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Title/Style of Cause:	Richard Conrad Solorzano Contreras v. Guatemala
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Paulo Sergio Pinheiro, Paolo G. Carozza.
Dated:	29 October 2009
Citation:	Solorzano Contreras v. Guatemala, Petition 581-03, Inter-Am. C.H.R., Report No. 103/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
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I. SUMMARY

1. On July 14, 2003, the Inter-American Commission on Human Rights (hereinafter the “Commission”, the “Inter-American Commission”, or the “IACHR”) received a petition lodged by Mr. Mario Conrado Solórzano Puac (hereinafter “the petitioner” and “the alleged victim”) which claims that the Republic of Guatemala (hereinafter “Guatemala”, the “State” or the “Guatemalan State”) bears international responsibility for the lack of due diligence in the investigation, the alleged negligence and actions to cover up the crime of agents of the state in the criminal proceeding opened in connection with the murder of his 16-year-old son, Richard Conrad Solórzano Contreras, which occurred on March 10, 2003, as well as the alleged failure to receive adequate medical care in the moments leading up to his death while he was hospitalized.

2. The petitioner claims that the State did not investigate his son’s murder, which was committed by a private citizen, with due diligence and, therefore, argues that the State denied him justice and left the crime unpunished. The petitioner says that the police and justice authorities failed to act in the opening stages of the investigation, thereby allowing the alleged culprit to escape. Specifically, the petitioner argues in this respect that certain authorities participated in acts designed to conceal the responsibility and whereabouts of the alleged culprit. For its part, he argues that the medical staff at the hospital where his wounded son was admitted and shortly afterwards died failed to provide him the medical care he required. As to admissibility requirements, the petitioner says that the remedies under domestic law have been exhausted.

3. For its part, the State argues with respect to admissibility requirements that the petition is inadmissible because the remedies under domestic law have not been exhausted and, therefore, it is not possible to claim a violation of the American Convention on Human Rights (hereinafter

the “American Convention”), in accordance with Article 46(1)(a) of said instrument and Article 31 of the Rules of Procedure of the IACHR. Specifically, the State says that there are no violations of the American Convention given that the petitioners’ pleadings are being heard in domestic petitions and, therefore, they must first be disposed of in the national courts.

4. The IACHR, without prejudging the merits of the matter and having analyzed the information available and verified compliance with the admissibility requirements contained in Articles 46 and 47 of the American Convention and Articles 30 and 37 of its Rules of Procedure, concludes that the petition is admissible with regard to the alleged violation of rights recognized in Articles 8 and 25 of the American Convention in connection with Article 1(1) of that instrument. With respect to the claims regarding alleged denial of medical treatment to Richard Conrad Solórzano, the Commission declares them inadmissible due to non exhaustion of domestic remedies. Furthermore, the Commission decides to notify the parties of this decision, make it public, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

1. Processing of the Petition

5. On July 14, 2003, the Commission received a petition dated July 8, 2003, lodged by Mr. Mario Conrad Solórzano Puar, President, Coordinator General, and Founder of the Richard Solórzano Solidarity Group Committee. The petition was assigned number 581-03. On March 30, 2005, the IACHR relayed the pertinent portions of the petition to the State and requested it to submit its response within two months, in accordance with Article 30 of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter the “Rules of Procedure”). The State’s response was received on May 25, 2005.

6. The IACHR also took receipt of information submitted by the petitioner on the following dates: May 3 and 4, 2005; June 17, 2005; August 11, 2005; September 21, 2005; October 13, 2005; March 6, 2006; June 26, 2006; September 19, 2006; October 11, 2006; December 12, 2006; March 3, 2007; July 24, 2007; March 24, 2008; July 22, 2008; December 30, 2008, and August 4, 2009. Said communications were duly forwarded to the State, as appropriate, for its attention and comment.

7. In addition the IACHR received comments from the State on the following dates: May 25, 2005; September 19, 2005; November 28, 2005; May 4, 2006; August 3, 2006; January 19, 2007; May 4, 2007; September 12, 2007; May 21, 2008; September 9, 2008; May 12, 2009, and October 8, 2009. Said communications were duly forwarded to the petitioner.

III. POSITIONS OF THE PARTIES

A. The Petitioner

8. The petitioner says that his son, Richard Conrad Solórzano Contreras, age 16, was stabbed in the right side of his neck by an individual at around 8:30 p.m. on March 10, 2003,

approximately three and a half blocks from his residence. He was immediately taken to Coatepeque National Hospital.

9. As regards the medical assistance that his son received, the petitioner alleges that at the hospital, the doctor and nurses on duty who attended him were not concerned with saving his life because they “merely cleaned the wound, prepared a vein to connect a drip, and checked his vital signs,” without proceeding to perform surgery in order to save him. The petitioner says that his son was alive in the emergency room for approximately 30 minutes before the doctor ordered the oxygen to be removed and he died minutes later in his brother’s arms. He adds that a male nurse mocked his son’s brother, telling him that he had “better find a box.”

10. As regards the alleged culprit of the homicide, the petitioner says that on that same day, March 10, 2003, he was admitted to Coatepeque National Hospital with a number of injuries and was recognized and reported by the relatives, friends, classmates, and neighbors who were accompanying his son, to the policeman on duty at the hospital and to the Deputy Chief of the National Civil Police and the Assistant Prosecutor from the Office of the Attorney General who went to the hospital. He says that when the authorities were asked to arrest the alleged culprit and place him in preventive detention, they replied that everything was “under control”. The petitioner mentions that the assistant prosecutor took statements from three witnesses at the hospital who specifically said that the person allegedly responsible for the homicide of Richard Conrad Solórzano Contreras was in the hospital at that moment and they even indicated which bed he was in. However, he says that despite the fact that the authorities were advised of the presence in the hospital of the person allegedly responsible for the homicide, the latter escaped. In this connection, the petitioner says that the state officials present in the hospital emergency room could -and should- have arrested the alleged culprit under Article 257 of the Code of Criminal Procedure,[FN1] which provides that “the police shall arrest anyone they catch in flagrante delicto or pursue them immediately after the commission of an offense.”

[FN1] Article 257. (Arrest)

The police shall arrest anyone they catch in flagrante delicto or pursue them immediately after the commission of an offense.

In the same circumstances any person has the authority to make the arrest and to prevent the offense from causing further consequences. They shall immediately turn over of the arrested man, together with any objects collected, to the Office of the Attorney General, the police, or the nearest judicial authority.

The Office of the Attorney General may request the judge or court to order the arrest of the accused when it considers that the legal requirements are met or that their incarceration is necessary, in which case it shall place them at the disposal of the judge in charge of the investigation. The judge may order any non-custodial measures or dispense with them altogether, in which case they shall set the accused at liberty.

11. The petitioner adds that there were certain irregularities in the hospital admission records, which show two different times of admission, the name written differently, and different indications with respect to his place of origin. The petitioner holds that the purpose of the latter

was to prevent his arrest. The petitioner says that the alleged killer was last seen in Mexican territory on his way to the United States.

12. Furthermore, the petitioner says that on the night of the events a National Civil Police patrol composed of approximately four officers spotted a person running, proceeded to pursue him and quickly caught up with him. He says that the officers pointed their guns at this person, threatened to shoot him, threw him to the ground, and beat and kicked him in order to get him to confess to having murdered someone a few minutes earlier. However, he says that the victim of this mistreatment was his other son, Alexander Solórzano, age 15, who had been running after the vehicle that was carrying his mortally wounded brother to the hospital.

13. As regards the nature of the petition, he says that his complaint does not seek to hold the State responsible for his son's death, because the homicide did not appear to have been committed by agents of the State or with their direct participation. He clarifies that his petition is based on the fact that the alleged culprit escaped because of the actions of the state authorities, who propitiated his flight and, therefore, the denial of justice, and he claims that several agents of the state were involved in a conspiracy to conceal the responsibility and whereabouts of the alleged culprit.

14. As to the criminal inquiry into his son's murder by the Court of First Instance for Criminal Matters and Environmental Offenses in and for the Municipality of Coatepeque, numbered 1200-03, he says that it remains in complete impunity. According to the petitioner, this is clear from the confirmation that a succession of assistant prosecutors were assigned to the investigation; that the authorities went to the hospital but that neither the Office of the Attorney General nor the National Civil Police visited the scene of the crime to investigate and collect relevant information; that an arrest warrant was only issued on March 19, 2003, and not served because the alleged culprit escaped; that information was falsified in numerous procedures; and that no public officials were investigated in connection with the alleged escape of the culprit and the purported negligence in the medical treatment administered to his son. He also says that, given that the police did not visit the scene of crime, the murder weapon was searched for and found by Richard Conrad's next of kin, who handed it over to the appropriate authorities.

15. The petitioner adds that on January 22, 2004, he filed a criminal complaint with the Court of First Instance for Criminal Matters and Environmental Offenses in and for the Municipality of Coatepeque, in which he charged the representative of the Office of the Attorney General, the representative of the National Civil Police, and the Deputy Chief of the National Civil Police, who were at the hospital on the night of the events, with denial of justice and aiding and abetting. He reports that the complaint was accepted, processed, and subsequently dismissed because the court found that the state agents had acted in accordance to law.

16. The petitioner also reports that in early 2005 he filed another complaint, this time with the Office of the Anticorruption Prosecutor of the Office of the Attorney General, in which he charged the same public officials as mentioned above with corruption and cover-up charges after the facts. The complaint was declared to be with due cause and referred to the Office of the General Supervisor of the Office of the Attorney General for processing, as case No. 4-2005. The documents accompanying the petition include a report from the Office of the General Supervisor

of the Office of the Attorney General dated February 2, 2005, which concluded, inter alia, that the escape of the suspect was facilitated by the tardiness in issuing the arrest warrant, given that the identity of the accused was known on the night of the events, and it recommended that a disciplinary proceeding be opened.

17. With respect to exhaustion of the remedies under domestic law, the petitioner says that he attempted all the appropriate judicial and administrative steps but that they did not receive effective treatment.

18. Finally, he says that as a result of lodging the petition with the IACHR he feared that he would be detained and extrajudicially executed by “clandestine para-police groups”. In this connection, he says that on January 31, 2006, while standing outside his home with a relative and a neighbor he was the victim of an attack in which gunshots were fired; however, he emerged unharmed. He reports that this incident remains in impunity.[FN2]

[FN2] On February 3, 2006, the IACHR received a request for precautionary measures on behalf of Mario Conrado Solórzano Puac and family. The request was assigned number 17-06. After relaying the request to the Guatemalan State, the latter reported that it was providing protection to the petitioner and his family. Having evaluated the information supplied by the parties, the IACHR decided not to grant the request for precautionary measures.

B. The State

19. With respect to the death of Richard Conrad Solórzano Contreras, the State holds that according to the medical records he was admitted to the emergency room of Coatepeque National Hospital on March 10, 2003, with a stab wound five centimeters deep and two to three centimeters long located over the vena cava causing his right lung to fill with blood. In this regard, the State says that the appropriate resuscitation procedures were carried out but that he eventually died due complications from the wound. It says that, in the opinion of the doctors who treated him, he died immediately.

20. As to the criminal proceeding, the State holds that the Office of the Attorney General has carried out the legally required steps in order to locate the man responsible for the crime. In that regard, it provides a detailed account of all the steps taken, among which the following may be mentioned for their relevance:

- On March 11, 2003, the removal of the corpse was carried out.
- On March 19, 2003, the Office of the Attorney General requested a detention order for the alleged culprit.
- On March 21, 2003, the Judge of the Court of First Instance for Criminal Matters and Environmental Offenses in and for the Municipality of Coatepeque issued a detention order.
- On May 9, 2003, Mr. Mario Conrado Solórzano Puac requested his inclusion as co-complainant.

- On February 20, 2004, the detention order was reissued to the National Civil Police Department and the Office of the Chief of Police of the Department of San Marcos.
- On March 29, 2004, a search warrant was requested for the building in which the parents of the accused reside in order to locate him.
- The search was carried out on April 9, 2004.
- On April 19, 2004, an official letter was sent to the Criminal Investigation Service requesting them to carry out an investigation in order to locate the accused.
- On February 28, 2005, the whereabouts of the accused was entered in the record, indicating that he was out of the country.
- On July 29, 2005, the Office of the Attorney General requested Interpol to enforce the international detention order.

21. With respect to the judicial proceeding for the crimes of denial of justice and cover-up, the State says that on January 22, 2004, Mr. Mario Conrado Solórzano filed a criminal complaint with the Court of First Instance for Criminal and Narcotics-Related Matters in and for Coatepeque, in which he accused the assistant prosecutor, the representative of the National Civil Police and the Deputy Chief of the National Civil Police, who were present on the night of the events, of the aforesaid offenses. In that connection, the State says that on June 15, 2004, the Court dismissed the complaints because it found that the agents of the state had acted in accordance to law. Notice of that decision was issued on June 23, 2004, and the complainant has not appealed it.

22. As regards the administrative proceeding opened against the assistant prosecutor who was present at the hospital on the night of the murder, the State notes that the District Prosecutor for the Municipality of Coatepeque indicated in his report of February 22, 2005, prepared at the request of the Office of the General Supervisor of the Office of the Attorney General, that the complaint should be dismissed and closed under the principle of non bis in idem because the assistant prosecutor had already being the subject of a proceeding instituted in connection with the same events for alleged denial of justice and being an accessory after the fact in which he was cleared of responsibility.

23. In its communication of October 2009, the State submitted updated information on the detention order for the person allegedly responsible for the murder. In that connection, the State reports that the order remains in force in the Department of San Marcos, but that a request would be made to the judge presiding over the case to extend the detention order in order to notify it to every National Civil Police precinct in the country. Furthermore, the State says that the Office of the Attorney General reported in June 2009 that the measures taken to locate and capture the culprit have been to send official letters to the National Civil Police Department and the Office of the Chief of Police of the Department of San Marcos, as well as coordination with Interpol.

24. Finally, with respect to the admissibility of the petition, the State argues that the complaints at the domestic level must first be settled in keeping with Article 46(1)(a) of the Convention. Specifically, the State says that there are no violations of the American Convention given that all of the petitioners' pleadings are being heard in domestic petitions and, therefore, they must first be disposed of in the national courts. It adds that the process remains at the investigation stage

IV. ANALYSIS

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

25. The petitioner has standing under Article 44 of the American Convention to lodge petitions on his own behalf as an alleged victim in respect of whom the Guatemalan State undertook to observe and ensure the rights recognized in the American Convention. Thus, the Commission has *ratione personae* competence to examine the petition.

26. The Commission is also competent *ratione loci* to take up the petition because it alleges violations of rights protected in the American Convention that are purported to have occurred within the jurisdiction of the State. The Commission is competent *ratione temporis* because the obligation to observe and ensure the rights protected in the American Convention was already binding upon Guatemala at the time the events described in the petition are alleged to have occurred, given that it ratified the American Convention on May 25, 1978.

27. Finally, the Commission has *ratione materiae* competence to analyze the instant case because the petition alleges possible violations of human rights protected by the American Convention.

B. Other admissibility requirements for the petition

1. Exhaustion of domestic remedies

28. Article 46(1)(a) of the American Convention provides that admission of petitions lodged with the Inter-American Commission in keeping with Article 44 of the Convention shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve them before they are taken up in an international proceeding.

29. The prior exhaustion rule applies when there are actually available in the national system suitable and effective remedies to repair the alleged violation. In that connection, Article 46(2) specifies that the rule does not apply when: a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right in question; b) the alleged victim did not have access to the remedies under domestic law; and, c) there has been unwarranted delay in rendering a final judgment under said remedies. As Article 31 of the IACHR Rules of Procedure provides, when the petitioner invokes one of these exceptions, it is up to the State concerned to demonstrate that the remedies under domestic law have not been exhausted, unless that is clearly evident from the record.

30. The petitioner says that he attempted all the appropriate judicial and administrative steps but that they did not receive effective treatment and, therefore, his son's murder remains unpunished. He also says that the public officials involved in the purported cover-up of the

alleged culprit's escape continue to serve in state organs. The petitioner also claims that the medical staff at the hospital where his wounded son was admitted did not provide him with the medical assistance necessary to save his life.

31. For its part, the State claims non-exhaustion of domestic remedies on the basis that the criminal proceeding to elucidate the facts and apportion the respective criminal responsibilities has not concluded. The State also holds that the right to judicial protection was not violated because Mr. Solórzano's complaint was admitted and the respective criminal prosecution and proceedings initiated. In that connection, the IACHR proceeds to analyze the aforesaid rule under the Convention.

32. In this regard, the Commission should point out that in order to determine whether the Convention rule requiring exhaustion of domestic remedies has been satisfied, the purpose of the petition must be determined and the domestic remedies used to contest the situation denounced must be analyzed. Thus, the Commission notes that the purpose of the complaint in the instant case concerns the alleged failure to provide Richard Conrad Solórzano with adequate medical treatment in the moments leading up to his death while he was hospitalized; the purported lack of due diligence in the investigation, and the supposed negligence on the part of agents of the State in the criminal proceeding instituted following his death.

33. With respect to the claims of inadequate medical attention at the hospital to which Richard Solórzano was admitted wounded on the night of the homicide, the IACHR notes that the petitioner has not supplied any information to suggest the invocation of any remedy at the national level designed to bring these circumstances to the attention of the appropriate judicial authorities. Consequently, the IACHR finds that said claims are inadmissible since it has not been shown that the rule on prior exhaustion of domestic remedies contained in the Convention has been met, nor has an explanation been provided of circumstances that warrant an exception to this rule.

34. As regards the submissions regarding lack of due diligence in the investigation and supposed negligence on the part of agents of the State in the criminal proceeding instituted following the homicide of Richard Conrad Solórzano Contreras, the Commission finds that the facts connected with the aforesaid homicide entail publicly actionable offenses under the country's domestic laws. The Commission's case law recognizes that when a publicly actionable offense is committed, the State has the obligation to institute criminal proceedings and pursue them,^[FN3] and that in such cases, this is the best way to clarify the facts, judge the perpetrators, and establish the corresponding criminal punishment, in addition to providing for other forms of reparation, including financial reparation.

[FN3] Report 52/97, Case 11.218, Arges Sequeira Mangas, Annual Report of the IACHR 1997, pars. 96 and 97. See also Report 55/97, par. 392. Report 57/00 La Granja, Ituango, Annual Report of the IACHR 2000, par. 40.

35. In this regard, the IACHR sees that on the very day of Richard Conrad's homicide, that is, March 10, 2003, a criminal investigation was opened and a case brought before the Court of First Instance for Criminal Matters and Environmental Offenses in and for the Municipality of Coatepeque. The Commission notes that in said proceeding the judge of the Court of First Instance for Criminal Matters and Environmental Offenses in and for the Municipality of Coatepeque only issued a detention order for the alleged culprit of the murder of the Solórzano youth on March 21, 2003. The record also shows that one year after the detention order was issued, on April 9, 2004, a search was carried out of the building in which the parents of the accused reside in order to locate him. Furthermore, in response to an investigation report dated February 28, 2005, to the effect that the alleged culprit was out of the country, on July 29, 2005, the Office of the Attorney General requested Interpol to enforce the international detention order.

36. It emerges from the information supplied by the State that since 2005 no further judicial steps to locate the alleged murder culprit have been taken in the framework of the aforesaid criminal proceeding, other than what the State reported in its note of October 8, 2009, where it mentioned that a request would be made to extend the detention in order to notify it to every National Civil Police precinct in the country.

37. For its part, the IACHR finds that the timeline of these proceedings is indicative of delay, particularly when one considers that under Guatemalan criminal law, the absence of the accused does not suspend the criminal investigation in its preparatory stage until the opening of the trial proper.[FN4]

[FN4] In this regard, the Code of Criminal Procedure of Guatemala provides as follows: Article 79: (Default) The accused shall be declared in default when, without the permission of the court, they fail to appear in response to a summons without a serious impediment to do so; flee from the facility or place where they were detained; disregard an order issued for their arrest; or absent themselves from the place assigned as their residence.

The declaration of default shall be issued by the judge of first instance or the competent tribunal following confirmation of non-appearance, flight, or absence, in addition to which a preventive detention order shall be issued.

A ne exeat order shall also be issued before the appropriate authorities to prevent them from leaving the country. A photograph, drawing, information and physical description of the defaulter may be published in the media in order to facilitate their immediate arrest.

Article 80.- (Effects of default). The declaration of default shall not suspend the preparatory process. In the rest of the process, the procedure shall only be suspended with respect to the defaulter, in which case the proceedings, effects, instruments or evidence which it is indispensable to preserve shall be reserved, and it shall continue for the other accused present.

The declaration of default shall entail revocation of the liberty that the accused might have been granted and shall obligate them to pay the costs caused.

When the accused appears or is turned over to the authority that seeks them, the proceeding with respect to this accused shall resume from the appropriate stage

38. In keeping with the foregoing, as a general rule, criminal investigations must be conducted promptly, in order to protect the interests of the victims, preserve the evidence, and safeguard the rights of anyone considered a suspect in the context of the investigation. As the Inter-American Court has noted, while every criminal investigation must meet a series of legal requirements, the rule of prior exhaustion of domestic remedies should not lead international action on behalf of the victims to come to a halt or to be delayed to the point of being rendered ineffective.[FN5]

[FN5] I/A Court H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, par. 93.

39. Consequently, the Commission finds that the exception provided in Article 46(2)(c) of the American Convention is applicable. Accordingly the requirement of prior exhaustion of domestic remedies contained in the American Convention does not apply and nor, therefore, does the six-month deadline for lodging the petition.

40. All that remains to be noted in this respect is that invocation of the exceptions to the rule of exhaustion of domestic remedies provided in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights set forth therein, such as guarantees of access to justice. However, Article 46(2), by its nature and purpose, is a self-contained provision vis á vis the substantive provisions contained in the Convention. Therefore, to determine whether or not the exceptions to the rule of exhaustion of domestic remedies provided in subparagraphs (a), (b) and (c) of the aforesaid provision are applicable to a particular case requires an examination carried out prior to and separate from the analysis of the merits of the case, since it depends on a standard of evaluation different to that used to establish whether or not there has been a violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that have prevented exhaustion of domestic remedies will be examined in the report that the IACHR adopts on the merits of the dispute, in order to determine if they constitute violations of the American Convention.

2. Filing time

41. Under Article 32(2) of the Rules of Procedure of the IACHR, when the exceptions to the rule requiring prior exhaustion of domestic remedies apply, the petition is to be presented within what the Commission deems to be a reasonable period. Pursuant to this provision, in its analysis, the Commission “shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.”

42. With respect to the petition under analysis, the Commission has determined that the exception provided in Article 46(2)(c) is applicable, and therefore, it must evaluate if the petition was presented within a reasonable time in accordance with the specific circumstances of the situation submitted for its consideration. In that regard, given that the criminal inquiry into the murder of Richard Conrad Solórzano Contreras on March 10, 2003, is at the preliminary

investigation stage, the Commission concludes that the instant petition was presented within a reasonable time.

3. Duplication of international proceedings and *res judicata*

43. There is nothing in the record to suggest that the subject matter of the petition is pending in another international proceeding for settlement or that it has previously been studied by the Inter-American Commission. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) must be deemed met.

4. Characterization of the alleged facts

44. As the Commission has held in other cases, it is not appropriate for it at this stage of the proceedings to determine whether or not the American Convention has been violated. For the purposes of admissibility, the IACHR simply has to determine if the arguments set out in the petition state facts that could tend to establish a violation of the American Convention, as required under Article 47(b) thereof, and whether the petition is “manifestly groundless” or “obviously out of order,” as paragraph (c) of the same Article provides. The standard by which to assess these extremes is different from the one needed to decide the merits of a petition. At this stage the IACHR must perform a summary *prima facie* evaluation that does not imply any prejudgment or advance opinion on the merits of the petition. By establishing two clearly separate phases -one for admissibility and the other for the merits- the Commission’s own Rules of Procedure reflect the distinction between the evaluation the Commission must make to declare a petition admissible, and the evaluation required to determine the responsibility of the State.

45. In the instant case the petitioner alleges violation by the Guatemalan State of fair trial guarantees and access to justice in the investigation of his son’s murder. The petitioner claims in this regard that the police and the representatives of the Office of the Attorney General did not adopt the measures needed to investigate and get to the truth of the crime, and draws attention to the lapses of inactivity in both the investigation and the search for the alleged perpetrator. The petitioner alleges irregularities in the investigation and the involvement of state agents in concealing the responsibility and whereabouts of the alleged culprit, according to the arguments referred in the paragraph sixteen of the instant report. The State, for its part, argues that the steps taken to investigate the complaints filed by the petitioner were pursued in accordance to law.

46. According to the standard of assessment applied in the admissibility stage, which is necessarily preliminary in nature, the petition contains claims that require review in the merits stage in order to determine if they reflect a violation of Mr. Mario Conrado Solórzano’s right to judicial protection and fair trial guarantees, especially if the State proceeded with due diligence negligence in the investigation of the alleged facts, and if it took place concrete actions to cover up the crime or judicial corruption, according to the mentioned in paragraph sixteen.

47. Thus, based on the facts described in petition, the Commission finds that the petitioner has formulated allegations that are neither “manifestly groundless” nor “obviously out of order” and which, if found to be true, could constitute violations of Articles 8 and 25 of the American Convention, respectively, in conjunction with Articles 1(1) of that international instrument.

48. Since these aspects of the complaint are clearly not baseless or out of order, the Commission considers the requirements set forth in Articles 47(b) and (c) of the American Convention to be met

V. CONCLUSION

49. The Commission concludes that the case is admissible and that it is competent to examine the complaint presented by the petitioner with regard to the alleged violation of Articles 8 and 25 of the American Convention, taken together with the obligation under Articles 1(1) thereof

50. Based on the factual and legal arguments given above and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant petition admissible with regard to the alleged violation of the rights recognized in Articles 8 and 25 of the American Convention, taken in conjunction with the obligation under Articles 1(1) thereof.
2. To transmit this report to the petitioner and the State.
3. To proceed with its analysis of merits in the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 29th day of the month of October, 2009.
(Signed): Luz Patrica Mejía Guerrero, President; Víctor E. Abramovich, First Vice-President; Felipe González, Second Vice-President; Paulo Sérgio Pinheiro, and Paolo G. Carozza, members of the Commission.