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Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 88/09; Petition 405-99  
Session: Hundred Thirty-Fifth Regular Session (3 – 8 August 2009)  
Title/Style of Cause: Pedro Bacilio Roche Azana and Patricio Fernando Roche Azana v. Nicaragua  
Doc. Type: Decision  
Decided by: President: Luz Patricia Mejia Guerrero;  
First Vice President: Victor Abramovich;  
Second Vice President: Felipe Gonzalez;  
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Paolo G. Carozza.  
Dated: 7 August 2009  
Citation: Roche Azana v. Nicaragua, Petition 405-99, Inter-Am. C.H.R., Report No. 88/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)  
Represented by: APPLICANT: Patricio Barrera Tello  
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## I. SUMMARY

1. On December 23, 1998, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition lodged by Mr. Patricio Barrera Tello (hereinafter “the petitioner”), representing Messrs. Pedro Bacilio Roche Azaña and Patricio Fernando Roche Azaña (hereinafter “the alleged victims”), in which he asserted the State of Nicaragua (hereinafter “Nicaragua” or “the State”) violated the human rights of the alleged victims due to an alleged police attack, supposedly motivated by the alleged victims undocumented immigration status, in which the first alleged victim lost his life and the second was left physically disabled. The petitioner further asserts the State violated basic due process rights by acquitting the alleged perpetrators.

2. The petitioner claims that the State is responsible for violating the rights enshrined in Articles 1.1, 4.1, 5.1, 22.1, and 22.4 of the American Convention on Human Rights (hereinafter, “the American Convention”) and Article XVII of the American Declaration of the Rights and Duties of Man (“the American Declaration”), in conjunction with Articles 24 and 8.1 of the American Convention. The petitioner also asserts the petition should be deemed admissible because all available domestic remedies have been exhausted.

3. In turn, the State claims that the petitioner had access to adequate and effective domestic remedies, and that just because the final judgment was not what was desired by the alleged victims, it cannot be considered an abridgment of their human rights.

4. After analyzing the available information and verifying compliance with the admissibility requirements set out in Articles 46 and 47 of the American Convention, the Commission rules the case admissible for the reasons set forth below. Based on the allegations and information presented by the parties, the Commission concludes that the petition raises colorable claims of potential violations of Articles 1.1, 4.1, 5.1, 8.1 and 24 of the American Convention. Additionally, by application of the principle *iura novit curia*, the Commission will analyze, in the merits stage, if there is a possible violation of Article 25 of the American Convention. However, the Commission decides to declare inadmissible the present petition with respect to alleged violations of the rights recognized under Article 22 of the American Convention. The Commission resolves to give notice of this decision to the parties, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

## II. PROCESSING BY THE COMMISSION

5. On December 23, 1998, the Commission received the complaint and registered it as Petition No. 405-99.

6. On October 19, 1999, the IACHR asked the petitioner for additional information in order to complete its analysis of the allegations; his reply was received in a note dated December 16, 1999.

7. On August 30, 2002, the IACHR received a communication from the chairman of the Permanent Human Rights Commission of the National Congress of the Republic of Ecuador, requesting it to process the complaint lodged by the petitioner.

8. On October 26, 2005, the IACHR asked the petitioner for additional information in order to complete the processing described in Article 26 of the Commission's Rules of Procedure. A reply to this request was received on December 20, 2005, and, on April 10, 2006, the petitioner submitted additional information.

9. On September 27, 2006, the IACHR asked the petitioner for additional information.

10. On February 23, 2007, the Commission forwarded the relevant parts of the petition to the State and asked it to present its reply to the complaint within the following two months, in accordance with Article 30.3 of the Commission's Rules of Procedure. The State requested an extension on April 27, 2007, which was granted by the Commission on April 30, 2007. On June 13, 2007, the IACHR granted the State a further extension, pursuant to a request lodged on June 6, 2007.

11. By communication received by the Commission on July 5, 2007, the State submitted its reply, which was conveyed to the petitioner on August 14, 2007, granting a period of one month in which to submit his comments. On September 18, 2007, the petitioner submitted his comments, which were conveyed to the State on September 27, 2007, which had a one-month deadline to submit its comments and provide a complete copy of the case file of the criminal proceedings begun on April 1996 before the First District Criminal Judge in Chinandega.

12. On October 25, 2007, the petitioner submitted additional information.
13. By communication dated November 6, 2007, the State submitted its comments to the communication forwarded to it on September 27, 2007, and sent a copy of the requested criminal proceedings on November 21 of that year. The Commission forwarded the State's comments and a copy of the case file to the petitioner on December 3, 2007, granting a one-month deadline for submitting his respective comments.
14. On December 6, 2007, the Commission forwarded to the State the information submitted by the petitioner on October 25, 2007, granting it one month to submit its comments, which were received by the Commission through communication dated January 14, 2008, and notifying the petitioner about said communication on January 23, 2008.
15. On February 13, 2008, the petitioner presented his observations to the communication forwarded on December 3, 2007, and of which the State was notified of on February 14, 2008.
16. In addition, the IACHR received information from the petitioners on December 29, 2008 and received observations from the State as well on April 28, 2008 and April 27, 2009.

### III. POSITIONS OF THE PARTIES

#### A. Petitioner

17. The petitioner states that on April 14, 1996, Patricio Fernando Roche Azaña and Pedro Bacilio Roche Azaña, two brothers of Ecuadorian nationality, along with some 30 other people of different nationalities, were traveling through the Republic of Nicaragua toward their final destination in the United States of America. With that objective in mind, upon arriving at the Nicaraguan city of Chinandega, they were transferred to a van that would take them into the Republic of Honduras. At approximately 8:00 pm on that day, as they were traveling along the road that would take them to the border, he claims that:

suddenly, and simply because they believed us to be immigrants or foreigners, the Nicaraguan police arrived (as they call the Chinandega Municipal Police) and, in a brutal and inhuman way, without warning or announcing their presence with sirens or any other form of signal, began firing premeditatedly at the surrounded, defenseless victims: there were between 30 and 40 of us, inside the van (a vehicle with the capacity for 12 people), and we were unable to get out or do anything to defend ourselves.[FN1]

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[FN1] Fernando Roche Azaña and Pedro Bacilio Roche, in communication from the petitioner, received December 20, 2005.

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18. The petitioner reports that, as a result of this attack, some 15 people were seriously wounded by "large caliber bullets that perforated our internal organs,"[FN2] including Patricio Fernando and Pedro Bacilio Roche Azaña, the former with a wound to his chest and the latter

with a gunshot wound to the head. He states that afterwards, the wounded were abandoned in an unpopulated area, where Mr. Pedro Bacilio Roche Azaña died of his injuries at around midnight. According to the petitioner, at approximately 8:00 am the next day, they received assistance from a group of locals, who took the injured, including Patricio Fernando, to area hospitals. Mr. Patricio Rocha remained in hospital for three months, the first of which he spent in a coma, and he was later able to return to Ecuador with assistance from his country's embassy. He reports that he underwent six operations and suffers from a permanent physical disability that keeps him from working. All this, along with the expenses incurred as a result of the incident, has led to the financial ruin of his family.

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[FN2] Communication from the petitioner, received December 20, 2005.

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19. The petitioner reports that, on April 23, 1996, legal proceedings began against seven members of the Nicaraguan police for the crimes of culpable homicide grievous bodily harm, and physical endangerment, during which, "even though the commission of the crime was clear," the defendants were acquitted. The petitioner believes that the acquittal, dated February 27, 1997, and the subsequent release of the defendants indicates an absence of impartial justice and points to "false and underhanded proceedings (which served solely to indicate how that country's justice system is blind when the victim is foreign or a migrant...)."

20. The petitioner claims that no statement was taken from Patricio Fernando during the criminal trial and says it is "absurd" for the State to claim that Patricio Fernando's declaration could not be taken because he was hospitalized in critical condition and any statement taken after the first ten days after the alleged crime occurred would be inadmissible at trial. The Petitioner emphasizes, "during proceedings that reportedly lasted more than a year, only the first 10 days are allotted for taking a statement from the principal victim or injured party in the crime under investigation." [FN3]

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[FN3] Communication from the petitioner, received September 18, 2007.

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21. He further contends that, based on the number of injured, it can be concluded that at least 17 rounds were fired, and the fact that none of those shots hit sensitive parts of the vehicle instead of the passengers' bodies indicates the abuses committed by the police officers.

22. As a consequence of the incident and subsequent trial, the petitioner alleges that the State violated the alleged victims' rights enshrined in Articles 1.1, 4.1, 5.1, 22.1, and 22.4 of the American Convention, and in Article XVII of the American Declaration, in conjunction with Articles 24 and 8.1 of the Convention.

23. As regards the complaint's admissibility, the petitioner believes that the judgment issued by the Chinandega First District Criminal Court was the final judicial decision and that it exhausted all available remedies under domestic law.

24. Finally, the petitioner reports that none of the judicial decisions handed down during the proceedings were ever directly notified to Patricio Fernando or his family by the State. The petitioner reports that Patricio Fernando first learned of the Nicaraguan court decision in August 1998, when his mother informally receive a copy of the judgment adopted by the Chinandega District Criminal Jury Court from an official of the Ecuadorian foreign ministry. Four months after learning of the decision, the petitioner, on behalf of Patricio Fernando and his deceased brother, lodged their petition with the IACHR.

B. State

25. The State indicates that, after investigating the incident described by the petitioner, it was able to verify that on April 14, 1996, approximately 30 individuals of Peruvian, Ecuadorian, and Colombian nationality illegally entered Nicaraguan territory through its border with Costa Rica, en route to the United States. On that day,, they boarded a minibus with tinted windows to conceal the quantity of passengers in order to travel through Nicaragua to its northern border with Honduras. On the highway they encountered a police checkpoint that ordered the vehicle to stop; the driver ignored the order and instead accelerated in an attempt to flee.

26. In light of the driver's actions, the State reports that the police authorities began pursuit of the vehicle. The State alleges that despite multiple warnings to stop, the driver continued to flee at high speed. The State claims "the police authorities were forced to fire on the vehicle in order to halt its escape; even so, it continued on until it reached a sparsely populated area where it stopped and the driver ran away, abandoning the illegal migrants who were on board." [FN4] The State alleges that, principally as a result of the driver's actions, Patricio Roche Azaña and four other persons were wounded and Pedro Bacilio Roche Azaña lost his life.

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[FN4] Submission from the State, received July 5, 2007.  
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27. The State reports that the National Police began an investigation that determined that the migrants were being illegal trafficked, and it referred five police officers to the Office of the Attorney General for Justice so that their level of criminal responsibility could be determined at trial and the identity of the individual who was transporting the migrants, who fled the scene, could be established. The State submitted a copy of the criminal case file with a summary of the proceedings.

28. With regards to the failure to take a statement from the alleged victim, Patricio Fernando Roche Azaña, during the criminal proceedings, the State claims that in order to take his statement and inform him of his rights and the fact that he was being represented by the Office of the Attorney General, during the legally mandated period, the First District Criminal Judge of Chinandega came to the hospital on April 30, 1996 where Patricio Fernando was interned. However, on account of his critical medical condition, the judge was unable to take his statement before the deadline. The State emphasizes that the law establishes a single, non-extendible deadline of ten days for these procedures.

29. The State notes that Nicaragua's Directorate of Migration and Nationality authorized the departure of the foreigners to their countries of origin, tacitly extending them a pardon from the State of Nicaragua by not initiating criminal proceedings for their status as illegal foreign migrants.

30. In the proceedings against the police officers involved, the State believes it acted in accordance with its obligation of pursuing crimes on an ex officio basis and with all the other formalities and principles set out in the procedural law then in force. It further adds that the courts discharged all the requisite formalities, including taking depositions from the witnesses and from the illegal migrants who were traveling with Pedro Bacilio Roche and his brother on the day in question.

31. With regards to the notification of the judgment, the State claims that due notice of the decision was served on the defense attorneys, on the Office of the Attorney General for Justice representing the victims, and on the victims that had asked the judicial authority to do so. According to the State, this was in line with the legislation in force in Nicaragua at the time, which defined the parties involved in a trial as the judge, the defendant, the accuser and/or the criminal prosecutor, with the latter serving as the victim's representative through whom notice of judgments and other judicial decisions was to be given. It explains that under that law, a private citizen could participate, but only with the status of a private accuser or complainant. The State maintains that neither Mr. Patricio Fernando Roche Azaña nor his mother, either acting on their own behalf or through representatives or the consular service of the Embassy of Ecuador, or any public official of that embassy – in spite of the broad dissemination and public awareness of the incident – appeared in the capacity of "private accuser" at trial. The State, however, emphasizes that that does not mean that the alleged victims' rights were not represented, as the Office of the Attorney General for Justice, the agency responsible for public legal action, brought charges against the alleged perpetrators and attempted to prosecute them at trial.

32. In connection with this, the State says that:

If the petitioner Patricio Roche Azaña and the Embassy of Ecuador accredited in Nicaragua at that time did not appear and did not request participation in the criminal trial that took place, the State of Nicaragua cannot assume responsibility for their absence; it did, however, ensure that they were represented by the Office of the Attorney General for Justice, in accordance with national law.

33. Regarding the alleged impunity caused by the actions of the justice system, the State maintains that procedural guarantees and due process were respected at all times and that the events in question were analyzed and decided upon by means of a jury verdict, a legal institution enshrined in the Constitution of Nicaragua and found in many legal systems around the world. The State contends the jury reached a conscientious decision regarding the facts and the guilt of the accused, and its determination, which was correctly followed by the judge, formed the basis of the verdict. The State reports that according to Article 484 of the Nicaraguan Code of Criminal Instruction, no appeals may be brought. Questioning the decision reached in the process, the State concludes, would mean questioning the jury trial system itself.

34. Regarding the requirement of prior exhaustion of domestic remedies, the State reiterates that the petitioner did not appear at trial, nor did they ask the Nicaraguan judicial authorities to participate in the proceedings. Nicaragua notes that legal remedies are set down in law for all persons, irrespective of their nationality or legal status, and it adds that if the mechanisms afforded by domestic jurisdiction were not exhausted, that was simply because at the time charges were brought regarding this incident, the alleged victims did not notify Nicaraguan authorities of their interest in pursuing domestic remedies. Nevertheless, the Office of the Attorney General for Justice pressed charges against the alleged perpetrators and prosecuted them by jury trial in accordance with Nicaraguan law.

35. With regards to the alleged violation of the principle of equality before the law, the State denies the existence of any discrimination and repeats that the alleged victims' rights were specifically protected through the public prosecutors' representation in the proceedings. It also emphasizes that most of the victims did participate in those proceedings through declarations and statements.

36. With regards to the alleged abridgment of the right of free circulation, the State maintains that no such violation exists, in that the alleged victims entered the country illegally, at a location not set up as a border post, without passing through migration controls, and in breach of domestic law. It holds that there can not be a violation of Articles 22.1 and 22.4 of the American Convention for illegal immigrants.

37. The State requests that because the petitioner's allegations do not constitute violations of the American Convention and American Declaration and are manifestly groundless and out of order, the Inter-American Commission should rule the petition inadmissible under Article 46 and 47 of the American Convention. Likewise, the State requests that the petition also not be admitted because the petitioner failed to exhaust domestic remedies, as required by Article 46 of the Convention..

#### IV. ANALYSIS OF ADMISSIBILITY AND COMPETENCE

A. Competence of the Commission *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci*

38. The petitioner is entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition names, as its alleged victims, individual persons with respect to whom Nicaragua had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. The Inter-American Commission therefore has competence *ratione personae* to examine the complaint.

39. The Inter-American Commission has competence *ratione materiae* to examine the substance of the petition since it describes alleged violations of rights enshrined in the American Convention and the American Declaration.

40. The IACHR has competence *ratione loci* to hear the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto. It also has competence *ratione temporis* to examine the complaint since the alleged incidents took place when the general obligation of respecting and ensuring the rights set out in the Convention were already in force for the State, following Nicaragua's ratification of the American Convention on Human Rights on September 25, 1979.

B. Other requirements for admissibility

1. Exhaustion of domestic remedies

41. Article 46(1)(a) of the American Convention states that for a complaint lodged with the Inter-American Commission to be admissible under Article 44 of the Convention, the remedies available under domestic law must have first been pursued and exhausted in accordance with generally recognized principles of international law. This requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, to resolve it before it is brought before an international venue.

42. The prior exhaustion requirement applies when the national system does in fact offer resources that are available, adequate, and effective for remedying the alleged violation. Thus, Article 46.2 stipulates that the requirement need not be observed when domestic legislation does not afford due process of law for the protection of the right in question, if the alleged victim was denied access to the remedies offered by domestic law, or if there was an unwarranted delay in issuing judgment on those remedies. As stated in Article 31 of the Commission's Rules of Procedure, when the petitioner invokes one of those exceptions, it falls to the State to demonstrate that the domestic remedies have not been exhausted, unless it is clearly evident from the record.

43. In the case at hand, the State claims that the petitioner had the opportunity to file all the remedies afforded by domestic jurisdiction under the law at that time in force and, if that did not happen, that was simply because "no desire to file those remedies was expressed to the Nicaraguan authorities." In light of that, it requests that the petition be ruled inadmissible.

44. In turn, the petitioner maintains that the acquittal of February 27, 1997, handed down by the First District Criminal Judge of the department of Chinandega, exhausted the domestic remedies in this case.

45. From the criminal case file provided by the State, the Inter-American Commission observes that the allegations in the case at hand were investigated by the Nicaraguan courts and criminal charges were filed as a public action brought by the Office of the Attorney General for Justice. The Commission further notes that the petitioner did not participate in those criminal proceedings, either personally or through legal representatives.

46. The Inter-American Commission has ruled that when an alleged crime involving State officials is committed, the State is obliged to bring and pursue criminal proceedings to their final consequences and that, in such cases, this is the best way to clarify the facts, adjudicate any



possible responsibility, and set the corresponding criminal punishments, in addition to enabling other forms of monetary compensation to be established.[FN5] It is through such criminal proceedings that adequate and effective remedies are exhausted in such matters.

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[FN5] See Report N° 52/97, Case 11.218, Argues Sequeira Mangas, Nicaragua, paras. 96-97; Report N° 57/00, Case 12.050, La Granja - Ituango, Colombia, October 2, 2000, para. 40.  
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47. Pursuant to this, and because ex officio proceedings were brought and prosecuted by the competent authorities of the State in accordance with the law, the remedies provided by domestic law were exhausted with the acquittal of the alleged perpetrators on February 27, 1997. Consequently, the acquittal judgment irrevocably completed the procedural avenues that existed, as a result of which, at the time the petition was lodged with the IACHR, there were no remedies remaining to be exhausted.

48. Based on the terms of Article 46 of the Convention, Article 31 of its Rules of Procedure, and its review of the case file, the Commission concludes that, with the acquittal of the alleged perpetrators on February 27, 1997, by the First District Criminal Judge of Chinandega, the requirement of exhaustion of available domestic law was met in this case.

## 2. Timeliness of the petition

49. Under the terms of Article 46.1.b. of the Convention, for a petition to be admissible it must be lodged within a period of six months following the date on which the complainant was notified of the final judgment that exhausted domestic remedies.

50. In the case at hand, the acquittal of the alleged perpetrators entered on February 27, 1997, by the First District Criminal Judge of Chinandega department was the final ruling in accordance with Nicaraguan domestic law.

51. In connection with that, and as indicated above, the petitioner claims that the alleged victims were not notified of the decisions reached during the proceedings and only learned of the acquittal judgment a year and a half after it was issued when, in August 1998, an official from the Ecuadorian foreign ministry gave Mr. Patricio Roche Azaña's mother a copy of the judgment handed down by the Chinandega District Criminal Jury Court.[FN6] The petitioner asserts that the petition with the IACHR was lodged four months after learning of the final judgment of the Nicaraguan courts. The State responds that the alleged victims were not notified of the domestic court's final judgment because they chose not to register with the court as a "private complainant" in the trial that investigated and prosecuted the incident.

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[FN6] Communication from the petitioner, received April 10, 2006.  
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52. The Commission notes that the alleged victims were not informed of the final judgment, in part, because they were not registered as complainants or plaintiffs as required by Nicaraguan law and, consequently, were not a part of the proceedings that investigated the incident. The State notes that neither of the alleged victims informed the competent authorities of an address for receiving information on the proceedings and contends that, had they done so, “had they expressed that desire to be notified, for which purpose the law requires the indication of an address within the jurisdiction of the judge, it would have been complied with, even though neither the Embassy of Ecuador in Nicaragua nor the petitioner [...] provided the judge with an address or location for receiving notifications.”[FN7]

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[FN7] Submission from the State, received July 5, 2007.

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53. On the other hand, the State does not provide evidence that the court, the Attorney General’s office, or any other State official notified Mr. Patricio Fernando Roche Azaña of his rights regarding intervening in the trial or to be notified of the final judgment. As the State reports, Mr. Roche Azaña was in critical condition when the judge visited the hospital on April 30, 1996 and apparently was sufficiently incapacitated that he could not provide a declaration or speak with the judge. Mr. Roche Azaña asserts that he spent his first month in the hospital in a coma, which the Government does not dispute. Mr. Roche Azaña then spent the next two months in the hospital until he stabilized before being returned to Ecuador, where he reports spending additional time in rehabilitation for permanent physical disabilities. The State does not indicate that it ever had any contact with Mr. Roche Azaña regarding the pending trial before he was sent back to Ecuador after his condition stabilized.

54. The State contends that had Mr. Roche Azaña left a mailing address the court would have provided notification of the final judgment to the alleged victim. The court documents, however, provide evidence that this is not necessarily correct. For example, the August 28, 1996 decision of the Appeals Tribunal for the Western Region certifies that copies of the decision were to be delivered to two private complainants, Norma Doza Samaniego and Maribel Quispe PomaHuanare who were both injured in the incident. The court records, however, demonstrate that copies of the court of appeals decision were not mailed to either private complainant but rather left at the court house to be picked up by the private complainants. By the time the decision was published, however, both women had already been returned to their home country of Peru. All the court records provided to the Commission demonstrate that the same method of “notice” was provided to the two private complainants throughout the trial proceedings. A copy of decisions were also copied into the tribunal’s book of judgments, however, the State provides no information that this record was disseminated publicly.

55. While the Commission recognizes that a State should not be held responsible for failing to provide notice of a judicial decision if a complainant refuses or declines to engage in established procedures to be provided timely notice; however, under the specific circumstances of this case the Commission is compelled to accept that the alleged victims’ six-month clock to file a petition with the Commission started in August 1998, when Mr. Roche Azaña first received actual notice. In particular, the Commission finds the State’s failure to advise Mr. Roche Azaña

of his rights to intervene as a private complainant in the trial proceedings and the evidence that the intervening private complainants never received the decision by mail in their home countries as evidence that the State's system to provide notice did not function properly in this specific case.

56. Therefore, in light of the specific circumstances of this case, the Commission finds the petition satisfies the six month filing deadline established in Article 46.1.b of the American Convention.

### 3. Duplication of proceedings

57. The petitioners have expressed and the record suggests that the subject of this petitions is neither pending in another international proceeding for settlement (Article 46.1.c. of the American Convention) nor substantially the same as one previously studied by the Commission or by another international organization (Article 47.d. of the Convention). Consequently, the petition satisfies both requirements in the referenced instrument.

### 4. Characterization of alleged facts

58. For the purposes of admissibility, the Commission needs to decide if the petition presents facts that could characterize a violation, as is required by Article 47.b. of the American Convention. Likewise, the IACHR must determine if the petition is "manifestly groundless" or is "obviously out of order," according to subsection (c) of the same article. The standard for assessing admissibility differs from the one used to decide the merits of a petition. For admissibility purposes, the Inter-American Commission need only make a prima facie analysis whether the petitioners establish the apparent or potential violation of a right guaranteed under the American Convention and not to establish the existence of a violation. Such an examination is a summary analysis that does not imply any prejudgment or preliminary opinion on the merits. The Inter-American Commission's own Rules, establishing one phase for admissibility and another for the merits, reflects this distinction between the evaluation conducted by the Inter-American Commission for the purpose of declaring a petition admissible and the one required to establish whether there has been violations impugnable to the State.[FN8]

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[FN8] See IACHR, Report N° 31/03, Case 12.195, Mario Alberto Jara Oñate et al., Chile, March 7, 2003, paragraph 41; Report N° 4/04, Petition 12.324, Rubén Luis Godoy, Argentina, February 24, 2004, paragraph 43; Petition 429-05, Juan Patricio Marileo Saravia et al., Chile, April 23, 2007, paragraph 54; Petition 581-05, Víctor Manuel Ancalaf LLaupe, Chile, May 2, 2007, paragraph 46.

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59. In the present case the IACHR considers that the alleged facts, if proven, could characterize possible violations of the rights guaranteed under Articles 1.1, 4.1, 5.1 and 8.1 of the American Convention. Likewise, the Commission observes that the alleged lack of access to justice could as well characterize a violation of Article 24 of the American Convention.

60. Additionally, in application of the principle *iura novit curia*, the Commission will analyze, in the merits stage, if there is a possible violation of Article 25 of the American Declaration.

61. The IACHR considers the information presented does not offer sufficient characterization of a violation of the rights protected under Article 22 of the American Convention.

## V. CONCLUSIONS

62. Based on the foregoing considerations of fact and law, the Commission believes that the petition is admissible under the rules of admissibility established in Articles 44 through 47 of the American Convention.

63. In consideration of the comments and conclusions set out in this report,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES TO:

1. Declare admissible the present petition with respect to alleged violations of the rights recognized in Articles 1.1, 4.1, 5.1, 8.1 and 24 of the American Convention. In addition, by application of the principle *iura novit curia*, the Commission will analyze in the merits stage the possible application of Article 25 of the Convention.
2. Declare inadmissible the present petition with respect to alleged violations of the rights recognized in Article 22 of the American Convention.
3. To notify this decision to the petitioner and to the State.
4. To publish this decision and to 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 7th day of the month of August, 2009.  
(Signed): Luz Patrica Mejía Guerrero, President; Víctor E. Abramovich, First Vice-President; Felipe González, Second Vice-President; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Paolo G. Carozza, members of the Commission.