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Session:	Hundred Thirty-Seventh Regular Session (28 October – 13 November 2009)
Title/Style of Cause:	Carlos Aristides Lara Silva and David Eduardo Delgado Galarza 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, Paolo G. Carozza.
Dated:	10 November 2009
Citation:	Lara Silva v. Ecuador, Petition 1101-04, Inter-Am. C.H.R., Report No. 113/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANT: the Comité Permanente por la Defensa de los Derechos Humanos
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## I. SUMMARY

1. On October 19, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition submitted by the Comité Permanente por la Defensa de los Derechos Humanos (hereinafter “the petitioner”) alleging the responsibility of the Republic of Ecuador for the detention, torture, and death of Carlos Arístides Lara Silva and David Eduardo Delgado Galarza on December 29, 2001, in the area of Guasmo in the city of Guayaquil, Republic of Ecuador.

2. The petitioner alleged that the State was responsible for violating the rights to life, humane treatment, judicial guarantees, and judicial protection established at Articles 4, 5, 8, and 25 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”). The State alleged that the petitioner’s claims were inadmissible given that the petitioner does not state facts that tend to establish violations of rights enshrined in the American Convention.

3. After analyzing the parties’ positions and compliance with the requirements set out at Articles 46 and 47 of the American Convention, the Commission decided to find admissible the claims regarding the alleged violation of Articles 4(1), 5(1), 8(1), 25, and, in application of the principle of *iura novit curia* Articles 2, 7, and 19, all in conjunction with Article 1(1) of the American Convention, to notify the parties of this decision, and to order its publication in its Annual Report to the General Assembly.

## II. PROCESSING BEFORE THE COMMISSION

4. The Commission registered the petition under number P-1101-04, and on November 30, 2004, it proceeded to transmit a copy of the pertinent parts to the State, which was given two months to submit information, in keeping with Article 30(2) of the Rules of Procedure. In response, the State requested a 30-day extension, which was granted by the IACHR. On March 15, 2005, the State sent its response, which was forwarded to the petitioner, which was given one month to submit its observations. On July 26, 2005, a brief was received at the Commission from the petitioner, which was forwarded to the State for its observations. On October 21, 2005, the State sent its response, which was forwarded to the petitioner for observations. On April 17, 2006, a brief was received from the petitioner, which was forwarded to the State for observations. The request for observations was reiterated to the State on May 1, 2008. On October 28, 2008, the State filed its final observations.

## III. THE PARTIES' POSITIONS

### A. The petitioner's position

5. The petitioner alleges that on December 29, 2001, at approximately 8:00 p.m., a vehicle with no tags, with a siren and a radio patrol car antenna that was transporting six agents of the Intervention and Rescue Group (GIR: Grupo de Intervención y Rescate) of the National Police[FN1] intercepted Carlos Arístides Lara Silva (28) and David Eduardo Delgado Galarza (16). It alleges that three agents got out of the vehicle and, after beating Carlos Arístides and David Eduardo, forced them into the vehicle and then left the area. It notes that a woman resident of the area, who saw what happened, told their families and they, it is alleged, went through the police facilities in the area on December 30 and 31, 2001, without being able to determine the whereabouts of Carlos Arístides and David Eduardo.

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[FN1] The petitioner notes that the five agents investigated in connection with these events were identified as: Leoncio Livan Ontaneda Merchán, Guido Hugo Vásquez Miranda, Tito Leonardo Ponce Baque, Néstor Segundo Claudio Chicaiza, and Marcos Vinicio Vargas Terán. Original petition received at the IACHR on October 19, 2004.  
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6. The petitioner further alleges that on January 1, 2002, the family of David Eduardo Delgado Galarza, by an anonymous phone call, received information that the corpses of Carlos Arístides and David Eduardo were on the perimeter road known as the Vía Perimetral. It argues that on that same day the family proceeded to file the respective complaint with the Office of the State Prosecutor (Fiscalía) and the corpses of Carlos Arístides and David Eduardo were found at kilometer 25 of the Vía Perimetral. It also notes that a woman resident of the area recognized one of the agents of the GIR allegedly involved in the facts and that the other four agents alleged involved were identified through him.

7. The petitioner alleges that based on the autopsy reports by the Department of Legal Medicine (Departamento Médico Legal) of Guayas it appears that the corpses of Carlos Arístides

and David Eduardo had signs of torture.[FN2] The petitioner indicates that on January 17, 2002, the First Court of the Fourth District of the National Police instituted criminal proceedings and ordered the preventive detention of five National Police agents.[FN3] It indicates that on April 15, 2002, the First Court ordered the transfer of the accused to the jail known as Cárcel No. 4 of the city of Quito, to continue being held in preventive detention. It further notes that on July 15, 2002, the judicial prosecutor (Fiscal de la Judicatura) handed down a formal indictment against five agents of the Police.[FN4]

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[FN2] The petitioner makes reference to Autopsies No. 2 and 3 of the Provincial Headquarters of the Judicial Police, Department of Legal Medicine of Guayas, of January 1, 2002. Attached to the petitioner's brief received at the IACHR on July 26, 2005.

[FN3] The petitioner notes that the five agents detained are Leoncio Livan Ontaneda Merchán, Guido Hugo Vásquez Miranda, Tito Leonardo Ponce Baque, Néstor Segundo Claudio Chicaiza, and Marcos Vinicio Vargas Terán.

[FN4] Guido Hugo Vásquez Miranda and Tito Leonardo Ponce Baque were accused of the crime of murder as perpetrators, and Marco Vinicio Vargas Terán, Segundo Néstor Claudio Chicaiza and Leoncio Livan Ontaneda Merchán were accused as aiders and abettors (Article 128(1),(4), (5), and (7) of the National Police Criminal Code). In the order calling the matter to trial of August 6, 2002, the District Judge for the National Police modified the degree of participation of Marco Vinicio Vargas Terán, Segundo Néstor Claudio Chicaiza, and Leoncio Livan Ontaneda Merchán from aiders and abettors to accomplices. Original petition received at the IACHR on October 19, 2004.

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8. The petitioner argues that on August 6, 2002, the District Judge of the National Police issued a reasoned order mandating the case be brought to trial, which was appealed to the Second District Court for the National Police. It notes that the State Prosecutor (Ministro Fiscal) of the Second Court refrained from issued a decision and instead asked "... the Honorable Tribunal of the Second District Court of Police Justice to remand the proceeding to the judge below, with a severe admonition to set the procedure straight" in view of the varying degrees among the accusations of murder, complicity, and aiding and abetting against the members of the Police.[FN5] It argues that on October 2, 2002, the Second District Court of the National Police amended the order with an enhanced degree and determined that all the accused would have the degree of co-perpetrators of the crime of murder (asesinato).

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[FN5] Original petition received at the IACHR on October 19, 2004.

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9. The petitioner alleges that the National Director of Legal Advisory Services (Director Nacional de Asesoría Jurídica) of the Police set the trial date for January 16, 2003, that is, one day prior to the lapsing of the one-year period established in Article 24(8) of the Constitution of Ecuador as the time limit for pre-trial detention.[FN6]

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[FN6] The petitioner makes reference to Article 24(8) of the Constitution of Ecuador of 1998: “To ensure due process, the following basic guarantees shall be observed, without detriment to others that are established in the Constitution, international instruments, the statutes, and the case-law: ... 8. Pre-trial detention may not exceed six months, in cases of crimes punished by prisión, or one year, in crimes punished by reclusión. If those terms are exceeded, the pre-trial detention order shall cease to have effect, under the responsibility of the judge hearing the case. In every case, and without any exception whatsoever, once the order of dismissal or judgment of acquittal is issued, the detainee shall immediately regain his or her freedom, without prejudice to any consultation or remedy pending.”

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10. The petitioner alleges that on January 16, 2003, the day set for the trial, the accused appeared without a defense attorney, after which the judge below designated a public defender for the hearing. It alleges that said designation was not accepted by the court, and that consequently the trial was continued until January 22, 2003. The petitioner alleges that on January 21, 2003, the Police Court decreed that the pre-trial detention had lapsed and ordered the immediate release of the accused. Petitioner further notes that on January 23, 2003, after a closed-door hearing, the Criminal Court for Subaltern Officers of the National Police signed the judgment convicting Guido Hugo Vásquez Miranda and Tito Leonardo Ponce Baque and sentencing them to 16 years of imprisonment (reclusión mayor extraordinaria) as perpetrators of the crime of murder; Segundo Néstor Claudio Chicaiza and Leoncio Livan Ontaneda Merchán to eight years of imprisonment (reclusión) as accomplices in the crime of murder; and Marco Vinicio Vargas Terán to two years of imprisonment (prisión correccional) for aiding and abetting the crime of murder.

11. The petitioner notes that the persons convicted appealed the judgment, and that on June 25, 2003, the Second District Court of the National Police ruled on the motion of appeal finding guilty the five persons convicted as perpetrators of the crime of murder, and imposed on each of them the sentence of 16 years imprisonment (reclusión mayor extraordinaria). It notes that the judgment was appealed, and that on February 5, 2004, the National Police Court resolved that second appeal and sentenced Guido Hugo Vásquez Miranda and Tito Leonardo Ponce Baque to 16 years imprisonment (reclusión mayor extraordinaria) as perpetrators of the crime of murder, Segundo Néstor Claudio Chicaiza and Leoncio Livan Ontaneda Merchán to eight years imprisonment (reclusión) as accomplices to the crime of murder, and Marco Vinicio Vargas Terán to two years of imprisonment (prisión correccional) for aiding and abetting the crime of murder. The petitioner further indicates that on March 8, 2004, the First Court of the Fourth Police District issued the arrest warrants for the persons convicted.

12. The petitioner alleges that to date the convicted police agents have not been detained. It alleges that the State has not taken measures to located the convicts and that in the face of suspicions of the family members of the alleged victims the accused may have left the country; the police judge was asked, on several occasions, to officially notify the immigration authorities and if pertinent forward the arrest warrants to the National Central Office of Interpol. It notes that on October 1, 2004, in response to the request from the Comisión Ecuémica de Derechos Humanos in representation of the family members of the alleged victims, the National Central

Office of Interpol, based in Quito, certified that arrest warrants for the five persons convicted were not received at that office.

13. In summary, the petitioner alleges that despite the existence of a firm judgment against five members of the Police for the death of Carlos Arístides and David Eduardo, the Ecuadorian State has not fulfilled its duty to punish them effectively. The petitioner also argues that the lapsing of the period for the precautionary measure of detention and the defendants' consequent release hours before the trial and the signing of the conviction was the result of unreasonable delays in the proceeding.

14. The petitioner also argues that on July 14, 2004, the family members of the alleged victims brought a claim for damages against the Ecuadorian State specifically against the Minister of Government and Police, the Attorney General, the National Commander of the National Police, the Chief of the Fourth District of the National Police, and the Chief of the Guayas No. 2 Regiment, in which it was alleged that there is State responsibility for the death of Carlos Arístides Lara Silva and David Eduardo Delgado Galarza, which was rejected on September 3, 2004, on grounds that "the final judgment ... does not consider or establish damages against the persons convicted." [FN7] It alleges that said decision was appealed and that on January 20, 2005, the decision of the lower court was affirmed on the grounds that in order to go forward with the summary oral proceeding for damages the complaint must be directed against those who were said to have been ordered to pay them, that is against those who were guilty of and responsible for the crime, and not against other state agents. [FN8] The petitioners consider that they exhausted the suitable remedy for establishing state responsibility as well as the corresponding reparation, and that the decision represents another denial of justice.

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[FN7] The petitioner makes reference to the judgment of September 3, 2004 of the First Court of the Fourth District of the National Police. Attached to the petitioner's brief received at the IACHR on July 26, 2005.

[FN8] The petitioner makes reference to the Judgment of January 20, 2005, of the First Court of the Fourth District of the National Police. Attached to petitioner's brief received at the IACHR on July 26, 2005.  
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15. In summary, the petitioner alleges that the Ecuadorian State is responsible for violations of the right to life, humane treatment, judicial guarantees, and judicial protection protected in the American Convention.

16. In terms of compliance with the requirement of prior exhaustion of domestic remedies, the petitioner notes that the proceeding in the police jurisdiction culminated with the judgment on the second appeal of the National Police Court of February 5, 2004, thus the requirement set forth at Article 46(1)(a) of the American Convention has been met.

17. As for the State's argument with respect to reparation already having been made for the death of Carlos Arístides and David Eduardo since the persons responsible were sanctioned (see *infra* the State's Position), the petitioner argues that while there is a judgment convicting the

persons responsible, they are not serving the sentence imposed, which has led to the human rights violations committed to the detriment of Carlos Arístides Lara Silva and David Eduardo Delgado Galarza being left in impunity.

B. The State's Position

18. The State alleges that the IACHR is not competent to hear the instant case because "reparation was made for the violation of human rights domestically." [FN9] The State indicates that in the instant case "while a violation of a fundamental right has been committed (on this occasion the right to life), the State undertook a serious and effective investigation that led to the criminal sanctioning of five bad elements of the National Police, as they were found guilty of the murder of Messrs. Lara and Delgado...." [FN10] The State indicates that the five persons convicted have been fugitives since September 3, 2003. [FN11]

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[FN9] The State makes reference to Report on the Merits 55/97, Case 11,137, Juan Carlos Abella v. Argentina, November 18, 1997, when it points out that: "When reparation for the violation alleged is not made in the domestic jurisdiction ... the Commission make take cognizance of any report that alleges such a violation, and decide on it..." Official note 014729 from the Office of the Attorney General (Procuraduría General del Estado) of February 11, 2005, transmitted by Note No. 4-2-51/05 of March 15, 2005.

[FN10] Official note 014729 of the Office of the Attorney General of February 11, 2005, transmitted by Note No. 4-2-51/05 of March 15, 2005.

[FN11] National Court of Police Justice, Official note No. 384-2008-CNJP, September 15, 2008. Official note 03994 from the Office of the Attorney General of October 7, 2008, transmitted by Note No. 4-2-304/2008 of October 28, 2008.

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19. With respect to the argument that there was a breach of the obligations under the American Convention due to the fact that the persons convicted have not been detained, the State alleges that "... according to the information provided by the General Command of the Police, it is not possible to determine that such a situation occurred." It emphasizes that the police agents were sanctioned criminally and administratively with discharge from service, and that said sanctions have been effective and fit within the guidelines established by the organs of the Inter-American system. In summary, the State argues that the petition does not state facts that tend to establish violations of the rights guaranteed in the American Convention as required by Article 47(b) of the Convention.

20. As for the reasonableness of the duration of the proceeding before the criminal jurisdiction for police matters, and its effect on the release of the accused in the proceeding concerning the deaths of the alleged victims, the State notes that the rule that establishes time limits on pre-trial detention "has the purpose of keeping the accused from being held pre-trial for long periods and at ensuring that criminal charges are decided upon promptly." [FN12] It also alleges that if there had been delay, there would have been a "denial of justice," [FN13] which in the instant case did not happen since there has been a final judgment. It alleges that the time it

took to resolve the domestic proceedings is within the limits of reasonableness established by the Court and the Commission, and therefore the State did not violate Article 8(1) of the Convention.

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[FN12] The State cited the I/A Court H.R., Suárez Rosero Case, Judgment of November 12, 1997, Series C, No. 35, para. 70. Official note 014729 from the Office of the Attorney General of February 11, 2005, transmitted by Note No. 4-2-51/05 of March 15, 2005.

[FN13] The State indicates that a “denial of justice” occurs when the judicial organ does not decide promptly on the matters put before it. Official note 014729 from the Office of the Attorney General of February 11, 2005, forwarded by Note No. 4-2-51/05 of March 15, 2005.

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21. In addition, the State notes that the petitioner had free access to the judicial apparatus and at no time were the family members of the alleged victims impeded from exercising their right to be heard in equal conditions before the competent organs. In view of the foregoing arguments, the State asks the Commission to find the claim inadmissible.

22. As for the time period for submitting the petition, the State alleges that the petition was filed on October 19, 2004, i.e. eight months after the final resolution of the matter on February 5, 2004. Consequently, it notes that the requirement of Article 46(1)(b) of the American Convention has not been met, and the claim must be declared inadmissible.

#### IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

##### A. Competence

23. The petitioner is authorized, in principle, by Article 44 of the American Convention on Human Rights to submit petitions to the Commission. The petition describes as the alleged victims individual persons in respect of whom the Ecuadorian State undertook to respect and guarantee the rights enshrined in the American Convention. As regards the State, the Commission notes that Ecuador has been a state party to the American Convention since December 8, 1977, when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

24. The Commission is also competent *ratione loci* to take cognizance of the petition, insofar as it alleges violations of rights protected in the American Convention said to have taken place in the territory of Ecuador, a state party to that treaty. The Commission is competent *ratione temporis* insofar as the obligation to respect and guarantee the rights protected in the American Convention was already in force for the State as of the date on which the facts alleged in the petition are said to have taken place. Finally, the Commission is competent *ratione materiae* because the petition alleges possible violations of human rights protected by the American Convention.

##### B. Admissibility requirements

###### 1. Exhaustion of domestic remedies

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

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

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

As the Inter-American Court has established, whenever a State alleges failure to exhaust domestic remedies by the petitioners, it has the burden of showing that the remedies that have not been exhausted are “adequate” for curing the alleging violation, i.e. that the function of such remedies within the domestic legal system is suitable for protecting the legal situation infringed.[FN14]

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[FN14] Article 31(3) of the Commission’s Rules of Procedure. See also I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 28, 1988, para. 64.

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27. In the instant case the petitioner alleges that the judgment on second appeal by the National Police Court of February 5, 2004, meets the requirement of prior exhaustion of domestic remedies provided for at Article 46(1) of the American Convention. As for the State, the Commission observes that it has not called into question the exhaustion of domestic remedies in relation to the claims presented in the petition.

28. First, one must clarify which domestic remedies must be exhausted in the instant case. The Inter-American Court has indicated that only those remedies adequate for curing the violations allegedly committed need be exhausted. It has described adequate remedies as follows:

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.[FN15]

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[FN15] I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 63.

29. The Commission observes that considering that the instant claim involves the alleged responsibility of state agents in the detention, torture, and death of civilians, the adequate remedy for clarifying the facts is a criminal investigation in the regular courts so as to establish the criminal liability of the state agents involved and to open the door to possible reparations for damages.

30. As appears from the parties' arguments, after the events of December 29, 2001, a criminal proceeding was initiated in the police jurisdiction, which culminated in a judgment on second appeal handed down by the National Court of Police on February 5, 2004, in which Guido Hugo Vásquez Miranda and Tito Leonardo Ponce Baque were convicted and sentenced to 16 years imprisonment (*reclusión mayor extraordinaria*) as perpetrators of the crime of murder, Segundo Néstor Claudio Chicaiza and Leoncio Livan Ontaneda Merchán were convicted and sentenced to eight years imprisonment (*reclusión*) as accomplices to the crime of murder, and Marco Vinicio Vargas Terán to two years of imprisonment (*prisión correccional*) for aiding and abetting the crime of murder.[FN16] In addition, it appears that on March 8, 2004, the First Court of the Fourth Police District issued arrest warrants for the persons convicted, yet the petitioner indicates that the perpetrators have not been detained, and that they have not been able to obtain due reparation. The State has not provided information on actions undertaken by the judicial authorities in order to locate the persons convicted and obtain jurisdiction over them.

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[FN16] Judgment of the National Police Court, criminal trial No. 232-CJP, February 5, 2004. Annex to the original petition received at the IACHR October 19, 2004.

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31. The Commission has issued repeated pronouncements to the effect that special jurisdictions, such as for the military or police forces, do not constitute an appropriate forum, and therefore do not provide an adequate remedy to investigate, judge, and sanction violations of the human rights enshrined in the American Convention that have allegedly been committed by members of such forces.[FN17] Accordingly, the trial before the police jurisdiction of members of the National Police involved in conduct associated with the death of civilians is not an adequate remedy for clarifying their responsibility in the violations alleged, in the terms of Article 46(1)(a) of the American Convention.

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[FN17] IACHR. Report on Admissibility No. 11/02, Joaquín Hernández Alvarado et al., Ecuador, February 27, 2002, para. 18.

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32. Therefore, in view of the characteristics of the instant case, the Commission considers that the situation alleged by the petitioner falls within the exception to the prior exhaustion rule provided for at Article 46(2)(b) of the American Convention, which establishes that the 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,” accordingly the requirement of exhaustion of domestic remedies does not apply.

33. Invoking the exceptions to the prior exhaustion rule provided for at Article 46(2) of the Convention is closely tied to the determination of possible violations of certain rights enshrined therein, such as the guarantees of access to justice. Nonetheless, Article 46(2), given its nature and purpose, is a provision with autonomous content vis-à-vis the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the rule on prior exhaustion of domestic remedies apply to the case in question should be done prior to and separate from the analysis of the merits, since it depends on a different standard of appreciation from that used to determine the possible violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that impeded the exhaustion of domestic remedies will be analyzed in the report the Commission adopts on the merits to determine whether there have been violations of the American Convention.

## 2. Time for submitting the petition

34. The American Convention establishes that for a petition to be admissible by the Commission it must be submitted within six months of the date on which the alleged victim has been notified of the final decision. Article 32 of the Commission’s Rules of Procedure establishes that in those cases in which the exceptions to the prior exhaustion rule apply, the petition must be submitted within a time which, in the view of the Commission, is reasonable. To this end, the Commission must consider the date of the alleged violation of rights and the circumstances of each case.

35. In the instant case, the facts that are the subject matter of the claim occurred on December 29, 2001, after which an investigation was initiated in the police jurisdiction that culminated in a guilty verdict handed down by the National Police Court on February 5, 2004, and the petition was received on October 19, 2004. The Commission takes into account, moreover, that the family members of the alleged victim pursued supplemental remedies to defend their interests, which extended to January 2005. Therefore, in view of the context and the characteristics of the instant case, the Commission considers that the petition was submitted within a reasonable time and that the provisions of Article 32 of the Commission’s Rules of Procedure should be considered satisfied in relation to the admissibility requirement regarding time of submission.

## 3. Duplication and international res judicata

36. It does not appear from the record that the subject matter of the petition is pending before any other international proceeding for settlement or that it is substantially the same as a petition already examined by this or another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention should be deemed to have been satisfied.

## 4. Characterization of the facts alleged

37. In view of the elements of fact and law raised by the parties and the nature of the matter put before it, the Commission finds that in the instant case, the petitioner's allegations regarding the violation of the rights to life, humane treatment, judicial guarantees, and judicial protection tend to establish violations of the rights protected at Articles 4(1), 5(1), 8(1), and 25 in conjunction with Article 1(1) of the American Convention.

38. In addition, given the factual elements of the instant petition, and in application of the principle of *iura novit curia*, the Commission should establish the possible responsibility of the State for the alleged violation of its duty to adopt provisions of domestic law, provided for at Article 2 of the Convention, in relation to the use of the police criminal justice system.

39. In the instant case, it is alleged that there was a conviction, in the police jurisdiction, of the police agents responsible for the death of Carlos Arístides Lara Silva and David Eduardo Delgado Galarza, yet according to the information received, they are fugitives, and the State has not provided information on action taken by the judicial authorities to locate and obtain jurisdiction over them.

40. Although, the Commission considers that the processing of members of the National Police involved in conducts related to the death of civilians before the police jurisdiction is not an adequate remedy to clarify their responsibility in the alleged violations, in the present case the Commission observes that the families of the alleged victims participated of the proceedings with a legitimate expectation of a result and they promoted the execution of the given sanctions. In this context, they allege that the State has not acted with diligence in order to apply the sanctions.

41. Furthermore, the petitioners argue that the fact that the court rejected the action for damages, repudiating state responsibility for the conduct of its agents, constitutes another denial of justice. In view of the foregoing, the Commission considers that the allegations require an analysis of the merits under the standards of Articles 8(1) and 25 of the American Convention in order to evaluate whether the State applied due diligence in the investigation, prosecution, and punishment in this case.

42. In the instant case it is alleged that after being intercepted by a vehicle that was transporting agents of the GIR of the National Police, Carlos Arístides Lara Silva and David Eduardo Delgado Galarza were violently forced into the vehicle and taken to an unknown location. The Commission considers that in the face of these allegations and in application of the principle of *iura novit curia*, the claim tends to establish violations of the right to personal liberty provided for at Article 7 in keeping with Article 1(1) of the American Convention to the detriment of Carlos Arístides Lara Silva and David Eduardo Delgado Galarza.

43. In addition, given the factual elements of this petition, and in application of the principle of *iura novit curia*, the Commission should establish the possible responsibility of the State for the alleged violation of its duty to prevent the violation of the rights of children protected at Article 19 of the American Convention in relation to Article 1(1) of the same treaty. For example, according to the available information at this initial stage the organ that would have detained David Eduardo Delgado Galarza (16) did not have the competence to do it, that

competence would have corresponded to the Specialized Police for Children and Adolescents of Ecuador.[FN18] Accordingly, the Ecuadorian legislation establishes that the Specialized Police for Children and Adolescents of Ecuador is the organ in charge of investigating and intervening in all of the cases in which the affected are children and adolescents, including their detention. Therefore, with respect to the alleged violation of article 19 , in accordance with the standards of interpretation established in the American Convention on Human Rights,[FN19] as well as the criteria established by the Inter-American Court of Human Rights with respect to the integration of the regional and universal systems,[FN20] and in light of the corpus juris relating to the rights of the child,[FN21] the Commission will interpret the scope and content of the rights allegedly violated with respect to the minor child David Eduardo Delgado Galarza (16 years of age).

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[FN18] See, Executive Decree No. 908 published in the Official Registry No. 207 of December 3, 1997. The Commission notes that the organ that detained the alleged victims has as a principal duty “the protection of dignitaries’, the localization and neutralization, transport and destruction of explosives or suspicious artifacts, prevention of terrorist acts, rescue and evacuation of people.”

[FN19] 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; [...]”

[FN20] I/A Court H.R., Advisory Opinion 1/82 “Other Treaties” Subject to the Consultative Jurisdiction of the Court (Art. 64 American Convention on Human Rights)” of September 24, 1982. Series A No. 1, paragraph 41. The Commission observes that Colombia ratified the United Nations Convention on the Rights of the Child on January 29, 1991. See also, I/A Court H.R., Advisory Opinion OC-17/02 Juridical Condition and Human Rights of the Child of August 28, 2002. Series A No. 17, paragraphs 20-24.

[FN21] I/A Court H.R., Case of the “Street Children” (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 194. Case of the “Juvenile Reeducation Institute” Judgment of September 2, 2004. Series C No. 112, para. 148, Case of the Gómez-Paquiyaury Brothers. Judgment of July 8, 2004. Series C No. 110, para. 166. I/A Court H.R., Judicial Status and Human Rights of the Child, Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras 24, 37, 53.

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44. As the petition is not manifestly groundless or obviously out of order, the Commission considers that the requirements established at Articles 47(b) and (c) of the American Convention have been satisfied.

## V. CONCLUSIONS

45. The Commission concludes that it is competent to examine the claims presented by the petitioner on the alleged violation of Articles 4(1), 5(1), 7, 8(1), 19, and 25 in conjunction with Articles 1(1) and 2 of the American Convention and that these are admissible in keeping with the requirements established at Articles 46 and 47 of the American Convention.

46. Based on the arguments of fact and law set forth above, and without this representing any prejudging of the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare admissible the claims on the alleged violation of Articles 4(1), 7, 8(1), 19 and 25 of the American Convention in relation to Articles 1(1) and 2.
2. To give notice of this decision to the Ecuadorian State and the petitioner.
3. To proceed to analyze the merits.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 10th day of the month of November, 2009. (Signed): Luz Patricia Mejía, President; Víctor E. Abramovich, First Vice-Presidente; Felipe González, Second Vice-Presidente; Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo G. Carozza, members of the Commission.