I. SUMMARY

1. On July 26, 2006, the Inter-American Commission on Human Rights (hereinafter referred to as "the Commission") received a petition lodged by Andrés Pizarro Sotomayor, the lawyer of the presumptive victim and Erick D. Bravo Dutary (hereinafter referred to as "the petitioners") in which they claim that Mr. Bravo was suspended from his post as Deputy-Director of the Technical Judicial Police as a result of a decision taken by the Attorney-General, on the basis of his supposed improper interference in the investigation of a homicide.[FN1] The petitioners allege that Mr. Bravo, by law, could only be suspended or removed from his post by the Attorney General, following a favorable opinion in this regard issued by the Fourth Chamber of the Supreme Court, a procedure that was not followed in this specific case.

[FN1] By letter received July 12, 2007, Mr. Andres Pizarro Sotomayor formally renounced his role as co-petitioner in this case given that he had been selected as a Romulo Gallegos fellow.

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2. The petitioners alleged that Mr. Bravo has been the object of an illegal and arbitrary suspension by the Attorney General, as a disciplinary measure, which included the suspension of his salary, by means of Resolution No. 30 dated March 15, 2005, for a period of 18 months in violation of Articles 8(1), 8(2)(b), (c), (d), (f), 8(4), (Right to a Fair Trial), 9 (Freedom from Ex Post Facto Laws), 11 (Right to Privacy), 21 (Right to Property), 23 (Right to Participate in Government) and 25 (Right to Judicial Protection) in conjunction with Article 1(1) of the American Convention on Human Rights (hereinafter "American Convention").

3. The State responded to the petition on November 13, 2006 and informed the Commission that the Attorney General, Ana Matilde Gómez Ruiloba, basing herself on Articles 1 and 20 of Law No. 16 of 1991, requested the President of the Fourth Chamber of the Supreme Court to order the immediate suspension or removal of Mr. Bravo from the post of Deputy Director of the Technical Judicial Police based on a set of facts that alleged his improper interference in the investigation of a homicide. The State noted that Mr. Bravo had filed a request for reconsideration of Resolution 30, a suit before the respective administrative body, and an amparo, all of which had been resolved against him. The State alleged that domestic remedies had not been exhausted since a contentious administrative proceeding is pending before the Third Chamber of the Supreme Court.

4. The petitioners claim, for their part, that the amparo is to be decided rapidly, normally in 15 days and that there has been an unwarranted delay on the part of the Supreme Court in deciding the amparo (i.e. 23 months) and that the contentious administrative proceeding has been pending since June 3, 2005, for over two years, comprising an unwarranted delay in the adjudication of his rights and constituting an exception to the exhaustion requirement for the admissibility of a petition. The petitioners allege that Mr. Bravo's due process rights were violated in that the established procedures and protections were not followed and afforded to him and that he was removed from his post by means of the adoption of a law on December 20, 2006, that can only be described as a retroactive application of the law (bill of attainder), the purpose of which was to remove him from his post by skirting the legal procedures established by law to protect his rights.

5. After analyzing the positions of the parties, the Commission concludes that it has jurisdiction to decide on the complaint presented by the petitioners and that the case is inadmissible, under Article 47 (a) of the American Convention for failure to comply with the provisions of Article 46 (1) (a) in that domestic remedies have not been exhausted.

II. PROCESSING BY THE COMMISSION

6. The original petition was filed on July 26, 2006 and then presented, in person, by Mr. Bravo on August 21, 2006 and registered as Petition No. 630 of 2006. On September 11, 2006, the Commission communicated the petition to the State in accordance with Article 30(3) of its Rules of Procedure and granted the State a two-month period within which to reply.

7. On September 26, 2006, the Commission informed the petitioners that the hearing they had requested during the 126º period of sessions had been denied due to the large volume of such requests. On September 29, 2006, October 2, and October 24, 2006, the petitioners submitted additional information to the Commission.

8. On November 14, 2006, the Commission received the State's response to the petition, which was transmitted to the petitioners on November 29, 2006. On November 29, 2006, the Commission received additional information from the State with regard to the case and submitted three files that were in process before the Supreme Court. On December 5, 2006, the Commission requested the petitioners to present their observations on the State's response within

the period of one month. On January 3, 2007, the petitioners submitted their observations to the State's response, and on January 9, 2007, these observations were transmitted to the State.

9. Simultaneously the petitioners requested precautionary measures in anticipation of the adoption of Law Nº 53 which resulted in Mr. Bravo's removal from his post, skirting the procedures established by the existing laws. The request for precautionary measures (MC 366/06) was therefore rejected for failure to comply with the requirements. On April 2, the petitioners presented additional evidence, including a CD-Rom with a compilation of press clippings on the case, and a request for information on the status of the petition. This information was transmitted to the State on April 9, 2007.

10. The Commission received additional observations from the State on July 5, 2007 with regard to the petitioners' observations of April 2, 2007. The State's response included, as attachments, the March 2, 2007 decision of the Panamanian Supreme Court, which rejected the petitioners' request for amparo and the May 10, 2007 decision of the Fourth Chamber of the Supreme Court, which declared that the subject matter presented to it for decision was rendered moot by the promulgation of Law No. 53 of December 20, 2006, published in the Official Gazette on December 21, 2006, by which the Attorney General acquired the competence to appoint and remove the Director and the Deputy Director of the Technical Judicial Police for a period of 180 days. This information was transmitted to the petitioners on July 16, 2007 and the petitioners presented their observations thereto on July 18, 2007 by electronic mail and on July 19, 2007 by courier with the relevant annexes. The observations of the petitioners were transmitted to the State on July 20, 2007 and no further information was received with regards to the admissibility of the complaint.

III. POSITIONS OF THE PARTIES

A. The Position of the Petitioners

11. By means of Resolution Nº 011 of December 13, 2002, Erick Bravo had been named Deputy Director of the Technical Judicial Police, in accordance with Article 20 of Law Nº 2 of January 6, 1999 for the fixed period of seven years. Such appointments, for a specified number of years, pursuant to Article 307 of the Constitution, the petitioners alleged, do not form part of the national civil service. Consequently, the petitioners argue, the dispositions governing the national civil service do not apply to posts such as his.

12. On March 5, 2005, the dead body of Vanesa Márquez Fawcet was found, and a police investigation was initiated, pursuant to Law Nº 16 of 1991, in order to establish the cause of her death.

13. As a result of the investigation, Inspector Rubén Darío Feuillebois, the Chief in charge of the Division of Crimes against Life and Personal Integrity of the Technical Judicial Police, lawyer Jaime Jácome, Director General of the investigative body and Luis Alberto Martínez Sánchez, Auxiliary Prosecutor of Panama, personally handed the Attorney General, Ana Matilde Gomez Ruiloba, at 11:30 pm on March 11, 2005, a report alleging irregular actions that were

supposedly taken during the preliminary investigation by Erick Bravo, the Deputy Director of the Police.

14. On March 13, 2005, one day before the Attorney General requested the Fourth Chamber of the Supreme Court to suspend and remove Erick Bravo, on the front page of the Sunday issue of the newspaper "El Panamá América" the headline: "The separation of a director of the PTJ will be ordered". The petitioners allege that the contents of the newspaper article were totally false and that it adversely affected his honor and reputation.

15. The petitioners allege that the Attorney General, relying exclusively on the information provided by the above mentioned functionaries (see para. 13, supra) and without giving Mr. Bravo the opportunity to respond to the charges, presented, on March 14, 2005, a request to the Fourth Chamber of the Supreme Court for the suspension and removal of Erick Bravo from the post of Deputy Director of the Technical Judicial Police.

16. The Fourth Chamber, by means of a Resolution issued on March 14, 2005 rejected the request for removal, noting that Article 42 of the Rules of Procedure of the PTJ require that: "The removal of a functionary will be preceded by an investigation designed to clarify the charges which are attributed to him, in which he will be permitted to exercise the right to defense . . .". In this context, the Resolution noted: "In attention to this norm, when no investigation has been carried out, the Court considers that the Attorney General cannot remove Mr. Bravo from the post which he is occupying."

17. In the Resolution of March 14, 2005, the Fourth Chamber indicated that the measure: " may result in the suspension of the post without salary, among other disciplinary measures, pursuant to the provisions of Article 40 of the same Rules of Procedure, pursuant to which this Chamber finds no objection to the ordering of the same."[FN2] Further on, the Resolution specifies that the Fourth Chamber "has no objection to the suspension of Mr. Bravo, should it be considered appropriate by the Attorney General."

[FN2] Article 40 provides in relevant part: "De las Sanciones por Faltas Leves o Graves. En virtud de los dispuesto en el artículo cuarenta y cinco (45) de la Ley 16 de 1991, se aplicarán las siguientes sanciones: a) xxx; b) xxx; c) Suspensión sin Goce de Salario: cuando se trate de la comisión de faltas graves se podrá suspender al funcionario hasta por quince (15) días sin goce de salario."

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18. The following day, the Attorney General issued Resolution Nº 30 of March 15, 2005, in which she ordered the "suspension of Erick Bravo from the post of Deputy Director of the Technical Judicial Police, until the investigations that are designed to establish the disciplinary responsibility that may be attributed to him shall be completed." The petitioners allege that this resolution applies a disciplinary sanction, in that Article 20 of Law Nº 16 of 1991, modified by Law Nº 2 of 1999, establishes that the Director and the Deputy Director of the PTJ "may only be suspended or removed from their posts" pursuant to the Internal Rules of Procedure.

19. The Fourth Chamber admitted the Attorney General's request, pursuant to Article 20 of Law 16. The decision states that the Attorney General sought the suspension or removal of Erick Bravo due to his alleged improper interference in the criminal investigation of the death of Vanessa Marquez. The Court considers that the Attorney General's request is for "suspension or removal" and states that when the norm is clear that these disciplinary measures exclude each other, as is set forth in Article 34 of the Internal Rules of 1994, pursuant to which they are four kinds of sanctions that may be imposed upon the members of the PTJ: 1) private reprimand; 2) written reprimand; 3) suspension without salary; 4) removal from the post.

20. The Fourth Chamber stated that the Attorney General, as a special request, asked the Court to order "the immediate suspension" of Mr. Bravo until the issue of his removal is decided. The Court notes that this request is "completely inappropriate" pursuant to Article 20 of Law 16. Article 20 provides that the Director and Deputy Director of the PTJ are to be designated and removed at the discretion of the plenary of the Supreme Court.

21. Article 20 of Law 16, however, was amended by Law No. 2 of January 6, 1999, which provides that the Director and Deputy Director will be designated by the President of the Supreme Court and can only be "suspended or removed" from their posts by the Attorney General, following the favorable opinion of the Fourth Chamber. The Court, in its March 14, 2005 decision, then proceeds to decide whether suspension or removal is the more appropriate measure and looks to the Internal Rules. Article 42 of the Internal Rules provides that the removal of a functionary must be preceded by an investigation designed to clarify the charges and in which he is permitted the right to defend himself. Since Mr. Bravo's case was not investigated, the Court concludes that a suspension would be more appropriate. Article 42 of the Internal Rules specifically provides that an investigation must precede removal, but there is no corresponding provision of the Internal Rules to the effect that a suspension must be preceded by an investigation.

22. According to the petitioners, the Attorney General issued Resolution 30 in violation of the American Convention, in that the Resolution ordered, in numeral 1: "To initiate a disciplinary investigation against the Deputy Director of the Technical Judicial Police, for the purpose of determining the existence or irregularities that could have involved the infraction of ethical, judicial norms and the prohibitions on functionaries of this body, according to Law Nº 16 of 1991, the Internal Rules of Procedure of the Technical Judicial Police and the Judicial Code, as well as in order to determine his responsibility." The petitioners argue that the Attorney General, on the same day that she decreed the suspension sanction, ordered the opening of a disciplinary investigation, for the purpose of collecting evidence that would convince the Fourth Chamber of the Supreme Court to apply the sanction of firing or removing the functionary. The petitioners argued that this constitutes a second punishment for the same facts. It should be remembered, the petitioners argued, that the first sanction, -the suspension- was ordered without a previous hearing that would have allowed Mr. Bravo the opportunity to defend himself.

23. The petitioners note that Article 45 of Law 16 of July 9, 1999, provides that when there is a complaint for alleged wrongdoing, the functionary's supervisor has the obligation "to hear the charges and the defense to the charges." In this case, they allege, the supervisor only heard the

charges and did not even communicate to Mr. Bravo the existence of reports alleging his wrongdoing and did not give him the opportunity to defend himself.

24. On March 16, 2005, an article was published in the edition of "Mi Diario" with the headline: "PTJ needs a Deputy Director who is fit for the job" and specifically affirmed that "The chief of the Department of Justice made it perfectly clear that the best thing would be to replace Mr. Bravo with a person from outside who would be more fit for the job." This behavior on the part of the Attorney General, according to the petitioners, reveals her unusual interest in removing and replacing Mr. Bravo, without having initiated the disciplinary investigation, as the Organic Law of the PTJ and its Internal Rules of Procedure require.

25. On March 17, 2005, Erick Bravo was notified that the disciplinary investigation had been ordered opened on March 15th. On that date, he presented a writ to have the Resolution reconsidered, the only recourse available to him, by law, to challenge the Resolution.

26. On April 5, 2005, by Resolution Nº 33, the Attorney General confirmed the decision adopted in Resolution Nº 30 of March 15, 2005. On the same day the investigation was initiated, Erick Bravo was given five days within which to present his defense and the evidence he considered necessary with regard to the facts that gave rise to this administrative disciplinary action.

27. On June 3, 2005, the Attorney General, by means of Note PGN-SG-086-05, sent to the Fourth Chamber the file containing the disciplinary procedure followed against Mr. Bravo, so that the Court could decide whether or not his removal from the post was warranted. At the time that this petition was presented to the Commission, July 26, 2005, the Court had not acted.

28. In addition to the request for reconsideration, the petitioners stated that on April 20, 2005 Mr. Bravo presented an amparo for the protection of his constitutional rights, and, on June 3, 2005, a complaint before the Administrative Tribunal, and they alleged in their petition that neither of these remedies had been decided, amounting to a denial of justice.

29. The State, in its submission of additional information to the Commission on July 5, 2007, included the Supreme Court's March 2, 2007 rejection of the petitioner's request for amparo. The Supreme Court rejected the request for amparo finding that it did not fulfill the requisites set forth in the law.

30. The petitioners allege that the prejudice to Mr. Bravo is aggravated by the fact that as of the date of the present report Mr. Bravo alleges that he is technically still in the post of Deputy Director of the PTJ, although for over two years he has been unable to work due to the "suspension" and he is not receiving his salary and other benefits. The petitioners allege that Panamanian law (Article 45 of Law 16 and Article 40 of the Internal Rules of Procedure) only permits a maximum 15-day sanction of suspension without pay from one's post. The petitioners argue that in this case it constitutes an unjust and aberrant situation in that it has lasted much beyond the 15 days permitted by law. It has been transformed into an "indefinite" suspension without salary, a measure that is not contemplated in Panamanian law.[FN3]

[FN3] Article 45 of Law 16, on the disciplinary regime with the PTJ, provides four kinds of sanctions: 1) private reprimand; 2) written reprimand; 3) suspension without salary; 4) removal from post. Article 45 (4) provides that suspension without salary shall not exceed 15 days for non repetitive serious offenses ("faltas graves") or recidivist non serious offenses. Article 40 of Resolution 25-94 of 1994, the International Rules of the PTJ, implements Article 45 of Law 16 and provides that the sanctions for serious and non serious offenses shall be 1) private reprimand if the functionary incurs in non serious and non repetitive offenses; 2) written reprimand when the functionary repeats a non serious offenses or according to the nature of the offense; 3) suspension without salary up to 15 days when the functionary has committed 5 non serious offenses for a period of 1 to 5 days. If there are more than 5 non serious offenses it will be considered a serious offense and the appropriate sanctions will be applied. Repetition of the commission of serious offenses will lead to removal
from one's post.

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31. On December 20, 2006, the National Assembly adopted Law Nº 53 which retroactively suspended the protections set forth in Article 20 of Law 16 of 1991 and permitted the Attorney General, for a period of 180 days, to summarily remove the Director, the Deputy Director and the Secretary General of the PTJ from their posts without the prior approval of the Fourth Chamber of the Supreme Court. This Law was approved on December 20, 2006 and published in the Official Gazette on December 21, 2006, and on the same day, the Attorney General removed Mr. Bravo from his post. On December 26, 2006, Mr. Bravo's lawyer filed a cause of action with the Supreme Court requesting that Law Nº 53 be declared unconstitutional.

32. The petitioners note that the decision of the contentious administrative chamber (Third Chamber) of the Supreme Court is still pending on the merits of the case. They argue that this remedy has been pending since June 3, 2005, for over two years and that the petition should excuse exhaustion due to the unwarranted delay on the part of the Supreme Court in deciding the matter, pursuant to Article 46 (2)(c) of the American Convention. As noted by the former President of Panama, Guillermo Endara, in the Baena Ricardo et al. case before the Inter-American Court, "[T]he Third Section [Chamber] of the Supreme Court [was granted competence], since it is the highest pre-established authority in labour matters."[FN4] The petitioners note that the Attorney General has five days to respond to the application filed with the contentious administrative chamber of the Supreme Court and in the instant case eight months have elapsed without the Attorney General responding to the application. The petitioners allege that they have filed several motions to move the proceedings forward, but that they have been unjustifiably paralyzed.

[FN4] I/A Court H.R., Baena Ricardo et al. Case. Judgment of February 2, 2001. Statement of Guillermo Endara at para. 65(h),

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33. The petitioners note further that with the adoption of Law Nº 53 of December 20, 2006 and the ensuing removal of Mr. Bravo from his post, they filed an action to have both the

removal and Law Nº 53 declared unconstitutional. The petitioners allege that the filing of the unconstitutionality motion had a suspensive effect in that the Attorney General could not resolve the request for reconsideration, and thus the removal of Mr. Bravo, until such time as the Supreme Court resolved the question of the constitutionality of Law Nº 53. This judicial action also questioned the retroactive application of Law Nº 53 and the subsequent violations of Mr. Bravo's right to due process and non-retroactivity of the norms that prevail in the application of such sanctions.

34. The petitioners conclude alleging that the adoption of Law Nº 53 of December 20, 2006, and the Attorney General's Resolution Nº 56 of December 21, 2006, constituted a retroactive application of the law and sanctioned Mr. Bravo, by definitive removal from his post for the same act for which he was suspended from his post, without having conducted an investigation or provided for the necessary due process guarantees. The petitioners allege that although the new Law granted the Attorney General the competence to remove the Deputy Director of the PTJ, they argue that the articles of the original Law (Law 16 of 1991) remain in force and require an investigation and respect for due process before sanctioning a civil servant. Also, the petitioners maintain that Law Nº 53 was applied retroactively, since it was applied to legal situations that already existed and were covered by existing law.

35. The petitioners allege that Erick Bravo was not informed, in a timely manner, of the charges presented against him, nor permitted to defend himself against them, and was deprived of a complete, impartial and objective investigation of the facts. In addition, they allege that Mr. Bravo was publicly attacked by the communications media to the point of questioning his fitness for a post that he had occupied, in an exemplary fashion, for a period of two years, and that this not only produced serious damage to his impeccable reputation and good name, but also left him in the most deplorable state of defenselessness, in violation of the most elemental legal and constitutional guarantee of due process. As a consequence of the actions taken against Erick Bravo the petitioners argue that Panama is responsible internationally for the violation of articles 8 (right to a fair trial), 9 (freedom from ex post facto laws), 11 (right to privacy), 21 (right to property) and 25 (right to judicial protection) of the American Convention in conjunction with the obligations assumed by the State under Article 1(1) thereof.

B. The Position of the State

36. In its response, dated November 13, 2006, the State noted that the Attorney General sought the immediate suspension and removal of Mr. Bravo from the post of Deputy Director of the PTJ, based on the seriousness of the facts alleged regarding Mr. Bravo's improper interference in the criminal investigation of the death of Vanessa Marquez. The State indicated that the Attorney General requested the Supreme Court to order the immediate suspension of Mr. Bravo from his post as Deputy Director of the PTJ until the issue of his removal from that post could be determined, since allowing him to remain in the post would have affected the normal development and activity of the institution, and, if he were not removed, he could continue to improperly intervene in a criminal investigation as sensitive as the homicide of Vanessa Marquez.

37. The State noted that the Attorney General presented the information and evidence to the Supreme Court. The State indicated that in response to the Attorney General's request for Mr. Bravo's removal, the Fourth Chamber of the Supreme Court, in the resolutive part of its decision, stated:

For the reasons expressed above, the Supreme Court, Fourth Chamber of General Business, administering justice in the name of the Republic and by authority of the law, views favorably the Request for Suspension of the post of Deputy Director of the Judicial Technical Police of Mr. Erick Bravo Dutary, requested by Dr. Ana Matilde Gomez Ruiloba, Attorney General.

Consequently, by means of Resolution 30 of March 15, 2005, the Attorney General suspended Mr. Bravo from his post.

38. The State requested the Commission to determine that the petition is inadmissible, inter alia, because domestic remedies have not yet been exhausted. In particular, the State pointed out that the Fourth Chamber had not yet issued its decision with regard to the Attorney General's request for Mr. Bravo's removal. In the recent observations from the State received on July 5, 2007, the State informed the Commission of the decision of the Fourth Chamber, dated May 10, 2007, whereby the Supreme Court inhibited itself from deciding the matter, concluding that the issue has been mooted by the adoption of Law Nº 53 of December 20, 2006, by which the Attorney General was granted the competence to appoint and remove both the Director and the Deputy Director of the Judicial Technical Police (PTJ), for a period of 180 days.

39. The State noted that on March 17, 2005, Mr. Bravo presented a request for reconsideration of Resolution 30 that suspended him from his post, issued on March 15 , 2005, in which an disciplinary investigation is order for the purpose of determining the existence or not of irregular acts that could violate ethical or judicial norms or other prohibitions on functionaries of the Technical Judicial Police, according to Law No. 6 of 1991, the Internal Regulations of the PTJ and the Judicial Code, as well as for the purpose of determining his responsibility.

40. The State pointed out that on April 20, 2005, the law firm, Bravo, Dutary and Associates presented a writ of amparo to protect constitutional guarantees before the plenary of the Supreme Court, against Resolution No. 30 of March 15, 2005, by which the Attorney General resolved to suspend Mr. Bravo from his post until such time as the investigation could establish disciplinary responsibility. In the additional observations presented by the State on July 9, 2007, the State included the decision of the Supreme Court of March 2, 2007, which denied the amparo requested by the petitioner.

41. The amparo was presented against Resolution Nº 30 of March 15, 2005, which suspended Mr. Bravo from his post. The amparo alleged violations of the guarantees of due process and the presumption of innocence, set forth in various articles of the Panamanian Constitution and also in Article 8(1) of the American Convention. The central argument was that Mr. Bravo had been suspended from his post without having been permitted to defend himself. The plenary of the Supreme Court noted that the Resolution of March 14, 2005 was issued by the Fourth Chamber of the Supreme Court and was in accord with the Attorney General's suspension of Mr. Bravo. The Attorney General had requested Mr. Bravo's removal, but the Fourth Chamber held that the

removal was not appropriate because an investigation, pursuant to Article 42 of the Internal Rules of the PTJ had not been carried out; instead, it held that a suspension was appropriate. Since the suspension was carried out with the prior approval of the Fourth Chamber, the plenary of the Supreme Court concluded that it was constitutional since Article 207 of the Panamanian Constitution provides that amparos will not be permitted against judgments of the Supreme Court.

42. In addition, the plenary of the Supreme Court considered that the request for amparo did not fulfill the necessary requisites. In particular, the Court pointed out that the suspension was not a disciplinary sanction but rather an administrative provisional measure to allow for the possibility of an investigation. Disciplinary sanctions are set forth in Article 34 (c) of the Internal Rules of the PTJ, whereas the administrative provisional sanctions are set forth in Article 30(b) of the same Rules, as well as in Article 146 of Law 9 of June 20, 1994.[FN5] The Supreme Court cited its judgment in the case of Octavio Nuñez, of September 7, 2000 as authority for this distinction.

[FN5] Article 34(c) of the Internal Rules provides: Temporal suspension without salary: It is the action by which the functionary, who infringed the legal provisions or those contemplated in the present Rules, is separated from his post, without right to a salary and which does not merit his removal from his post. Article 30(b) of the Internal Rules provides: To receive remuneration in the form of salaries, when the Institution orders his separation based on facts which the functionary fully proves that he has not committed. If the functionary is proved innocent of the charges imputed, he will be reintegrated into his post and he will be paid the salaries that he did not receive during the period of his separation. If the functionary is separated from his post by judicial order, the Institution will abstain from paying the salaries even if the judgment absolves him.

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43. Further, the Court stated that there was no showing of imminent irreparable harm to merit an amparo. If the petitioner wins his case, the Court noted, then he has the right to be restored to his post and to be paid the salary that he was not paid. The Court stressed that what was at issue was an allegation regarding the application of norms in the disciplinary process which could not be considered by the plenary of the Supreme Court because it would denature the writ of amparo, converting it into a fourth instance recourse. If, in the application of the law, there is an infraction of due process or errors are committed, these are situations concerning legality and do not transcend in importance to reach the level of violations of the constitutional principle of guarantees of due process. If the impugned order is of an administrative nature, the Court concluded, the individual should opt for the contentious administrative recourse rather than an amparo.

44. The State noted that on June 3, 2005, the law firm Bravo, Dutary and Associates, in representation of Erick Bravo, presented a complaint before the relevant contentious administrative (Third) Chamber of the Supreme Court, requesting nullification of Resolution No. 30 of March 15, 2005.

45. In summary, the State noted that the petitioners have attempted to challenge Resolution 30 of March 15, 2005, first, by administrative means, by presenting a cause of action to the Administrative Tribunal and second, by constitutional means, by presenting an amparo to protect constitutional guarantees to the plenary of the Supreme Court. The State claimed, in contradiction to the petitioners, that the first action has been resolved whereas the second, the State indicated, is still pending. In its additional observations presented on July 9, 2007, the State amended its earlier position and stated that the administrative complaint filed by the petitioner on June 3, 2005, is still pending. By this complaint, the petitioner seeks the judicial nullification of Resolution No. 30 of March 15, 2005, by which he was suspended from his post as Deputy Director of the PTJ without the requisite guarantees of due process guaranteed to him by Panamanian law.

46. The State argued that the admissibility requirements established in Article 46 of the American Convention have not been met, in particular, that the domestic remedies have not been exhausted.

47. The State argued that the exceptions to the exhaustion of domestic remedies, established in Article 46(2) of the American Convention, do not apply in this case, for the following reasons:

1) Panamanian law establishes due process for the protection of the rights which it is alleged have been violated, specifically in Law No. 6 of 1991, the Internal Rules of Procedure of the Technical Judicial Police and the Judicial Code, a process which to date has not yet been concluded;
2) Erick Bravo and his representatives have been granted access to internal remedies and have not been impeded from exhausting them, as is proven in the files submitted by the Supreme Court,

48. In addition, the State argued that there has not been unwarranted delay in the petitioners' attempts to exhaust domestic remedies. The State noted that the petitioners had presented the following remedies to the domestic Courts:

1) Request for Reconsideration of Resolution No. 30 of March 15, 2005 of the Attorney General.
The purpose of this remedy was to seek reconsideration by the Attorney General of his resolution to suspend Mr. Bravo from his post.
The Attorney General's Resolution No. 33 of April 5, 2005 resolved this request.
2) Administrative complaint filed before the Third Chamber of the Supreme Court.
This remedy is to resolve the merits of Mr. Bravo's case and is a remedy for reconsideration of the resolution to suspend Mr. Bravo from his post. The State argues that it has not been resolved because Mr. Bravo presented a remedy to have Law No. 53 declared unconstitutional and that this matter must be resolved by the plenary of the Supreme Court before this remedy can be addressed. The request was filed on June 30, 2005 and is still pending.
3) Proceedings to determine the suspension and removal of Erick Bravo from his post of Deputy Director of the Technical Judicial Police before the Fourth Chamber of the Supreme Court (Disciplinary proceedings).

By decision dated May 10, 2007 the Fourth Chamber of the Supreme Court inhibited itself from deciding the matter on the basis that the issue had been mooted by the adoption of Law 53 granting the Attorney General the competence to remove Mr. Bravo from his post without the necessity of the Fourth Chamber's prior agreement.

4) Writ of amparo for constitutional guarantees presented by the law firm Bravo, Dutary and Associates before the plenary of the Supreme Court.

On March 2, 2007, the Supreme Court decided against admitting the amparo requested by the petitioner. The petitioner filed the amparo to challenge the suspension of Mr. Bravo from his post without the prior agreement of the Fourth Chamber, in violation of two domestic norms and art. 8(1) of the American Convention. The Court held that an amparo cannot be used to challenge a decision adopted by the Attorney General with the prior agreement of the Fourth Chamber of the Supreme Court.

5) Writ of unconstitutionality.

On December 26, 2006, the petitioner filed a writ of unconstitutionality to have Law No. 53 declared unconstitutional by the plenary of the Panamanian Supreme Court. This remedy is still pending.

The State concluded that the status of these proceedings is evidence that it is carrying out its function and obligation of administering justice, pursuant to the guarantees of due process established in the internal norms of the State.

49. In addition, the State reiterated that it is complying with Article 8(1) of the American Convention, which provides that every person has the right to a hearing, with due process guarantees and within a reasonable time. The State pointed out that the definition of a "reasonable time" is not simple and that it is necessary to examine the particular circumstances of every case. It noted that the Inter-American Court of Human Rights shares the criteria established by the European Court of Human Rights, that in order to determine the "reasonableness" of the time period in question, it is necessary to consider: 1) the complexity of the case, 2) the procedural activity of the defendant and 3) the actions of the judicial authorities. The Inter-American Court, the State noted, added an additional criterion: the global analysis of the proceedings must be taken into consideration. Consequently, the State argued, "unwarranted delay" cannot be found in a situation where the defendant has the opportunity to access domestic remedies that may effectively resolve the violations alleged.

50. In addition, the State noted that the petitioners' reference to "the sanction of suspension" by means of Resolution No. 30 of March 15, 2005, is erroneous. Resolution No. 30 of March 15, 2005 does not involve a sanction, which in the final analysis, must be determined by the Supreme Court, but rather it involves a preventive suspension from the post for the purpose of facilitating the disciplinary investigation set forth in Article 146 of Law No. 9 of 1994, which governs the administrative career service. Furthermore, this provisional measure was an urgent measure designed to avoid the possible aggravation of behavior that violated the law and for which the defendant was accused and was necessary to defend the integrity of the Technical Judicial Police. The State attempted to clarify, therefore, that the provisional measure of suspension from his post was not a disciplinary sanction.

51. The State concluded that based on the above considerations, the Commission should reject a possible violation by the State of the articles of the American Convention cited by the

petitioners and should consider the petition to be inadmissible for failure to exhaust domestic remedies.

IV. ANALYSIS CONCERNING JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

1. The Commission's jurisdiction ratione personae, ratione loci, ratione temporis, and ratione materiae

52. The petitioners are entitled, pursuant to Article 44 of the American Convention, to lodge petitions with the Commission. The petition names Erick Bravo Dutary as the alleged victim, whose rights under the American Convention, Panama has pledged to respect and guarantee. As for the State, the Commission points out that Panama signed the American Convention on November 22, 1969 and ratified it on June 22, 1978. Consequently, the Commission has jurisdiction ratione personae to examine the petition.

53. The Commission has jurisdiction ratione loci because the alleged violations are said to have taken place within the territory of a State party to the American Convention.

54. With regard to the Commission's jurisdiction ratione temporis to examine the petition, the facts are said to have occurred as of March 15, 2005, at which time the American Convention was in force in Panama.

55. Finally, the Commission is competent ratione materiae, because the petition denounces violations of human rights protected by the American Convention.

2. Exhaustion of domestic remedies

56. Article 46(1)(a) of the American Convention states that admission by the Commission of a petition or communication lodged in accordance with Article 44 shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to learn of the alleged violation of a protected right and, in appropriate cases, to resolve it before it is taken before an international instance.

57. The requirement of prior exhaustion of remedies is met when the national system is furnished with remedies that are adequate and effective to repair the alleged violation. In this connection, the requirement to exhaust domestic remedies, contained in Article 46(2) of the American Convention, does not apply when there is denial of justice, viz., 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; 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 there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. As indicated by Article 31 of the Commission’s Rules of Procedure, when the petitioner contends that he or she is unable to prove compliance with the requirement indicated

in this article, it shall be up to the State concerned to demonstrate to the Commission that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

58. Based on inferences from the principles of international law, as reflected in precedents established by the Commission and the Inter-American Court of Human Rights, it is especially important that the State against which a claim is being lodged should invoke the plea of non-exhaustion of domestic remedies in the early stages of the proceedings before the Commission[FN6]. At the same time, given the burden of proof incumbent upon it in such matters, the State that alleges non-exhaustion should point to the domestic remedies that need to be exhausted and give proof of their effectiveness.[FN7]

[FN6] I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case, Preliminary Objections. Judgment of February 1, 2000, para. 53; Castillo Petruzzi Case, Preliminary Objections. Judgment of September 4, 1998, para. 56; Loayza Tamayo Case, Preliminary Objections. Judgment of January 31, 1996, para. 40. The Commission and the Court have found that the early stages of the proceedings should be defined as the stage for assessing the admissibility of the proceedings before the Commission —i.e., before any assessment of the merits. See, for example, I/A Commission H.R., Report No. 71/05, P-543/04, Admissibility, Ever de [Jesús] Montero Mindiola, Colombia, October 13, 2005, which cites, I/A Court H.R., Case of Herrera Ulloa. Judgment of July 2, 2004, para. 81.

[FN7] Cf. I/A Commission H.R., Report Nº 32/05, P-642/03, Admissibility, Luis Rolando Cuscul Pivaral (Persons living with HIV/AIDS), Guatemala, March 7, 2005, paras 33-35; I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case, Preliminary Objections, Judgment of February 1, 2000, supra, note 4, para. 53; Durand and Ugarte Case, Preliminary Objections, Judgment of May 28, 1999, para. 33; Cantoral Benavides Case, Preliminary Objections, Judgment of September 3, 1998, para. 31.

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59. In the instant case, the petitioners invoked the exception established in Article 46(2) (c) of the American Convention, alleging that Mr. Erick Bravo, has suffered unwarranted delay in the resolution of his claims. As of April 6, 2007, the petitioners alleged that Mr. Bravo had presented the following claims before the Panamanian courts that have not been resolved:

1) Contentious-administrative complaint of full jurisdiction before the Third Chamber of the Supreme Court. This complaint was presented on June 3, 2005 and still has not been resolved on the merits. It was admitted by the (contentious-administrative) Third Chamber of the Court on November 17, 2006, but has not been acted upon despite motions to accelerate consideration of the matter. The purpose of the remedy is to seek the nullification of Resolution 30 which suspended Mr. Bravo from his post and to restore the right violated.

2) Request for reconsideration and a writ of unconstitutionality against Law No. 53, adopted on December 21, 2006. The petitioners presented a request for reconsideration and a writ of unconstitutionality against the administrative act of the Attorney General's removal of Mr. Bravo from his post and for the unconstitutionality of the adoption of Law No. 53 based on the argument that the law cannot be applied retroactively

60. The State argued that "unwarranted delay" cannot be found in a situation where the defendant has the opportunity to access domestic remedies that may effectively resolve the violations alleged. It is clear that the above remedies could effectively resolve the violations alleged, however, the American Convention requires that these remedies be resolved within a reasonable time and that Mr. Bravo not be subjected to an unwarranted delay as he attempts to vindicate his rights.

61. The petitioners maintain that Erick Bravo continues technically in the post of Deputy Director of the PTJ, but due to his protracted suspension, he is not permitted to perform any of the functions of this post and he has not been remunerated for a period of approximately two years, despite the prescriptions of the Internal Rules of Procedure that contemplate a "suspension without pay" for a maximum of 15 days. The State clarified, however, that Resolution No. 30 of March 15, 2005 does not involve a sanction, which in the final analysis, must be determined by the Supreme Court, but rather it involves a preventive suspension from the post for the purpose of facilitating the disciplinary investigation. Article 30(b) of the Internal Rules provides that if Mr. Bravo is absolved of the charges pending against him that he has the right to recuperate the salary that has been withheld and to be reinstated in his post. The State further clarified that the suspension without pay imposed upon Mr. Bravo was not a disciplinary sanction pursuant to Article 34(c) of the Internal Rules, but rather a temporal measure to permit a full investigation.

62. The nature of the case has changed during the time since the petition was brought before the Commission. In August 2006, the petitioners alleged that the Attorney General sought to remove Mr. Bravo from his post in March 2005, but was unable to do so because of the due process guarantees provided by Panamanian law and the applicable regulations that required the prior approval of the Fourth Chamber of the Supreme Court for such a removal. Lacking the requisite of a prior investigation into the acts pending against Mr. Bravo, the Supreme Court was unwilling to grant the necessary prior approval for Mr. Bravo's removal, but consented to his suspension, on March 15, 2005, from the post to permit the carrying out of a disciplinary investigation. In lieu of carrying out the necessary disciplinary investigation and seeking the Fourth Chamber's approval, the National Assembly adopted Law Nº 53 on December 20, 2006, which empowered the Attorney General to remove both the Director and Deputy Director of the PTJ for a period of 180 days. Mr. Bravo was removed from his post the same day that Law Nº 53 was promulgated. Mr. Bravo has judicially challenged the constitutionality of Law Nº 53, but that remedy is also still pending and was not filed until December 2006, less than one year ago.

63. The existence of two domestic remedies that have not yet been exhausted requires the Commission to declare this case inadmissible pursuant to Article 46(1)(a) of the American Convention. A remedy filed by the petitioners, regarding the constitutionality of Law Nº 53 is pending before the Supreme Court, and also a remedy regarding the merits is pending before the Third Chamber of the Supreme Court, the highest judicial authority in labor matters. Consequently, the rule which requires the previous exhaustion of domestic remedies, set forth in Article 46(1)(a) of the American Convention, is applicable to Mr. Bravo in this case, at least for now.

V. CONCLUSIONS

64. Based on the arguments of fact and law set forth above

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the petition inadmissible.
2. To notify the State and the petitioner of this decision.
3. To publish this decision and include it in its Annual Report, to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 17th day of the month of October, 2007. (Signed): Florentín Meléndez, President; Sir Clare K. Roberts, Evelio Fernández Arévalos, Paulo Sérgio Pinheiro, and Freddy Gutiérrez, Commissioners.