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Title/Style of Cause: Juan Francisco Arrom Suhurt, Anuncio Marti Mendez, Victor Antonio Colman Ortega, Ana Rosa Samudio de Colman and Jorge Samudio Ferreira v. Paraguay
Doc. Type: Decision
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, Victor E. Abramovich.
Dated: 30 October 2008
Citation: Arrom Suhurt v. Paraguay, Petition 4-03, Inter-Am. C.H.R., Report No. 86/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by: APPLICANTS: Andres Dejesus Ramirez and Matthias Mailleux Sant'ana
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I. SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” the “Commission” or the “IACHR”) instituted proceedings on this case after receiving communications from Marina and Cristina Arrom Suhurt dated September 23 and December 27, 2002. The communications alleged that the State of Paraguay (hereinafter “Paraguay” or “the State”) had violated the rights to humane treatment and to a fair trial to the detriment of Juan Francisco Arrom Suhurt and Anuncio Martí Méndez. Then, on September 20, 2004, the Commission received a communication signed by attorneys Andrés Dejesús Ramírez and Matthias Mailleux Sant’ana in which they requested that the Arrom family’s previous petitions and communications and the attorneys’ communication be joined and processed as a single petition. The attorneys alleged that the State had violated articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 22 (freedom of movement and residence) and 25 (right to judicial protection), all in relation to articles 1(1) (obligation to respect rights) and 2 (domestic legal effects) of the American Convention on Human Rights (hereinafter “the American Convention” or the “Convention”), and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Juan Francisco Arrom Suhurt, Anuncio Martí Méndez, Víctor Antonio Colmán Ortega, Ana Rosa Samudio de Colmán, Jorge Samudio Ferreira and the next of kin of the alleged victims (hereinafter “the alleged victims”).

2. In exercise of its authority under Article 29(1) of its Rules of Procedure, the Commission joined the petitions received from the Arrom family and from attorneys Andrés Dejesús Ramírez and Matthias Mailleux Sant'ana (hereinafter "the petitioners") in order to process them as a single case. The parties were advised of that decision, in keeping with Article 29(1)(e) of the Commission's Rules of Procedure.

3. The petitioners allege that Juan Francisco Arrom and Anuncio Martí were arbitrarily detained, held in captivity and subjected to torture from January 17 to 30, 2002. The petitioners allege further that Jorge Samudio, Ana Rosa Samudio de Colmán and Victor Colmán were detained on February 19, 2002, after an illegal search. During their detention, the agents who took them into custody allegedly physically mistreated them. They contend that the criminal investigations into these facts were not independent, impartial and professional and that the remedies attempted were allegedly ineffective in prosecuting and, where appropriate, punishing those responsible.

4. The State, for its part, asserts that it has exercised jurisdiction and competence by prosecuting the investigation and granting the victims adequate guarantees to participate in the process. Concerning the facts alleged by Mr. Arrom and Mr. Martí, the State contends that an exhaustive investigation failed to turn up any credible evidence that would allow the competent organs to indict. The State also stresses what it claims is the prevarication in the statements made by the alleged victims. As for the situation of Mr. Víctor Antonio Colmán, Ms. Ana Rosa Samudio and Mr. Jorge Samudio, the State contends that the internal remedies have not yet been exhausted.

5. In the present report, the Commission examines the available information in light of the provisions of the American Convention and concludes that the facts alleged, if proved true, could tend to establish possible violations of the rights recognized in articles 5, 7, 8 and 25 of the Convention, to the detriment of Mr. Juan Francisco Arrom Suhurt and Mr. Anuncio Martí Méndez, in relation with the general obligations granted for in articles 1.1 and 2 of that instrument. The Commission also declares the instant case admissible regarding the alleged violations to articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Juan Francisco Arrom Suhurt and Mr. Anuncio Martí Méndez. As for the other alleged victims named in this case, the Commission finds that the petition is inadmissible on the grounds that domestic remedies were not exhausted. The Commission also decides to transmit this report to the parties and order that it be published in its Annual Report.

II. PROCESSING BY THE COMMISSION

6. On February 5, 2002, the nongovernmental organization CODEHUPY asked the Commission to order the State of Paraguay to adopt precautionary measures to protect the life and personal integrity of Mr. Víctor Colmán, Ms. Ana Rosa Samudio de Colmán and Mr. Jorge Samudio, who claimed to have been victims of arbitrary detention and torture, and those of Mr. Anuncio Martí Méndez and Mr. Juan Francico Arrom Suhurt, who at the time of the request were reportedly disappeared. On February 6, 2002, the Inter-American Commission on Human Rights asked the State of Paraguay to immediately take precautionary measures to avoid irreparable harm to the life and personal safety of Juan Francisco Arrom Suhurt, Anuncio Martí

Méndez, Víctor Colmán, Ana Rosa Samudio de Colmán and Jorge Samudio. The Commission lifted the precautionary measures on June 12, 2006, because no up-to-date information was received from the petitioners, and the available information indicated that three of the beneficiaries were no longer within Paraguayan territory but were in Brazil as political refugees.

7. The Commission's processing of this petition began on September 23, 2002, when the Commission received a general communication presented by the next of kin of Mr. Arrom Suhurt in which it was alleged that agents of the State had abducted and tortured Mr. Juan Francisco Arrom Suhurt and Mr. Anuncio Martí Méndez on January 17, 2002. Then, on December 27, 2002, additional information was received at the Commission from the family of Arrom Suhurt. Both communications were recorded under petition number 04-03. The relevant parts of petition 04-03 were forwarded to the State on May 20, 2003, which was given two months to present its observations.

8. On July 8, 2003 and August 11, 2003, additional information was received at the Commission in which the petitioners claimed to have been victims of persecution and harassment.

9. On July 25, 2003, the Paraguayan State sent the Commission its response to the petition. That information was forwarded to the petitioners on August 15, 2003. On September 16 and October 7, 2003, the State sent the Commission additional information related to this petition. That information was sent to the petitioners on December 10, 2003.

10. On October 24, 2003, the petitioners sent the Commission additional information concerning the petition. That information was forwarded to the State on December 15, 2003. On November 7, 2003, still more information was received from the petitioners and forwarded to the State on December 12, 2003. Additional information was forthcoming from the petitioners on October 22, 2003, March 31, 2004 and September 13, 2004.

11. On September 20, 2004, a communication was received, signed by attorneys Andrés Dejesús Ramírez and Matthias Maillieux Sant'ana, in which they requested that the previous communications sent by the Arrom family and others, and being processed under petition 04-03, be joined with this communication and processed as a single case file. The attorneys also provided new information on the events of which Mr. Arrom and Mr. Martí had allegedly been victims and added the names of Víctor Antonio Colmán Ortega, Ana Rosa Samudio de Colmán, Jorge Samudio and the next of kin of Arrom Suhurt and Anuncio Martí Méndez to the list of alleged victims. That information was filed under petition No. 850-04.

12. On March 30, 2005, the petitioners sent information to the Commission to explain the victims' decision to opt for common representation of their case and to request that the filings the Commission had theretofore received in connection with the alleged events be joined in a single petition. On April 1, 2005, the petitioners sent a communication, signed by the victims' next of kin, in which the latter endorse the request to join the petitions and communications lodged with the IACHR.

13. On April 19, 2005, the Commission sent the petitioners a communication to advise them of its decision to join petition 850-04 to petition 04-03. At the same time, inasmuch as the communication of September 20, 2004 included new information and added more alleged victims to the case, that information was transmitted to the State on April 19, 2005. The State was again given two months in which to present the relevant observations.

14. On June 14, 2005, the State asked the Commission to grant it a 30-day extension on the time period for sending its observations on the petition. On August 25, 2005, the Commission informed the State of its decision to grant an extension. The new deadline would be September 27, 2005.

15. On September 27, 2005, the petitioners conveyed to the Commission their concern over the State's failure to respond. On October 25, 2005, the petitioners sent the Commission a communication from the next of kin of the alleged victims in connection with the case.

16. The State sent its response to the petition on September 27, 2005, and sent the corresponding annexes on October 7, 2005. That information was forwarded to the petitioners on February 9, 2006. On September 28, 2005, the State sent its response to the communication sent to it on April 19 of that year. This information was transmitted to the petitioners on October 13, 2005.

17. On June 1, 2006, the Commission received a note from Mr. Arrom's next of kin in connection with the processing of the petition. On June 17, 2007, the petitioners wrote to the Commission to request that the petition be declared admissible. On July 28, 2007, a note dated July 17, 2006 was received at the Commission, in which the petitioners presented their observations on the information supplied the State. That information was forwarded to the State on September 18, 2007.

18. On August 21, 2007, the Forum of National Human Rights Organizations sent additional information to the Commission in connection with the petition. That information was forwarded to the Government on September 25, 2007.

19. On October 23, 2007, the State requested a 15-day extension to present its observations. The Commission granted the State's request on October 30, 2007.

20. On November 15, 2007, additional information was received at the Commission from the State. That information was sent to the petitioners on November 19, 2007.

III. POSITIONS OF THE PARTIES

A. The petitioners

21. The petitioners contend that the facts that prompted the petition began in early 2002, when news of the abduction of Mrs. María Edith Bordón de Debernardi was made public. She had allegedly been released on January 19, 2002, after 64 days in captivity and after her family paid the ransom that her kidnappers demanded. On January 19, 2002, the Police had allegedly

released a list of suspects implicated in the kidnapping and against whom the Public Prosecutor's Office had allegedly issued arrest warrants. The suspects, who included Mr. Juan Arrom and Mr. Anuncio Martí, were members of the Patria Libre Movement.

22. Given the circumstances, the next of kin of Juan Arrom and Anuncio Martí allegedly told the local authorities that the two men had disappeared on Thursday night, January 17. They claimed that the police had taken the two into custody and were holding them in clandestine places of detention. The next of kin of Mr. Arrom and Mr. Martí filed petitions of habeas corpus that were dismissed on the grounds that the fact of their detention could not be proved.

23. The petitioners reported that when the time came, the Deputy Ombudsman filed a complaint to the effect that Mr. Arrom and Mr. Martí had been detained by groups of police officers who were operating clandestinely and that two men were in serious danger of being killed.

24. According to the information supplied by the petitioners, Mr. Arrom and Mr. Martí were allegedly discovered at a secret base on January 30, 2002. They had allegedly been held since January 17, 2002, and had allegedly been tortured by police in civilian dress.

25. They point out that once liberated, Mr. Arrom and Mr. Martí were allegedly hospitalized and a medical board had allegedly concluded that both had sustained injuries to the neck, throat, lungs, testicles and lower extremities caused by attempted suffocation and beatings. The petitioners contend that to this day, Mr. Arrom and Mr. Martí are still suffering from the physical and psychological aftereffects of the torture to which they were subjected.

26. The alleged victims purportedly identified police agents, members of the Public Prosecution Judicial Investigation Center, and others as their alleged torturers. They also claim that during their captivity, they spoke with the Minister of Justice and Labor and the Minister of the Interior, who had allegedly assured them that they would be allowed to leave the country if they agreed to sign statements. According to the petitioners, "the idea was that the two should claim responsibility for the abduction of Mrs. de Debernardi, sign some incriminating documents and implicate other opposition politicians and businessmen in the planning and execution of the crime."

27. The petitioners allege that with the Attorney General's acquiescence, "persons under his authority –including government agents and personnel from the Judicial Investigation Center, police and military in active service- had knowledge of, participated in, aided and abetted and helped cover up those who committed the punishable offenses of unlawful detention, forced disappearance, kidnapping and torture of leftist political activists, as in the case of Juan Arrom and Anuncio Martí."

28. The petitioners assert that in testimony to the Judicial Police and to the Public Prosecutor's Office, the Attorney General himself, among others, had allegedly acknowledged that he had established "a paramilitary-police group to investigate and monitor people in the political opposition, tap their phones and even detain them, both within the national territory and abroad."

29. The petitioners also point out that on January 19, 2002, Mr. Jorge Samudio, Ms. Rosa Samudio de Colmán and Mr. Víctor Colmán had allegedly been detained in connection with the kidnapping of Mrs. María Edith Bordón de Debernardi. Without giving specifics as to the dates or the officials involved, the petitioners claim to have filed complaints to the effect that the search was unlawful and that the police, in connivance with the public prosecutor on the case, had planted evidence at the search scene. Without giving any more information as to the dates or authorities involved, the petitioners allege that a complaint had been filed asserting that the agents who arrested Samudio and Colmán had physically mistreated them and that a physical examination had allegedly found that both detainees had sustained injuries on various parts of their body. According to the petitioners, these complaints were never investigated.

30. The petitioners make a generic claim to the effect that party leaders and the next of kin of Juan Arrom, Anuncio Martí and Víctor Colmán were allegedly harassed and persecuted by the Debernardi family and the Public Prosecutor's Office: their homes were searched, they received telephone death threats, they were followed by vehicles with tinted windows and no license plates, threatening shots were fired into their homes, threats were made in the print media, images of their children were painted on high school walls, and other forms of harassment.

31. According to information supplied by the petitioners, Mr. Juan Francisco Arrom Suhurt, Mr. Anuncio Martí Méndez and Mr. Víctor Antonio Colmán Ortega, leaders of the Patria Libre Party, have allegedly been under the protection of the Brazilian State and have been political refugees there since December 1, 2003.

32. The petitioners point out that "due process was not observed in the court cases titled "De los Santos Saldívar et al on Alleged Kidnapping"[FN1] and "Saturnino Antonio Gamarra et al. on Kidnapping, Torture and Other Offenses,""[FN2] which they claim were based entirely on the version of events given by the husband of Mrs. Debernardi; the petitioners allege that none of the evidence they asked the court to consider was admitted. The petitioners allege that they were denied access to the prosecution's file on these cases, thereby limiting their ability to mount a proper defense.

[FN1] In this case, the alleged victims in this petition were charged with the kidnapping of Mrs. María Edith Bordón de Debernardi.

[FN2] This case concerns the kidnapping and torture of which Mr. Arrom and Mr. Martí were allegedly victims.

33. The petitioners observe also that various proceedings in the court case titled "De los Santos Saldívar et al. on punishable offenses against the freedom of persons (kidnapping)", were allegedly conducted in violation of provisions of the Constitution and procedural law. Without offering specifics, the petitioners list the following as examples of these violations: taking a statement from a minor without his or her parents being present and without the advice of counsel; the search of various homes without a government agent being present; a search

conducted without the proper court order; a delay in bringing the persons apprehended before the court authorities, and others.

34. Furthermore, according to the petitioners, a number of those accused and detained in the court case titled “De los Santos Saldívar et al. on punishable offenses against the freedom of persons (kidnapping)” had claimed that the victims “had been tortured by the group of police and civilians in charge of investigating the present case and had identified those very same persons as their torturers; they had been victims of the same type or system of torture, which was suffocation with plastic bags over the head, blows to the head and back, being held underwater to the verge of drowning and, most especially, sharp pressure to the testicles.” In the petitioners’ opinion, this indicates that those responsible for investigating the supposed kidnapping at no time had even the slightest clue pointing to the guilt of the persons apprehended and accused, which is why they acted as they did; as in the sorry days of dictatorship, they used the fear of more torture or even death to force people, despite their innocence, to incriminate themselves and end up making the confessions that their torturers were seeking.”

35. It should be added that on several occasions the petitioners reported that when the correspondence from the Commission arrived, the envelopes were opened, which implied tampering with the national postal system.

36. As for exhaustion of local remedies, the petitioners point out that various legal actions were attempted within the domestic legal system. However, those remedies, they alleged, were ineffective for purposes of prosecuting and, where appropriate, punishing those responsible.

37. They begin by pointing out that on January 19, 2002, Mr. Arrom’s next of kin filed a petition of habeas corpus seeking redress; however, the petition was dismissed since both the Police and the Ministry of the Interior denied having detained Mr. Arrom, whom they regarded as a fugitive. Similarly, Mr. Martí’s next of kin filed a petition of habeas corpus on his behalf, which was dismissed on the grounds that his detention was not a certainty.

38. The alleged victims then purportedly asserted that the responsible parties were the Director of the Public Prosecution’s Judicial Investigation Center, two police officers, a police inspector, various officials in the Investigations Department assigned to the case of Mrs María Edith Bordón de Debernardi, and other authorities. The alleged victims filed complaints against these people. Nonetheless, the petitioners assert that on February 8, 2003, the Public Prosecutor’s Office closed the case and sought a definitive stay in the proceedings against the accused. They add that on May 14, 2003, a preliminary hearing was held at which the criminal prosecutor on the case argued that he had established that the events in question never happened.

39. According to the petitioners, “when the public prosecutor’s office refused to bring charges against and indict the more than 20 police, military and civilians implicated,” the petitioners filed a constitutionality challenge with the Supreme Court seeking an order from the Court to the effect that the case was to go to trial, and declaring unconstitutional the article of the Penal Code that provides that no case shall go to trial without a formal indictment from the public prosecutor’s office. The Court agreed to hear the challenge, but decided not to declare that article unconstitutional.

40. The information from the petitioners indicates that with the Supreme Court's decision, the Criminal Court of Guarantees for Preliminary Proceedings held the preliminary hearing on November 4, 2003 and decided to order the definitive dismissal of the charges against the three accused in the case. The petitioners state that "the dismissal of the charges has the effect of an acquittal; it extinguishes the criminal case and states for the record that the case does not affect the good name and honor of the accused." The plaintiffs appealed this decision and the final decision on the appeal came from the Fourth Chamber of the Criminal Court on March 24, 2004, which upheld the ruling being appealed.

41. The information available indicates that on October 8, 2003, members of the Arrom family filed a request with the chamber of deputies seeking impeachment of the Attorney General for failure to perform the duties of his office, for crimes committed in office, for common crimes and for State terrorism. In 2004, the Paraguayan Human Rights Coordinator (CODEHUPY) reportedly repeated its petition seeking impeachment of the Attorney General and his removal from office on grounds that the Attorney General had allegedly failed to properly perform his prosecutorial functions in the investigation into the complaints from Mr. Martí and Mr. Arrom. Attached to CODEHUPY's request were the signatures of dozens of members of Paraguayan civil society organizations. However, the impeachment petition reportedly did not prosper. According to the petitioners, that "closed off any possibility of an impartial investigation into the complaint."

42. In view of the foregoing, the petitioners contend that neither Mr. Arrom, Mr. Martí nor any of the other victims received the judicial protection that under articles 8, 25 and 1(1) of the American Convention, the Paraguayan State was obligated to afford to the alleged victims. The petitioners assert that "the Paraguayan State failed to fulfill its obligation to conduct adequate, exhaustive and impartial investigations to shed light on the arbitrary detention and torture denounced, with the result that the victims have been unable to obtain redress for their violated rights." The petitioners add that "the State has failed to fulfill its obligation to conduct an effective investigation of the victims' complaints of torture."

43. The petitioners allege further that the right to personal liberty and security, protected under Article 7 of the American Convention, was also violated in the case of Mr. Juan Arrom and Mr. Anuncio Martí, since both were allegedly deprived of their physical liberty by agents of the State and held in clandestine places of confinement from January 17, 2002 to January 30 of that year. They also allege that the right to humane treatment protected by Article 5 of the American Convention and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture were violated by "the arbitrary detention of Juan Arrom and Anuncio Martí, the fact that they were considered detained-disappeared, the fact that they were confined in secret places, and the physical, psychological and moral suffering these two and Mr. Víctor Colmán, his wife Ana Samudio and Jorge Samudio endured."

44. The petitioners also point out that the State violated Article 2 of the American Convention by failing to enact specific laws criminalizing torture in a manner consistent with the international conventions. Finally, they allege that the State violated the right to freedom of movement and residence, protected by Article 22 of the Convention, inasmuch as three of the victims have had to flee Paraguayan territory and seek refuge in Brazil.

45. The petitioners reject the State's argument that the facts did not occur. They reason that the fact that the criminal investigation ended in a dismissal does not mean that the facts alleged did not happen. The petitioners add that in the case of Mr. Arrom and Mr. Martí, there was no judicial proceeding because the Public Prosecutor's Office did not bring charges. The petitioners contend that the criminal investigation conducted was lacking in independence, impartiality and professionalism. They assert that Mr. Colmán, Mr. Samudio and Ms. Samudio de Colmán publicly denounced that they had been victims of torture; the State, therefore, had an obligation to investigate the facts on its own, even if the victims did not file a complaint.

46. Finally, the petitioners requested that the State's response to their September 20, 2004 communication -in which they had requested that all previous communications and petitions be joined to petition 04-03- be entirely disregarded in the admissibility phase, given the State's failure to present its observations within the two-month time frame that the Commission set.

B. The State

47. In its initial response to the petition, the State asserts that the facts raised in the petition were purportedly being investigated in the domestic courts, with all guarantees of due process of law. Hence, the State contends that the remedies under domestic law have not been pursued and exhausted. The State reported at the time that "Arrom's legal representation filed a constitutionality challenge against Article 358 of the Code of Criminal Procedure, a remedy that has not yet been exhausted."

48. According to the State, "this would be a transgression of the subsidiary role of the organs of the inter-American system for the protection of human rights. These bodies would be taking upon themselves the function of overseeing the process -as a kind of fourth instance- through communications and requests for information from the government concerning issues that go to the merits of a case and procedure, when those issues are being discussed and litigated in the domestic courts, with all guarantees of due process."

49. In July 2003, the State reported that "public, oral proceedings have been instituted and fugitives from justice Anuncio Martí, Juan Francisco Arrom and Víctor Colmán have been declared in contempt of court in the case [titled] "De los Santos Saldivar et al. on punishable offense against the liberty of persons." With that same communication the State enclosed copies of the arrest warrants issued against Messrs. Martí, Arrom and Colmán.

50. The State further alleges that on February 5, 2002, the Special Rapporteur on Torture from the Office of the United Nations High Commissioner had requested a report from the State on a complaint that two of the alleged victims in this petition, Juan Francisco Arrom and Anuncio Martí, had filed with the Office of the United Nations High Commissioner claiming acts of torture by government agents. The State asserts that this would mean that the subject of the complaint was pending with two different international bodies, which would constitute a duplication of proceedings.

51. In the communication it presented on September 28, 2005, the State writes that it had “exercised jurisdiction and competence by prosecuting the investigation and granting the victims adequate guarantees to participate in the process.” The State makes the point that a ruling has been delivered that definitively stayed the proceedings and dismissed the case against the persons accused of being the authors of the violations alleged in this petition.

52. The State adds that as the organ charged with criminal prosecution, the Public Prosecutor’s Office decided not to bring the corresponding indictment “due to the fact that certainty, which is the essential element for the government to bring charges and then take a case to trial, is lacking.” The State’s contention was that “not only was the evidence necessary to bring charges lacking, but there were misrepresentations in the statements made by the petitioners in the form of repeated contradictions [...] The investigation found that there was no legal evidence of a punishable offense; indeed there was some question as to whether any such offense ever existed or was simply a smokescreen for political persecution in an attempt to cover up a criminal act. The State could not show evidence that they were victims of any criminal act; if anything, they may have been perpetrators.”

53. The information supplied by the State indicates that at the time of Mrs. María Edith Bordón de Debernardi’s release on January 19, 2002, a court-ordered search was done of Víctor Colmán’s residence. In the house search, some \$50,000 was said to have been seized, all in bills that the Public Prosecutor’s Office had marked before handing them over to her abductors. This was why orders were given for the arrest of Víctor Colmán, Ana de Colmán and Jorge Samudio. The State pointed out that on that day arrest warrants were issued for a number of suspects, among them Mr. Juan Arrom and Mr. Anuncio Martí.

54. To show the alleged falsehoods in the versions given by the alleged victims, the State informed the Commission that in a police report dated January 19, 2002, Juan Arrom reported the theft of his driver’s registration, which would contradict his version to the effect that he was allegedly already being held as of January 17, 2002. The State also reported that on January 18, 2002, Mr. Arrom was alleged to have communicated with Mr. Víctor Colmán eight times, even though by Mr. Arrom’s version of events he was at the time in unlawful custody.

55. The State alleges that the public prosecutor’s office processed the missing person report filed by the next of kin of Juan Arrom and Anuncio Martí, and launched an investigation. It also received the criminal complaint that Mr. Arrom and Mr. Martí brought charging members of the national police with the crimes of criminal coercion, kidnapping, threat, attempted murder, forced disappearance, gross personal injury, gross personal injury done in the performance of public functions, torture, persecution of innocent persons, and conspiracy to commit crime. The State of Paraguay notes that “the investigation was unable to turn up evidence demonstrating that the crimes alleged ever occurred. While it is true that the medical diagnoses show that Juan Arrom and Anuncio Martí sustained injuries, the investigation turned up no evidence suggesting that the injuries were caused by the crimes alleged in the complaints; the investigation was also unable to turn up any evidence suggesting that the authors of the crimes reported in the complaints were the persons named in the complaints.”

56. The State's contention is that it would be premature to label the investigation ineffective by the standards of the international law of human rights, since the investigation would appear, *prima facie*, to have all the hallmarks of an effective, immediate, exhaustive, serious and impartial inquiry.

57. According to the State, in the proceedings on the habeas corpus petitions filed by the next of kin of Mr. Arrom and Mr. Martí, reports concerning their whereabouts were alleged to have been compiled from the security agencies. The State asserts that those reports indicated that the two men were not in custody, despite the fact that a competent authority (the Public Prosecutor's Office) had issued orders for their arrest even before the petitions of habeas corpus were filed.

58. The State adds that a criminal case was opened by virtue of the criminal complaint that Mr. Arrom and Mr. Martí brought against the Public Prosecutor, the Minister of the Interior and the Minister of Justice and Labor, alleging unlawful deprivation of liberty, torture and other crimes. However, a court ruling dismissed the complaint on the grounds that the testimony and documentary evidence allegedly showed that the Public Prosecutor, the Minister of the Interior and the Minister of Justice and Labor "were not party to the acts at issue in the complaint."

59. The State observes that Mr. Arrom and Mr. Martí turned to the appellate chamber, which confirmed the definitive dismissal of the case against the accused; they also filed a constitutionality challenge with the Supreme Court, which was also dismissed as being without merit. The State concludes that the case brought by Mr. Arrom and Mr. Martí went through every stage of the procedural process.

60. The State argues that if a competent authority had already issued an order for their arrest in the course of the investigation into the kidnapping of Mrs. María Edith Bordón de Debernardi, then any arrest and detention was not arbitrary.

61. The State of Paraguay alleges that "this case is not about State terrorism; quite the contrary, these are common crimes, kidnappings for purposes of extortion, portrayed as political persecution." According to the State, the Patria Libre political movement was virtually unknown in Paraguay until the alleged victims were named as members of the group that allegedly committed the kidnapping. The State goes on to say that "Messrs. Arrom, Martí and Colmán took advantage of a situation to portray themselves as victims of political persecution when in fact that are common criminals seeking to elude punishment by arguing that they were victims of state terrorism and political persecution."

62. The State also observes that a criminal case has been opened against the alleged victims now refugees in Brazil, in connection with the abduction of Mrs. María Edith Bordón de Debernardi, and that the judicial bodies are thereby prevented from clarifying the facts denounced, redressing the rights claimed by the petitioners and making reparations for any harm done.

63. Finally, in the case of Messrs. Víctor Antonio Colmán, Ana Rosa Samudio and Jorge Samudio, the State alleges that internal remedies have not been exhausted inasmuch as they have

neither filed a complaint nor brought any action with the domestic jurisdictional bodies in connection with the claims they are making to the Commission.

IV. ADMISSIBILITY

A. The Commission's competence

64. Under the terms of Article 44 of the American Convention, the petitioners have standing to lodge a petition with the Commission. The petition states that the persons named as alleged victims therein were under the jurisdiction of the Paraguayan State at the time of the facts alleged. With regard to the State, the Commission observes that Paraguay has been a State party to the American Convention, having duly deposited its instrument of ratification on August 24, 1989. Therefore, the Commission has competence *ratione personae* to examine the petitions lodged. It also has competence *ratione materiae* because the petitioners are alleging violations of rights protected by the American Convention.

65. The Commission has competence *ratione tempore* to examine the complaints. The petition alleges facts said to have occurred starting on January 17, 2002. Therefore, the facts alleged occurred subsequent to the date on which the State's obligations as a party to the American Convention took effect. Furthermore, since the petition alleges violations of rights protected by the American Convention that were said to have occurred within the territory of a State party, the Commission concludes that it has competence *ratione loci* to examine it.

B. Other requirements for the petition to be admissible

66. The Commission must begin by clarifying that the State's response to the petitioners' communication of September 20, 2004, which was initially to be submitted within two months, was presented by the extended deadline that the Commission granted, which was September 27, 2005. Therefore, the Commission is not agreeing to the petitioners' request that the State's response be discounted in its entirety during the admissibility phase of the proceedings because, they alleged, the State had not presented its observations within the time period that the Commission set for it.

1. Exhaustion of domestic remedies

67. Article 46 of the American Convention specifies that in order for a case to be admitted, "remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law."

68. In the instant case, three separate situations must be distinguished to examine the question of exhaustion of domestic remedies: the situation of Messrs. Arrom and Martí; the situation of Messrs. Víctor Antonio Colmán, Ana Rosa Samudio de Colmán and Jorge Samudio; and finally, the situation of the next of kin of the alleged victims.

69. The following has been established with regard to the events of which Messrs. Arrom and Martí claimed to have been victims: their next of kin filed petitions of habeas corpus seeking

redress and prevention, respectively; those petitions were dismissed because of an outstanding order for the arrest of the two men, issued by a competent authority; based on the complaints brought by their next of kin, the Criminal Prosecutor decided to bring charges against the Director of the Judicial Investigation Center that is under the Public Prosecutor's Office, a deputy police inspector and a lower-ranking police officer attached to the criminal investigation police unit; the alleged victims filed a criminal complaint against these people alleging crimes against liberty, gross coercion, threat, attempted intentional homicide, forced disappearance, grievous personal injury, grievous personal injury while performing one's public functions, torture and persecution of innocents in a criminal conspiracy, and offered a number of pieces of evidence; on February 8, 2003, the prosecutor requested that the charges against the accused be dismissed, offering evidence and arguments; on May 14, 2003, a preliminary hearing was held after which the criminal court judge concluded that the arguments put forward by the prosecutors to support the request for a definitive dismissal were insufficient to warrant dismissal of the charges against the accused and that the evidence should be debated and analyzed in oral and public proceedings; the judge therefore decided to send the case files to the Attorney General for confirmation of the intervening prosecutors' position; on May 27, 2003, the Deputy Attorney General confirmed the prosecutorial requests and sought definitive dismissal of the charges filed against the accused for the events of which Messrs. Arrom and Martí were allegedly victims; on June 19, 2003, counsel for Mr. Arrom filed a constitutionality challenge, which at a preliminary hearing held that same day the Supreme Court agreed to hear; on September 19, 2003, the Constitutional Chamber of the Supreme Court decided to dismiss the constitutionality challenge; on November 4, 2003, a preliminary hearing was held where the court ordered definitive dismissal of the charges against the accused in connection with the events of which Messrs. Arrom and Martí were allegedly victims; counsel for Mr. Arrom filed a general appeal to challenge this ruling; on March 24, 2004, the court of appeal confirmed the decision to order definitive dismissal of all charges.

70. The Commission therefore considers that the proper remedies for the alleged violations of the rights of Mr. Arrom and Mr. Martí were pursued and exhausted.

71. In the case of Messrs. Víctor Antonio Colmán, Ana Rosa Samudio de Colmán and Jorge Samudio, the State alleges a failure to exhaust domestic remedies. The petitioners, for their part, assert that the alleged victims protested "openly and loudly –as reported on the radio and television news and in the print media–" about the events in which they claimed to have been victims of torture and miscarriages of justice in the investigations into the abduction of Mrs. María Edith Bordón de Debernardi, in which they were suspects.

72. Time and time again, the Inter-American Commission has stated that whenever a crime is committed that the State can prosecute on its own initiative, the State has an obligation to pursue and drive the criminal process; in such cases, prosecution by the State is the proper means to clarify the facts, try those responsible, establish the corresponding punishment and make any other means of pecuniary reparations possible. The Commission observes that the alleged victims participated in and exercised their right of defense in the criminal proceeding instituted against them for the abduction of Mrs. María Edith Bordón de Debernardi. It was in the course of this investigation that the events of which they claim to have been victims were alleged to have occurred. Therefore, the alleged victims were given the opportunity to inform the competent

authorities of the events they are denouncing and to exhaust the remedies under domestic law. As the Inter-American Commission and the Inter-American Court have held, when a case comes to a State's attention that involves a complaint of torture lodged with a competent authority, either formally or otherwise, the State has the obligation to conduct a proper investigation. In the instant case, the three alleged victims did not bring the facts being alleged to the attention of a competent authority, either formally or informally, and have offered no explanation of why they were unable to do so. Furthermore, the petitioners have made no argument to explain the reasons why, during the course of the judicial process,[FN3] the alleged victims did not formally bring those facts to the attention of the State so that they could be investigated, or why they failed to explain the reasons they did not report the alleged acts of torture.

[FN3] The available information indicates that on December 16, 2002, a definitive stay was ordered in the proceedings instituted against Messrs Jorge Samudio and Ana Rosa Samudio de Colmán in the case of the abduction of Mrs. María Edith Bordón de Debernardi, while Mr. Víctor Antonio Colmán was declared in contempt of court, since he did not appear for the oral and public proceedings conducted between August 26 and September 21, 2003.

73. The Commission therefore considers that the domestic remedies available in connection with the alleged violations of the rights of Messrs. Víctor Antonio Colmán, Ana Rosa Samudio de Colmán and Jorge Samudio were not exhausted.

74. As for the next of kin of the alleged victims, the Commission has no information whatever to indicate that any attempt has been made to pursue and exhaust domestic remedies in connection with the alleged acts of harassment, persecution and violence of which they claim to have been victims, nor does it have detailed information about the acts being alleged.

75. The Commission therefore considers that it has no basis for concluding that the local remedies available in connection with the alleged violations of the rights of the next of kin of Messrs Arrom and Martí have been pursued and exhausted.

76. Based on the foregoing, the Commission will examine the other admissibility requirements only with respect to Messrs. Arrom and Martí, since the other alleged victims in this case do not appear to have pursued and exhausted local remedies.

2. Time period for lodging the petition

77. Under the terms of Article 46(1)(b) of the Convention, a petition must be presented in a timely manner to be admitted, specifically within six months from the date on which the complaining party was notified of the final judgment at the domestic level.

78. In the instant case, proceedings were instituted when the communications from the alleged victims' next of kin were received on September 23 and December 27, 2002.

79. Based on these considerations, the Commission finds that the present petition was lodged in a timely manner.

3. Duplication of proceedings and *res judicata*

80. Under Article 46(1)(c) of the American Convention, in order to be admissible, a petition's subject matter shall not be "pending in another international proceeding for settlement." Article 47(d) of the Convention stipulates that the Commission shall not admit a petition which "is substantially the same as one previously studied by the Commission or by another international organization."

81. In the instant case, while the State alleged that the Special Rapporteur on Torture with the Office of the United Nations High Commissioner allegedly requested a report from the State on a complaint that Juan Francisco Arrom and Anuncio Martí were said to have filed with that Office claiming acts of torture by government agents, the Commission has no information indicating that the report in question triggered a proceeding before that international agency such that it would constitute a duplication of this petition..

82. Therefore, the petition lodged satisfies the requirements established in articles 46(1)(c) and 47(d) of the Convention.

4. Characterization of the facts alleged

83. For admissibility purposes, the Commission must decide whether the petition states facts that tend to establish a violation of rights guaranteed by the Convention, as required under article 47.b of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," in the language of Article 47.c. The standard for evaluating these requirements is different from that for deciding the merits of a petition; the Commission must conduct a *prima facie* evaluation to determine whether the petition establishes grounds for the apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation. This determination involves a summary analysis that does not imply a prejudgment on the substance of the matter.

84. The petitioners are alleging that the facts denounced establish a violation of articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 22 (freedom of movement and residence), and 25 (right to judicial protection) of the American Convention on Human Rights, all in relation to the general obligations established in articles 1.1 and 2 thereof.

85. The State argues that the investigation into the facts of which Messrs. Arrom and Martí claimed to have been victims "was unable to show that the accused were the authors of the events described in the complaint or that they had any hand in perpetrating them. Furthermore, while the charges against the accused [...] were therefore dropped, the case is still open within the domestic judicial system and other persons could at any time be named as suspects for the events denounced in the complaint [...] since under Paraguayan law and in keeping with the provisions of the Constitution and the American Convention on Human Rights, crimes of torture are not subject to any statute of limitations. The State contends, therefore, that there is nothing to

prevent the case from going forward if other persons should be charged in the events denounced.”

86. In the instant case, for admissibility purposes the Commission is not determining whether specific agents should have been convicted or acquitted in the process under examination; instead, it is establishing whether Messrs. Arrom and Martí were or were not victims of torture and arbitrary detention and whether the State did or did not fulfill its obligation to investigate any situation that implies a violation of the right to humane treatment through the commission of these crimes.

87. Based on these considerations, the Commission does not find the petition to be “manifestly groundless” or “obviously out of order.” The Commission’s view is that, prima facie, the petitioners have satisfied the requirements established in Articles 47.b and 47.c and that the facts alleged, if true, could constitute possible violations of the rights recognized in articles 5, 7, 8 and 25 of the Convention, to the detriment of Juan Francisco Arrom Suhurt and Anuncio Martí Méndez, in relation with the general obligations granted for in articles 1.1 and 2 of that instrument. In the merits stage, the Commission will analyze, where appropriate, the alleged violations to articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of MR. Juan Francisco Arrom Suhurt and Mr. Anuncio Martí Méndez.

88. Furthermore, the fact that Messrs Arrom and Martí have requested and been granted refuge in Brazil does not necessarily mean that the alleged victims have been unable to exercise their right to freedom of movement and residence in Paraguay, or that they have been expelled from Paraguayan territory, or that they have been denied their right to seek and receive asylum in a foreign territory. Therefore, from the information available the Commission cannot conclude that these facts may tend to establish possible violations of the right to freedom of movement and residence, protected by Article 22 of the Convention.

V. CONCLUSIONS

89. The Commission concludes that it is competent to take cognizance of the instant case and that the petition with respect to Messrs Juan Francisco Arrom Suhurt and Anuncio Martí Méndez is admissible, pursuant to Articles 46 and 47 of the American Convention.

90. As for the other victims alleged in this case, the Commission concludes that the remedies under domestic law have not yet been pursued and exhausted.

91. Based on these 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 petition admissible with respect to the alleged violations of the rights recognized in articles 5, 7, 8 and 25 of the American Convention, in relation to the general

obligations upheld in articles 1.1 and 2 of the Convention, and to the detriment of Messrs. Juan Francisco Arrom Suhurt and Anuncio Martí Méndez. To declare the case also admissible with respect to the alleged violations to articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Messrs Juan Francisco Arrom Suhurt and Anuncio Martí Méndez.

2. To declare the present petition inadmissible with respect to the alleged violations of Article 22 of the American Convention.

3. To declare the present petition inadmissible with respect to the alleged violations of the rights of Messrs. Víctor Antonio Colmán, Ana Rosa Samudio de Colmán, Jorge Samudio, and their next of kin.

4. To notify the parties of this report.

5. To publish this report in its Annual Report.

Done and signed in the city of Washington, D.C., on the 30th day of the month 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, and Víctor E. Abramovich, members of the Commission.