

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 59/09; Petition 489-02
Title/Style of Cause: Joffre Antonio Aroca Palma v. Ecuador
Doc. Type: Decision
Decided by: President: Luz Patricia Mejia Guerrero;
First Vice President: Victor Abramovich;
Second Vice President: Felipe Gonzalez;
Commissioners: Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich.
Dated: 16 July 2009
Citation: Aroca Palma v. Ecuador, Petition 489-02, Inter-Am. C.H.R., Report No. 59/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
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 June 20, 2002, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition lodged by Winston Joffre Aroca Melgar and Gabriel Palacios Verdesoto (hereinafter “the petitioners”), which claimed the responsibility of the Republic of Ecuador for the death of Joffre Antonio Aroca Palma, on February 27, 2001, in the city of Guayaquil, Ecuador.

2. The petitioners argued that the State was responsible for violation of the rights to life, personal liberty, a fair trial, and judicial protection recognized in Articles 4, 7, 8, and 25 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”). For its part, the State held that the claims of the petitioners were inadmissible for failure to exhaust domestic remedies and considered that the petition did not state facts that tend to establish a violation of the rights guaranteed by the American Convention.

3. Having examined the positions of the parties and compliance with the requirements provided in Articles 46 and 47 of the American Convention, the Commission decided to declare the petition admissible as regards to the alleged violation of Articles 4(1), 7, 8(1), and 25 and, pursuant to the principle of *iura novit curia*, in conjunction with Articles 1(1) and 2 of the American Convention; to notify the parties, and order publication of the report.

II. PROCESSING BY THE COMMISSION

4. The Commission registered the petition as No. P-489-02 and, on December 6, 2002, proceeded to transmit a copy of the pertinent portions to the State, giving it two months in which to submit information in accordance with Article 30(2) of the Rules of Procedure. On June 3,

2003, the State submitted its response, which was relayed to the petitioners, who were given one month to present observations. On June 18, 2003, the Commission received a brief containing additional information from the petitioners.

5. On May 18, 2004, a brief containing additional information supplied by the petitioners was transmitted to the State. On September 29, 2004, the State conveyed its response, which was relayed to the petitioners for observations. The Commission received further briefs from the petitioners on March 1 and September 2, 2005, which were forwarded to the State for observations. On November 1, 2005, the State sent its response, which was transmitted to the petitioners for observations.

6. On December 14, 2005, the Commission received a brief containing additional information from the petitioners which was relayed to the State for its observations. On April 17, 2006, the State presented its response, which was passed on to the petitioners for their observations. On June 15, 2006, the Commission received a brief from the petitioners, which was conveyed to the State for its observations. The request to the State to submit its observations was reiterated on April 3, 2008. On May 6, 2008, the State presented its response which was relayed to the petitioners. On August 5, 2008, the petitioners presented a brief containing additional information, which was relayed to the State for observations.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

7. The petitioners allege that on February 27, 2001, at approximately 3:30 a.m., patrol car No. 115 of the Guayaquil National Police[FN1] approached Joffre Antonio Aroca Palma (21), who was waiting for a bus together with a group of friends from the neighborhood.[FN2] The four occupants of the patrol car allegedly harassed the youths and requested their identification documents, in response to which Joffre Antonio Aroca Palma is said to have asked them for an explanation. The petitioners say that thereupon the policemen in patrol car No. 115 detained Joffre Antonio Aroca Palma and drove off with him along the hill that leads to the rear of the Estadio Monumental (Monumental Arena). The petitioners claim that at that spot, two policemen made Joffre Antonio Aroca Palma get out of the vehicle and walked with him approximately 100 meters away, after which one of the policeman returned alone to the patrol car. They say that two minutes later the shot of a firearm was heard and then the other policeman jogged back to the patrol car without the detainee, whereupon the policemen continued their patrol without reporting the arrest to the police radio control center. The petitioners indicate that Joffre Antonio's body was found later that same day (February 27, 2001) at the rear of the Estadio Monumental and taken to the National Police morgue in Guayaquil.

[FN1] The petitioners say that the policeman who were in the patrol car were National Police Second Lieutenant Carlos Eduardo Rivera Enríquez; National Police Officer Edison Patricio Yépez Espín; Metropolitan Police Officer José Francisco Bone Franco, and driver Willer Keller Lara Valencia. Original petition received by the IACHR on June 20, 2002.

[FN2] The petitioners cite the testimony of a number of witnesses which indicates that Zoila García, Alfredo Sani, Mariuxi Sani, Raúl Sani, Duval Orobio, and Carolina Arechua were gathered at the corner of Pedro Pablo Gómez Street and 17th Street in the city of Guayaquil. Testimony of Duval Bernardo Orobio Coello and Mariuxi Ángela Sani Salcedo to Justice Police Captain Fabián Salas Duarte, May 9, 2001. Annexes to the original petition received by the IACHR on June 20, 2002.

8. The petitioners claim that on March 6, 2001, Metropolitan Police Officer José Francisco Bone Franco, one of the occupants of the patrol car No. 115, informed the Metropolitan Police Company Commander of the events that occurred in the early hours of February 27, 2001, and said that he had learned from the press that Joffre Antonio Aroca Palma had been found dead. The petitioners say that, based on this information, the Company Commander requested the Judge of the Seventh Criminal Court to issue arrest warrants for Metropolitan Police Officer Bone and driver Lara Valencia, whose arrests were carried out on March 7, 2001. They also allege that National Police Officer Edison Patricio Yépez Espín was arrested on the verbal orders of the Judge of the Second Court of the Fourth National Police District, and that on March 8, 2001, National Police Second Lieutenant Carlos Eduardo Rivera Enríquez voluntarily reported to the offices of the Judicial Police of Guayas and was taken into custody. They say that as result of the foregoing, two criminal proceedings were initiated: one in the ordinary jurisdiction and one in the police jurisdiction.

9. As regards to the criminal investigation in the ordinary jurisdiction, the petitioners note that on March 22, 2001, the Judge of the Fifth Criminal Court of Guayas ordered the initiation of the judicial proceedings and the pre-trial detention of José Francisco Bone Franco and Willer Keller Lara Valencia. On July 17, 2001 an order for trial was issued against José Francisco Bone Franco and Willer Keller Lara Valencia charging them with accessory after the fact to murder; annulled the pre-trial detention order of the accused pursuant to Supreme Court ruling No. 30-10-85, which provides that accessories after the fact are not subject to pre-trial detention and, [FN3] therefore, ordered their immediate release. The petitioners say that in the framework of this proceeding Winston Joffre Aroca Melgar filed an appeal (308-2001), which was decided on November 15, 2002, by the First Chamber of the Superior Court of Justice of Guayaquil, which confirmed the involvement of the accused as accessories. They add that the case was remanded, by lot, for trial to the Third Criminal Court of Guayas, which would be still pending.

[FN3] The petitioners note that Supreme Court ruling No. 30-10-85, which was issued to clarify doubts or obscurities in the law, provides that, under Article 177 of the 1983 Code of Criminal Procedure, which was in force at the time of the facts that comprise the subject matter in the instant case, an accessory after the fact is not subject to pre-trial detention, and it cannot be imposed on them in the indictment proceeding. The ruling also states that according to Article 253 of said Code, pre-trial detention does not exist for accessories after the fact. Supreme Court ruling No. 30-10-85 published in Official Register 318 of November 20, 1985.

10. As to the investigation in the police jurisdiction, the petitioners indicate that on March 14, 2001, Winston Joffre Aroca Melgar, the father of the alleged victim, filed a private indictment against National Police Second Lieutenant Carlos Eduardo Rivera Enríquez and National Police Officer Edison Patricio Yépez Espín for the murder of Joffre Antonio Aroca Palma. They also say that on March 19, 2001, Winston Joffre Aroca Melgar filed another private indictment against Carlos Eduardo Rivera Enríquez, Edison Patricio Yépez Espín, José Francisco Bone Franco and Willer Keller Lara Valencia in connection with the same events. The petitioners say that on March 30, 2001, the examining judge admitted the private charge against the two national policemen for processing but ruled that the police courts were not the appropriate venue for Metropolitan Police Officer José Francisco Bone Franco and driver Willer Keller Lara Valencia.

11. The petitioners note that, at the same time, on April 11, 2001, a Disciplinary Tribunal punished Edison Patricio Yépez Espín by discharging him from the National Police under Article 31(1) of the National Police Disciplinary Regulations in force at the time of the events. They say that Edison Patricio Yépez Espín was subsequently placed at liberty with the argument that there were insufficient grounds to hold him in pre-trial detention. They say that on September 18, 2001, the prosecutor presented an indictment against Carlos Eduardo Rivera Enríquez and Edison Patricio Yépez Espín as perpetrator and accessory, respectively, in the murder of Joffre Antonio Aroca Melgar.

12. The petitioners hold that on October 29, 2001, the Second Court of the Fourth National Police District issued a reasoned order and summoned for full trial to Carlos Eduardo Rivera Enríquez “as the perpetrator of the crime of aggravated homicide or murder as classified at Article 228(7) of the Police Criminal Code” and Edison Patricio Yépez Espín “as accessory to the crime of aggravated homicide or murder as classified at Article 226(72) of the National Police Criminal Code.” They also say that the Judge of the Second Court decided to keep in effect the detention order against Carlos Eduardo Rivera Enríquez and not to order the detention of Edison Patricio Yépez Espín on the grounds that he was an accessory.[FN4]

[FN4] The interlocutory order of the Second Court of the Fourth National Police District, Criminal Case No. 011-2001, October 29, 2001, provided that detention was not ordered because he was an accessory in accordance with Article 91 of the Police Code of Criminal Procedure, in keeping with the definition of pre-trial detention of the Supreme Court of Justice published in Official Register No. 245 of July 30, 1999. Annex to the original petition received by the IACHR on June 20, 2002.

13. The petitioners mention that Carlos Eduardo Rivera Enríquez and Edison Patricio Yépez Espín filed an appeal against the writ of indictment. They say that on November 27, 2001, the Second District Court of Police Justice ruled on the appeal, confirming the indictment and amended the alleged involvement of the accused from perpetrator and accessory to perpetrator and accomplice to the crime of aggravated homicide as defined at Article 228(7) of the National Police Criminal Code.

14. The petitioners say that owing to the failure of Edison Patricio Yépez Espín to appear in order to “present testimony,” on February 18, 2002, the Second Court of the Fourth National Police District suspended the trial of the accused until the latter was apprehended or came forward voluntarily. Furthermore, they say that the Second Court ordered the location and capture of Edison Patricio Yépez Espín, decided to continue with the trial of Carlos Eduardo Rivera Enríquez alone, and summonsed him to present his testimony.

15. The petitioners claim that on March 27, 2002, the Second Court of the Fourth National Police District announced that the precautionary measure issued against Carlos Eduardo Rivera Enríquez had lapsed because the time limit of one year set forth in Article 24(8) of the Constitution of Ecuador had run.[FN5] They argue that the precautionary measure expired because of the constant delays by the police courts in delivering their decisions and “a series of unlawful incidents caused by the accused, which the police authorities did little or nothing to prevent.”[FN6]

[FN5] The petitioners cite Article 24(8) of the Constitution of Ecuador of 1998. “Without prejudice to other guarantees recognized in the Constitution, international instruments, laws, or case law, the following basic guarantees must be observed in order to ensure a fair trial: [...] 8. Pre-trial detention may not exceed six months in cases involving offenses punishable with imprisonment of up to five years; nor one year with respect to offenses punishable with imprisonment for longer than five years. Once these time limits elapse, the pre-trial detention order shall become void, under the liability of the judge hearing the case. In all cases, without exception, once the dismissal or acquittal has been ruled, the detainee shall immediately regain their liberty, without prejudice to any pending inquiry or appeal.”

[FN6] Petitioners’ brief received at the IACHR on August 7, 2003.

16. They say that on April 19, 2002, the Criminal Tribunal for Superior Officers of the National Police returned a judgment at first instance, in which it sentenced Carlos Eduardo Rivera Enríquez to “eight years of long-term ordinary imprisonment, which sentence is amended and reduced in accordance with Article 66 (2) of the National Police Criminal Code, since it considers that it is also appropriate to take into account as extenuating circumstances his conduct before and after the event, [...] the fact that he presented himself voluntarily to face trial [...].” It also provided that “the time he has spent in detention for the same reason shall be deducted” from the sentence. The petitioners claim that immediately after this judgment was delivered Carlos Eduardo Rivera Enríquez was released because the precautionary measure had lapsed.

17. They mention that Winston Joffre Aroca Melgar lodged an appeal against the judgment of the Criminal Tribunal for Superior Officers of the National Police and that on November 5, 2002; the Second National Police District Court confirmed the appealed decision. They hold that Winston Joffre Aroca Melgar appealed the judgment at second instance and on February 25, 2003, the National Court of Police Justice ruled on the appeal at third instance and upheld the appealed judgment. The petitioners claim that on June 11, 2003, the Second National Police District Court ordered the location and capture of Carlos Eduardo Rivera Enríquez so that he

might be made to serve the prison sentence imposed, which, as of the adoption of the instant report, had not occurred.

18. To summarize, the petitioners allege the responsibility of agents of the state in the death of Joffre Antonio Aroca Palma and that of the four investigations of the men accused -two in the ordinary courts and two in the police courts- only one sentence has been returned in the police jurisdiction, which has not been served on account of the fact that the convicted man remains at large owing to the slowness and inaction of the judicial authorities. They further argue that the Ecuadorian State has not met its constitutional obligation to provide civil reparation for the harm caused.[FN7] In sum, the petitioners argue that the Ecuadorian State is responsible for violation of the rights to life, personal liberty, a fair trial, and judicial protection protected in the American Convention.

[FN7] The petitioners refer to Article 22 of the Constitution of the Republic of Ecuador of 1998, which provides, “The State bears civil liability for judicial errors arising from inadequate administration of justice, for any acts that might have led to the imprisonment or arbitrary detention of an innocent person, and for instances of violation of the provisions set forth in the Article 24. The State shall have the right to seek indemnity from the judge or official responsible.”

19. As to compliance with the requirement of prior exhaustion of domestic remedies, the petitioners argue that the exceptions provided in Article 46(2)(c) of the American Convention are applicable in view of the unwarranted delay in the trial of the cases in the police and ordinary courts.

20. As regards the State’s argument that the petitioners seek to use the Commission as a fourth instance tribunal to review the decisions of domestic courts (see below, Position of the State), the petitioners contend that even though a confirmed judgment exists that convicts one of the culprits, that individual is not serving the sentence and, therefore, the case of Joffre Antonio Aroca Palma has remained in impunity.

B. Position of the State

21. The State claims that the petitioners’ complaint is inadmissible inasmuch as the remedies provided under domestic law have not been exhausted as required by the American Convention. The State also argues that the Ecuadorian courts repaired the violations committed against Joffre Antonio Aroca Palma and, therefore, none of the rights enshrined in the American Convention have been violated.[FN8]

[FN8] Official letter 01054 of May 15, 2003, from the Office of the Procurator General, submitted in Note No. 4-2-79/03 of June 3, 2003.

22. On the question of exhaustion of domestic remedies, the State argues that the petitioners lodged their complaint with the Commission when the remedies under domestic law had not yet been exhausted, since a decision was pending on an appeal filed by the petitioners with the National Police Court. The State holds that the petitioners should have waited until the criminal proceeding concluded before invoking the protection of the inter-American system. The State also contends that the parties have been afforded all the fair-trial guarantees and that the person responsible for violation of the right to life of Joffre Antonio Aroca Palma was punished, which demonstrates the effectiveness of the criminal proceeding in the police courts.[FN9]

[FN9] Official letter 01054 of May 15, 2003, from the Office of the Procurator General, submitted in Note No. 4-2-79/03 of June 3, 2003.

23. The State argues that the petitioners “become badly confused” in their analysis of the decisions of the Ecuadorian police courts, which is chronologically but not legally correct and that it does not support the exception of unwarranted delay under Article 46(2)(c) of the American Convention. The State contends that the statutory time limits are “guidelines for determining reasonableness” and that, therefore, it is essential to examine said reasonableness on a case-by-case basis when determining the possible international responsibility of the State.[FN10] The State argues that the proceeding against Carlos Eduardo Rivera Enríquez in the police courts lasted approximately two years and that, therefore, there was no unwarranted delay under the terms of Article 46(2)(c) of the American Convention.

[FN10] The State cites the European Court of Human Rights which held in its judgment in the Stogmuller case of November 10, 1969, that the “reasonableness of a court order or of length of time must be weighed within its own and specific context, that is, there are no general universally valid criteria and what is involved is something that is legally known as a question of fact [...]”. Official letter 01054 of May 15, 2003, from the Office of the Procurator General enclosed in Note No. 4-2-79/03 of June 3, 2003.

24. The State holds that the petition does not state facts that tend to establish a violation of the rights recognized by the American Convention, as required by Article 47(b) of the Convention. Concretely, it considers that the duration of the domestic proceedings was within reasonable limits as recognized by the Court and the Commission and, therefore, the State has not committed a violation of Article 8(1) of the Convention. It argues that the purpose of the principle of “reasonable time” ‘is to prevent accused persons from remaining in that situation for a protracted period and to ensure that the charge is promptly disposed of.’[FN11] The State says that the petitioners had free access to the judicial apparatus and to all of the remedies available against the alleged violations of the Convention; so much so, in fact, that the National Police Court confirmed the sentence of Carlos Enrique Rivera Enríquez to eight years of imprisonment.[FN12] It alleges that in the instant case there was no “denial of justice,”[FN13] given that a “confirmed” sentence exists and the petitioners cannot take their case to the

Commission since it is not its function “to act as a quasi-judicial fourth instance and to review the holdings of the domestic courts of the OAS Member States.”[FN14]

[FN11] The State cites I/A Court H.R., Suárez Rosero Case. Judgment of November 12, 1997. Series C, No. 35, para. 70. Official letter 023728 of March 22, 2006, from the Office of the Procurator General of Ecuador, enclosed in Note 4-2-130/06 of April 17, 2006.

[FN12] Official letter 01054 of May 15, 2003, from the Office of the Procurator General, submitted in Note No. 4-2-79/03 of June 3, 2003.

[FN13] The State says that “denial of justice” occurs when a jurisdictional organ fails promptly to dispose of matters submitted to it for a decision. Official letter 023728 of March 22, 2006, from the Office of the Procurator General of Ecuador, enclosed in Note 4-2-130/06 of April 17, 2006.

[FN14] The State cites IACHR, Clifton Wright, Resolution No. 29/88, Case 9260, Jamaica, 14 September 1988, OEA/Ser.L/V/II.74, Doc. 10 rev. 1. Official letter 023728 of March 22, 2006, from the Office of the Procurator General of Ecuador, enclosed in Note 4-2-130/06 of April 17, 2006.

25. The State considers that “the violations committed to the detriment of young Aroca Palma have been redressed by the Ecuadorian courts, which means that in no way have any of his rights under the Convention or any other of human rights treaty ratified by Ecuador been abridged.”[FN15] As to the alleged failure to provide reparation for civil liability, the State argues that the domestic system of laws affords an effective remedy to redress civil injury, namely a civil suit for damages, recognized at Article 72 of the Code of Criminal Procedure of the National Civilian Police,[FN16] which the petitioners did not pursue. Based on the arguments given above, the State requests that the Commission declare the petitioners’ complaint inadmissible.

[FN15] Official letter 01054 of May 15, 2003, from the Office of the Procurator General, submitted in Note No. 4-2-79/03 of June 3, 2003.

[FN16] The State cites the Code of Criminal Procedure of the National Civilian Police: “Article 72: In the event of a conviction, the claim for damages shall not suspend execution of the sentence and shall be heard by the judge presiding over the case in an oral summary proceeding and under a separate record, without prejudice to preservation of procedural unity.” Official letter 023728 of March 22, 2006, from the Office of the Procurator General of Ecuador, enclosed in Note 4-2-130/06 of April 17, 2006.

IV. ANALYSIS

A. Competence of the IACHR

26. The petitioners are entitled, in principle, to lodge petitions with the Commission under Article 44 of the American Convention. The petition names as alleged victim an individual on

whose behalf the Ecuadorian State undertook to observe and ensure the rights enshrined in the American Convention. As for the State, the Commission notes that Ecuador has been a party to the American Convention since December 28, 1977, when it deposited its instrument of ratification. Thus, the Commission has *ratione personae* competence to examine the petition.

27. The Commission is competent *ratione loci* to examine the petition because it alleges violations of rights protected in the American Convention that are purported to have occurred within the territory of Ecuador, a state party to said treaty. The Commission is competent *ratione temporis* because the obligation to observe and ensure the rights protected in the American Convention was already binding upon the State at the time the events described in the petition are alleged to have occurred. Finally, the Commission has *ratione materiae* competence because the petition alleges violations of human rights protected by the American Convention.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

28. Article 46(1)(a) of the American Convention provides that admission of petitions lodged with the Inter-American Commission alleging violation of the Convention shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. Article 46(2) of the Convention provides that the rule on prior exhaustion of domestic remedies does not apply when:

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

According to Article 31(3) of the Rules of Procedure of the IACHR, when the petitioner contends that he or she is unable to prove compliance with the rule of exhaustion of domestic remedies, it shall be up to the State concerned to show that the domestic remedies that remain to be exhausted are "adequate" for dealing with the violation alleged, in other words, that the function of those remedies in the legal system of the country is suitable to address an infringement of a legal right.[FN17]

[FN17] See also I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, para. 64.

29. To begin with, the Commission must clarify which domestic remedies need to be exhausted in the instant case. The Inter-American Court has found that the only those remedies that are adequate for addressing an alleged violation need be exhausted In the words of the Court

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.[FN18]

[FN18] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, para. 63.

30. With respect to the instant petition, it emerges from the arguments of the parties that following the events of February 27, 2001, a private indictment was brought before the police courts against four agents of the state.[FN19] By interlocutory order of March 30, 2001, the preliminary investigation judge admitted the private indictment against two members of the National Police: Carlos Eduardo Rivera Enríquez and Edison Patricio Yépez Espín. The trial of Edison Patricio Yépez Espín was suspended due to the fact that he remains at large. On April 19, 2002, the Criminal Tribunal for Superior Officers of the National Police issued a judgment at first instance in which it sentenced Carlos Eduardo Rivera Enríquez to eight years of imprisonment. The sentence was twice appealed and confirmed at the third instance on February 25, 2003, by the National Court Police Justice.[FN20] By means of an interlocutory order dated June 11, 2003, the Second National Police District Court ordered the location and capture of Carlos Eduardo Rivera Enríquez so that he might be made to serve the prison sentence imposed,[FN21] which, as of the adoption of the instant report, had not occurred.

[FN19] The petitioners cite the indictment of the prosecutor of the Second District Court of Police Justice in criminal proceeding No. 164-2001, November 27, 2001. Annex to the original petition received by the IACHR on June 20, 2002.

[FN20] Judgment of the National Court Police Justice, February 25, 2003. Annex to the petitioners' brief received at the IACHR on June 18, 2003.

[FN21] Ruling of the Second National Police District Court, Criminal Case No. 011-2001, June 11, 2003. Annex to the petitioners' brief received at the IACHR on June 28, 2003.

31. Furthermore, based on a complaint, the inspection of the corpse and the autopsy conducted on it, and a report submitted by the Chief of Judicial Police of Guayas, a criminal case was brought against José Francisco Bone Franco and Willer Keller Lara Valencia, on which a decision is pending before the Third Criminal Court of Guayas. In sum, the facts that comprise the subject matter of the petition have been presented both before the police courts where an agent of the National Police, who remains at large, was found responsible, and before the ordinary courts where a decision on the responsibility of the accused is pending.

32. The state argues that the petitioners' complaint does not meet the requirement of prior exhaustion of domestic remedies provided at Article 46(1) of the American Convention because at the time that the petition was lodged a final decision was still pending in the proceeding before the police courts. For their part, the petitioners hold that the exceptions to the rule of prior

exhaustion of domestic remedies are applicable due to the unwarranted delay in trying the case and because the only agent of the state actually convicted for the death of Joffre Antonio Aroca Palma is not serving his sentence.

33. The Commission has consistently held that special jurisdictions, like those of the military or the police, do not constitute an appropriate forum to investigate, judge and punish violations of rights recognized in the American Convention allegedly committed by members of the public security forces.[FN22] Consequently, the prosecution in the police jurisdiction of members of the National Police involved in acts connected with the death of a civilian does not constitute a suitable remedy within the meaning of Article 46(1)(a) of the American Convention.

[FN22] IACHR, Report on Admissibility No. 11/02, Joaquín Hernández Alvarado et al., Ecuador, February 27, 2002, para. 18.

34. The Commission further notes that the proceeding instituted in the ordinary jurisdiction against two other agents of the state thought to be implicated in the events is still pending a decision by the Third Criminal Court of Guayas more than eight years after the facts occurred. In the case of publicly actionable offenses that require an ex officio investigation on the part of the criminal authorities, the State has an obligation to conduct and complete said investigation. As regards a civil suit for damages suggested as suitable by the petitioners, the Commission notes that, on principle, it does not serve to clarify criminal responsibility or to remedy what the petitioners allege to be an unwarranted delay that has resulted in a denial of justice.

35. In view of the foregoing, as regards the proceeding instituted in the police jurisdiction, the situation charged by the petitioners is consistent with the exception to the rule of prior exhaustion of domestic remedies provided at Article 46(2)(b) of the Convention, which provides that said exception applies 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.” Furthermore, with respect to the case brought before the ordinary courts, the situation charged by the petitioners is consistent with the exception to the rule of prior exhaustion of domestic remedies provided at Article 46(2)(c) of the Convention, which provides that said exception applies when “there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.”

36. Invocation of the exceptions to the rule of exhaustion of domestic remedies provided in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights set forth therein, such as guarantees of access to justice. However, Article 46(2), by its nature and purpose, is a self-contained provision vis á vis the substantive provisions contained in the Convention. Therefore, to determine whether or not the exceptions to the rule of exhaustion of domestic remedies provided in said provision are applicable to a particular case requires an examination carried out in advance of and separate from the analysis of the merits of the case, since it depends on a different standard of appreciation to that used to establish whether or not there has been a violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that have prevented exhaustion of domestic remedies in the instant

case will be examined, where pertinent, in the report that the IACHR adopts on the merits of the dispute, in order to determine if they do indeed constitute violations of the American Convention.

2. Filing period

37. The American Convention provides that for a petition to be admissible, it must be presented within six months of the date on which the party alleging violation of rights was notified of the final judgment. Article 32 of the Commission's Rules of Procedure states that when the exceptions to the rule requiring prior exhaustion of domestic remedies apply, the petition is to be presented within what the Commission deems to be a reasonable period. The Commission must therefore consider the date on which the alleged violation of rights occurred and the circumstances of each case.

38. In the instant case, the events that comprise the subject matter of the petition transpired on February 27, 2001, and the petition was received on June 20, 2002, while the complaints were being heard in both the police and the ordinary jurisdictions. As noted, the criminal proceeding was ongoing as of the date of approval of the incident report. Accordingly, in light of the characteristics of the instant case and the allegations advanced therein, the Commission considers that the petition was lodged within a reasonable time and the admissibility requirement regarding the timeliness of the petition as set forth in Article 32 of the Commission's Rules of Procedure must be deemed met.

3. Duplication of proceedings and international res judicata

39. There is nothing in the record to suggest that the subject matter of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by the Commission or by another international organization. Therefore, the Commission finds that the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the alleged facts

40. Given the arguments of fact and of law made by the parties and the nature of the matter before it, the Commission finds that in the instant case, the proper determination is that the petitioners' claims of alleged violation of the rights to life, personal liberty, a fair trial, and judicial protection, could characterize violations of the rights protected under Articles 4(1), 7, 8(1), and 25 of the American Convention, in conjunction with Article 1(1) thereof.

41. Furthermore, in view of the factual evidence set out in the instant petition and pursuant to the principle of *iura novit curia*, the Commission must assess the possible responsibility of the State for an alleged breach of its duty to adopt provisions under domestic law provided at Article 2 of the Convention, as regards application of the police criminal justice system. Even though the state claims to have used the remedies under domestic law as the law and the American Convention prescribe and, therefore, holds that the complaint is inadmissible because it

constitutes a “fourth instance”, the Commission finds that the alleged facts and arguments put forward warrant thorough analysis in the light of the Convention.

42. Since these aspects of the complaint are clearly not baseless or out of order, the Commission considers the requirements set forth in Articles 47(b) and (c) of the American Convention to be met.

V. CONCLUSIONS

43. The Commission concludes that it is competent to examine the petition with respect to the alleged violations of Articles 4(1), 7, 8(1), and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof, and that the petition is admissible in accordance with the requirements contained in Articles 46 and 47 of the American Convention.

44. Based on the factual and legal arguments given above and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible as regards the alleged violations of Articles 4(1), 7, 8(1), and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof.
2. To notify the Ecuadorian state and the petitioners of this decision.
3. To proceed with its analysis of merits in the matter.
4. To publish this decision and included in its Annual Report to the OAS General Assembly.

Approved by the Commission on the 16th day of the month of July 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president, Felipe González, Second Vice-president, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.