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Title/Style of Cause:	Jose Antonio Romero Cruz, Rolando Ordonez Alvarez and Norberto Hernandez v. Colombia
Doc. Type:	Decision
Decided by:	President: Florentin Melendez; First Vice-President: Paolo Carozza; Second Vice-President: Victor Abramovich; Commissioners: Evelio Fernandez Arevalos, Sir Clare K. Roberts, Freddy Gutierrez.
Dated:	15 October 2007
Citation:	Romero Cruz v. Colombia, Petition 1136-03, Inter-Am. C.H.R., Report No. 74/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANT: the Corporacion Colectivo de Abogados Jose Alvear Restrepo
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## I. SUMMARY

1. On December 23, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition presented by the Corporación Colectivo de Abogados José Alvear Restrepo (hereinafter “the petitioners”) alleging the responsibility of agents of the Republic of Colombia (hereinafter “the State,” “the Colombian State” or “Colombia”) for the extrajudicial executions of José Antonio Romero Cruz, Rolando Ordóñez Álvarez, and Norberto Hernández, allegedly perpetrated on December 16, 1996, in the village of El Darién, municipality of Puerto Rico, department of Meta.

2. The petitioners argued that the State was responsible for violating the rights to life, humane treatment, judicial protection, and a fair trial of José Antonio Romero Cruz, Rolando Ordóñez Álvarez, and Norberto Hernández, enshrined at Articles 4, 5, 8, and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) to the detriment of the victims and their family members, as well as the generic obligation to respect and ensure the rights protected in the Convention, provided for at Article 1(1). For its part, the State alleged that the petitioner’s claims were inadmissible in view of the failure to exhaust domestic remedies, as required by Article 46(1)(a) of the American Convention.

3. After analyzing the parties’ positions and compliance with the requirements provided for at Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible for the purposes of examining the alleged violation of Articles 4(1), 5(1), 5(2), 8(1) y 25; y 7(2), 7(3), in application of the *iura novit curia* principle, in conjunction with Article 1(1)

of the American Convention. In addition, it decided to notify the parties of the report and order its publication in its annual report.

## II. PROCESSING BEFORE THE COMMISSION

4. The IACHR registered the petition under number P1136-03 and on May 5, 2004, it proceeded to forward a copy of the pertinent parts to the State, which was given two months to submit information, in keeping with Article 30(2) of the Rules of Procedure. On July 14, 2004, the State requested a 30-day extension for submitting its observations, which was granted by the IACHR. The extension of the term lapsed without the State submitting its response. On July 31, 2007, the State submitted its observations.

## III. THE PARTIES' POSITIONS

### A. The petitioners' position

5. The petitioners indicate that on December 16, 1996, at approximately 5:30 am, Mr. José Antonio Romero Cruz, his wife and his mother-in-law[FN1] were at the farm located in the village of El Darién, in the department of Meta, when approximately 35 troops arrived from the "Héroes de Arauca" company of Mobile Brigade No. 1 of the Army, under the command of Lt. García Hillón Mauricio.[FN2] They allege that the state agents violently took Mr. Romero Cruz from his house, threw him to the ground, bound him and threatened to kill him, while his wife and mother-in-law begged for his life. They indicate that next Mr. Romero Cruz was taken by the members of the Army to a neighboring farm, owned by Mr. Jairo Sánchez, where they encountered workers Rolando Ordóñez Álvarez and Norberto Hernández, who they also beat and bound.[FN3]

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[FN1] His wife Aleida Donoso Arias and his mother-in-law María Arias. Original petition received at the IACHR on December 23, 2003, p. 1.

[FN2] The petitioners indicate that the elements of evidence of who were the direct perpetrators of the acts are established in the Order of June 28, 2002, of the Office of the 22nd Military Criminal Prosecutor before the Fourth Judge of Brigade of the Fourth Division, attached to the original petition received at the IACHR on December 23, 2003, p. 2.

[FN3] Original petition received at the IACHR on December 23, 2003, p. 1.

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6. They indicate that the soldiers continued on their way with the three men tied up and that at approximately 10:00 am shots were heard, apparently "simulating a confrontation," as a result of which Messrs. José Antonio Romero Cruz, Rolando Ordóñez, and Norberto Hernández were killed. In addition, they indicate that at 4:00 pm, a helicopter came to the place, collected the bodies, and took them to the sports center of the secondary school Colegio Departamental Ricardo Moncaleano, in the municipality of Puerto Rico.[FN4] The petitioners note that the Army cordoned off the site and denied access and refused to give any information to José Antonio Romero's two sisters.

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[FN4] Original petition received at the IACHR on December 23, 2003, pp. 1 and 2.

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7. They note that at night the local media reported that the Army's Seventh Counter guerrilla Battalion had killed, in combat, "narco-bandits" of the FARC, alias "Coporo," chief of the Bolivarian Militias, Front 43; alias "Pategurre"; and one other unidentified person.[FN5]

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[FN5] Radiogram No. 1223 of December 16, 1996. Original petition received at the IACHR on December 23, 2003, p.1.

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8. The petitioners allege that the bodies were not handed over to the victims' next-of-kin, but that they were buried in the cemetery of the municipality of Puerto Rico, between 6:30 am and 7:00 am on December 17, 1996.

9. With respect to the judicial actions brought to clarify the facts, the petitioners indicate that on December 17, 1996, the Office of the 15th Prosecutor Delegate before the Municipal Criminal and Circuit Courts based in Puerto Rico, department of Meta, ordered that a preliminary inquiry be opened and on March 25, 1997, the Office of the Attorney General considered that the events had likely been perpetrated by members of the National Army in the performance of their duties, and ordered that the proceedings be referred to the military criminal jurisdiction.[FN6]

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[FN6] The petitioners allege that the Office of the Attorney General continues sending cases involving human rights violations to the military criminal jurisdiction, in violation of judgment C-357/98 of August 5, 1997, of the Colombian Constitutional Court, and the judgment of March 10, 2003, of the Supreme Court of Justice, which ruled incorporating the previous judgment, ordered the nullity of the procedures, and removed the investigation into the facts of the Riofrío massacre to the regular courts, IACHR case 11,654. Original petition received at the IACHR on December 23, 2003, p. 3.

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10. They indicate that on April 14, 1997, the 31st Court of Military Criminal Investigation of the Seventh Brigade ordered, in October 1997, that the investigation be initiated.[FN7] In addition, the petitioners note that Procurator 276 for Criminal Justice matters asked that the investigation be forwarded to the regular court[FN8], and that it was forwarded to the Office of the Regional Prosecutor for the Eastern Region on December 31, 1998. They indicate that the Office of the Attorney General refrained from taking cognizance of it and forwarded it to the Departmental Prosecutorial Offices (Fiscalías Seccionales) of Granada, Meta. The petitioners note that subsequently, the Office of the 37th Prosecutor Delegate Before the Circuit Court of Meta, after a somber analysis of the evidence, forwarded the case to the Superior Judicial Council for it to resolve the jurisdictional conflict.[FN9] The Superior Judicial Council refrained from resolving it[FN10] and once again forwarded the case to the military criminal jurisdiction.

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[FN7] The petitioners argue that the commanders of the military units, with judicial functions, continue assuming and provoking jurisdictional conflicts in cases of human rights violations being investigated by the Office of the Attorney General. They argue: “the figures shown by the military forces of cases sent to the regular courts include crimes that don’t make out grave violations of human rights (corruption, drug-trafficking, burglaries) and others, apparently homicides, personal injuries, and rapes, do not correspond to the most important cases of human rights violations that have had an essential impact on the country’s situation. Additionally, 87% of the cases removed correspond to conduct committed by low-ranking military personnel (soldiers to captains). No trial against an official with the rank of colonel or general was removed to the regular courts from August 1997 to April 1999.” Document Gestión del honorable Tribunal Superior Militar, published by the General Command of the Military Forces, corresponding to the period from August 1997 to April 1999, p. 7. Original petition received at the IACHR on December 23, 2003, p. 4.

[FN8] On December 23, 1998, based on the case-law of the Constitutional Court.

[FN9] By Order of April 22, 1999 of the Office of the 37th Prosecutor Delegate before the Circuit Court of Meta. Original petition received at the IACHR on December 23, 2003, p. 3.

[FN10] July 1, 1999. Original petition received at the IACHR on December 23, 2003, p. 3.

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11. They argue that on December 18, 1997, the military criminal courts ordered that 13 members of the military be linked to the proceeding[FN11] and that on November 8, 1999, the 31st Court of Military Criminal Investigation ordered their pre-trial detention, as alleged co-perpetrators of aggravated homicide. They note that subsequently all of those involved were conditionally released “due to lapsing of terms.”

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[FN11] First Corporal Francined Ríos Amaya; Second Corporal Diego Fernando Restrepo Agudelo; and volunteer soldiers Jesús María Navarro Parrado; Jonson Pizarro Cobos; José Ávila Terreros; Tulio Guerrero Carrillo; Álvaro Valbuena Muñoz, Luis Eleuder González; Henry Leyton García; Raúl Muñoz; José Félix Peña Rodríguez, Luis Hernández Barahona, and Delfo Santa Malambo. Original petition received at the IACHR on December 23, 2003, p. 4.

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12. The petitioners argue that on June 28, 2002, the 22nd Military Criminal Prosecutor before the Fourth Judge of Brigades of the Fourth Division handed down an indictment against 14 members of the military.[FN12] They indicate that on January 2, 2003, the President of the Court Martial (Presidencia de la Corte Marcial) absolved them, and released them, because there was no certainty as to the punishable act and the liability of the accused.[FN13] In addition, they indicate that the judge forwarded the proceeding, in consultation, to the Military Criminal Court along with an argument on appeal[FN14], which was presented in untimely fashion. They note that even the Public Ministry asked that the proceeding be annulled.

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[FN12] Lt. Mauricio García Hillón, First Corporal Ríos Amaya Francined, Second Corporal Restrepo Agudelo Diego Fernando; and volunteer soldiers José María Navarro Parrado, Álvaro Valbuena Muñoz, José Román Ávila Terreros, Raúl Muñoz, Jhonson Pizarro Cobos, José Félix Peña Rodríguez, Luis Hernández Barahona, Delfo Santa Malambo, Henry Leyton García, Tulio Guerrero Carrillo, and Luis Eleuder González. Ruling of June 28, 2002, attached to the original petition received at the IACHR on December 23, 2003, p. 4.

[FN13] The petitioners note that the Verbal War Council was convoked unforeseeably on December 28, 2002, without notifying the representative of the civil party, as it had previously requested in briefs that appear in the record. Ruling of January 2, 2003, attached to the original petition received at the IACHR on December 23, 2003, p. 4.

[FN14] January 21, 2003. Original petition received at the IACHR on December 23, 2003, p. 4.

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13. With respect to the investigation into extrajudicial executions, the petitioners consider that the testimony of the victims' family members, along with the DNA and ballistics evidence, would have made it possible to conclude with certainty the identity of the victims, the executions, and the acts of torture directed against Messrs. Romero Cruz, Ordóñez Álvarez, and Hernández, but that the autopsy protocols were performed in an irregular and incomplete manner.[FN15] They indicate that six years after the facts, the military criminal justice system ordered that the bodies be exhumed[FN16] but that the Forensic Medicine Institute (Instituto de Medicina Legal) could not fully identify Rolando Ordóñez Álvarez and Norberto Hernández.[FN17]

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[FN15] The petitioners explain that these protocols were drawn up by the Director of the Health Post of Puerto Rico, Meta, and that "it was not established to which official act of removing the body each protocol corresponded, nor was any detailed description done of the trajectories of each of the wounds, nor was it determined whether any of them possibly showed gunpowder residues or tattoos." Ruling of the Office of the 22nd Military Criminal Prosecutor before the Fourth Judge of Brigades of the fourth Division, Apiay, Meta, June 28, 2002, attached to the original petition received at the IACHR on December 23, 2003, p. 8.

[FN16] Order of October 9, 2002, 22nd Military Criminal Prosecutor. The petitioners indicate that the exhumation was carried out by the Municipal Circuit Court of Puerto Rico, which sent the remains to the Institute of Forensic Medicine (Instituto de Medicina Legal). Original petition received at the IACHR on December 23, 2003, p. 8.

[FN17] The petitioners indicate that the identification was not done, as genetic studies based on the bone samples taken from the skeletal remains were not done, and that given the degree of deterioration of the remains it was impossible to locate entry and exit orifices, tattooing and gunshot residues. Ruling of the Office of the 22nd Military Criminal Prosecutor before the Fourth Judge of Brigades of the Fourth Division, Apiay, Meta, June 28, 2002, folio 32, attached to the original petition received at the IACHR on December 23, 2003, p. 8.

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14. As regards the procedural activity in other jurisdictions, the petitioners argue that the Office of the Procurator-Delegate for Human Rights of the Office of the Procurator General of the Nation began a disciplinary investigation and drew up charges against Lt. García Hillón, non-

commissioned officer Francisco Ríos Amaya, Second Lieutenant Diego Fernando Restrepo Agudelo, and the other members of the military because they detained without any order the three citizens whose death they subsequently caused by shots from firearms when they were totally defenseless, under the pretext of having had an armed confrontation with subversives.[FN18] In addition, the petitioners note that a contentious-administrative action was filed for direct reparation before the Administrative Court of Meta, which is still pending.[FN19]

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[FN18] Original petition received at the IACHR on December 23, 2003, p. 5.

[FN19] Case No. 007-1999. They indicate that in that proceeding there was a summons to a settlement hearing in June 2003, but that there was no interest in settlement on the part of the respondent, thus the presentation of concluding arguments was pending at the time this petition was filed. Original petition received at the IACHR on December 23, 2003, p. 5.

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15. In view of the facts alleged, the petitioners consider that during the time they were held, Messrs. Romero Cruz, Ordóñez Álvarez, and Hernández were subjected to inhuman treatment and extreme psychological and moral suffering.[FN20] In addition, they argue that the circumstances surrounding the death of these three persons, how their remains were handled, the impossibility of fully identifying two of the victims[FN21], and the absence of an investigation in the regular courts of what has happened, caused the next-of-kin anguish and profound grief, accordingly, they allege that the State violated the rights established in Article 5(1) and 5.2 of the American Convention, in conjunction with Article 1(1), to the detriment of the victims and their next-of-kin.[FN22]

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[FN20] Original petition received at the IACHR on December 23, 2003, p. 7.

[FN21] “From the outset the authorities in charge of carrying out the official act of removing the bodies of the three deceased omitted the evidence aimed at fully identifying them, which subsequently was reflected in that only one of them, specifically JOSÉ ANTONIO ROMERO CRUZ, (alias Coporo) was reliably identified.” Office of the 22nd Military Criminal Prosecutor before the Fourth Judge of Brigades of the Fourth Division, Apiay, Meta, June 28, 2002, folio 33.

[FN22] The petitioners base their argument on: I/A Court H.R., Blake Case, Judgment of January 24, 1998, Series C No. 36, para. 114. I/A Court H.R., Villagrán Morales et al. Case, Judgment of November 19, 1999, Series C No. 63, para. 173. Original petition received at the IACHR on December 23, 2003, pp. 8 and 9.

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16. In addition, they allege that the extrajudicial execution of the victims was the result of the actions of members of the Army that had been covered up – making them appear to have been killed in combat – so as to later use the military criminal jurisdiction and try those responsible. In this regard, they consider that the State is responsible for violating the right of life of José Antonio Romero Cruz, Rolando Ordóñez Álvarez, and Norberto Hernández, enshrined in Article 4 of the American Convention.

17. The petitioners allege that even though an investigation was opened against members of the Army implicated in the executions, the case was removed, on the judicial authorities' initiative, to the military criminal justice system, and then the Superior Judicial Council refrained from resolving the jurisdictional conflict. Accordingly, they consider that the use of the military criminal jurisdiction violates the right of the victims' next-of-kin to have access to an independent and impartial court, as well as judicial protection, enshrined in Articles 8(1) and 25 of the American Convention.[FN23]

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[FN23] The petitioners base their argument on: IACHR, Report No. 62/01, Case 11,654, Riofrío Massacre, Colombia, April 6, 2001, para. 42. Original petition received at the IACHR on December 23, 2003, pp. 11 and 12.

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18. The petitioners consider that the State has breached its duty to investigate the extrajudicial execution of the victims, prosecute and punish the persons responsible, and make reparation to their next-of-kin, accordingly, the execution of José Antonio Romero Cruz, Rolando Ordóñez Álvarez, and Norberto Hernández remains in impunity.[FN24] In this regard, the petitioners argue that the State has breached its duty to provide adequate judicial protection, in keeping with Articles 8 and 25, in conjunction with Article 1(1), of the American Convention to the detriment of the victims in the instant case and their next-of-kin. In addition, they argue that given that the military criminal courts do not constitute an adequate remedy, the requirements provided for at Articles 46(1)(a) and (b) of the Convention would not be applicable to the instant case, and they allege the exception provided for at Article 46(2).[FN25]

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[FN24] The petitioners based their argument on: I/A Court H.R., Paniagua Morales et al. Case, March 8, 1998, para. 173. Original petition received at the IACHR on December 23, 2003, p. 12.  
[FN25] Original petition received at the IACHR, December 23, 2003, p. 6.

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19. In summary, in view of the arguments set forth, the petitioners allege that the State is responsible for violating the rights to life, humane treatment, judicial protection, and a fair trial, to the detriment of José Antonio Romero Cruz, Rolando Ordóñez Álvarez, and Norberto Hernández, and their next-of-kin.

B. The State's position

20. In response to the petitioners' claim, the State argues the failure to exhaust domestic remedies, on considering that there are proceedings pending and remedies to be exhausted by the victims' next-of-kin. In addition, it alleges that there has been no unwarranted delay, considering the complexity of the matter, the procedural activity of the interested party, and the conduct of the judicial authorities. In this regard, the State asks the IACHR to have the petition declared inadmissible.[FN26]

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[FN26] Note DDH.GOI/33281/1670 of the Ministry of Foreign Relations of Colombia, of July 25, 2007.

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21. The State justifies the complexity of the matter considering that the persons tried in the military criminal jurisdiction argue that Messrs. Romero Cruz, Ordóñez Álvarez, and Hernández were killed in combat.[FN27] It alleges that this gave rise to a jurisdictional conflict resolved in a final decision by the Superior Judicial Council in favor of the regular criminal jurisdiction.[FN28] In addition, the State highlights the diligent action of the judicial authorities and the processing of the matter in a reasonable time, which would make the exception provided for at Article 46(2)(c) inapplicable.

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[FN27] Resolution of indictment for homicide, of June 28, 2002, issued by the Office of the 22nd Military Criminal Prosecutor, ruling absolving the accused on January 2, 2003, handed down by the Fourth Court of Brigade of Villavicencio, ruling of August 6, 2004 issued by the Superior Military Tribunal, that orders the remand of the case to the fourth court and orders that the judgments of first instance be annulled, and proposes a negative jurisdictional clash before the respective official of the regular criminal jurisdiction. Note DDH.GOI/33281/1670 of the Ministry of Foreign Relations of Colombia, of July 25, 2007, pp. 4 and 5.

[FN28] Order of May 18, 2005, issued by the Disciplinary Chamber of the Superior Judicial Council. Note DDH.GOI/33281/1670 of the Ministry of Foreign Relations of Colombia, of July 25, 2007, p. 5.

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22. The State alleges that the next-of-kin of Messrs. Ordóñez Álvarez and Hernández have not exhausted the remedies available in the domestic jurisdiction, since they did not pursue a civil action for direct reparation. As for the contentious-administrative proceeding brought by the next-of-kin of Mr. Romero Cruz, the State indicates that it has been processed diligently, and that there is a judgment of first instance that finds the Ministry of Defense responsible for the death of José Antonio Romero Cruz and orders the Nation to pay compensation to his next-of-kin, which has been appealed by the parties.[FN29]

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[FN29] Contentious-Administrative Court of Meta, case of Leonardo Romero et al., judgment of November 11, 2003. The State indicates that a settlement hearing was set for July 7, 2007, that could not be held, and that another has been set for July 5, 2007. Note DDH.GOI/33281/1670 of the Ministry of Foreign Relations of Colombia, of July 25, 2007, p. 7.

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#### IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

##### A. Competence

23. The petitioners are authorized, in principle, by Article 44 of the Americana Convention to submit petitions to the Commission. The petition notes as the alleged victims individual persons with respect to whom the Colombian State has undertaken to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Colombia has been a state party to the American Convention since July 31, 1973, when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to take cognizance of the petition, insofar as petitioners allege violations of rights protected in the American Convention said to have taken place in the territory of Colombia, a state party to that treaty.

24. The Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State as of the date on which the facts are alleged to have occurred. Finally, the Commission is competent *ratione materiae*, because the petition sets forth possible violations of human rights protected by the American Convention

B. Admissibility requirements

1. Exhaustion of domestic remedies

25. Article 46(1)(a) of the American Convention requires the prior exhaustion of remedies available in the domestic jurisdiction in keeping with generally recognized principles of international law, as a requirement for the admission of claims alleging a violation of the American Convention.

26. Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies does not apply when:

- a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

As the Inter-American Court has established, whenever a State alleges failure to exhaust domestic remedies, it bears the burden of showing that the domestic remedies not exhausted are “suitable” to cure the violation alleged; in other words, that the operation of those remedies is suitable for protecting the legal situation that has been infringed.[FN30]

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[FN30] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 64.

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27. In the instant case, the State alleges that the petition does not meet the requirement of prior exhaustion of domestic remedies, provided for at Article 46(1)(a) of the American Convention given that the petitioners did not exhaust the civil action for direct reparations, and there is a proceeding pending before the contentious-administrative jurisdiction into the death of José Antonio Romero Cruz. The petitioners allege that the exception provided for at Article 46(2)(b) applies, since the military criminal justice system does not constitute an adequate jurisdiction for investigating, prosecuting, and punishing human rights violations.

28. First, one must clarify what domestic remedies must be exhausted in the instant case. The Inter-American Court has indicated that only those remedies suitable for curing the violations allegedly committed need be exhausted. Adequate domestic remedies are

those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.[FN31]

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[FN31] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 64.  
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29. In the instant case, after the events of December 16, 1996, the Office of the 15th Prosecutor Delegate before the Municipal Criminal and Circuit Courts of Puerto Rico ordered that a preliminary inquiry begin, and on March 25, 1997, the Office of the Attorney General considered that the facts were perpetrated by members of the National Army in the performance of their duties, and ordered that the case be forwarded to the military criminal jurisdiction. In October 1997, the 31st Court of Military Criminal Investigation of the Seventh Brigade ordered that an investigation be opened, in response to which the 276th Procurator for Criminal Justice Matters raised a jurisdictional conflict, as it involved prosecuting human rights violations. That conflict meant forwarding the case file to two prosecutorial offices and the Superior Judicial Council, which refrained from hearing the case, and resolving the conflict; and remanding the matter once again to the military criminal justice system in 1999.

30. In December 1997, it was ordered that 13 members of the military be linked to the proceeding; in 1999, the 31st Court of Military Criminal Investigation ordered their pre-trial detention, as alleged co-perpetrators of aggravated homicide, and subsequently they were released conditionally. In 2002, the 22nd Military Criminal Prosecutor before the Fourth Judge of Brigades of the Fourth Division handed down an indictment against 14 members of the military, who were absolved in 2003 by the President of the Court Martial, and released.

31. On August 6, 2004, the Superior Military Tribunal ordered that the proceeding be sent back to the Court of Brigades of the Fourth Division, and ordered that the judgment of first instance be annulled, and proposed a negative jurisdictional clash before the regular criminal jurisdiction. This conflict was finally resolved by the Superior Judicial Council, which by order

of May 18, 2005, declared that jurisdiction vested in the regular criminal courts.[FN32] The IACHR understands that this decision was carried out and that the case was returned to the regular jurisdiction, where it is pending resolution.

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[FN32] The petitioners did not inform the IACHR of the developments of the jurisdictional clash subsequent to the submission of the petition.  
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32. The IACHR notes that more than 10 years after the facts, it was not until 2005, eight years and five months after the criminal proceeding began, that it was established that the regular jurisdiction is the adequate one for clarifying the death of three civilians in December 1996. In addition, the IACHR notes that the exhumation of the corpses was finally ordered by the authorities in 2002, almost six years after the facts, resulting in the necessary evidence deteriorating due to the delay, and making a reliable identification of the bodies impossible.

33. Beyond the suitability of the remedies employed as of 2005 to re-establish the individual liability of the persons implicated, the delay caused while the proceeding was pending before the military criminal jurisdiction entailed an unwarranted delay in the terms of Article 46(2)(c) of the American Convention, and, therefore, the petitioners should be exempted from having to exhaust those remedies before having recourse to the inter-American system in search of protection.

34. As for the other remedies pending to which the State refers, the Commission has held previously that the decisions handed down in disciplinary and contentious-administrative proceedings do not meet the requirements established in the Convention. The disciplinary jurisdiction does not constitute a sufficient means for prosecuting, punishing, and repairing the consequences of human rights violations. The contentious-administrative jurisdiction is a mechanism that seeks to oversee the administrative activity of the State, and that only allows one to obtain compensation for damages caused by abuse of authority. Accordingly, in a case such as this, it is not necessary to exhaust such remedies before turning to the inter-American system.

35. Invoking the exceptions to the prior exhaustion requirement provided for at Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights set forth therein, such as the guarantees of access to justice. Nonetheless, Article 46(2), given its nature and purpose, is a norm with autonomous content vis-à-vis the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be carried out prior to and separate from the analysis of the merits, as it depends on a different standard of appreciation from that used to determine the possible violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that impeded the exhaustion of domestic remedies shall be analyzed in the report the Commission adopts on the merits, in order to determine whether they constitute violations of the American Convention.

2. Time period for submission of the petition

36. The American Convention establishes that for a petition to be admissible by the Commission, it must be submitted within six months from the date on which the alleged injured party has been notified of the final decision. In the claim under analysis, the IACHR has established that the exceptions to the exhaustion of remedies apply in keeping with Article 46(2)(c) of the American Convention. In this respect, Article 32 of the Commission's Rules of Procedure establish that in those cases in which the exceptions to the prior exhaustion rule apply, the petition must be presented within a time that is reasonable in the Commission's view. To this end, the Commission must consider the date on which the alleged violation of rights occurred and the circumstances of each case.

37. In the instant case, the petition was received on December 23, 2003, the facts that are the subject matter of the claim occurred on December 16, 1996, and their effects in terms of the alleged failure of the administration of justice to produce results extends to the present day. Therefore, in view of the context and characteristics of the instant case, the Commission considers that the petition was submitted in a reasonable time, and that the admissibility requirement referring to the time for submission should be considered satisfied.

### 3. Duplication of procedures

38. It does not appear from the record that the subject matter of the petition is pending before any other international procedure for settlement, or that it reproduces a petition already examined by this or any other international body. Therefore, the requirements established at Articles 46(1)(c) and 47(d) of the Convention should be considered to have been met.

### 4. Characterization of the facts alleged

39. Considering the elements of fact and of law presented by the parties and the nature of the matter put before it, the IACHR finds that in the instant case, the petitioner's allegations tend to establish violations of the rights to life, human treatment, judicial protection, and a fair trial, protected at Articles 4(1), 5(1), 5(2), 8(1), and 25, in conjunction with Article 1(1) of the American Convention.

40. In addition, the IACHR considers, in application of the principle of *iura novit curia*, that the facts alleged in the petition tend to establish a violation of Article 7(2) and (3) of the Convention with respect to the detention of José Antonio Romero Cruz, Rolando Ordóñez Álvarez, and Norberto Hernández. As it is not evident that these aspects of the claim are unfounded or out of order, the Commission considers that the requirements established at Articles 47(b) and (c) of the American Convention have been satisfied.

## V. CONCLUSIONS

41. The Commission concludes that it is competent to examine the claims presented by the petitioner on the alleged violation of Articles 4(1), 5(1), 5(2), 7(2), 7(3), 8(1), and 25, in conjunction with Article 1(1) of the American Convention, and that these are admissible, in keeping with the requirements established at Articles 46 and 47 of the American Convention.

42. Based on the arguments of fact and law set forth above, and without prejudging the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find the instant case admissible with respect to Articles 4(1), 5(1), 5(2), 7(2), 7(3), 8(1), and 25, in conjunction with Article 1(1) of the American Convention.
2. To notify the Colombian State and the petitioner of this decision.
3. To proceed to analyze the merits.
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 15th day of the month of October, 2007.  
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and Freddy Gutiérrez, Commissioners.