



REPORT No. 89/09

PETITION 663-06

ADMISSIBILITY

TGGL^[1]

ECUADOR

August 7, 2009

I. SUMMARY

1. On June 26, 2006 the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition submitted by Messrs. Iván Patricio Durazno Campoverde and Gustavo Quito Mendieta (hereinafter “the petitioners”) alleging responsibility on the part of the Republic of Ecuador (hereinafter “the State”) for injury done to the female child TGGL due to alleged infection with the Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (hereinafter “HIV/AIDS”) through a transfusion of blood supplied by the provincial Red Cross in the city of Cuenca, Province of Azuay, on June 22, 1998 and administered at the Pablo Jaramillo Crespo Foundation Humanitarian Clinic. The petition also alleges a failure to prosecute and punish those responsible.

2. The petitioners allege that the State is responsible for providing blood banks with “safe blood” through institutions such as the Ecuadorian Red Cross and is thus responsible for violating the right to life established in Article 4 of the American Convention on Human Rights (hereinafter “the Convention”) as it relates to the duty to guarantee rights under Article 1(1) of that convention. For its part, the State alleged that the events in the complaint cannot be attributed to it and that in any case the requirement to exhaust domestic remedies in accordance with Article 46(1) of the American Convention has not been met and, as a result, the petition is inadmissible.

3. After analyzing the positions of the parties and compliance with the requirements established in Articles 46 and 47 of the American Convention, the Commission, applying the principle of *iura novit curia*, decided to declare the case admissible for purposes of examining the claim regarding the alleged violation of Articles 4(1), 5(1), 8(1), 19, and 25(1) as they relate to Article 1(1) of the American Convention, to notify the parties, and order publication of this report in the annual report.

II. PROCESSING BY THE COMMISSION

4. The Commission recorded the petition under No. P663-06 and on June 19, 2008 it proceeded to send copy of the relevant sections to the State, asking that it submit its observations within a period of two months. On July 31, 2008, the State reported that it had not received a complete copy of the relevant sections of the petition so that copy was again forwarded to the State, allowing it another two months to submit its observations. On August 19, 2008, the State again reported that it had not received a complete copy of the relevant sections of the petition and thus another copy was sent to the State along with another deadline.

5. On December 10, 2008, the State submitted its observations, which were forwarded to the petitioner, with a deadline of one month. On January 19, 2009, the petitioners submitted their response, which was forwarded to the State for its observations. On March 30, 2009, the State submitted its final observations to the Commission.

III. POSITIONS OF THE PARTIES

A. Petitioners

6. The petitioners indicate that on June 20, 1998 the female child TGGL, then three years of age, entered the Catholic University Hospital in the city of Cuenca in the Province of Azuay where she remained for two days and was then transferred to the Pablo Jaramillo Crespo Foundation Humanitarian Clinic. They state that she was diagnosed at the clinic with thrombocytopenic purpura and needed an emergency blood transfusion for which they went to the Provincial Red Cross in the city of Cuenca for two pints of O RH-positive blood and two platelets. The blood – which came from the donors HS and LN – was donated at the Provincial Red Cross of Azuay. It was delivered to the Humanitarian Clinic on June 22, 1998 at approximately 8:00 p.m. and administered to the child at 9:00 p.m. of the same day.

7. The petitioners allege that after the female child TGGL had been given the blood transfusion, a HIV/AIDS test was administered to the donor HS, with positive results.^[2] As a result, on June 27, 1998, the director of the blood bank of the Provincial Red Cross of Azuay ordered that the girl be given an HIV/AIDS test, which established that she was infected with the virus.^[3] The petitioners state that she was also given gynecological tests to rule out other potential routes of contagion.

8. The petitioners allege that the mother of TGGL filed a series of remedies in order to establish the criminal responsibility of the officials of the Provincial Red Cross of Azuay and obtain compensation for damages and injury. Specifically, on September 29, 1998 a complaint was filed with the Fourth Criminal Court of Azuay, which ordered the opening of proceedings on October 19, 1998. After concluding the investigation, the court ordered a dismissal without prejudice, which was overturned by the Supreme Court of Justice of Azuay.^[4] With the reopening of the summary proceeding, the expert report prepared by the

Laboratory for Clinical and Epidemiological Virology of the Catholic University of Leuven, Belgium was incorporated. That report concluded that the "HIV could only have passed to the child [TGGL] [...] from the person indicated as [HS] in two ways: through sexual transmission or transfusion of contaminated blood products from that person. If the court's investigations excluded sexual transmission, from a logical medical perspective, the conclusion must be that the only way HIV could have spread to the child [TGGL] is through blood transfusion."^[5]

9. The petitioners state that after the summary proceeding phase, on September 23, 2001 the District Prosecutor of Azuay drew up an indictment and ordered the preventive detention of Mariana de Jesús Ramírez Ramírez as the alleged perpetrator of the crime defined in Article 436 of the Penal Code^[6] and against Drs. Monsalve Toral and Orellana Quezada as allegedly guilty of the crime of concealment. On October 29, 2001, the Fourth Criminal Court of Azuay issued a summons to court based on the fact that "an offense has been proven to exist, i.e., infection of the minor child [the girl TGGL] with AIDS, on June 22, 1998 when the [girl] received a transfusion of platelets prepared with fresh blood from donors for that day, among them [HS] who was infected [and that] [...] it has been demonstrated that Mariana Ramírez prepared and administered the platelets, demonstrating negligence, carelessness, lack of precaution, and giving [TGGL] an incurable disease."^[7] In addition, the Fourth Court dismissed without prejudice the other officials of the Red Cross of Azuay. The petitioners allege that since Mariana de Jesús Ramírez Ramírez was outside the country, the proceeding against her was suspended pending her appearance or capture, and on February 28, 2005 the Second Chamber for Criminal, Collusion, and Traffic Matters of the Superior Court of Justice of Azuay ruled that the statute of limitations had expired.

10. The petitioners state that, parallel to the above, on March 5, 2002 a civil suit was filed for damages and injury against the President and Director of the blood bank of the Red Cross of the Province of Azuay, respectively. They state that on July 12, 2005 the Sixth Criminal Judge of Cuenca issued a decision declaring the suit inadmissible. In response to an appeal, on May 18, 2006 the First Civil and Commercial Chamber of the Superior Court of Justice of Cuenca declared void everything that had been done from the time the suit was accepted for processing, in that Article 41 of the Criminal Procedure Code establishes that "there can be no suit for civil compensation based on the criminal offense as long as there is no criminal conviction carried out and declaring someone responsible for an offense." There has been no such conviction issued in the instant case.

11. In view of the above, the petitioners allege that because she was infected by the HIV/AIDS virus, the minor female child TGGL has suffered serious injury to her health and life. They allege that she lacks access to the medical treatment and nutrition that her health situation requires. They mention that social rejection and discrimination prevent her from attending the primary school of her choice. They allege that the State is responsible for supplying banks with "safe blood" through entities such as the Ecuadorian Red Cross and thus the Ecuadorian State failed to fulfill its obligation to guarantee the right to life protected under the American Convention. The petitioners allege that the statute of limitations on the criminal action against the only person called to justice expired due to the inaction of the judges. They allege that since they do not have a conviction in the criminal case the civil suit was declared void and, therefore, they have not been able to obtain reparations for the damage caused to the female child TGGL.

12. In response to the State's allegations regarding a failure to comply with the requirement regarding prior exhaustion of domestic remedies (see III B below), they maintain that the actions indicated by the State, i.e., the recusal action, the action for damages and injuries against magistrates, and the monetary compensation action against the State for having suffered damages, are not suitable, adequate, or effective remedies for obtaining justice. In addition, they allege that they have demonstrated that there were defects in the administration of justice so that the intervention of the IACHR would not constitute a fourth instance.

B. The State

13. The State alleges that the complaint does not present facts that characterize violations of the rights guaranteed by the American Convention, in accordance with Article 47 of that convention. Specifically, the State alleges that the acts or omissions referred to in the petition are not attributable to agents of the State and that "the lamentable infection by HIV/AIDS suffered by the minor child [TGGL] is not attributable or imputable to the Ecuadorian State as such through its various agencies or institutions."^[8]

14. It maintains that States are internationally responsible only for unlawful acts or events that can be imputed or attributed to them. It indicates that in the area of international responsibility "[...] what is decisive is to elucidate whether a specific violation took place with the support or tolerance of the State or if the State acted in such a way that the violation was carried out without any effort to prevent it or with impunity [...]."^[9] The State believes that the infection of the minor child TGGL with the HIV/AIDS virus and the resulting humiliation and social discrimination are not attributable or imputable to any agent of the State. It asserts that "the guilty parties, according to statements made by the petitioner, would be the Red Cross or its officials." It asserts that the International Committee of the Red Cross (ICRC) is a private society created under the Swiss Civil Code, its functions are based on the Geneva Conventions, and both the ICRC and the Ecuadorian Red Cross enjoy "international legal status" or "a separate status" so that the Ecuadorian State is outside "any responsibility for the commission of this alleged violation of human rights."^[10]

15. In addition, the State alleges that the petition is inadmissible due to the failure to comply with the requirement regarding prior exhaustion of domestic resources as established in Article 46(1)(a) of the American

Convention. It alleges that TGGL and her family did not use the appropriate and effective judicial remedies provided under Ecuadorian law. Specifically, it states that “.they allowed the statute of limitations on the criminal action to expire;” they did not seek recusal of the judges who delayed the handling or trying of the case; they did not attempt action for damages and injury against those judges; they did not file suit for monetary compensation for moral damages; and did not avail themselves of the cassation appeal in accordance with the Criminal Procedure Code.

16. With respect to the criminal proceeding in which the relatives of TGGL were denied a specific indictment because the action was untimely, the State believes that her relatives demonstrated “negligence and little interest in moving forward with the case and obtaining the conviction of the alleged perpetrators.”^[11] It emphasizes that the mother of TGGL did not have competent legal counsel in her complaint before the First Specialized Chamber for Civil, Commercial, and Leasing and Residual Matters of the Superior Court of Justice of Cuenca, which declared void everything done starting with the order that accepted the complaint for processing. The State indicates that the petitioner never submitted a cassation appeal to challenge this decision or sought to file another civil action. The State alleges that in view of their disagreement with the court decisions, the petitioners seek to use the Commission as a body for review of the substantive aspects of legitimately concluded judicial proceedings and the Commission would thus constitute a fourth instance. Finally, the State alleges that the petitioners are not compliant because they fail to indicate whether their complaint is being heard or pending a decision in another international organization.

17. In summary, the State alleges that the complaint does not meet the requirements established in Articles 46 and 47 of the American Convention and asks the Commission to declare the petition inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

18. In principle, the petitioners are authorized by Article 44 of the American Convention to file petitions with the Commission. The petition indicates as alleged victim an individual person with respect to whom the Ecuadorian State agreed to respect and guarantee rights enshrined in the American Convention. Ecuador has been a party to the American Convention since December 28, 1977, the date on which it submitted its ratifying instrument. Therefore, the Commission is competent *ratione personae* to examine the petition.

19. In addition, the Commission is competent *ratione loci* to hear the petition, in that it alleges violations of rights protected in the American Convention that would have occurred within the territory of Ecuador, a State Party to that convention. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date when the events alleged in the petition would have occurred. Finally, the Commission is competent *ratione materiae*, because the petition denounces possible violations of human rights protected in the American Convention.

B. Admissibility Requirements

1. Exhaustion of Domestic Remedies

20. Article 46(1)(a) of the American Convention requires prior exhaustion of the remedies available in the domestic jurisdiction in accordance with generally recognized principles of international law, as a requirement for the admission of complaints regarding the alleged violation of the American Convention.

21. As established by the Inter-American Court, whenever a State claims that a petitioner has not exhausted the relevant domestic remedies, it is required to demonstrate that the remedies that have not been exhausted are “adequate” for remedying the alleged violation and that the function of those remedies within the domestic legal system is suitable to address the infringement of a legal right.^[12]

22. In the instant case, the case file indicates that TGGL’s family took steps for the determination of responsibility of the President and the Blood Bank Director of the Azuay Red Cross by the courts. Specifically on September 29, 1998 a complaint was filed before the Fourth Criminal Court of Azuay, which ordered the opening of proceedings on October 19, 1998. On September 23, 2001, the District Prosecutor of Azuay issued an indictment and ordered the preventive detention of Mariana de Jesús Ramírez Ramírez, an official of the Red Cross of Azuay, as alleged perpetrator. On October 29, 2001, the Fourth Criminal Court of Azuay issued a summons for trial. Given that the accused was a fugitive, the proceeding against her was suspended pending her appearance or capture.

23. The State has not provided information regarding actions taken by the judicial authorities to locate the accused and regain jurisdiction over her.^[13] Finally, on February 28, 2005, given that the five-year period established by law had expired^[14], the Second Chamber for Criminal, Collusion, and Traffic Matters of the Superior Court of Justice of Azuay declared that the action had lapsed. Also, on March 5, 2002 the family of TGGL filed a civil suit for damages and injury against the President and Director of the blood bank of the Red Cross of the Province of Azuay. On May 18, 2006 the First Civil and Commercial Chamber of the Superior Court of Justice of Cuenca declared on appeal that the civil suit was void, due to the lapse of the criminal action.

24. In brief, the petitioners allege that the majority of the officials initially investigated were acquitted and the only accused fled. The trial was thus suspended pending her appearance or capture and subsequently the statute of limitation expired due to the passage of time. They consider that their expectation of obtaining a decision and the

resulting compensation for damages and injury was thwarted by the lapse of the action and that they have exhausted the judicial remedies available to them, without a determination of responsibility of the Red Cross of Azuay's officials.

25. For its part, the State alleges that the claim is inadmissible because it does not satisfy the requirement provided in Article 46(1) of the American Convention. It considers that, during the criminal proceeding, the petitioners did not seek to file actions such as recusal, damages and injury actions against magistrates who delay the proceedings, and cassation. It also alleges that the petitioners should have exhausted the monetary compensation action for moral damages provided for in the Civil Code.

26. Regarding the remedies of recusal^[15] and cassation^[16] to which the State refers in its allegations, the Commission notes that based on their characteristics they are not adequate for remedying the situation complained of by the petitioners in terms of determining criminal liability for the actions surrounding the infection of the female child TGGL with the HIV/AIDS virus. These remedies also do not serve the purpose to determine compensation intended to repair the damage sustained and ensure access to medical treatment by the alleged victim. This is also applicable to a possible action for damages and injury against the magistrates^[17] involved in the proceeding that was terminated based upon statute of limitations rules.

27. The compensatory action for moral damage provided for in the Civil Code^[18] is aimed at obtaining compensation for moral damage caused by an individual and not by an action attributable to the State. If filed against an institution providing a public service, such as the Ecuadorian Red Cross, to obtain reparations for the damage caused by infection with the HIV/AIDS virus, this remedy would be futile. Therefore, it cannot be required for purposes of determining the admissibility of the complaint.

28. The Commission notes that the conduct connected with the object of the claim was typified by the Criminal Code then in force as a crime and therefore to be investigated *ex officio* by the authorities.^[19] Therefore, the criminal proceeding constituted the adequate remedy to clarify the facts. The Commission also understands that in the context of Ecuadorian domestic law such proceedings were a requirement to pursue civil remedies as confirmed by the judgment rendered on May 18, 2006. In light of the above, the Commission considers that the petitioner's claim satisfies the requirement set by Article 46(1)(a) of the American Convention.

2. Deadline for Submitting the Petition

29. Article 46(1)(b) of the American Convention establishes that in order for a petition to be admissible by the Commission, it will have to be submitted within a period of six months of the date when the alleged injured party was notified of a final decision. In the instant case, the petition was received on June 26, 2006 and the last decision adopted in the domestic jurisdiction was notified on May 18, 2006. Therefore, the Commission finds the admissibility requirement regarding the deadline for submission must be considered to have been met.

3. Duplication and *res iudicata*

30. The file does not indicate that the subject of the petition is pending another international proceeding or that it reproduces a petition already examined by this or any other international organization. Therefore, it is appropriate to consider the requirements established in Articles 46(1)(c) and 47(d) of the Convention to have been met.

4. Characterization of the Alleged Facts

31. The State has rejected the attribution of responsibility for the events that surrounded the infection of the female child TGGL with the HIV/AIDS virus and its connection with the use of the blood banks of the Ecuadorian Red Cross. It claims not have any responsibility for the actions of that institution.

32. The Commission notes that TGGL was allegedly infected with the HIV/AIDS virus through blood supplied by the Red Cross of Cuenca in the Province of Azuay. The legislation then in force provided that the Ecuadorian Red Cross was exclusively responsible for the supply and use of blood and blood derivatives, and the regulatory control and coordination of the blood banks and deposits of the Ministry of Health and other State institutions.^[20] The responsibility of organizing the supply of blood in the country^[21], and testing each and every one of the units collected for the blood banks to the effect of "tracking irregular components"^[22], was delegated on the National Red Cross by the State. Also, the Supreme Court of Ecuador has established that the Ecuadorian Red Cross provides a service of a public nature and that its attestations are equally valid to those of official institutions.^[23] Based on the delegated and direct powers of the State organs with respect to supervision and oversight of the provision of a service by the Ecuadorian Red Cross,^[24] and their connection with the claim of the instant case, the Commission finds that it is competent to examine the possible responsibility of the State in the merits phase.

33. With regard to the claims of the petitioners, the Commission finds that the alleged facts could characterize possible violations of the right to life, protected in Article 4(1)^[25] in connection with Article 1(1) of the American Convention. In addition, the Commission, applying the principle of *iura novit curia*, finds that the allegations of fact submitted by the petitioners may constitute a violation of the duty of the State to protect personal integrity in

accordance with Article 5(1) of the American Convention and its duty to ensure due protection of the courts in accordance with Articles 8(1) and 25(1) as they relate to Article 1(1) of the Convention.

34. In addition, the IACHR will consider the possible responsibility of the State in connection with the duty to protect the rights of the female child TGGL under Article 19 of the American Convention *vis-a-vis* Article 1(1) of the Convention and the restrictions regarding interpretation established in the American Convention,^[26] as well as the criteria established by the Inter-American Court of Human Rights with respect to the tendency to integrate the regional and universal systems,^[27] and with respect to the notion of *corpus juris* in the area of children.^[28]

35. In that the lack of foundation and inadmissibility of these aspects of the complaint are not evident, the Commission finds that the requirements established in Article 47(b) and (c) of the American Convention have been met.

V. CONCLUSIONS

36. The Commission concludes that it is competent to examine the complaints submitted by the petitioner regarding the alleged violation of Articles 4(1), 5(1), 8(1), 19, and 25(1) consistent with Article 1(1) of the American Convention and that the complaints are admissible in accordance with the requirements established in Articles 46 and 47 of the American Convention.

37. Based on the factual and legal arguments presented above and without thereby prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible with respect to Articles 4(1), 5(1), 8(1), 19, and 25(1) of the American Convention as they relate to Article 1(1) thereof.
2. To report this decision to the Ecuadorian State and the petitioner.
3. To continue with the analysis regarding the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 7th day of the month of August 2009. (Signed): Luz Patricia Mejía Guerrero, President, Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Paulo Sérgio Pinheiro, and Paolo Carozza, members of the Commission.

[1] Although not specifically requested by the petitioners, the IACHR is protecting the identity of the alleged victim because she is a child. In order to provide greater protection to the alleged victim, the IACHR also holds back the names of the alleged victim's mother and the blood donors.

[2] The petitioners refer to the result of the Microelisa HIV antibodies test performed on HS, which yielded the result: "doubly reactive." Annex to original petition received by the IACHR on June 26, 2006.

[3] The petitioners refer to the results of the Microelisa HIV antibodies test performed on the female child TGGL, which yielded the result "doubly reactive." Annex to the original petition received by the IACHR on June 26, 2006.

[4] The petitioners indicate that the revocation of the dismissal without prejudice was issued at the request of the Prosecutor of Azuay. Original petition received by the IACHR on June 26, 2006.

[5] The petitioners refer to the expert report from Drs. Juan Peralvo Román and Nardo Vivar Idrovo, March 9, 2001. Annex to the original petition received by the IACHR on June 26, 2006.

[6] The petitioners refer to Article 436 of the Penal Code: "Physicians, pharmacists, or anyone else who, through a lack of precaution or care, prescribes, dispenses, or administers medications that seriously compromise health shall be punished with a prison term of six months to one year; if they have caused an illness that seems to be or is incurable, the term shall be one to three years; and if they have caused death, the term shall be three to five years." Opinion of Azuay District Prosecutor, Criminal case No. 257-98, September 23, 2001.

[7] The petitioners refer to the summons for trial issued by the Fourth Criminal Court of Azuay, Criminal Case 257-98, October 29, 2001. Annex to the original petition received by the IACHR on June 26, 2006.

[8] Official letter 05193 from the Office of the Attorney General dated December 4, 2008, submitted by means of Note No. 4-2-347/2008 of December 9, 2008.

[9] The State refers to: I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C, No. 4, para. 173; I/A Court H.R., *Godínez Cruz Case*. Judgment of January 20, 1989. Series C, No. 5, para. 183, and I/A Court H.R., *Gangaram Panday Case*. Judgment of January 21, 1994. Series C, No. 16, para. 62. Official letter 05193 from the Office of the Attorney General dated December 4, 2008, submitted by means of Note No. 4-2-347/2008 of December 9, 2008.

[10] Official letter 06630 of the Office of the Attorney General dated March 24, 2009, submitted by means of Note No. 4-2-70/2009 of March 27, 2009.

[11] The State refers to Article 33 of the Criminal Procedure Code, which states that "the complainant does not incur the obligation binding him to the judicial proceeding, nor does he incur any liability, except in those cases where the Judge declares the complaint to be malicious or frivolous." Official letter 05193 from the Office of the Attorney General dated December 4, 2008, submitted by means of Note No. 4-2-347/2008 of December 9, 2008.

[12] See also Article 31(3) of the IAHC's Rules of Procedure and I/A Court H.R., *Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, para. 64

[13] See IACHR. Report No. 69/02, Petition 419/01, *Laura Albán Cornejo*, paragraph 38.

[14] Article 101 of the Penal Code of the Republic of Ecuador establishes that: “All criminal actions lapse over time and under the conditions indicated by the Law. In the exercise of the right established by prescription, the following rules shall be followed: Both in the case of crimes affecting public order to be prosecuted by government and crimes to be prosecuted by private action, a determination shall be made, above all, the crime having been committed, as to whether or not a trial has been initiated: [...] in other crimes punishable by prison, when government prosecutes, if there is no trial, the action to prosecute them shall lapse in ten years; in the case of crimes punishable by long-term imprisonment, the action to prosecute them shall lapse in fifteen years. In the case of crimes punishable by prison, the action to prosecute them shall lapse in five years. The time shall be calculated as from the date when the offense was committed. In the same crimes where government prosecutes, if a trial has begun before those time periods expire, the action to continue the case shall lapse according to the same time periods, calculated as from the date of the opening of the proceeding.”

[15] The recusal proceeding is provided in the Code of Civil Procedure. “A judge, whether in a tribunal or court, may be recused by either of the parties and must refrain from hearing the case for any of the following reasons: 10. Not handling the proceeding within three times the time period indicated.” In addition, the State indicates that recusal is provided under Article 265 of the Criminal Procedure Code. Official letter 05193 of the Office of the Attorney General dated December 4, 2008, submitted by means of Note No. 4-2-347/2008 of December 9, 2008.

[16] The State indicates that Article 349 of the Criminal Procedure Code establishes that the cassation appeal “[...] shall be admissible before the Supreme Court of Justice when the decision has violated the law, either by expressly contradicting the language of the law, or by applying the law falsely, or finally by interpreting it incorrectly.” In addition, the State indicates that Article 350 provides the deadline for submitting the cassation appeal. Official letter 05193 from the Office of the Attorney General dated December 4, 2008, submitted by means of Note No. 4-2-347/2008 of December 9, 2008.

[17] The State indicates that said remedy is provided in the Code of Civil Procedure: “Action for damages and injury is admissible against the Judge or Magistrate who in the performance of his duties causes economic damage to the parties or interested third parties, due to delay or denial of justice for breaking express laws, for usurpation of functions, for granting denied appeals, or for rejecting remedies granted by the law, expressly or by altering the decision when finalizing it. This action is also admissible against clerks and other employees of the Court, who through their action or omission have caused economic damage, through bad faith or negligence [...].” Official letter 05193 from the Office of the Attorney General dated December 4, 2008, submitted by means of Note No. 4-2-347/2008 of December 9, 2008.

[18] The State indicates that the Civil Code states that “[...] in any case not provided for in the preceding provisions, a person who has suffered merely moral damages may also sue for monetary compensation, by way of reparations, when such compensation is justified by the particular gravity of the harm suffered and the offense. Setting aside the penalty imposed in cases of intentional or unintentional tort, this reparation is especially incumbent upon those who in cases other than those indicated in the preceding article damage another’s reputation through any type of defamation, or those who cause injuries, commit rape, statutory rape, or assaults against modesty, provoke illegal or arbitrary detentions or arrests, or unjustified prosecutions, and generally, physical or psychic suffering such as anguish, anxiety, humiliation and similar offenses. Reparations for moral damages may be demanded if such damages are the proximate result of the unlawful action or omission of the respondent, leaving to the judge’s discretion the determination as to the value of the compensation in view of the circumstances, as provided in the first paragraph of this article.” The Code states that “action for moral damage is the exclusive prerogative of the victim or the victim’s legal representative. But in the case where the victim is physically unable to exercise this prerogative, this may be done by the victim’s legal representative, spouse, or relatives up to the second degree by blood. If the unlawful act caused the death of the victim, the action may be filed by the victim’s heirs, in accordance with the provisions of this Code [...].” Official letter 05193 from the Office of the Attorney General dated December 4, 2008, submitted by means of Note No. 4-2-347/2008 of December 9, 2008.

[19] Article 436 of the Penal Code establishes: “Physicians, pharmacists, or anyone else who, through a lack of precaution or care, prescribes, dispenses, or administers medications that seriously compromise health shall be punished with a prison term of six months to one year; if they have caused an illness that seems to be or is incurable, the term shall be one to three years; and if they have caused death, the term shall be three to five years.” Articles 14, 21, 23, and 428 of the Criminal Procedure Code in effect at the time of the events established: Article 14: “criminal action is public in nature. In general, it shall be conducted *ex officio*, and individual accusations may be admitted, but in the cases indicated in Art 428 of this Code criminal action shall be carried out through individual accusation only” Article 21: “the Public Prosecutor’s Office shall encourage the respective judges to initiate criminal proceedings for the commission of crimes, basing that encouragement on information received.” Article 23: “the intervention of the Public Prosecutor’s Office shall be necessary in all criminal proceedings that, based on the commission of a crime, are initiated in the respective tribunals and courts, even when an individual accuser is acting in said proceedings, provided that such crime must be prosecuted *ex officio*.”

[20] Law No. 54 of October 31, 1986, published on November 7, 1986. Article 1 of Law 54 was replaced through a reform introduced by the Organic Health Law (Law No. 2006-67), which provides that: “monitoring the control, supply, and use of blood and its derivatives in Ecuador shall be the responsibility of the national health service [...]”.

[21] See Ecuadorian Red Cross, <http://www.cruzroja.org.ec/programas/salud/redbansan.htm>

[22] Agreement No. 4.148, Manual of Rules for Blood Banks, Storage Facilities, and Transfusion Services, August 7, 1998. See also Ecuadorian Red Cross, http://www.cruzroja.org.ec/programas/salud/normativo_habilitacion.pdf

[23] First Chamber for Civil and Commercial Matters, Ordinary Judgment 192-2001, Judgment 367-2001, Official Registry 490, January 9, 2002.

[24] The Inter-American Court has stated that “when related to the essential jurisdiction of the supervision and regulations of rendering the services of public interest, such as health, by private or public entities, the state responsibility is generated by the omission of the duty to supervise the rendering of the public service to protect the mentioned right.” I/A Court H.R., *Albán Cornejo et al. Case*. Judgment of November 22, 2007. Series C, No. 171, para. 119.

[25] See I/A Court H.R., *Case of the Yakye Axa Indigenous Community*. Judgment of June 17, 2005, Series C, No. 125, para. 162 and I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community*. Judgment of March 29, 2006, Series C, No. 146, para. 153.

[26] American Convention, Article 29 Restrictions Regarding Interpretation. No provision of this Convention shall be interpreted as: [...] b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party; [...].

[27] I/A Court H.R., Advisory Opinion OC 1/82 of September 24, 1982 on “Other Treaties” Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights) para. 41. The Commission notes that the Ecuadorian State ratified the United Nations Convention on the Rights of the Child on March 23, 1990.

[28] I/A Court H.R., The “Street Children” Case (*Villagrán Morales et al.*) Judgment of November 19, 1999, Series C, No 63, para. 194. *Juvenile Reeducation Institute Case*. Judgment of September 2, 2004, para. 148, *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004, para. 166. I/A Court H.R., *Juridical Status and Rights of the Child, Advisory Opinion OC-17/02* of August 28, 2002, Series A, No. 17, paras. 24, 37, 53.