REPORT No. 173/11[1]
PETITION 897-04
ADMISSIBILITY
ALEJANDRO DANIEL ESTEVE AND SONS
BRAZIL
November 2, 2011

I. SUMMARY

1. On September 14, 2004, the Inter-American Commission on Human Rights (hereinafter, "the Inter-American Commission" or "the IACHR") received a petition lodged by Alejandro Daniel Esteve on behalf of himself and his minor children Dan and Paul (hereinafter "the alleged victims") against the Federative Republic of Brazil (hereinafter, "Brazil" or "the State") for the alleged illegal retention of both of his children in Brazilian territory and for alleged due process violations during the trial on their return. Subsequently, attorney Fabiana Marcela Quaini (hereinafter, "the petitioner") took over representation of the case before the IACHR.[2]

2. The petitioner contends, among other things, that there has been an unwarranted delay in carrying out the federal return procedures at the first and the second instance levels. She further alleges that Mr. Esteve cannot be a main party in the return process, which violates his right to access to justice and equality before the law. The State, for its part, points out that there are remedies still pending in the domestic venue and therefore the petition is inadmissible. It adds that Mr. Esteve had the opportunity to participate in the return trial and therefore his access to justice was not impeded. Finally, the State asserts that Brazilian judges have concluded that it is not illegal for the children to remain in Brazil, taking into account their best interest.

3. Without prejudging the merits of the complaint, and after examining the positions of the parties and in compliance with the requirements set out in Articles 46 and 47 of the American Convention, the Inter-American Commission decides to declare the case admissible for the purpose of examining the alleged violation of the rights enshrined in Articles 8(1), 17, 19, 24, and 25 of the American Convention on Human Rights (hereinafter, "American Convention"), in accordance with Article 1(1) of that treaty. The IACHR further decides to notify the parties of this decision, publish it, and include it in its Annual Report to the General Assembly of the OAS.

II. PROCESS BEFORE THE IACHR

4. The IACHR received the petition on September 14, 2004, and on January 30, 2008, it forwarded a copy of the pertinent parts to the State, granting it a period of two months to submit its observations. On May 5 and 20, 2008, it received the State's response and the annexes thereto, respectively, the pertinent parts of which were forwarded to the petitioner on May 21, 2008.

5. The petitioner submitted additional observations on June 20 and October 20, 2008; on April 9 and September 24, 2009; and on July 28, 2010. For its part, the State submitted additional observations on September 29, 2008. These communications were duly forwarded to the other party.

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[1] Commissioner Paulo Sérgio Pinheiro, of Brazilian nationality, did not participate in the deliberations or the decision in the instant case in accordance with the provisions of Article 17(2)(a) of the Commission's Rules of Procedure.

[2] Communication of September 25, 2007, received in the Executive Secretariat on the 27th of that same month.

III. PRELIMINARY MATTERS

6. According to the documentation provided by the parties, the following procedures were carried out in relation to the international return of children Dan and Paul Esteve:

- On March 28, 2003, the Second Family Court of San Isidro, Buenos Aires Province, granted Mr. Esteve temporary custody of Dan and Paul, all of Argentine nationality, and ordered the children's return to the Argentine Republic;

- In April 2003, the Argentine Central Authority designated under the Inter-American Convention on the International Return of Children (hereinafter, the CIRIM) sent a request to the Central Authority of Brazil for the return of the children;

- On August 8, 2003, the Federal Union (hereinafter, "the Union"), through the Attorney General of the Union, forwarded the request to the 12th Federal Court (*12ª Vara Federal*) of Rio de Janeiro (hereinafter, "12th Court") to initiate the relevant legal action for the international return of the children;

- On March 31, 2004, Mr. Esteve attended a hearing before the 12th Court. According to the record of proceedings, the Federal Public Ministry requested the immediate repatriation of the children to Argentina;

- On March 9, 2005, Court 12 declared the return process extinguished due to the Union's lack of active legal standing;

- On June 17, 2005, the Union filed an appeal claiming, among other things, that the Brazilian State is administratively and legally responsible for ensuring the repatriation of the children unlawfully taken to Brazil. For his part, Mr. Esteve, in his capacity as assistant of the Union at the trial, filed an appeal in support of the Union's request. The appeal was taken up by the Federal Regional Court of the 2nd Region on December 18, 2006;

- On March 24, 2008, the Federal Regional Court found the appeal to be well-founded in part, recognizing the active standing of the Union. It also began to examine the merits of the matter and rejected the request for the children's return based on the fact that five years had elapsed since their arrival in Brazil; that it would therefore be detrimental to them to send them to Argentina; and that there was sufficient evidence to demonstrate the family's intention to remain in Brazil;[3]

- On May 21, 2008, the Union filed a motion for clarification (*embargos de declaração*) before the same Court claiming that the measure was contradictory insofar as the ruling affirmed that the issue was solely a matter of law, when in fact a factual analysis was carried out by examining the merits of the matter;

- On May 18, 2009, the Court rejected the motion, taking the view that there was no obstacle to evaluating the facts of the case and that in order to change the ruling, the Union should have pursued the relevant proceeding;

[3] The Court based its findings, among other things, on the following evidence submitted by Hilana Lannes, the children's mother: that the lease for their place of residence in Buenos Aires was cancelled in December 2002, before it was to expire; that the couple sold all of their furniture and belongings; and that the purchase of round trip airline tickets did not mean the return ticket was going to be used. The Court concluded that this evidence confirmed Ms. Lannes version, according to which the purpose of the trip was to remain in Brazil because of the financial crisis that was sweeping Argentina.

- On July 13, 2009, the Union filed an extraordinary remedy before the Federal Supreme Court, requesting that it declare the application of Article 515, §3 of the Code of Civil Procedure[4] in the ruling of March 24, 2008 unconstitutional; that it return the records of proceedings to the first instance court; and that the return of the children Dan and Paul to their habitual residence be ordered; and

- On July 14, 2009, the Union filed a special remedy before the Supreme Court of Justice claiming the Federal Regional Court's failure to apply the Convention on the Civil Aspects of International Child Abduction (hereinafter, the "Hague Convention"). The Union requested that the records of proceedings be returned to the first instance court or, in the alternative, that the Hague Convention be applied and an order entered for the return of the children to the Argentine Republic.

7. As of September 2010, the two remedies filed by the Union were still pending. In addition, on September 30, 2008, the Public Prosecutor of San Isidro, Martínez District, Buenos Aires requested the Supervisory Judge (*Juez de Garantías*) No. 5 of the Judicial Department of San Isidro to arrest and proceed with the international extradition of Ms. Lannes, mother of the children, Dan and Paul, as the "likely perpetrator of the crime of abduction [of the children] and subsidiarily, of preventing contact between minor children and a non-resident parent." On March 18, 2009, the Judge ruled to order the arrest as requested. To date, Ms. Lannes remains on the list of individuals wanted by Interpol.

IV. POSITION OF THE PARTIES

A. Position of the petitioner

8. According to the petitioner, on December 18, 2002, Alejandro Daniel Esteve, an Argentine citizen, traveled to Rio de Janeiro, Brazil, to spend the summer vacation there with his then wife, Hilana de Moraes Lannes, a Brazilian citizen, and their two children Dan and Paul, then 3 years old and 7 months old respectively, both Argentine citizens. According to the petition, the couple and their two children resided in San Isidro, Buenos Aires; they traveled to Rio de Janeiro with round trip tickets; and they declared in Immigration that they were entering Brazil as tourists. Mr. Esteve returned to Argentina a few weeks early for work-related reasons, while Ms. Lannes and the two children were to return on March 1, 2003, in time for the start of the school year. Ms. Lannes, however, had allegedly decided unilaterally to remain in the city of Rio de Janeiro and to illegally keep her two sons with her.

9. According to the petitioner, the Brazilian State violated the right of the alleged victims to due process because Mr. Esteve could not be a party in the return trial; that the ruling handed down on March 24, 2008, by the Federal Regional Court was *ultra petita*; that there were unwarranted delays at the first and the second instance levels; and that the crime of "international prevarication" had been committed.

10. With regard to the first point, the petitioner claims that Mr. Esteve does not have the right to be a party in the return proceedings in the Brazilian federal justice system and therefore, he cannot bring any legal action whatsoever, have access to the file, or appeal the legal rulings. She adds that as a foreigner, Mr. Esteve is "annulled as a person." She notes that the private attorneys hired by the alleged victim in Brazil to represent his interests are relegated to the role of assistants of the Union, which is the main party in the case. She points out in this regard that Mr. Esteve is totally dependent on the Union's attorneys to pursue any type of action in the proceeding. She notes also that the Union's attorneys have not taken seriously the evidence submitted by Mr. Esteve, which demonstrates the specious nature of Ms.

[4] Article 515, §3 of the Code of Civil Procedure establishes that "in cases of extinction of a proceeding without judging the merits (Art. 267), the court may rule on the matter if the case deals exclusively with a matter of law and the circumstances are such that it can be decided immediately (translation by the Executive Secretariat).

Lannes' pleadings concerning the couple's intention to reside in Brazil, which were the grounds for the Federal Regional Court's decision to deny the return.[5]

11. In relation to the March 28, 2008, ruling, the petitioner asserts that the court pronounced on the merits of the matter, which was not what the Union had requested in its remedy. The ruling should have been declared *ultra petita* inasmuch as it failed to confine itself to the issue raised by the Union, namely the matter of active standing. The petitioner further states that the Court should have returned the matter to the first instance court in order for the latter to rule on the merits of the case.

12. In regard to the alleged unwarranted delay, the petitioner points out that the first instance ruling was handed down one and half years after receiving the request from the Argentine justice system. She adds that another year and a half had transpired before the Union's appeal was taken up, and that there was no ruling on that appeal, which should have been decided within 6 weeks, until more than a year later, and then only because Mr. Esteve had lodged the instant petition before the IACHR. With respect to the latter point, the petitioner claims that before the State was notified of the petition, the remedy had been stalled since December 18, 2006, and that after being notified of the petition, the Court handed down a ruling in 70 days. The petitioner observes that a return process based on the CIRIM or the Hague Convention takes approximately three months to a year in order to keep the children from being uprooted again.

13. Finally, the petitioner indicates that the Union's attorneys, who indirectly would be defending the interests of Mr. Esteve in the return trial, are the same ones who are representing the Brazilian State in the instant petition before the IACHR.[6] She concludes that this incongruence infringes on due process and access to justice to the detriment of the alleged victim.

14. The petitioner contends that the three exceptions to the exhaustion of domestic remedies set out in Article 46(2)(a), (b) and (c) of the American Convention are applicable to this case. She asserts that subparagraphs (a) and (b) are applicable inasmuch as Brazilian law does not allow Mr. Esteve to be a party to the return proceedings. She further asserts that the exception set out in Article (46(2)(c) of the American Convention is applicable due to the unwarranted delay in the return proceedings mentioned *ut supra*.

15. In addition, the information provided by the petitioner indicates that two trials were held in the Rio de Janeiro state court system concerning child custody and support, parallel to the return trial before the federal courts.

16. The petitioner notes that in September 2003, Ms. Lannes initiated a legal separation and custody trial before the 9th Family Court of the Rio de Janeiro district (*9ª Vara de Família da Comarca da Capital*). Temporary custody was granted to Ms. Lannes on October 16, 2003. In November 2004, the Office of the Presidency of the Federative Republic of Brazil requested the Family Court to grant a suspension of proceedings on grounds that the return proceeding was pending in the federal court system. Despite that request, on September 27, 2005, the Family Court granted temporary custody to the mother on grounds that the Argentine judge's ruling granting temporary custody to Mr. Esteve had not been recognized by the Supreme Court of Justice of Brazil.

17. According to the available documentation, Mr. Esteve appealed this ruling. On January 11, 2006, Civil Chamber No. 17 of the Court of Justice of Rio de Janeiro (*17ª Câmara Cível do Tribunal de Justiça do Estado do Rio de Janeiro*) rejected the appeal and determined that the children should

[5] The evidence mentioned by the petitioner includes: that the cancellation of the lease of their residence in Buenos Aires does not demonstrate the couple's intention not to return to Argentina, since the lease was to expire permanently on April 1, 2003; that some of the furniture was sold because, upon returning from Brazil, they were going to live in a furnished house; that they did not sell their car or their motorcycle; that the alleged victim has an important position at the French-Argentine School and both children have a total scholarship in that establishment, for which the Argentine crisis would not have had the effect on the family that Ms. Lannes alleged.

[6] According to the petitioner, when a collaborator of the justice system simultaneously represents opposing and contradictory interests, he or she is committing what is known in domestic law as the crime of prevarication.

remain in their mother's custody, with the father granted visitation rights, until the terms of the couple's separation had been decided. In its ruling, the Chamber took the view that as the mother, Ms. Lannes could not commit the crime of abduction against her own children and therefore the CIRIM was not applicable.[7]

18. With respect to the child support proceedings, in March 2006, the 15th Family Court of Rio de Janeiro ordered Mr. Esteve to pay 50,000 Argentine pesos (equivalent at that time to approximately USD 16,000) in child support, allegedly without issuing him any notification or summons. She also points out that this debt would prevent the alleged victim from entering Brazil to see his children. According to the petitioner, Mr. Esteve has been unable to see his children since 2004 due to this debt and to the alleged threats described *infra*.

19. Finally, the petition describes alleged threats and attempts on the life of Mr. Esteve, as well as the alleged abuse suffered by the children, Dan and Paul. With regard to the former, the petitioner contends that after the March 31, 2004, hearing in the 12th Court, Ms. Lannes threatened the alleged victim with death, which the latter reported to the Rio de Janeiro police. According to the documentation available in the file, the criminal complaint initiated due to the alleged threat was subsequently closed.[8] In addition, the day before the hearing held before the 9th Family Court in August 2004, Mr. Esteve allegedly was accosted by two people when he arrived at the hotel to discuss the case with his attorneys and he had to be hospitalized with two broken ribs and a hepatic hematoma. This was also reported to the police of Rio de Janeiro. According to the alleged victim, this attack was related to the trial on the return of his children.

20. In relation to the second point, the petitioner claims that the children, Dan and Paul, have suffered physical and psychological abuse at the hands of Ms. Lannes. When visiting his children on April 10, 2004, Mr. Esteve allegedly observed burn marks on Dan, then five years old, and that Paul, then two, was showing signs of delayed speech and body language attributable, according to Mr. Esteve, to psychological problems. The petition indicates that the alleged abuse was reported on August 23, 2004, before the 12th Court.

21. Based on the foregoing, the petitioner contends that the State violated the rights recognized in Articles 8(1), 17, 19, 24, and 25 of the American Convention in relation to Article 1(1) of that treaty, to the detriment of the alleged victims. She further claims that the State violated Articles 7 and 16 of the CIRIM due to the Brazilian State's alleged failure to locate and return the children and the fact that Brazil ruled on the merits of the custody issue while the return proceeding was still pending.

B. Position of the State

22. The State requests the IACHR to declare the petition inadmissible due to the failure to exhaust domestic remedies. It asserts that the ruling of the Federal Regional Court of the 2nd Region that ordered the children, Dan and Paul, to remain in Brazilian territory is still under review in the domestic courts.

23. The State further alleges that after examining the facts and available evidence, the Brazilian judges found no illegal behavior whatsoever. In this regard, the State notes that the organs of the inter-American human rights system cannot replace domestic jurisdiction in order to obtain better or more effective outcomes, nor may it impose specific investigative methods. It adds that the ruling of the Federal Regional Court shows that the overriding concern is the best interests of the children.

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[7] *Agravo de Instrumento No. 2005.002.23729*. Annex to the petitioner's communication received on October 29, 2007.

[8] Complaint No. 9094 filed by Daniel Alejandro Esteve before the Public Ministry of Buenos Aires Province, Judicial Department of San Isidro, Martinez District, on June 24, 2005. Annex to the petitioner's communication received on October 29, 2007.

24. The State contends that all requests for the return of minors received by the Brazilian Central Authority are forwarded to the Attorney General of the Union, the federal judicial organ vested with the authority to represent the Union in return trials. It indicates that Brazilian law does not prohibit the participation of the interested party in the trial; that the Brazilian Constitution recognizes the legal standing of all persons, whether nationals or foreigners; and that international treaties do not provide for any exception in this regard.

25. According to the State, should the interested person wish to participate in the return proceeding, the foreign State that requested international cooperation would forfeit its interest in the case and therefore, there would be no cause for the Union to be a party in the proceeding. Nonetheless, in most cases the interested person opts to avail him or herself of the support of the State apparatus, which renders the case a matter of public order that goes forward at no cost to the interested party since the State itself is the active party. In this circumstance, even though the Union is the active party to the suit, the interested person may act through the role of assistant set out in the Code of Civil Procedure.

26. In relation to the instant case and the alleged lack of access to justice, the State asserts that in his capacity as an assistant, Mr. Esteve was notified of all of the proceedings in the case; that he had the opportunity to participate in a hearing; and that he even appealed the first instance ruling that extinguished the proceeding. The State asserts that, although the Union was the main party, Mr. Esteve played an extremely relevant role. It adds that in the instant case, the legal action seeking the return of the children to Argentina was all the more effective for having been pursued on two fronts: the Union as the main party and Mr. Esteve as an assistant, which served to strengthen the defense of the case. In this sense, the State concludes that the assertion concerning the alleged lack of access to domestic remedies is erroneous, since those remedies were available to him directly as well as indirectly.

27. With respect to the alleged subversion of justice at the international level (*prevaricato internacional*), the State contends that the Union does not directly represent Mr. Esteve's interests in the return proceedings, since it is the interests of the Argentine Republic that give rise to inter-State cooperation. According to the State, the mediate cause giving rise to the return petition is the request of the father whose children were unlawfully retained, while the immediate cause is the request for international legal cooperation from the foreign country that is a signatory to the Convention. The State adds that it is natural that the same legal service that defended the case throughout the legal proceedings would provide technical-legal support, in conjunction with the Ministry of Foreign Affairs and the Special Secretariat for Human Rights, in the Brazilian State's defense before the IACHR. It also notes that the concept of prevarication used by the petitioner is one that has been culled from Argentine law and does not figure in the instant case since it is a matter of international jurisdiction.

28. In it last communication, moreover, the State mentioned that it was unable to provide information concerning some of the factual allegations submitted by the petitioner since the case file was at that time in the Public Defender's Office for submission of observations in the motion for clarification.

29. In conclusion, the State contends that the petition is inadmissible due to the failure to exhaust domestic remedies and requests the IACHR to declare accordingly.

V. ANÁLYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

30. In principle, the petitioner is authorized under Article 44 of the American Convention to lodge petitions before the Inter-American Commission. The petition claims as alleged victims, individual persons with respect to which the State of Brazil has undertaken to respect and ensure the rights enshrined in the American Convention. As far as the State is concerned, the IACHR notes that Brazil has been a State party to the American Convention since September 25, 1992, the date on which it deposited its ratification instrument. The Inter-American Commission therefore has competence *ratione personae* to examine the petition. The IACHR also has competence *ratione loci* to take up the petition insofar as it

claims violations of rights protected in the American Convention that allegedly occurred within the territory of Brazil, a State party to that treaty.

31. The Inter-American Commission has competence *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention were already in effect for the State on the date on which the events described in the petition allegedly occurred. Finally, the IACHR has competence *ratione materiae*, because the petition claims possible violations of rights protected by the American Convention. It should be noted that the petitioner also claims the violation of Articles 7 and 16 of the Inter-American Convention on the International Return of Children. The Inter-American Commission does not have material competence with respect to the latter, since it is not authorized to process complaints of violations of that Convention. Without prejudice to this, the IACHR may consult this treaty as a source of interpretation when applying the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

32. Article 46(1)(a) of the American Convention requires the prior exhaustion of remedies available in the domestic jurisdiction in accordance with generally recognized principles of international law in order to admit complaints concerning the alleged violation of the American Convention. The purpose of this requirement is to allow the national authorities to take up the alleged violation of a protected right and, where appropriate, to resolve it before it is taken up by an international body. For its part, Article 46(2) of the American Convention provides that the requirement of prior exhaustion of domestic remedies is not applicable when the domestic law of the State in question does not provide legal due process for the right or rights that have allegedly been violated; when the one whose rights were allegedly harmed has not had access to domestic remedies or has been impeded from exhausting them, or when there has been an unwarranted delay in the decision on the aforementioned remedies.

33. The petitioner claims that the three exceptions to the exhaustion of domestic remedies envisaged in Article 46(2) of the American Convention are applicable. She notes that the first two exceptions are based on Mr. Esteve's alleged inability to be party to the return proceedings, and the third is due to an alleged unwarranted delay in said proceedings. The State, for its part, points out that the remedies filed against the Federal Regional Court are still pending and that the IACHR should therefore declare the petition inadmissible.

34. According to the available information, Mr. Esteve initiated the mechanism for the international return of children envisaged in the CIRIM and the Hague Convention as soon as the alleged unlawful retention of children Dan and Paul in Brazil occurred. The Argentine Central Authority notified its Brazilian counterpart of the return request in April 2003. The Brazilian federal courts declared the return proceedings extinguished in March 2005, without examining the merits of the matter. A motion to appeal that decision was filed on June 17, 2005, and was sent to the Federal Regional Court on December 18, 2006. On March 24, 2008, the Court ruled that the appeal was well-founded, in part, and rejected the return request. In July 2009, an extraordinary appeal of that ruling was filed with the Federal Supreme Court and a special remedy before the Supreme Court of Justice, both of which remain pending to date.

35. In this regard, the Inter-American Commission observes that more than 8 years have transpired since the international return proceeding began. It took the Brazilian federal courts more than one and half years to hand down a ruling at the first instance level, and another year and a half to take up the appeal of that ruling. As a general rule, a proceeding must be held promptly to protect the rights of the interested party. As the Inter-American Court has pointed out, the timing of the decision on domestic remedies must also fit the purposes of the international protection system. The rule of prior exhaustion must never lead to a halt or delay that would render international action ineffective.[9] Given the characteristics of the material complaint in the instant case, therefore, the IACHR concludes that the

[9] Inter-Am. Ct. H.R., *Case of Velásquez Rodríguez. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para 93.

exception envisaged in Article 46.2(c) of the American Convention is applicable with respect to the international return trial.

36. In relation to the child support trial, the petitioner claims that Mr. Esteve was never notified of the order to pay child support issued by the 15th Family Court. The State, for its part, did not refute those allegations. Therefore, based on the available information, the alleged lack of notification of the legal ruling would have prevented Mr. Esteve from gaining access to domestic remedies, for which the exception envisaged in Article 46.2(b) of the American Convention is applicable.

37. In this regard, the Inter-American Commission deems it important to underscore that the application of the rule of prior exhaustion of domestic remedies is closely related to the determination of potential violations of certain of the rights recognized therein such as guarantees of access to justice. Nonetheless, given its inherent nature and purpose, Article 46(2) of the American Convention is a norm with autonomous content *vis à vis* the substantive norms set out in that treaty. Therefore, a determination of whether the exceptions to the rule of prior exhaustion of domestic remedies are applicable to the case under study must be undertaken prior to and independently of the analysis of the merits of the matter, as it relies on a different standard of evaluation than that used to determine the possible violation of Articles 8 and 25 of the American Convention.

38. Finally, with respect to the temporary custody trial, according to the available information, Mr. Esteve appealed the ruling handed down by the 9th Family Court granting temporary custody to the children's mother to the Court of Justice of Rio de Janeiro. The appeal was rejected on January 11, 2006. Therefore, domestic remedies have been exhausted on this point.

2. Time frame for lodging the petition

39. According to Article 46(1)(b) of the American Convention, in order for a petition to be admissible by the IACHR, it must have been lodged within a six month period counted from the date on which the alleged victim was notified of a final judgment. In the complaint under examination here, the IACHR has established that the exception to exhaustion of domestic remedies is applicable with respect to two of the three proceedings included in the instant petition, in accordance with Articles 46.2(c) and (b) de la American Convention. In this regard, according to Article 32(2) of the IACHR's Rules of Procedures, in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the IACHR. For this purpose, the Inter-American Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

40. The petition under examination herein was lodged on September 14, 2004, in other words, one year after the start of the trial on the children's return in the Brazilian federal court system and months before the first instance ruling was handed down, a period considered reasonable by this Commission. In relation to the child support trial, the respective order was issued in March 2006, in other words, after the instant petition was presented. Finally, with respect to the temporary custody hearing, the rejection from the Court of Justice of Rio de Janeiro was also handed down after the presentation of this petition before the IACHR.

41. Therefore, the Inter-American Commission concludes that the instant petition meets the requirement set out in Article 32(2) of the IACHR's Rules of Procedure.

3. Duplication of proceedings and international res judicata

42. The case file shows no evidence that the petition is pending before any other international proceeding for settlement, nor is the petition substantially the same as any other previously examined by this or any other international body. Therefore, the requirements set out in Articles 46(1)(c) and 47(d) of the American Convention have been met.

4. Colorable claim

43. For the purposes of admissibility, the Inter-American Commission must decide whether the facts, as stated, tend to establish a violation of rights under the provisions of Article 47(b) of the American Convention, or whether the petition is "manifestly groundless " or "out of order," as provided in subparagraph (c) of that Article. The standard for evaluating these admissibility requirements is different from that required for deciding the merits of the petition, given that the IACHR must only conduct a *prima facie* evaluation to determine whether or not the petitioners establish grounds for the apparent or potential violation of a right guaranteed by the American Convention. This review is a summary examination that does not involve any prejudgment or opinion on the merits of the matter.

44. The petitioner claims that the Brazilian State violated Mr. Esteve's right to due process guarantees and to judicial protection due to the unwarranted delay in the return proceedings, which are still pending before the federal courts, and an alleged *ultra petita* ruling by the Federal Regional Court. She further contends that Mr. Esteve's alleged inability to act as a main party in the return proceedings violates his right to access to justice and equality before the law. She concludes that Brazil violated the rights envisaged in Articles 8(1), 17, 19, 24, and 25 of the American Convention in relation to Article 1(1) of that treaty. The State, in turn, contends that the Brazilian judges, taking into account the child's best interest, concluded that the mother of the children had not acted unlawfully. It further points out that Mr. Esteve had both direct and indirect access to domestic remedies.

45. In view of the elements of fact and law presented by the parties, and the nature of the matter before it, the IACHR is of the view that should they be proved, the allegations made by the petitioner could establish violations of Articles 8(1), 17, 24, y 25 of the American Convention in relation to Article 1(1) of that treaty, to the detriment of Alejandro Daniel Esteve, and of Articles 8(1), 17, 19, and 25

of the American Convention in relation to Article 1(1) of that treaty, to the detriment of the children, Dan and Paul Esteve.

46. Among other things, during the merits stage, IACHR shall determine in light of the international *corpus juris* on the rights of children and adolescents, whether the State violated due process guarantees to the detriment of the alleged victims in the international return proceedings. In this regard, and without prejudging the merits of the matter, the Inter-American Court has found that "administrative and judicial proceedings relating to the protection of the human rights of the child, particularly those judicial proceedings concerning the adoption guardianship and custody of boys and girls in early childhood, must be handled by the authorities with exceptional diligence and celerity."[10]

VI. CONCLUSIONS

47. The Inter-American Commission concludes that it is competent to take up the complaints presented in the instant petition, and that the petition is admissible under, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant petition admissible in relation to Articles 8(1), 17, 19, 24 and 25, in relation to Article 1(1) of the American Convention;

2. To notify the parties of this decision;

3. To continue its examination of the merits of the matter;

4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the November 2nd, 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.

[10] Order of the Inter-American Court of Human Rights of July 1, 2011, Provisional Measures with regard to Paraguay, Matter of L.M., para. 16. The IACHR also observes that the European Court of Human Rights has interpreted Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms based on the best interest of the child, the Convention on the Rights of the Child, and the Convention on the Civil Aspects of the International Abduction of Miners in numerous cases of the international return of boys and girls, concluding that in such cases, the administrative authorities must act in a speedy and diligent manner. See ECHR, *Case of Ignaccolo-Zenide v. Romania*, Application no. 31679/96, Judgment, 25 January 2000, para. 102; *Case of Monory v. Romania and Hungary*, Application no. 71099/01, Judgment, 5 April 205, para. 83 to 85, and; *Case of Neulingerand Shuruk v. Switzerland*, Application no. 41615/07, Judgment, 6 July 2010, para. 132.