

Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 36/05; Petition 12.170  
Session: Hundred Twenty-Second Regular Session (23 February – 11 March 2005)  
Title/Style of Cause: Fernando A. Colmenares Castillo v. Mexico  
Doc. Type: Decision  
Decided by: President: Clare K. Roberts;  
First Vice-President: Susana Villaran;  
Second Vice-President: Paulo Sergio Pinheiro;  
Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez.  
Dated: 9 March 2005  
Citation: Colmenares Castillo v. Mexico, Petition 12.170, Inter-Am. C.H.R., Report No. 36/05, OEA/Ser.L/V/II.124, doc. 5 (2005)  
Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at [www.worldcourts.com/index/eng/terms.htm](http://www.worldcourts.com/index/eng/terms.htm)

---

## I. SUMMARY

1. On September 5, 1998, the Inter-American Commission on Human Rights (hereinafter the “IACHR” or the “Inter-American Commission”) received a petition lodged by Fernando A. Colmenares Castillo (also the “petitioner” or the “alleged victim”) against the United Mexican States (the “State” or the “Mexican State”). The complaint alleges that the State is responsible for violations of the petitioner’s right to be free from arbitrary detention; mistreatment; and violations of his rights to due process of law and to property. These violations supposedly took place during the seizure and search of Discotheque Yambalay on December 11, 1993. The complaint also alleges that the petitioner has been denied justice by Mexican authorities, because they failed to answer the petitioner’s requests for justice and to remedy the violations of his rights.

2. The petitioner asserts that the facts reported in his complaint constitute violations of the following Articles protected under the American Declaration of Rights and Duties of Man (the “American Declaration”): I, II, V, VI, VII, VIII, IX, XIV, XVI, XVII, XVIII, XXI, XXII, XXIII, XXIV, XXV, XXVI, and XXVIII. The State, for its part, argues that the petition does not state facts that tend to establish a violation of any of the rights guaranteed by the American Convention on Human Rights (the “American Convention”). The State further contends that domestic remedies have not been exhausted. Due to these reasons, the Mexican State asks that the petition be declared inadmissible.

3. In this report, the IACHR analyzes the available information in light of the provisions of the American Convention, and concludes that the petitioner has not pursued and exhausted domestic remedies in accordance with generally recognized principles of international law, and

also has not presented the petition within a reasonable period of time. The Inter-American Commission therefore decides that the petition is inadmissible under Article 47(a) of the American Convention and Articles 31(1) and 32(2) of its Rules of Procedure; transmits the report to the parties; publishes the report, and orders its publication in its Annual Report.

## II. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION

4. The petition was lodged on September 5, 1998. After an initial evaluation, the Inter-American Commission decided to ask the petitioner for more information on November 11, 1998. The IACHR received the requested information on May 19, 1999, and then the petition was registered as Case number 12.170. The Commission initiated proceedings on June 11, 1999, when it requested information from the State concerning the facts alleged by the petitioners and set a 90-day deadline.[FN1]

-----  
[FN1] In accordance with Article 37 of the Rules of Procedure of the IACHR, in force at the time.  
-----

5. The petitioner sent additional information on June 27, July 3 and August 26, 1999. The State's response was submitted on September 13, 1999; and the pertinent parts were forwarded to the petitioner on September 19, 1999 with a request for his observations within 30 days. The petitioner asked for an 8-day extension on October 15, 1999. The IACHR granted the request extension on October 18, 1999. The petitioner submitted his observations on the State's response on October 25, 1999. In addition, the petitioner sent additional information on September 18, October 5, October 21, October 28, and November 1st, 1999.

6. The Inter-American Commission forwarded the petitioner's October 25 response to the State on November 15, 1999 for comments within 30 days. The State's observations were filed on December 14, 1999. On December 17, 1999, the Inter-American Commission forwarded the pertinent parts of the State's last observations for the petitioner's comments within a month.

7. The petitioner sent additional information on January 3, 2000, and remitted his observations on the State's last communication on January 10, 2000. The petitioner's observations were then forwarded to the State for comments within 30 days. The State requested a 30-day extension on March 10, 2000, and the IACHR granted it on March 17, 2000.

8. On April 11, 2000, the petitioner sent more additional information. The State presented its observations on April 17, 2000. These were remitted to the petitioners for his observations within 30 days, on May 1, 2000. The petitioner submitted his observations on May 16, 2000, and then they were forwarded to the State on June 4, 2000 for its observations within 30 days.

9. The State sent its observations on July 12, 2000, and these were remitted to the petitioner on July 25, 2000 for his observations within 30 days. The petitioner presented additional information on July 6 and August 21, 2000, and also his response on the State's last observations on August 11, 2000, which was duly remitted to the State on September 19, 2000. The petitioner

submitted additional information on November 9 and 30, 2000, and also on January 2, March 19, August 23, 2001, and on May 29, September 23 and 30, October 1 and 21, 2002. These communications from the petitioner were submitted to the State on December 2, 2002 with a request for comments within 30 days. The petitioner sent more communications on November 11, 2002 and February 11, 2003.

10. The State asked for a prorogation for the presentation of its observations on the petitioner's latest communications on January 2, 2003, and the IACHR granted the extension. Then, the State presented its observations on February 7, 2003. These were forwarded to the petitioner on April 2, 2003. The petitioner presented his comments on the State's last observations on May 22, 2003. The petitioner also sent additional communications on July 29, 2003, January 6, February 11, March 9, September 1 and 23, November 15, December 7, 2004, and January 9, 2005.

### III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

#### A. The petitioner

9. The petitioner states that on December 11, 1993, a group of about 60 to 70 heavily armed agents of the Federal Judicial Police raided without a judicial order his commercial establishment, which was named "Discotheque Yambalay" and located in Yautepec, Morelos State. According to the petitioner, police agents "planted" 150 grams of marihuana in order to extort 400 million pesos from him, in exchange for not charging him with drug-related offenses. Moreover, the petitioner denounces that police agents also used extreme violence and abuse of authority in order to insult, threaten and assault the 450 people that were present at the discotheque. He alleges that they also robbed the cashier and wrecked the facilities of both the discotheque and the offices of Light Paper and Vending de Mexico S.A. de C.V., which were located in the same building and belonged to him as well.

10. According to the petitioner, the allegedly illegal seizure and search was commanded by the Office of the Federal Public Prosecutor (the "PGR" for its name in Spanish Procuraduría General de la Republica.), namely by Francisco Javier Mascorro Garcia and Victor Manuel Medina Hernandez (PGR agents); Ricardo Muriel Martinez, Ana Lilia Sanchez Galindo, Jovita Galvan Levya, Armando Trejo Caballero and Marco Antonio Campos Torres (agents of the Federal Judicial Police); Julio Estrada Castillejos (Head of the Homicide Department of the PGR); and Fernando Aisiain Diaz Barriga (Commander of the Federal Judicial Police).

11. In addition, the petitioner claims that his rights were further violated within the context of the criminal proceedings that were initiated against him, including preliminary investigation (Averiguación Previa) No. 262/93 and criminal action No. 152/93. These proceedings allegedly violated the petitioner's due process guarantees in several ways, for instance, through illegal constraints to Mr. Colmenares' right to present evidence, as well as in the fabrication and destruction of evidence and procedural errors, among other irregularities.

12. The petitioner also maintains that eight months after the alleged raid, on August 19, 1994, the facilities of Light Paper and Vending de Mexico S.A. de C.V. --which had been closed since

December 11, 1993 and kept under guard and custody of the PGR and the Second District Court (Juzgado Segundo de Distrito)-- were surrendered back to the petitioner after being plundered and destroyed.

13. Mr. Colmenares Castillo contends that the allegedly illegal action of the PGR and the subsequent irregularities in the criminal proceedings against him resulted in his sentencing to one year in prison for possession of marijuana on October 31, 1994. According to the petitioner, he was released on November 11, 1994 after serving 11 months. However, Mr. Colmenares asserts that he did not appeal that sentence because he had been pressured, psychologically tortured and threatened while under custody by agents of the PGR, in the sense that if he appealed the sentence, he and his family would be in danger.

14. Notwithstanding the lack of appeal, the petitioner and his family allegedly kept on being harassed and threatened by agents of the PGR. According to the petitioner, that was due to his testimony and the evidence presented by his defense in the course of criminal action no. 152/93, as well as the complaints presented that were related to the raid to his discotheque and company office and the plundering of their facilities, and the intervention of the National Commission on Human Rights and the Human Rights Department of the Archdiocese of Mexico (CARITAS). For that reason, the petitioner contends that he and his family had to flee Mexico on January 29, 1995 and apply for asylum in the United States of America, where the petitioner and his family have been living since then.

15. Lastly, the petitioner states that since 1994 he has been unsuccessfully presenting and ratifying complaints about the facts alleged in this petition before Mexican authorities. These complaints have been allegedly presented to the following governmental bodies: PGR, Office of Citizen Matters of the Presidency of the Republic (Oficina de Atención a la Ciudadanía de la Presidencia de la Republica), Supreme Court of the Nation (Suprema Corte de Justicia de la Nación), Ministry of Interior (Secretaria de Gobernación), Ministry of Foreign Affairs (Secretaria de Relaciones Exteriores), Internal Affairs Department of the Office of the Public Prosecutor (Contraloría Interna de la PGR), National Commission on Human Rights (Comisión Nacional de Derechos Humanos), the Federal Council of the Judiciary Branch (Consejo de la Judicatura Federal), and the Office of the Comptroller and Administrative Development (Secretaria de la Contraloría y Desarrollo Administrativo). Moreover, the petitioner asserts that such complaints were ratified before the agency of the PGR in Cuernavaca, Morelos State, Mexico, and again in 1997 before the Mexican Consulate in Seattle, Washington State, U.S.A.

16. On the question of the exhaustion of domestic remedies, the petitioner claims that despite the numerous complaints presented to various authorities, the matters were not investigated or even considered, since the perpetrators of the alleged violations were the same authorities that had the competence to take action. The petitioner also adds that it would be absurd and unacceptable to consider that domestic remedies have not been exhausted and that, as alleged by the State, Mr. Colmenares Castillo still has the possibility of filing a writ of Amparo in order to remedy his situation, or that the procedures before the Federal Council of the Judiciary Branch are still pending. That is so because the Mexican authorities have allegedly denied the exercise of the petitioner's most fundamental and basic constitutional rights throughout these years.

17. Indeed, the petitioner denies that he has not tried domestic remedies before presenting the petition before the Inter-American Commission. In this regard, the petitioner asserts that he presented complaints to the authorities in 1993 and 1994, as well as during the course of criminal action no. 152/93, all of which should have been seriously investigated by the Mexican State. Moreover, the petitioner points out that the Government of Mexico itself recognizes that a series of complaints have been submitted to the authorities from 1995 on. However, according to the alleged victim, these complaints have not been answered, resolved or decided, which constitutes a denial of justice and unwarranted delay, thus the exceptions to the rule of exhaustion of domestic remedies enshrined in Article 46(2)(b) and (c) of the American Convention are applicable.

B. The State's position

18. Preliminarily, the State purports to clarify some of the facts of the case. It asserts that the operation undertaken at Discotheque Yambalay was not a seizure and search operation, but rather an inspection in a public place, in conformity with an administrative order (Oficio DEM/993/93) issued by the Delegate of the PGR in Morelos State, Guillermo Jiménez Padilla.

19. According to the State, on December 11, 1993, a group of about 30 to 40 agents of the Federal Judicial Police (Policía Judicial Federal) and two agents of the PGR arrived at Discotheque Yambalay and informed its owner, Mr. Colmenares Castillo, that they would conduct an inspection. During the inspection, the federal agents found cigarettes of marihuana inside the facility and arrested the petitioner in flagrante delicto. Then, the PGR initiated Preliminary Investigation (Averiguación Previa) No. 262 and obtained a judicial prison order (Auto Formal de Prisión) against the petitioner on December 17, 1993. The issuing of such order was appealed by the petitioner through Appeal No. 458/93, but the order was confirmed on February 18, 1994 by the Tenth Circuit Unitary Tribunal (Tribunal Unitario del Décimo Circuito). Then, the petitioner filed writ of Amparo Indirecto No. 201/94 against the acts of the judicial authorities who had issued and confirmed the prison order, but the decision was in favor of the authorities and the prison order was maintained.

20. In sum, the State alleges that the actions of the competent authorities were duly and seriously undertaken in response to the facts under analysis by the Inter-American Commission. This demonstrates, according to the State, that the denounced facts do not tend to establish a violation of the rights guaranteed by the American Convention. Furthermore, the State contends that remedies available to the petitioner within Mexico's domestic jurisdiction have not been exhausted, as both the Mexican Constitution and the jurisprudence of the Federal Judiciary provide the writ of Amparo in order to remedy the petitioner's situation.

21. According to the State, the National Commission on Human Rights ("CNDH" for its name in Spanish) initiated an investigation on February 10, 1994 in response to a complaint that accused agents of the PGR of committing offenses during the December 11 operation at Discotheque Yambalay. At the end of the investigation, on November 23, 1994, the CNDH recommended to the PGR that it launch an investigation on the responsibility of the agents of both the PGR and the Federal Judicial Police who had participated in the operation for the alleged commission of abuse of authority.

22. The State affirms that, for its part, the PGR undertook a series of actions related to the present case. First, it mentions that administrative procedures 001/94 and AC/12/95 were carried out. The State reports that in the first one, the authorities found that the detained people did not present any signs of violence, the existence of the drug was corroborated, and finally, the conclusion was that the petitioner's complaint was unfounded. The second one also found no criminal responsibility of the PGR agents. Finally, the State adds that the first administrative procedure originated a third administrative procedure, labeled No. 03/94, which resulted in an administrative sanction for Francisco Mascorro García due to irregularities related to the weighing of the drugs that were seized.

23. On top of that, the State indicates that preliminary investigation No. 8816/DGSR/94 was carried out, but that it concluded with a decision that no indictment would be presented (no ejercicio de la acción penal). According to the State, that conclusion was approved on April 7, 1999, and subsequently the PGR determined that no indictment would be presented in the case.

24. Lastly, the State adds that another administrative procedure (Expediente 486/97) was launched by the Federal Council of the Judiciary Branch due to the petitioner's allegations of illegal acts perpetrated by members of the Federal Judiciary, but that organ decided that the petitioner's complaint was unfounded on June 25, 1997. In spite of that, the State contends that the petitioner kept on presenting documents and complaints within this sphere, and that there are still recourses pending in proceedings before the Federal Council of the Judiciary Branch.

#### IV. ANALYSIS OF ADMISSIBILITY

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

25. Under Article 44 of the American Convention, the petitioner is authorized to lodge petitions with the IACHR. As for the State, it has been a party to the American Convention since March 24, 1981, the date on which its instrument of ratification was deposited. The Inter-American Commission is, therefore, competent *ratione personae* to examine the present petition inasmuch as it alleges violations perpetrated by the Mexican State.

26. As regards competence *ratione materiae*, the IACHR observes that the petitioner maintains that the State violated several of his rights under the American Declaration. Therefore, in keeping with its previous practice, the Inter-American Commission deems it correct and appropriate to examine the petition in light of the rights claimed by the petitioners.[FN2]

---

[FN2] See, e.g., IACHR, Annual Report 2000, Amílcar Ménendez et al v. Argentina, Case 11.670, Report No. 3/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 95, para. 40.

---

27. The IACHR states that it is, in principle, competent *ratione materiae* to examine the alleged violations of the rights set forth in the American Declaration,[FN3] bearing in mind

Articles 23 and 49 of its Rules of Procedure. However, the Inter-American Commission has previously established[FN4] that once the American Convention has entered into force with respect to a State, it is that treaty and not the American Declaration that becomes the specific source of law to be applied, as long as the petition alleges violation of substantially identical rights enshrined in both instruments[FN5] and a continuing situation is not involved.[FN6]

---

[FN3] See also, Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89, July 14, 1989, Inter-Am. Ct. H.R. (Ser. A) No. 10 (1989), para. 41.

[FN4] See IACHR, *Amílcar Menéndez et al v. Argentina*, supra note 1, para 41.

[FN5] Advisory Opinion OC-10/89, supra, para. 46

[FN6] The IACHR has established that it has competence to examine violations of the American Declaration and the American Convention as long as ongoing violation of the rights protected in both instruments is verified. See, e.g., IACHR, Annual Report 1987-88, Resolution 26/88, Case 10.190, Argentina; and IACHR, Annual Report 1998, Report 38/99, Argentina, para. 13.

---

28. In the case under consideration, the articles of the American Declaration invoked by the petitioner are subsumed in articles of the American Convention. Consequently, the Inter-American Commission declares that it is competent *ratione materiae* insofar as the petition refers to alleged violations of human rights protected by the American Convention. Notwithstanding the petitioner's claims of violations of the American Declaration, due to the aforementioned, the IACHR will refer only to the norms of the American Convention when addressing the alleged violations of the former instrument.

29. The IACHR is competent *ratione temporis* because the facts alleged occurred when the obligation to respect and guarantee the rights established by the American Convention was already in force for the State, as it ratified that instrument on March 24, 1981.

29. The Inter-American Commission is competent *ratione loci* because the facts alleged occurred within the territory of a State party to the American Convention.

## B. Admissibility requirements

### 1. Exhaustion of domestic remedies

30. Article 31(1) of the IACHR's Rules of Procedure specifies that, in order to decide on the admissibility of a matter, the Inter-American Commission must verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with generally recognized principles of international law.

31. If a State alleges non-exhaustion and proves the existence of specific domestic remedies that should have been utilized, the petitioner has the burden of showing that those remedies were exhausted or that the case comes within the exceptions of Article 46(2). As the Inter-American Court of Human Rights has affirmed, “[i]t must not be rashly presumed that a State party to the

Convention has failed to comply with its obligation to provide effective domestic remedies [...] The rule of prior exhaustion of domestic remedies allows the state to resolve the problem under its internal law before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction."[FN7]

---

[FN7] See I/A Court H.R., Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C N° 4, paras. 60 and 61.

---

32. In the present matter, there are two separate instances regarding the alleged violations and the exhaustion of domestic remedies. The first one refers to the due process violations in the course of the criminal action against the petitioner. The second one refers to the complaints presented by Mr. Colmenares Castillo about the facts that occurred on December 11, 1993, and the actions then undertaken by the Mexican judicial and administrative bodies.

33. The State has alleged that the domestic remedies that are available to the petitioner within Mexico's domestic jurisdiction have not been exhausted, as the petitioner has not filed a writ of Amparo in order to remedy his situation. The IACHR has previously established that in Mexico the writ of Amparo is the available, appropriate, and effective judicial proceeding to remedy a wrongful sentence imposed on a person[FN8] or other official act that violates the human rights of a person. In its Report on the Human Rights Situation in Mexico, the IACHR asserted that

[Amparo's] purpose is to protect persons from any official act (broadly construed) which causes harm to a person's interests and which is deemed to violate the rights enshrined in the Constitution. Amparo proceedings seek to invalidate the act in question or to render it without effect on the grounds of unconstitutionality or illegality in the specific circumstances in which it occurred.[FN9]

---

[FN8] See IACHR, Santos Soto Ramirez and Sergio Cerón Hernández, Case 12.117, Report No. 68/01, OEA/Ser./L/V/II.114 Doc. 5 rev. at 216, paras. 10-15 (2001).

[FN9] IACHR, Report on the Human Rights Situation in Mexico, OEZ/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 93.

---

34. According to the information received from both parties, the Inter-American Commission considers that the petitioner has not filed a writ of Amparo to remedy his situation. The petitioner mentioned several complaints he presented to authorities without any success. However, the IACHR considers that most of such complaints do not constitute effective remedies in the sense established by the jurisprudence of the Inter-American system, and therefore the petitioner was under no obligation to exhaust them before having access to the individual petition mechanism provided for in the American Convention.

35. With regard to the characteristics of the domestic remedies that are required to be exhausted, the Inter-American Court has stated that,

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted.[FN10]

---

[FN10] I/A Court H.R, Velásquez Rodríguez Case, see supra, note 7, para. 64.

---

36. Along the same lines, the IACHR has previously ascertained that administrative remedies such as lodging a petition or complaint with the National Commission on Human Rights, for instance, “is not a suitable remedy for the alleged human rights violations described in the instant case [...] [since] it is not effective in the sense established by the case law of the Inter-American system, for which reason the petitioner [is] under no obligation to exhaust it before having access to the international protection provided for in the American Convention.”[FN11]

---

[FN11] IACHR, Ejido "Ojo de Agua" v. Mexico, Case 11.701, Report N° 73/99, OEA/Ser.L/V/II.106 Doc. 3 rev. at 316 (1999), para. 16.

---

37. Likewise, the Inter-American Commission considers that complaints such as the one before the Federal Council of the Judiciary, or the complaints that the petitioner presented to the Office of Citizen Matters of the Presidency of the Republic, the Supreme Court, the Ministry of Interior, Ministry of Foreign Affairs, Internal Affairs Department of the Office of the PGR, or the Office of the Comptroller and Administrative Development.

38. With regard to the facts denounced, from the operation that took place at Discotheque Yambalay on December 11, 1993 to the subsequent related facts, all of which, if true, would constitute crimes under Mexican domestic legislation, the IACHR deems that the appropriate remedy in order to examine the exhaustion of domestic remedies is the complaint (queja) that the petitioner presented to the PGR on December 5, 1994 about the alleged robbery and related facts, which resulted in the launching of a preliminary federal investigation (Averiguación Previa no. 8816/DGSR/94).

39. According to the information received, the decision taken by the PGR on April 7, 1999 that no indictment would be presented could be appealed by means of a writ of Amparo, which was not presented by the petitioner. Similarly, he could have sought remedy by means of the same writ to question the other acts of Mexican authorities that he deemed harmful to his interests, or that violated his rights enshrined in the Mexican Constitution or in the American Convention.

40. The petitioner has not presented justifiable arguments for not pursuing the constitutional remedy provided for in Mexican domestic legislation in order to have the State resolve the matter under its internal law before being confronted with the international proceeding of the IACHR. In that regard, the petitioner has simply asserted that Mexican authorities have denied the exercise of his most fundamental and basic constitutional rights since 1993. Nevertheless, the alleged victim has not presented any valid arguments that might excuse him from the filing of a writ of Amparo in order to have the decision not to prosecute the persons accused by him reviewed. Neither did he attempt that recourse to revert any other act by State agents.

41. Accordingly, the IACHR finds that the petitioner's claims regarding the lack of investigation or prosecution for the crimes allegedly committed against him are barred from consideration under Article 31(1) of its Rules of Procedure and Article 46(1)(a) of the American Convention and, to that extent, the petition is inadmissible.

## 2. Time period for lodging a petition

42. With regard to the first set of violations as mentioned above (*supra*, para. 32), it must be noted that the petitioner was convicted and sentenced to one year in prison for possession of marihuana on October 31, 1994. Then, after serving 11 months, he was released on November 11, 1994. According to the petitioner, he did not appeal that sentence because agents of the PGR had pressured, psychologically tortured and threatened him while he was under custody. While the Inter-American Commission will not pronounce itself on the veracity of such allegations, it acknowledges that the petitioner may have presented a justifiable excuse under Article 46(2)(b), since the alleged victim may have been "prevented from exhausting [the domestic remedies]."

43. In addition to the exhaustion of domestic remedies, the American Convention also establishes in Article 46(1)(b) that a petition must be "lodged within a period of six months from the date on which the party alleging the violation of his rights was notified of the final judgment." That rule obviously applies only to cases where a final judgment has been rendered. In cases where an exception to the six-month rule applies, the Rules of Procedure of the IACHR ascertain that "the petition shall be presented within a reasonable period of time, as determined by the Commission." [FN12]

---

[FN12] IACHR Rules of Procedure, Article 32(2).

---

44. Because the purpose of the American Convention is the protection of fundamental freedoms of the individual, the jurisprudence of the Inter-American system has allowed certain leeway regarding procedural time periods, depending upon the circumstances of a given case and within certain reasonable limits. In the present case, even considering that the petitioner may have had a well-founded fear of retaliations against him or his family while he was in prison or right after being released, the IACHR observes that the petitioner fled Mexico on January 29, 1995. Since that date, the alleged victim and his family have been living in the United States of America, and he has not presented any information concerning continuing threats from Mexican State agents during this period.

45. The petition was presented on September 5, 1998, i.e., more than three years and seven months after the petitioner left Mexico. In the instant case, the Inter-American Commission considers that the petition was not lodged within a reasonable period of time regarding the alleged due process violations in the course of the criminal action that resulted in the petitioner's conviction on October 31, 1994.

46. Therefore, in relation with the alleged violations of due process, the petition does not satisfy the requirement stipulated in Article 32(2) of the IACHR's Rules of Procedure, hence it is inadmissible.

47. In light of its conclusion as to the exhaustion of domestic remedies (*supra*, para. 41) and as to the timeliness of the petition, the Inter-American Commission does not consider it necessary to address the remaining elements of admissibility.

## V. CONCLUSIONS

48. The IACHR concludes that it has the competence to examine the petitioner's allegations.

49. The Inter-American Commission also concludes that the claims raised in the petition are inadmissible, on the basis that the alleged victim has failed to pursue and exhaust domestic remedies in accordance with the generally recognized principles of international law, and also has not presented the petition within a reasonable period of time, to the detriment of Articles 46(1)(a) of the American Convention, and 31(1) and 32(2) of the IACHR's Rules of Procedure.

50. On the basis of the findings of fact and law set forth above,

## THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

### DECIDES TO:

1. Declare the present case inadmissible.
2. Transmit this report to the parties.
3. Publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 9th day of the month of March 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez.