

REPORT No. 11/09
PETITION 208-01
ADMISSIBILITY
MARÍA NINA LUPE DEL ROSARIO ANDRADE SALMÓN
BOLIVIA
March 19, 2009

I. SUMMARY

1. On April 2, 2001, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission", or "the IACHR") received a petition lodged by Coty Krsul Andrade¹ (hereinafter "the petitioners") on behalf of Mrs. Maria Nina Lupe del Rosario Andrade Salmón (hereinafter "the alleged victim" or "Mrs. Andrade"). The petition alleges that the Republic of Bolivia (hereinafter "Bolivia", "the State" or "the Bolivian State") violated the alleged victim's rights under articles 5 (right to humane treatment), 8 (right to a fair trial), 21 (right to private property), 22 (right to freedom of movement and residence) and 25 (right to judicial protection), all in relation to articles 1(1) (obligation to respect and ensure rights) and 2 (domestic legal effects) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention").

2. The petitioners argue that Mrs. Andrade was unlawfully detained for a period of six months and seven days, during the six criminal cases being prosecuted against her. As for the cases in question, the petitioners allege that there was no evidence of Mrs. Andrade's involvement in the crimes charged. They further contend that there has been an unreasonable delay in rendering judgments in the cases against her and that her unwarranted prosecution is the result of biased decisions on the part of the justice system, where prosecutors and examining judges have waged a campaign to smear her political ambitions.

3. The State, for its part, asks the Commission to declare the petition inadmissible. It asserted an objection claiming a failure to exhaust the remedies under domestic law, pursuant to Article 46(1)(a) of the American Convention, arguing that the domestic courts have still not delivered verdicts in the criminal cases and that the petitioner has brought constitutional, criminal, civil and administrative actions to protect her rights. It makes the point that Mrs. Andrade used the remedy of *habeas corpus* to secure her own release. It also argues that the delay in the criminal proceedings is attributable to the complexity of the case and to the defense put on by the alleged victim.

4. After examining the positions of the parties, the Commission concludes that it has competence to take up the petition and that the case is admissible under articles 46 and 47 of the American Convention. The Commission therefore decides to notify the parties, make public this Admissibility Report and include it in its Annual Report.

II. PROCESSING WITH THE COMMISSION

5. The Commission received the original petition on April 2, 2001, and registered it as number P 208-01. Additional information on the petition was received on May 15, 2001 and November 25, 2002. On June 24, 2002, a brief was received in which Mrs. Andrade granted power of attorney to Mr. John Slater and Mr. John Lee to represent her vis-à-vis the Commission.

¹ On June 24, 2002, a document signed by Mrs. Andrade was received in which she grants power of attorney to Mr. John Slattery and Mr. John Lee and the Center for International Human Rights of Northwestern University School of Law, to serve as her representatives in the proceedings with the Commission.

Documents were also received signed by Mr. Edwin G. Corr and Mr. Juan Carlos de la Vía, as coadjutors.²

6. On April 4, 2003, pursuant to Article 30 of its Rules of Procedure, the Commission forwarded the petition to the Bolivian State and gave it two months in which to submit its response. The State presented its response on June 19, 2003, reporting on the cases prosecuted against Mrs. Andrade. The State's response was forwarded to the petitioners who, on July 31, 2003, supplied additional information.

7. On December 1, 2003, the petitioners asked that pursuant to Article 41 of the American Convention, the Commission set a new day and time for a working meeting to explore the possibility of a friendly settlement. That communication was forwarded to the State on December 22, 2003. The petitioners sent more information on January 20 and 30, 2004, which was forwarded to the State. In the second of these communications, they requested a hearing. On February 10, 2004 the IACHR advised the petitioners that it was unable to accede to their request. On February 19, 2004, the State expressed its interest in instituting a friendly settlement proceeding. On June 16, 2004, the State sent additional observations, which were forwarded to the petitioners on June 18, 2004. On September 24, 2004, the petitioners supplied additional information, which was forwarded to the State on September 29, 2004 and October 6, 2004.

8. On January 26, 2005, the Commission received a communication from the petitioners enclosing a "Conciliatory Agreement" with the State of Bolivia. On April 7, 2005, the petitioners told the Commission that they wanted to continue to pursue action on the petition inasmuch as Bolivia had failed to abide by the "Conciliatory Agreement." That same day, the Commission requested the State to present its observations within one month's time. On May 13 and August 3, 2005, the petitioners again made the point that the State had failed to honor the "Conciliatory Agreement." On June 1, 2005, the IACHR asked the State to supply the pertinent information. On August 10 and October 25, 2005, the State reported that it had fully complied with the "Conciliatory Agreement." That information was forwarded to the petitioners.

9. On October 26, 2005, during the Commission's 123rd session, Bolivia and the petitioners signed a Commitment intended to spur compliance with the "Conciliatory Agreement". A decision was also taken to hold another meeting, which took place at Commission headquarters on November 28 of that year. There, the petitioners asked the Commission to continue with the processing of the petition, with the understanding that should either party so request, the Commission could again place itself at the disposal of the parties with a view to reaching a friendly settlement.

10. On May 1 and September 12, 2006, the petitioners filed additional information and requested a hearing. On June 28, July 25 and September 14, 2006, the State presented additional observations.

11. The petitioners and the State held a working meeting in La Paz on November 16, 2006, during a visit by a Commission delegation to Bolivia. On December 18, 2006, the petitioners forwarded a proposed friendly settlement that was sent to the State on December 26 of that year. On April 13, 2007, the State asked the Commission to send it a copy of a document that references a payment that the Bolivian State made to Mrs. Andrade. On June 19, 2007, the Commission informed the State of the only document in the case file that fit that description. On November 13, 2007, the petitioners withdrew from the friendly settlement proceeding and asked the Commission

² Later, on December 12 and 17, 2003 and September 30, 2004, Messrs. Daniel Strasser, Jeffrey Carmel and Robert Gelbard, respectively, presented briefs as coadjutors.

to draw up its final report on the case. On November 27, 2007, the Commission told the parties that its role in the friendly settlement proceeding was at an end and that it would continue to process the petition.

12. On June 17, 2008, the State sent the Commission another report on the case, which was forwarded to the petitioners on June 25, 2008. On December 4, 2008, the Commission requested that the petitioners advise it of the status of the criminal cases.

III. THE PARTIES' POSITIONS

A. The petitioners

13. The petitioners observe that Mrs. Andrade served as Chair of the La Paz City Council from January 1998 to June 1999 and was elected mayor of the city on June 7, 1999. She held that post until February 6, 2000. The petitioners note that during her term as mayor, Mrs. Andrade publicly complained of corruption cases and that when she left office, she was implicated in six criminal cases, among them the cases she had denounced.

14. In general terms, the petitioners allege that a number of violations of due process have occurred in the prosecution of those cases, specifically the right to be prosecuted within a reasonable period, the presumption of innocence, the right of defense and the right to be tried by an independent and impartial court. As for the principle of presumption of innocence, the petitioners point out that charges made by the prosecutors and the examining judges were baseless, as no proof or evidence was offered to show Mrs. Andrade's involvement in criminal acts. They also argue that the alleged victim is still laboring under bail and the order not to leave the court's jurisdiction, which were the alternatives to incarceration ordered by the court and which have exacted a toll on her assets and her freedom of movement. What follows is a summary of the main arguments in each of the criminal cases.

1. The Gader Case

15. According to the petitioners, this case involves a contract that former Mayor Germán Monroy awarded to the Gader company to provide software to prepare an integrated tax collection system in the city of La Paz. The petitioners contend that the contract was not submitted to the City Council for approval before it was signed. When Mrs. Andrade became mayor of La Paz, she sent the contract to the City Council to correct the omission. They add that the foregoing notwithstanding, the District Attorney ordered that criminal proceedings be instituted against Mr. Andrade and the criminal case was brought on June 21, 2000.

16. The petitioners provide further details: on August 3, 2000, the order for the alleged victim's preventive detention was issued, ignoring the requirements under Bolivian law, which are that there must be evidence suggesting guilt, risk of flight and obstruction of the investigation. They contend that as a result of this decision, Mrs. Andrade was taken to the La Paz Women's Prison, where she was placed in the prison's general population until February 10, 2001, the date on which she was released upon issuance of a writ of *habeas corpus*. The petitioners indicate that this decision ordered alternatives to incarceration, namely bail, an order confining her to the court's jurisdiction, bond and supervised release.

17. The petitioners observe that the case is ongoing and thus far no indictment has been handed down. The attachments that the petitioners provide show that between January 26, 2004 and March 2006, the case was docketed in 19 different courts, in some cases as a consequence of

recusals, disqualifications and internal remittances between the judges who deemed that they did not have jurisdiction.³ The petitioners argue that the authorities are to blame for an unreasonable delay that has violated the rights of the alleged victim, who is still coping with the alternative court-ordered measures.

18. Finally, the petitioners observe that on August 20 and September 16, 2004, they filed a motion to have the criminal case time-barred because it had exceeded the maximum period that a case of that nature is allowed to continue under the Code of Criminal Procedure.⁴ They add that the Fourth Criminal Examining Court of El Alto denied the motion on August 13, 2005 on the grounds that the alleged victim had caused the delay by her “excessive precaution.”

2. The Guaglio Case (Ham v. Monroy)

19. The petitioners report that this case concerns the siphoning of money from the General Pension Fund into private accounts. They note that on December 14, 1999, while Mrs. Andrade was Mayor of La Paz, she was told that checks for amounts in excess of a half million dollars were being deposited into those private accounts. She therefore reported the fraud to the Judiciary Police (Policía Técnica Judicial – PTJ), to the Office of the Superintendent of Banking, to the Special Financial Investigation Unit (hereinafter the “UIF”) and to the Office of the Internal Auditor. The petitioners state that following the preliminary investigation, the reports were referred to the Judicial Branch. However, neither the complaint, the original writ instituting preliminary proceedings nor the UIF report mentioned Mrs. Andrade.

20. The petitioners observe that the foregoing notwithstanding and as a consequence of heavy political pressure and the bias of the Third Criminal Examining Judge –who started the preliminary criminal proceedings in the Gader case- the case was inexplicably moved to the Superior

³ See in this regard: Note No. 20/04 of January 26, 2004, issued by the Sixth District Criminal Court; Recusal dated January 27, 2004, and the explanation dated February 3, 2004, from the Eighth District Receiving Court for Preliminary Criminal Proceedings; order authorizing the recusal, dated February 17, 2004, and the memorandum remitting the case files, dated February 18, 2004, from the First Criminal Examining Judge; Memorandum No. 56/2004, dated March 9, 2004, from the Second Receiving Court for Preliminary Criminal Proceedings; Recusal dated March 11, 2004, and remittance memoranda dated March 18 and April 14, 2004, from the Fourth Receiving Court for Preliminary Criminal Proceedings; order authorizing the recusal, dated April 23, 2004, and remittance memorandum dated April 27, 2004, from the Fifth Criminal Examining Judge; recusal dated April 28, 2004, and remittance memorandum dated April 29, 2004, from the Seventh Receiving Court for Preliminary Criminal Proceedings; recusal dated April 30, 2004, and remittance memorandum dated May 10, 2004, from the Ninth Criminal Examining Court; declaration of May 23, 2004, and remittance memorandum of June 15, 2004, from the President of the Second Criminal Chamber of the Superior Court; Report from the Clerk of the Eighth La Paz District Receiving Court for Preliminary Criminal Proceedings, dated June 18, 2004; declaration dated December 6, 2004, confirming the declaration of February 3, 2004 and remittance memorandum dated December 15, 2004; request dated December 2, 2005, from the Prosecutor with subject matter jurisdiction from the La Paz District Attorney’s Office; remittance memorandum of December 6, 2005, from the Ninth Criminal Examining Court; declaration of January 11, 2006, and remittance memorandum dated January 30, 2006, from the La Paz Criminal Examining Magistrate; declaration of January 31, 2006, from the Fifth Criminal Examining Magistrate of El Alto; remittance memorandum of March 16, 2006, from the Fourth Criminal Examining Court of El Alto.

⁴ According to the petitioners, the Third Transitory Provision under the previous Code of Criminal Procedure provided that “cases that must be prosecuted in accordance with the previous procedural system must conclude within no more than five years, counted from the date of publication of this Code (i.e., from May 31, 1999). Judges shall determine, either *ex officio* or at the request of one of the parties, whether this time period has passed and, where appropriate, shall declare the criminal action time-barred and close the case.” The petitioners point out that a new law was enacted on May 12, 2004, which modified this provision and, with respect to the duration of a case, provided that “Cases being conducted under the previous system shall continue to be prosecuted to completion.” They also report that on September 14, 2004, the Constitutional Court declared unconstitutional Law 2683, which extended indefinitely the time period for completion of criminal cases. Thus, a case would be time barred if the delay in rendering justice is due to negligence on the part of the courts or where there has been an unjustified omission.

Court, to institute a special "Court Case"⁵ against Mrs. Andrade. They add that on June 20, 2000, the Constitutional Court declared "Court Cases" unconstitutional, which is why all the proceedings thus far conducted in the "Court Case" were declared null and void and the case was docketed again with the regular court system. Mrs. Andrade had not been named in that case. The petitioners therefore asked that she be excluded from the case. What happened was just the opposite: the Eighth Criminal Examining Judge added Mrs. Andrade's name to the indictment and required alternative measures of her.

21. The petitioners state that on January 28, 2004, the alleged victim was acquitted of the crime of "dereliction of duties" but convicted of the crime of "mismanagement of funds." The available information indicates that Mrs. Andrade filed a parallel appeal to challenge the conviction and a motion to have the criminal case time-barred on the grounds of an unwarranted judicial delay. The September 9, 2005 decision on this last request, delivered by the Second Criminal Chamber of the La Paz District Superior Court, did not go in Mrs. Andrade's favor. The court argued that the delay was caused by the remedies filed by the defendant. The decision on the appeal, delivered by the Second Criminal Chamber of the District Superior Court on September 11, 2006, acquitted Mrs. Andrade of the crime of "mismanagement of funds."

3. The Street Lamps Case

22. According to the petitioners' account, this case involved the purchase of street lamps for the city of La Paz. The purchase was made by former Mayor Germán Monroy. He paid for the purchase with an unauthorized advance of one million dollars made to the firm's representative. The petitioners state that Mrs. Andrade was at the time the Chair of the La Paz City Council and that on July 5 and September 24, 1999, she had requested, respectively, an internal audit and a court order voiding the contract. They further contend that although there was no evidence against her,⁶ on October 3, 2000 the Ninth Criminal Examining Judge ordered that preliminary proceedings against Mrs. Andrade be instituted for "abuse of influence", "decisions contrary to the Constitution and the law" and "dereliction of duty."

23. According to the petitioners, on October 17, 2000, the alleged victim's preventive detention was ordered; they further allege that at the respective hearing, she was denied assistance of her defense counsels, whom the presiding judge threatened to expel from the courtroom. The petitioner report that on October 25, 2000, Mrs. Andrade filed a petition of *habeas corpus* which the First Civil Chamber of the La Paz District Superior Court dismissed as out of order. They add, however, that by a resolution dated November 10, 2000, the Second Criminal Chamber of the District Superior Court revoked the order of preventive detention and ordered alternative measures instead. According to information supplied by the petitioners, the final verdict in this case has not been delivered. The petitioners argue that throughout the proceeding the alleged victim was denied the opportunity to exercise her right of defense. By way of example they cite the fact that the final writ instituting preliminary proceedings, dated December 11, 2002, included a criminal offense that was not mentioned in the original order instituting preliminary proceedings.

⁵ They explain that the Court Case ["Caso de Corte"] was a special legal proceeding reserved for high ranking public officials. It was a commonly known fact that this proceeding never ended in a verdict of conviction. Consequently, it was routinely used to protect "political dealings." According to the law, the special jurisdiction would take precedence over the ordinary system of justice; thus, in an attempt to avoid conviction, the defendants intentionally fingered Mrs. Andrade who, because of her office, would have to be prosecuted in this special proceeding.

⁶ The petitioners state that none of the defendants accused Mrs. Andrade; they also note that the investigations conducted by the District Attorney, the PTJ and the audit by the Comptroller General of the Republic uncovered no suggestion of wrongdoing on the alleged victim's part.

24. The petitioners observe further that on August 23, 2004 and January 21, 2005, the alleged victim filed a motion to have the criminal case time-barred. The Second District Receiving Court for Preliminary Criminal Proceedings denied her motion on November 30, 2005, arguing that the complexity of the case and the multiple petitions the co-defendants had filed seeking release delayed the proceedings in the case.

4. The Mendieta Case (Villa Ayacucho)

25. The petitioners state that this case was brought against certain La Paz officials who, in the course of enforcing a constitutional writ ordering the deeding of wooded areas as a means to compensate for expropriation, handed over other lands of equal value. The petitioners emphasize that at the time of these events, Mrs. Andrade was neither a government official nor a member of the city council, and hence was not involved in any of the events at the heart of this case.

26. The petitioners state that on January 25, 2000, the Third Criminal Examining Court, which had included Mrs. Andrade in the Gader case, nonetheless included her name among the defendants in the order instituting preliminary proceedings. The crimes charged were "contempt of court" and "decisions that contravene the Constitution and the law." The petitioners note that although that court ordered that she be taken into custody, she was granted provisional release and alternative measures were ordered. The information supplied by the petitioners indicates that a settlement of this case is currently being worked out between the Municipality of La Paz and the civil party to the case, and that the hearing that would close this case has still not been held.

5. The Mallasa Case

27. According to the petitioners, this case concerns the allegedly unlawful sale of land in the Mallasa National Park by a former Mayor of La Paz and other officials. The petitioners contend that on January 26, 2001, the Municipal Mayor of the City of La Paz filed a complaint against Mrs. Andrade claiming that she had failed to take legal action and was therefore derelict in her duty. The petitioners report that, as alternatives to incarceration, the judge hearing the case ordered that Mrs. Andrade put up bond, that she submit to a supervised release arrangement requiring weekly check-ins, and that she be confined to the jurisdiction of the court.

28. According to the petitioners, on September 8, 2003, the Fifth Receiving Court for Preliminary Criminal Proceedings issued the final investigating court writ and ordered provisional dismissal of the case against Mrs. Andrade on the grounds that there was no cause to suspect that the alleged victim had committed the crimes with which she was accused (no probable cause). They point out that the plaintiff appealed this decision. However, because the appeal has not yet been heard, the case is still open. The petitioners go on to say that on September 16, 2004, they filed a motion to have the case against Mrs. Andrade declared time-barred. The judge denied their motion on April 19, 2005, on the grounds that the delay in the proceedings was caused by the defendants' conduct. The petitioners argue that the failure to meet the legally established deadlines is the fault of the judicial system, which has suspended 36 hearings. None of those suspensions, they contend, is the fault of Mrs. Andrade.⁷

⁷ The petitioners observe that according to the report submitted by the Office of the Clerk of the Second District Criminal Court, hearings have been suspended in 8 cases because of the absence of the prosecutor; 4 because of the absence of the judge; 4 because of recusals and disqualifications; 15 because of mistakes in notification or procedures, and 5 because of the absence of the civil party.

6. The Esin Case

29. The petitioners state that this case concerns a contract that former Mayor Gaby Candia signed and former Mayor German Monroy extended. They explain that given the litigation pending with the Comprehensive Urban Sanitation Services Company, the City Council ordered the then mayor to terminate the contract; the contract was nonetheless extended in violation of the legal provisions then in force. The petitioners underscore the fact that Mrs. Andrade had no hand in either the contract or its extension.

30. The petitioners report that the case was assigned to the First Criminal Investigating Court which, by a decision dated May 10, 2002, charged the alleged victim with the crimes of "dereliction of duty" and "contracts contrary to the interests of the State." According to the information provided by the petitioners, the preliminaries in this case have been underway for four years.

31. As for the admissibility requirements, the petitioners are asking the Commission to apply the exceptions established in subparagraphs a) and c) of Article 46(2) of the American Convention. They argue that the absence of due process is self evident, as is the unwarranted delay in the judicial proceedings. Their contention is that Bolivian law establishes final deadlines for concluding criminal cases; in Mrs. Andrade's case, those deadlines were systematically violated, even though all the conditions specified by law had been satisfied. They argue that the political interests of certain judges had biased the preliminary proceedings, resulting in unjustified arrest warrants and alternatives to incarceration that were impossible to comply with.

32. Finally, the petitioners observe that on August 20, 2003, at the request of the Vice Minister of Justice, an investigation was launched into Messrs. Constancio Alarcón (Seventh Criminal Examining Judge), Rolando Sarmiento (Ninth Criminal Examining Judge), William Dávila and Alberto Costa Obregón (Third Criminal Examining Judge). The petitioners state that on November 27, 2003, the Public Prosecutor's Office brought formal charges against the respective judges for the crimes of deprivation of freedom, rulings that were in violation of the Constitution and the law, and contempt of decisions delivered in *habeas corpus* proceedings. They add that on June 7, 2004, the Public Prosecutor's Office asked that oral proceedings be instituted in the La Paz District Trial Court. Judging from the information available, the trial is still underway.

B. The State

33. The State recounts the reasons why the six criminal cases were brought against Mrs. Andrade.

34. As for the Gader case, the State asserts that as La Paz' Mayor, Mrs. Andrade made a number of payments disregarding the City Council's instructions ordering that the contract and payments under the contract be suspended. As for the Guaglio case (Ham v. Monroy), the State asserts that, in her capacity as Mayor of La Paz, the alleged victim made payments to private accounts to the detriment of the public coffers and despite the fact that the egregious errors in processing the vague paperwork were obvious.

35. In the Street Lamps case, the State asserts that according to the report of the Committee of Public Participation and Decentralization, serious evidence was uncovered pointing to the criminal culpability of Mrs. Andrade in the purchase of some street lamps for the city of La Paz. On the subject of the Mendieta case (Villa Ayacucho) the State asserts that the alleged victim, while serving as Chair of the City Council, issued Municipal Ordinance No. 151/98 in which she failed to observe the mandates established in Supreme Order No. 231 of October 21, 1997. It adds

that she was charged with the crime of contempt of decisions in proceedings of *habeas corpus* and constitutional *amparo* and of adopting decisions that were contrary to the Constitution and the law.

36. With reference to the Mallasa case, the State asserts that as Chair of the La Paz City Council, Mrs. Andrade, although aware of the criminal business involving the Mallasa national park, never ordered the respective inspection and never took the appropriate measures against those responsible. As for the Esin case, the State asserts that the alleged victim failed to conduct responsible oversight of the municipal executive. As a result, the State contends, both in the various audit reports and the reports of the comptroller, significant irregularities were found with respect to the signature on and extension of certain contracts.

37. As for the arguments of law, the State alleges that the six criminal cases instituted against the alleged victim were supported by serious evidence of criminal responsibility and that in each case, the right to presumption of innocence was respected. The State acknowledges the delay in processing the criminal cases, but argues that the delay was attributable to Mrs. Andrade and to the manner in which she has exercised her right of self-defense and her right to be represented by counsel. The State makes specific reference to the series of petitions of *habeas corpus* that the alleged victim filed to obtain her release.

38. The State underscores its contention that the right to access the courts was guaranteed to the alleged victim through various procedural mechanisms that recognize the principles established in the Convention. It argues that the petitions filed by Mrs. Andrade in exercise of this right were settled as promptly as possible, and while observing the rights of the accused.

39. The State argues that the Constitutional Court decided promptly, effectively, and impartially the petitions of *habeas corpus* that Mrs. Andrade filed and ruled in her favor. It states further that as a consequence of the efforts made and the complaint filed by the Vice Minister of Justice with the Attorney General of the Nation, an inquiry was instituted with the domestic courts against Judges Constancio Alcon Paco, Rolando Sarmiento and former Judge Alberto Costa Obregón. It reports that the Prosecutor assigned to the case has opened case 3870/03 against the afore-named judges who are charged with the crimes of unlawful incarceration, decisions contrary to the Constitution and the law, dereliction of duty and contempt of the rulings handed down in the *habeas corpus* and constitutional *amparo* proceedings. The accused were formally indicted on November 27, 2003.

40. As for the alleged violation of the right to property, the State claims that Mrs. Andrade remains in possession of her assets, with only the most minimal restriction on her right to dispose of them freely. That restriction would be immediately lifted in the event that she was acquitted. As to the alleged violation of the right to freedom of movement, the State asserts that the precautionary measure ordering her not to travel beyond the court's jurisdiction is allowed by law and was applied by the competent judicial authority as required by law.

41. As for the admissibility requirements, the State argues that the petitioners did not exhaust the remedies under domestic law. It is therefore asking the Commission to declare the petition inadmissible. First, the State indicates that Bolivian law provides for a remedy of constitutional *amparo*. Its contention is that although this remedy is both adequate and effective, it was not invoked in any of the criminal cases prosecuted in the national courts. Second, the State observes that Mrs. Andrade did not file a petition of complaint with the Ombudsman, whose authorities include that of investigating acts or omissions that imply violations of the human rights recognized in the Constitution of Bolivia. The State's third argument is that the petitioner did not avail herself of yet another remedy, which is the complaint with the Council of the Judiciary. This remedy can be used to get civil and criminal penalties imposed on officials whose obstruction or

omission constitutes violations of proper and timely administration of justice. Finally, the State observes that the petitioner could have filed a criminal complaint with the Public Prosecutor's Office if she was so convinced that public order crimes were committed in the administration of justice in the cases prosecuted against her.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

42. Under Article 44 of the American Convention, the petitioners are authorized to file a petition with the Commission. The alleged victim was under the jurisdiction of the Bolivian State at the time the facts alleged were said to have occurred. The State, for its part, is party to the American Convention, having deposited its instrument of ratification, in due and proper form, on July 19, 1979. The Commission therefore has competence *ratione personae* to examine the complaint lodged. It also has competence *ratione materiae* because the petitioners are alleging violation of rights protected by the American Convention.

43. The Commission has competence *ratione temporis* to examine the petition inasmuch as the obligation to respect and ensure the rights protected under the American Convention was already binding upon the Bolivian State at the time the events alleged in the petition occurred. Furthermore, the Commission has competence *ratione loci* because the petition alleges violations of Convention-protected rights said to have occurred in the territory of a state party.

B. Exhaustion of the remedies under domestic law

44. Article 46(1)(a) of the American Convention provides that in order for a case to be admitted in accordance to Article 44 of the Convention, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to afford national authorities the opportunity to address the alleged violation of a protected right and, where appropriate, resolve it before the matter is brought to the attention of an international body.

45. The requirement of prior exhaustion established in Article 46 of the Convention applies when the domestic remedies available in practice within the national system are adequate and effective in providing a remedy for the alleged violation. In this sense, Article 46(2) specifies that the requirement is not applicable when the domestic legislation does not afford due process for the protection of the right in question; or if the alleged victim did not have access to domestic remedies; or if there was unwarranted delay in rendering a final judgment under those remedies. As indicated by Article 31 of the Commission's Rules of Procedure, when a petitioner alleges one of these exceptions, it then falls to the State to demonstrate that domestic remedies have not been exhausted, unless that is clearly evident from the record.

46. The State duly filed the objection claiming a failure to exhaust the remedies under domestic law, alleging that the petitioners did not file i) a petition of *amparo* in the criminal proceedings; ii) a complaint with the Ombudsman's Office; and iii) a criminal or disciplinary action against the judges who heard the alleged victim's cases. The petitioners, for their part, argued that the exceptions allowed under subparagraphs a) and c) of Article 46(2) of the Convention apply, since the State has incurred an unwarranted delay in rendering a final judgment in the criminal cases which, in their view, are blatantly contrary to due process. To assess the parties' arguments and determine whether the requirement of exhaustion of local remedies has been satisfied, the Commission must first determine which remedy is adequate for correcting the situation put to the Commission.

47. The petitioners' allegations can be summarized as follows: the alleged violations of the right to personal liberty, the right to a fair trial, the right to private property and the right to freedom of movement and residence, all in the criminal proceedings conducted against the alleged victim. As these were criminal cases alleged to be in violation of rights recognized in the American Convention, the Commission must analyze whether the remedies under domestic law have been pursued and exhausted with respect to the criminal cases themselves.⁸ What the Commission must examine is whether the proceeding has concluded and whether the respective ordinary remedies have been pursued; or in the alternative, if the case has not concluded, whether the exceptions allowed under Article 46(2) of the Convention apply.

48. From the information available, the Commission observes that the criminal cases referred to as Gader, Street Lamps, Mendieta (Villa Ayacucho), Mallasa and Esin are still being prosecuted, and were opened on June 21, 2000, June 20, 2000, January 25, 2000, January 26, 2001, and May 10, 2002, respectively. This information indicates that the oldest case has lasted 9 years and the most recent almost 7 years. The alleged victim has exercised her defense and has filed a number of remedies to protect her interests in the proceedings, including remedies of *habeas corpus* and motions to have the criminal action time-barred. The rules on burden of proof are that once the petitioners have alleged the existence of one of the objections provided for in Article 46(2) of the Convention, such as the unwarranted delay, it is up to the State to explain the reasons why the exception does not apply.

49. In the instant case, the Bolivian State argued that the use of the remedies to regain her freedom and to have the criminal case time-barred is what has caused the delay in prosecuting the cases. The Commission's position is that invoking the remedies provided under domestic law to protect those interests –*habeas corpus*, for example- is the proper course of action and does not relieve the authorities of their duty to conduct the proceedings with all due speed. Furthermore the information available shows that there have been protracted periods of procedural inactivity and that at least 20 courts have taken cognizance of the cases, in most cases because of disqualifications and internal rotations unrelated to Mrs. Andrade's conduct.

50. While it is true that the cases are still ongoing and the alleged victim could file ordinary remedies if convicted, in cases such as this, which may, *prima facie*, constitute unwarranted delay, the Commission deems that the persons being prosecuted cannot be required to wait until the final judgment is delivered before challenging alleged procedural irregularities. In the instant case, the Commission observes, moreover, that during the criminal cases, the alleged victim attempted other avenues to protect the rights that she alleges were violated, such as the petitions of *habeas corpus* and the motions to have the criminal action time barred.⁹

51. Given the 7 and 9 years that have passed since the proceedings were instituted, the fact that the cases do not appear to be particularly complex, the weak arguments the State used to explain the delay, and certain indicia pointing to periods of inactivity caused by suspended hearings and internal rotations of judges, the Commission, based on the exception recognized in Article 46(2)(c), deems Mrs. Andrade to be exempt from having to wait until the domestic criminal proceedings have concluded before turning to this international body.

⁸ See also: IACHR, Petition 1419-04. Hanny Fahmy, Costa Rica. Report No. 25/07, March 9, 2007. Para. 50.

⁹ In addition to the petitions of *habeas corpus* that ultimately resulted in the alleged victim's release, the petitioners filed repeated motions to have the criminal case time-barred. The decisions on those motions, issued on April 19, August 13 and November 30, 2005, were never in the alleged victim's favor and were decided on the grounds that the delay was the fault of the accused because of the remedies they had invoked.

52. Finally, as for the Guaglio case (Ham v. Monroy), the petitioners' account indicates that Mrs. Andrade was definitively acquitted by a decision delivered on September 11, 2006. From the information available, it appears that this verdict was not appealed, thus ending the case against the alleged victim. The domestic remedies were exhausted in compliance with the requirement established in Article 46(1)(a) of the American Convention.

C. Time period for lodging the petition

53. Under Article 46(1)(b) of the American Convention, a petition must be lodged within six months from the date on which the party alleging violation of his rights was notified of the final judgment of the domestic courts. However, this rule does not apply when one of the exceptions that Article 46(2) of the Convention applies. In such cases, the Commission will consider whether the petition was lodged within a reasonable period of time, in accordance with Article 32 of its Rules of Procedure.

54. As indicated at *supra* para. 51, the Commission concludes that in the present case, the unwarranted delay in rendering a final judgment, established as an exception in Article 46(2)(c) of the Convention, applies. Considering that the violations alleged would be continuing in the case of five of the criminal cases brought against the alleged victim, and the fact that during those cases Mrs. Andrade has actively pursued the legal mechanisms available to her to protect her rights, the Commission deems that the petition was lodged within a reasonable period of time.

55. As for the Guaglio case (Ham v. Monroy), the Commission observes that the domestic remedies were exhausted on September 11, 2006, subsequent to the date on which the petition was lodged. Compliance with the rule requiring that the petition be lodged within the proper time frame is intrinsically linked to exhaustion of local remedies.

D. Duplication of proceedings and international *res judicata*

56. Article 46(1)(c) establishes that in order for a petition to be admitted its subject shall "not [be] pending in another international proceeding for settlement;" Article 47(d) of the Convention provides that the Commission shall not admit a petition that "is substantially the same as one previously studied by the Commission or by another international organization." In the instant case, the parties have not raised the existence of either of these two grounds for inadmissibility, and they cannot be deduced from the proceedings.

E. Characterization of the facts alleged

57. For admissibility purposes, the Commission must determine whether the petition states facts that could tend to characterize a violation of the Convention, as stipulated in Article 47(b) thereof, whether the petition is "manifestly groundless" or "obviously out of order," as required under paragraph (c) of that article. The standard for evaluating these requirements is different from the standard for deciding the merits of a petition. The IACHR must conduct a *prima facie* evaluation to determine whether the petition establishes grounds for the apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation. Such an evaluation is a summary analysis and does not imply prejudgment or advance an opinion on the merits.

58. The Commission considers that the facts recounted by the petitioners in connection with the alleged victim's detention, the length of the proceedings and the alleged procedural irregularities could characterize violations of the rights recognized in Articles 7, 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 thereof. Moreover, the Commission deems that the restriction that prevented her from leaving the country and the limitation on her exercise of

her right to private property –both of which were the result of proceedings alleged to be excessively protracted- could tend to characterize violations of the rights recognized in Articles 21 and 22 of the Convention.

V. CONCLUSIONS

59. Based on these considerations of fact and of law, and without prejudging the merits of the question, the Inter-American Commission concludes that the present case meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention and, therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the petition under study admissible with respect to the rights recognized in Articles 7, 8, 21, 22 and 25 of the American Convention, in relation to the obligations undertaken in Articles 1(1) and 2 thereof.
2. To notify the State and the petitioners of this decision.
3. To proceed to the merits of the case.
4. To publish this decision and include it in the Annual Report to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on March 19, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo Carozza, members of the Commission.