



**REPORT Nº 16/04**  
 PETITION 129/02  
 ADMISSIBILITY  
 TRACY LEE HOUSEL  
 UNITED STATES OF AMERICA  
 February 27, 2004

## **I. SUMMARY**

1. On February 25, 2002, the Inter-American Commission on Human Rights (hereinafter the "Commission") received a petition from Adrian Fulford and Hugh Southey, Barristers with Toops Court, London, Yasmin Waljee, Solicitor with Lovells, London, and Robert McGlasson and Elizabeth Wells with the Federal Defender Program, Atlanta, Georgia (hereinafter "the Petitioners") against the Government of the United States of America (hereinafter the "State" or "United States"). The petition was presented on behalf of Mr. Tracy Lee Housel, a citizen of the United States and the United Kingdom who is alleged to have been tried and convicted of the crime of malice murder and motor car theft in the state of Georgia and sentenced to death on February 7, 1986. At the time the petition was lodged, Mr. Housel was incarcerated on death row at the Georgia Diagnostic and Classification Prison. Mr. Housel was subsequently executed on March 12, 2002, despite precautionary measures adopted by the Commission on February 27, 2002 requesting that the State take the necessary measures to preserve Mr. Housel's life pending the Commission's investigation of the allegations in his petition.

2. The petition alleges that the State is responsible for violations of Mr. Housel's rights under Articles I, XI, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration" or the "Declaration") based upon deficiencies in the criminal proceedings against him. In particular, the Petitioners alleges violations of Articles XI, XXV, and XXVI of the Declaration relating to Mr. Housel's treatment during his pre-trial detention, Article XVIII relating to quality of Mr. Housel's legal representation, Articles XVIII and XXVI relating to use of unadjudicated offences during the sentencing phase of Mr. Housel's trial, and Articles I, XVIII and XXVI relating to the length of time for which Mr. Housel was incarcerated on death row.

3. The State claims that Mr. Housel's petition is inadmissible on the basis that the claims raised by the Petitioners are without merit, that Mr. Housel has failed to exhaust his domestic remedies regarding the claim concerning his length of time on death row, and the petition fails to state facts which constitute a violation of principles under the American Declaration.

4. As set forth in this Report, having examined the contentions of the parties on the question of admissibility, and without prejudicing the merits of the matter, the Commission has decided to declare the petition admissible with respect to Articles I, XI, XVIII, XXV, and XXVI of the American Declaration, to transmit this Report to the parties, to continue with the analysis of the merits of the case, and to publish this Report and include it in its Annual Report to the General Assembly of the Organization of American States.

## **II. PROCEEDINGS BEFORE THE COMMISSION**

5. Following the receipt of Mr. Housel's petition on February 27, 2002, which was designated as P129/2002, the Commission transmitted the pertinent parts of the complaint to the United States by means of a note dated February 27, 2002 with a request for observations within two months in accordance with Article 30(3) of the Commission's Rules of Procedure. In the same note, the Commission granted precautionary measures in favour of Mr. Housel pursuant to Article 25 of the Commission's Rules of Procedure, requesting that the State preserve Mr. Housel's life pending the Commission's investigation of the allegations in his petition.

6. By communication dated March 8, 2002, the State transmitted to the Commission its response to the Petitioners petition and the Commission's request for precautionary measures. In its response, the State informed the Commission that Mr. Housel was scheduled for execution on March 12, 2002, which subsequently proceeded notwithstanding the Commission's February 27, 2002 request for precautionary measures. The Commission acknowledged receipt of the State's response and transmitted the pertinent parts of the response to the Petitioners, with a request for observations to be submitted within 30 days.

7. In a note dated April 11, 2002, the Petitioners requested an extension of 30 days within which to submit their observations to the States response. This extension was granted and both parties were informed in notes from the Commission dated April 15, 2002.

8. The Petitioners subsequently delivered their observations to the Commission by letter dated May 10, 2002, the annexes for which were received by the Commission on May 29, 2002. By notes dated May 15, 2002 and June 3, 2002, the Commission transmitted the pertinent parts of the Petitioners' observations and annexes to the State with a request for a response within 30 days. The Commission did not receive a response from the State within the prescribed time period.

### **III. POSITIONS OF THE PARTIES**

#### **A. Position of the Petitioners**

9. According to the information submitted by the Petitioners, Tracy Lee Housel is a citizen of both the United States and the United Kingdom. It is also alleged that on June 4, 1985, Mr. Housel was indicted by a grand jury in the State of Georgia on charges of murder, rape, motor vehicle theft and financial transaction card theft. At his July 23, 1985 arraignment, Mr. Housel pleaded not guilty on all counts. On February 4, 1986, following jury selection for his trial, Mr. Housel entered a plea agreement with the prosecution and, in exchange for dismissal of the rape charge, pled guilty to capital murder and automobile theft. The plea agreement did not include any undertaking to recommend leniency at sentencing. Following the plea hearing, a sentencing hearing was held before the jury. On February 7, 1986, the jury returned a verdict finding the existence of a statutory aggravating circumstance under applicable legislation and recommended imposition of the death penalty, whereupon the trial court sentenced Mr. Housel to death by electrocution.

10. With regard to the admissibility of the petition, the Petitioners argue that Mr. Housel has exhausted all available domestic remedies and habeas corpus rights within the United States and that there are no further legal remedies available to Mr. Housel that will allow him to pursue the issues raised in his petition.

11. In this respect, the petition states that Mr. Housel pursued appeal and post-conviction proceedings before state and federal courts. In particular, the information in the petition indicates that Mr. Housel pursued a direct appeal from his sentence to the Georgia Supreme Court, which affirmed his sentence on May 19, 1987, and that the U.S. Supreme Court denied a petition for a writ of certiorari in respect of that decision on June 30, 1988. The petition also indicates that on December 16, 1988, Mr. Housel filed a petition for a writ of habeas corpus in the Superior Court of Butts County, Georgia, and filed an amended petition on August 16, 1990. On December 21, 1990, the State court entered an order denying relief on all claims on the merits. On March 1, 1991 the Georgia Supreme Court denied a Certificate of Probable Cause, without opinion, and the U.S. Supreme Court denied certiorari in respect of that decision on November 15, 1991. Mr. Housel then pursued habeas corpus relief before the federal courts, in respect of which the U.S. Court of Appeals for the Eleventh Circuit denied relief on January 18, 2001 as well as a request for rehearing on April 6, 2001. On February 25, 2002, the U.S. Supreme Court refused Mr. Housel's final petition for a writ of certiorari.

12. With regard to the State's contention that the claims in the petition concerning Mr. Housel's time on death row were not presented in the domestic courts and are therefore inadmissible, the Petitioners argue that Mr. Housel should be excused from exhausting domestic remedies on this issue. In particular, the Petitioners assert, based in part upon the State's own observations, that the U.S. Supreme Court has repeatedly rejected arguments challenging prolonged detention on death row as cruel and unusual punishment, and therefore contend that there was no serious prospect that domestic proceedings on this issue would succeed. The Petitioners also allege that this conclusion was confirmed in an affidavit sworn by Mr. Housel's attorney, Robert L. McGlasson, on May 9, 2002.<sup>[1]</sup>

13. With regard to the merits of the petition, the Petitioners argue that the State is responsible for violations of Mr. Housel's rights under Articles I, XI, XVIII, XXV and XXVI of the American Declaration in connection with the criminal proceeding against him, based upon several grounds. Relying in part upon affidavits signed by employees at the institutions in which Mr. Housel was incarcerated, the Petitioners contend that Mr. Housel suffered significant physical and mental abuse at the hands of State agents during his pre-trial detention. The

Petitioners also contend that the effect of this treatment was exacerbated by the fact that Mr. Housel had suffered from severe mental health problems, for which he did not receive treatment.

14. Further, the Petitioners claim that the abuse suffered by Mr. Housel, together with the 16-year period that he spent on death row, from February 7, 1986 to March 12, 2002, violated his right to preservation of his health and well-being, his right to humane treatment while in custody, and his right not to receive cruel, infamous or unusual punishment, protected by Articles XI, XXV and XXVI of the American Declaration. The Petitioners assert that the State is obliged to organise its legal system so that death row inmates have a proper opportunity to challenge their conviction, but also in a manner whereby these challenges are considered promptly to ensure that death row inmates are not allowed to remain on death row for excessive periods.

15. In addition, the Petitioners contend that during the sentencing phase of Mr. Housel's trial, the trial judge admitted evidence of various other offences that Mr. Housel was alleged to have committed in other states, but for which he had never been tried, contrary to Mr. Housel's right to a fair trial. The Petitioners claim in this connection that there was a real risk that exculpatory evidence held by the prosecuting authorities responsible for the investigation of Mr. Housel's unadjudicated offences was not disclosed.

16. Moreover, the Petitioners contend that Mr. Housel's legal representation was inadequate in the course of the legal proceedings against him. They assert in particular that during post-conviction proceedings, Mr. Housel's trial counsel failed to undertake sufficient investigations to uncover significant mitigating evidence concerning Mr. Housel's mental condition and upbringing and present it during his sentencing.

17. Finally, the Petitioners submit that the State's failure to comply with the Commission's request for precautionary measures constitutes a further violation of the Mr. Housel's rights, including his right to pursue a petition before the Commission, and that he suffered irreparable harm when he was executed by the State before the Commission had completed its consideration of his petition.

## **B. Position of the State**

18. In its March 8, 2002 response to the Petitioners petition, the State argues that the Commission should declare the Petitioners' claims inadmissible on three grounds, namely that the arguments raised by the Petitioners are without merit, that Mr. Housel has failed to exhaust his domestic remedies regarding his claim that the length of time on death row amounted to cruel and unusual punishment, and that the petition fails to state facts which constitute a violation of principles under the American Declaration.

19. Concerning the issue of exhaustion of domestic remedies, the State asserts that Mr. Housel's claim that the length of time spent on death row is inhuman and violates his individual human rights was not presented in the state or federal courts. Furthermore, according to the State, the U.S. Supreme Court has not accepted this argument as a valid claim under the Eighth Amendment.<sup>[2]</sup>

20. With respect to the Petitioners' remaining allegations, the State contends that the Petitioners have failed to present evidence to substantiate the claims and that the allegations lack merit, and therefore that the Commission should find the petition to be inadmissible on the basis that it fails to state facts that tend to establish violations of rights under the American Declaration of the Rights and Duties of Man.

21. In particular, the State asserts that there is no evidence to substantiate the Petitioners' claim that Mr. Housel suffered significant physical and mental abuse before or after his trial. The State argues in this respect that the evidence submitted by the Petitioners, which included affidavits from other inmates, lacked proper foundation and amounted to suspect testimony given the fact that Mr. Housel was kept in solitary confinement during the majority of his pre-trial incarceration.

22. The State similarly discounts as unmeritorious the Petitioners' allegations regarding Mr. Housel's mental condition. It points out, *inter alia*, that the federal habeas corpus court found that "Housel never purported to make any showing that his sanity was likely to be a significant issue at trial",<sup>[3]</sup> and refers to a pre-trial report and psychological assessments which the State claims illustrated that Mr. Housel was "competent and suffered from no major mental illness."<sup>[4]</sup>

23. The State also contends that the Petitioners' arguments concerning the use of evidence of unadjudicated offences during the sentencing phase of Mr. Housel's trial were rejected by the Supreme Court of Georgia and by the federal habeas corpus court, and were found by the Eleventh Circuit Court to be barred from review under the non-retroactivity doctrine, with the U.S. Supreme Court denying certiorari on this issue on February 25, 2002.

Further, the State maintains that if the state of Georgia had been in possession of exculpatory evidence about the unadjudicated offences it would have turned over that evidence to Mr. Housel.

24. Finally, the State maintains that the Petitioners' allegation that Mr. Housel's legal representation was inadequate was expressly rejected by both the state and federal habeas corpus courts, following evidentiary hearings in which Mr. Housel's trial attorney testified.

#### **IV. ANALYSIS OF ADMISSIBILITY**

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

25. Upon considering the record before it, the Commission considers that it has the competence *ratione personae* to entertain the claims in the present petition. Under Article 23 of the Commission's Rules of Procedure, the Petitioners are authorized to file complaints alleging violations of rights protected under the American Declaration of the Rights and Duties of Man. The alleged victim, Mr. Tracy Lee Housel, is a person whose rights are protected under the American Declaration, the provisions of which the State is bound to respect in conformity with the OAS Charter, Article 20 of the Commissions Statute and Article 49 of the Commissions Rules of Procedure. The United States has been subject to the jurisdiction of the Commission since June 19, 1951, the date on which it deposited its instrument of ratification of the OAS Charter.<sup>[5]</sup>

26. Given that the petition alleges violations of rights protected under the American Declaration of the Rights and Duties of Man that have taken place in the territory of the United States, the Commission concludes that it has the competence *ratione loci* to take cognizance of it.

27. Further, the Commission has the competence *ratione temporis* to examine this matter. The petition is based on facts alleged to have occurred beginning in 1986, at which time the obligations undertaken by the State pursuant to the OAS Charter and the American Declaration were in effect.

28. Finally, inasmuch as the Petitioners have filed complaints alleging violation of Articles I, XI, XVIII, XXV and XXVI of the American Declaration, the Commission is competent *ratione materiae* to examine the complaint.

##### **B. Duplication**

29. There is no information on the record indicating that the subject matter of Mr. Housel's complaint has been previously submitted to the Commission or to any other intergovernmental organization of which the United States is a member. The State has not contested the issue of duplication of procedures. The Commission therefore finds no bar to the admissibility of the Petitioner's claims under Article 33 of the Commission's Rules of Procedure.

##### **C. Exhaustion of domestic remedies**

30. Article 31(1) of the Commission's Rules of Procedure specifies that, in order to decide on the admissibility of a matter, the Commission must verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with generally recognized principles of international law. Article 31(2) of the Commission's Rules of Procedure, however, specifies that this requirement does not apply if the domestic legislation of the state concerned does not afford due process of law for protection of the right allegedly violated, if the party alleging the violation has been denied access to domestic remedies or prevented from exhausting them, or if there has been an unwarranted delay in reaching a final judgment under the domestic remedies.

31. Additionally, the Inter American Court of Human Rights has observed that domestic remedies, in order to accord with generally recognized principles of international law, must be both adequate, in the sense that they must be suitable to address an infringement of a legal right, and effective, in that they must be capable of producing the result for which they were designed.<sup>[6]</sup>

32. Further, when a petitioner alleges that he or she is unable to prove exhaustion, Article 31(3) of the Commission's Rules of Procedure provides that the burden then shifts to the State to demonstrate that the remedies under domestic law have not been previously exhausted, unless that is certainly evident from the record.

33. In the present case, the Petitioners have argued that Mr. Housel has pursued all domestic remedies available to him in the United States, including direct appeal proceedings before the state courts, and habeas corpus relief before the state and federal courts. In addition, according to the decisions of these courts, Mr. Housel raised before them the claims

that have been presented in his petition to the Commission, with the exception of the complaint relating to his prolonged incarceration on death row.<sup>[7]</sup>

34. The State disputed the admissibility of Mr. Housel's petition on the ground of exhaustion of domestic remedies with regard to only one issue presented by the Petitioners, namely the contention that Mr. Housel's detention on death row constituted cruel, infamous or unusual punishment contrary to Article XXVI of the American Declaration. The State claims that Mr. Housel failed to raise this issue before any domestic courts, at the state or federal levels. The Petitioners have not denied this assertion, but argue that Mr. Housel should be considered excused from exhausting domestic remedies on this issue, on the basis that this argument would have no serious prospect of success in light of existing domestic precedents on the issue including the jurisprudence of the U.S. Supreme Court.

35. In this regard, the Commission observes that in its response to the petition, the State specifically asserts that the U.S. Supreme Court has not accepted protracted time on death row as a valid claim of cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution.<sup>[8]</sup> In support of this assertion, the State cites the decisions of the U.S. Supreme Court in the cases of *Knight v. Florida*, 120 S. Ct. 459 (1999) and *Lackey v. Texas*, 514 U.S. 1045 (1995), as well as the decisions of other domestic courts, in which the contention that prolonged incarceration on death row constitutes cruel and unusual punishment has been rejected.<sup>[9]</sup> In this regard, the State quotes the concurring vote of U.S. Supreme Court Justice Stevens in denying certiorari in the *Knight v. Florida* case as opining that

'[h]owever critical one may be of protracted post-trial procedures, it seems inevitable that there must be a significant period of incarceration on death row during the interval between sentencing and execution.' It is incongruous to arm capital defendants with an arsenal of 'constitutional' claims with which they may delay their executions, and simultaneously to complain when executions are inevitably delayed.<sup>[10]</sup>

36. In its jurisprudence, this Commission has shared the view of the European Court of Human Rights that a petitioner may be excused from exhausting domestic remedies with respect to a claim where it is apparent from the record before it that any proceedings instituted on that claim would have no reasonable prospect of success in light of prevailing jurisprudence of the state's highest courts.<sup>[11]</sup> In these circumstances, the Commission has considered that proceedings in which claims of this nature are raised would not be considered "effective" in accordance with general principles of international law.

37. According to the observations of the Petitioners and the State in the present complaint, the U.S. Supreme Court, the highest appellate court in the United States, has rejected the validity of a claim that the length of time spent by a condemned inmate on death row may constitute cruel and unusual punishment prohibited under the U.S. Constitution. Moreover, the Supreme Court denied leave to revisit this issue in petitions for writs of certiorari as recently as November 1999, 27 months prior to that Court's dismissal of Mr. Housel's final writ of certiorari on February 25, 2002. In these circumstances, the Commission finds that any proceedings raising these claims before domestic courts would appear to have no reasonable prospect of success, and therefore would not be effective in accordance with general principles of international law.

38. Based upon the information before it, therefore, the Commission finds that Mr. Housel has exhausted domestic remedies in respect of the claims raised in his petition, or that any available domestic remedies would not be effective. Consequently, the Petitioners' petition is admissible under Article 31 of the Commission's Rules of Procedure.

#### **D. Timeliness of the Petition**

39. Pursuant to Article 32(1) of the Commission's Rules of Procedure, the Commission must refrain from taking up petitions that are lodged after the six month period following the date on which the complaining party has been notified of the final ruling, in cases where the remedies under domestic law have been exhausted. In the present case, the Petitioners' petition was lodged on February 27, 2002 and therefore within six months from the date of the denial by the U.S. Supreme Court of Mr. Housel's petition for a writ of certiorari on February 25, 2002. The State has not specifically contested the timeliness of the Petitioners' petition. Consequently, the Commission concludes that the Petitioners' petition is not barred from consideration under Article 32 of the Commission's Rules of Procedure.

#### **E. Colorable Claim**

40. Article 27 of the Commission's Rules of Procedure mandates that petitions state facts "regarding alleged violations enshrined in the American Convention on Human Rights and other applicable instruments". In addition Article 34(a) of the Commission's Rules of Procedure requires the Commission to declare a petition inadmissible when it does not state facts that

tend to establish a violation of the rights referred to in Article 27 of the Rules.

41. The Petitioners allege that the State is responsible for violations of Articles I, XI, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man in connection with the criminal proceedings against Mr. Housel. The Commission has summarized in Part III of this report the substantive allegations of the Petitioners, as well as information submitted by the Petitioners in support of those allegations. The State has argued, however, that there is no credible evidence to substantiate the claims raised by the Petitioners or that their claims are otherwise without merit. In particular, the State argues that the evidence submitted in support of Mr. Housel's allegations of physical and mental abuse before his trial and his mental condition were unsubstantiated or based upon unreliable evidence and, for these reasons, were rejected by domestic courts. The State similarly contends that domestic courts rejected Mr. Housel's arguments regarding the use of unadjudicated crimes during the sentencing phase of his trial, as well as his assertions that he received ineffective assistance of counsel due to his trial attorney's failure to undertake a proper investigation of mitigating evidence.

42. After carefully reviewing the information and arguments provided by the Petitioners and the State in light of the heightened scrutiny test applied by the Commission in capital punishment cases,<sup>[12]</sup> and without prejudicing the merits of the matter, the Commission considers that the petition states facts that tend to establish violations of Articles I, XI, XVIII, XXV, and XXVI of the American Declaration. In this regard, the Commission wishes to emphasize that its evaluation of whether a petition may tend to disclose a violation of the American Declaration for the purposes of admissibility cannot, as the State appears to suggest, be determined based upon the fact that similar claims were determined by domestic courts to be unsubstantiated. While it will not undertake a fourth instance review of the decisions of domestic courts acting within their competence and with due judicial guarantees,<sup>[13]</sup> the Commission is empowered to undertake its own evaluation of the evidence presented in the proceeding before it, in light of the principles and jurisprudence of the inter-American human rights system, in order to determine whether a violation of a state's international commitments may be involved.<sup>[14]</sup> In light of the allegations and information submitted by the Petitioners in this matter, the Commission considers that the petition raises colourable claims of violations of the American Declaration that ought to be evaluated on the merits of the case. In the Commission's view, these claims include the implications, within the framework of the State's obligations in the inter-American human rights system, of the State's failure to comply with the Commission's request for precautionary measures in this matter and Mr. Housel's consequent execution.

43. Accordingly, the Commission concludes that the Petitioners' petition should not be declared inadmissible under Article 34 of the Commission's Rules of Procedure.

## **V. CONCLUSIONS**

44. The Commission concludes that it has the competence to examine this case, and that the petition is admissible in accordance with Articles 31 to 34 of the Commission's Rules of Procedure.

45. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter,

## **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

### **DECIDES:**

1. To declare the present petition admissible, with respect to Articles I, XI, XVIII, XXV and XXVI of the American Declaration.
2. To transmit this Report to the parties.
3. To continue with the analysis of the merits of the case.
4. To publish this Report 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 27<sup>th</sup> day of the month of February, 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Paulo Sergio Pinheiro and Florentín Meléndez, Commissioners. Commissioner Evelio Fernández Arévalos and Commissioner Freddy Gutiérrez dissented from the decision of the majority.

[1] See Petitioners' response dated May 10, 2002, Annexes, Tab 10.

[2] State response dated March 5, 2002, p.8, citing *Knight v. Florida*, 120 S.Ct. 459 (1999); *Lackey v. Texas*, 514 U.S. 1045 (1995); *Chambers v. Bowerson*, 157 F. 3d. 560 (8<sup>th</sup> Cir. 1998); *Johns v. Bowerson*, 203 F.3d. 538, 547 (8<sup>th</sup> Cir. 2000).

[3] State's response dated March 5, 2002, p.4, citing Federal District Court Order of March 31, 1988, page 36.

[4] *Ibid*, p. 5, citing Federal District Court Order of March 31, 1988, page 36.

[5] Article 20 of the Statute of the IACHR provides that, in respect of those OAS member states that are not parties to the American Convention on Human Rights, the Commission may examine communications submitted to it and any other available information, to address the government of such states for information deemed pertinent by the Commission, and to make recommendations to such states, when it finds this appropriate, in order to bring about more effective observance of fundamental human rights. See also Charter of the Organization of American States, Articles 3, 16, 51, 112, 150; Rules of Procedure of the Inter-American Commission on Human Rights, Articles 49, 50; I/A. Court H.R., Advisory Opinion OC-10/8 "Interpretation of the Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights," July 14, 1989, Ser. A Nº 10 (1989), paras. 35-45; I/A Comm. H.R., *James Terry Roach and Jay Pinkerton v. United States*, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-87, paras. 46-49.

[6] I/A Court H.R., *Velásquez Rodríguez Case*, Merits, Judgment of July 29, 1988, Ser. C. Nº 4, (1988), paras. 64-66.

[7] See, e.g., Petitioners' observations dated May 10, 2002, Annexes, Tabs 5, 6 (*Housel v. Thomas*, Order dated March 30, 1998, Civil Action Nº 1:94-CV-1444-ODE (U.S. Dist. Ct.); *Housel v. Head*, 238 F.3d 1289 (11<sup>th</sup> Cir. 2001)).

[8] The Eighth Amendment to the U.S. Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

[9] State's observations dated March 8, 2002, pp. 8-9, citing, *inter alia*, *Chambers v. Bowerson*, 157 F.3d 560 (8<sup>th</sup> Cir. 1998); *Johns v. Bowerson*, 203 F.3d 538, 547 (8<sup>th</sup> Cir. 2000); *Arizona v. Drake*, 983 P.2dI 748 (1999).

[10] State's observations dated March 8, 2002, p. 8, n. 1.

[11] See, e.g., Case 11.193, Report 51/00, *Gary Graham v. United States (Admissibility)*, Annual Report of the IACHR 2000, para. 60, citing Eur. Court H.R., *De Wilde, Oomas and Versyp Cases*, 10 June 1971, Publ. E.C.H.R. Ser. A, Vol.12, p. 34, paras. 37, 62; Eur. Court H.R., *Avan Oosterwijck v. Belgium*, Judgment (Preliminary Objections), November 6, 1980, Case Nº 7654/76, para. 37. See also Case 11.753, Report 108/00, *Ramón Martínez Villareal v. United States (Admissibility)*, Annual Report of the IACHR 2000, para. 70.

[12] The Commission will review and decide cases with a heightened level of scrutiny to ensure that any deprivation of life that an OAS member state proposes to effect through the death penalty complies with the requirements of the applicable inter-American human rights instruments. See Report Nº 57/96 (*Andrews v. United States*), Annual Report of the IACHR 1997, paras. 170-171; Report Nº 38/00 (*Baptiste v. Grenada*), Annual Report of the IACHR 1999, paras. 64-66; Report Nº 41/00 (*McKenzie et al. v. Jamaica*), Annual Report of the IACHR 1999, paras. 169-171.

[13] See Case 11.673, Report Nº 39/96, *Santiago Marzióni v. Argentina*, Annual Report of the IACHR 1996, paras. 48-52.

[14] See similarly Petition 790/01, Report 74/03, *Chief Grand Michael Mitchell v. Canada (Admissibility)*, October 22, 2003, para. 37.