REPORT No. 148/11
PETITION 12.268
ADMISSIBILITY
GONZALO ORLANDO CORTEZ ESPINOZA
ECUADOR
November 1st, 2011

I. SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition on March 29, 2000, presented by the Human Rights Clinic of the School of Law of the Pontificia Universidad Católica del Ecuador (hereinafter "the petitioners"), alleging the responsibility of the Republic of Ecuador (hereinafter "the State" or "Ecuador") for the illegal detention and other violations of the right to personal liberty, violation of the right to humane treatment, and violation of the right to private property, as well as the failure to uphold the right to a fair trial in the criminal proceeding brought against Gonzalo Orlando Cortés Espinoza (hereinafter "the alleged victim"), dating from July 11, 1997, in the city of Quito.

2. The petitioners argue that the State is responsible for violating Articles 5, 7, 8, and 21 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") in conjunction with its Articles 1(1) and 2. The State argues that the petition is inadmissible given the failure to exhaust available domestic remedies and that there were no violations of the American Convention.

3. After analyzing the positions of the parties and the requirements provided for at Articles 46 and 47 of the American Convention, the Commission decided to declare the petition admissible for the purposes of examining the alleged violation of Articles 5, 7, 8, and 21 of the American Convention, in conjunction with its Articles 1(1); and in application of the principle of *iura novit curia* it also decided to declare admissible the possible violation of Article 25 of the American Convention, in conjunction with Article 1(1). In addition, it decided to find the petition inadmissible with respect to the alleged violation of Article 2 of the American Convention and to give notice of the report to the parties and order its publication in its Annual Report.

II. PROCESSING BEFORE THE IACHR

5. On March 29, 1997, the IACHR received the petition that was recorded under number 12,268 and after a preliminary analysis, on April 20, 2000; a copy of the pertinent parts was transmitted to the State for its observations. On July 11, 2000, the State presented its response, which on August 14, 2000, was transmitted to the petitioners for their observations.

6. On August 6, 2010, the IACHR asked the petitioners to provide updated information to determine whether the motives of the claim persisted. On September 8, 2010, the petitioners requested an extension, and a copy of the record in the petition, which was granted by the Commission, which also agreed to forward the copies requested. On October 22, 2010, the petitioners presented their response, which was forwarded to the State for its observations. On March 17, 2010, the State presented its response, which was forwarded to the petitioners.

III. THE PARTIES' POSITIONS

A. The petitioners' position

7. The petitioners note that Gonzalo Orlando Cortéz Espinoza served for 15 years as a member of the Ecuadorian Armed Forces until he reached the rank of Second Sergeant, working as a technical specialist on electronic equipment for communication and terrestrial navigation for the Air Force, with unblemished conduct. They indicate that for personal reasons, on August 31, 1993, the alleged victim filed a voluntary request to leave the Air Force; in response, he was discharged on February 28, 1994.

8. They allege that on March 19, 1997, the Military Criminal Judge for the First Aerial Zone instituted criminal proceedings and ordered that an investigation be opened against the alleged victim on accusations of having stolen electronic equipment that was property of the Air Force, committed in January 1997, and ordered his provisional detention. In this respect, the petitioners allege that said order was unfounded and illegal in the Ecuadorian legal system, for a military judge does not have jurisdiction to order the detention of a civilian, violating the right to a judge with jurisdiction.

9. They indicate that the alleged victim was detained, without the constitutionally-required arrest warrant, on July 11, 1997, by agents of the Air Force Intelligence Service, and was taken to the air base. They indicate that the arrest warrant was issued five days later, on July 16, 1997, by the Military Judge of the First Aerial Zone, who ordered his detention to carry out certain investigative steps, and then his transfer to the Pichincha Provisional Detention Center in view of his status as a civilian, which never happened.

10. They argue that the alleged victim was brought before the judge on July 30, 1997, 19 days after his detention, when they received his statement; accordingly, there was a violation of Article 7(5) of the Convention. In addition, they argue that the alleged victim was held incommunicado for 15 days. In this respect, they allege that Gonzalo Orlando Cortéz Espinoza should have been brought before the judge immediately after his detention. They indicate that in Ecuadorian legislation, detention without judicial order is illegal, and that detainees must give their statement to a judge within 24 hours of their detention, which may be extended for up to 24 hours more. They indicate that the alleged victim was detained at the Military District of the "Mariscal Sucre" Air Base for five months and one week, and that he was released on December 18, 1997.

11. The petitioners allege that during his detention the alleged victim was subjected to cruel, inhuman, and degrading treatment. In this respect, they allege that in addition to the incommunicado detention, at night the guards would kick the door of the alleged victim's cell, and that he was subjected to verbal attacks to instill fear in him. They also argue that the alleged victim was forced to pay for his food, and that it was served to him having already been chewed and spit out.

12. In response to the State's argument that a writ of habeas corpus should have been filed (see *infra* III B.), the petitioners answer that given that the alleged victim was held incommunicado, he could not file such a writ, either personally or by means of another person, since his family members or attorney were not aware of what was happening; and that had he filed it subsequently it would have lacked the characteristics of timeliness and effectiveness.

13. In response to the State's arguments that it was not apparent that the person being tried was a civilian, and that he was the one who asked to continue under the military jurisdiction, so as to safeguard his personal integrity (see *infra* III B.), the petitioners answer that his status as a civilian was shown in the domestic record, which includes information on his discharge, and that it is an obligation of the State to safeguard the integrity of persons charged, without sacrificing the proper jurisdiction and due process in keeping with the law.

14. The petitioners argue that the alleged victim was forced to pay a bond that was set and collected illegally and in dollars – to be delivered to the commander of the base, and not at a state bank –

which unleashed a series of violations by state agents. They argue that it was ordered that the alleged victim be held in preventive detention, he was prohibited from selling his property, and his bank accounts were blocked. In this respect, they allege that this constitutes an illegal appropriation of his money, thus that his right to private property, established at Article 21 of the American Convention, was violated.

15. They argue that even though the military criminal jurisdiction is a special jurisdiction, the alleged victim participated in the process and appealed the order to proceed to trial handed down on November 25, 1998, as this was the last procedural act allowed the parties under law. Subsequently, they alleged that the Court of Military Justice vacated the proceedings due to the lack of jurisdiction of the military judge[1], by order of November 16, 1999. From the information provided by the petitioners, it appears that the Judge ordered that the matter be sent to the regular jurisdiction, and that the bond collected be returned. In addition, it appears that the sanction of 200 sucres was imposed "on the Judge of Law and the Criminal Law Judge of 1-ZA" in keeping with Article 159 of the Code of Military Criminal Procedure.[2] They argue that said order exhausted domestic remedies, given that it was not appealable.

16. From the information presented by the petitioners it appears that on November 20, 1999, the Judge of the First Aerial Zone notified him of the collection of the cost of forwarding the matter to the regular jurisdiction, which prompted a complaint by the petitioners, and that they requested that the bond be returned, in keeping with the ruling to vacate the matter, yet that complaint was rejected. On December 20, 1999, they requested a hearing before the Ministry of Defense to explain why his rights violated– through the preventive detention order, the blocking of bank account, the prohibition on the alienation of assets, and the bond deposited that had not been returned – should be vindicated. On January 11, 2000, the petitioner sent a brief to the President of the Court of Military Justice along the same lines.

17. They indicate that on February 28, 2000, when the alleged victim went to the Air Base to recover that bond, he was once again detained by members of the military intelligence service and held incommunicado from 10:30 am to 2:00 pm in the offices of intelligence. They indicate that as there was no arrest warrant, the Center for Provisional Detention of Quito refused to receive him. They allege that a member of the police agreed to write up a false police report stating that he made the arrest at calle Montúfar, when in reality it was at the "Mariscal Sucre" Air Base.

18. They argue that the attorney for the alleged victim went to the air base to inquire into his whereabouts, and that the Military Criminal Judge denied that Gonzalo Cortéz had been detained. They indicate that on March 2, 2000, a writ of habeas corpus was filed that reported the illegal and arbitrary detention; it was rejected on March 8, 2000, as unfounded. They argue that the arrest warrant was issued four days after his detention by the Third Judge of Pichincha, on March 3, 2000, along with the start-up of a proceeding against him for the same robbery. They argue that with that detention, without a warrant, the alleged victim's due process rights were violated once again.

19. From the information produced by the petitioners, it appears that on March 9, 2000, they reported the illegal detention, the preparation of the false police report, and the failure to return the bond, and other rights, before the prosecutor of the Court of Military Justice. In addition, the petitioners asked the prosecutor to apply the relevant sanctions against the investigative judge, the chief of intelligence, and members of his staff for the illegal detention.

20. They indicate that on March 10, 2000, the alleged victim was transferred to the Center for Provisional Detention on orders of the Third Judge for Criminal Matters of Pichincha. They indicate that on March 29, 2000, a second writ of habeas corpus was filed, which was rejected the same day, considering that an identical motion had already been resolved and denied. In the face of that response,

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[1] Code of Military Criminal Procedure of Ecuador. "Article 166.- The following are causes of nullity of military proceedings: 1. Lack of jurisdiction or competence…."

[2] Code of Military Criminal Procedure of Ecuador. "Article 159.- In case of omission of a material formality the proceeding shall be annulled and a fine shall be imposed on the person responsible…."

an appeal to the Constitutional Court was ruled on favorably on May 9, 2000, as there was no arrest warrant issued by a judge with jurisdiction, and it was ordered that the alleged victim be released.

21. They allege that the victim was tried twice for the same crime, in violation of the principle of *non bis in idem* established in the American Convention; and that the authorities have sought to cover up the illegalities of the Military Criminal Court on detaining, prosecuting, and incarcerating a civilian. They allege that the right of the alleged victim to a regular judge with jurisdiction, and to an independent and impartial judge, was violated.

22. The petitioners argue that the criminal proceeding that was removed to the regular jurisdiction was drawn out for almost 10 years until in September 2009 it was declared to have prescribed, and in April 2010 the case was archived, though the defendant was not given notice. They argue that this delay was not reasonable. In this respect, they argue that a criminal proceeding for aggravated robbery (*robo calificado*) is not a complex case; that the interested party sought by all means to be placed at the orders of a judge with jurisdiction, and that his procedural activity was aimed at showing his innocence; and that there was delay in the conduct of the judicial authorities, given that a regular criminal proceeding in Ecuador takes approximately three years.

23. In addition, they argue that the delay caused uncertainty as to the personal liberty of the alleged victim, which has had an impact on his psychological integrity. Moreover, having had a case open for 10 years kept him from pursuing work opportunities, he was unable to recover the money attached in his savings accounts, and in the public realm he continued to be considered a criminal, based on his police record, even though there is no guilty verdict.

24. Based on the foregoing, the petitioners argue that the alleged victims suffered arbitrary detention and arbitrary, cruel, and inhuman treatment, as well as the violation of his procedural guarantees and his rights to due process and private property, in violation of Articles 5, 7, 8, and 21 of the Convention, in relation to its Article 1(1).

B. The State's position

25. In response to the petition the State argued that it is inadmissible due to failure to exhaust the remedy of habeas corpus with respect to the first detention, and the contentious-administrative action. It also argues that given that the military criminal proceeding against the alleged victim was declared null and that the habeas corpus against the second detention of the alleged victim was effective, the facts that are the subject matter of the petition do not constitute a violation of the American Convention.

26. The State argues that for the first detention the petitioners should have filed a writ of habeas corpus, which is the adequate remedy. It argues that said remedy was doubly regulated, both in the Constitution and in the Law on the Municipal Regime. It also indicates that according to the Code of Criminal Procedure, which is the supplemental law for the Code of Military Criminal Procedure, by means of the writ of habeas corpus the alleged victim or anyone on his behalf could turn to the Court of Military Justice for it to order, if appropriate, his immediate release.

27. In this regard, with respect to the first detention of the alleged victim, the State argues that the petitioner did not exhaust available remedies. It alleges that participating in the military criminal jurisdiction, not saying that he was a civilian, and not asking the criminal judge to recuse himself, but being under his jurisdiction and requesting evidence, is not tantamount to exhausting domestic remedies. It argues that the only remedy that the alleged victim pursued was the appeal before the Court of Military Justice, which was effective, as the proceedings were declared null for lack of jurisdiction on November 16, 1999.

28. It argues that the military criminal proceeding was declared null by the Court of Military Justice on November 16, 1999; it ordered that the case be removed to a regular judge, and that in April 2000 the Third Court for Criminal Matters of Pichincha took cognizance of the accusation. It argues that

when the petitioners filed the petition the regular criminal proceeding was pending resolution; it culminated in a decision that the action had prescribed on September 2, 2009, accordingly the petition should have been presented after that date.

29. In response to the petitioners' argument with respect to the violation of the reasonable time in the regular criminal proceeding (see *supra* III.A), the State answered that the alleged victim could have filed an action before the contentious-administrative judge to obtain compensation and other reparations for the alleged inadequate administration of justice, and that therefore there was no exhaustion of domestic remedies.

30. The State alleges that the first detention of the alleged victim, on July 11, 1997, was carried out with the institution of criminal proceedings, in March 1997, when his provisional detention was ordered, accordingly he was detained by order issued by a judge with jurisdiction.

31. It also argues that the alleged victim was brought before the judge on July 14, 1997, in response to which the next day the judge issued the order to hold him in the Center for Provisional Detention. It states that in response to that decision, the alleged victim's attorney came forward stating that he wanted to continue to be at the orders of the military criminal judge, he asked that he be detained in the military prison until his innocence was shown, since his life was at risk at the regular detention center, given that the inmates had a negative attitude towards members of the armed forces. It argues that the judge accepted that request to safeguard the life of the alleged victim. In response to the petitioners' argument on the violation of Article 5 (see *supra* III.A), the State answered that it guaranteed the personal integrity of the alleged victim on accepting his request not to be transferred to a regular detention center where his life would be in danger.

32. The State alleges that at the moment the criminal proceedings were instituted and the arrest warrant was issued, and the alleged victim detained, procedurally there was no record of his status as a civilian, and that the military judge had to investigate it, therefore he was the judge with jurisdiction. Indeed, no complaint was ever presented arguing lack of jurisdiction of the judge, nor any request for disqualification, but to the contrary interest was expressed in continuing to be at the judge's orders. It argues that the alleged victim's status as a civilian was set forth in the proceeding subsequently, with which, through the appeal, the proceedings were declared null.

33. In response to the petitioners' argument on the violation of the principle of *non bis in idem* the State responds that there is no double jeopardy since the Court of Military Justice, on resolving the appeal, did not analyze his conduct and did not acquit him, but rather ordered annulment of the trial, and that another judge should judge him. In other words, in the military criminal justice system no judgment was handed down, which would have had to have been the case to assert that he was tried twice on the same facts.

34. In response to the petitioners' argument on violation of the right to property of the alleged victim, due to the fact that he paid an illegal bond, the State answers that it was Gonzalo Cortéz who asked the judge to set the amount of the bond so as to secure his liberty, which was set at US$1,500, considering the that object stolen was a spare part for an airplane that is acquired abroad, by deposit in dollars at the Central Bank of Ecuador. It indicated that said bond was delivered at the Department of Finance. It further indicates that since the procedure was annulled, the bond was no longer current, and so it was ordered that it be returned.

35. The State alleges that the second detention of Gonzalo Cortéz, on February 28, 2000, was carried out by the Police and not by members of the Air Force. It indicates that on this occasion a writ of habeas corpus was filed, which turned out to be effective, and the situation was amended. It alleges that the Second Chamber of the Constitutional Court, on verifying that the arrest warrant was issued by the Third Judge for Criminal Matters of Pichincha on April 10, 2000, ordered the alleged victim's immediate release, considering that he had been illegally detained. It argues that this shows that the State has guaranteed adequate remedies, and that they are not merely formal, but effective in practice.

36. In sum, the State argues that remedies were available to the alleged victim which he, as a matter of his own will, did not use; accordingly, one cannot attribute the non-existence of such remedies to the State.[3] It alleges that it is shown that when the alleged victim requested the bond, it was granted to him; when he appealed to the Court of Military Justice the proceeding was vacated; and when he filed a writ of habeas corpus he was released. Thus those remedies proved effective in his case. The State further indicates that the alleged victim was not kept from exhausting remedies, and that there was no unwarranted delay on resolving the remedies pursued; therefore the exceptions to the rule on prior exhaustion of domestic remedies do not apply.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

37. The petitioners are authorized, in principle, by Article 44 of the American Convention to present petitions to the Commission. The petition names as the alleged victim an individual person with respect to whom the Ecuadorian State undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission indicates that Ecuador has been a State party to the American Convention since December 28, 1977, on which date it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to take cognizance of the petition insofar as it alleges violations of rights protected by the American Convention which are said to have taken place in the territory of Ecuador, a state party to that treaty.

38. The Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State on the date on which the facts set forth in the petition are alleged to have occurred. 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

39. Article 46(1)(a) of the American Convention requires the prior exhaustion of domestic remedies in keeping with generally recognized principles of international law as a requirement for admitting claims alleging violations of the American Convention.

40. In the instant petition, the State alleges: (1) that as of the date of filing of the petition, the regular jurisdiction criminal proceeding against the alleged victim was pending, (2) the failure to exhaust the remedy of habeas corpus against the first detention of the alleged victim; and (3) the failure to exhaust the contentious-administrative action due to the alleged delay in the regular jurisdiction criminal proceeding against him. The petitioners, for their part, allege that due to the incommunicado detention of Gonzalo Cortéz it was not possible to file a writ of habeas corpus, and that the exception provided for at Article 46(2)(c) of the American Convention, regarding unwarranted delay in the regular criminal proceeding, applies in this case.

41. Article 31(3) of the Commission's Rules of Procedure establishes that when petitioners allege that exception, the burden of proving that said domestic remedies continue to represent an effective corrective measure in the face of the alleged harm is shifted to the State.

[3] In support of its argument the State cites I/A Court H.R., *Blake Case*, Judgment of January 25, 1998. Office of the Solicitor General. Brief received on July 11, 2000.

42. One must clarify which domestic remedies have to be exhausted in the instant case. The Inter-American Court has noted that only those remedies adequate to address the violations allegedly committed need be exhausted:

> Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.[4]

43. The Commission observes that this petition refers specifically to the facts related to the alleged violations of the right to personal liberty and to due process in the criminal proceeding brought against Gonzalo Cortéz, which include the alleged arbitrary detentions, the incommunicado detention, and the alleged violations of due process, as well as the alleged cruel, inhuman, and degrading treatment to which the alleged victim is said to have been subjected, and the alleged violation of his right to private property.

44. First, with respect to the remedies adequate for challenging the deprivation of liberty, the Commission observes that as of the date on which the facts occurred two remedies were available in Ecuador: (i) the constitutional habeas corpus remedy, and (ii) the *amparo de libertad* remedy, also known as legal habeas corpus.

45. The constitutional habeas corpus remedy must be filed with the mayor or president of the council.[5] In this respect, both the Inter-American Commission[6] and the Inter-American Court have established that the presentation of a writ of habeas corpus before an administrative authority does not constitute an adequate remedy under the standards of the American Convention[7]; therefore one cannot require that it be exhausted.

46. In terms of the remedy of legal habeas corpus established in the Code of Criminal Procedure[8], the Commission notes that in view of the incommunicado detention to which Gonzalo Cortéz was said to have been subjected in his first detention, he and his family members or attorneys would not have had any real possibility of pursuing such a remedy during the first days of detention, when this remedy is effective. Considering that the alleged victim was impeded from exhausting it, due to the incommunicado detention to which he is said to have been subjected, the Commission considers that the exception to the exhaustion of domestic remedies set out at Article 46(2)(b) applies to this part of the petition.

47. In relation to the second detention, effectuated without a judicial order, on February 28, 2000, the petitioners filed a writ of habeas corpus on March 2, 2000, which was rejected, and a complaint before the Prosecutor of the Court of Military Justice, on March 9, 2000, which was said to produce no result. In addition, they filed a second writ of habeas corpus on March 28, 2000, which was also rejected.[9] In the face of that rejection, they filed an appeal with the Constitutional Court that was resolved favorably on May 9, 2000, considering that the detention was carried out without a judicial order; accordingly the alleged victim was released.

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[4] I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, para. 63.

[5] Article 19(17)(j) of the Ecuadorian Constitution of 1979.

[6] IACHR, Report No. 66/01 *Dayra María Levoyer Jiménez*, June 14, 2001, paras. 78-81.

[7] I/A Court H.R., *Case of Chaparro Álvarez and Lapo Íñiguez*. Judgment of November 21, 2007 Series C No. 114, para. 128.

[8] Article 458 of the 1983 Code of Criminal Procedure of Ecuador.

[9] In both the writs of habeas corpus and in the complaint presented to the prosecutor, the petitioners alleged the commission of an illegal and arbitrary detention by members of the military intelligence service, as well as the preparation of a false arrest report by a state agent, and they asked that the applicable sanctions be imposed.

48. The Commission considers that in this petition the domestic remedies available were exhausted by the decision of the Constitutional Court of May 9, 2000. Therefore, this part of the petition complies with the requirement established at Article 46(1)(a) of the American Convention.

49. As for the contentious-administrative action to which the State makes reference, the Commission considers that for this petition, what was argued earlier applies, in that the decisions handed down by the contentious-administrative jurisdiction are not suitable remedies for satisfying Article 46 of the American Convention. The contentious-administrative jurisdiction is a mechanism for supervising the administrative activity of the State, and that only allows for obtaining compensation for damages. Accordingly, that process is not suitable for this claim[10], and therefore one cannot require that it be exhausted.

50. The petitioners also allege delay in the regular criminal proceeding against the alleged victim, which was ended in 2010 after the action was found to have prescribed, in his favor, 10 years after it was brought, which caused him harm. In this respect, the Commission considers that when it is the State that begins a criminal action, it must culminate the process within a reasonable time. Therefore, the petitioners do not have the procedural burden of invoking and exhausting domestic remedies with respect to this aspect of the petition.

[10] IACHR. Report No. No. 68/09, *Wilfredo Quiñónez Barcenas and family v. Colombia*, August 5, 2009, para. 42 and Report No. 123/10 *Gerson Jahirzinho González Arrollo v. Colombia*, October 23, 2010, para. 45.

2. Time for submitting the petition

51. The American Convention establishes that in order for a petition to be admissible it must be filed within six months from the date on which the person allegedly injured has been notified of the final decision by the domestic courts. In addition, Article 32 of the Rules of Procedure of the Commission establishes that in those cases in which the exceptions to the prior exhaustion of domestic remedies apply, the petition should be filed within a time that the Commission considers reasonable.

52. For the purposes of establishing whether the petition has been submitted in timely fashion, the Commission considers that the petitioners' claim was made in relation to a set of alleged interrelated facts that are said to have been set in motion from the first detention of the alleged victim in 1997, and that they continued with his second detention and with the military and regular jurisdiction criminal proceeding in the different stages, which culminated in the finding that the action had prescribed and would be closed. The Commission takes into account that the petition was submitted to the Commission on March 29, 2000, as that situation continued to unfold. Therefore, in view of the context and the characteristics of the petition, the Commission considers that it was submitted in timely fashion.

3. Duplication of international proceeding

53. It does not appear from the record that the subject matter of the petition is pending in another international proceeding for settlement, or that it reproduces a petition already examined by this or any other international organization. Therefore, the requirements established at Articles 46(1)(b) and 47(a) of the Convention have been met.

4. Characterization of the facts alleged

54. Given the information presented by the parties and the nature of the matter put before it, the Commission finds that in the instant case the petitioners' arguments regarding the alleged violations of the right to personal liberty and to judicial guarantees, which include the alleged incommunicado detention, if proven, tend to establish possible violations of the rights protected in the American Convention at Articles 5, 7, and 8, to the detriment of Gonzalo Orlando Cortéz Espinoza, all in keeping with its Article 1(1).

55. The IACHR, in application of the principle of *iura novit curia*, considers that the facts tend to establish violations of the right provided for at Article 25 of the American Convention given the failure to investigate the facts that are the subject matter of the instant petition, and the alleged delay in the criminal proceeding against the victim. As it is not evident that these aspects of the claim are 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 met.

56. The Commission notes that the petitioners argued the violation of the alleged victim's right to private property; its arguments included that he "was unable to recover the attached money from his savings accounts." From the information available in the record, it appears that the bond he put up was returned. Nonetheless, one cannot infer whether the savings accounts continued to be subject to attachment due to the regular criminal proceeding against him, and whether the money was returned as a result of the declaration that the case against him had prescribed. Therefore, the Commission considers it appropriate to verify the facts in the merits stage and, if appropriate, analyze the possible violation of Article 21 of the American Convention.

57. Finally, the Commission considers that the petitioners have not presented basic elements in support of their claims regarding the alleged violation of Article 2 of the American Convention. Therefore, this claim does not meet the requirements established at Articles 47(b) and (c) of the American Convention, and so it is found to be inadmissible.

V. CONCLUSIONS

58. The Commission concludes that it is competent to examine the claims presented by the petitioners regarding the alleged violation of Articles 5, 7, 8, 21, and 25 in conjunction with Article 1(1) of the American Convention, and that these are admissible in keeping with the requirements established at Articles 46 and 47 of the American Convention. It also concludes that the claims with respect to the alleged violation of Article 2 of the American Convention are inadmissible.

59. Based on the foregoing arguments of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find this petition admissible with respect to Articles 5, 7, 8, 21, and 25 of the American Convention, in conjunction with Article 1(1).

2. To find this petition inadmissible with respect to Article 2 of the American Convention.

3. To notify the Ecuadorian State and the petitioner of this decision.

4. To continue with the analysis of the merits.

5. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 1st day of November 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.