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Session:	Hundred Thirty-Fifth Regular Session (3 – 8 August 2009)
Title/Style of Cause:	Wilfredo Quinonez Barcenas and Family v. Colombia
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo G. Carozza.
Dated:	5 August 2009
Citation:	Quinonez Barcenas v. Colombia, Petition 164-06, Inter-Am. C.H.R., Report No. 68/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANT: Corporacion Colectivo de Abogados Jose Alvear Restrepo
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I. SUMMARY

1. On February 23, 2003 the Inter American Human Rights Commission (hereinafter "the Commission") received a petition submitted by Corporación Colectivo de Abogados José Alvear Restrepo (hereinafter "the petitioners") which alleges the liability of agents of the Republic of Colombia (hereinafter "the State", "the Colombian State" or "Colombia") for the extrajudicial execution of Wilfredo Quiñonez Barcenas, allegedly perpetrated by agents of the State on September 3, 1995 in the town of Barrancabermeja, department of Santander.

2. The petitioners argued that the State was liable for the violation of the rights to life, personal integrity, personal freedom of Wilfredo Quiñonez Barcenas and judicial protection and guarantees of his relatives, as enshrined in Articles 4, 5, 7, 8 and 25 of the American Convention on Human Rights (herein after "the American Convention" or "the Convention"), as well as having the general obligation to respect and guarantee the rights protected in the Treaty, provided for in Article 1(1). For its part, the State argued that petitioner's claims were inadmissible because they were not submitted within a reasonable period of time, exceeding the six-month period provided for in Article 46.1.b of the American Convention, and if considered admissible the Commission would be acting as fourth international instance.

3. After analyzing the positions of the parties and compliance with the requirements of Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible in order to examine the alleged violation of Articles 4.1, 5.1, 5.2, 7.2, 8.1 and 25, in accordance with Article 1.1 of the American Convention. Also, the Commission decided to notify the parties and order its publication in its annual report.

II. PROCEDURE BEFORE THE COMMISSION

4. The Commission registered the petition under number P 164-06 and on April 12, 2006 proceeded to submit a copy of the relevant parts to the State, with a period of two months to submit information under Article 30.2 of the Regulations. On July 3, 2006 the State requested a thirty-day extension to comment, which was granted by the Commission.

5. On August 9, 2006 the State submitted its comments and on August 28, 2006 its attachments, which were notified to the petitioners on August 15 and September 13, 2006 respectively, for them to present their comments. The petitioners submitted comments on June 7, 2007, which were notified to the State on June 8, 2007, to present its comments. On August 18, 2007 the State submitted its observations.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

6. The petitioners indicate that on September 3, 1995 at 8:30 p.m. 18 year-old Wilfredo Quiñonez Barcenas along with two friends - José Gregorio Romero Reyes and Albeiro Ramirez - left their homes on bicycles to attend a party to be held at La Floresta neighborhood in the city of Barrancabermeja, department of Santander.

7. They note that in the early morning María Rosalba Barcenas (mother of Wilfredo Quiñonez) - along with the parents of the other young men - went to police stations in the area, seeking information about their children, without success. They note that the local Army battalion, a soldier told them that three boys had been brought into to said facilities, after which the duty officer reprimanded him and denied the information.

8. They noted that on the morning of September 4, 1995, Wilfredo's body was found near Colegio Santo Tomás (St. Thomas School) in the La Paz neighborhood - on the road to Llanito - with nine gun shots, and signs of torture[FN1]. They claim that according to an Army report, Wilfredo Quiñonez had been "killed" in combat and that a gun was found next to his body. The petitioners point out, however, to the testimonies of people in the area who said that three boys who were riding on bicycles were chased, beaten and detained by army officials in charge of detentions and conducting searches.

[FN1] Record of the identification of Wilfredo Quiñonez's body Number 105, September 4, 1995 (pages 004 and 005): "in an area of five cm (original typo in Spanish, it read "cindo"), covering an open wound from the left frontal superciliary region and left orbital region; broken left eyeball (original typo in Spanish, it read "grobo"); open wound in suprabucal region and left side cigome region; wound with irregular edges in left suprahyoid region 7 cm from the midline; open wound with exposed bone and muscle and fracture of the upper left arm, two wounds in the subclavian region derived from the prior wound; wound with regular edges consecutive to the one with irregular edges on the mid left forearm; inner side, partial destruction of phalanges on

the left small and ring finger; three open wounds in the right mammary region; open wound in the right hypochondrium region, lacerations(sic) in elbow and arm, it corrects in the forearm; laceration in the external side of the upper third of the right arm". Similarly, the criminal file page 239 which contains a record of the autopsy says: "We found abrasions on the right malar and left supra labial regions. An open burn wound with edges 9x3 cm. was also found in front facial region and upper left eyelid, which shows fracture of the frontal bone and rupture of left eyeball. Upon checking the damage caused by the nine gun shots received by the victim, it becomes clear that none of them caused the injuries earlier described; thus, it seems logical to believe – because there is no evidence to the contrary – that he was tortured while still living. The petitioners indicate that on the same day, around 4:00 PM, the bodies of José Gregorio Romero Reyes and Jorge Albeiro Ramírez were found near the airport, a few meters from a military base. Original petition received by the IACHR on February 23, 2006, page 2.

9. Based on the foregoing, the petitioners allege that during the night of September 3, 1995, Wilfredo Quiñónez Barcenás was captured by members of the National Army and illegally detained, and thus they sustain that the State violated Article 7 of the American Convention[FN2].

[FN2] Original petition received at the IACHR on February 23, 2006, page 10.

10. The petitioners allege that during his illegal detention, Wilfredo Quiñónez was defenseless in a situation that caused psychological distress amounting to torture[FN3]. Additionally, they argue that the evidence in the criminal proceedings, such as body identification record, shows that the corpse of Wilfredo Quiñónez Barcenás presented obvious signs of torture. They argue that this confirms that Wilfredo Quiñónez did not die in combat but when he was detained by agents of the State. Consequently, they allege that the State violated Article 5 of the American Convention in conjunction with Article 1.1. They also contend that, based on the non-derogable right to personal integrity, Article 2 of the Inter American Convention to prevent and Punish Torture applies, which extends the framework of implementation and interpretation of Article 5 of the American Convention.

[FN3] The petitioners cite the following cases in the Inter-American Court of Human Rights to support this claim: Case of the Gómez Paquiyauri Brothers, paragraph 108; Case of Maritza Urrutia. Judgment of November 27, 2003. C Series No. 103, paragraphs 87 and 92; Case of Juan Humberto Sánchez. Judgment of June 7, 2003. C Series No.99, paragraph 96; and Cantoral Benavides Case. August of August 18, 2000. C Series No. 69, paragraph 102. Original petition received at the IACHR on February 23, 2006, page10.

11. The petitioners argue that "the death of Wilfredo Quiñónez did not result from an open exchange of gun shots between the victim and Military Forces, but it was an extrajudicial execution, as evidenced by: (1) the clues derived from the apparent contradictions in the

statements of members of the National Army regarding the events of September 3, 1995, (2) the illogical position in which Wilfredo Quiñonez's lifeless body was found, demonstrating a change in the way it was originally found, (3) signs of torture, cruel, inhuman and degrading treatment actually suffered by the victim, Wilfredo Quiñonez, (4) the statements of several people who saw when Wilfredo Quiñonez and his two friends were forced into a truck from the National Army after being beaten". Therefore, the petitioners consider that the State violated Article 4 of the American Convention, in conjunction with Article 1.1, to the detriment of Wilfredo Quiñonez.

12. They note that the investigation into the facts of this petition was brought before the 15th Military Criminal Prosecutor's Office and that on October 24, 2003 the Second Brigade Court of the Second Division validated the merits of the case and ordered the discontinuance of legal proceedings for then Captain Jairo Alberto Prieto Rivera and volunteer soldiers, Luis Enrique Pineda Matallana and Orlando Evelio Ceballos Arboleda, now retired. They note that this decision was appealed by the partie civile before the Second Prosecutor's Office of the Military Higher Court which, through order of May 21, 2004, revoked the discontinuance of legal proceedings and initiated a trial against Captain Prieto Rivera and soldiers Luis Enrique Pineda Matallana and Orlando Evelio Ceballos Arboleda, for the murder of Wilfredo Quiñonez. The petitioners indicate that the trial began on September 22, 2004 in Audit 17 of the Second Brigade Court of Bucaramanga.

13. On April 18, 2005 the representative of the partie civile requested a positive conflict of venue to the Specialized Criminal Courts of the Circuit of Bucaramanga. They note that on May 3, 2005, the Second Specialized Criminal Court of the Circuit decided not to propose a positive conflict of venue based on the perception that there was no evidence of torture, and therefore it was not pertinent for the case to be tried in ordinary courts. The petitioners argue that the judge failed to consider the other arguments presented by the partie civile. In response, María Esther Quiñonez Barcenas, Wilfredo Quiñonez's sister, requested as partie civile the protection of the fundamental rights to due process and access to the administration of justice, having been subjected to substantial and factual error. They note that on October 12, 2005 the Superior Tribunal of Santander denied said protection, so the case remained under the purview of Military Criminal Justice.

14. They note that on December 1, 2005, the Second Brigade Judge issued a verdict against Jairo Alberto Prieto Rivera and volunteer soldier, Luis Enrique Pineda Matallana, for the crimes of homicide and excesses in the execution of a legitimate order and cleared Orlando Evelio Ceballos Arboleda for homicide[FN4]. They state that on December 22, 2005 the partie civile appealed the conviction, considering that Military Criminal Justice issued the verdict "in excess of the grounds of justification." [FN5] They claim that there was a serious error in assessing evidence, since they considered that there was sufficient evidence to verify an extrajudicial execution and therefore it is not for Military Criminal Justice but for ordinary courts to examine these actions. The information in the record before the IACHR states that this stage of the case would still be pending.

[FN4] Original petition received at the IACHR on February 23, 2006, page 4.

[FN5] Decision of the Second Judge of Brigade of December 1st, 2005. Original petition received at the IACHR on February 23, 2003, page 4.

15. The petitioners further point out that on December 2, 1997 the relatives of Wilfredo Quiñonez Barcenas filed a lawsuit against the State and the Army for illegal detention, torture and extrajudicial execution, before the Administrative Tribunal of Santander.

16. The petitioners argue that 13 years after the execution of Wilfredo Quiñonez, the State has failed to guarantee due process and there is still no accountability for the crime committed. They argue that the evidence of torture, cruel, inhuman and degrading treatment and the extrajudicial execution, the investigation of the facts should have been under the purview of ordinary criminal courts. They argue that the military criminal jurisdiction applies only to acts directly related to military service. They note that although the attorneys for the partie civile attempted repeatedly that the case be heard by the ordinary criminal justice, the process continued its course under military criminal jurisdiction. Therefore, they argue that the relatives of the victim were denied the right to know the truth of what happened; their right to judicial clarification; and the right to be repaired in full. They consider, therefore, that the lack of clarification of the facts is a violation of Articles 8 and 25 of the American Convention.

17. Additionally, the petitioners argue that since the family of Wilfredo Quiñonez Barcenas lived a distressing situation at the death of their loved one and that they did not have access to an adequate remedy to reclaim their right to truth, justice and reparation; thus they have suffered a violation to their right to personal integrity. In this regard, the petitioners consider that the State violated Article 5 of the American Convention in conjunction with Article 1.1 to the detriment of the family of Wilfredo Quiñonez Barcenas.

18. As to the admissibility of the complaint before the IACHR, the petitioners claim that there is evidence on the involvement of army personnel in the events, which sets the responsibility for actions of State agents, and characterizes their claims as violations to human rights protected under the Convention[FN6]. As to the requirement of exhaustion of domestic remedies provided for in Article 46 of the American Convention, they argue that the exemption provided in the same Article applies, given the absence of due legal process to investigate, prosecute and punish those responsible and to repair the damage inflicted. Also they argue that the exception to the above exhaustion rule applies due to the inability of the victim's relatives to exhaust adequate resources to repair the damage. They state that the military justice system lacks independence and impartiality to establish the truth of the events, to appropriately punish those responsible and to repair the material damage caused.

[FN6] They indicate that in addition to the evidence introduced before the IACHR, which the State objects with the opinion of the Military Criminal Judge, are the claims filed by María Rosalba Barcenas, her explanatory and ratification statement, the explanatory and ratification statement of Eneth Romero Ávila and operations report number 1709 GH-CTI, among others. Observations Writ of the petitioners dated June 7, 2007, page 3.

19. Faced with the allegation of the State as to whether the petition was not filed within a reasonable time (see *infra* III B), the petitioners responded that it must be taken into account that: (1) criminal proceedings in this case has been under military criminal jurisdiction, (2) the *partie civile* has requested, by all means the change of venue, without success, and (3) the petition was filed in 2006 when the case was pending before Military Criminal Justice. In this regard, they argue that the Commission has examined cases in which it considered that the deadline to file the petition was reasonable given the obstacles in the criminal investigation of cases that remain unpunished[FN7]. The petitioners argue that in this case the alleged human rights violations are continuing in relation to judicial protection and legal guarantees, thus it is not pertinent to consider that the petition was not filed within a reasonable time[FN8].

[FN7] In support of their argument, the petitioners cite IACHR's Report No. 14/06 (Raquel Natalia Lagunas and Sergio Antonio Sorbellini) in which it was considered that a petition filed seventeen years after the death of the alleged victims had been introduced within a reasonable period in light of the obstacles to the clarification of the facts. Observations Writ of the petitioners dated June 7, 2007, pages 5 and 6.

[FN8] The petitioners add that the State alleges fraud to demonstrate a supposed inadmissibility of the petition, since it argues that the lack of competency of military jurisdiction might be considered – without having done anything for over 10 years to correct it. Observations Writ of the petitioners dated June 7, 2007, page 7.

B. Position of the State

20. In response to the claim of the petitioners, the State sought a declaration of inadmissibility. First it claims that it has not been filed within a reasonable time, and that its filing exceeds the six-month period provided for in Article 46.1.b of the American Convention. The State argues that criminal proceedings had been resolved before Military Criminal Justice and believes that, should the petition be declared admissible, the Commission would be acting as the fourth international forum[FN9].

[FN9] Note GOI/33.888/1872 of Colombia's Ministry of Foreign Relations dated August 9, 2006 and Note GOI/39754/2112 of Colombia's Ministry of Foreign Relations dated August 10, 2007, pages 7-10.

21. On the facts, the State refers to the first instance ruling of the Second Court of Brigade. Specifically, it argues that on September 4, 1995, at about midnight, intelligence information was received on Aguabarranca's military base, located in the city of Barrancabermeja, according to which a group of people were robbing and extorting the occupants of vehicles traveling on the road that leads from Barrancabermeja to "Llanito".

22. They note that in response a patrol went through the internal “Fertilizantes” road, while the second went around the elevated bridge all the way to La Paz neighborhood. They claim that the troops detected the presence of an individual who was riding a bicycle, who upon seeing the Army two vehicles abandoned the bike and fled towards “Fertilizantes” road. It points out that faced with this, the patrollers gave ordered him to stop several times, but Mr. Quiñonez did not obey, so shot several shots into the air to intimidate him. They point out that he did not stop and took a shot against the military, so the troops reacted and killed him.

23. The State argues that the witness Angel María Noriega – whom the petitioners refer to in order to explain the circumstances in which Wilfredo Quiñonez died - never identified Wilfredo Quiñonez, José Gregorio Romero and Jorge Albeiro Ramirez as the individuals who were arrested by members of the Army, citing the 15th Criminal Military Office of the Prosecutor in the resolution by which the merit of the case is qualified in which it is stated:

For his part, Mr. Angel María Noriega actually says that when he was in the Versalles neighborhood at approximately 10:00 p.m. saw at a distance of 60 meters, when people dressed in army clothing, among whom there were two individuals wearing hoods, forced the three boys into a white truck, but he could not guarantee that those were the same ones that appeared dead the next day because he did not see them, rather it was a conclusion he reached when Diana Torres told him what had happened[FN10].

[FN10] Office of the Attorney General, Judicial I Criminal Office of the Attorney General 293. Attachment 2. Note GOI/33.888/1872 of Colombia’s Ministry of Foreign Relations dated August 9, 2006.

24. Regarding the allegations of torture, the State maintains that in accordance with a ballistics’ report issued by forensic medicine, transmitted on January 3, 2002, the findings of the 1995 autopsy did not constitute torture and in that regard the first instance ruling on the matter issued by the Second Court of Brigade states:

The findings described in autopsy number SA – 2265 - 95 such as bruises, fractures and abrasions with burnt edges are due to the damage produced by an element traveling at high speed and high temperature, such as a projectile, which even without direct contact with some tissues, like the eyeball or socket, can cause other damage due to its explosive and vibratory force, and hence there can sometimes be no entry or exit wound so the description of the wound is termed a ‘general finding’ [FN11].

[FN11] Second Court of Brigade, verdict of December 1, 2005, page 58. Note GOI/33.888/1872 of Colombia’s Ministry of Foreign Relations dated August 9, 2006.

25. With regard to criminal proceedings conducted at military headquarters for the death of Wilfredo Quiñonez, the State pointed out that it is before the Supreme Military Tribunal on

appeal by both the partie civile and the military personnel punished by the first instance ruling of the Second Court of Brigade.

26. In regards to the allegation of the petitioners with respect to "a disproportionate sentence" which implies a framework of impunity in the absence of clarification, appropriate punishment and reparation for the events (see supra III A), the State understands it to be a reference to the sentence imposed to a member of the National Army by the Second Criminal Court of Brigade. In this regard, it responds that the Commission lacks competency to act as a court of fourth instance and that it is only competent to declare a petition admissible when it relates to a court ruling that was issued without due process or in violation of rights guaranteed in the Convention, and not when it merely states that the ruling is unjust or wrong in itself. The State argues that this sentence imposed to a member of the National Army can not be disqualified as a judicial act by bodies of the Inter-American Human Rights System.

27. The State notes that a disciplinary investigation on the facts of the petition before the Office of the Attorney General under file number 008-20363, 1998, in which the preliminary inquiry was launched on September 4, 1995 and was closed due to statute of limitation on September 27, 2000.

28. It also indicates that a direct reparation process is before the Contentious Administrative Tribunal of Santander for the alleged arrest and subsequent death of Wilfredo Quiñonez and Jose Gregorio Romero, which is on its evidentiary period. It indicates that the Directorate of Human Rights and the DIH have requested to the Office of the Attorney General to study the possibility of forming a special agency in this process.

29. Furthermore, the State argues that the petition was not filed within a reasonable period and argues that the facts alleged in the petition date back to 1995 and were heard by Military Criminal Justice that same year. It argues that the petition was filed 10 years after Military Criminal Justice took the case, which is not a reasonable time[FN12]. The State argues that reasonable time should also address the circumstances of the particular case and the date on which the violation occurred, according to Article 32.2 of the Rules of the Commission. It notes that the petition for the death of Wilfredo Quiñonez could have been filed at the time that the military courts began to hear the case if the petitioners felt that it was not an adequate and effective recourse to investigate the facts.

[FN12] To support its argument the State cites two reports in which the IACHR declares the inadmissibility of the petition in light that the time period was not reasonable: IACHR Report No. 20/02, Inadmissibility, petition 11.627, Santos Hernan Galeas Gonzalez, Honduras, February 27, 2002, paragraph 28, and Report No. 85/05, petition 430/00, Inadmissibility Romeel Eduardo Diaz Luna, Peru, October 24, 2005, paragraph 27. Note GOI/33.888/1872 of Colombia's Ministry of Foreign Relations dated August 9, 2006.

30. The State argues that on May 3, 2005, the Second Specialized Criminal Court of the Circuit ruled not to propose the positive conflict of competency. It considers that the period of

six months for filing the petition pursuant to Article 46 of the Convention should be computed from that decision. The State argues that the petition was filed on April 12, 2006, ten months and eight days later, which exceeded the time limit under Article 46.1.b of the American Convention and 32.1 of the Rules of the Commission.

31. In response to the comments of the petitioners regarding the reasonableness of the period (see supra III A) the State alleges that in the example used by them as support of their argument[FN13] the Commission decided that - although the petition was filed more than ten years after the events - the term was reasonable, given that judicial and police authorities obstructed the truth in order to cover up the facts. The State contends that these obstructions and concealment by the courts were not present in the case under analysis. Therefore, the State considers that in this case the exemption provided for in Article 46.2.a of the Convention does not apply and that the petition is inadmissible because it was not filed within a reasonable time.

[FN13] IACHR, Report No. 14/06, Petition 617-01, Lagunas and Sorbellini , Argentina. IACHR's Annual Report 2006. Note GOI/39754/2112 of Colombia's Ministry of Foreign Relations dated August 10, 2007, pages 2 and 3.

IV. ANALYSIS ON COMPETENCY AND ADMISSIBILITY

A. Competency

32. The petitioners are entitled, in principle, by Article 44 of the American Convention to file petitions before the Commission. The petition states as alleged individual victims, in connection to whom the Colombian State was responsible to respect and guarantee the rights enshrined in the American Convention. With regard to the State, the Commission notes that Colombia is a Member State of the American Convention since July 31, 1973 date on which they deposited their ratification instruments, respectively. Therefore, the Commission has *ratione personae* competency to review the petition. Also, the Commission has *ratione loci* competency to hear the petition, as it claims violations of rights protected under the American Convention that allegedly took place within the territory of Colombia, Member State in said treaty.

33. The Commission has *ratione temporis* competency because the obligation to respect and guarantee the rights protected under the American Convention was already in force for the State on the date in which the facts alleged in the petition occurred. Finally, the Commission has *ratione materiae* competency because the petition denounces possible violations of human rights protected by the American Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

34. Article 46.1.a of the American Convention requires the prior exhaustion of remedies available in the domestic jurisdiction in accordance with principles of international law generally

recognized, as a requirement for admission of claims about the alleged violation of the American Convention. Article 46.2 of the Convention provides that the requirement of prior exhaustion of domestic remedies is not applicable when:

- a) the domestic law of the pertinent State does not contain the legal due process for the protection of the right or rights that have allegedly been violated;
- b) the alleged injured party has not been allowed, in exercise of his rights, access to the remedies within the domestic jurisdiction, or has been prevented from exhausting them; and
- c) there has been unwarranted delay in the decision on these remedies.

35. First, it must be clarified what are the remedies to be exhausted in this case. The Inter-American Court noted that only the adequate recourses to remedy the violations allegedly committed must be exhausted. For recourses to be adequate means that

The role of such recourses within the domestic legal system is appropriate to protect the legal situation violated. In all domestic legal systems there are multiple recourses, but not all are applicable in all circumstances. If in a particular case the remedy is not adequate, it is obvious that it must not be exhausted. This follows the principle that the rule is intended to produce an effect and can not be interpreted as meaning that it does not produce any or that its result is manifestly absurd or unreasonable[FN14].

[FN14] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, paragraph 63.

36. In this case, after the events occurred between September 3 and 4, 1995, the investigation into the murder of Wilfredo Quiñonez began at the 15th Criminal Military Office of the Prosecutor and on October 24, 2003 the Second Court of Brigades of the Second Division acknowledged the merits of the case and ordered the discontinuance of the legal proceedings in favor of the accused. That decision was appealed by the partie civile before the Second Office of the Prosecutor of the Higher Military Tribunal which, through an Order of May 21, 2004, revoked the discontinuance of the legal proceedings and initiated a trial against Captain Prieto Rivera and the soldiers Luis Enrique Pineda Matallana and Orlando Evelio Ceballos Arboleda.

37. On April 18, 2005 the partie civile requested positive conflict of venue to the Specialized Criminal Courts of the Circuit of Bucaramanga, so the case was transferred to the ordinary courts. On May 3, 2005, the Second Specialized Criminal Court of the Circuit resolved not to propose the positive conflict of venue. In response, the partie civile filed a factual protection remedy which was denied on October 12, 2005 by the Higher Tribunal of Santander and the case remained in the military criminal jurisdiction.

38. On December 1, 2005 the Second Court of Military Brigade issued a conviction verdict against Lieutenant Jairo Alberto Prieto Rivera and volunteer soldier, Luis Enrique Pineda Matallana, for the crimes of homicide and excess in the execution of a legitimate order, and cleared Orlando Evelio Ceballos Arboleda. On December 22, 2005 the partie civile appealed the

conviction based on "serious error in assessing probative value" and for being an extrajudicial execution that should be clarified before the ordinary courts[FN15].

[FN15] Observations of the petitioners dated June 7, 2007. The parties have not provided any information on the result of this appeal.

39. On the requirement of exhaustion of domestic remedies provided for in Article 46.1 of the Convention, the State contends that the criminal proceedings being conducted in regards to the facts surrounding the death of Wilfredo Quiñónez is before the Higher Military Tribunal due to the appeal filed not only the partie civile but also by military personnel penalized in the first instance ruling, issued by the Second Court of Brigade. The State also notes that "the legal problem that arises in light of the Convention revolves around the judge hearing the facts" and that "there is a suitable and effective domestic remedy for settling conflicts of competency ... within a criminal case... known as conflict of venue". In this sense it points out that the petitioners invoked this appeal and that on May 3, 2005, the Second Specialized Court of the District ruled not to propose for positive conflict of venue.

40. On the other hand, the petitioners argue that the claim is admissible under the exception provided for in Article 46.2, paragraphs a and b, of the American Convention, on the grounds that military criminal justice is not an appropriate forum and therefore it does not provide an adequate recourse to investigate, prosecute and punish human rights violations.

41. The Commission and Court have established that military criminal justice is not the appropriate forum to try actions related to possible human rights violations, but these should be subject to investigation before the ordinary courts[FN16]. The Commission notes that the facts surrounding the death of Wilfredo Quiñónez had been the subject of investigation before Military Criminal Justice for over 14 years. This despite unsuccessful attempts by the partie civile to get ordinary courts to recommend a conflict of venue, and the grounds of appeal against the decision issued by the Court of Brigade, which is still pending. In light of the foregoing, the Commission considers that the exemptions apply to the rule of prior exhaustion of domestic remedies provided for in Article 46.2.b of the American Convention.

[FN16] I/A Court H.R., Almonacid Arellano and others Case. Judgment of September 26, 2006. C Series No. 154, paragraph 131, Palamara Iribarne Case. Judgment of November 22, 2005. C Series No. 135, paragraph 143; 19 Merchants Case, July 5, 2004. C Series No. 109, paragraph 167; and Las Palmeras Case. Judgment of December 6, 2001. C Series No. 90, paragraph 52 and IACHR, Report No. 63/01, Case 11.710 Carlos Manuel Prada Gonzalez and Evelio Antonio Bolaño Castro, April 6, 2001, paragraph 41.

42. Regarding the pending contentious-administrative proceedings and disciplinary proceedings filed, referred to by the State, the Commission has previously held that decisions issued in contentious-administrative and disciplinary jurisdiction are not appropriate remedy to

meet the requirements of Article 46 of the Convention. Contentious-administrative jurisdiction is a mechanism that ensures the supervision of the administrative activity of the State, and that only allows for compensation for damages caused by abuse of authority. Therefore, said pending process is not suitable in this analysis.

43. The invocation of exceptions to the rule of exhaustion of domestic remedies provided for in Article 46.2 of the Convention is closely linked to the determination of possible violations of rights enshrined therein, such as ensuring access to justice. However, the Article 46.2, by its nature and object, is a rule with independent content vis-à-vis the substantive provisions of the Convention. Therefore, whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question should be determined prior and separate from the analysis of the merits, since it depends on a different standard of assessment than the one used to determine the possible violation of Articles 8 and 25 of the Convention. It should be noted that the causes and effects that prevented the exhaustion of domestic remedies will be analyzed in the report that the Commission issues on the merits of the case, to verify if these are violations of the American Convention.

2. Timeliness

44. The American Convention provides that for a petition to be admissible, it must be filed within six months from the date when the alleged injured party was notified of the final decision by domestic courts. Similarly, Article 32 of the Rules of the Commission states that in cases in which exceptions may apply to the prior exhaustion of domestic remedies provision, the petition must be filed within a reasonable time, at the discretion of the Commission.

45. As noted above, the State contends that the determination of the judge to hear the facts of the petition depends on the invocation of the so-called "conflict of competences". It remarks that the petitioners invoked this recourse on April 18, 2005 in the ordinary courts and it was resolved unfavorably on May 3, 2005 by the Second Specialized Criminal Court of the Circuit. The State argues that this exhausted the remedies available in domestic jurisdiction in relation to this aspect of the claim of the petitioners and that therefore the petition filed in February 2006 exceeded the period of six months provided for in the Convention. Meanwhile, the petitioners argue that in view of the application of exceptions to the exhaustion of domestic remedies, in order to determine the reasonableness of the period for filing the petition, it must be taken into consideration that it was filed when the case was pending before Military Criminal Justice; that the partie civile has requested by all means[FN17] a change of jurisdiction, without success; and that the alleged violations of the obligation to administer justice are of continuing nature.

[FN17] The partie civile appealed the cessation of process in favor of the ones indicted before the Second Prosecutor's Office of the Superior Military Tribunal. On April 18, 2005 the partie civile requested a change of jurisdiction to the Specialized Criminal Judges of Bucaramanga's Circuit. They also filed a tutela for their human Rights to due process and access to justice, given a factual and substantial error. This tutela was denied on October 12, 2005 by the Superior Tribunal of Santander.

46. According to the Commission has set out above, this claim is subject to the exhaustion of domestic remedies exception provided for in Article 46.2.b of the American Convention. In order to establish whether the petition has been filed within a reasonable time, pursuant to Article 32 of the Rules of the Commission, the Commission must consider the date on which the alleged violation of the rights occurred and the circumstances of each case.

47. In this case, the facts surrounding the death of Wilfredo Quiñonez would have occurred between September 3 and 4, 1995 and it is claimed that these are still unclear. Wilfredo Quiñonez Barcenás' family members filed several remedies after the events in order to obtain clarification of the facts before the courts, and the petitioners claim that it has not been possible to establish liability for the case. The petition was received on February 23, 2006. Given the characteristics of this case, the Commission considers that the petition was filed within a reasonable time and that the admissibility requirement of concerning the time of filing has been met.

3. Res Judicata

48. The file does not reflect that the subject of the petition is pending in another international proceeding or settlement, or that it is a reproduction of a petition already examined by this or any other international body. Therefore, it meets the requirements set down in Articles 46.1.b and 47.a of the Convention.

4. Characterization of alleged facts

49. To this end, in light of the factual and legal elements introduced by the parties and the nature of the case before it, the Commission finds that in this case, establishing that the petitioner's allegations concerning the alleged violation of the right to life, personal integrity, personal liberty, judicial protection and due process, could characterize violations of the rights protected under Articles 4.1, 5.1, 5.2, 7.2, 8.1 and 25 in accordance with Article 1.1 of the American Convention.

V. CONCLUSIONS

50. The Commission concludes that it has jurisdiction to review claims filed by the petitioner on the alleged violation of Articles 4.1, 5.1, 5.2, 7.2, 8.1 and 25, in accordance with Article 1.1 of the American Convention and that these are admissible under the requirements of Articles 46 and 47 of the American Convention.

51. Based on the above mentioned arguments of fact and law and without that implying a prejudgment of the merits,

THE INTER AMERICAN HUMAN RIGHTS COMMISSION,

DECIDES:

1. Declare this case admissible with regards to Articles 4.1, 5.1, 5.2, 7.2, 8.1 and 25, in connection to Article 1.1 of the American Convention.
2. Notify this decision to the Colombian State and to the petitioners.
3. Continue with the analysis of the merits.
4. 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 5th day of the month of August 2009.
(Signed) Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo G. Carozza, members of the Commission.