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First Vice-President: Susana Villaran;
Second Vice-President: Paulo Sergio Pinheiro;
Commissioners: Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez,
Florentin Melendez.
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Represented by: APPLICANT: the Asociacion para la Promocion Social Alternativa
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I. SUMMARY

1. On August 27, 2002, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission” or the “IACHR”) received a petition lodged by the Asociación para la Promoción Social Alternativa (MINGA) (hereinafter “the petitioners”), which alleges that the judicial authorities of the Republic of Colombia (hereinafter “the State”, “the Colombian State” or “Colombia”) sentenced Mr. Gustavo Sastoque Alfonso to 41 years in prison as a result of a judicial proceeding that lacked due process guarantees.

2. The petitioners alleged that the State is responsible for violation of the rights to humane treatment, personal liberty, and a fair trial, as well as to respect for honor and personal dignity, rights of the family, and the right to judicial protection, recognized in Articles 5, 7, 8, 11, 17, and 25 of the American Convention on Human Rights (hereinafter “the American Convention”), in conjunction with the general obligation to respect and ensure the rights enshrined in that treaty, provided in Article 1(1) thereof. For its part, the Colombian State argued that the criminal responsibility of Mr. Sastoque Alfonso had been determined by the domestic tribunals in accordance with Colombian law; that he had had access to the remedies necessary to appeal the decision against him; and that, therefore, the petitioners’ complaint should be declared inadmissible in light of the doctrine that prevents the IACHR from acting as a fourth instance to review judicial decisions adopted by domestic courts. In response, the petitioners argued that their petition did not request the IACHR to act as an appellate court, but to find the State responsible for violation of rights recognized by the American Convention.

3. Based on its analysis of the positions of the parties, the Commission concluded that it was competent to take up the petition and that the allegations on Articles 1(1), 8 and 25 were

admissible in keeping with the provisions contained in Articles 46 and 47 of the American Convention. Furthermore, it decided to inform the parties of its decision and to publish its report.

II. PROCESSING BY THE COMMISSION

4. The petition was lodged with the Commission on August 27, 2002. On September 9, 2002, the IACHR requested the petitioners for additional information, which was submitted on September 23, 2002. On November 6, 2002, the petitioners submitted additional information about the imprisonment conditions of Mr. Gustavo Sastoque Alfonso. In a communication of December 4, 2002, the Commission again requested the petitioners for information, which was presented on December 24, 2002. On January 14, 2003, the IACHR began to process the petition as Case 3156/2002 and transmitted the pertinent portions of the complaint to the State, which was granted two months to submit observations. On March 21, 2003, the State presented its reply, which was forwarded in a communication of March 24, 2003, to the petitioners, who were given 30 days to comment.

5. On April 29, 2003, the petitioners submitted a brief with their observations on the reply of the State. This was sent to the State for comment on May 6, 2003. On August 15, 2003, the State presented its comments, which were conveyed to the petitioners on August 22, 2003. In a communication of September 22, 2003, the petitioners presented additional information, which was transmitted to the State on September 24, 2003. Faced with silence from the State, the IACHR reiterated its request for information on August 13, 2004.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

6. The petitioners allege that Mr. Gustavo Sastoque Alfonso –who, at the time of his arrest was serving as an official of the Technical Investigative Corps (CTI) of the Office of the Attorney-General- was arbitrarily prosecuted and convicted for the murder of Hernando Pizarro Leongómez, as a result of what they describe as a charade arranged by persons with connections to the Army designed to find a scapegoat for the crime. The petitioners allege that Mr. Sastoque was tried according to standards that contravened the due process guarantees established in the American Convention. As to the crime for which Mr. Sastoque Alfonso was tried, the petitioners say that on February 26, 1995, a group of uniformed armed men, who said they were from the Office of the Attorney-General, detained Hernando Pizarro Leongómez in a building located in the district of Alta Blanca in the city of Bogotá. They say that Hernando Pizarro Leongómez resisted when his captors attempted to force him into a white Toyota vehicle, whereupon one of the men shot him four times, causing his death.

7. According to the petitioners, on March 8, 1995, the Office of the Attorney-General ordered an investigation into the murder of Hernando Pizarro Leongómez; it tied Gustavo Sastoque Alfonso to the crime, and a warrant was issued for his arrest. On March 9, 1995, Mr. Sastoque Alfonso was interrogated and on November 8, 1995, he was indicted as the perpetrator of the crime of aggravated homicide. On December 29, 1995, the case was referred to the jurisdiction of the special courts in existence at that time known as the Regional Justice System

(composed of 'faceless' judges) for the trial phase of the proceeding. On May 26, 1997, discovery having concluded, Gustavo Sastoque Alfonso was convicted at first instance and sentenced to 41 years in prison, had his right to participate in government suspended, and ordered to pay damages for emotional and material losses for the crime of aggravated homicide. The petitioners say that the defense counsel for Mr. Gustavo Sastoque Alfonso appealed the aforesaid judgment in the legally prescribed manner and, on March 6, 1998, the National Court confirmed the conviction imposed by the lower court but amended the length of the prison term, which was reduced from 41 years to 40 years and six months. A cassation appeal was interposed on July 29, 1998, which was decided on February 23, 2003.

8. The petitioners claim that the proceeding that ended in the conviction of Mr. Sastoque Alfonso was plagued with flaws that amount to violation of the right to a fair trial and judicial protection enshrined in the American Convention. In first place, the petitioners argue that Mr. Sastoque was arrested in an irregular manner. Specifically, they mention that the arrest was made when Gustavo Sastoque had gone voluntarily to the offices of the Regional Prosecutor after he was verbally summonsed in the firm belief that he had been called with regard to a labor matter. They say that he was arrested there and then that he was only shown the relevant arrest warrant hours later. The petitioners allege that this constitutes a breach of the standards then in force with respect to preparation and prior grounds for arrest warrants.

9. Furthermore, the petitioners argue that the judicial authorities invoked Article 324(8) of the Criminal Code,[FN1] which recognizes murder of political leaders as an aggravating circumstance. The foregoing enabled the case to be transferred from the ordinary jurisdiction to the Regional Justice jurisdiction. The petitioners contend that this was "arbitrary" and "capricious" given that the information in the record before the court showed that Hernando Pizarro Leongómez was not involved in any political activities at the time of the murder, but that after he severed ties to the "Ricardo Franco Front"[FN2] in 1987 he devoted himself to art and literature.

[FN1] Criminal Code, Article 324. - Punitive aggravating circumstances. Amended. Law 40, 1993, Art. 30. The penalty shall be forty (40) to sixty (60) years imprisonment, if the crime described in the foregoing article is committed: 1. Against the person of an ascendant or descendant, spouse, adopted or adoptive sibling, or relative up to the second degree by affinity. 2. To prepare, facilitate, or consummate another punishable crime; to conceal it, or to secure the proceeds therefrom or impunity for oneself or for partners in the crime. 3. By means of any conduct recognized in Chapter Two and Three of Titl V of the Second Book of this Code. 4. For a price, promise of remuneration, profit, or any other heinous or futile motive 5. Taking advantage of an unimpeachable activity. 6. With extreme cruelty. 7. By placing the victim in a situation of defenselessness or disadvantage and taking advantage of that situation. 8. For terrorist purposes, in pursuit of terrorist activities or against any person who is or might have been a public servant, journalist, candidate to public office, or community, trade union, political or religious leader; a member of the security forces, university professor, diplomatic or consular official in the service of the nation or accredited before same, by virtue of their office or position, or by reason of their duties, or against any person who inhabits the national territory, based on

their political opinions or beliefs; or against consanguineous relatives up to the fourth degree, relatives by affinity up to the second degree of affinity, or civil relatives of the first degree.

[FN2] In the 1980's Hernando Pizarro Leongómez –brother of the M-19 leader, Carlos Pizarro Leongómez— was second-in-command of the so-called “Ricardo Franco Front”, a hard-line dissident faction of the FARC. Hernando Pizarro Leongómez rose to notoriety as the “Monster of the Andes” in 1985 for the massacre of his own followers in Tacueyó, Cauca Department, for which there was an outstanding warrant for his arrest.

10. The petitioners say that as a result of the activation of the Regional Justice jurisdiction, testimony in support of the charges against Mr. Sastoque was admitted from witnesses whose identities were kept secret. They allege that secret witness No. 1—whose name, Olga Ester Guevara, would later be disclosed[FN3]— gave her testimony at the facilities of Counterintelligence Battalion N° 1, where she said she had witnessed the murder of Hernando Pizarro Leongómez from a window. The petitioners cast doubt on the credibility of the witness by saying that the artist's impression created based on her description of one of the assailants looks exactly like the digitalized copy of the photograph on Mr. Sastoque Alfonso's citizenship card. This artist's impression was allegedly the main exhibit on which his arrest, indictment, and subsequent conviction were based. The petitioners also say that the defense was not given the opportunity to cross-examine the witness during a lineup in which she recognized Mr. Sastoque Alfonso.

[FN3] The petitioners explain that the standards governing the workings of the Regional Justice System provided that convictions could not be based solely on the testimony of witnesses whose identity was withheld. Consequently, at the trial stage the secret identity of witness No. 1, Olga Ester Guevara, was revealed.

11. The petitioners say that, in spite of the importance attached to the testimony of Ms. Guevara, the regional judges failed to examine alleged contradictions in her testimony. They say that, on the contrary, the judges disregarded testimony that opposed the veracity of statements attesting to the presence of Mr. Sastoque at the scene of the crime, as well as a credit card voucher that placed him in another part of the city. They add that after the trial ended it was determined that both the witness and her spouse had labor ties to the Army. They also say that the regional prosecutors (who were ‘faceless’) in charge of the investigation were reservists in the armed forces.

12. The petitioners further allege that there was an unwarranted delay in rendering a decision on the cassation appeal filed on July 29, 1998, given that said decision was issued four years, eight months and 14 days after filing. They allege that the domestic procedural standards provide a time limit of 90 days for a decision to be returned on such an appeal.

13. In light of the aforementioned arguments, the petitioners request the Commission to declare that the State bears international responsibility for violation of the rights recognized at Articles 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American

Convention. Furthermore, the petitioners request the IACHR to find that the State bears responsibility for violation of Articles 5 (right to humane treatment), 11 (right to have his honor and personal dignity respected), and 17 (rights of the family) of the American Convention, without providing additional substantiating arguments or evidence .

14. As to admissibility of the complaint, the petitioners allege that the decision on the cassation appeal of February 23, 2003, confirmed exhaustion of domestic remedies as mentioned in Article 46(1)(a) of the American Convention. In response to the arguments of the State detailed infra, the petitioners mention that they have not approached the Commission as an appellate court; that is, to seek a review of the proceedings in the domestic courts, but so that the State might be found to bear international responsibility for violation of the due process guarantees enshrined in the American Convention in a trial where Mr. Sastoque Alfonso was sentenced to 40 years in prison.

B. Position of the State

15. The State asserts that the complaint of the petitioners is inadmissible because the legal situation of Mr. Sastoque Alfonso was determined by the competent organs at the domestic level, including -at last instance- the Supreme Court of Justice, in accordance with the laws then in force and the due process guarantees provided in the American Convention. It considers, therefore, that an examination of merits in the complaint brought by the petitioners before the inter-American system would compel the IACHR to review the proceedings of the domestic tribunals, which would exceed its jurisdiction.[FN4] In support of its position it cites a series of precedents on application of the fourth-instance doctrine.

[FN4] Notes DDH 10046 of March 18, 2003, and DDH24718 of August 14, 2004, of the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of Colombia.

16. In response to the arguments of the petitioners, the State reproduces the reasoning used in the judgment of the Supreme Court of Justice that upheld the conviction imposed on Mr. Sastoque Alfonso. First, it mentions the decision to include aggravating circumstances in the classification of the offense and, therefore, to try Mr. Sastoque under the so-called Regional Justice System then in existence. In this connection, it justified the decision, saying that, while Mr. Hernando Pizarro Leónomez expressed his revolutionary ideology through military action prior to 1987, thereafter later years he switched his opposition methods to institutional channels, which, coupled with his blood ties to the well known M-19 leader, Carlos Pizarro, led to the conclusion that his murder was motivated by his political beliefs. The State argues that the measures adopted in the investigation and trial were carried out by officials of the Regional Justice System in accordance with the standards then in force in the Code of Criminal Procedure. As to the alleged violation of the right of defense due to the failure to notify the accused, before the murder investigation, that the charges took into account aggravating circumstances, the State says that the notification of the accused of facts that led him to be tied to the crime, irrespective of its legal classification, would not impair his due process guarantees because, under the

procedural standards in force, notification of the classification was reserved until the legal situation of the accused was determined and the indictment was issued.

17. As to the reliance on testimony of witnesses whose identity was withheld, the State argues that –as the Supreme Court found– credibility was not only accorded to that testimony, but that value was also ascribed to other items of evidence. As for the arguments concerning adherence to the rules of reasoned opinion, the State says that the Court found that, “while [the testimony submitted by Olga Ester Guevara] contained contradictions, they do not materially impair the objectiveness of her account, such as her identification and recognition of the accused as the person who fired the shots, or the evidence considered in the lower court rulings to determine that her information contained the necessary certainty to convict Gustavo Sastoque.” With respect to the exclusion of potential evidence, the State says that Mr. Sastoque’s defense counsel failed “to identify the evidence, refer to it, and demonstrate its veracity in the proceeding with the same effectiveness as that used to determine the challenged judgment.”[FN5]

[FN5] Note DDH 10046 of March 18, 2003, of the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of Colombia.

18. Furthermore, the State mentions that the Office of the Attorney-General issued an opinion against the arguments put by the appellant to the Supreme Court of Justice and that the judicial authorities who took cognizance of the case were processed and absolved by the Procuraduría Delegada para la Vigilancia Judicial.[FN6]

[FN6] On June 24, 1990, Gladis Varela Cadenam, Regional Prosecutor at the time of the facts alleged in the petition, was cleared of disciplinary responsibility. Furthermore, by decision of June 13, 2001, the Office of the Procurador General de la Nación abstained from instituting disciplinary proceedings against the Procurador Delegado for Criminal Matters, who had represented the Office of the Attorney General before the Supreme Court of Justice. Note DDH 10046 of March 18, 2003, of the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of Colombia.

19. In sum, the State considers that both the legal classification of the charges against Mr. Sastoque Alfonso, and the evaluation of the evidence that led to his conviction by the judicial authorities with jurisdiction at the time, were supported by domestic laws, did not violate due process guarantees, and are not eligible for review in an international proceeding.

IV. ANALYSIS

20. The Commission now proceeds to analyze the admissibility requirements set down in the American Convention.

A. Competence

21. The Commission is competent *prima facie* to examine the complaint filed by the petitioner. The alleged facts adversely affected individuals within the State's jurisdiction and they occurred at a time when the State effectively had the obligation to respect and guarantee the rights established in the Convention. [FN7] The Commission then turns to determining whether the present case satisfies the requirements established in Articles 46 and 47 of the American Convention.

[FN7] Colombia ratified the American Convention on Human Rights on July 31, 1973.

B. Admissibility requirements for the petition

1. Exhaustion of domestic remedies

22. Under Article 46(1)(a) of the American Convention, for a petition to be admissible it shall be necessary "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law". This rule is designed for the benefit of the State, for it seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means".[FN8]

[FN8] See Inter-Am. Ct. H.R., In the Matter of Viviana Gallardo et al. Decision of November 13, 1981, Ser. A, N° G, 101/81, par. 26.

23. In the instant case, the information provided by both parties mentions that an appeal was filed against the judgment that convicted Mr. Sastoque Alfonso on May 26, 1997. That appeal was rejected on March 6, 1998, by the National Court. Furthermore, the petitioners and legal representatives of Mr. Sastoque Alfonso lodged a cassation appeal with Supreme Court of Justice, which, was also rejected on February 23, 2003. The State, for its part, has not invoked failure to meet the requirement contained in Article 46(1)(a) of the American Convention and, therefore, the Commission takes it as met.

2. Deadline for lodging the petition

24. Article 46(1)(b) of the American Convention provides that admission by the Commission of a petition or communication shall be subject to the requirement that it is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. In this connection, the IACHR notes that the petition was lodged by the petitioners on August 27, 2002, and the decision on the cassation appeal to challenge the conviction imposed on Mr. Gustavo Sastoque Alfonso at second instance was issued on February 13, 2003, by the Criminal Cassation Chamber of the Supreme Court of Justice. Accordingly, the

Commission finds that the requirements at Article 46(1)(b) of the American Convention have been met.

3. Duplication of proceedings and res judicata

25. The record contains no information that could lead to a determination that this matter is pending in another international proceeding for settlement or that it has been previously studied by the Inter-American Commission. Therefore, the IACHR concludes that the requirement provided in Article 46(1)(c) of the American Convention is met.

4. Nature of the allegations

26. As the Commission has held in other cases, this is not the proper stage in the proceedings to determine whether or not the American Convention has been violated. For purposes of admissibility, the IACHR simply has to determine if the arguments set out in the petition could tend to establish a violation of the American Convention, as required under Article 47(b) thereof, and whether the petition is "manifestly groundless" or "obviously out of order," as paragraph (c) of the same Article provides. The standard by which to assess these extremes are different from the one needed to decide the merits of a petition. At this stage the IACHR must perform a prima facie evaluation that does not imply any prejudgment or advance opinion on the merits of the petition. By establishing two clearly separate phases -one for admissibility and the other for the merits- the Commission's own Rules of Procedure reflect the distinction between the evaluation the Commission must make to declare a petition admissible, and the evaluation required to determine the responsibility of the State.

27. In the instant case, the petitioners have presented a series of arguments on alleged violation of the judicial guarantees of Mr. Sastoque Alfonso in the trial for aggravated homicide that resulted in a 40-year prison sentence. They also make references to violations of the right to humane treatment, the right to have one's honor and dignity respected, and the rights of the family, that do not seem clearly dissociated from the outcome of the aforementioned judicial proceeding and do not appear to tend to establish possible violations of the American Convention separately there from. For its part, the State argues that the trial that led to the conviction of Mr. Gustavo Sastoque Alfonso was held in accordance with domestic laws and due process guarantees. The State considers that should it examine the petitioner's complaint, the IACHR would be acting as a fourth instance review body.

28. In light of these arguments, the Commission considers pertinent to reiterate that the international protection provided by the supervisory bodies of the Convention is of a subsidiary nature and in democratic societies, where the courts function in the framework of the rule of law, it is up to the competent tribunals to examine and make decisions on matters brought before them. However, if it is determined that a possible violation of rights protected by the American Convention could exist, it is up to the Commission to examine the matter. In principle, it is not for the IACHR to act as court of appeal to review the determinations of fact and law of domestic tribunals; however, it is empowered to ascertain if the standards of due process enshrined in the American Convention have been observed in the course of such proceedings.

29. In the instant case, based on its analysis of the arguments of the parties, the Commission finds that the allegations presented by the petitioners could tend to establish violations of the rights to personal liberty, a fair trial and judicial protection recognized in Articles 7, 8, and 25 of the American Convention, in conjunction with the general obligation of the State to respect and ensure rights contained in Article 1(1) of the aforementioned instrument, to the extent that they refer to the way in which the trial of Mr. Sastoque Alfonso was conducted in the Regional Justice jurisdiction.[FN9] Consequently, the Commission concludes that these aspects of the petition meet the requirements contained in Article 47(b) and (c).

[FN9] For an analysis of the workings of the so-called regional justice jurisdiction at the time of the events mentioned in the petition, see Third Report on the Human Rights Situation in Colombia (1999) OEA/Ser.L/V/II.102 Doc. 9 rev. 1, Chapter V “Administration of Justice and Rule of Law”, pars. 82 to 130. The so-called regional justice jurisdiction expired automatically on June 30, 1999, in accordance with Law 270 (Statutory Law on Administration of Justice) of 1996. Certain types of conduct previously tried in this jurisdiction currently come under the jurisdiction of the so-called specialized circuit courts. See Chapter V of the Annual Report of the IACHR 1999 OEA/Ser.L/V/II.106 Doc. 3, April 13, 2000, “Follow-up Report on Implementation of the Recommendations Contained in the Third Report of the IACHR on the Human Rights Situation in Colombia 1999”, pars. 45 to 51.

V. CONCLUSION

30. The Commission concludes that it is competent to take up this case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention. Based on the foregoing factual and legal arguments and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible as regards the alleged violation of Articles 1(1), 7, 8, and 25 of the American Convention on Human Rights.
2. To notify the parties of this decision.
3. To continue with its analysis of the merits of the case.
4. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington D.C. on the 22nd day of the month of February of 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez, and Florentín Meléndez, Commissioners.