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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 16/09; Petition 12.302
Session:	Hundred Thirty-Fourth Regular Session (16 – 27 March 2009)
Title/Style of Cause:	Luis Eduardo and Andres Alejandro Casierra Quinonez v. Ecuador
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo Carozza.
Dated:	19 March 2009
Citation:	Casierra Quinonez v. Ecuador, Petition 12.302, Inter-Am. C.H.R., Report No. 16/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANT: Alejandro Ponce Villacis

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I. SUMMARY

1. On June 27, 2000, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition lodged by Alejandro Ponce Villacís (hereinafter "the petitioner") alleging the responsibility of the Republic of Ecuador for the death of Luis Eduardo Casierra Quiñónez and the injuries suffered by Andrés Casierra Quiñónez in an attack purportedly carried out by members of the Ecuadorian Navy on December 8, 1999, on the River Atacames in the province of Esmeraldas, Republic of Ecuador.

2. The petitioner alleged that the State was responsible for violating the right to life, to humane treatment, to a fair trial, to equal protection, and to judicial protection, enshrined in Articles 4, 5, 8, 24, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), and for failing in its duty to adopt domestic legal provisions as set forth in Article 2 of the Convention, all in conjunction with the duty of ensuring and guaranteeing rights contained in Article 1.1 thereof. In turn, the State maintained that the petitioner's claims were inadmissible on account of the nonexhaustion of domestic remedies and held that the exceptions provided in Article 46.2 were inapplicable.

3. After analyzing the positions of the parties and the requirements contained in Articles 46 and 47 of the American Convention, the Commission decided to rule the case admissible for the purpose of examining the alleged violation of Articles 2, 4.1, 5.1, 8.1, and 25 of the American Convention, in conjunction with Article 1.1 thereof, to notify the parties, and to order the publication of this report.

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II. PROCESSING BY THE COMMISSION

4. The Commission recorded the petition as No. 12.302, pursuant to the Regulations in force before April 30, 2001, and, on July 7, 2000, it conveyed a copy of its relevant parts to the State with a 90-day deadline for comments. On October 11, 2000, the State sent its reply, which was forwarded to the petitioner with a one-month deadline for comments.

5. On August 23, 2000, the petitioner submitted additional information, which was forwarded to the State with a one-month deadline for comments. The petitioner submitted his reply to the State's comments on March 7, 2001, which was conveyed to the State for its comments on March 26, 2001. On July 19, 2001, the State sent its reply, which was forwarded to the petitioner for his comments. On December 10, 2001, the petitioner presented his reply, which was conveyed to the State for its comments. On January 24, 2003, the petitioner submitted additional information.

6. On December 17, 2007, the Commission asked the petitioner for up-to-date information regarding his claim. The petitioner's reply was conveyed to the State for comments on February 15, 2008. The State was again asked to submit its comments on January 7, 2009.

III. POSITIONS OF THE PARTIES

A. Petitioner

7. The petitioner claims that at 6:30 PM on December 7, 1999, the brothers Andrés Alejandro (21), Luis Eduardo (23), and Darlin Sebastián (33) Casierra Quiñónez set out from Puerto Prado on the River Atacames for a fishing trip in the vessel Rodach. The group included another five fishermen.[FN1]

[FN1] Identified by the petitioners as Freddy Zambrano Quiñónez, Orlando Olaya Sosa, Jorge Olguín Ortiz Bone, and the children Christian Jesús Sosa Quiñónez and Eguberto Arselio Padilla Caicedo. Original petition, received June 27, 2000.

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8. The petitioner claims that at 1:30 AM on December 8, 1999, the vessel was stationary while changes were being made to its fuel tank. The crew claims that a launch then approached them in a threatening fashion, without giving any audible or visual signal. As they tried to move away peacefully, they claim, the fishermen were fired on. As a result of the attack, Luis Eduardo Casierra Quiñónez was killed and Andrés Alejandro Casierra Quiñónez suffered serious injuries to his left leg.[FN2]

[FN2] The petition also states that Darlin Sebastián Casierra Quiñónez's left hand was injured, and that the child Christian Jesús Sosa Quiñónez suffered superficial cuts to both his legs.

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9. The petitioner claims that the assailants approached the Rodach and identified themselves as three members of the Ecuadorian Navy and one civilian, following which they took the vessel under tow and arrested Eguberto Padilla Caicedo, Jorge Ortiz Bone, and Orlando Olaya Sosa, whom they took to the city of Esmeraldas.[FN3] The rest of the crew was taken to the city of Atacames. The wounded were ultimately taken to hospital, and Luis Eduardo Casierra Quiñónez's body was taken to the morgue.

[FN3] Following their arrest, Eguberto Padilla Caicedo, Jorge Ortiz Bone, and Orlando Olaya Sosa were released on December 10, 1999, by means of a Habeas Corpus injunction. Police report to the provincial chief of the Esmeraldas Judicial Police, December 17, 1999, enclosed with the original petition received on June 27, 2000.

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10. In connection with the incident, on December 13, 1999, they filed a private accusation with the Fifth Criminal Judge in Esmeraldas against José Angulo Cuero, Goen Manuel Franco Estrada, and Freddy Enrique Espinoza Zurita, all of whom were Navy personnel, together with the civilian Fausto Segundo Caicedo Reasco. They report that in a ruling of February 22, 2000, the judge recused himself from hearing the accusation and referred the proceedings to the Military Criminal Court of the Third Naval Zone of Esmeraldas, ignoring the accusations made against the civilian Fausto Segundo Caicedo Reasco. The petitioner claims that no appeal could be made against that ruling.[FN4]

[FN4] Original petition, received June 27, 2000.

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11. Consequently, a private accusation was lodged against Navy personnel José Angulo Cuero, Freddy Espinoza Zurita, and Manuel Franco Estrada with the Criminal Military Judge of the Third Naval Zone of Esmeraldas, who, in a ruling of April 5, 2000, dismissed the accusation on the grounds that it could not be considered in the context of the military proceedings. In response, an appeal was lodged with the Court of Military Justice, which was denied in a ruling of April 10, 2000. The petitioner claims that on account of the rulings handed down by the military criminal justice system, he was unable to take action against the state agents allegedly involved in the incident, or against their civilian companion.[FN5]

[FN5] Original petition, received June 27, 2000. In addition, the petitioner reports that a complaint was lodged with the Embassy of the Federal Republic of Germany in connection with the rights of the German citizen Uwe Dostal as the owner of the vessel in which the Casierra Quiñónez brothers had embarked on the day of the attack; as a result, the Embassy sent a verbal note to the Ecuadorian Ministry of Foreign Affairs. On July 12, 2000, the Ministry of Foreign Affairs replied that it had "written to the Superior Court of Esmeraldas to recommend close oversight over the proceedings to ensure they are conducted properly, in accordance with law, and so that a fair decision is adopted, seeking compensation for the loss and damage suffered and emphasizing, above all, that it was a crime of common jurisdiction." In connection with this, the

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petitioner maintains that it is clear that the Ecuadorian State acknowledges that the incident involved a common crime and not a crime of military jurisdiction but that nevertheless, the investigation has been handled by the military criminal justice system. Petitioner's submission of August 14, 2000.

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12. The petitioner states that the structure and rules of the military justice system prevent civilians from participating in proceedings, and so the victims cannot invoke the remedies offered by the Code of Military Criminal Procedure. Thus, the petitioner claims, given the nonexistence of a remedy before the regular courts and the disqualification of civilians from appearing before the military courts, the victims were denied the right of a hearing with all due guarantees and were rendered defenseless, in breach of the provisions of Article 25 of the American Convention.[FN6]

[FN6] Original petition, received June 27, 2000; and petitioner's submission of March 6, 2001.

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13. In addition, the petitioner alleges that Ecuadorian military justice does not uphold the principles of impartiality and independence and is thus in violation of Article 8 of the American Convention. He explains that the Navy's military judges are a part of the armed forces' hierarchical structure; and that they are not legal officers or lawyers but Zone Commanders, as stipulated by the Code of Military Criminal Procedure.[FN7] He states that the Organic Law of the Justice Service in the Armed Forces sets the following powers for Zone Commanders: "to require that the Investigating Judge, the Prosecutor, and Secretary perform their duties; […]." The petitioner states that the military courts service is a part of the organizational structure of the armed forces and that all its members are subject to the discipline and obedience imposed by that structure. Consequently, he maintains, the military courts are themselves subject to military authority, which curtails their independence.[FN8]

[FN7] The petitioner cites Article 66 of that Code: "With the corresponding prosecutor's assent, the Zone Commander shall issue, as promptly as possible, an order for dismissal, a summons for plenary proceedings, or grounded warrant, as applicable." Petitioner's submission of March 6, 2001.

[FN8] Petitioner's submissions of March 6 and December 10, 2001.

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14. The petitioner further alleges that when a member of the armed forces is charged with a crime, the regular courts refuse to exercise jurisdiction. The petitioner believes this situation has a discriminatory effect on the victims of crimes committed by state agents and, consequently, that it constitutes a violation of Article 24 of the American Convention.[FN9]

[FN9] Original petition, received June 27, 2000; and petitioner's submission of March 6, 2001.

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15. The petitioner also holds that his claims regarding the alleged violation of the guarantees of a fair trial and judicial protection caused by the use of military justice indicate that the State has failed to abide by the obligation of adapting its domestic law as required by Article 2 of the American Convention.

16. In summary, the petitioner alleges that the Ecuadorian State is responsible for violating the right to life of Luis Eduardo Casierra Quiñónez, the right to humane treatment of Andrés Alejandro Casierra Quiñónez, the right to a fair trial and to judicial protection, and the right to equal treatment, and for failing to abide by the obligation of adopting provisions of domestic law, in conjunction with the general obligation of respecting and ensuring the rights protected by the American Convention.

17. Regarding the admissibility of his complaint, the petitioner maintains that domestic remedies were exhausted with the denial of the appeal lodged with the Court of Military Justice in the decision it handed down on April 10, 2000.

18. Regarding the State's claim that an appeal for annulment was not lodged (see III.B, below), the petitioner responds that such remedies are exceptional in nature and may be lodged only against judgments handed down by the regular courts. In the case at hand, he says, since there was no criminal trial before the regular courts, no appeal for annulment can be filed. He maintains that the regular proceedings concluded with the recusal of the Fifth Criminal Judge and that as a result, no judgment that might admit an appeal for annulment was adopted.[FN10]

[FN10] The petitioner cited Article 373 of the Code of Criminal Procedure: "An appeal for annulment shall be admitted by the Supreme Court of Justice when a judgment has violated the law, either by an express breach of its text, by falsely applying it, or by interpreting it erroneously." Petitioner's submission of March 6, 2001. See also: petitioner's submission of December 10, 2001.

B. State

19. The State maintains the petitioner's claim is inadmissible since the remedies afforded by domestic law have not been exhausted as the American Convention requires. It further maintains that the right to a fair trial has not been violated in the instant case.

20. Specifically, the State claims that on December 15, 1999, the Military Criminal Judge of the Third Naval Zone issued a trial commencement deed against "José Angulo Cuero, Freddy Espinoza, and Manuel Franco Estrada, plus other perpetrators, accomplices, and accessories after the fact for the death of the citizen Luis Casierra Quiñónez and the wounding of Andrés Casierra Quiñónez." It states that following an exhaustive legal analysis of the evidence presented by the parties and gathered by the court, the Judge found that the actions of the state agents in the incident of December 7, 1999, were covered by the exemption from criminal responsibility provided by Article 22 of the Military Criminal Code.[FN11] The State explains that as result, on

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May 24, 2000, an irrevocable dismissal order was issued with respect to the proceedings and the accused, and that the dismissal order was then referred to the Court of Military Justice for consultation, where decision is still pending.[FN12] The State therefore claims that the proceedings have not yet concluded and that the courts must proceed to resolve the matter in accordance with law. It maintains that those channels, regardless of whether or not the decision is favorable, are suitable for resolving the alleged victims' situation.

[FN11] That article reads: "No crime shall be committed by those who act in accordance with law in pursuit of the duties of their military position or post, or who are forced to act by the inevitable and supreme needs of war, or who, hindered by an insuperable legitimate cause, incur in punishable omissions." Deed 14742 of the Office of the Attorney General of the State, October 11, 2000, submitted by means of Note No. 4-2-285/00 of October 24, 2000.
[FN12] Deed 14742 of the Office of the Attorney General of the State, October 11, 2000, submitted by means of Note No. 4-2-285/00 of October 24, 2000.
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21. The State also maintains that the civilian Fausto Caicedo Reasco, who is not covered by military jurisdiction, is facing trial before the Fifth Criminal Judge of Esmeraldas,[FN13] and that as a result, domestic remedies have not yet been exhausted. Ecuador also holds that the time it has taken to resolve the matter is within the reasonable limits established by the Inter-American Court and the Commission, and so it cannot be accused of violating the right enshrined in Article 8.1 of the Convention.[FN14]

[FN13] Deed 18641 of the Office of the Attorney General of the State, July 19, 2001, submitted by means of Note No. 4-2-184/01 of August 6, 2001.
[FN14] Deed 14742 of the Office of the Attorney General of the State, October 11, 2000, submitted by means of Note No. 4-2-285/00 of October 24, 2000.
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22. The State maintains that the petitioner may lodge an appeal for annulment against the future judgment of the Criminal Court and that such a remedy would be appropriate, since its function "within the domestic legal system, is suitable for protecting an infringed legal right."[FN15] It holds this remedy to be suitable and effective in the event that the judges or courts incur in errors in judicando.

[FN15] The State cites: I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C No. 4, paragraph 64. Deed 14742 of the Office of the Attorney General of the State, October 11, 2000, submitted by means of Note No. 4-2-285/00 of October 24, 2000.
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23. Regarding the petitioner's claim that his right to judicial protection was violated, the State responds that all the remedies provided for by Ecuadorian law have been available to the alleged victims. The State holds that the right of defense is violated only when the rules of due

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process are undermined, or when a case involves elements that affect the impartiality or independence of the judges or that fail to guarantee a fair and legal trial, and that in the present case, the free and full enjoyment of the right to a fair trial has been upheld. It maintains that the petitioner had free access to the jurisdictional apparatus and that at no time was he kept from exercising his right to be heard on an equal footing by the competent authorities.[FN16]

[FN16] Deed 14742 of the Office of the Attorney General of the State, October 11, 2000, submitted by means of Note No. 4-2-285/00 of October 24, 2000.

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24. Regarding the petitioner's claim about the lack of impartiality and independence of military judges, the State responds "that the military courts dealing with the alleged crime were independently and impartially established prior to the facts by Ecuadorian law, and that they offer public hearings."[FN17] It notes that as the European Court has ruled, "the personal impartiality of each member of a Court must be presumed until there is proof to the contrary,"[FN18] and that the Inter-American Court has also ruled that "the fact that it involves a military court does not per se signify that the human rights guaranteed [...] by the Convention are being violated."[FN19] The State also argues that in its 1996 Annual Report, the Inter-American Commission noted that "the decisive point is not the subjective fear of the interested party regarding the impartiality of the court that is to hear the case, but rather whether the circumstances indicate that his fears can be objectively justified" – which would be the case if, for example, it were shown that the court's members had committed acts of corruption or lacked the probity to hold their positions, but that no such claims had been made in the instant case.[FN20] The State therefore maintains that the Commission cannot conclude that the court's decisions were taken or will be taken in a way that is not impartial or that undermines due process. In consideration of the foregoing arguments, the State requests that the Commission rule the petitioner's claim inadmissible.

[FN17] Deed 18641 of the Office of the Attorney General of the State, July 19, 2001, submitted by means of Note No. 4-2-184/01 of August 6, 2001

[FN18] The State cites: Eur. Ct. H. R., Case of Albert Le Compte v. Belgium. Deed 18641 of the Office of the Attorney General of the State, July 19, 2001, submitted by means of Note No. 4-2-184/01 of August 6, 2001.

[FN19] The State cites: I/A Court H. R, Case of Genie Lacayo, Judgment of January 29, 1997, Series C No. 30. Deed 18641 of the Office of the Attorney General of the State, July 19, 2001, submitted by means of Note No. 4-2-184/01 of August 6, 2001.

[FN20] Deed 18641 of the Office of the Attorney General of the State, July 19, 2001, submitted by means of Note No. 4-2-184/01 of August 6, 2001.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

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25. First of all, the petitioner is entitled, under Article 44 of the American Convention, to lodge complaints with the Commission. The petition names, as its alleged victim, an individual person with respect to whom the Ecuadorian State had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. With respect to the State, the Commission notes that Ecuador has been a party to the American Convention since December 8, 1977, when it deposited the corresponding instrument of ratification. The Commission therefore has competence ratione personae to examine the complaint.

26. The Commission has also competence ratione loci to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of Ecuador, which is a state party to that treaty. The Commission 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 petition describes possible violations of human rights that are protected by the American Convention.

B. Admissibility Requirements

1. Exhaustion of Domestic Remedies

27. Article 46.1.a) of the American Convention requires the prior exhaustion of the resources available under domestic law, in accordance with generally recognized principles of international law, as a requirement for the admissibility of claims regarding alleged violations of the American Convention.

28. Article 46.2 of the Convention states that the requirement of prior exhaustion of domestic remedies shall 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 claims that a petitioner has not exhausted the relevant domestic remedies, it is required to demonstrate that the remedies that have not been exhausted are “suitable” for remedying the alleged violation, and that the function of those resources with the domestic legal system is applicable to protecting the violated juridical situation.[FN21]

[FN21] I/A Court H. R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 64.

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29. In the case at hand, the State maintains that the petitioner's claim does not satisfy the prior exhaustion of the remedies afforded by domestic law as required by Article 46.1 of the American Convention since there is a criminal trial still pending before the regular courts against a civilian accused of involvement in the incident, and since there is a military criminal trial of three members of the Ecuadorian Navy that stands referred on consultation to the Supreme Military Court. In turn, the petitioner holds that domestic remedies were exhausted with the ruling of April 10, 2000, in which the Court of Military Justice refused to hear the case on appeal.

30. First of all, the remedies still to be exhausted in the case at hand must be identified. The Inter-American Court has ruled that only those remedies appropriate for resolving the alleged violations 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.[FN22]

[FN22] I/A Court H. R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 63.

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31. The Commission believes it relevant to examine the exhaustion of domestic remedies in this case in connection with, first, the proceedings before the military justice system and, second, the case pending before the regular courts.

32. According to the parties' claims, following the events of December 8, 1999, a private accusation was lodged with the Fifth Criminal Judge of Esmeraldas against Navy personnel José Angulo Cuero, Goen Manuel Franco Estrada, and Freddy Enrique Espinoza Zurita, and against the civilian Fausto Segundo Caicedo Reasco. By a ruling of February 22, 2000, the Judge recused himself from hearing the charges and referred the proceedings to the Military Criminal Court of the Third Naval Zone of Esmeraldas. The petitioner lodged a private accusation against those same members of the Navy with the Military Criminal Judge of the Third Naval Zone of Esmeraldas, which was denied in a ruling of April 5, 2000, on the grounds that it was not covered by the jurisdiction of the military justice system. The petitioner appealed against that decision before the Court of Military Justice, which denied his appeal in a ruling dated April 10, 2000.

33. The Commission has repeatedly ruled that military courts are not a suitable venue for investigating, judging, and punishing violations of the human rights enshrined in the American Convention allegedly committed by members of the armed forces and consequently do not provide an adequate remedy for that purpose.[FN23] Similarly, the Inter-American Court has ruled that the military justice system is only a suitable venue for trials of military personnel accused of crimes or offenses that by their own nature attack legally protected interests of the military order.[FN24] Consequently, the prosecution by the military courts of the members of the

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Ecuadorian Navy allegedly involved in actions leading to the death of a civilian and the physical injuring of another is not a suitable remedy for resolving their responsibility in the alleged violations, in the terms of Article 46.1 of the American Convention.

[FN23] IACHR, Admissibility Report No. 43/02, Leydi Dayán Sánchez, Colombia, October 9, 2002, paragraph 23; Admissibility Report No. 11/04, Teodoro Cabrera García and Rodolfo Montiel Flores, Mexico, February 27, 2004,
paragraph 40.
[FN24] I/A Court H. R., Durand and Ugarte Case, Judgment of August 16, 2000, paragraph 117.

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34. Since a claim was lodged with the regular courts and that claim did not prosper, the situation described by the petitioner is covered by the exception to the requirement of exhausting domestic remedies provided by Article 46.2 of the Convention, which states that the exception shall apply when "the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them."

35. Subsidiarily, the Commission notes that as regards the procedural activity of the regular courts, the information furnished by the State indicates that the proceedings initiated in 1999 against the civilian Fausto Segundo Caicedo Reasco are still awaiting the decision of the Fifth Criminal Judge of Esmeraldas. That means that approximately a decade since the incident occurred, the trial has not yet concluded. The Commission points out that such a period of time constitutes an unwarranted delay in the terms of Article 46.2.c) of the American Convention.

36. As regards the appeal for annulment that the State maintains is pending exhaustion, the Commission notes that in the criminal prosecution of Fausto Caicedo Reasco before the regular courts, no judgment concluding the proceedings has yet been handed down, thus denying the possibility of lodging an appeal for annulment.[FN25] In addition, as regards the possibility of lodging an appeal for annulment with the military courts, the Commission again states that the military justice system is not an appropriate venue and thus does not afford a suitable remedy for resolving this claim.

[FN25] Law 000, Official Register, Supplement 360, of January 13, 2000. Code of Criminal Procedure of Ecuador, Art. 349. Grounds. "An appeal for annulment shall be admitted by the Supreme Court of Justice when a judgment has violated the law, either by an express breach of its text, by falsely applying it, or by interpreting it erroneously.

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37. Consequently, in consideration of the characteristics of the case, the Commission believes that the exceptions provided for in Articles 46.2.a) and 46.2.c) of the American Convention are applicable, and so the prior exhaustion of domestic remedies is not required.

38. Furthermore, the invocation of the exceptions provided for in Article 46.2 to the prior exhaustion rule bears an intimate relation with the possible violation of certain rights protected

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by the Convention, such as its guarantees of access to justice. However, by its very nature and purpose, Article 46.2 is a provision with autonomous content vis-à-vis the Convention's substantive precepts. So, the decision as to whether the exceptions to the exhaustion of domestic remedies rule are applicable in the case at hand must be taken before the merits of the case are examined and in isolation from that examination, in that it depends on a different criterion from the one used to determine whether Articles 8 and 25 of the Convention were indeed violated. It should be noted that the causes and effects that prevented the exhaustion of domestic remedies will be analyzed in the Commission's future report on the merits of the dispute, in order to determine whether or not they constitute violations of the American Convention.

2. Timeliness

39. The American Convention requires that for a petition or communication to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was notified of the final judgment. Article 32 of the Commission's Rules of Procedure establishes that in cases in which the exceptions to the prior exhaustion requirement are applicable, the petition must be presented within what the Commission deems to be a reasonable period of time. For that purpose, the Commission is to consider the date on which the alleged violation of rights occurred and the circumstances of each case.

40. In the case at hand, the incident described in the petition occurred on December 8, 1999, and the petition was received on June 27, 2000, while the complaint was still being heard by the military courts. Consequently, in consideration of the context and characteristics of the case, the Commission believes that the petition was lodged within a reasonable time and that the terms of Article 32 of the Commission's Rules of Procedure regarding the timeliness with which a petition must be lodged for it to be admissible can be taken as satisfied.

3. Duplication of Proceedings and Res Judicata

41. The case file does not indicate that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as another petition already examined by this Commission or any other international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

4. Characterization of the Alleged Facts

42. In light of the matters of fact and law argued by the parties and of the nature of the case brought before it, the Commission believes that in the instant case it must rule that the petitioner's claims regarding the alleged violation of the State's obligation to adopt domestic legal provisions and of the right to life, to humane treatment, to a fair trial, and to judicial protection could tend to establish violations of the rights protected by Articles 2, 4.1, 5.1, 8.1, and 25 of the American Convention, in conjunction with Article 1.1 thereof. Since these aspects of the petition are not manifestly groundless or obviously out of order, the Commission holds that the requirements set forth in Articles 47.b) and 47.c) of the American Convention have been met.

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43. In addition, the petitioner claims that Article 24 of the American Convention was violated by the unequal treatment given to the victims of crimes allegedly committed by members of the armed forces. The Commission believes that the petitioner has not presented sufficient elements to indicate a potential violation of Article 24 of the Convention and so it declares that claim inadmissible.

V. CONCLUSIONS

44. The Commission concludes that it is competent to hear the petitioner's claims regarding the alleged violation of Articles 2, 4.1, 5.1, 8.1, and 25 of the American Convention, in conjunction with Article 1.1 thereof, and that those claims are admissible under the requirements established by Articles 46 and 47 of the American Convention. It also concludes to declare inadmissible the claim regarding the alleged violation of article 24 of the American Convention.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible as regards Articles 2, 4.1, 5.1, 8.1, and 25 of the American Convention, in conjunction with Article 1.1 thereof.
2. To give notice of this decision to the Ecuadorian State and to the petitioner.
3. To continue with its analysis of the merits of the complaint.
4. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the Dado 19th day of the month of March, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-President; Felipe González, Second Vice-President; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo Carozza, members of the Commission.