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| Session: | Hundred Twenty-Third Regular Session (11 – 28 October 2005) |
| Title/Style of Cause: | Ivan Eladio Torres v. Argentina |
| 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: | 13 October 2005 |
| Citation: | Eladio Torres v. Argentina, Petition 960/03, Inter-Am. C.H.R., Report No. 69/05, OEA/Ser.L/V/II.124, doc. 5 (2005) |
| Represented by: | APPLICANTS: Maria Leontina Millacura Llaipen and the Asociacion Grupo Pro-Derechos de los Ninos |
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I. SUMMARY

1. On November 14, 2003, the Inter-American Commission on Human Rights (IACHR) received a complaint lodged by Mrs. Maria Leontina Millacura Llaipén and the Asociación Grupo Pro-Derechos de los Niños ("the petitioners"), claiming the international responsibility of agents of the State of Argentina ("the State") for the illegal detention, incommunicado detention, torture, and forced disappearance of Iván Eladio Torres (a Chilean citizen and resident of Argentina) in Comodoro Rivadavia, Province of Chubut. The petition also claims the denial of judicial protections and guarantees relating to the failure to adequately investigate and punish the officials allegedly responsible for the torture and disappearance of the alleged victim.

2. The petitioners assert that the claims made constitute a violation of Articles 5(1) (right to physical, mental, and moral integrity), 5(2) (prohibition of torture or cruel, inhuman, or degrading treatment), 7 (right to personal liberty, and 8(1) (fair trial) of the American Convention on Human Rights (hereinafter the "American Convention") in relation to Article 1(1) (general obligation to respect rights). The petitioners further claim that the State is responsible for the violation of Articles I, II and XI of the Inter-American Convention on Forced Disappearance of Persons.

3. Although the State has submitted information regarding the precautionary measures that were granted in relation to this petition, it has failed to respond to the allegations of fact presented by the petitioners concerning the detention and disappearance of Iván Torres, nor has it disputed the admissibility of this petition.

4. After analyzing the positions of the parties, and without prejudging the merits of the matter, the IACHR concludes in this report that the petition is admissible inasmuch as it meets the requirements set forth in Articles 46 and 47 of the American Convention. Therefore, the IACHR decides to notify the parties of this decision and to continue with its examination of the merits of the alleged violation of Articles 2, 4, 5, 7, 8(1), 25 and 1(1) of the American Convention, as well as Articles I, II, and XI of the Inter-American Convention on Forced Disappearance of Persons, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

II. PROCESSING BEFORE THE COMMISSION

5. Based on the petition and the additional information received on April 19, 2004, the IACHR began to process the petition registered with number N° 0960/03, in keeping with the Regulations in effect as of May 1, 2001, and forwarded the relevant portions of the petition to the State on April 22, 2004, with a period of two months to submit its observations.

6. On May 26, 2004, the State responded with a request for a one month extension, which was granted by the IACHR on June 8, 2004. On November 22, 2004, the IACHR sent a note reiterating its request for information from the State and asking that it be sent as soon as possible.

7. On January 10, 2005, Mrs. Leontina Millacura Llaipen and the attorneys Silvia de los Santos and Verónica Heredia submitted a request for precautionary measures on behalf of David Alberto Hayes, and relatives and witnesses related to the reported disappearance of Iván Eladio Torres (Maria Leontina Millacura Llaipen, Gerardo Atilio Colin, Luis Patricio Oliva, Tamara Bolívar, Walter Mansilla, Silvia de los Santos, Verónica Heredia, and other relatives of Iván Eladio Torres) and this request was registered as N° MC 9-05. On January 18, 2005, the IACHR granted the precautionary measures and established a period of 7 days for the State to submit information on the measures adopted.

8. On January 19, 2005, the petitioners requested that the precautionary measures be expanded to include Juan Pablo Caba and Miguel Ángel Sánchez, and, on January 24, 2005, they requested that the precautionary measures be expanded to include members of the Hayes family. The IACHR granted this expanded coverage and forwarded this information to the State on January 21 and 25 respectively, setting a 5 day period for the State to submit information on the measures adopted.

9. On January 28, 2005, the State submitted information on the measures granted by the IACHR, which was duly forwarded to the petitioners on February 4, 2005, with a period of 7 days to submit their observations.

10. On February 11, 2005, the petitioners sent their observations, requesting that the IACHR grant provisional measures to the beneficiaries, and this response was forwarded to the State on February 15, 2005, with a 5-day period to provide the relevant information.

11. On March 8, 2005, the State submitted information to the IACHR in response to the request for provisional measures and, in this context attached information concerning the investigation without commenting as to the admissibility of the petition. This information was forwarded to the petitioners on March 31, 2005, along with a list of questions, and they were given a 10-day period in which to respond and submit their observations.

12. The petitioners responded with notes dated April 12, and May 3, 2005, containing their observations. These responses were forwarded to the State on June 8, 2005, with a 15-day period to submit its observations. The State submitted its observations on the petitioners' responses on July 5, 2005. The parties have met in working meetings on a number of occasions during the processing in order to analyze questions concerning the precautionary measures, as well as in relation to the investigation of the facts denounced.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

13. The petitioners assert that Mr. Iván Eladio Torres, age 26, was the victim of a forced disappearance, presumably at the hands of State agents. The petitioners stated that, prior to the events alleged in the petition, Iván Eladio Torres had told his mother, Mrs. Maria Millacura Llaipen, that he had been "picked up" by patrol car N° 469 about a month and a half before the events, put into a car, and taken to a location near a hill; "they dragged him out by his hair, beat him, and took off his shoes, and they kicked his bare torso and threatened him with death. They told him to 'run because we're going to kill you' and they fired a revolver at him." [FN1]

[FN1] Original petition received on November 14, 2003 and the testimonies of Tamara Bolívar, Walter Mansilla, Patricio Oliva, and Gerardo Atilio Colin of October 23, 2003 in the case "Millacura Llaipen, Maria Leontina s/Dcia. Psta. Disappearance persons C. Rivadavia 2003".

14. With respect to their claims, the petitioners assert that Mr. Iván Eladio Torres left his home on October 1, 2003 between 1500 and 1600 hours, met up with Luis Patricio Oliva, Gerardo Atilio Colin, and Walter Mansilla in the plaza España, and then headed toward plaza Bitto. At approximately 00 hours on October 2, 2003, Luis Patricio Oliva and Gerardo Atilio Colin (both minors) observed, as they were going into an ice cream shop in the park, that patrol car 469 carrying three police officers approached Mr. Iván Eladio Torres. When they emerged from the shop, neither Iván Eladio Torres nor the patrol car was there. [FN2]

[FN2] Internal Report of Martín Rico of the Human Rights Secretariat of the Ministry of Justice, Security, and Human Rights of the Nation to Dr. Rodolfo Mattarollo on the investigation conducted in "Millacura Llaipen, Maria Leontina s/ report of disappearance of persons" on February 24, 25, and 26, 2004. Original petition received by the IACHR on November 14 2003. Testimonies of the minors Luis Patricio Oliva and Gerardo Atilio Colin, of October 23, 2003 in

the case “Millacura Llaipen, Maria Leontina s/Dcia. Psta. disappearance persons C. Rivadavia 2003”.

15. The petitioners reported to the IACHR that Mr. Dante Caamaño testified that he had been detained by the police on October 2, 2003 along with Iván Eladio Torres, that they were taken to the First Police Station [Comisaría Seccional Primera] where they were separated, and that he did not see Iván Eladio Torres again after that. Subsequently, the petitioners informed the IACHR that Mr. Dante Caamaño died of a bullet wound to the head on May 23, 2005, under unclear circumstances.[FN3]

[FN3] Article from the periodical Diario la Crónica, Comodoro Rivadavia, May 23, 2005, <http://www.diariocronica.com.ar/>.

16. The petitioners claim that, on October 2, 2003, Mr. David Alberto Hayes, who was being held in the First Police Station, observed how several police officers beat Mr. Iván Eladio Torres until he fainted and then saw them drag him along the stairs, while another police officer cleaned up the trail of blood. On January 9, 2005, Mr. Hayes hand-wrote his testimony in the presence of Mrs. Millacura Llaipen, indicating, in addition, that the police chief [Comisario] had threatened him with death and that he was willing to testify before the Inter-American Court of Human Rights.[FN4] Mr. Iván Eladio Torres remains disappeared since that time.

[FN4] Handwritten testimony of David Hayes received as part of the request for precautionary measures dated January 10 , 2005.

17. The petitioners submitted a request for precautionary measures on January 10, 2005, to protect the life and personal integrity of David Alberto Hayes, relatives, and witnesses related to the case of the alleged disappearance of Iván Eladio Torres (Maria Leontina Millacura Llaipen, Gerardo Atilio Colin, Luis Patricio Oliva, Tamara Bolívar, Walter Mansilla, Silvia de los Santos, Verónica Heredia, and other relatives of Iván Eladio Torres). In their request, the petitioners claimed that a witness, Tamara Bolívar, was raped by a person that they claim was a police officer and that, after raping her, he asked her whether she was the sister of Iván Eladio Torres and told her: “I’ll be waiting for you at the First for you to file your complaint.” They also stated that Marcos and Valeria Torres, siblings of Mr. Iván Eladio Torres, had been arrested and that the Torres family and the attorneys in the case have been subjected to constant police surveillance.

18. In their correspondence dated January 12, 2005, the petitioners reported that Walter Mansilla had been threatened by members of the police on several occasions as a result of having given testimony in court documents. They further asserted that Gerardo Atilio Colin and Luis Patricio Oliva and their families have been harassed by the police.

19. On January 17, 2005, Mr. David Alberto Hayes was stabbed to death in the Municipal Jail [Alcaldía Policial] during an alleged altercation at recreation time,[FN5] days after having requested precautionary measures from the IACHR as described in paragraphs 7 and 8 of section II, above, because of the threats and intimidation, and the alleged rape of Miss Tamara Bolívar.

[FN5] Article from the periodical *Diario la Crónica*, February 11, 2005, <http://www.diariocronica.com.ar/>.

20. The petitioners reported to the IACHR in their January 19, 2004 request to expand the precautionary measures that Miguel Ángel Sánchez, another witness who is serving a prison sentence in the Third Police Station of Comodoro Rivadavia, stated in a December 20, 2004 letter to Mrs. Millacura Llaipen, that he was detained with Mr. Iván Eladio Torres in the First Police Station, that he was later moved from one place to another and always held incommunicado, and that his statement had been taken but nothing more was ever said about it. Moreover, the petitioners reported that Mr. Juan Pablo Caba, a son-in-law of Mrs. Millacura Llaipen who had acted as an intermediary between her and David Alberto Hayes and was allegedly present when Mr. Hayes was killed, was also threatened with death by individuals presumed to be police officers. Similarly, the petitioners notified the IACHR that Gerardo Atilio Colin, a minor, was detained on January 17, 2005 by personnel from the First Police Station and that Mrs. Millacura Llaipen received a telephonic death threat on January 18 of that year. The petitioners asserted that Viviana Hayes, a minor and the sister of David Alberto Hayes, had also received death threats.

21. Consequently, based on the available information, the testimonies, and the subsequent threats and acts of aggression against the witnesses, the petitioners allege that Mr. Iván Eladio Torres was in police custody in the First Police Station on October 2, 2003 and that his disappearance is the result of acts and omissions by the State. More specifically, police agents detained, tortured and caused the disappearance of the alleged victim. They consider, therefore, that the State is responsible for the violation of his right not to be arbitrarily detained, his right to physical integrity, and his right not to be subjected to torture or cruel and inhuman treatment. The petitioners underscore that they are continuing their search for the alleged victim in the hope of finding him alive.

22. The petitioners also claim that Mr. Iván Eladio Torres disappeared “in the framework of a systematic practice of human rights violations by the provincial police targeting children, adolescents, and adults wandering the streets: torture, rapes, simulated executions, trumped up legal cases, etc...” They added that this has been going on at least since 1994 when it was first reported by the Asociación Grupo Pro Derechos de los Niños.[FN6]

[FN6] Request for precautionary measures dated January 10, 2005. Attached to the original petition dated November 14, 2003 is a list of 22 alleged cases of disappeared persons, illegal coercion, and death threats by police officers in the city of Comodoro Rivadavia, that were reported in the city’s newspapers.

23. With respect to the exhaustion of domestic remedies, the petitioners indicate that when Mr. Iván Eladio Torres failed to appear by midday on October 3, 2003, his mother called the First Police Station to find out what had happened to him and they did not give her an answer. Mrs. Millacura Llaipen claims that she tried report the situation to the First Police Station on October 4, 6, and 8, but they refused to take a written statement from her. The report was finally taken on October 14, 2003, leading to the opening of a case of disappearance before the Second Court of Instruction in Comodoro Rivadavia, entitled, “Millacura Llaipen, Maria Leontina s/Dcia. Psta. Disappearance Persons C. Rivadavia 2003”.

24. The petitioners claim that the complaint was set aside by the public prosecutor five months after it was filed. They add that all the reports contained in the present investigation indicate that Mr. Iván Eladio Torres “was not delayed or detained on October 2, under a warrant issued by a court or police authority.” On November 5, 2003 a request was made to expand on the information so that detention centers could respond as to whether Iván Torres was delayed or detained on October 2, without a warrant from the jurisdictional authority, and this request was denied on November 12, 2003, by the investigating judge in the case.

25. On October 27, 2003, Mrs. Valeria Torres, sister of Mr. Iván Eladio Torres, filed a writ of habeas corpus with the Second Court of Instruction of Comodoro Rivadavia to establish the whereabouts of Mr. Iván Eladio Torres, and the case of “Torres, Valeria s/ habeas corpus” File N°1139/03 was opened. On that date, the first on-site inspection of the First Police Station was conducted.

26. On November 5, 2003 Mrs. Maria Millacura Llaipen filed an action in the case of disappearance requesting that the file name be changed to “Forced disappearance of a person.”[FN7] The petitioners claim that a resolution of the Superior Court of Justice of Chubut Province states that the forced disappearance of a person is a matter of federal jurisdiction and they allege that an opinion issued by the Federal Prosecutor of Comodoro Rivadavia maintains that the offense of forced disappearance of persons does not exist in Argentine law.

[FN7] Original petition received by the IACHR on November 14, 2003.

27. The petitioners denounced before the IACHR irregularities in the investigation into the disappearance of Mr. Iván Eladio Torres. They point out that “the preliminary investigation was carried out by the First Police Station accused in the case up until October 23, 2003, with the knowledge and consent of the Second Investigating Judge. The SS never formally took over the preliminary investigation of the case. The Public Prosecutor’s Office did not become involved until November 5, 2003 [...] more than a month after the disappearance of Iván Eladio Torres”.[FN8] Mrs. Millacura Llaipen denounced this, seriously calling into question the behavior of the Second Investigating Judge in charge of the case as well as other judges in similar cases, and succeeded in having a complaint brought before the Judicial Council [Consejo de la Magistratura] by means of Special Agreement [Acuerdo Extraordinario] No. 3382 of the

Superior Court of Justice of Chubut, as well as an order for administrative proceedings against the other judges. The Judicial Council ruled, in Act No 133, to proceed with the impeachment of the Investigating Judge. The petitioners allege that the judge was never separated from the case.

[FN8] Ibid.

28. The petitioners informed the IACHR that the Investigations Brigade to Search for Disappeared Persons was established on January 2, 2004, made up of members of the police. In their view, this is unconstitutional because it entails an investigation parallel to the official one that is not subject to a judge's supervision, and the interrogation of witnesses outside of a legal proceeding. The petitioners took their complaint regarding the unconstitutionality of this situation to the State Prosecutor on March 2, 2004, and to the National Ombudsman [Defensor del Pueblo] and the Attorney General of the Nation on September 13, 2004.

29. Arguing that forced disappearance constitutes a federal offense and that the local authorities had not conducted a satisfactory investigation, the petitioners filed an appeal in cassation on January 22, 2005, in the case "Millacura Llaipen, Maria Leontina s/ plea as to the jurisdiction of the court" with respect to Ivan's disappearance. In the plea, she requests that local jurisdiction be renounced in favor of federal jurisdiction. On March 16, 2005, the Superior Court of Chubut renounced its jurisdiction in the case in favor of the federal justice system and therefore, the federal State is now in charge of the legal investigation into the disappearance of Mr. Iván Eladio Torres.[FN9]

[FN9] Communication from the petitioners to the IACHR dated May 2, 2005 in response to the list of questions.

30. The petitioners claim that the respective authorities have failed to carry out an effective investigation and that it has been subject to an unwarranted delay given that more than two and a half years have transpired since the disappearance of a person was reported and the investigation has not been concluded, and no one is under investigation or accused thus far. In addition, the petitioners claim that neither the Public Prosecutor's Office nor the judges have taken measures in response to the reports made by friends of Iván Eladio Torres regarding cases of torture, unlawful coercion, and other abuses by police personnel, which are included in their testimonies.

31. The petitioners claim that the alleged facts constitute a violation by the State of several provisions of the American Convention, such as Article 2 (obligation to adopt provisions of domestic law), 5(1) (right to physical, mental, and moral integrity), 5(2) (prohibition on torture, and cruel, inhuman, or degrading treatment), 7 (right to personal liberty), and 8(1) (fair trial), in conjunction with Article 1(1) (obligation to respect and guarantee rights), and Articles I, II, and XII of the Inter-American Convention on Forced Disappearance of Persons.

B. Position of the State

32. The State has not responded directly to the allegations of fact submitted by the petitioners, nor has it contested the admissibility of the petition under examination. The only responses from the State were the May 26, 2004 communication to the IACHR requesting an extension of time to respond, which it has not done to date, and its communications concerning the precautionary measures granted by the IACHR.

33. Although the March 17, 2005 communication from the State in response to the request for precautionary measures N° 09-05 “Maria Leontina Millacura Llaipen et al” includes a report from the Public Prosecutor in the case of “Millacura Llaipen, Maria Leontina s/Dcia. Psta. Disappearance persons C. Rivadavia 2003” from which it can be inferred that some measures have been taken in the investigation of the case, the State does not, in this communication, express an opinion regarding the admissibility of the instant petition.

34. The State’s response of July 5, 2005, also regarding the precautionary measures, does indicate that the State has adopted certain measures to implement the precautionary measures in force. The State also asserts that “it believes it is appropriate to reaffirm its willingness to keep the channels for dialogue open with the petitioners as well as the provincial Government” with respect to the precautionary measures.

IV. ANALYSIS

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

35. The petitioners are entitled to bring petitions before the IACHR pursuant to Article 44 of the American Convention. These petitions identify as the alleged victims individual persons, Iván Torres and his family, with respect to whom the State has undertaken to respect and ensure the rights enshrined in the Convention. As for the State, the IACHR observes that Argentina is State party to the American Convention, having ratified it on September 5, 1984. Moreover, the IACHR observes that with respect to its passive competence in *ratione personae*, it is a general principle of international law that the State must answer for the acts of all of its organs, including those pertaining to the Judiciary. Therefore, the IACHR is competent to examine the instant position.

36. The IACHR is competent *ratione loci* to take up the petition insofar as it claims violations of rights protected by the American Convention, which allegedly occurred within the territory of a State party to that treaty. The IACHR is competent *ratione temporis*, inasmuch as the obligation to respect and ensure the rights established in the Convention was in force for the State when the events described in the petition allegedly occurred. With regard to the claims of possible violations of the Inter-American Convention on the Forced Disappearance of Persons, the IACHR observes that Argentina ratified that Convention on February 28, 1996 and that it entered into effect on March 28, 1996. Therefore, this international instrument was in force for Argentina when the events described in the instant petition allegedly occurred. Finally, the IACHR is competent *ratione materiae* because the petition claims violations of human rights protected by the American Convention and by the Inter-American Convention on the Forced

Disappearance of Persons. Further, pursuant to its ratification of the Inter-American Convention to Prevent and Punish Torture on March 31, 1989, those obligations also apply.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

37. Under Article 46(1)(a) of the American Convention, the admission of a particular petition requires that "...the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." [FN10] The Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") and the IACHR have stated repeatedly that "(...) under the generally recognized principles of international law and international practice, the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule 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. [FN11] Nonetheless, the Convention itself stipulates that this provision should not be applied when the domestic remedies cannot be exhausted because they are not available either as a matter of fact or as a matter of law. More specifically, Article 46(2) establishes exceptions to the general principle of exhaustion of domestic remedies, when the domestic legislation of the State concerned does not afford due process of law for the protection of the rights that have allegedly been violated; the party alleging violation of his rights has been denied access to the remedies under domestic law; or there has been an unwarranted delay in rendering a final judgment.

[FN10] See Inter-Am Ct HR, Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights (Advisory Opinion OC-11/90, August 10, 1990, Ser. A N° 11, para. 17.

[FN11] See Inter-Am Ct HR, In the Matter of Viviana Gallardo et al, Decision of November 13, 1981, Series A N° G 101/81, para. 26.

38. First, in the case at hand the petitioners have sustained that they have attempted without success to exhaust the resources available under domestic jurisdiction in order to determine the fate of Mr. Iván Eladio Torres.

39. It is evident from the documentation provided by the petitioners that they did, in fact, file a complaint and that a report of a disappearance was taken on October 14, 2003, and a writ of habeas corpus was received on October 27, 2003; both actions remain pending in the investigation stage. The petitioners also claim that they had attempted to report the disappearance of Mr. Iván Eladio Torres several times prior to that and the respective authorities had refused to take their complaints. Moreover, the IACHR has noted that the petitioners have submitted a number of complaints concerning events associated with the disappearance of Mr. Iván Eladio Torres, such as several complaints against police officers, the complaints concerning the rape of Tamara Bolívar, the threats against the Torres family and Walter Mansilla, and the murder of David Alberto Hayes.

40. In the present petition, the Commission observes that, according to the information sent by the petitioners, the writ of habeas corpus has yet to be resolved by the authorities. This is the most appropriate remedy to exhaust in this case as the Court has pointed out since its earliest adversarial cases: “habeas corpus would be the normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty”.^[FN12]

[FN12] See Inter-Am Ct HR, Case of Velásquez Rodríguez, Judgment of July 29, 1988, Ser. C N°4, para. 65.

41. The petitioners also stated that the lack of due diligence in the investigations launched to establish the whereabouts of Mr. Iván Eladio Torres impeded their effective access to domestic remedies, and that, despite this, they made an effort to initiate these proceedings and give the State the opportunity to complete its investigation into the whereabouts of Iván Eladio Torres, which has not occurred to date.

42. In the case at hand, the State is not claiming the failure to exhaust domestic remedies and therefore, it can be presumed to have tacitly waived its opportunity to argue the failure to exhaust domestic remedies.^[FN13] The Inter-American Court has stated in this regard, that “the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed.”^[FN14] In accordance with the foregoing considerations, the Commission concludes that this requirement was met.

[FN13] See Inter-Am Ct HR, Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, Para. 88. See also: IACHR Report N° 30/96, Case 10.897, Guatemala, October 16, 1996, Para. 35 and Report N° 53/96, Case 8074, Guatemala, December 6, 1996. Annual Report of the IACHR 1996. Report N° 25/94, Case 10.508, Guatemala, September 22 1994, page 52. Annual Report of the IACHR 1994.

[FN14] See Inter-Am Ct HR, Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, Para. 8[sic]; Case of Fairén Garbi and Solís Corrales, Preliminary Objections, Judgment of June 26, , Ser. C, N° 2, Para. 87; Case of Gangaram Panday, Preliminary Objections, Judgment of December 4, 1991, Ser C, N° 12, Para. 38; and Case of Loayza Tamayo, Preliminary Objections, Judgment of January 31, 1996, Ser. C, N° 25, Para. 40.

2. Time Frame for Lodging the Petition

43. Article 46(1)(b) of the Convention establishes that in order for a petition to be declared admissible it must have been lodged within six months from the date on which the interested party was notified of the final judgment in the domestic venue. However, according to Article 46(2) of the Convention and 32(2) of the Commission’s Regulations, “The rule does not apply

when it has been impossible to exhaust internal remedies due to a lack of due process, denial of access to remedies, or unwarranted delay in issuing a final decision [...] Nor does this rule apply where the allegations concern a continuing situation--where the rights of the victim are allegedly affected on an ongoing basis".[FN15]

[FN15] See IACHR, Report N° 72/03 (Admissibility), Petition 12.159, Gabriel Egisto Santillán, para. 60; Report N° 33/99 (Admissibility), Case 11.763, Plan de Sánchez Massacre, Guatemala, April 16, 1999, paras. 29 and 30.

44. With regard to the instant petition, the IACHR determined that the State implicitly waived its ability to invoke the objection of failure to exhaust domestic remedies. But it should be noted that the Convention presents both requirements—exhaustion of domestic remedies and the lodging of the petition within six months from the date of the final judgment in the domestic venue—as two distinct and independent criteria. The IACHR must determine whether the petition was lodged within a reasonable time frame. In the case at hand, the complaint was lodged on November 14, 2003, one month after the formal complaint was lodged with the authorities; therefore, the requirement set forth in Article 46(1)(b) of the American Convention on the timely lodging of the complaint has been met.

3. Duplication of proceedings and international res judicata

45. There is no indication in the file of the instant petition that this matter is pending a decision in another proceeding for international settlement, or that it duplicates a proceeding that has already been resolved by the IACHR. Therefore, the IACHR concludes that the exceptions set forth in Article 46(1)(d) and in Article 47(d) of the American Convention do not apply.

4. Characterization of the alleged facts

46. Articles 47(b) and (c) of the Convention and Articles 34(a) and (b) of the IACHR's Rules of Procedure require that it consider a petition to be inadmissible if it does not state claims that tend to establish a violation of the rights guaranteed by the Convention or by another applicable instrument, or if the statements made by the petitioner or by the State indicate that the petition is manifestly groundless.

47. The petitioners in this case expressly invoke the violation of Articles 5, 7, and 8(1) of the American Convention and I, II, y XI of the Inter-American Convention on the Forced Disappearance of Persons. The State has not offered any observations on the violations claimed by the petitioners.

48. The IACHR has been able to verify that file N° 142 of the Office of the Public Prosecutor [Ministerio Público Fiscal] contains direct imputations such as that, on September 26, 2003, Mr. Iván Eladio Torres was detained by officers of the Radioelectric Command of the Regional Unit of the Chubut Police and taken to the First Police Station, where he was not registered as an incoming detainee in the official records. It further confirms that on the night of October 2, 2003

he was last seen moments before mobile unit No. 469 from the First Police Station was circulating on roads in the vicinity of the place where Mr. Iván Eladio Torres was waiting for his friends Patricio Oliva and Gerardo Colin.[FN16] The IACHR has also established that the Special Fiscal Investigation Unit [Unidad Especial de Investigación Fiscal] created by Resolution N° 47/04 of the Office of the General Public Prosecutor of Chubut Province believes that the now disappeared Iván Eladio Torres was, on other occasions, threatened with death, subjected to a simulated execution, and detained by police officers without justification, all of this according to testimony obtained by the aforementioned Special Unit.[FN17]

[FN16] Judgment of March 16, 2005, of the Superior Court of Justice of Chubut in response to the revocation remedy filed by the petitioners and described in para. 30.

[FN17] Ibid.

49. Based on the information provided by the petitioners, and without prejudging the merits of the matter, the IACHR concludes that the petition contains allegations of fact that, should they be proven, would tend to establish violations of the rights to personal integrity, to personal liberty, and to a fair trial protected by Articles 5 (1), 5(2), 7, and 8(1) in conjunction with Article 1(1) of the American Convention, and Articles I, II, and XI of the Inter-American Convention on Forced Disappearance of Persons. The IACHR, by virtue of the principle of *iura curia novit*, also considers that the alleged facts, should they be found to be true, could establish violations of the obligation to adopt domestic legislative measures and the right to prompt recourse enshrined in Articles 2 and 25, in conjunction with Article 1(1) of the Convention. Moreover, the IACHR deems it necessary to assess the situation relative to the violation of Article 4 of the Convention during the merits stage, as well as the possible application of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. The IACHR concludes that the information provided by the petitioners is not manifestly groundless or extemporaneous. As a result, the complaints contained in the petition are not inadmissible under Article 47(b) and 47(c) of the Convention, and Article 34(a) and (b) of the Regulations of the IACHR.

V. CONCLUSIONS

50. The IACHR concludes that it has competence to examine the merits of this case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention, based on the aforementioned arguments of fact and law, and without prejudging the merits of the matter.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant petition admissible inasmuch as it refers to alleged violations of the rights enshrined in Articles 2, 4, 5, 7, 8(1), and 25 in conjunction with Article 1(1) of the American Convention, Articles I, II, and XI of the Inter-American Convention on Forced

Disappearance of Persons, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To notify the parties of its decision.
3. To proceed with its analysis of the merits of the petition, and
4. To publish this decision and 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 13th day of the month of October, 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.