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File Number(s): Report No. 20/06; Petition 458-04  
Session: Hundred Twenty-Fourth Session (27 February – 17 March 2006)  
Title/Style of Cause: Omar Zuniga Vasquez and Amira Isabel Vasquez de Zuniga v. Colombia  
Doc. Type: Decision  
Decided by: President: Evelio Fernandez Arevalos;  
First Vice-President: Paulo Sergio Pinheiro;  
Second Vice-President: Florentin Melendez;  
Commissioners: Clare K. Roberts, Freddy Gutierrez, Paolo G. Carozza,  
Victor Abramovich.  
Dated: 2 March 2006  
Citation: Zuniga Vasquez v. Colombia, Petition 458-04, Inter-Am. C.H.R., Report No.  
20/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)  
Represented by: APPLICANTS: the "Jose Alvear Restrepo" Legal Aid Corporation  
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## I. SUMMARY

1. On May 10, 2004, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received a petition from the "José Alvear Restrepo" Legal Aid Corporation [Corporación Colectiva de Abogados "José Alvear Restrepo" (hereinafter "the petitioners") alleging the responsibility of the Republic of Colombia (hereinafter "the State," "the Colombian State" or "Colombia") for the arrest, torture and extrajudicial execution of Omar Zúñiga Vásquez and the arrest and inhumane treatment of his mother, Amira Isabel Vásquez de Zúñiga, in the district of San Jacinto, department of Bolívar.

2. The petitioners allege that the State is responsible for the violation of Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter in the "Convention" or the "American Convention") in conjunction with its Article 1.1. Petitioners contend the petition is admissible because the requirement of prior exhaustion of domestic remedies under Article 46.1 of the Convention does not apply in this case. The State, despite the Commission's requests, presented no arguments on the facts or the law cited by the petitioners.

3. After reviewing the available information, the Commission ruled the case admissible under Articles 46 and 47 of the Convention with respect to Articles 4, 5, 7, 8 and 25 thereof, in conjunction with its Article 1.1, and decided to notify the parties and publish the report in its Annual Report.

## II. PROCEEDINGS BEFORE THE COMMISSION

4. The Commission assigned the number P458-04 to the petition and, on August 27, 2004, conveyed a copy of the relevant parts to the State, giving it two months to present information, as provided by Article 30.2 of the IACHR Rules of Procedure. Colombia asked for a 30-day extension to answer. On October 27, 2004, the Commission granted the extension. On January 3, 2005, it reiterated its request for information from the State, with no reply to this day.

### III. POSITIONS OF THE PARTIES

#### A. The petitioners

5. According to the petition, on June 1, 1992, at about 5:30 p.m., some 30 soldiers and Marines[FN1] entered the home of Mrs. Amira Isabel Vásquez de Zúñiga, located at El Cerrito, in the municipality of San Cristóbal, district of San Jacinto, department of Bolívar, and ordered the residents to lie face down on the floor. These armed men allegedly raised Omar Zúñiga Vásquez, the son of Mrs. Amira Isabel Vasquez de Zúñiga, from the floor and beat him, hooded him and took him away. Mrs. Vásquez de Zúñiga decided to follow them.

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[FN1] Petition dated May 10, 2004, citing an application for review from the Departmental Prosecutor of Bolívar dated October 28, 1992, which states that Mrs. Amira Vásquez de Zúñiga, upon viewing a lineup, identified as members of the group of soldiers that entered her property and detained her along with her son Omar Zúñiga, the Marines named Ortega Olmos José, Ibáñez Marmolejo Lewis, Arango Martínez Carlos and Pérez Ospino Álvaro Enrique; the record shows that these men were in the area at the time of the events, the physical description given by Mrs. Zúñiga fits that of the men identified (...) there are statements establishing that the men who enter the home and ordered everyone in it to lie face down and then seized Omar, beat him and took him away along with his mother, were military personnel; this is fully established, as all witnesses concur on it under oath.  
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6. The petitioners allege that the group of men took Omar Zúñiga Vásquez and his mother to the town of San Cristóbal and then to the El Paraíso school, where they kept them in custody. Mrs. Zúñiga Vásquez -- who was locked up in a bathroom -- managed to see through chinks in the door her son Omar Zúñiga being taken out of a car with his face covered and his limbs tied and later struck in the face and burned from behind.

7. The petition indicates that two days later Mrs. Zúñiga was released on the highway to San Onofre. When she asked her captors about the whereabouts of her son, they said he had escaped. The petitioners point out that on June 10, 1992, the remains of Omar Zúñiga Vásquez were found, preyed on by scavengers, with a bullet in the head and a fractured jaw.

8. The petitioners contend that on July 31, 1992, Military Criminal Investigative Court 103 in Cartagena ordered an investigation of Marines Álvaro Pérez Ospino, Carlos Mario Arango Martínez, Luis Enrique Ibáñez Marmolejo and José Miguel Ortega Olmos, who were identified

in a lineup by Mrs. Amira Isabel Vásquez de Zúñiga. On October 19, 1992, the military judge declined to order the Marines jailed.

9. On February 7, 1996, a ruling put an end to the criminal prosecution of Marines José Miguel Ortega Olmos and Álvaro Pérez Ospino because of their death. This decision was confirmed on May 29, 1996, by the Higher Military Tribunal. On February 18, 1997, the commander of Marine Fusileer Battalion No. 3, instruction judge decided to send the case to the criminal ordinary jurisdiction. However, on May 19, 1997, the Higher Military Tribunal ordered all proceedings stopped, for lack of evidence, against Carlos Mario Arango Martínez and Luis Enrique Ibáñez Marmolejo.

10. On June 11, 1992, the Zúñiga Vásquez family filed a criminal complaint with the regular courts and that same day the Joint Municipal Court of San Jacinto took preliminary steps and ordered the body exhumed and autopsied. On December 28, 1994, however, Sectional Prosecuting Office No. 43 sent the case to Judge 103 of the Military Criminal Investigation System.[FN2] On April 15, 1997, Sectional Prosecuting Office No. 22 at Carmen de Bolívar reopened the investigation and, because no identified suspects were in custody, ordered the investigation labeled preliminary, which it remains to this day.

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[FN2] Petition of May 10, 2004, citing the ruling of December 27, 1994, by the National Prosecuting Office, the El Carmen de Bolívar Prosecuting Unit, Sectional Prosecuting Office No. 43, case file 026.

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11. The petitioners indicate that on April 19, 1999, the Administrative Litigation Tribunal of the department of Bolívar found the State (Ministry of Defense and First Marine Infantry Brigade) administratively and financially responsible for the kidnapping and subsequent death of Omar Zúñiga Vásquez.

12. The petitioners allege that these events, the use of the military criminal justice system and the lack of investigative results in the regular courts constitute violations of the rights to life, humane treatment, freedom and a fair trial of Omar Zúñiga Vásquez, as well as the right to personal freedom, humane treatment, fair trial and judicial protection of his mother, Amira Isabel Vásquez de Zúñiga, under Articles 4, 5, 7, 8 and 25 of the Convention, in conjunction with its Article 1.1. They also allege the violation of Articles 5, 8 and 25 with respect to the remaining family members of Omar Zúñiga Vásquez, in light of the suffering caused by the circumstances of his death and the failure to solve the case.

13. As to admissibility, the petitioners maintain that the petition must be exempted from the prior exhaustion of domestic remedies required by Article 46.1 of the Convention, in light of the unwarranted delay exception of Article 46.2.c. They also argue that the six-month time frame established in Article 46.1.b is inapplicable.

B. Position of the State

14. The State did not reply to the facts and the law cited by the petitioners and did not comment on the admissibility of the complaint under Articles 46 and 47 of the Convention.

#### IV. JURISDICTION AND ADMISSIBILITY

15. Before dealing with jurisdiction and admissibility, the IACHR notes that Colombia has challenged neither the facts alleged by the petitioners nor the admissibility of the petition. The IACHR notes that the State, by ratifying the Convention, assumed various international obligations. In particular, Article 48.1.a provides that, upon receiving a petition or communication, the Commission "shall request information from the government of the state indicated as being responsible for the alleged violations" and that this "information shall be submitted within a reasonable period." Article 48.1.e provides that the Commission "may request the states concerned to furnish any pertinent information." Such provisions accordingly place on States Parties to the Convention the obligation to provide the information requested by the IACHR in connection with a review of individual petitions.[FN3]

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[FN3] See IACHR, Report No. 129/01, Case No. 12389, Jean Michel Richardson (Haiti), para. 11 and ff. in IACHR 2001 Annual Report; and Report No. 79/03, Petition 139/02, Admissibility, Guy André Francois (Haiti), 2003 Annual Report.

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16. The IACHR stresses the importance of answering requests for information, for it is on that basis that the Commission decides petitions. The Inter-American Court of Human Rights has held that cooperation by the States Parties is one of the basic obligations they assume in the inter-American system. The Court has stressed that, unlike domestic criminal-law proceedings, proceedings instituted for human rights violations cannot entertain a State defense based on the complainant's inability to secure evidence that, in many cases, cannot be obtained without the cooperation of the State (...) the State controls the means needed to elucidate events within its territory. The Commission, though empowered to conduct investigations, in practice depends, to carry them out within the jurisdiction of a State, on the cooperation and means provided by the Government.[FN4]

The case law of the system also indicates that silence from the defendant or an elusive or ambiguous reply may be interpreted as acceptance of the plaintiff's allegations, at least insofar as the opposite does not result from the record or from judicial assessment.[FN5] Consequently, the Commission reminds the State that it is under an obligation to cooperate with the agencies of the inter-American system of human rights, so as to enable it to fulfill its role of protecting those rights.

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[FN4] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, paras. 135 and 136. IACHR Report No. 28/96, Case No. 11.297, Juan Hernández (Guatemala), October 16, 1996, para. 43.

[FN5] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 138. IACHR Report No. 28/96, Case No. 11297, Juan Hernández (Guatemala), October 16, 1996, para. 45.

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A. Jurisdiction

17. The petitioners are in principle authorized by Article 44 of the American Convention to file applications with the Commission. The petition names as the alleged victim a physical person whose rights under the Convention the State undertook to respect and guarantee. Colombia is a state party to the Convention since July 31, 1973, when it deposited its instrument of ratification. Consequently, the Commission has jurisdiction *ratione personae* to examine the case.

18. The Commission also has jurisdiction *ratione loci* because the petition alleges violations of rights protected by the Convention that are said to have occurred within the jurisdiction of the State. The Commission has jurisdiction *ratione temporis* because the obligation to respect and guarantee rights protected by the Convention was already in force for the State when the alleged events are said to have taken place. Lastly, it has jurisdiction *ratione materiae* because the petition reports possible violations of human rights protected by the Convention.

B. Admissibility requirements

1. Exhaustion of internal remedies

19. Article 46.1.a of the Convention establishes that for a petition presented before the Commission to be admissible in conformity with Article 44 of the Convention, is necessary that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The objective of this requirement is to allow national authorities to know about the alleged violation of the right protected and, if violated, to permit them to find a solution before the matter is known by an international mechanism.

20. The previous requirement of exhaustion of internal remedies applies when the national system has available effective remedies that also are adequate and efficient to remedy the alleged violation. In this sense, Article 46.2 specifies that the requirement is not applicable when the domestic legislation of the state concerned does not afford due process of law for the protection of the rights that have been allegedly been violated; or the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. As it indicates on Article 31 of the Commission's Rule of Procedure, when the petitioners allege one of the exceptions, it shall be up to the State concerned to demonstrate to the Commission that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

21. According to the principles of international law, reflected on the precedent case law of the Inter-American system of human rights protection, it is for the State concerned to inform

expressly or implicitly the invocation of such a rule.[FN6] Secondly, to be timely on the invocation of the rule regarding the exception of non exhaustion of domestic remedy it shall be presented on the first steps of the procedure before the Commission, and if not presented it is presumable the tacit renounce on the exception by the State concerned.[FN7] According to the burden of prove in this matter, the State that allege the non exhaustion shall indicates which remedies are there available and provide prove of its efficiency.[FN8] Consequently, if the State concerned does not present timely its argument regarding the requirement, it is conceder that the State has renounced to its rights to allege the non exhaustion of domestic remedies, therefore to satisfy its burden of prove.

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[FN6] IACHR, Report N° 69/05, petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, para. 42; I/A Court H.R., I/A Court H. R., Case of Ximenes Lopes. Preliminary Objections. Judgment of November 30, 2005. Series C No. 139, para. 5; I/A Court H.R., Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 49; y Corte I.D.H., I/A Court H. R., Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 135.

[FN7] I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, para. 53; I/A Court H.R., Castillo Petruzzi Case. Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 56; y Corte I.D.H., I/A Court H.R., Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C No. 25. The Commission and the I/A Court have held that "early stages of the procedure" must be understood to mean "the admissibility stage of the procedure before the Commission, in other words, before any consideration of the merits (...)". See, e.g., IACHR, Report N° 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, that cites, I/A Court H.R., Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 81.

[FN8] IACHR, Report N° 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral Luis Rolando Cuscul Pivaral et al. (persons living with HIV/AIDS), Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case, supra note 3, para. 53; I/A Court H.R., Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para33; y I/A Court H.R., Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

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22. In the present case, the petitioners have alleged that it applies the exception of Article 46.2.c of the Convention about the unwarranted delay in the adoption of a decision, and the State did not controvert such allegations. Hence, based in the terms of Article 46 of the Convention; Article 31 of the Commission's Rule of Procedure; the allegations on lack of results in the investigation underway by the criminal ordinary jurisdiction to investigate the crimes denounced; and taking into account that the State renounce to present arguments regarding the admissibility of the present case; the Commission concludes that it applicable to the present case the exception established on Article 46.2.c of the Convention.

## 2. Filing deadline

23. According to Article 46.1.b of the Convention for a petition to be found admissible shall be 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. This requirement ensures judicial uncertainty once a decision has been reached.

24. As a result of Article 32.2 of the Commission's Rules of Procedure, in cases in which results applicable the exceptions regarding the exhaustion of domestic remedies, the petition shall be presented within a reasonable time, in the Commission's criteria. In accordance to this article, and its analysis, the Commission "will consider the date in which the alleged violations have occurred and its circumstances in each case".

25. Regarding the present petition, the Commission has established that it is applicable the exception of Article 46.2.c of the Convention, therefore it has to evaluate whether the petition has been presented within a reasonable time in accordance with the specific circumstances of the present situation presented to its consideration. In this respect, the Commission observes that the petition was filed May 10, 2004, and that by the arguments presented by the petitioners and the circumstances on the filed it results that the circumstances of the death of Mr. Omar Zúñiga Vásquez are still unresolved. Given that the State did not present arguments regarding the admissibility of the present case, the Commission concludes that the present petition was presented within a reasonable time.

3. Duplication of international procedures and *res iudicata*

26. Nothing in the record indicates that the subject of the petition is pending in another international settlement procedure or duplicates a petition already examined by this or another international agency. Consequently, the requirements of Articles 46.1.c and 47.d of the Convention are met.

4. Characterization of the alleged events

27. The Commission finds that the petitioners' allegations of violation of the rights to life, humane treatment, freedom, a fair trial and effective judicial protection could be characterized as violations of the rights protected by Articles 4, 5, 7, 8 and 25, in conjunction with Article 1.1 of the Convention. The groundlessness or inadmissibility of these aspects of the petition not being apparent, the Commission finds that the requirements of Articles 47.b and c of the Convention have been met.

## V. CONCLUSIONS

28. The Commission concludes that it has jurisdiction to hear the petitioners' claims of violation of the rights of Omar Zúñiga Vásquez, Amira Isabel Vásquez de Zúñiga and their family under Articles 4, 5, 7, 8 and 25 of the Convention, in conjunction with Article 1.1, and that those claims are admissible under Articles 46 and 47 of the Convention.

29. By virtue of the above facts and law and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the present case admissible with respect to Articles 4, 5, 7, 8 and 25 of the Convention in conjunction with its Article 1.1.
2. To notify this decision to the petitioners and the State.
3. To continue examining the merits of the case.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 2nd day of the month of March, 2006.  
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez, Paolo G. Carozza and Víctor Abramovich, Commissioners.