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Title/Style of Cause:	Gilberto Triana Molina v. Colombia
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, Freddy Gutierrez.
Dated:	23 July 2007
Citation:	Triana Molina v. Colombia, Petition 880-05, Inter-Am. C.H.R., Report No. 47/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by:	APPLICANT: the “Jose Alvear Restrepo” Attorneys Association
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I. SUMMARY

1. On August 1, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition that the “José Alvear Restrepo” Attorneys Association (hereinafter “the petitioners”) lodged against the Colombian State (hereinafter “Colombia” or the “State”). The petition alleged that Colombia had failed to comply with Constitutional Court ruling T-727103, delivered on July 16, 2003, on an action seeking protection of Gilberto Triana Molina’s constitutional right to due process. In that decision, the Constitutional Court nullified the November 1, 2003 ruling that the Supreme Court had issued on cassation.

2. The petitioners allege that the State is responsible for violation of the rights a fair trial and to judicial protection, established in Articles 8 and 25 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), both in relation to the obligations erga omnes that the State undertook with Articles 1(1) and 2 of the Convention, i.e., to ensure the Convention-protected rights and to adopt domestic legislative measures. The petitioners invoke the exceptions to the rule requiring exhaustion of local remedies, provided for in Article 46(2)(b) and (c) of the American Convention. The State, for its part, alleges that the petitioners’ claims are inadmissible because domestic remedies have not been exhausted. It also observes that the exceptions provided for in Article 46(2) do not apply and that the petition was not lodged within the prescribed time period.

3. After examining the parties’ positions and the admissibility requirements set forth in Articles 46 and 47 of the American Convention, the Commission decides to declare the petition admissible with regard to the alleged violation of Articles 8(1) and 25 of the American

Convention, in relation to Articles 1(1) and 2 thereof, to notify the parties and to order publication of the report.

II. PROCESSING WITH THE COMMISSION

4. The IACHR registered the petition as number P-880-05 and on November 18, 2005, forwarded the relevant parts to the State, with the request that it submit its information within two months, pursuant to Article 30(2) of the Commission's Rules of Procedure. On January 18, 2006, the State requested a 30-day extension to submit its information. The Commission acceded to the State's request.

5. The State submitted its information on May 4, 2006, which was forwarded to the petitioners on May 11, 2006 for their observations. The petitioners' observations were sent to the State on August 2, 2006, which was given one month in which to submit observations. On September 20, 2006, the State requested a 30-day extension to submit its observations. The Commission granted the request and later received the observations on April 23, 2007.

III. POSITIONS OF THE PARTIES

A. The petitioners

6. The petitioners allege that on December 10, 1998, the Bogotá Circuit's 36th Criminal Court convicted Gilberto Triana Molina of the crime of documents forgery[FN1] and sentenced him to serve 32 months in prison. The Bogotá Superior Court confirmed the ruling on November 8, 1999. The petitioners allege that Gilberto Triana Molina filed an appeal with the Supreme Court's Criminal Cassation Chamber, which on December 19, 2001 refused to hear the cassation petition.[FN2]

[FN1] Colombian Criminal Code, Title IX, Crimes against the Public Trust, Chapter Three, Forgery, articles 220 and 222..

[FN2] Original petition that the Commission received on August 1, 2005, pp. 1 and 2.

7. The petitioners assert that Mr. Triana Molina filed an action with the Supreme Court's Civil Cassation Chamber seeking protection of his constitutional rights. That action was denied on November 1, 2002, based on the principles of judicial autonomy and *res judicata*.

8. The petitioners observe that on February 27, 2003, the Constitutional Court decided to request that the Supreme Court's Civil Cassation Chamber forward Mr. Triana Molina's action seeking protection of his constitutional rights to the Constitutional Court within ten days.[FN3] On April 25, 2003, the Constitutional Court's Fourth Review Chamber selected Mr. Gilberto Triana Molina's case for review, and on July 16, 2003 nullified the previous ruling on grounds that Mr. Gilberto Triana Molina's petition "does not fall short of the minimum requirements, does not require correction and is not a reckless or frivolous case." It therefore ordered that the case file be sent back so that the Supreme Court could agree to hear the petition, as required

under the laws governing due process in the matter of protection of constitutional rights, set forth in Decree 2591 of 1991.[FN4]

[FN3] In compliance with the order issued by the Constitutional Court in its December 13, 2002 order.

[FN4] The Constitutional Court holds that courts rarely refuse to hear an action seeking protection of constitutional rights; refusal is suitable only when the petition is in need of correction, Article 17, and in reckless or frivolous cases, Article 38 of Decree 2591 of 1991. That decree regulates the action seeking protection of constitutional rights, which is recognized in Article 86 of the Colombian Constitution. Constitutional Court. Sixth Review Chamber. Reference: T-727103 of July 16, 2003.

9. The petitioners assert that on August 20, 2003, the Supreme Court's Civil Cassation Chamber rendered the same decision it had delivered in the November 1, 2002 ruling, without considering the nullification ordered by the Constitutional Court on July 16, 2003.[FN5]

[FN5] Supreme Court of Justice, Civil Cassation Chamber, Reference: Action seeking protection of constitutional rights No. 00526-01 of August 20, 2003.

10. The petitioners further allege that by an order dated February 3, 2004, the Constitutional Court ruled that a petition seeking protection of constitutional rights can be brought against any public authority and that the Supreme Court's refusal to hear petitions that individuals file to seek protection of constitutional rights against court rulings violates the fundamental right to have access to the courts and to secure effective judicial protection of their basic rights under international treaties and as held in the Advisory Opinions of the Inter-American Court.[FN6] It held further that it is the duty of the Constitutional Court to put a stop to the violation. It stated that:

[j]udges or tribunals with jurisdiction in the place where the threat or threats prompting the petition were alleged to have occurred are competent to hear the petition seeking protection of constitutional rights. Individuals must be able to avail themselves of the means necessary to seek review of their petitions for protection of constitutional rights. Persons filing such petitions (Gilberto Triana Molina) have the right of recourse to a competent judge or tribunal, or any other body of equal rank, to request basic protection [of the right] that they believe has been violated.[FN7]

[FN6] I/A Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11 and The Right to Information on Consular Assistance. in the Framework of the Guarantees of the Due Process of Law. Advisory Opinion OC-16/99 of

October 1, 1999. Series A No. 16. Constitutional Court of Colombia. Order of February 3, 2004, cited in the original petition received by the IACHR on August 1, 2005, p. 2.

[FN7] Constitutional Court of Colombia, Order of February 3, 2004, brackets added by the IACHR. Original petition received by the IACHR on August 1, 2005, p. 2.

11. The petitioners state that Mr. Gilberto Triana Molina therefore filed a petition seeking protection of his constitutional rights with the Council of State on June 10, 2005, in order to assert his rights. In a June 15, 2005 decision, the Council of State (Administrative-Adjudicatory Jurisdiction), en banc, declared that it did not have competence to examine the petition and sent the case file to the Supreme Court. The latter, in turn, dismissed the petition filed against the Supreme Court's Civil Cassation Chamber, in a ruling dated July 6, 2005.

12. The petitioners observe that the Supreme Court's August 20, 2003 and July 6, 2005 decisions are simply repetitions of the decision it delivered back on November 1, 2002. The August 20, 2003 and July 6, 2005 decisions were delivered in open defiance of the Constitutional Court's ruling T-727103 of July 16, 2003. As evidenced by the July 6, 2005 decision, the Supreme Court's posture did not change, despite the February 3, 2004 ruling in which the Constitutional Court vainly sought to defend its decision. Further, the petitioners believe that the parties should have been notified of the order, to enable them to challenge it and to allow another chamber of the Supreme Court to review it.

13. As for the merits of the case, the petitioners believe that Mr. Triana Molina did not have access to a simple and prompt recourse that would protect his right to due process. They also believe that Colombia does not have a statutory law on protection of constitutional rights or constitutional amparo with the kind of binding force that would foreclose any possibility of noncompliance. They contend that by virtue of the decision adopted by the Supreme Court, the Colombian State violated the obligation to adopt decisions that respect the guarantees of due process, as required under Article 8 of the American Convention.[FN8]

[FN8] I/A Court H.R., Constitutional Court Case, Competence, Judgment of September 24, 1999. Series C No. 55, para. 71, cited by the petitioners in the original petition received by the IACHR on August 1, 2005, p. 13, note 42.

14. They also consider that the Constitutional Court's ruling has been defied for so long as to constitute an unjustified delay, in violation of Article 25(1) of the Convention. As the Inter-American Court has held:

Article 25(1) incorporates the principle recognized in the international law of human rights of the effectiveness of the procedural instruments or means designed to guarantee such rights.[FN9]

[FN9] I/A Court H.R., Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8, American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 24. Petitioners' observations of July 28, 2006, p. 7, note 20.

15. In this connection, the petitioners contend that the facts alleged constitute a violation on the part of the Colombian State of the rights to judicial guarantees and to judicial protection, recognized in Articles 8(1) and 25 of the American Convention, and its obligation erga omnes to respect the rights protected in the Convention and to adopt domestic legislative and other measures needed to give effect to the rights and freedoms established in the Convention, undertaken in Articles 1(1) and 2 thereof. They therefore request that the IACHR declare the petition admissible.

16. The petitioners assert that the facts alleged in the present case show that the recourses available in Colombia do not constitute an effective means for Gilberto Triana Molina to access the courts and exercise his right to due process. Hence, the exception to the rule requiring exhaustion of local remedies, established in Article 46 of the Convention, should apply in this case. They therefore request that the IACHR declare the petition admissible by virtue of the exception allowed under Article 46(2)(c) of the American Convention.[FN10]

[FN10] The also contend that it has been four years since the Constitutional Court 's first ruling on Mr. Triana Molina's petition for protective relief, delivered on November 1, 2002. Petitioners' observations of July 28, 2006, p. 6.

17. The petitioners allege further that Mr. Triana Molina has been denied the means to exercise his rights, which is a clear example of the denial of justice in his case. The petitioners assert that this denial of justice is embodied in the conduct of the officers of the court.[FN11] They argue that the exception allowed under Article 46(2)(b) of the Convention applies precisely because Mr. Triana Molina was denied the opportunity to exhaust domestic remedies.

[FN11] Petitioners' observations, July 28, 2006, p. 6

18. As for the State's contention that effective remedies remain to be exhausted (see, *infra*, III B), the petitioners' rebuttal is that the remaining remedies are neither suitable nor effective for protecting the rights violated in Mr. Triana Molina's case. As for the action seeking protection of one's constitutional rights, the petitioners argue that in a democratic State, citizens should not have to go forum shopping with their grievances, to find a court willing to remedy the violation alleged. The petitioners point out that Mr. Triana Molina turned to two of the three bodies available to him –the Council of State and the Supreme Court- neither of which respected his right to have recourse to an effective remedy. Under Article 46(2)(b) this would constitute an impediment to the exhaustion of domestic remedies.

19. The petitioners also refute the State's argument as to the effectiveness of an action seeking protection of constitutional rights. They point out that while such an action is generally the appropriate means to protect the rights of Colombian citizens, it is not in the instant case since the practice of the courts, as described here, is to allow decisions of Colombia's Constitutional Court to remain inoperative. As a result, the right to judicial protection has become illusory since a State Party's "domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party." [FN12] The petitioners allege that this situation cannot be blamed on the aggrieved party.

[FN12] E. Court H.R. Case of Antonetto v. Italy, No. 15918/89, of July 20, 2000, par. 27; Case of Immobiliare Saffi v. Italy, No. 22774/93, 1999-V, par. 63, Case of Hornsby v. Greece, judgment of May 19, 1997, par. 40. Observations of the petitioners of July 28, 2006, p. 9, note 26.

20. As for the State's argument that the action seeking direct redress was not exhausted (see *infra* III B), the petitioners respond that the Inter-American Court has already held that a violation of a Convention-protected right cannot be fully redressed merely by payment of compensation. [FN13] They reason, therefore, that while an action seeking direct redress is an avenue for seeking reparations, it is not one of the remedies that needs to be exhausted under Article 46(1) of the American Convention.

[FN13] I/A Court H.R., Case of the "Mapiripán Massacre." Preliminary Objections. Judgment of March 7, 2005, Series C No. 122 par. 214. Petitioners' observations of July 28, 2006, p. 6.

21. The petitioners contend that the deadline for lodging a petition established in Article 46(1)(b) of the Convention does not apply in the present case. As previously observed, the circumstance provided for in Article 46(2)(c) of the Convention, i.e., an unwarranted delay in rendering a final judgment under the domestic remedies, obtains in the present case; the exception allowed under Article 46(2) therefore applies. [FN14]

[FN14] Petitioners' observations of July 28, 2006, p. 6 .

22. The petitioners also allege that the Supreme Court's repeated and ongoing defiance [FN15] of the Constitutional Court ruling is a continuing violation of Article 25 of the Convention, which recognizes the right to effective judicial protection. They therefore contend that the deadline for lodging petitions, established in Article 46(1)(b) of the American Convention, does not apply in the instant case. [FN16]

[FN15] Civil Cassation Chamber, Supreme Court, August 20, 2003 and July 6, 2005.

[FN16] IACHR Report No. 100/00 Cesar Cabrejos Bernuy, Peru, para. 22., Report No. 89/99 Carlos Torres Benvenuto, par. 23, Report No. 85/01 Workers of the Metropolitan Municipality of Lima and the Municipal Services Company of Lima, Peru, par. 21, cited by the petitioners in the original petition that the IACHR received on August 1, 2005, p. 4, note 15.

23. As for the State's arguments regarding application of the fourth-instance formula, the petitioners observe that the Commission has established that it is competent to find a petition admissible when the subject matter has already been decided by a domestic court if the Commission considers that the right to due process or any other right guaranteed by the Convention may have been violated.[FN17] The petitioners are asking the Commission to find that by its handling of Mr. Triana Molina's actions seeking protection of his constitutional rights, the State failed to comply with the principle of due process of law and so violated Articles 1(1), 2, 8 and 25 of the American Convention.

[FN17] IACHR, Case 11.673 Santiago Marzioni, Report N° 36/05, para. 50. Petitioners' observations of July 28, 2006, p. 10, note. 29.

B. The State

24. In response to the petitioner's claim, the State calls into question their argument alleging the exception to the rule requiring exhaustion of local remedies under Article 46(2)(c), The State contends that because the Constitutional Court gave authorization allowing any court to decide the action seeking protection of constitutional rights, Mr. Triana Molina still has standing to bring his case. It reasons that the ruling of the Council of State and the Supreme Court's final position notwithstanding, if an action seeking constitutional protection is brought, any judge can reinstate the rights that Mr. Triana Molina alleges have been violated. No bad faith can be inferred, since no decision on the merits as yet exists. The State further alleges that an action seeking direct redress can be filed if any judicial error has been committed by an agent of the State. As these two avenues are open, the State argues, suitable domestic remedies are available to seek restoration of the rights in question. The State contends, therefore, that the domestic remedies have not yet been exhausted in the present case.[FN18]

[FN18] As provided in Article 86 of the Administrative Litigation Code. Note DDH.GOI. No. 20907/0979 from the Ministry of Foreign Affairs of Colombia, dated May 2, 2006, point A.2.

25. As for the effectiveness of the action seeking protection of constitutional rights, the State points out that the decision of the Supreme Court's Civil Cassation Chamber not to review the petition was reported to Mr. Triana Molina in accordance with the law,[FN19] to give him the opportunity to challenge that decision with the Supreme Court's Labor Chamber, which serves as a court of second instance. It argues that the fault in this case is not an ineffective remedy but the complainant's failure to act. The State also observes that Mr. Triana Molina can still bring an

action seeking direct redress. Hence, the State contends that although Mr. Triana Molina is not availing himself of them, effective and adequate remedies remain to be exhausted within the domestic system to resolve his situation.[FN20]

[FN19] “So ordered. The interested party shall be notified of this decision by telegram.” Note DDH.GOI. No. 20907/0979 from the Ministry of Foreign Affairs of Colombia dated May 2, 2006, point A.2.2.1.

[FN20] Note DDH.GOI. No. 20907/0979 from the Ministry of Foreign Affairs of Colombia, who is May 2, 2006, point A.2.2.1.

26. As for the allegedly unwarranted delay under Article 46(2)(c) of the Convention, the State asserts that the IACHR cannot determine whether this exception applies merely on the basis of the amount of time that has passed; instead, an assessment must be done to determine the reasonableness of the time allowed, considering the complexity of the case, the procedural activity of the parties and the conduct of the judicial authorities. It contends that this is a complex case because of all its juridical implications and because it involves the State’s highest judicial authorities.[FN21] The State also makes the point that the interested party did not challenge the November 1, 2002 ruling at the appropriate time, opting instead to go to the Constitutional Court through extra-procedural channels. And he did not avail himself of the domestic remedies described above. The State asserts that the judicial authorities have comported themselves in accordance with the Constitution and the law and their functional competences.[FN22]

[FN21] The State observes that situations such as the one represented in the present petition are not a common occurrences; the action seeking protection of constitutional rights is the most effective judicial mechanism the Colombian State of Laws has to protect basic rights. Note DDH.GOI. No. 20907/0979 from the Ministry of Foreign Affairs of Colombia, dated May 2, 2006, point B.1.

[FN22] Note DDH.GOI. No. 20907/0979 from the Ministry of Foreign Affairs of Colombia, dated May 2, 2006, point B.1.

27. The State also asserts that the Commission does not have the authority to review judgments delivered by domestic courts unless it believes that a violation of the Convention has been committed. It reasons that to ask the Commission to “order the Colombian State to comply with the ruling of the Constitutional Court [...] in favor of Mr. Gilberto Triana Molina” is to ask the IACHR to act as a higher court.[FN23]

[FN23] Note DDH.GOI. No. 20907/0979 from the Ministry of Foreign Affairs of Colombia, dated May 2, 2006, point C.

28. It is the State's understanding that the petitioners acknowledge that in the criminal case brought against Mr. Triana Molina, which concluded with the December 19, 2001 ruling of the Supreme Court's Criminal Cassation Chamber, the right to judicial guarantees was observed, since they are not asking "the Commission to find that the internal proceedings have been either a miscarriage of justice or in error." The State therefore considers that inasmuch as the Convention-protected rights and guarantees were not violated in the criminal case, the State ought not to be compelled to enforce a ruling of the Constitutional Court whose execution would not serve to protect rights established under the Convention. Consequently, the States argues, the petition does not state facts that could tend to establish a violation of the Convention.[FN24]

[FN24] Note DDH.GOI. No. 18331/0889 from the Ministry of Foreign Affairs of Colombia, dated April 16, 2007, paragraphs 5 and 6.

29. Finally, the State alleges that the petition is inadmissible because it was lodged after the statutory deadline. It asserts that the petitioners' argument characterizing the Supreme Court's repeated and ongoing non-compliance as a continuing violation is unfortunate because non-execution of orders are deeds consummated at a specific moment in time and hence not continuing violations. The State therefore contends that the exception allowed under Article 46(1)(a) of the Convention would not apply and argues that the six-month time period should be counted as of the ruling delivered on the domestic remedy intended to provide an effective solution,[FN25] which in Mr. Triana Molina's case would be the action he filed with the Supreme Court's Civil Cassation Chamber seeking protection of his constitutional rights, which was dismissed on November 1, 2002, two years and 28 days before the petition was lodged.

[FN25] The State's argument is based on IACHR Report No. 70/01 Ernesto Galante, par. 71: "... the six month period in the present instance must be calculated from the October 3, 1997 denial of the first recourse seeking revocation and nullification of the Supreme Court's decision rejecting the recurso de queja. The petition was presented before the Commission and received on May 21, 1998, approximately seven and a half months after that decision, and thus, extemporaneously." The State also asserts that the action that Mr. Triana Molina filed with the Council of State seeking protection of his constitutional rights was not going to prosper because of jurisdictional issues.

30. Based on the foregoing considerations, in its original observations the State requests that the Commission declare the petition inadmissible for failure to exhaust domestic remedies and because the exception allowed under Article 46(2)(c) of the Convention for an unwarranted delay in rendering a final judgment on the remedy, is baseless. It therefore asks that the case be closed. In its second submission of observations, it requests that the IACHR find the petition inadmissible based on Articles 47(b) and 46(1) of the Convention, on the grounds that it was lodged after the statutory deadline.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

31. Under Article 44 of the American Convention, the petitioners are, in principle, authorized to lodge petitions with the Commission. The alleged victim named in the petition is a natural person whose Convention-protected rights the Colombian State undertook to respect and guarantee. As for the State, the Commission notes that Colombia has been a State party to the American Convention since July 31, 1973, the date on which it deposited its instrument of ratification. The Commission is, therefore, competent *ratione personae* to examine the petition.

32. The Commission is also competent *ratione loci* to examine the petition, because it alleges violations of rights protected by the American Convention, said to have occurred within the territory of Colombia, a State party to the Convention. The Commission is competent *ratione temporis* inasmuch as the obligation to respect and guarantee the rights protected under the American Convention was already binding upon the State on the date the facts alleged in the petition were said to have occurred. Finally, the Commission is competent *ratione materiae*, because the petition alleges possible violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

33. Under Article 46(1) of the Convention, one of the requirements for a petition alleging violation of the American Convention to be admissible is that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.

34. Article 46(2) of the Convention states that the rule requiring exhaustion of domestic remedies shall not apply when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. 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
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

As the Inter-American Court has written, whenever a State alleges the petitioner's failure to exhaust domestic remedies, it must show that the remedies that have not been exhausted are "adequate," in other words, that the function of those remedies within the domestic legal system is suitable to address an infringement of a legal right.[FN26]

[FN26] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 64.

35. In the instant case, the State is alleging that the petition does not satisfy the rule set forth in Article 46(1)(a) of the Convention requiring prior exhaustion of the remedies under domestic law. It contends that Mr. Triana Molina still has two legal remedies to exhaust: an action seeking protection of his constitutional rights, which can be brought before any judge in Colombia, and direct redress. It is worth noting that, by contrast, in the arguments it made to support its claim that the petition was filed belatedly, the State's contention was that the internal remedies had allegedly been exhausted on November 1, 2002, when the Supreme Court dismissed the first action brought by Mr. Triana Molina seeking protection of his constitutional rights. Despite this argument and its implications, the State alleges that Gilberto Triana Molina did not exhaust the remedies under domestic law, as required under Article 46(1) of the Convention. For their part, the petitioners allege that the Article 46(2)(c) exception to the rule requiring exhaustion of local remedies applies because of the delay in enforcing the decisions delivered by the Constitutional Court on the actions seeking protection of constitutional rights. They also allege that the exception allowed under Article 46(2)(b) if a petitioner has been denied access to the remedies under domestic law or been prevented from exhausting them also applies in the instant case, by virtue of the fact that Mr. Triana Molina has no way to demand enforcement of the Constitutional Court's ruling.

36. The Commission notes that although more than four years have passed since the Constitutional Court delivered its ruling on July 16, 2003, that ruling has still not been executed. The petitioners' argument on the merits revolves around an alleged failure to discharge the obligation to ensure the right to judicial protection through access to simple and prompt remedies based on enforcement of the writ of protection that the Constitutional Court issued in Mr. Triana Molina's favor on July 16, 2003. The petitioners claim that Mr. Triana Molina attempted to bring the same action to other judicial bodies, such as the Council of State, but to no avail.

37. The Commission observes that as a general rule, a proceeding must be carried out promptly in order to protect the interested party's rights. As the Inter-American Court of Human Rights has held, the timing of the decision on domestic remedies must also fit the purposes of the international protection system. The rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective. This is why Article 46 (2) of the Convention sets out exceptions to the requirement of recourse to domestic remedies prior to seeking international protection, precisely in situations in which such remedies are, for a variety of reasons, ineffective.[FN27]

[FN27] I/A Court H.R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 93.

38. Given the characteristics of the claim at issue in the present case and the period of time since the Court ruled on Mr. Triana Molina's rights, the Commission believes that because the exceptions allowed under Articles 46(2)(b) and (c) of the American Convention regarding the

impediment to exhaustion of domestic remedies and the delay in domestic judicial proceedings on the case, do apply, the rule requiring exhaustion of local remedies does not.

39. Application of the exceptions to the rule requiring exhaustion of domestic remedies, provided for in Article 46(2) of the Convention, is closely linked to the determination of possible violations of certain Convention-protected rights, such as the guarantees of access to justice. However, given its nature and purpose, Article 46(2) stands separate and apart from the Convention's substantive provisions. Therefore, the determination as to whether the exceptions to the rule of prior exhaustion of domestic remedies apply to the case in point must be done prior to and separate from the analysis of the merits, because it relies on a standard of assessment that is different from the standard used to determine possible violations of Articles 8 and 25 of the Convention. It is worth noting that the causes and effects that prevented exhaustion of domestic remedies will be examined in the report that the Commission adopts on the merits, to determine whether violations of the American Convention have occurred.

2. Deadline for lodging the petition

40. The American Convention provides that in order for the Commission to be able to admit a petition, the latter must be lodged within six months of the date on which the alleged aggrieved party was notified of the final decision in his case. While the State alleged that the petition was lodged after the statutory deadline, the IACHR has established that the exceptions that Article 46(2)(b) and (c) of the American Convention allow to the rule requiring exhaustion of local remedies do apply, this particular argument has to be dismissed. Article 32 of the Commission's Rules of Procedure provides that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

41. In the instant case, the petition was received on August 1, 2005, and the facts alleged therein occurred starting on July 16, 2003, the date on which the Constitutional Court delivered the decision that has not yet been executed. The effects in terms of the failure in the administration of justice extend right up to the present. Considering the context and characteristics of the present case, and the fact that the ruling has not yet been executed, the Commission finds that the petition was lodged within a reasonable period of time and therefore considers that the admissibility requirement regarding the filing time has been satisfied.

3. Duplication of proceedings and res judicata

42. Nothing in the case file suggests that the subject of 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 another international body. Thus, the Commission considers that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the facts alleged

43. The State alleges that the petitioners' claim does not state facts that could tend to establish violations of the American Convention, since in the criminal proceeding prosecuted against Mr. Triana Molina his right to judicial guarantees was respected. It is therefore asking the Commission to declare the petition inadmissible. The State further alleges that the Commission cannot review rulings delivered by domestic courts. It therefore considers that to ask the Commission to "order the Colombian State to comply with the ruling of the Constitutional Court [...]" is to expect the Commission to act as a higher court. It therefore asks the IACHR to declare the petition inadmissible based on the "fourth instance" formula.

44. The Commission observes first that the petitioners' complaint does not concern the alternatives of the lower court criminal proceeding in which Mr. Triana Molina was convicted on December 10, 2001 or the refusal to hear the subsequent petition for cassation on December 19, 2001. The petitioners' complaint concerns enforcement of ruling T727103 which the Constitutional Court delivered on July 16, 2003, granting the writ of protection of his constitutional rights. Second, an examination of allegations as to the possible violation of the right to a simple and prompt judicial recourse, recognized in the Convention, is not beyond the Commission's purview.

45. Based on the foregoing arguments of fact and of law made by the parties and the nature of the matter brought to its attention, the IACHR finds that in the instant case, the petitioners' allegations of a violation of the right to a fair trial and the right to judicial protection, could constitute violations of the rights protected in Articles 8 and 25, all in relation to the obligation erga omnes it undertook in Article 1(1) and 2 of the American Convention. The Commission does not find these claims to be either baseless or manifestly out of order. Therefore, the Commission considers that the requirements established in Articles 47(b) and (c) of the American Convention have been met.

V. CONCLUSIONS

46. The Commission concludes that it is competent to examine the petitioners' allegations with respect to the violation of Articles 8(1) and 25 of the American Convention, in respect to Article 1(1) and 2 thereof, and that they are admissible under the requirements established in Articles 46 and 47 of the American Convention.

47. Based on the foregoing arguments of fact and of law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present case admissible with respect to Articles 8(1) and 25 of the American Convention in connection with Articles 1(1) and 2 of the same instrument.
2. To notify the State and the petitioner of this decision.
3. To proceed with the analysis of the merits.

4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of July, 2007.
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts, and Freddy Gutiérrez, Commissioners.