

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 17/09; Petition 461-04
Session: Hundred Thirty-Fourth Regular Session (16 – 27 March 2009)
Title/Style of Cause: Adriana Victoria Plaza Orbe and Daniel Ernesto Plaza Orbe 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 G. Carozza.
Dated: 19 March 2009
Citation: Plaza Orbe v. Ecuador, Petition 461-04, Inter-Am. C.H.R., Report No. 17/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by: APPLICANT: the Fundacion Regional de Asesoría en Derechos Humanos
Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On May 11, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition lodged by the Fundación Regional de Asesoría en Derechos Humanos (INREDH) (hereinafter “the petitioner”) alleging the responsibility of the Republic of Ecuador for noncompliance with an amparo constitutional relief resolution handed down on May 2, 2002, by the Second Chamber of the Constitutional Court and with an order of September 17, 2003, issued by the Plenary of that same Court, affecting the access to education of the children Adriana Victoria Plaza Orbe (12) and Daniel Ernesto Plaza Orbe (17).[FN1]

[FN1] Ages of the children at the time of the incident, as indicated on birth certificates enclosed with the original petition, received by the IACHR on May 11, 2004.

2. The petitioner claimed that the State is responsible for violating the rights to a fair trial, to equal protection, and to judicial protection, enshrined in Articles 8, 24 (in conjunction with Article 2.2 of the United Nations Convention on the Rights of the Child), and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in conjunction with the obligation to respect rights contained in Article 1.1 thereof, and the right to education set forth in Article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (hereinafter “the Protocol of San Salvador”), in conjunction with Article 28.1 of the United Nations Convention on the Rights of the Child. The petitioner also claimed that the requirement of the prior exhaustion of domestic

remedies had been met, as provided for in Article 46.1.a of the American Convention. In turn, the State held that the petitioner's claims were inadmissible because the petition had been presented after the end of the six-month deadline provided for in Article 46.1.b of the Convention.

3. After analyzing the positions of the parties and compliance with the requirements set in Articles 46 and 47 of the American Convention, the Commission decided to rule the claims admissible for the purpose of examining the claimed violation of Articles 8.1, 19, and 25 of the American Convention, in conjunction with Article 1.1 thereof, and of Article 13 of the Protocol of San Salvador[FN2]; to notify the parties of that decision; and to order the publication of this report.

[FN2] Commissioner Paolo G. Carozza decided not to vote with the majority with respect to the admissibility of Article 13 of the Protocol of San Salvador. Therefore, in accordance with Article 19 of the Rules of Procedure of the Commission a written explanation of his vote follows the text of the present report.

II. PROCESSING BY THE COMMISSION

4. The Commission recorded the petition as No. P-461-04 and, on September 29, 2004, conveyed its relevant parts to the State, along with a deadline of two months in which to submit information, in compliance with Article 30.2 of the Rules of Procedure. On January 26, 2005, the State sent its reply to the Commission, which was forwarded to the petitioner for observations. On April 29, 2005, the Commission received observations from the petitioner, which were forwarded to the State for observations.

5. On September 1, 2005, the Commission received a communication from the State, which was forwarded to the petitioner for observations. On December 7, 2005, the Commission received a communication from the petitioner, which was forwarded to the State for observations. On March 3, 2006, the Commission received a communication from the State, which was forwarded to the petitioner for observations. On August 4, 2006, the Commission received the petitioner's observations, which were forwarded to the State for observations. On September 18, 2007, the Commission received a communication containing additional information from the petitioner, which was forwarded to the State for observations.

III. POSITIONS OF THE PARTIES

A. Petitioner

6. The petitioner claims that Adriana Victoria Plaza Orbe and Daniel Ernesto Plaza Orbe were pupils at the American School of Guayaquil (hereinafter "the American School")[FN3] up until the 2000–01 school year, when they completed their first and fifth years of secondary education, respectively. The petitioner reports that on May 3, 2000, a group of the American School parents lodged a complaint against the American School with the Guayas Provincial

Director for Education, the Private Education Cost Regulatory Board of the Province of Guayas, the Ministry of Education and Culture, the Ombudsman of the Province of Guayas, and various media outlets in the province and around the country, following a 65% increase in its monthly tuition fees.[FN4] The petitioner says that as a result of the complaint, the Private Education Cost Regulatory Board of the Province of Guayas decided to set the enrollment costs and tuition fees for the 2000–01 year.[FN5]

[FN3] The petitioner reports that the American School of Guayaquil belongs to the American School of Guayaquil Limited Civil Corporation, in liquidation, whose only shareholder is the American School of Guayaquil Association, represented by Mr. Francisco Andrade Sánchez, President of the Association’s Board, and Ms. Patricia Ayala de Colonel, the school’s headmistress. Original petition, received by the IACHR on May 11, 2004, paragraph 1.

[FN4] Original petition, received by the IACHR on May 11, 2004, paragraph 2. The petitioner cites communication No. 0320, signed by the Assistant Director for Education of Guayas, July 28, 2000. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN5] The petitioner cites communication No. 1247-C, signed by the Private Education Cost Regulatory Board of the Province of Guayas, August 1, 2000. Enclosed with the original petition received by the IACHR on May 11, 2004.

7. The petitioner claims that as a result of the protests against the increased tuition fees, the representatives of the American School took reprisals against some of the parents.[FN6] The petitioner states that on January 12, 2001, in two letters addressed to Mr. Luis Enrique Plaza, the father of Adriana Victoria and Daniel Ernesto, the headmistress of the American School informed him that his request for enrollment places for the following school year had been denied.[FN7] On January 23, 2001, the petitioner says, a group of parents lodged a complaint with the Guayas Provincial Director for Education, requesting urgent measures to impose sanctions on the headmistress of the American School, to urge her to reconsider her decision to expel the pupils and, accordingly, to enroll them for the upcoming academic year.[FN8] By means of a communication dated February 5, 2001, the Guayas Provincial Director for Education reported that on January 31, 2001, he had informed the headmistress of the American School that her decision to refuse to enroll several pupils was inadmissible because the pupils had committed no disciplinary infractions and also because denying enrolment was in violation of the legal and regulatory provisions governing the education sector.[FN9] In spite of those declarations and new filings lodged with the Guayas Provincial Director for Education,[FN10] Adriana Victoria and Daniel Ernesto were refused enrolment in the School.

[FN6] Specifically, 14 of them were allegedly prevented from participating in Parents’ Committee elections held on August 29, 2000, and 13 parents, including Mrs. Victoria Orbe (the mother of Adriana Victoria and Daniel Ernesto) were declared “persona non grata at the institution” on lists displayed in highly prominent locations on the school’s premises. The petitioner cites the letter from the headmistress of the American School of Guayaquil to the president of the School’s Association, August 30, 2000. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN7] The petitioner cites the unnumbered letters from the headmistress of the American School to Luis Enrique Plaza, January 12, 2001. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN8] The petitioner cites the parents' complaint lodged with the Guayas Provincial Director for Education, January 23, 2001. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN9] The petitioner cites communication No. 00056 from the Guayas Provincial Director for Education, February 5, 2001. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN10] The petitioner states that fresh filings were lodged between March and April 2001. Original petition, received by the IACHR on May 11, 2004, paragraph 10.

8. The petitioner claims that on March 5, 2001, a complaint was lodged with the Ecuadorian Interior Ministry's National Human Rights Directorate (DINADHU). On July 10, 2001, after the corresponding review,[FN11] the DINADHU concluded that there were no legal grounds to refuse the pupils enrolment and that the procedure regulated by Article 270 of the Education Law Regulations had not been followed, thus violating the pupils' rights set forth in Article 142 thereof. It also said that if the actions taken by the different sectors were not reviewed, that would undermine the pupils' basic rights as protected by the Constitution then in force and by the United Nations Convention on the Rights of the Child. The DINADHU also said the situation could be considered as an incipient form of discrimination.[FN12]

[FN11] The petitioner cites the reply from the headmistress of the American School of Guayaquil to the request made by the National Human Rights Director. Enclosed with the original petition received by the IACHR on May 11, 2004. "[...] The American School of Guayaquil, under the guarantees set forth in Art. 23.18 of the Constitution of the Republic, which enshrines the right of free contracting, whereby private citizens enjoy the right of contracting free and voluntarily, without the State in any way interfering therein, more so when in this case, the American School of Guayaquil, a private institute of education, proceeded to deny enrolment (illegible) [...] it is surprising, to say the least, for such a common action in the normal activities of a school as denying a pupil enrolment to have created such a dispute; it is clear, therefore, that behind the small group of parents, there are other hidden interests."

[FN12] The petitioner cites the Final Report of the National Human Rights Directorate, DINADHU-PG-2001-128, July 1, 2001, paragraphs 3.2 and 3.3. Enclosed with the original petition received by the IACHR on May 11, 2004.

9. The petitioner reports that on November 21, 2001, two applications for constitutional amparo were lodged with the Second District Court for Administrative Disputes of Guayaquil (hereinafter "Court for Administrative Disputes")[FN13] for the administrative omission committed by the Guayas Provincial Director for Education in failing to enforce its resolution of January 31, 2001, ratified in documents Nos. 00056 and 0602 of February 5 and 7, 2001, respectively, and consequently allowing the American School to continue refusing to enroll Adriana and Daniel Plaza Orbe and to remain unpunished.[FN14] The petitioner reports that at

the public hearing of November 29, 2001, the joinder of the two applications as case No. 413-01-RA was ordered.

[FN13] The petitioner states that on November 22, 2001, the Second District Court for Administrative Disputes of Guayaquil recorded those applications as Nos. 413/01/RA and 414/01/RA and summoned the parties to public hearings that took place on November 29 and December 3, 2001.

[FN14] The petitioner reports that the constitutional amparo applications, filed in compliance with Article 95 of the Constitution then in force, claimed that the omission by the Guayas Provincial Director for Education violated the right of equality before the law, of nondiscrimination, to education, to the free development of the person, to legal security and due process, to quality goods and services, and to the right of petition, protection by Article 23, sections 3, 5, 7, 26, and 27, of the Constitution, Article 66 thereof, and in the provisions of international agreements to which Ecuador is a party; in addition, they requested that urgent measures be taken to halt and remedy the consequences of an illicit omission that had led to serious harm by preventing Adriana and Daniel Plaza Orbe from continuing their studies at the American School in a normal fashion. Enclosed with the original petition received by the IACHR on May 11, 2004.

10. On January 8, 2002, the Court for Administrative Disputes denied the amparo remedy.[FN15] The petitioner reports that an appeal was filed; this remedy was admitted, and the case file was referred to the Constitutional Court on January 24, 2002. In a judgment on May 2, 2002, says the petitioner, the Second Chamber of the Constitutional Court voided the first-instance decision and granted the amparo application. It ordered the Guayas Provincial Director for Education to take the appropriate steps, within the legal framework, to uphold the constitutional right to education of the child Daniel Ernesto Plaza Orbe and to render void of all effect the refusal to enroll him at the American School.[FN16]

[FN15] The petitioner cites the Second District Court for Administrative Disputes of Guayaquil, amparo No. 413-01-RA, November 29, 2001. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN16] According to the petitioner, in its judgment the Court said that, “[...] [i]t is clear that the actions and procedures followed by the headmistress of the American School of Guayaquil are illegitimate and unconstitutional, in that they violate legal and constitutional provisions and the basic principles of justice and equality, indicating a desire for retaliation that is unworthy of the seriousness, responsibility, and example that should be given by an educational authority, and that causes serious harm for pupils and parents, who are, on the contrary, fully entitled to address complaints and petitions to the authorities and denounce and combat acts of corruption and arbitrary management.” Second Chamber of the Constitutional Court, case No. 051-2002-RA, May 2, 2002. Enclosed with the original petition received by the IACHR on May 11, 2004.

11. The petitioner notes that by means of a resolution of May 14, 2002, the Second Chamber of the Constitutional Court clarified that the legal effect of its ruling of May 2, 2002, benefited both Daniel Ernesto and Adriana Victoria Plaza Orbe.[FN17] On May 22, 2002, says the petitioner, the Second Chamber of the Constitutional Court forwarded a copy of its amparo resolution to the President of the Court for Administrative Disputes[FN18] and, on July 15, 2002, Mrs. Victoria Orbe, as the legal representative of Adriana and Daniel Plaza Orbe, requested that the Court for Administrative Disputes comply immediately with that resolution.[FN19]

[FN17] The request for clarification, explains the petitioner, was presented by Mrs. Victoria Orbe in a document of May 8, 2002, addressed to the members of the Second Chamber of the Constitutional Court. Enclosed with the original petition received by the IACHR on May 11, 2004. Second Chamber of the Constitutional Court, case No. 051-2002-RA, May 14, 2002. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN18] The petitioner cites the Second Chamber of the Constitutional Court, document No. 428-02-II-S, May 22, 2002. Enclosed with the original petition received by the IACHR on May 11, 2004. On May 29, 2002, the parties were told that the case file and resolution from the Second Chamber of the Constitutional Court had been received. Second District Court for Administrative Disputes of Guayaquil, amparo No. 414-2001, July 31, 2002. Enclosed with the original petition received by the IACHR on May 11, 2004.[FN19] The petitioner cites the submission of Victoria Orbe of July 15, 2002. Enclosed with the original petition received by the IACHR on May 11, 2004.

12. The petitioner reports that by means of a communication dated July 31, 2002, the Court for Administrative Disputes ordered notice to be served on the Guayas Provincial Director for Education for the amparo resolution to be enforced[FN20] and, by means of a communication dated August 6, 2002, it asked the director to take the “appropriate steps, within the legal framework, to uphold the constitutional right to education of the children Daniel Ernesto and Adriana Victoria Plaza Orbe.”[FN21] In addition, on September 10, 2002, the Court for Administrative Disputes ordered the court clerk to determine whether the Guayas Education Directorate had complied with the terms of the communication of July 31, 2002.[FN22]

[FN20] The petitioner cites the Second District Court for Administrative Disputes of Guayaquil, proceedings No. 413-01-RA, May 29, 2002. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN21] The petitioner cites the Second District Court for Administrative Disputes of Guayaquil, document No. 291-tdcag-02-S, August 6, 2002. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN22] The petitioner cites the Second District Court for Administrative Disputes of Guayaquil, amparo No. 413-01-RA, September 10, 2002. Enclosed with the original petition received by the IACHR on May 11, 2004.

13. The Court for Administrative Disputes, by means of a resolution given on October 8, 2002, ordered that “[...] notice be given to the Plenary of the Constitutional Court of the noncompliance of the Guayas Provincial Director for Education in enforcing Articles 251, 257, and other applicable provisions of the Criminal Code [...]”[FN23] By means of a communication dated October 16, 2002, the Guayas Provincial Director for Education asked the Court for Administrative Disputes to revoke the resolution it had issued and attached a copy of document No. 0003242 of August 13, 2002, in which she asked the headmistress of the American School to abide by the Court’s resolution and enroll Daniel Ernesto Plaza Orbe.[FN24] The petitioner maintains that sending an official communication to the American School does not constitute compliance with the resolution, since Adriana and Daniel Plaza Orbe were not actually enrolled.[FN25]

[FN23] The petitioner cites the Second District Court for Administrative Disputes of Guayaquil, RR.AA. No. 413-01-RA, October 8, 2002. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN24] Provincial Directorate for Education of Guayas, communication from the Guayas Provincial Director for Education to the judges of the Second District Court for Administrative Disputes of Guayaquil. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN25] Original petition, received by the IACHR on May 11, 2004, paragraph 12. The petitioner also states that it is inconceivable that the document from the Provincial Director for Education to the School’s headmistress only requested the enrolment of Daniel Ernesto Plaza Orbe and omitted to mention Adriana Victoria Plaza Orbe. The petitioner reports that Victoria Orbe also expressed her nonconformity with the Second District Court’s resolution of October 8, 2002, in a communication dated October 14, 2002, addressed to the judges of that court, in which she requested that the identity of the person serving as Provincial Director for Education in Guayas be specified and that an order be given for the dismissal of that official. Communication from Victoria Orbe to the judges of the Second District Court for Administrative Disputes of Guayaquil, October 14, 2002. Enclosed with the original petition received by the IACHR on May 11, 2004.

14. The petitioner states that in a communication dated November 11, 2002, the Court for Administrative Disputes ordered the court secretariat to instruct the School’s headmistress to enroll Adriana Victoria and Daniel Ernesto Plaza Orbe within the following five days, and it also ordered the Provincial Director for Education to report back, within the same deadline, on the corrective measures adopted to enforce the resolution of the Second Chamber of the Constitutional Court.[FN26]

[FN26] The petitioner cites the Second District Court for Administrative Disputes of Guayaquil, constitutional amparo No. 413-01-RA, November 11, 2002. Enclosed with the original petition received by the IACHR on May 11, 2004. The petitioner says that on November 15, 2002, Mrs. Victoria Orbe filed an appeal against the resolution of November 11, 2002, in which she argued that “there is no willingness to comply with the last-instance judgment [...]” and requested the

revocation of the resolution and the dismissal of “all those persons who, being subject to the obligation to abide by and enforce the terms of the judgment, are guilty of contempt through their actions or omissions.” Also, on November 27, 2002, Mrs. Victoria Orbe sent a communication to the judges of the Court for Administrative Disputes in which she reiterated the lack of willingness to comply with the Constitutional Court’s ruling and requested that the appeal lodged on November 15, 2002, be resolved.

15. The petitioner claims that on December 17, 2002, the Court for Administrative Disputes reported that neither the headmistress of the American School nor the Guayas Provincial Director for Education had complied with the terms of the order of November 11, 2002,[FN27] and, by means of a document dated May 12, 2003, it informed the Plenary of the Constitutional Court of the order of October 8, 2002, and its expansion of December 17, 2002.[FN28] On June 23, 2003, the Constitutional Court’s Legal Advice Service recommended that “[...] in compliance with Article 59 of the Organic Functional Regulations,[FN29] in conjunction with Article 60 of the Case File Processing Regulations,[FN30] a copy of all the proceedings be forwarded to the Minister Prosecutor General of the State, for her to commence the relevant legal action against the Guayas Provincial Director for Education.”[FN31]

[FN27] The petitioner cites the Second District Court for Administrative Disputes of Guayaquil, RR.AA. No. 413-01, December 17, 2002. Enclosed with the original petition received by the IACHR on May 11, 2004. The petitioner states that in response to Victoria Orbe’s request of October 14, 2002, the Second District Court for Administrative Disputes of Guayaquil ordered the full identification (complete name) of the Guayas Provincial Director for Education. On January 15, 2003, the Court for Administrative Disputes notified Mrs. Victoria Orbe that the appeal lodged against the order of November 11, 2002, had been disallowed on the grounds of inadmissibility and, in a communication dated January 17, 2003, Mrs. Victoria Orbe expressed her nonconformity with the way in which the appeal had been resolved.

[FN28] The petitioner cites the Second District Court for Administrative Disputes of Guayaquil, document No. 288-TDCAG-03, May 12, 2003. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN29] The petitioner cites Article 59 of the Organic Functional Regulations: “In the event of noncompliance with a resolution of the Constitutional Court, notice shall be served on the Minister Prosecutor General, on the Procurator General of the State (Procurador General del Estado), and the appropriate Oversight Body as indicated by the matter in question, so that the corresponding persons proceed to enforce and/or abide by the Constitutional Court’s resolution; without prejudice to the terms of the Statute of the Legal Administrative Regime of the Executive Function.”

[FN30] The petitioner cites Article 60 of the Case File Processing Regulations: “Noncompliance with resolutions: In the event of noncompliance with a resolution of the Constitutional Court, the Court Plenary shall notify the Minister Prosecutor General for the purposes of enforcing the terms of Articles 251, 277, and other provisions of the Criminal Code applicable the case. The above provisions shall apply to public officials who issue orders or take actions that affect resolutions of the Constitutional Court, either directly or indirectly, or that render them void of effect.”

[FN31] The petitioner cites document No. 080-03-TC-AJ of the Legal Advice Service of the Constitutional Court, addressed to the President of the Constitutional Court, June 23, 2003. Enclosed with the original petition received by the IACHR on May 11, 2004.

16. On September 17, 2003, says the petitioner, the Plenary of the Constitutional Court ruled that pursuant to Articles 55 and 58 of the Organic Law of Constitutional Control, the Court for Administrative Disputes was responsible for enforcing the amparo resolution and for implementing the legal measures it deemed fit.[FN32] On December 17, 2003, the petitioner states, the Court for Administrative Disputes ordered the current Guayas Provincial Director for Education to require the previous Provincial Director for Education and the headmistress of the American School to comply with the Constitutional Court's resolution in the amparo action.[FN33] At Mrs. Victoria Orbe's request,[FN34] on January 21, 2004, the Court issued an order requiring compliance with the amparo resolution within the following 48 hours.[FN35]

[FN32] The petitioner cites the Plenary of the Constitutional Court, September 17, 2003. Enclosed with the original petition received by the IACHR on May 11, 2004. The petitioner reports that the resolution of September 17, 2003, was conveyed to the Second District Court for Administrative Disputes of Guayaquil by means of document No. 518-TC-SG of September 29, 2003. Enclosed with the original petition received by the IACHR on May 11, 2004. The petitioner reports that on October 24, 2003, Mrs. Victoria Orbe filed a request with the Court for Administrative Disputes for it to order compliance with the ruling and begin the corresponding criminal action against the Guayas Provincial Director for Education and the headmistress of the American School. Communication of Victoria Orbe to the judges of the Second District Court for Administrative Disputes of Guayaquil, October 24, 2003. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN33] The petitioner cites the Second District Court for Administrative Disputes of Guayaquil, proceedings No. 413-01-RA, December 17, 2003. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN34] The petitioner cites the communication of Victoria Orbe to the judges of the Second District Court for Administrative Disputes of Guayaquil requesting that a deadline of no greater than 24 hours be set for compliance with the amparo resolution, January 7, 2004. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN35] The petitioner cites the Second District Court for Administrative Disputes of Guayaquil, amparo No. 413-01-RA, January 21, 2004. Enclosed with the original petition received by the IACHR on May 11, 2004.

17. According to the petitioner, on February 2, 2004, Mrs. Victoria Orbe communicated with the Court for Administrative Disputes indicating the expiration of the 48-hour deadline set for enforcement of the amparo resolution and asking the Court to file the relevant criminal charges on the grounds that the deadline had expired.[FN36] The petitioner states that on February 16, the Court's records clerk reported that "[...] a review of the case file does not indicate the Provincial Director for Education's compliance with the terms of the order of December 17, 2003, [...] and its expansion in the order of January 21, 2004 [...]"[FN37] On March 4, 2004,

the Court for Administrative Disputes noted the noncompliance of the Provincial Director for Education and stated that the applicant could take the action she deemed fit in defense of her rights, as provided for in Article 58 of the Organic Law of Constitutional Control.[FN38]

[FN36] The petitioner cites the communication of Victoria Orbe to the Second District Court for Administrative Disputes of Guayaquil, February 2, 2004. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN37] The petitioner cites the Second District Court for Administrative Disputes of Guayaquil, amparo No. 413-01-RA, February 16, 2004. Enclosed with the original petition received by the IACHR on May 11, 2004. The petitioner also reports that on February 27, 2004, Victoria Orbe filed a communication with the judges of the Second District Court for Administrative Disputes of Guayaquil requesting that criminal proceedings be ordered against the former and current Provincial Directors for Education in Guayas and the headmistress of the American School of Guayaquil. Communication of Victoria Orbe to the Second District Court for Administrative Disputes of Guayaquil, February 27, 2004. Enclosed with the original petition received by the IACHR on May 11, 2004.[FN38] The petitioner cites the Second District Court for Administrative Disputes of Guayaquil, amparo No. 413-01-RA, March 4, 2004. Enclosed with the original petition received by the IACHR on May 11, 2004.

18. In the criminal action taken against the officers of the American School and the Guayas Provincial Directorate for Education, the petitioner claims that the proceedings were marred by a series of irregularities that prevented Adriana and Daniel Plaza Orbe from making a just claim and, consequently, from securing the punishment of the individuals who had violated their rights.[FN39] The petitioner claims that a person unknown to the alleged victims and with no relationship with them filed a complaint with the Guayas Public Prosecutor's Office for contempt of the Constitutional Court's amparo resolution. In the statement lodged with the public prosecutor, this complainant stated he had learned of the facts of the case through the press and did not know Victoria Orbe's address.[FN40]

[FN39] Communication from the petitioners, received by the Commission on September 18, 2007, paragraph 26.

[FN40] Communication from the petitioners, received by the Commission on September 18, 2007, paragraphs 27 and 28.

19. The petitioner claims that the true intent of this complaint was to allow an investigation to begin without any real evidence for punishing those guilty of failing to comply with the amparo resolution. Mrs. Victoria Orbe tried to participate in the proceedings by presenting a private accusation, but her complaint was dismissed as untimely even though it was lodged within the procedural deadline.[FN41] In addition, according to information furnished by the State, on August 20, 2004, the Fourth Criminal Judge of Guayas ordered the irrevocable dismissal of the accused from the proceedings.[FN42] The petitioner claims that an action for the crime of collusion was filed against the citizen who lodged the criminal complaint for contempt,

requesting that that person's ties with the legal representatives of the American School of Guayaquil be investigated. The criminal investigation, says the petitioner, began on January 31, 2005.[FN43]

[FN41] The petitioner claims the complainant never submitted any evidence to the proceedings other than simple copies of Adriana and Daniel Plaza Orbe's amparo case file, and that in his statement he gave a false address, as was later proven by the National Police. The petitioner claims that the prosecutor in charge of the case opened the investigation with simple copies of the proceedings, and then later dismissed the action on the grounds that certified copies were required. The petitioner also states that the Fourth Criminal Judge of Guayas was also involved in irregularities by allowing the use of uncertified copies in processing the complaint and by refusing to admit Mrs. Victoria Orbe's private accusation. The petitioner claims that the National Council of the Judicature was unable to impose any sanctions on the Fourth Criminal Judge of Guayas because, when Victoria Orbe informed the Council of the facts, that judge had already been dismissed from her position. The petitioner also reports that on August 26, 2005, Victoria Orbe filed a complaint regarding the irregularities with the Superior Court of Justice, but that action produced no results. Communication from the petitioners, received by the Commission on September 18, 2007, paragraphs 29, 30, and 31.

[FN42] Note No. 4-2-55/06, received on March 3, 2006, from the Permanent Mission of Ecuador to the OAS, conveying Report of the Office of the Procurator General of the Ecuadorian State (Procuraduría General del Estado) No. 22824 of February 14, 2006.

[FN43] Communication from the petitioners, received by the Commission on April 29, 2005.

20. The petitioner also reports that on June 4, 2002, proceedings for moral damages were initiated against the American School of Guayaquil. Those proceedings are being heard by the Second Civil Court of Guayas and, says the petitioner, more than six years have passed without the matter being settled, indicating that regular civil venues do not offer a suitable and effective remedy for restoring the infringed rights.[FN44]

[FN44] Communication from the petitioners, received by the Commission on April 29, 2005.

21. The petitioner states that at the time the petition was lodged, the Constitutional Court's resolutions had not been enforced, causing serious harm to Adriana and Daniel Plaza Orbe. The petitioner therefore claims that the Ecuadorian State did violate, with respect to Adriana Victoria and Daniel Ernesto Plaza Orbe, the right to a fair trial, to equal protection, and to judicial protection, in conjunction with the general obligation of respecting and ensuring the rights protected by the American Convention, together with the right to education as protected by the Protocol of San Salvador.

22. As regards the admissibility of the claim and, in particular, the exhaustion of domestic remedies, the petitioner claims that an amparo action was filed, was upheld on appeal, and was not complied with by the Guayas Provincial Directorate for Education. The petitioner also claims

that the Court for Administrative Disputes took no criminal action against the Guayas Provincial Director for Education; that instead, criminal action was brought by an unknown individual; and that because of procedural irregularities that were reported to the authorities, Mrs. Victoria Orbe was unable to participate in the proceedings and was prevented from securing the punishment of the guilty.

23. Regarding the State's claim that the petition was lodged after the six-month deadline (see B, below), the petitioner states that the March 4, 2004, ruling of the Second District Court for Administrative Disputes of Guayaquil clearly indicates noncompliance with the amparo resolution of the Second Chamber of the Constitutional Court of May 2, 2002.[FN45] The petitioner also notes that the Court for Administrative Disputes took no criminal action against those who failed to abide by the ruling. Regarding the State's claim that no noncompliance with the Constitutional Court's resolution exists, since the accused were dismissed from the proceedings in the corresponding criminal trial (see B, below), the petitioner maintains that this dismissal only reflects the impunity prevailing within the country's judicial system.[FN46]

[FN45] The petitioner cites: "[...] decisions of the [Ecuadorian] Constitutional Court are legally binding on the parties or society as a whole, as appropriate. In reality, both by their formation and by their effects, these decisions constitute judgments since they are procedural acts that have the effect of *res judicata* and there is a coercive element in the event of noncompliance. As the Second Chamber of the Constitutional Court emphasized to the Registrar of the Real Estate Registry of the Canton of Guayaquil in its order of January 6, 1999, the Constitutional Court is the supreme organ of constitutional justice and control according to the Ecuadorian Constitution and Law. Its decisions are not appealable and must be obeyed by all State officials, government bodies, and natural and juridical persons." [...] "The Commission, without prejudging the merits of the case, must add that failure to enforce a final judgment may constitute a continuing violation by States that persists as a permanent infraction of Article 25 of the Convention, which enshrines the right to effective judicial protection. Therefore, in such cases, the requirement regarding the deadline for lodging a petition, set forth in Article 46.1.b of the American Convention, is not applicable." IACHR, Report on Admissibility No. 10/04, Petition 71/02, Fadia Aucar Daccach, February 26, 2004, paragraphs 35 and 39.

[FN46] Petitioner's submission, received August 4, 2006. The petitioner cites Article 58 of the Organic Law of Constitutional Control: "Resolutions handed down in the processing of amparo remedies shall require immediate compliance by the public official or authority on which they are served; officials or authorities that fail to comply with such resolutions shall provide compensation for the harm that their noncompliance causes the applicant."

B. State

24. In response to the petitioner's claim, the State maintains that the petition was lodged after the six-month deadline provided for by Article 46.1.b of the American Convention. Ecuador holds that the petition was submitted to the Commission on May 11, 2004, that is, 24 months after the final judgment on the amparo remedy, which was handed down by the Constitutional Court on May 2, 2002.[FN47] It maintains that the delay cannot be ignored in the interests of

justice, because 24 months is too long a time, undermining the legal security and institutionality of the Inter-American System.

[FN47] The State does not dispute the exhaustion of domestic remedies and cites the Inter-American Court's merits judgment in the Suárez Rosero Case, paragraph 71, to define what a final judgment within domestic proceedings must be taken as meaning. Note No. 4-2-13/05, received on January 26, 2005, from the Permanent Mission of Ecuador to the OAS, conveying Report of the Office of the Procurator General of the Ecuadorian State (Procuraduría General del Estado) No. 013949 of January 6, 2005.

25. Regarding the petitioner's claim that no criminal charges were brought for the failure to abide by the Constitutional Court's resolution, the State points out that the Fourth Criminal Judge of Guayas heard the criminal investigation into the alleged contempt on the part of the Guayas Provincial Director for Education and the headmistress of the American School. It also reports that on August 20, 2004, the judge ordered the irrevocable dismissal of the accused from the proceedings; consequently, it cannot be that the State or the aforesaid officials failed to abide by the Constitutional Court's resolution since the Court found that the alleged contempt did not exist; as a result, the six-month deadline for presenting the petition does apply.[FN48]

[FN48] Note No. 4-2-55/06, received on March 3, 2006, from the Permanent Mission of Ecuador to the OAS, conveying Report of the Office of the Procurator General of the Ecuadorian State (Procuraduría General del Estado) No. 22824 of February 14, 2006.

26. The State also maintains that no violations of the American Convention took place, arguing that the competent Courts proceeded to resolve the matter in accordance with the law and that, regardless of whether the result was favorable or not, the resolution was the ideal remedy for settling the petitioner's situation. The State adds that "the mere fact that a domestic remedy does not produce a result favorable to the petitioner does not in and of itself demonstrate the inexistence or exhaustion of all effective domestic remedies. For example, the petitioner may not have invoked the appropriate remedy in a timely fashion."[FN49]

[FN49] The State cites I/A Court H. R., Velásquez Rodríguez Case, Judgment on the Merits, paragraph 67. Note No. 4-2-13/05, received on January 26, 2005, from the Permanent Mission of Ecuador to the OAS, conveying Report of the Office of the Procurator General of the Ecuadorian State (Procuraduría General del Estado) No. 013949 of January 6, 2005.

27. The State notes that the documents enclosed with its submission and the report from the American School's administrators indicate that certain facts have been omitted by the petitioner, such as a civil trial and another criminal trial, which were resolved by the domestic courts; this, it claims, indicates the nonexistence of the alleged violations committed by agents of the State. It

maintains that this is supported by the favorable resolution handed down to the petitioner by the Constitutional Court in which the State did guarantee Adriana and Daniel Plaza Orbe their right to judicial protection, to due process, and to education. It further holds that the right to education has not been undermined due to the fact that Daniel Ernesto Plaza Orbe would have attended an institute of higher education and Adriana Victoria Plaza Orbe would have attended another school in the city of Guayaquil.[FN50]

[FN50] Note No. 4-2-13/05, received on January 26, 2005, from the Permanent Mission of Ecuador to the OAS, conveying Report of the Office of the Procurator General of the Ecuadorian State (Procuraduría General del Estado) No. 013949 of January 6, 2005.

28. In consideration of the above arguments, the State believes that this petition does not meet the requirements set by Article 46.1.b of the American Convention and requests that the Commission rule it inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

29. The petitioner is entitled, in principle, to lodge petitions with the Commission under Article 44 of the American Convention. The petition names, as its alleged victims, individual persons with respect to whom the Ecuadorian State had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. As for the State, the Commission notes that Ecuador has been a State party to the American Convention since December 8, 1977, when it deposited its corresponding instrument of ratification, and that it has also been a party to the Protocol of San Salvador since March 25, 1993. The Commission therefore has competence *ratione personae* to examine the complaint.

30. In addition, the Commission has competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention and the Protocol of San Salvador taking place within the territory of Ecuador, a state party to those treaties. The Commission has competence *ratione temporis* since the obligation of respecting and ensuring the rights protected by the American Convention and the Protocol of San Salvador 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. Similarly, under Article 19.6 of the Protocol of San Salvador, the Commission has competence to analyze facts related to violations of Article 13 thereof.

B. Admissibility requirements

1. Exhaustion of domestic remedies

31. 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. This requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, to resolve it before it is placed before an international venue. In the case at hand, the petitioner claims that the remedies provided by domestic jurisdiction – that is, the amparo remedy and the mechanisms for enforcing the execution of the final-instance ruling – have been exhausted.

32. As indicated by the case file, on November 21, 2001, two amparo applications were lodged with the Court for Administrative Disputes in connection with the administrative omission of the Guayas Provincial Director for Education in failing to enforce its resolution of January 31, 2001, ratified in documents Nos. 00056 and 0602 of February 5 and 7, 2001, in which it informed the headmistress of the American School that her decision to refuse a number of pupils enrollment was inadmissible. On January 8, 2002, the Court for Administrative Disputes denied the amparo remedy,[FN51] following which an appeal was lodged. That appeal was upheld and the case file was forwarded to the Constitutional Court on January 24, 2002. On May 2, 2002, the Second Chamber of the Constitutional Court, acting as the final instance, issued an amparo resolution on behalf of Adriana and Daniel Plaza Orbe. Specifically, the resolution ordered the Guayas Provincial Director for Education to take the steps necessary to uphold the constitutional right to education and to void all effects of the refusal to enroll them at the American School.[FN52]

[FN51] Second District Court for Administrative Disputes of Guayaquil, amparo No. 413-01-RA, November 29, 2001. Enclosed with the original petition received by the IACHR on May 11, 2004.

[FN52] Second Chamber of the Constitutional Court, case No. 051-2002-RA, May 2, 2002. Enclosed with the original petition received by the IACHR on May 11, 2004.

33. The petition indicates that Mrs. Victoria Orbe attempted, on repeated occasions, to secure compliance with the amparo resolution, but that she obtained no results. On September 17, 2003, the Plenary of the Constitutional Court ruled that it fell to the lower-court judge – in other words, the Second District Court for Administrative Disputes of Guayaquil – to enforce the amparo resolution. On January 21, 2004, the Court for Administrative Disputes set a deadline of 48 hours for compliance with the terms of the Constitutional Court's amparo resolution of May 2, 2002. On March 4, 2004, after that deadline had expired and at the request of Mrs. Victoria Orbe, the Court for Administrative Disputes ruled that the Guayas Provincial Director for Education was in contempt of the amparo resolution.[FN53]

[FN53] In that same ruling, the Second District Court for Administrative Disputes of Guayaquil stipulated that the applicant could “take the action she deemed fit in defense of her rights, as provided for in Article 58 of the Organic Law of Constitutional Control,” which states that public

officials or authorities who fail to comply with amparo resolutions must provide compensation for the harm caused to the applicant.

34. The Commission notes that more than six years after the Constitutional Court issued the amparo resolution on behalf of Daniel and Adriana Plaza Orbe, it has not yet been enforced, and that this situation affects them continuously. The State, in turn, does not dispute the noncompliance with the resolution. In connection with this, the Commission notes that, as a general rule, proceedings must be conducted swiftly in order to protect the interested parties' rights. As the Inter-American Court has ruled, the timing of the decision on domestic remedies must fit the purposes of the international protection system and must never cause a halt or delay in the international action that renders it useless.[FN54]

[FN54] I/A Court H. R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 64.

35. The Commission has previously ruled that to meet the prior exhaustion requirement, petitioners must only exhaust those remedies that are "suitable", that is, those that are available and effective for redressing the alleged violation. The Commission notes that following the refusal of the American School's authorities to enroll Daniel and Adriana Plaza Orbe, the petitioner exhausted the suitable and effective remedy, the amparo suit, and following the resolution of that application, she made various efforts, including numerous requests lodged with organs of the judiciary, to secure compliance with it. The Commission therefore notes that the parties agree that the filing of the amparo remedy yielded a resolution that favored the petitioners and that they do not dispute the fact that amparo was, in principle, the suitable and effective remedy for resolving the denial of Daniel and Adriana Plaza Orbe's enrolment. In the case at hand, it is not apparent – and the State has not explained – why it would be reasonable to require the applicants to lodge additional independent remedies in order to secure execution of the amparo resolution.

36. Consequently, in light of the characteristics of the claim set out in this case and the failure to abide by the amparo resolution issued on behalf of Daniel and Adriana Plaza Orbe, the Commission believes that the petitioner's claim satisfies the prior exhaustion of domestic remedies requirement set by Article 46.1.a of the American Convention.

37. By its very nature and purpose, Article 46.1.a is a provision with autonomous content vis-à-vis the Convention's substantive precepts. Consequently, the decision on the exhaustion of the domestic remedies applicable to a given case must be made prior to and in isolation from the analysis of the merits of the case, and that is because it depends on a standard of appreciation that is different from the one used to determine whether or not a violation of Articles 8 and 25 of the Convention took place. It should be noted that the causes and effects of exhausting those judicial remedies will be analyzed in the report that the Commission adopts on the merits of the dispute, in order to examine whether or not they constitute violations of the American Convention.

2. Filing period

38. The American Convention requires that for the Commission to admit a petition or communication, 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 must consider the date on which the alleged violation of rights occurred and the circumstances of each case.

39. With regard to this admissibility requirement, the State argues that the petition was lodged with the Commission on May 11, 2004 – in other words, 24 months after May 2, 2002, the date of the amparo resolution handed down by the Constitutional Court – and that consequently, the petitioner's claim is inadmissible.[FN55] Regarding the State's position, it should be noted that as established by the IACHR above, the petitioner exhausted the domestic remedies with the amparo resolution of May 2, 2002, a ruling that to date has not been enforced by the competent authorities. In previous cases the IACHR has established that the concept of timeliness applies in a different way to claims alleging noncompliance with a final court ruling that could represent ongoing violations of the right to effective judicial protection.[FN56]

[FN55] Note No. 4-2-13/05, received on January 26, 2005, from the Permanent Mission of Ecuador to the OAS, conveying Report of the Office of the Procurator General of the Ecuadorian State (Procuraduría General del Estado) No. 013949 of January 6, 2005.

[FN56] IACHR, Report No. 89/99 (Admissibility), Case 12.034, Carlos Torres Benvenuto et al. v. Peru, paragraphs 22 and 23; IACHR, Report No. 75/99 (Admissibility), Case 11.800, Cabrejos Bernuy v. Peru, paragraph 22.

40. The Commission notes that the petition was received on May 11, 2004; that the facts on which the claim is based occurred on or after May 2, 2002, the date of the Constitutional Court's amparo resolution that has not yet been enforced; and that their alleged effects, in terms of the alleged failure of the administration of justice, continue into the present. Consequently, in light of the context and characteristics of the instant case, of the different measures pursued by the petitioners following the adoption of the resolution to secure its execution, and of the fact that compliance with the judgment is still pending, the Commission believes that the petition was lodged on a timely basis and that the timeliness admissibility requirement must be taken as satisfied.

3. Duplication of international 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 the 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 rules that that the petitioner's claims in the case at hand regarding the alleged violation of the right to a fair trial and to judicial protection could tend to establish violations of the rights protected by Articles 8.1 and 25 of the American Convention, in conjunction with Article 1.1 thereof.

43. The Commission notes that Ecuadorian law states that education is an individual's unrenounceable right and guarantees private education. In addition, the law provides that the operations of private educational establishments shall be governed by the provisions of the Education Law and its regulations, that they shall be duly authorized by the corresponding Provincial Education Directorate, and that they shall follow the official study programs and plans, adopt the official nomenclature of the education system, and use the forms, records, and other documents issued by the Ministry of Education. The Commission notes that the Ecuadorian State, through its Ministry of Education, is responsible for ensuring that private educational establishments comply with those legal and regulatory provisions.[FN57] In consideration whereof, the Commission finds it is competent to hear the petitioner's allegations in this case regarding the alleged victims' access to education under Article 13 of the Protocol of San Salvador.

[FN57] See: Articles 66 and 67 of the Political Constitution of Ecuador of 1998, and Articles 2.e, 166 and 168 of the General Regulations of the Education Law (Decree 935).

44. Furthermore, given the evidence submitted in this petition and pursuant to the principle of *iura novit curia*, it falls to the Commission to establish the State's possible responsibility in the alleged violation of its duty to prevent the undermining of the rights of children protected by Article 19 of the American Convention, in conjunction with Article 1.1 thereof. Regarding the alleged violation of Article 19, as indicated by the standards of interpretation set out in the American Convention on Human Rights,[FN58] as well as by the criteria established by the Inter-American Court of Human Rights regarding the tendency toward integrating the regional and universal systems[FN59] and regarding the notion of a *corpus juris* for the protection of children,[FN60] the Commission will interpret the scope and contents of the allegedly violated rights of the children Daniel Ernesto Plaza Orbe (17) and Adriana Victoria Plaza Orbe (12).

[FN58] American Convention, Article 29: "Restrictions Regarding Interpretation. No provision of this Convention shall be interpreted as: [...] (b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; [...]."

[FN59] I/A Court H. R., Advisory Opinion OC 1/82 of September 24, 1982, "Other Treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human

Rights), paragraph 41. The Commission notes that the Ecuadorian State ratified the United Nations Convention on the Rights of the Child on March 23, 1990.

[FN60] I/A Court H. R.: Case of Villagrán Morales et al., Judgment of November 19, 1999, Series C No. 63, paragraph 194; Case of the Juvenile Reeducation Institute, Judgment of September 2, 2004, paragraph 148; Case of the Gómez Paquiyauri Brothers, Judgment of July 8, 2004, paragraph 166. I/A Court H. R., Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/02 of August 28, 2002, Series A No. 17, paragraphs 24, 37, and 53.

45. 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. As for the alleged violation of the right of equal treatment protected by Article 24 of the American Convention, the petitioner's claims set forth in the petition were not duly grounded and so that allegation cannot be ruled admissible.

V. CONCLUSIONS

46. The Commission concludes that it is competent to examine the claims lodged by the petitioner regarding the alleged violation of Articles 8.1, 19, and 25 of the American Convention, in conjunction with Article 1.1 thereof, and of Article 13 of the Protocol of San Salvador, and that those claims are admissible under the requirements set by Articles 46 and 47 of the American Convention.

47. 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 8.1, 19 and 25 of the American Convention, in conjunction with Article 1.1 thereof, and as regards Article 13 of the Protocol of San Salvador[FN61].
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.

[FN61] Commissioner Paolo G. Carozza decided not to vote with the majority with respect to the admissibility of Article 13 of the Protocol of San Salvador. Therefore, in accordance with Article 19 of the Rules of Procedure of the Commission a written explanation of his vote follows the text of the present report.

Done and signed in the city of Washington, D.C., on March 19, 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 G. Carozza, members of the Commission.

WRITTEN EXPLANATION OF COMMISSIONER PAOLO G. CAROZZA'S VOTE RELATING TO THE ADMISSIBILITY OF ARTICLE 13 OF THE PROTOCOL OF SAN SALVADOR IN REPORT

N° 17/09 (ADRIANA VICTORIA PLAZA ORBE AND DANIEL ERNESTO PLAZA ORBE)

In its Report the IACHR found that "it is competent to hear" the petitioner's allegations regarding the access to education of Adriana Victoria and Daniel Ernesto Plaza Orbe, under Article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador").

In its relevant parts, Article 13 of the Protocol of San Salvador establishes that:

1. Everyone has the right to education.

[...]

3. The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education:

- a. Primary education should be compulsory and accessible to all without cost;
- b. Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;

[...]

4. In conformity with the domestic legislation of the States Parties, parents should have the right to select the type of education to be given to their children, provided that it conforms to the principles set forth above.

5. Nothing in this Protocol shall be interpreted as a restriction of the freedom of individuals and entities to establish and direct educational institutions in accordance with the domestic legislation of the States Parties.

In my opinion, *inter alia*, the objective of this provision is that of, guaranteeing primary education without cost, the general availability and progressive introduction of free secondary education, and the right of the parents to select the type of education to be given to their children.

In the present case, based on the facts alleged by the petitioner and uncontested by the State, Adriana Victoria and Daniel Ernesto Plaza Orbe attended a private educational institution and

after the occurrence of the facts that provide a background for this claim they would have had access to education in other educational institutions. Article 13 of the Protocol of San Salvador does not guarantee access to education in specific private institutions; therefore I am of the opinion that it is not pertinent that the Commission analyzes the claim regarding the alleged responsibility of the State under this instrument. I am convinced that admitting the present claim under Article 13 of the Protocol could be deemed an invitation to the State parties to interfere with private education, freely selected by parents, beyond the regulations established in education statutes and rules enforced at the domestic level.