

**REPORT No. 8/10**  
CASE 12.374  
ADMISSIBILITY  
JORGE ENRIQUE PATIÑO PALACIOS *et al.*  
PARAGUAY  
March 16, 2010

**I. SUMMARY**

1. On February 26, 2001, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition lodged by César Patiño Mignone and Alba Palacios de Patiño (hereinafter "the petitioners") on behalf of their son, Jorge Enrique Patiño Palacios (hereinafter "the alleged victim") claiming violation of the alleged victim's human rights in the jurisdiction of the Republic of Paraguay (hereinafter "Paraguay," the Paraguayan State," or "the State"). The petition claimed violations against Jorge Enrique Patiño Palacios and his family with respect to the right to life, the right to a fair trial, and the right to judicial protection enshrined, respectively, in Articles 4, 8, and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), all in conjunction with the obligations to respect and ensure the rights guaranteed in Article 1(1) of the American Convention.

2. The petitioners indicated that their son, Jorge Enrique Patiño Palacios, then 20 years old, had died after three days in intensive care because of a gunshot to the head he received on October 21, 1994. They claim that there had been police and judicial irregularities during the investigation of the incident as well as an unwarranted delay in processing the case, which had made it impossible to solve the murder of the alleged victim and punish the perpetrators.

3. The State argued that there had been no omissions on the part of either the police or the court that heard the case, since the actions required by national law in cases of violent death had been ordered, including the intervention of experts and witnesses. It also claimed that the petitioners had not exhausted the remedies available under domestic law before presenting the case to the Commission, despite having been extensively involved throughout the proceeding and not having been prevented from employing the relevant procedural mechanisms. It stated that the reason why the judicial process had taken several years was that it had been prosecuted under the old written and inquisitorial system of criminal procedure.

4. After analyzing the positions of the parties, the Inter-American Commission concludes that it has jurisdiction to rule on the petitioners' claim, which is admissible under Article 46 of the American Convention. The Commission decides to proceed with its analysis of the merits of the alleged violations committed against the family of Jorge Enrique Patiño Palacios by the State of Paraguay, under Articles 8 and 25 of the American Convention in association with the general obligation enshrined in Article 1.1 thereof. In addition, it declares inadmissible the alleged violations against Jorge Enrique Patiño Palacios under Article 4 of the Convention. Therefore, the Commission decides to publish this report and include it in its Annual Report to the OAS General Assembly.

**II. PROCESSING BY THE IACHR**

5. On February 26, 2001, the petitioners filed the petition with the Executive Secretariat of the Commission. The IACHR forwarded the petition to the Paraguayan State on April 3, 2001 and asked it to submit a response within three months. The petitioners submitted additional information to the Commission on June 21, 2001, and the State presented its response in communications dated July 10 and August 1, 2001. The petitioners submitted additional observations on August 14, November 4, and November 26, 2001; April 22, 2002; August 5 and 13, September 15, October 28, and December 22, 2003; March 16, 2004; January 11 and July 20, 2005; January 24, 2006, and September 18, 2007, all of which were duly forwarded to the State.

6. The State sent additional observations on September 6 and October 11, 2001; May 23, 2003; June 28, November 14, and December 20, 2007; May 20 and July 28, 2008, as well as on May 11, 2009.

### **III. POSITIONS OF THE PARTIES**

#### **A. The Petitioners**

7. According to the petitioners, on October 21, 1994, Jorge Enrique Patiño Palacios went to visit his friend Miguel Rodríguez Trappani at his home and while being there he received a gunshot to the head. They claim that, at the time of the incident, there were only three people in the house: Jorge Enrique Patiño Palacios, Miguel Rodríguez Trappani, and the latter's father, Miguel Rodríguez Alcalá Casal.

8. The petitioners state that the alleged victim, Jorge Enrique Patiño Palacios, died from a gunshot wound on October 24, 1994, after being three days in the intensive care unit of the Sanitorio Americano hospital. The petitioners assert that their son was murdered by one or both of the Rodríguez's and maintain that the motives for the murder were political but that the authorities made it look like a suicide.

9. The petitioners claim that various irregularities occurred by the police and in the judicial handling of the case. They maintain that the police did not take the required actions to gather the evidence, such as questioning the family and neighbors, and this, they assert, worked in favor of the defendants. They add that the police arrived at the scene almost three hours after the incident. Furthermore, they state that the Criminal Division was the only department of the National Police to have conducted investigations, and the only immediate evidence was an expert analysis of the skin tissue surrounding the bullet entry hole, which was done before the alleged victim underwent surgery to stop the bleeding.

10. They argue that the Criminal Division acted without the knowledge of a judge, in violation of the constitutional requirement to "investigate under court direction," and that the police report was not submitted to judicial authorities until December 13, 1994, when it should have been sent within a maximum period of 72 hours.

11. They also argue that, because of the "influence of the suspects in the political, economic, and social spheres," they were able to prevent the immediate involvement of the judge, José Benítez Rivera, who should have assumed control of the judicial and police investigation and ordered an autopsy of the body of Jorge Enrique Patiño Palacios immediately. Instead, the autopsy was done eight months after his death, at the request of the petitioners' lawyer.

12. In their petition, Mr. and Mrs. Patiño question the actions of the Attorney General, Aníbal Cabrera Verón, who, they claim, favored and protected Miguel Rodríguez Trappani "by hiring him and keeping him on as a court official in the Office of the Attorney General,"<sup>1</sup> which, they say, impaired the impartial conduct of the other members of the Attorney General's Office. Furthermore, the petitioners contend that the prosecutor, Fabriciano Villalba, was biased and partial in his actions because, having forced the disqualification of the previous prosecutor for the case, he never assumed his role in the proceedings, except to issue his decision in favor of Miguel Rodríguez Trappani. They also state that the Attorney General failed to consider an important part of the Criminal Division's report.

13. The petitioners state that on June 15, 2001 a judgment was issued in the criminal case involving the death of their son<sup>2</sup>. Ruling on the basis of various expert findings, the court concluded that

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<sup>1</sup> A newspaper article published June 16, 2001, states that Miguel Alejandro Rodríguez Alcalá Trapani "was never dismissed from the Attorney General's Office, where he worked as an official of the Attorney Minor."

<sup>2</sup> A copy of this judgment was enclosed with the petitioner's communication of June 21, 2001

“Jorge Patiño did not commit suicide.” It also found that “certainty of a person’s guilt in a case of punishable homicide cannot be determined by simple process of elimination.”<sup>3</sup> It decided to acquit Miguel Alejandro Rodríguez Trapani on this basis, given that his father, Miguel Rodríguez Alcalá Casal, had died during the trial.<sup>4</sup>

14. The petitioners indicate that they appealed this judgment and that on March 16, 2004, the appeals court had confirmed the lower court decision. On May 10, 2004, they lodged an action of unconstitutionality, which was rejected on June 11, 2004, on the argument that even if the Constitutional Court did not share the courts' criterion for interpretation, an action for unconstitutionality could not be brought to win an argument. They add that, on May 11, 2004, they also applied for judicial review (cassation) of the appeals court decision in order to exhaust all ordinary and extraordinary remedies. They report that the Supreme Court of Justice declared it inadmissible on December 12, 2005.

15. The petitioners maintain that there was no serious, effective, and impartial investigation of the case. They also claim that there was unwarranted delay in prosecuting it. They clarify that, although the alleged victim’s death was reported immediately to the authorities in 1994, the lower court sentence was not handed down until June 2001, and the appeals court took almost two years to issue its opinion. The case was closed in December 2005.

## **B. The State**

16. Responding to the petition lodged by the petitioners, the State of Paraguay indicates that after young Patiño Palacios died, the first actions were taken by the police because it was a case of violent death. The police brought in agents from the criminal section of the investigations department, who went to the site of the incident and also took samples from the victim and the defendants at the Sanitorio Americano hospital. It adds that, on November 24, 1994, in memorandum number 143, the police notified the judge Benítez Rivera, who opened pre-trial proceedings to investigate and verify the reported incident, and on December 28, 1994 the complaint was admitted. In 1995, among the many actions taken to investigate and clarify the incident, the judge set a hearing date to obtain the testimonies of Miguel Rodríguez Alcalá Casal and Miguel Rodríguez Trapani, he had also ordered the Sanitorio Americano hospital to submit the medical background information to the court. Thus, the State maintains that there were no omissions on the part of the police or the court.

17. The State indicates that one of the defendants, Miguel Rodríguez Alcalá Casal, was murdered in February 1998 as he was coming home at night and that the trial had consequently continued only against his son Miguel Rodríguez Trapani. The State maintains that following the constitutional principle of presumption of innocence, the latter was eligible for public employment as long as he had not been convicted, and thus there had been no reason to suspend his employment as a public servant.

18. In its first communications, the State maintained that all remedies of domestic law had not been exhausted in the instant case and that Article 46(2)(c) of the American Convention was not applicable. It argued that the Article cited by the petitioners as a basis for the admissibility of the petition did not apply because the parties had been extensively involved throughout the proceeding and had not been prevented from attempting all the relevant procedural mechanisms.

19. The State indicates that the reason why the case took several years was that it was opened and conducted under the old written and inquisitorial criminal procedure, which divided proceedings into two stages: pre-trial and trial. In addition, the case had always presented two facets: the hypothesis of suicide, because of the young man’s history of depression and prior attempts, and the hypothesis of homicide.

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<sup>3</sup> The petitioners are quoting from the judgment of which they sent a copy to the Commission.

<sup>4</sup> In their communications, the petitioners clarify that Rodríguez Alcalá Casal was murdered in February 1998.

20. In a communication received in May 2003, the State explained to the Commission that the appeals court judges had “refused to continue to hear the case because they had been accused before the Inter-American Commission on Human Rights (...) and therefore found themselves in a mandatory recusal situation” and that this had further slowed the judicial process.

21. In a communication received on June 28, 2007, the State asked the Commission to declare the instant petition inadmissible because the Commission did not have jurisdiction to “review court decisions of the domestic jurisdiction of a particular State,” even when “repeated court rulings may or may not have been agreeable and acceptable to the petitioners.” It also stated that the petitioners had exercised their right to trial in all domestic jurisdictions in every instance. It contended that the Paraguayan State had therefore not violated the guarantees enshrined in Articles 8 and 25 of the American Convention.

#### **IV. ANALYSIS OF ADMISSIBILITY**

##### **A. Commission's jurisdiction *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae***

22. Article 44 of the American Convention establishes that “any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.” Thus, the petitioners are competent to submit a petition to the Inter-American Commission, and the IACHR has *ratione personae* jurisdiction in the instant case.

23. The State of Paraguay has been a party to the American Convention since August 24, 1989, date on which it deposited the ratification instrument. The petitioners claim violations of rights enshrined in the American Convention. Therefore, the IACHR has *ratione materiae* jurisdiction in the instant case.

24. The Inter-American Commission has *ratione loci* jurisdiction because the claimed human rights violations occurred in a State party to the American Convention. Likewise, the Commission has *ratione temporis* jurisdiction because, at the time of the facts presented, the American Convention was already in force in the Paraguayan State.

**B. Other requirements for admissibility****1. Exhaustion of domestic remedies**

25. Article 46(1)(a) of the American Convention provides that, for a complaint lodged with the Inter-American Commission pursuant to Article 44 of said treaty to be admissible, all remedies under domestic law must have been exhausted in accordance with the generally recognized principles of international law. The Commission recognizes this requirement as a procedural requirement, so that States may be seized of alleged violations of a right protected under the American Convention and, if possible, have the opportunity to resolve this in their own courts prior to the application of international jurisdiction.

26. Under the American Convention, this provision does not apply when domestic remedies are not available for reasons of fact or law. More specifically, Article 46(2) establishes exceptions to the general principle of exhaustion of domestic remedies when (a) the State's domestic legislation does not afford due process of law for the protection of the rights that have allegedly been violated; (b) the alleged victim has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in the resolution of the case.

27. During the initial phase of the petition process, the petitioners asked to be exempted under Article 46(2)(c) of the American Convention from the requirement of exhaustion of domestic remedies, because of an unwarranted delay in investigating the incident and punishing the perpetrators. The State claimed that the procedural delay was due to the old written and inquisitorial criminal procedure under which the case was processed and to the pursuit of two hypotheses about the death of the alleged victim, which had lengthened the proceedings.

28. In communications subsequent to the petition, both the petitioners and the State informed the Commission of the June 2001 lower court judgment, the March 16, 2004 judgment of the Court of Appeal, and the December 12, 2005 rejection of the appeal in cassation by the Supreme Court of Justice. After the December 2005 decision, the petitioners ceased to claim exemption under Article 46(2)(c) of the Convention, and the State indicated that the domestic remedies had been exhausted.

29. Therefore, the Commission finds that the petitioners have exhausted the remedies available under domestic law, for the purpose of having the State investigate the death of their son and punish the perpetrators.

**2. Compliance with the filing period**

30. Article 46(1)(b) of the Convention establishes that, to be declared admissible, petitions must be filed within a period of six months from the date on which the applicant was notified of the final judgment at the national level.

31. In the instant case, the Commission notes that the domestic remedies were exhausted on December 12, 2005, after the petition was filed. Under such circumstances, compliance with the filing period for the petition goes hand in hand with exhaustion of the domestic remedies, and the Commission considers the requirement to have been met.

**3. Duplication of proceedings and international *res judicata***

32. Article 46(1)(c) of the American Convention sets as a requirement for the admissibility of petitions that the subject "is not pending in another international proceeding for settlement," and Article 47(d) of the Convention stipulates that the Commission shall consider inadmissible a petition that is "substantially the same as one previously studied by the Commission or by another international organization." In the instant case, the parties have not indicated the existence of either of these grounds for inadmissibility, nor can they be deduced from the record.

#### 4. Determination of the facts presented

33. The Commission must decide whether, if confirmed, the facts described in the petition would tend to establish violations of the rights enshrined in the American Convention, as required under Article 47(b), or whether the petition should be rejected because it is “manifestly groundless” or “obviously out of order,” as required under Article 47(c). At this stage in the proceeding, the IACHR must make a *prima facie* evaluation of whether the petition describes facts that could potentially constitute violations of rights guaranteed in the American Convention, without prejudging the merits of the case.

34. The Commission notes that the petitioners’ main allegation is that the State has not solved the October 24, 1994 murder of young Jorge Enrique Patiño Palacios and that there has been no judicial determination as to the identity of its perpetrators. The claim adds that there was no serious, effective, and impartial investigation of the case and that its resolution exceeded a reasonable period of time, since almost ten years elapsed between the filing of the complaint and its final resolution. If the petitioners’ allegations were confirmed, the facts would tend to establish violations of the provisions contained in Articles 8 and 25 of the American Convention.

35. The State, noted that there were no irregularities and the reason that the judicial procedure lasted for so many years is because the case began and was filed under the old criminal procedure. The State also alleged that the petitioners were utilizing the Commission as a fourth instance, and were attempting to revise judgments made by the national courts within their sphere of competency. The Commission has reiterated that it does not have the competence to review questions of national law nor the right to act as a revisionary board. However, the Commission is able to analyze and preside over questions which raise an alleged breach by the State of its duties ratified under the American Convention. In the present case, the Commission has the competence to review the facts regarding the right to a fair trial and to judicial protection.

36. Regarding the alleged denial of justice, the Commission finds that, if the petitioners’ claims are compatible with other requirements and proven true, they would tend to establish a violation of rights of the alleged victim’s family protected under the American Convention and, in particular, those established by Articles 8 and 25, in conjunction with Article 1(1) thereof.

37. From the analysis made of the arguments and facts submitted by the petitioners and the State, the Commission has found no evidence supporting a possible violation of Article 4 of the Convention by the Paraguayan state.

#### V. CONCLUSION

38. The Commission concludes that the case is admissible and that it has jurisdiction to consider the petitioners’ claim of alleged violations of the rights contained in Articles 8 and 25 of the American Convention, all in conjunction with the obligations arising from Article 1(1) of said international instrument.

39. The Commission also concludes that it does not have evidence to support a possible violation of Article 4 of the Convention.

40. On the basis of the above contentions of fact and law, and without prejudging the merits of the case,

#### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES:

1. To declare the case before it admissible with respect to the rights enshrined in Articles 8 and 25 of the American Convention, in conjunction with the obligations under Article 1(1) thereof.

2. To declare the case inadmissible with respect to Article 4 of the American Convention.
3. To transmit this report to the petitioners and the State.
4. To pursue its analysis of the merits of the case.
5. To publish this report and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 16<sup>th</sup> day of the month of March 2010.  
(Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-presidente; Dinah Shelton, Second Vice-president; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).