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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 22/07; Petition 259-06
Session: Hundred Twenty-Seventh Session (26 February – 9 March 2007)
Title/Style of Cause: Joe Luis Castillo Gonzalez, Yelitze Moreno de Castillo and Luis Cesar Castillo Moreno v. Venezuela
Doc. Type: Decision
Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Second Vice-President: Victor Abramovich;
Commissioners: Evelio Fernandez Arevalos, Sir Clare K. Roberts.
Pursuant to Article 17(2)(a) of the Rules of Procedure of the Commission, Commissioner Freddy Gutierrez, who is Venezuelan, did not participate in the deliberations or voting on this case.
Dated: 9 March 2007
Citation: Castillo Gonzalez, Petition 259-06, Inter-Am. C.H.R., Report No. 22/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by: APPLICANTS: the Episcopal Human Rights Vicariat of Caracas and the Center for Justice and International Law
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I. SUMMARY

1. On March 20, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition lodged by the Episcopal Human Rights Vicariat of Caracas and by CEJIL, the Center for Justice and International Law, (hereinafter “the petitioners”) representing Joe Luís Castillo González, Yelitze Moreno de Castillo, and Luís Cesar Castillo Moreno, in which it is alleged that the Bolivarian Republic of Venezuela (hereinafter, “the State”, or “the Venezuelan State”) is responsible for the assassination of the human rights activist Joe Luís Castillo González and for acts of violence resulting in gunshot wounds to the members of the Castillo family identified above.

2. The petitioners maintain that the events that are the subject of this petition amount to violations of various provisions of the American Convention on Human Rights (hereinafter the “American Convention”): the right to life (Article 4), right to humane treatment (Article 5), right to a fair trial (Article 8), judicial protection (Article 25), and freedom of thought and expression (Article 13), all in relation to the general obligation enshrined in Article 1(1) of the above mentioned instrument.

3. At the date of this report, the State had lodged no observations regarding the admissibility of this petition.

4. Having studied the positions of the parties, the Commission concluded that it was competent to decide on the claim currently lodged by the alleged victims, and that the case was admissible in light of Articles 46 and 47 of the American Convention. Consequently, the Commission decided to notify the parties, to publish the present Admissibility Report, and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

A. Petition

5. On March 20, 2006, the Commission received a petition lodged by the Episcopal Human Rights Vicariat of Caracas, and by CEJIL, the Center for Justice and International Law, in representation of Joe Luís Castillo González, Yelitze Moreno de Castillo, and Luís Cesar Castillo Moreno, and recorded it under case number P-259/06.

6. On May 2, 2006, the IACHR transmitted the pertinent parts of the said petition to the State in accordance with Article 30(2) of the Rules of Procedure of the IACHR, and gave a period of two months for the State to present its observations.

7. By the date of this report, the Commission had received no response from the State in relation to this petition.

B. Precautionary Measures MC-619/03

8. On August 28, 2003, the Commission received a request for precautionary measures to protect the life and physical integrity of Mrs. Yelitze Moreno de Castillo, and her son, Cesar Luís Castillo Moreno.

9. On August 29, 2003, the Commission, in accordance with Article 25(1) of its Rules of Procedure, requested that the State should adopt precautionary measures to protect the lives and physical integrity of the persons named in paragraph 8 of this report. The Commission required that the State:

1. Provide the protection necessary to protect the lives and physical integrity of Yelitze Moreno de Castillo and her son Cesar Luís Castillo Moreno, in accordance with Articles 4 and 5 of the American Convention on Human Rights.

2. Conduct an exhaustive investigation in order to bring to trial and punish those responsible for the death of Joe Castillo González, as well as those who were responsible for seriously wounding his wife and son.

10. On September 26, 2003, the State sent the Commission a report on initial steps taken to comply with the precautionary measures requested, and this was transmitted to the petitioners on October 1 of the same year.

III. POSITIONS OF THE PARTIES

A. Petitioners

11. The petitioners state that Mr. Joe Castillo worked as the coordinator of the Office of Social Action and Human Rights of the Machiques Apostolic Vicariat. In such office also worked his wife Yelitze Moreno de Castillo. Among other things, they were responsible for providing legal assistance, monitoring, and helping prepare local laws on migration, asylum, and refugee issues; education and training on human rights with the indigenous communities of the Perijá Mountains, and legal assistance for small farmers (campesinos) involved in land recuperation lawsuits.

12. As background to the events surrounding the murder of the human rights activist Joe Castillo and the failed gunshot attack on his wife and son, the petitioners state that one of the main roles carried out by Joe Castillo was to assist persons who were refugees, or seeking asylum, in the frontier area between Venezuela and Colombia. He carried out this work under the aegis of projects run by the Machiques Apostolic Vicariat in the State of Zulia, and by the Regional Office of the United Nations High Commissioner for Refugees (UNHCR). The petitioners state that in an attempt to protect the rights of asylum seekers, Mr. Castillo had requested precautionary measures from the IACHR on behalf of several persons, some of whom were subsequently murdered by alleged paramilitaries. Furthermore, they state that one of the main problems in the State of Zulia, on which Joe Castillo had also been working, is the issue of ownership and use of land, and the struggle of the campesinos for land. On January 31, 2003, in application of the 2001 Land and Agrarian Development Law, the government issued Decree No. 2,292, which authorized the granting of agrarian permits to farmers occupying public lands for agricultural purposes. They state that the process used for allocating lands was rejected by the previous owners and by the cattle ranching associations and resulted in violence erupting when lands were occupied. They state that during 2003 the levels of tension escalated to a point at which several campesino leaders were killed by hired murderers.[FN2]

[FN2] The petitioners quote a PROVEA report which states that the National Agrarian Coordinating Office reported that 20 campesino leaders were murdered, while CICPC (the Criminal Investigation police) reported that 56 campesinos had been murdered in the States of Zulia, Ampure, Barinas, Guarico, Portuguesa, and Táchira.

13. Furthermore, the petitioners state that in the last few years in Venezuela there has been an increase in acts of aggression against human rights activists – both male and female. They claim that these acts of aggression range from attacks on lives and physical integrity, threats and harassment, to more subtle ones such as smear or intimidation campaigns. They also state that months before he was murdered, Joe Castillo had told his team that he feared for his life and he was going to request UNHCR to provide more security in view of the danger he was in. The petitioners allege that the State knew of the conflict unfolding in the state of Zulia, was aware of the activities of paramilitaries and hired murderers in the area, and they add that it was possible that agents of the State were participating in some of these groups. The petitioners argue that even though the acts of violence in the Colombian/Venezuelan border area were public

knowledge, the State took no steps to prevent or avoid more attacks against lives and physical integrity, such as those which directed against the alleged victims in this case.

14. The petitioners state that the facts referred to in this petition took place in the context described in the foregoing paragraphs and are described below.

15. On August 27, 2003, as Joe Luís Castillo was driving in his car to his home in the Tinaquillo district of Machiques, in the state of Zulia, Venezuela, (bordering Norte de Santander, Colombia), with his wife, Yelitze Moreno de Castillo, and his one and a half year old son, two persons riding a motorbike overtook the car on the driver's side, slowed down in order to check the identity of those in the car, and a few meters further on fired thirteen shots at Mr. and Mrs. Castillo. The petitioners state that Joe Castillo lost control of the vehicle and crashed into the pavement. Of the thirteen shots, nine hit Joe Castillo and caused his death. The gunshots also wounded Yelitze Moreno de Castillo and her son, and they both needed to be taken to the emergency ward in the city of Maracaibo where they were operated on. Yelitze Moreno de Castillo presented with entrance and exit gunshot wounds to the left forearm, the left side of her thorax, and to the left shoulder. The child, Luís Cesar Castillo, presented with entrance and exit gunshot wounds to his left forearm, his two shoulders, and to the left side of his thorax.

16. The Machique sub-office of CICPC (the Criminal Investigation police) subsequently sent the body of Joe Castillo for medical examination and legal autopsy, and a visual inspection was carried out of both the body of Joe Castillo and the scene of the events.

17. With regard to the progress made in the investigation, the petitioners state that on August 28, 2003, the 20th Office of the Public Prosecutor of the Judicial Division of the State of Zulia (Fiscalía 20), opened its investigation. On September 8, 2003, the State Attorney General instructed the 83rd Office of the Public Prosecutor responsible for Fundamental Human Rights in the Metropolitan Area of Caracas (Fiscalía 83) to take part jointly or separately with the 20th Office in order to investigate the case and identify those responsible.

18. The procedures ordered by the prosecutors' offices involved were: the certificate of the removal of the body; medical examination and autopsy; interviews of those in the vicinity; interviews of those who knew Joe Castillo; expert examination of his vehicle; ballistic and other measurement in his car; forensic examination of Yelitze and her son; interviews with Yelitze Moreno de Castillo; examination by Yelitze Moreno de Castillo of photographs of three persons without identification of any of them. These procedures were performed until September 2004.

19. The petitioners state that the following procedures have not yet been carried out: identification by Yelitze Moreno de Castillo of another suspect, pending since December 2004; comparative ballistic examination, pending since November 2004.

20. The petitioners complain that to date no one has been identified as responsible for the punishable offenses in which Joe Castillo González was murdered, and Yelitze Moreno de Castillo and Luís César Castillo were injured.

21. With regard to the effects of the murder of Joe Luís Castillo González on his wife and child, as well as on the work of the organization for which he worked, the petitioners firstly allege that a number of developments resulted from the abrupt change brought about in the life of Yelitze Moreno de Castillo and her son, such as depression, fear of being the object of a further attack, uncertainty, change of home, work, and others. They state that the sense of vulnerability experienced by Mrs. Moreno Castillo has resulted in her selling her house, car, and land, and has led her to avoid traveling to places in the west of the country or near Machiques. She will only leave the place where she is living in the company of friends or family. They state that the symptoms associated with post-traumatic stress disorder are well known: violent flashbacks, nightmares, difficulty in sleeping and in relaxing. These symptoms have also been observed in her son, Luís César Castillo, whose symptoms include panic attacks when he hears the sound of explosions. The murder of Joe Castillo has affected the work of other human rights activists working with the Machiques Vicariat because following his murder and the receipt of further threats, the organization first declared collective holidays and then decided to close the Social Action Office for two months. The office is no longer working with refugees and on human rights violations in general.

22. With regard to the exhaustion of remedies available under domestic law, the petitioners allege that the exception described in Article 46(2)(c) of the American Convention. Taking into account the nature of the facts and type of violations alleged the most appropriate remedy would be a criminal trial brought ex officio by the Public Prosecutor.

23. In the instant case, the petitioners allege that in the course of the investigation, the Public Prosecutor has undertaken a number of tasks such as the removal of the body and the autopsy, interview of those in the vicinity of the events, identikit, and medical examination of the two injured victims, identification, and photographic identification. In addition, the offices in charge of the investigation have maintained regular contact with Yelitze Moreno de Castillo in order to update her on the results of the investigations and to attend to her protection requirements.

24. Without prejudice to the foregoing, the petitioners claim that the exception to the requirement to exhaust remedies available under domestic law is applicable in this case because there has been an unwarranted delay, given that three years and six months have passed since the events, and the criminal investigation is still in its preparatory phase because no criminal charge has yet been brought.[FN3]

[FN3] The petitioners refer to the fact that the Commission has stated that periods of two years without those responsible at least being identified and with no progress made towards clarifying the events amounts to unwarranted delay. See, IACHR, Claudia Ivette González Case. Admissibility Report, 2005, paragraph 21; IACHR, Esmeralda Herrera Montreal Case, Admissibility Report, 2005, paragraph 25; Laura Berenice Ramos Monarrez Case. Admissibility Report 2005, paragraph 20; IACHR César Geovanny Guzmán Reyes Case. Admissibility Report, 2004, paragraph 24, and IACHR, Luisiana Ríos and others Case. Admissibility Report 2004, paragraph 68.

25. Finally they point out that although the case is complex, this does not justify the delay in the investigation because from the outset the Office of the Public Prosecutor has been in possession of evidence such as the description given by Yelitze Moreno Castillo, the ballistic evidence, detailed descriptions given by those in the vicinity, none of which has subsequently been used to follow up and identify lines of investigation that might make it possible to identify those responsible.

B. State

26. The Commission has not received a response from the State with respect to the admissibility of the petition even though it was duly informed.

IV. ANALYSIS

A. Prior matters

27. The IACHR notes that the State has not responded to the allegations lodged by the petitioners; nor has it questioned the admissibility of the petition. The IACHR wishes to make it clear that Venezuela assumed various international obligations under the terms of the American Convention on Human Rights, including those enshrined in Article 48.1 of the Convention which states that: “When the Commission receives a petition or communication (...) it shall ... request information from the government of the state indicated as being responsible for the alleged violations (...) This information shall be submitted within a reasonable period (...) The Commission may request the states concerned to furnish any pertinent information...” The Convention, therefore, requires states to provide the information requested by the Commission in the processing of an individual case.”[FN4]

[FN4] See for example, IACHR Report No. 129/01, Case 12,389, Admissibility, Jean Michel Richardson, Haiti, December 3, 2001, paragraph 11.

28. In the judgment of the Commission it should also be pointed out that the information it requested would presumably allow it to arrive at a decision in a case lodged before it. The Inter-American Court of Human Rights has stated that the cooperation of States is an essential obligation in international proceedings of the inter-American system:

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State’s cooperation.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State’s jurisdiction unless it has the cooperation of that State.[FN5]

[FN5] I/A Court of H.R., Velásquez Rodríguez Case. Judgment July 29, 1988. Series C, No 4, paragraphs 135-36.

29. The IACHR and the Inter-American Court of Human Rights have both stated that “the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law.”[FN6] The Commission therefore reminds Venezuela that it is obliged to cooperate with the organs of the inter-American human rights system, to enable it most effectively to fulfill its role in the protection of human rights.

[FN6] *Idem*, paragraph 138; and IACHR, Report No. 28/96, Case 11,297, Guatemala, October 16, 1996, paragraph 45.

B. Competence of the Commission, *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

30. The petitioners possess *locus standi* to lodge petitions in accordance with Article 44 of the Convention. The petition names as victims private individuals whose rights under the terms of the Convention, the Bolivarian Republic of Venezuela is obliged to respect and protect. With regard to the State, Venezuela has been a State party to the American Convention since August 9, 1977. The petitioners denounce acts or omissions that are directly attributable to the State. The Commission therefore considers that it has competence *ratione personae*.

31. The Commission has competence *ratione materiae* because the petition alleges violations by the State of the human rights of the alleged victims that are protected under the American Convention.

32. The Commission has competence *ratione temporis*, because the events alleged in the petition took place at a time when the obligation to respect and protect the rights enshrined in the Convention was already in force for the State.

33. The Commission has competence *ratione loci* to examine the petition because it alleges violations of rights protected under the American Convention which took place within the territory of a State party to the Convention.

C. Exhaustion of remedies under domestic law

34. Article 46(1)(a) of the American Convention states that for a petition lodged before the Commission to be admissible according to Article 44 of the Convention, it is necessary that all remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to ensure that the State may learn of the alleged violation of a protected right, and where appropriate, find a solution before it is examined by an international proceeding.

35. The requirement of prior exhaustion is applicable when domestic legislation does in fact provide remedies that are adequate and effective to remedy the alleged violation. In this sense, Article 46.2 specifies that the requirement is not applicable when domestic law does not afford due process of law for the protection of the right in question; or if the alleged victim has been denied access to the remedies under domestic law; or if there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies. As stated in Article 31 of the Rules of Procedure of the Commission, when a petitioner alleges one of these exceptions it shall be up to the State concerned to demonstrate that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

36. Based on the principles of international law, the precedents established by the Inter-American Commission, and the case-law of the Inter-American Court, the respondent State may waive, either tacitly or expressly, its right to invoke this rule.[FN7] Secondly, the exception of non-exhaustion of remedies available under domestic law, in order to be appropriate, must be invoked during the early stages of the proceedings before the Commission, and if this is not done, the implication will be that the respondent State has waived its right to invoke it.[FN8] Thirdly, in accordance with the burden of proof applicable in this case, any State that alleges the non-exhaustion of remedies available under domestic law must indicate the remedies that were available to be exhausted and must provide proof of their effectiveness.[FN9] Therefore, if the State in question does not at the appropriate time lodge its allegations in relation to this requirement, it will be considered to have renounced its right to allege the non-exhaustion of remedies available under domestic law and to meet the corresponding burden of proof.

[FN7] IACHR, Report No. 69/05, petition 960/03, Admissibility, Ivan Eladio Torres, Argentina, October 13, 2005, paragraph 42; I/A Court of H.R., Ximenes Lopes Case. Preliminary Exception. Judgment November 30, 2005, Series C No. 139, paragraph 5; I/A Court of H.R., Case of the Moiwana Community, Judgment June 15, 2005, Series C No. 124, paragraph 49; and I/A Court of H.R., Case of the Serrano Cruz Sisters. Preliminary Exceptions. Judgment November 23, 2004, Series C No 118, paragraph 135.

[FN8] I/A Court of H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Exceptions. Judgment February 1, 2000, Series C No. 66, paragraph 53; I/A Court H.R., Castillo Petruzzi Case. Preliminary Exceptions. Judgment September 4, 1998. Series C No 41, paragraph 56; and I/A Court of H.R., Loayza Tamayo Case. Preliminary Exceptions. Judgment January 31, 1996. Series C No 25, paragraph 40. The Commission and the Court have stated that “the first stages of a process” must be understood as “the admissibility stage of the proceedings before the Commission, that is, before any consideration of the merits [...]”. See, for example, IACHR, Report No. 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, that quotes I/A Court of H.R., Case of Herrera Ulloa. Judgment July 2, 2004, Series C No 107, paragraph 81.

[FN9] IACHR, Report No. 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV-AIDS, Guatemala, March 7, 2005, paragraphs 33-35; I/A Court of H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Exception. *supra* note 6, paragraph 53; Durand and Ugarte Case. Preliminary Exceptions. Judgment May 28,

1999. Series C No. 50, paragraph 33; and Cantoral Benavides Case. Preliminary Exceptions. Judgment September 3, 1998. Series C No 40, paragraph 31.

37. In the present case, the State has not responded to the initial petition and consequently has tacitly renounced its opportunity to claim the exception of non-exhaustion of remedies available under domestic law. For their part, the petitioners alleged the existence of an unwarranted delay in the criminal proceedings and consequently claim that the exception enshrined in Article 46(2) of the American Convention is applicable.

38. To assess how far the requirement to exhaust remedies available under domestic law has been met, the Commission must determine which is the appropriate remedy that should be exhausted in the circumstances, understanding this as that remedy which is able to solve the juridical situation that has been infringed. In cases of alleged arbitrary infringements of the right to life, the appropriate remedy is the criminal investigation and proceedings brought and pursued by the State in order to identify and punish those responsible.

39. In relation to the unwarranted delay, the Commission examines the circumstances and makes a case-by-case evaluation in order to decide whether or not there has been an unwarranted delay. As a general rule, the Commission states that “a criminal investigation should be carried out promptly to protect the interests of the victims and to preserve evidence.”[FN10] To determine whether or not an investigation has been carried out “promptly”, the Commission must evaluate a series of factors such as the time elapsed since the offense was committed, whether the investigation has progressed beyond the initial stages, the steps taken by the authorities, and the complexity of the case.[FN11]

[FN10] IACHR, Report No. 16/02, Petition 12.331, Servellón García, Honduras, Admissibility, paragraph 31 (February 27, 2002).

[FN11] IACHR, Report No. 130/99, Petition 11.740, Victor Manuel Oropeza, Mexico, paragraphs 30-32.

40. In this case, the petitioners allege there has been an unwarranted delay in the investigation and therefore that they have been denied justice under domestic law. They state that there has been negligence and omission[FN12] on the part of the Public Prosecutor’s Office, which possesses exclusive authority to initiate investigations and bring criminal proceedings for so-called criminal cases in view of the fact that more than three years after the event that gave rise to the petition the case is still in its preparatory stage and no criminal charges have been brought. On the basis of the information provided by the petitioners and unchallenged by the State, it appears that the investigations have not progressed since September 2004 in spite of the fact that Mrs. Yelitze de Castillo has played an active role and even asked for proceedings to be undertaken.

[FN12] The petitioners state that:

[...]The steps taken by the Investigating Office (Fiscalía) have tended basically to establish the corpus delicti, such as a visual examination of the scene of the event; the visual inspection of the car driven by Joe Luis Castillo; the visual examination of his body; the certificate for the removal of the body; the taking of verbal descriptions for identification; the forensic examination of the minor Luís Cesar Castillo and of Yelitze Moreno de Castillo.[...]Even when the Public Prosecutor's Office interviewed those in the vicinity of the events, some of whom, at the time, reported valuable observations, these were not used subsequently to feed into and activate lines of investigation. [...]Equally, even though the Public Prosecutor's Office carried out two photographic examinations with Yelitze, it has not checked the evidence by comparing the ballistic studies based on the bullets that were found against weapons that have been similarly seized from persons killed during alleged confrontations with police, nor against expert analysis of the legal examination made of the bullets found at the scene of the events.

41. Taking the above into account, the Commission considers that in the instant case an unwarranted delay has taken place in the criminal investigation and that consequently, according to Article 46(2)(c), the petitioners are exonerated from the requirement to exhaust the remedies available under domestic law.

42. The Commission reaffirms that citing exceptions to the rule of exhaustion of remedies available under domestic law enshrined in Article 46(2) of the Convention is closely linked to the definition of possible violations of certain rights described therein, such as the right to judicial guarantees. However, Article 46(2) of the American Convention, by its nature and object, is autonomous in content, vis á vis the Convention's substantive norms. Therefore, a decision on whether the exceptions to the rule of exhaustion of remedies available under domestic law enshrined in Article 46(2) can be applied to the case in question must be established prior to, and separate from, an examination of the merits of the case because it relies on a different standard of judgment than the one that determines a violation of Articles 8 and 25 of the Convention. It should be pointed out that the causes and effects that have prevented the exhaustion of remedies available under domestic law in the present case will be examined, as far as they are relevant, in the Report adopted by the Commission on the merits of the case, in order to establish whether it indeed deals with real violations of the American Convention. Based on the foregoing, the Commission considers that there exist sufficient grounds to exonerate the petitioner from the obligation of prior exhaustion of domestic remedies as described in Article 46(2) of the American Convention.

D. Deadline for presentation of petitions

43. In accordance with Article 46(1)(b) of the Convention, for a petition to be admissible it must be lodged within six months from the date on which the party alleging violation of his rights was notified of the final judgment in the domestic jurisdiction. The six months rule ensures legal certainty and stability once a judgment has been reached.

44. Article 32 of the Rules of Procedure of the IACHR states that in those cases in which the exception to the requirement of prior exhaustion of domestic remedies is applicable, the petition must be lodged within a reasonable period, as determined by the Commission. In accordance

with this article, the Commission “shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.”

45. In the petition under consideration, the IACHR has concluded that the State of Venezuela tacitly renounced its right to raise an objection of the non-exhaustion of remedies available under domestic law. Furthermore, the IACHR has concluded that in this case, Article 46.2.c concerning the existence of an unwarranted delay is applicable given that more than three years have elapsed since the events took place, and the investigation is still at the preliminary stage. The Commission therefore must determine whether or not the petition was lodged within a reasonable period based on the specific circumstances described for its consideration.

46. In this regard, the IACHR observes that the original petition was received on March 20, 2006. The incidents that are the subject of the petition began in August 2003. The IACHR considers that the petition was lodged within a reasonable period.

E. Duplication of procedures and *res judicata*

47. The allegations of the petitioners do not suggest that the petition is pending in another international proceeding for settlement, or that it is substantially the same as one previously studied by the Commission or by another international organization. Therefore, the Commission considers that the requirements for admissibility enshrined in Articles 46(1)(c) and 47(d) of the Convention have been met in this case.

F. Description of the alleged facts

48. In order to determine admissibility, the IACHR must establish if the facts described in the petition tend to establish a violation of the rights guaranteed in the American Convention, in accordance with the requirements of Article 47(b), or if the petition, in accordance with Article 47.c should be considered inadmissible because it is “manifestly groundless” or “obviously out of order.”

49. The petitioners have made allegations that if substantiated could tend to establish violations of Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 8 (Right to a Fair Trial), Article 13 (Freedom of Thought and Expression), and Article 25 (Right to Judicial Protection), all in relation to the general obligation enshrined in Article 1(1) of the Convention, and are not “manifestly groundless” or “obviously out of order.” Furthermore, in accordance with the general principle of *iura novit curia*, this gives the power to apply all pertinent legal provisions, even when these have not been invoked by the parties, the IACHR considers that the facts alleged by the petitioners could constitute violations[FN13] of Article 19 (Rights of the Child) of the American Convention to the detriment of Luís Cesar Castillo Moreno and article 16 (Freedom of Association) of the same instruments. Therefore, without prejudice to the merits of the case, the Commission considers that the requirements described in Articles 47(b) and (c) of the American Convention has been met.

[FN13] IACHR, Report No. 38/96, Case 10.506, Argentina, October 15, 1996.

V. CONCLUSIONS

50. The Commission concludes that it has competence to examine the case and that the petition is admissible in accordance with the requirements for admissibility laid down in Articles 46 and 47 of the American Convention on Human Rights, and with reference to the alleged violations of Articles 4, 5, 8, 13, 16, 19, and 25 of the American Convention in relation to Article 1(1) of the same instrument to the detriment of Joe Luís Castillo González, Yelitze Moreno de Castillo, and Luís Cesar Castillo Moreno.

51. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare that the present petition is admissible in relation to the alleged violations of rights protected by Articles 4, 5, 8, 13, 16, 19, and 25 of the American Convention in relation to Article 1(1) of the same instrument.
2. To give notice of this decision to the parties
3. To continue the analysis of 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 9th day of the month of March, 2007.
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, Commissioners.