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Title/Style of Cause:	Andres Mestre Esquivel v. Colombia
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Decided by:	Chairman: Paolo Carozza; First Vice-Chairwoman: Luz Patricia Mejia Guerrero; Second Vice-Chairman: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich.
Dated:	17 October 2008
Citation:	Mestre Esquivel v. Colombia, Petition 268-06, Inter-Am. C.H.R., Report No. 75/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by:	APPLICANT: the Inter-Ecclesiastical Justice and Peace Commission
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I. SUMMARY

1. On March 21, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition lodged by the Inter-Ecclesiastical Justice and Peace Commission [Comisión Intereclesial de Justicia y Paz] (hereinafter “the petitioners”) alleging that agents of the Republic of Colombia (hereinafter “the State, “the Colombian State,” or “Colombia”) were responsible for the forced disappearance and death of Andrés Mestre Esquivel on August 29, 1995, in the corregimiento [subdivision] of Villa María, Municipality of Turbo, Department of Antioquia, and for failure to clarify the events through a judicial inquiry.

2. The petitioners contended that the State is responsible for violation of the rights to life, personal liberty, judicial protection, and a fair trial, established in Articles 4, 7, 8, and 25 of the American Convention on Human Rights (hereinafter “the American Convention”), to the detriment of Andrés Mestre Esquivel and his family, and for failure to comply with the general obligation to respect and guarantee the rights protected in the American Convention, established in Article 1.1. Moreover, the petitioners invoked application of the exceptions to the requirement of prior exhaustion of domestic remedies, provided for in Article 46.2.b and c of the American Convention. The State, on the other hand, alleged that the petition was inadmissible, due to the fact that State agents were not responsible for the events in question, and due to failure to exhaust domestic remedies, together with the inapplicability of the exceptions set forth in Article 46.2 of the American Convention.

3. After examining the positions of the parties and compliance with the requirements stipulated in Articles 46 and 47 of the American Convention, the Commission decided to declare

the case admissible, for the purpose of examining the alleged violation of Articles 4.1, 7.1, 8.1, 25, and Articles 3 and 5.1, in application of the principle of *iura novit curia*, considered in accordance with Article 1.1 of the American Convention. It further decided to notify the parties of the report and order its publication.

II. PROCEDURES BEFORE THE COMMISSION

4. On March 21, 2006, the Commission received the petition and registered it as number P268-06. After a preliminary analysis, on March 31, 2006 it transmitted a copy of the relevant parts to the State, and granted it two months to submit information, in accordance with Article 30.2 of its Rules of Procedure.

5. On May 30, 2006, the State requested a thirty-day extension, which was granted. On July 7, 2006, the State submitted its observations, which were forwarded to the petitioners for observations. On August 10, 2006, the petitioners requested an extension, which was granted. The petitioners sent their observations on September 18, 2006; they were forwarded to the State for its observations. On December 12, 2006, the State requested an extension, which was granted. On June 27, 2007, the State presented its final observations.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

6. The petitioners allege that the phenomenon of paramilitarism began with the creation of self-defense organizations, under the protection of Decree 3398 of 1965 and Law 48 of 1968. These organizations were subsequently converted into specialized federated groups or gangs specializing in eliminating political opponents and in exterminating social organizations. They argue that by 1995, these paramilitary armies, and especially the so-called Self-Defense Units of Córdoba and Urabá (hereinafter referred to as “ACCU”), had extended their influence to the municipalities of Necoclí, Turbo, Apartadó, Carepa, Chirgorodó, Mutatá, and Dabeiba, thus giving them control over the Urabá region.[FN1]

[FN1] The petitioners quote the follow-up report on compliance with IACHR recommendations on the human rights situation in Colombia in 1996: “According to nongovernmental sources, the paramilitaries are responsible for 48-59% of the extrajudicial assassinations for political reasons. The Public Defender in Colombia has stated that paramilitary activity has increased by 62% since 1992. These statistics should be examined in the context of the serious evidence that links the murders committed by paramilitaries with the complicity of individual soldiers and/or military units, and that tends to demonstrate that the government has not managed to adequately control the paramilitaries [...]. At their Third National Summit, the paramilitary groups recognized and debated their cooperation with national security forces. The Commission attaches the utmost importance to the information that indicates that government agents participate in the activities of Colombian paramilitaries.” Original petition received on March 21, 2006.

7. They further state that Mr. Mestre Esquivel, owner of the “Villa Florida” property, located in the Corregimiento of Villa María, was the director of the Community Action Council [Junta de Acción Comunal] of the municipality of Turbo, in Antioquia Department. They indicate that the Council was planning a public construction project, for which they were conducting a voluntary fund drive to collect 2,000 Colombian pesos from each small landholder. Andrés Mestre, as director of the Council, was the one collecting the funds and turning them over to the Council’s controller.

8. The petitioners allege that during the morning of August 29, 1995, approximately 80 men dressed in camouflage and carrying long-range rifles and guns, entered the Villa Florida property and proceeded to surround the house with Mestre Esquivel’s wife, Ana Dolores Guerra, inside. They allege that the uniformed men were wearing armbands with the acronym “ACCU,” and that they identified themselves as members of the self-defense units. They contend that when these men learned that Mr. Mestre was working in the banana plantations, they left in that direction.

9. The petitioners allege that when they located Mr. Mestre Esquivel –who was with Mr. Carlos Díaz— the armed men made him lie down on the ground while they threatened to kill him “for being a FARC extortionist, because he was going around extorting money from peasants by asking them for 5,000 pesos.” The petitioners further allege that Mr. Mestre responded by saying “you are going to kill me when I’m innocent, because I don’t know what you are talking about.” The petitioners state that the armed men proceeded to tie him up and take him into the banana plantations, after which shots were heard coming from that direction.

10. The petitioners allege that on August 30, 1995, Mrs. Ana Dolores Guerra went to the Personería [municipal office of the Ministerio Publico, that exercises administrative control and protects human rights and public interests] of the Municipality of Turbo, to file a report with the Prosecutor’s Office [Fiscalía] denouncing the disappearance of her husband. They indicate that the Personería took responsibility for submitting the report to the Prosecutor’s Office, and sent Mrs. Guerra to the Turbo Police Station to make a statement, which she did.

11. The petitioners allege that in 1998, Mrs. Guerra was told that the investigation had been transferred to the Sectional Prosecutor’s Office of Apartadó, where the headquarters of the 18th Army Brigade’s Command is located. The petition indicates that the reason for the transfer was related to the fact that according to all the statements or testimony already given, the armed men were carrying weapons belonging exclusively to the National Army.[FN2]

[FN2] Original petition received on March 21, 2006.

12. The petitioners contend that in 2001, an alleged ACCU member had shown Mrs. Guerra the place where the remains of Andrés Mestre were located. They indicate that this information was reported to the Technical Investigative Unit of the Apartadó Sectional Prosecutor’s Office and that the remains were exhumed on August 22, 2001 on the Nueva Florida property[FN3] on the Turbo – Necoclí road, nearly seven years after the investigation was opened.

[FN3] Currently known as “No te Creas” [“Don’t Believe It”]. Petitioners’ brief received on September 18, 2006.

13. The petitioners allege that in 2002, Mrs. Guerra requested access to the court records of the case, which the judicial officers were unable to locate. They state that in response to a request for information on the location of the criminal investigation and the status of the proceeding, the Prosecutor’s Office responded in May 2005 that it was ongoing at the Specialized Prosecutor’s Office 10 of the Medellin Circuit.[FN4] They report that in 2005, the remains of Andrés Mestre were finally delivered and the death certificate issued, indicating that he was victim of a violent death.[FN5]

[FN4] The petitioners point out that the action on the part of the prosecutor in charge of the case is not consistent with any relevant circumstantial line of reasoning, in attempting to use military intelligence reports to demonstrate the existence of subversive groups in the area of Urabá in a case involving a crime committed by paramilitary units clearly identified during the act itself. Petitioners’ brief received on September 18, 2006.

[FN5] Original petition received on March 21, 2006., paras. 10 and 11.

14. The petitioners allege that the events described in the petition characterize violations of the right to personal liberty and life, to the detriment of Andrés Mestre, rights that are protected in Articles 4.1 and 7 of the American Convention, considered in relation to Article 1.1 of that instrument, on the grounds of failure to comply with the positive obligation to prevent and protect against human rights violations. They argue that the State is responsible for the disappearance[FN6] and death of Andrés Mestre, in view of the appearance of legality granted to paramilitary groups by Law 48 of 1968, and the danger thereby generated for the civilian population. They further maintain that there was an unjustified delay in the administration of justice, since the investigative stage extended over more than ten years, in violation of the rights protected by Articles 8.1 and 25.1, as considered in relation to Article 1.1 of the American Convention.[FN7] They contend that the right of Mrs. Ana Dolores Guerra to adequate reparations for herself and family members was not recognized, and that the responsibility of the authors of the crime has never been clarified by judicial inquiry, thereby violating the rights to truth and justice to which the next of kin of Andrés Mestre are entitled.

[FN6] They show that Andrés Mestre disappeared on August 29, 1995, and his body was not found until August 22, 2001. Petitioners brief received on September 18, 2006.

[FN7] Original petition received on March 21, 2006.

15. With regard to the admissibility of the petition, the petitioners allege that the investigation pending in the preliminary stage of the proceeding has been going on for over ten years, exceeding a reasonable period of time for clarification of the events and judgment of the

perpetrators.[FN8] In response to the State's contention regarding the failure to exhaust domestic remedies (supra III.B), the petitioners allege that the family members of the alleged victim and their representative encountered obstacles in gaining access to the case files and in obtaining information in response to requests on the status of proceedings and the progress of investigations which, they argue, made it impossible to file charges or bring civil suits as part of the proceeding.

[FN8] Petitioners brief received on September 18, 2006.

16. With regard to the State's allegation pertaining to failure to exhaust the remedy of accion de tutela [similar to writ of amparo] (supra III.B), the petitioners maintain that this is an extraordinary type of remedy that they are not required to exhaust, meant to protect the right to effective and immediate protection of fundamental rights. They further contend that in any event, the judge responsible for such writs does not have jurisdiction to judge the criminal responsibility of the authors or to determine due reparations or compensation. Moreover, they argue that recourse to the contentious-administrative jurisdiction would have entailed reducing the responsibility to payment of economic compensation, without guaranteeing judgment of the responsible parties.

17. The petitioners allege that due to the ineffectiveness of the investigation and the time lapsed, the remedies existing in Colombia were neither adequate nor effective in the present case. Thus, the exception to the requirement of exhaustion of domestic remedies stipulated in Article 46.2, b) and c) of the American Convention applies.[FN9]

[FN9] Original petition received on March 21, 2006. See also the petitioners' brief received on September 18, 2006.

B. Position of the State

18. By way of background, the State indicates that Colombian law has legal mechanisms that provide victims and their next of kin with the opportunity to know the status of proceedings and/or to participate or intervene in investigations, provided they demonstrate a legitimate interest in the criminal investigation. It states that in preliminary investigative proceedings, families may lodge petitions to obtain information or make specific requests, and may also bring evidence, as demonstrated in the petition lodged by the wife of Mr. Mestre with the investigative authorities, to which the State duly responded.

19. The State maintains that the acts alleged by the petitioners originally referred to a denial of justice in the judgment of the acts or events that occurred on August 29, 1995, and the absence of adequate and effective domestic remedies to resolve it. It indicates that in their observations,[FN10] the petitioners set forth allegations regarding the State's responsibility for the presumed violations of Articles 4 and 7 of the American Convention, to be added to the

violations of Articles 8 and 25 initially cited.[FN11] It argues that these allegations should be found inadmissible, both with respect to the assumed violations suffered by Mr. Mestre Esquivel, and for the presumed ignorance of the rights contained in Articles 8.1 and 25.1 in favor of family members.

[FN10] The State cites the petitioners' brief dated November 2, 2006, forwarded to the State on November 7, 2006.

[FN11] Communication DDHH.GOI/30606/1497 of the Ministry of Foreign Affairs of Colombia, dated June 21, 2007, p. 3.

20. With regard to the investigations, the State indicates that the competent criminal authorities were informed of the events, through the Personería Municipal of Turbo, and so proceedings were initiated ex officio.

21. Moreover, the State contradicts the petitioners' allegations to the effect that the family members of Andrés Mestre were prevented from access to domestic remedies, and that there was an unwarranted delay in resolving the case. The State alleges that the exceptions stipulated in Article 46.2 b) and c) related to (i) the alleged violation of Articles 4 and 7 of the American Convention, and (ii) violation of its Articles 8 and 25, are not applicable, in view of the fact that exhaustion of domestic remedies must be analyzed in each specific case.

22. On this point, the State argues that the appropriate domestic remedy to be exhausted in relation to the alleged violation of Articles 4 and 7 is the criminal proceeding, and that the facts presented to the Commission show that the petitioners had access to the proceeding on a continuous basis. It alleges that they participated actively in the investigative process, and that there is no evidence whatsoever showing lack of access to the criminal investigation. They further argue that physical access to the case files is a different matter, since it requires not only proof of a legitimate interest and presentation of a request, but also establishment of the family members as parties to the process, even though the investigation is private in its preliminary stage, in accordance with the jurisprudence of the Colombian Constitutional Court. Therefore, the State considers that the exception stipulated in Article 46.2.b) of the American Convention does not apply.

23. The State further alleges that neither does the exception stipulated in Article 46.2.c) apply, since there is no absolute criterion regarding the time needed to carry out an investigation. The State makes reference to criteria of reasonability pertaining to the time period, which has to do with the complexity of the matter, the procedural actions of the interested party, and the conduct of the judicial authorities. Here the State contends that the conduct of the judicial authorities was serious and that various steps were taken,[FN12] despite difficulties in contacting the complainant herself and the complexity of the acts perpetrated by members of paramilitary groups.[FN13] It indicates that the investigation is currently being conducted by Specialized Prosecutor's Office 29 [Fiscalía 29 Especializada] of Medellín.

[FN12] The State reported that among the steps taken, testimony was received, battle orders against subversive groups in the area were given, and intelligence work was performed to determine the whereabouts of Andrés Mestre, among other things. Communication DHH.GOI/31939/1558 from the Colombian Ministry of Foreign Affairs, received on July 7, 2006, pp. 4-7.

[FN13] Communication DDHH.GOI/30606/1497 from the Colombian Ministry of Foreign Affairs dated June 21, 2007, p. 12.

24. As for the non-applicability of the exceptions established in Article 46.2.b) and c) of the American Convention in relation to the alleged violation of Articles 8 and 25, the State claims that the petitioners have domestic remedies available to them to obtain reparations and to deal with the presumed violations of their rights. In this regard, the State specifies that: i) if the petitioners consider that the death of the victim is imputable to third parties (not State agents), they may file a civil complaint with a regular criminal or civil court, even as part of the criminal proceedings themselves; and, ii) if the petitioners consider that the State is responsible for the acts, they may bring direct legal action for reparations before the contentious-administrative jurisdiction. The State maintains that the petitioners themselves have indicated that the persons responsible for the death of Mr. Mestre are members of paramilitary groups. Moreover, it argues that in the briefs of the petitioners, there is no evidence that they have sought economic compensation, which does not mean that reparations are limited to a payment, but that there are various domestic remedies that can be used to resolve possible violations, and under the Colombian domestic legal system they are sufficient for obtaining one of the elements of comprehensive reparations: economic compensation.

25. With regard to an unwarranted delay, the State contends that the petitioners have accion de tutela at their disposal, used to resolve judicial proceedings without unwarranted delays. Moreover, the State argues that if the petitioners consider that the delay is unwarranted and has been harmful to them, they can bring suit in the contentious-administrative jurisdiction to obtain compensation.

26. Consequently, the State asserts that the exceptions contained in Article 46.2 are not applicable to the alleged violations of Articles 8 and 25 of the American Convention, and that the legal consequence of failure to exhaust domestic remedies is the inadmissibility of the petition. It therefore requests that the petition be declared inadmissible as regards the allegation of violation of Articles 8 and 25, by virtue of Article 47.b of the American Convention, since there is no characterization of facts that tend to establish a violation.

27. Finally, the State maintains that the fact that it has not given its position on several of the facts narrated in the petition should not be interpreted as tacit acceptance of responsibility, but rather as the exercise of its prerogative to give its position on them during the appropriate procedural stage.

IV. ANALYSIS ON JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

28. The petitioners are authorized under Article 44 of the Convention to lodge petitions in favor of the alleged victims. As for the State, Colombia has been a State Party to the American Convention since July 31, 1973, the date on which it deposited its instrument of ratification. Consequently, the Commission has personal jurisdiction to examine the petition. In addition, the Commission has temporal jurisdiction since the American Convention was already in force for the State on the date that the events alleged in the petition occurred.

29. The Commission has territorial jurisdiction, because the alleged violations occurred within the territory of a state party to the Convention. Finally, the Commission has subject matter jurisdiction, because the petition reports alleged violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

30. Article 46.1.a) of the American Convention establishes prior exhaustion of remedies under domestic law in accordance with generally recognized principles of international law as a requirement for admission of petitions pertaining to an alleged violation of the American Convention.

31. Article 46.2 of the Convention states that the requirement concerning prior exhaustion of domestic remedies is not applicable 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.

The Rules of Procedure of the Commission and the Inter-American Court establish that whenever a state alleges failure on the part of the petition to exhaust domestic remedies, it has the burden to prove that the remedies not exhausted are “adequate to redress the alleged violation, or in other words that these remedies under the domestic legal system are appropriate to protect against the violated legal situation.[FN14]

[FN14] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 64.

32. In the present case, the State alleges that the petition does not meet the requirement of prior exhaustion of remedies under domestic law, stipulated in Article 46.1 of the American Convention, since there is an investigation pending. It further argues that the exception

established in Article 46.2.b) of the American Convention does not apply, since evidence shows that the petitioners have had continuous access to the proceedings and that they participated actively in the investigative process. The petitioners, however, contend that the authorities have not conducted a timely and effective investigation. This goes to the exception stipulated in Article 46.2.c), namely, an unwarranted delay in the proceeding. They further argue that the family members were repeatedly denied access to the case records and denied information regarding the status of the proceedings and the progress of the investigation. As a result, they were unable to file charges or civil action as part of the process, and so the exception stipulated in Article 46.2.b) of the American Convention also applies.

33. The Commission notes that the purpose of this petition refers specifically to events related to the alleged forced disappearance and death of Andrés Mestre Esquivel and to matters related to the investigations into the circumstances in which these events occurred. The Commission has established precedents that recognize that whenever an indictable crime is committed, the State has the obligation to promote and advance criminal proceedings to their ultimate outcome,[FN15] and that in such cases, this is the appropriate way to clarify the events, prosecute the responsible parties, and determine the relevant criminal sanctions, as well as to provide for other monetary types of reparations. The Commission is of the view that the events alleged by the petitioners in this case entail the alleged violation of fundamental, irrevocable rights, such as the right to life and humane treatment, that are established as indictable crimes under domestic legislation, and that consequently it is this process advanced by the State itself that should be considered for the purpose of determining the admissibility of the petition.

[FN15] Report No. 52/97, Case 11,218, Arges Sequeira Mangas, 1997 Annual Report of the IACHR, paras 96 and 97. Also see Report N° 55/97, para. 392; Report N° 62/00, Case 11,727, Hernando Osorio Correa, 2000 Annual Report of the IACHR, para. 24.

34. In the case in point, an investigation was opened following the report filed by Ana Dolores Guerra with the Personería Municipal of Turbo on August 30, 1995; she then gave a statement at the Turbo Police Station. The Commission notes that after more than 13 years, the investigation is in the preliminary inquiry phase at the Specialized Prosecution Office 29 of Medellín, and that the most recent actions taken in the investigation were in August 2002.

35. In this regard, the Commission notes that as a general rule, a criminal investigation should be conducted promptly to protect the interests of the victims, preserve the evidence, and even safeguard the rights of any persons considered as suspects in the context of the investigation. According to the Inter-American Court, although any criminal investigation must comply with a series of legal requirements, the rule of prior exhaustion of domestic remedies should not lead to a situation in which international procedures to assist the victims would be detained or delayed to the point of uselessness.[FN16] The Inter-American Court has found that in order for a remedy to be regarded as effective, it must be capable of producing the result for which it was established.[FN17]

[FN16] I/A Court H.R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 93.

[FN17] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C No. 4, para. 66.

36. In the present case, the criminal investigation is in its preliminary phase 13 years after the events occurred. The State has not reported any significant advances in the investigation beyond exhumation of the remains in 2001 and their return in 2005, which implies an unwarranted delay in accordance with the terms of Article 46.2.c) of the American Convention. Hence the petitioners should be exempt from the requirement to exhaust said remedies before having recourse to the Inter-American system to seek protection.

37. Invocation of the exceptions to the rule of exhaustion of domestic remedies stipulated in Article 46.2 of the Convention is closely linked to the determination of possible violations of certain rights established therein, such as guaranteed access to justice. However, Article 46.2, by its nature and purpose, is a provision whose content is independent of the substantive provisions of the Convention. Therefore, whether or not the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in point should be determined prior to and separately from an analysis of the merits of the case, since it relies on a different standard of evaluation from the one used to determine a possible violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that prevented exhaustion of domestic remedies will be examined in the report on the merits of the petition to be adopted by the Commission, in order to determine whether they constitute violations of the American Convention.

2. Deadline for presentation of the petition

38. The American Convention establishes that in order for a petition to be considered admissible by the Commission, it must 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. In the complaint under consideration, the Commission has established the application of exceptions to exhaustion of domestic remedies, in accordance with Article 46.2.c) of the American Convention. In this regard, Article 32 of the Commission's Rules of Procedures establishes that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition must be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission will consider the date on which the alleged violation of rights occurred and the circumstances of each case.

39. In the present case, the petition was received on March 21, 2006, while the events described in the petition occurred on August 29, 1995, and their effects in terms of the alleged lack of results produced in the administration of justice extend to the present time. Therefore, in view of the context and the characteristics of this case, and of the fact that the persons responsible for the events have still not been identified or punished, the Commission considers that the petition was presented within a reasonable period of time and that the admissibility requirement referring to the deadline for presentation should be regarded as having been met.

3. Duplication of procedures

40. The case records do not show that the subject of the petition is pending other international settlement procedures, or that it replicates a petition already examined by this or another international organization. Therefore, the requirements set forth in Articles 46.1.c) and 47.d) of the Convention are considered as having been met.

4. Characterization of the alleged events

41. In view of the factual and legal elements presented by the parties and the nature of the matter in question, the IACHR is of the opinion that the allegations of the petitioner regarding the scope of the presumed responsibility of the State for the events described in the complaint could characterize possible violations of the rights to life, personal liberty, a fair trial, and judicial protection, protected in Articles 4.1 and 7.1, considered together with Article 1.1 of the American Convention, to the detriment of Andrés Mestre Esquivel and in Articles 8.1 and 25 of that instrument, to the detriment of his next of kin.

42. In addition, in application of the principle of *iura novit curia*, the Commission considers that the facts could characterize violations of the right to juridical personality established in Article 3 of the American Convention, considered together with Article 1.1 of that instrument, with regard to the alleged forced disappearance of Andrés Mestre Esquivel.

43. In the present case, it is alleged that Mr. Andrés Mestre was retained by armed men who forced him to lie down on the ground while they threatened to kill him and proceeded to tie him up and transport him to the banana plantations where they murdered him. The IACHR considers that in view of these allegations and in application of the principle of *iura novit curia*, the petition could characterize violations of the right to human treatment stipulated in Article 5.1 in relation to article 1.1 of the American Convention, to the detriment of Andrés Mestre.[FN18]

[FN18] See I/A Court H. R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, para. 110.

44. Moreover, in application of the principle of *iura novit curia*, the IACHR considers that the family of Andrés Mestre suffered as a direct consequence of the alleged detention, abusive treatment, and assassination of Mr. Andrés Mestre, and as a result of the alleged denial of justice. Therefore, the IACHR is of the opinion that these allegations could characterize violations of the right to human treatment established in Article 5.1, considered together with Article 1.1 of the American Convention, to the detriment of the family members of Andrés Mestre.[FN19]

[FN19] I/A Court H. R., Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, para. 118.

V. CONCLUSIONS

45. The Commission concludes that it is competent to examine the complaints presented by the petitioner regarding the alleged violation of Articles 3, 4.1, 5.1, 7.1, 8.1, and 25, considered together with Article 1.1 of the American Convention, and that they are admissible, in accordance with the requirements established in Articles 46 and 47 of the American Convention.

46. Based on the factual and legal arguments set forth in this report, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible insofar as it relates to Articles 3, 4.1, 5.1, 7.1, 8.1, and 25, considered together with Article 1.1 of the American Convention.
2. To notify the Colombian State and the petitioner of this decision.
3. To continue with an examination of the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 17th day of October, 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.