of the merits." See, for example: IACHR, Report No. 71/05, Petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, quoting I/A Court H. R., Case of Herrera Ulloa, Judgment of July 2, 2004, Series C No. 107, paragraph 81.

[FN28] See: IACHR, Report No. 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral et. al (Persons Living with HIV/AIDS), Guatemala, March 7, 2005, paragraphs 33-35; I/A Court H. R., Case of the Mayagna (Sumo) Awas Tingni Community, Preliminary Objections, supra note 3, paragraph 53; Durand and Ugarte Case, Preliminary Objections, Judgment of May 28, 1999, Series C No. 50, paragraph 33; and Cantoral Benavides Case, Preliminary Objections, Judgment of September 3, 1998, Series C No. 40, paragraph 31.

63. In the case at hand, the Commission notes that the petitioners claim to have exhausted the domestic venues with the amparo filed against the Public Transport Council of the Ministry of Public Works and Transport, which was resolved by Resolution No. 2001-00107 issued by the Constitutional Chamber of the Supreme Court of Justice on January 5, 2001. However, the Commission notes that the deadline set by the law in question had not yet passed when the remedies were filed in Costa Rica; it thus determines that they were exhausted erroneously, since the amparo suit was at that time premature and could therefore not have yielded the results sought.

64. The Commission also notes that at the start of the processing of the petition, the State did not claim that domestic remedies had not been exhausted in connection with the violations alleged by the petitioners. In its last communication, dated April 30, 2007, however, the State said that given the new developments related to the amendment of Law No. 7600, approved as No. 8556, "Addition of Article 46 bis and Transitory Article VIII to Law No. 7600, Equal Opportunities for Persons with Disabilities," published in the Official Journal on November 27, 2006, the petitioners were required to exhaust domestic remedies but did not do so. With specific reference to this point, the Commission agrees that domestic remedies were not exhausted: as noted by the State, with the extension of the deadline set in Law No. 7600, the petitioners did not pursue the concrete legal channels for objecting to and challenging that extension. The Commission therefore concludes that there are still domestic remedies available to the petitioners and, consequently, it finds that the petition lodged by the petitioners is inadmissible under the terms of Article 46(1)(a) of the Convention.

V. CONCLUSION

65. Based on the foregoing considerations of fact and law, the Commission believes that the petition is inadmissible pursuant to the requirements set out in Article 47(a) of the American Convention on Human Rights.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition inadmissible.
2. To notify this decision to the petitioner and to the State.
3. To publish this decision and to include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 27th 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.