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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 9/03; Petition 12.116
Session:	Hundred and Seventeenth Regular Session (17 February – 7 March 2003)
Title/Style of Cause:	Maria Estela Garcia Ramirez and Celerino Jimenez Almaraz v. Mexico
Doc. Type:	Decision
Decided by:	President: Juan Mendez; First Vice-President: Marta Altolaguirre; Second Vice-President: Jose Zalaquett; Commissioners: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, Susana Villaran.
Dated:	20 February 2003
Citation:	Garcia Ramirez v. Mexico, Petition 12.116, Inter-Am. C.H.R., Report No. 9/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by:	APPLICANTS: Accion de los Cristianos para la Abolicion de la Tortura, the Liga Mexicana por la Defensa de los Derechos Humanos and the "Fray Francisco de Vitoria" Human Rights Center

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I. SUMMARY

1. On March 1, 1999, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or "the IACHR") received a complaint filed by María Estela García Ramírez, Acción de los Cristianos para la Abolición de la Tortura (ACAT), the Liga Mexicana por la Defensa de los Derechos Humanos (LIMEDDH-FIDH) and the "Fray Francisco de Vitoria" Human Rights Center (hereinafter, jointly "the petitioners") alleging that the United Mexican States ("the State") had incurred international responsibility for the unlawful detention, torture and extra-judicial execution of Mr. Celerino Jiménez Almaraz, alleged to have occurred on April 24, 1997, and for the subsequent harassment of his wife, Mrs. García Ramírez, and his family. The petitioners also attribute international responsibility to the Mexican State for its failure to investigate and punish the facts denounced.

2. The petitioners contend that the facts denounced constitute violations of a number of provisions of the American Convention on Human Rights (hereinafter the "American Convention"): the right to life (Article 4); the right to humane treatment (Article 5); the right to a fair trial (Article 8); and the right to judicial protection (Article 25). They further assert that all the admissibility requirements stipulated in the Convention have been met. The Mexican State contends that the American Convention has not been violated; that the facts in the complaint have not been proved and, further, that the remedies under domestic law have not been exhausted. The State therefore asks the Inter-American Commission to declare the petition inadmissible.

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3. Without prejudging the merits of the matter, in this report the IACHR concludes that the case is admissible, as it meets the requirements set out in Articles 46 and 47 of the American Convention. The Inter-American Commission therefore decides to advise the parties of its decision and to continue with the examination of the merits of the allegations of violations of Articles 4, 5, 7, 8 and 25 of the American Convention with respect to Celerino Jiménez Almaraz; and of Articles 5, 8 and 25 with respect to Mrs. Maria Estela García Ramírez and their family.

II. PROCESING BY THE IACHR

4. On August 28, 1997, the petitioners submitted a request seeking precautionary measures to protect Mrs. María Estela García Ramírez. On September 11, 1998, the IACHR sent a message to the State to notify it that it had granted precautionary measures on behalf of Mrs. García Ramírez, and asked the State to inform it within 15 days of the measures taken to protect her life and personal safety. The Mexican State's response of September 26, 1997 was forwarded to the petitioners on October 3, 1997. The petitioners' reply was received on December 19, 1997, and brought to the Inter-American Commission's attention.

5. On March 1, 1999, the petitioners filed a complaint concerning facts alleged to have happened to Celerino Jiménez Almaraz and María Estela García Ramírez, and reiterated their request that precautionary measures be ordered on her behalf.[FN1] On March 18, 1999, the Inter-American Commission transmitted the pertinent parts of that communication to the State and instituted the procedure provided for in Article 48 of the American Convention. Accordingly, it gave the State 90 days in which to present relevant information. The State's observations on the petition were received on June 17, 1999, and the pertinent parts forwarded to the petitioners on June 22, 1999. On August 16 of that year, the IACHR received the petitioners' response and brought it to the Mexican State's attention on August 25, 1999. The parties continued to send additional observations and information until the Inter-American Commission felt that each one's position was sufficiently clear.[FN2]

[FN1] In that same communication to the Mexican State, the IACHR advised it that it had 15 days to submit a report on the precautionary measures requested by the petitioners. On March 30, 1999, the State sent a note informing the Commission of the measures taken to protect Mrs. García Ramírez. That note was transmitted to the petitioners on March 31, 1999. The latter were asked to present their observations within 15 days. The petitioners' response, received on May 7, 1999, was brought to the Inter-American Commission's attention on May 18 of that year.

[FN2] The IACHR received communications from the State containing additional information on the petition, on the precautionary measures and other matters, dated September 24, 1999, November 29,1999, December 13, 1999, December 28, 1999, August 9, 2000, October 2, 2000, December 20, 2001. For their part, the petitioners sent communications dated December 3, 1999, January 12, 2000, June 22, 2000, August 14, 2000, November 24, 2000, March 31, 2001, July 23, 2001, October 19, 2001, and January 21, 2002.

III. THE PARTIES' POSITIONS ON ADMISSIBILITY

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A. The petitioners

6. In the communication that served as the basis for the commencement of proceedings on this matter, the petitioners recounted the following version of the events that began in the early-morning hours of April 24, 1997:

At approximately 2:00 a.m., Mrs. María Estela García Ramírez, her husband Celerino Jiménez Almaraz, and their family were asleep in their home, known as Rancho de los Limares in Santa María Jalatengo, Municipality of San Mateo Río Hondo, Mihuatlán, Oaxaca, when between sixty and eighty people broke into the home. The intruders were wearing black rags to cover their features and had their faces painted a dark color, so that only their eyes could be seen. They used force to gain entry, breaking down the door to the house and destroying everything in their path. All the while they were yelling "Policía judicial, policía judicial" [investigative police, investigative police].

Mr. Celerino Jiménez Almaraz was hit hard and detained right there. When his wife tried to pull him away, one of the police officers yelled: "Action, Action!" They began to fire, and Celerino was hit. However the undersigned had no idea where he was hit, because she, too, was being beaten; she had been thrown to the floor, which prevented her from seeing the faces of her assailants and from protecting her husband.

Estela's brother, Aquilino García Ramírez, was also wounded and left bleeding on the patio of the home. Celerino was quickly herded away; the other members of the family were ordered to stay down on the floor and not to look at anyone.

At approximately 10:00 a.m. the next day, she went to Oaxaca city to inquire about her husband's whereabouts. There, she sought the assistance of the LIMEDDH-FIDH, whose people accompanied her to the Office of the Oaxaca State Attorney General's Office to ask for information. There they told her that Mr. Celerino had died in a skirmish between the investigative police and members of the Ejército Popular Revolucionario (a guerrilla group), [and] that his body was in the PGJ offices in the municipality of Pochutla.[FN3]

[FN3] Communication from the petitioners dated March 1, 1999, pages 1 and 2.

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7. In a later communication the petitioners contend that the Mexican State "is attempting to blame the victims and the petitioners for the omissions in the investigation of this matter." They question the State's willingness to investigate the facts.

The State bears sole responsibility for investigating and punishing, regardless of whether the victims of the crime have a right to assist in the investigation into the facts or in the prosecution of the suspects. We petitioners have assisted in the investigation, even though the measures we have suggested have largely been ignored. No action has been taken on most of our suggestions.

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The measures that have been taken have not been carried through to completion; the effect has been to sidetrack and delay the investigations.

Based on the facts, there are sufficient indicia to reasonably infer that Mr. Celerino Jiménez' death was a homicide and that the evidence in the State Human Rights Commission's Recommendation suggests that the identities of the alleged material authors of the murder are known. It is for this reason that we maintain that the Government is not only directly responsible for the murder of Mr. Jiménez Almaraz, but is also responsible for denying his next of kin justice.[FN4]

[FN4] Communication from the petitioners, August 16, 1999, "Single attachment: analysis of the relevant points in the Mexican Government's communication," p. 1.

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8. The petitioners contend that the exception to the rule requiring exhaustion of local remedies, provided for in Article 46(2)(c) of the American Convention, applies in this case, due to the excessive period of time that has passed since the events occurred, without the case being solved and all the guilty parties punished. In one of their more recent communications to the IACHR, the petitioners argue that "four years to find a person guilty of a crime is far beyond what could be regarded as a reasonable time period, and is even more excessive in a case such as this one, where it has taken four years just to bring criminal charges against those responsible, with other phases of the process still to come."[FN5]

[FN5] Communication from the petitioners, March 31, 2001, p. 3.

B. The State

9. In response to the complaint, the Mexican State argues that the petitioners made a number of errors "about how, when and where the events unfolded." The State's version of the events is as follows:

In the early morning hours of April 24, 1997, members of the Oaxaca State Investigative Police Force came under fire while en route to carry out a number of arrest warrants in the town of San Agustín Loxicha, Pochutla, Oaxaca. The police fired back. When the skirmish was over, one of the assailants, who had been wounded, attempted to hide the pistol he was carrying when the police discovered him. That person later died, after being taken to the Pochutla hospital. En route to the hospital, however, he identified himself as Celerino Jiménez Almaraz. Also found at the site were a Winchester rifle, a number of spent shells of various caliber, and an olive-green ski mask in the person's pocket.

A sodium rodizonate test was done on Mr. Celerino Jiménez Almaraz, which was positive on both hands. The test confirmed that he had fired a weapon. When the weapons discovered were analyzed, it was found that they had recently been fired.

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Based on these facts, preliminary investigation 320(II)97 was launched. On-site inspections were conducted, testimony was taken and an autopsy conducted. The latter established that the cause of death was a massive hemorrhage caused by a firearm the caliber of which did not match those that the police were carrying on the day the events occurred.

The measures taken and the case file do not bear out the petitioners' claims.[FN6]

[FN6] Communication from the State, June 17, 1999, p. 1.

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10. The Mexican State contends that a preliminary inquiry got underway immediately and that "the measures necessary to shed light on the facts in this case continue, which shows that there is nothing to suggest that Mexican authorities either consented to or tolerated the commission of probable crimes."[FN7] During the processing of this case, the State continued to report on the measures taken by the Oaxaca State Office of the Public Prosecutor (PGJE) to investigate the facts and the progress made in carrying out recommendation 16/98 of the Oaxaca State Human Rights Commission (CEDH).[FN8]

[FN7] Idem, p. 4

[FN8] Recommendation Nº 16/1998 of the Oaxaca CEDH, dated September 30,1998, was to the Oaxaca State Prosecutor's Office. The ombudsman recommended to it that the preliminary inquiry to investigate the murder of Celerino Jiménez Almaraz "be conducted with absolute impartiality"... "in order to determine the probable fault of the police involved" and that the inquiry be completed "within thirty days," in keeping with Article 65 of the Bylaws of the State Prosecutor's Office (Recommendation One). It also recommended to the State Attorney General "that the preliminary inquiry should investigate the suspected involvement of other elements of the Investigative Police force who might have had a hand in the operation in which Celerino Jiménez Almaraz lost his life" (Recommendation Two).

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11. Later, the State reported that on September 27, 2001, the PGJE "brought legal criminal charges against Lucio Esteban Vásquez Ramírez for the crime of aggravated homicide in the death of Celerino Jiménez Almaraz"[FN9] and that same day ordered the start of criminal case 279/2001 and the arrest of the accused. Mr. Vásquez was apprehended on October 3,2001, and entered his plea before the second criminal-law judge. Based on these measures, on October 19, 2001, the CEDH ruled that Recommendation 16/1998 had been fully carried out.

[FN9] Communication from the State, December 20, 2001, p. 1.

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12. The State contends that "the fact that a preliminary inquiry has been undertaken and various prosecutorial and expert proceedings conducted" is proof that the Government of Mexico

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has complied with and is complying with its duty to investigate the facts" and "shows no violation of any Article of the American Convention"[FN10] in the instant case. The State asks the IACHR to apply Article 47 of the American Convention and declare the petition inadmissible on the grounds of failure to pursue and exhaust the remedies under domestic law and because the petition does not state facts that tend to establish a violation of the rights protected under the Convention.

[FN10] Communication from the State, June 17, 1999, pp. 4 and 5, respectively.

IV. ANALYSIS

A. The Inter-American Commission's competence ratione personae, ratione materiae, ratione temporis and ratione loci

13. Under Article 44 of the American Convention, the petitioners are authorized to lodge petitions with the IACHR. The petition names as alleged victims persons whose rights under the American Convention Mexico pledged to respect and to guarantee. As for the State, Mexico has been a party to the American Convention since March 24, 1981, the date on which its instrument of ratification was deposited. The Commission is, therefore, competent ratione personae to examine the present petition.

14. The IACHR is competent ratione loci to take up the petition inasmuch as it alleges violations of rights protected under the American Convention, purported to have occurred within Mexican territory, which is a State party to the Convention. The Commission is also competent ratione temporis inasmuch as the obligation to respect the rights protected by the American Convention and to ensure their free and full exercise to all persons subject to its jurisdiction was already binding upon the State on the date the events claimed in the petition allegedly occurred. Finally, the Commission is competent ratione materiae because the petition alleges violations of human rights protected by the American Convention.

B. Other admissibility requirements

a. Exhaustion of domestic remedies

15. Article 46(1)(a) of the American Convention provides that the admissibility of a petition lodged with the Commission is subject to the requirement that "the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." Article 46(2) of the Convention spells out three hypothetical situations under which the rule requiring exhaustion of local remedies would not apply: a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

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16. As is evident from the foregoing, the parties in the present matter differ on the question of exhaustion of local remedies in Mexico. Therefore, it is up to the Inter-American Commission to decide this question. On the one hand, the State contends that this requirement of the Convention has not been met and that none of the exceptions mentioned above apply; the petitioners, for their part, allege that an unwarranted delay has been shown that relieves them from having to wait upon the conclusion of the inquiries launched in Mexico into the facts denounced.

17. The State claiming non-exhaustion of domestic remedies has an obligation to show that domestic remedies remain to be exhausted and that they are effective.[FN11] If it does, then the procedural burden is upon the petitioners to show that those remedies were exhausted or that one of the exceptions provided for in Article 46(2) of the American Convention applies.

[FN11] IACtHR, Velásquez Rodríguez Case, Judgment on Preliminary Exceptions, paragraph 88. See also, Fairén Garbi and Solís Corrales Case, Preliminary, Judgment of June 26, 1987, Series C No. 2, par. 8; Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987, Series C No. 3, par. 90; Gangaram Panday Case, Preliminary Objections, Judgment of December 4, 1991, Series C No.12, par. 38; Neira Alegría et al. Case, Preliminary Objections, Judgment of December 11, 1991, Series C No.13, par. 30; Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996, Series C No. 24, par. 40; Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C No. 25, par. 40; Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10,1990, Series A No.11, par. 41.

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18. In the matter being examined here, the Mexican State contends that the suitable recourse for solving the situation denounced is the criminal case instituted against one of the persons alleged to be responsible for the death of Celerino Jiménez Almaraz. It further alleges that the investigation began immediately after the events occurred and that the authorities have pursued the case diligently. The petitioners, for their part, contend that the investigation was neither prompt nor effective, and single out a number of problems and delays in conducting elementary procedures, such as a reconstruction of the events and the inspection of the crime scene. The petitioners point to the time that has elapsed since April 24, 1997, without any resolution of the case or conviction of those responsible, to make their case that this constitutes an unwarranted delay in the sense of the exception in Article 46(2)(c) of the American Convention.

19. Before entering into an analysis of the arguments made by the parties regarding violation of the rights to due process and to judicial protection, the Inter-American Commission will make a preliminary observation, which is that as of the date of approval of this report, almost 5 years have passed since Celerino Jiménez Almaraz's violent death was confirmed. During that time, a preliminary inquiry was undertaken as a result of which criminal proceedings were instituted against Mr. Lucio Esteban Vásquez Ramírez, alleged to be responsible for the events. The suspect was arrested on October 3, 2001. According to the information available to the

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Commission, the criminal case against that person has not concluded and the facts denounced have not been fully solved.

20. It is an uncontested fact in petition 12.116 that Mr. Lucio Esteban Vásquez Ramírez was one of the investigative police who had a hand in the operation conducted on April 24, 1997 that ended in Celerino Jiménez Almaraz' violent death. The case file also shows that Mr. Vásquez Ramírez was elected Municipal President of San Agustín de los Loxichas and took office on December 1, 1998. It is the Commission's understanding that he was in the area during the time the events were being investigated and at the time he was apprehended in December 2001. Both the alleged extra-judicial execution of Mr. Jiménez Almaraz and the threats and harassment targeted against Mrs. García Ramírez are matters that ought to be investigated ex officio.

21. The information in the case file shows that María Estela García Ramírez denounced the threats to the Office of the Public Prosecutor of Oaxaca, to the Governor of that State, as well as to the Oaxaca State Human Rights Commission. The petitioners also hold that the Mexican authorities never investigated the threats. They highlight the fact that the harassment and surveillance on them increased after December 1st 1998, when Mr. Lucio Vásquez Ramírez was elected Municipal President. The responses of the Mexican State refer to the investigation into the death of Mr. Jiménez Almaraz, but they supply no information on measures taken to clarify the threats denounced by Mrs. García Ramírez.

22. Given the foregoing and in light of all the records in the file on this matter, the Inter-American Commission finds–for admissibility purposes-that there has been an unwarranted delay in the Mexican jurisdictional organs' decision regarding the facts denounced. Consequently, in the present matter, the IACHR is allowing the exception set forth in Article 46(2)(c) of the American Convention to the rule requiring exhaustion of the remedies under domestic law.

23. The Inter-American Court of Human Rights has written that the invocation of the exceptions that Article 46(2) postulates to the rule requiring exhaustion of local remedies, is closely linked to the determination of possible violations of certain rights protected under the Convention, such as the right to due process and the right to judicial protection, established in Articles 8 and 25 of the Convention.[FN12]

[FN12] IACtHR, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, par. 91; see also, IACtHR, "Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights)," Advisory Opinion OC-9/87, October 6, 1987, Series A No. 9, par. 24.

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24. However, the nature and purpose of Article 46(2) set it apart from the substantive normative provisions of the American Convention. Hence, the determination as to whether any of the exceptions to the rule requiring exhaustion of domestic remedies applies to the matter in question must be done prior to and separate from the analysis of the merits, since the criterion used to make that assessment is different from the one to determine whether Articles 8 and 25 of

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the Convention have been violated. The causes and effects that in the instant case have obstructed exhaustion of domestic remedies in Mexico will be examined in the report that the Commission adopts on the merits of the controversy in order to determine whether they do in fact constitute violations of the American Convention.

b. Time period for lodging a petition

25. Under Article 46(2) of the American Convention, when there is an unwarranted delay in rendering a final judgment on domestic remedies the rule requiring exhaustion of domestic remedies and the rule requiring that the petition be lodged within six months of the date of notification of the final judgment do not apply. Article 32(2) of the Commission's Rules of Procedure states that:

In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

26. The petition being analyzed here was lodged on March 1, 1999, almost two years after the violent death of Celerino Jiménez Almaraz. According to the records in the case file, between April 24, 1997 and the date on which the petition was lodged with the IACHR, the petitioners took a number of measures to move the case's investigation forward on the domestic front. Since August 28, 1997, the petitioners have sent numerous communications to the Commission, wherein they have asked for protective measures to guarantee the life and physical safety of Mrs. García Ramírez. As of the date of adoption of the present report, the Commission has no information indicating that the case has been concluded in the domestic courts.

27. Therefore, for the foregoing reason, the Commission finds that the petition was lodged within a reasonable period of time.

c. Duplication of proceedings and res judicata

28. The case file contains no information that might lead one to conclude that the petition is pending in another international proceeding for settlement or that it is substantially the same as one already decided by the Inter-American Commission. The latter therefore finds that the grounds for inadmissibility provided for in Article 46(1)(d) and in Article 47(d) of the American Convention do not apply in the instant case.

d. Characterization of the facts alleged

29. The petitioners' allegations refer to the purported unlawful arrest, torture and extra-judicial execution of Celerino Jiménez Almaraz; the harassment of and threats to his wife María Estela García Ramírez; the failure to investigate the facts and punish those responsible. For its part, the Mexican state alleges that the facts in this case do not tend to establish violations of rights protected under the American Convention.

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30. This is not the proper stage in the proceedings to determine whether in fact the American Convention was violated. For purposes of admissibility, the Commission has to establish whether the facts stated in the petition tend to establish violations of Convention-protected rights, as stipulated in Article 47(b) of the American Convention. The criterion by which these issues are evaluated is different from the one used to decide the merits of the petition. The Inter-American Commission must make a prima facie assessment to examine whether the petition supports an apparent or potential violation of a right guaranteed under the Convention. This is a summary analysis and does not constitute any prejudgment or advance opinion on the petition's merits. The distinction made between the study needed to establish a petition's admissibility and the study needed to establish that a violation has been committed is reflected in the Commission's own Rules of Procedure, which clearly separate the admissibility phase from the merits phase of the proceedings.

31. The petitioners' allegations concern facts that, if true, would establish violations of several rights guaranteed under the American Convention. Although the State's argument is that there is no violation, the information it has provided indicates that a civil servant alleged to have participated in the events that resulted in Celerino Jiménez Almaraz' death is in custody and being prosecuted for homicide; furthermore, despite the time that has passed, it is still not clear what happened on April 24, 1997 and thereafter. The Commission believes that the facts reported are such that a more careful and thorough examination of the petition during the merits phase of the proceedings is warranted.

32. The Commission considers that the facts in this case, if proven to be true, would tend to establish violations of the rights guaranteed under Articles 4, 5, 7, 8 and 25 of the American Convention. It therefore considers that the petitioners have satisfied prima facie the requirements set out in Article 47(b) of the American Convention.

V. CONCLUSIONS

33. The Inter-American Commission concludes that it is competent to take up the merits of this case and that the petition is admissible under Articles 46 and 47 of the American Convention. Based on the arguments of fact and of law herein explained, and without prejudging the merits of the petition,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible with regard to the alleged violations of the rights protected under Articles 4, 5, 7, 8 and 25 of the American Convention with respect to Mr. Celerino Jiménez Almaraz; and of the rights protected under Articles 5, 8 and 25 of that instrument with respect to Mrs. Estela García Ramírez and their family.
2. To notify the parties of this decision.
3. To proceed with the analysis of the merits of the petition, and
4. To publish this decision and include it in the Commission's Annual Report to the OAS General Assembly.

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Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., the 20th day of the month of February 2003. (Signed): Juan E. Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, Susana Villarán, Commission members.