

**REPORT No. 70/10**  
PETITION 11.587  
ADMISSIBILITY  
CÉSAR GUSTAVO GARZÓN GUZMÁN  
ECUADOR  
July 12, 2010

**I. SUMMARY**

1. On November 8, 1994, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition lodged by the Ecumenical Commission for Human Rights (CEDHU) (hereinafter, “the petitioners”) alleging the responsibility of the Republic of Ecuador for the disappearance of César Gustavo Garzón Guzmán on November 10, 1990, in the city of Quito, Ecuador, and for failing to adequately investigate the facts.

2. The petitioners alleged that the State was responsible for violating the rights to life, to judicial guarantees, and to judicial protection established in Articles 4, 8(1) and 25 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”) in connection with Article 1(1) of the same instrument. For its part, the State alleged that the petitioners’ claims were inadmissible because the domestic remedies had not been exhausted, because the petition duplicated a similar international proceeding initiated with the United Nations Working Group on Enforced or Involuntary Disappearances and, also, because it considered that the petitioners were requesting the Commission to rule on the matter as a Court of Fourth Instance.

3. After analyzing the position of the parties and establishing compliance with the requirements set forth under the provisions of Articles 46 and 47 of the American Convention, the Commission decided to declare admissible the claims of presumed violations of Articles 4(1), 8(1) and 25 in connection with Article 1(1), under the principle of *iura novit curia*, Articles 3, 5 and 7 of the American Convention, and Article 1 of the Inter-American Convention on Forced Disappearance of Persons, to notify the parties and to include the report in its Annual Report to the General Assembly.

**II. PROCESSING BEFORE THE COMMISSION**

4. The Commission assigned the petition number 11.587 and on April 24, 1995, it forwarded copies of the relevant parts of the complaint to the State, granting it ninety days to submit observations in accordance with Article 34 of the Rules of Procedure in force. On March 5, 1996, the IACHR reiterated its request that the State submit observations. On April 19, 1996, the State forwarded its response. On May 20, 1996, the IACHR requested that the State provide additional information which the State forwarded in communication dated July 2, 1996. The Commission forwarded the information provided by the State to the petitioner and granted it 45 days to submit its observations.

5. On August 13, 1996, the Commission received a communication from the petitioners indicating that the documents provided by the State were already known to them and that there had been no progress in the investigation. On April 30, 1999, and on July 17, 2001, the Commission requested that the State provide updated information on the case. On April 2, 2009, the IACHR requested the petitioners to provide updated information on the case in question. On August 3, 2009, the IACHR received written communication from the petitioners with updated information which was forwarded to the State for its observations. On April 16, 2010, the State submitted its final observations that were transmitted to the petitioners for their knowledge. On June 28, 2010 the petitioners presented additional information which was forwarded to the State for its knowledge.

**III. POSITIONS OF THE PARTIES**

**A. The petitioners**

6. The petitioners allege that author César Gustavo Garzón Guzmán, 32, disappeared at approximately 12:00 AM, November 10, 1990, as he was heading home from the Son Candela Discotheque located at Amazonas Avenue and Reina Victoria Street in the city of Quito. The petitioners allege that, at the time these facts took place, César Gustavo Garzón was preparing his Doctoral Thesis in Literature at the Pontifical Catholic University of Ecuador.

7. The petitioners cite as precedent that on August 7, 1989, César Gustavo Garzón was detained by members of the Criminal Investigations Service of Pichincha. They allege that he was held incommunicado for four days and tortured during the first days of his detention in order to extract a confession that he was a member of an illegal armed group. The petitioners further allege that he was later transferred to the García Moreno Prison where he remained for 13 months until his release on September 7, 1990, after the judge in the case dismissed all charges due to lack of evidence.

8. The petitioners point out that, on the night of his disappearance, the mother of César Gustavo Garzón asked relatives and friends of her son whether they had heard from him, and that on the following day she went to clinics, hospitals, prisons, and even the morgue, in order to find him. They allege that at 6:00 PM, relatives of Garzón went to the Criminal Investigations Service of Pichincha to report his disappearance but that the unit had refused to take the report because it had not yet been 48 hours since his disappearance.

9. The petitioners allege that on November 14, 1990, several fellow classmates of César Gustavo Garzón reported his disappearance to various media outlets such as the newspapers El Comercio, La Hora, Últimas Noticias, Radio Quito and Radio Tarqui. According to the petitioners, on November 16, 1990, they lodged a complaint with the Criminal Investigations Service of Pichincha.

10. The petitioners point out that on November 23, 1990, a complaint was lodged with the National Congress whose President sent written communication to the Director of the National Police urging that the situation be investigated. The petitioners also point out that on November 28, 1990, writers from Pichincha protested in public the disappearance of César Gustavo Garzón. Furthermore, the petitioners indicate, on November 29, 1990, a complaint was lodged with the Tribunal of Constitutional Guarantees which referred the matter to the Ministry of Government, Police and Worship.

11. The petitioners allege that on January 8, 1991, the Provincial Criminal Investigations Department of Pichincha issued a press release listing the investigations carried out to date regarding the disappearance César Gustavo Garzón, where they indicated that they had not been able to develop any evidence concerning his disappearance and that they would continue to investigate.

12. The petitioners allege that, at that point, they approached various authorities requesting that serious and exhaustive investigations be carried out to shed light on the case. Specifically, the petitioners state that they sent written communications to Ecuadorian President Rodrigo Borja on November 7, 1991 and on July 8, 1992; and to President Sixto Durán Ballén on August 5, 1992. In 1992, they also had a meeting with Assistant Secretary of Government Félix López, who stated that he had no information regarding the disappearance of César Gustavo Garzón and who offered to immediately order and investigation.

13. The petitioners allege that that in May 2003, the newspaper El Comercio published a report that a former National Army Officer asserted that the Commander General of the Police would know where the remains of César Gustavo Garzón could be found. They point out that in June 2003, a new report published by the newspaper El Comercio confirmed the information published in May 2003. The petitioners allege that, based on those news reports, they sent communications to the Minister of Defense and to the Minister of Government, Police and Worship requesting that exhaustive investigations be undertaken to shed light on the facts, but that their requests were never answered.

14. Furthermore, the petitioners argue that in 2007, the State had indicated to the United Nations Working Group on Enforced or Involuntary Disappearances that according to information provided by the Provincial Chief of the Pichincha Judicial Police, César Gustavo Garzón was still in

detention which, the petitioners argue, was not true since after several requests and complaints lodged by his relatives in connection with his disappearance, they had never been told that he was detained rather than disappeared or where he was being held.

15. In sum, the petitioners allege that the State is responsible for violating the rights to life, to judicial guarantees and to judicial protection established under the provisions of Articles 4, 8(1) and 25 of the American Convention in connection to Article 1(1) of the same instrument, with regard to the disappearance of César Gustavo Garzón Guzmán whose whereabouts remain unknown to this date, as well as for the lack of investigation of the facts which form the basis of this complaint.

16. With regard to the requirement of prior exhaustion of domestic remedies, the petitioners argue that given that more than 18 years have passed since the facts took place, the State has been negligent in the investigation of those facts and, therefore, the domestic remedies have been exhausted in accordance with the provisions of Article 46(1)(a) of the American Convention.

## **B. The State**

17. The State argues that this is a complex case because it took place during a special period of the Rule of Law in Ecuador, in the 1990s decade, when socioeconomic reforms and structural adjustments were being implemented which also included reforms of the Judicial Branch and the entities responsible for the administration of justice. With regard to the alleged human rights violations that occurred during that time, the State points out that a Truth Commission was created by presidential decree on May 3, 2007, to investigate the period 1984-1988 as well as other periods.

18. With regard to any role played by government agents in the disappearance of Cesar Gustavo Garzón, the State argues that the petitioners have not made any formal legal allegations that would indicate that National Police agents took part in the facts alleged in the instant petition.

19. With regard to the requirement of prior exhaustion of domestic remedies established by the American Convention, the State alleges that the petitioners, in addition to lodging their complaint with different entities, did not pursue other legal recourse to demand a full investigation of the facts. Specifically, the State points out that the new constitutional legal framework in force since 2008 incorporated new judicial guarantees that individuals may pursue when they believe their rights have been violated: the action for injunction (Article 88 of the Constitution of 2008<sup>1</sup>), the action for non-compliance (Article 93 of the Constitution of 2008<sup>2</sup>) and the extraordinary action for injunction (Article 94 of the Constitution of 2008<sup>3</sup>). Based on the preceding, the State alleges that the petitioners had legal remedies still available to them before petitioning the Inter-American Commission on Human Rights.

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<sup>1</sup> The State refers to Article 88 of the Constitution: “[t]he purpose of the action for injunction is to ensure the direct and effective protection of the rights enshrined in the Constitution and may be lodged any time a non-judicial government authority, by act or omission, violates constitutional rights; against public policies when those policies imply depriving the individual of the enjoyment or exercise of his constitutional rights; and when a private individual commits the rights violation, if the violation causes grave harm; if it provides government-regulated services; if the individual acts by delegation or concession; or if the person affected is in a status of subordination, defenselessness or discrimination.” Written communication No. 13484 from the Office of the Attorney General dated April 14, 2010, submitted via Note No. 4-2-123/2010, dated April 16, 2010.

<sup>2</sup> The State makes reference to Article 93 of the Constitution: “[t]he purpose of the action for non-compliance is to guarantee the enforcement of the statutes that make up the system of laws and the implementation of rulings and reports by international human rights organizations when the statute or decision whose implementation is sought contains a clear, explicit and enforceable obligation to act or to refrain from acting. The petition will be lodged with the Constitutional Court.” Written communication No. 13484 from the Office of the Attorney General dated April 14, 2010, submitted via Note No. 4-2-123/2010 dated April 16, 2010.

<sup>3</sup> The State refers to Article 94 of the Constitution: “[t]he extraordinary action for injunction may be taken against final rulings or edicts that by action or omission violate rights recognized in the Constitution and will be lodged with the Constitutional Court. This recourse may be pursued when all ordinary and extraordinary remedies have been exhausted within the prescribed legal limit, unless failure to seek these remedies was not attributable to negligence on the part of the persons whose constitutional rights have been violated.” Written communications No. 13484 from the Office of the Attorney General dated April 14, 2010, submitted via Note No. 4-2-123/2010 dated April 16, 2010.

20. The State also alleges that Article 19, paragraph 17(i) of the Constitution in force at the time of the facts<sup>4</sup> established the action for *habeas corpus*, which would have constituted the simple, quick and efficient remedy that should have been lodged with the Mayor of Quito and was not exhausted by the petitioners. In that regard, the State alleges that the mere complaint lodged by the petitioners was not sufficient to authorize that the disappeared individual be shown in person or to grant precautionary measures to safeguard his life.

21. With regard to the duplication of proceedings, the State alleges that the United Nations Working Group on Enforced or Involuntary Disappearances has the authority to hear complaints, take action and protect individuals, and that, given that in the instant case the Working Group has already launched an investigation based on a complaint lodged against the Ecuadorian State, the Inter-American Commission cannot hear the case.

22. The State alleges that the petitioners intend to force the Inter-American Commission on Human Rights into becoming a court of fourth instance and to assume the jurisdictional prerogatives of the State to investigate and sanction. Lastly, based on the preceding considerations, the State requests that the Commission declare the petition inadmissible.

#### **IV. ANÁLISIS OF COMPETENCE AND ADMISSIBILITY**

##### **A. Competence**

23. The petitioners are authorized by Article 44 of the American Convention to lodge petitions with the Commission. The petition identifies an individual as the alleged victim with respect to whom the Ecuadorian State has undertaken the commitment to respect and guarantee the rights enshrined in the American Convention. With regard to the State, the Commission points out that Ecuador is a State Party to the American Convention since December 28, 1977, the date it deposited its instrument of ratification. Therefore, the Commission has competence *ratione personae* to examine the petition.

24. The Commission also is competent *ratione loci* to hear the petition given that it contains allegations of violations of rights protected under the American Convention that presumably took place within Ecuadorian jurisdiction, a State Party to that treaty. The Commission is competent *ratione temporis* to examine the claim since the obligation to respect and guarantee rights protected under the American Convention was already in force for the State at the time in which the facts alleged in the petition occurred. Exercising its competence *iura novit curia*, the Commission also takes into account that Ecuador deposited its instrument of ratification of the Inter-American Convention on Forced Disappearance of Persons (hereinafter, "Convention on Forced Disappearance") on July 27, 2006, and, therefore, the Commission has competence *ratione temporis* with regard to the obligation established in Article I(b) of the Convention given the continuous nature of the absence of clarification regarding the alleged crime of forced disappearance.

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<sup>4</sup> The State makes reference to Article 19, paragraph 17(i) of the Constitution: "[a]ny person who believes to be illegally deprived of his liberty may seek the protection of Habeas Corpus. This action may be lodged by the individual or his designated representative, no written authorization required, with the Mayor or Chair of the Council with jurisdiction over the matter or with those acting on their behalf. Municipal authorities will immediately order that the appellant be brought before them and that the arrest warrant be shown. Their orders shall be followed without comment or excuses by the authorities in charge of the detention facility or social rehabilitation center.

Once informed of the particulars of the case, the Mayor or the Council Chair shall order the immediate release of the appellant if the detainee was not brought before the authority or if the arrest warrant was not produced, or if the warrant did not meet the legal requirements, if procedural errors were committed, or if, in the end, the basis of the complaint proved to be justified. Any official or employee who fails to comply with the order shall be relieved of his duties immediately and without further proceedings by the Mayor or the Council Chair, who will then notify the Office of the Comptroller General of the dismissal and also the authority responsible for naming a replacement.

After releasing the detainee, the dismissed employee may lodge a complaint with competent judicial authorities within 8 days of having been notified of his dismissal." Written communication No. 13484 from the Office of the Attorney General dated April 14, 2010, submitted via Note No. 4-2-123/2010, dated April 16, 2010.

25. Lastly, the Commission is competent *ratione materiae*, because the petition alleges possible violations of human rights protected under the American Convention.

## **B. Admissibility requirements**

### **1. Exhaustion of domestic remedies**

26. Article 46(1)(a) of the American Convention requires the prior exhaustion of domestic remedies within the national jurisdiction, in accordance with generally recognized principles on international law, in order for a complaint alleging presumed violations of the American Convention to be admitted. Under the provisions of Article 46(2) of the Convention, the requirement of prior exhaustion of domestic remedies 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 or rights that have allegedly been violated;
- b) the alleged victim of rights violations did not have access to the remedies under domestic law or was prevented from exhausting them; and
- c) there has been unwarranted delay in rendering a decision on those remedies.

Under the provisions of the Rules of Procedure of the IACHR, when a petitioner claims one of the exceptions to meeting the requirement established in this Article, it is up to the State concerned to prove that domestic remedies have not been exhausted, unless that is clearly evident from the record.<sup>5</sup>

27. In the instant case, the State alleges that the petitioners' claim does not meet the requirement of prior exhaustion of domestic remedies established in Article 46(1) of the American Convention given that they had remedies available such as the action for injunction, the non-compliance action, the extraordinary action for injunction, and the action for *habeas corpus*. For their part, the petitioners allege that domestic remedies have been exhausted in accordance with Article 46.1(a) of the American Convention, given that more than 20 years after the facts occurred, the State has been negligent in investigating those facts.

28. In view of the allegations made by the parties, the first thing that should be made clear is what domestic remedies need to be exhausted in a case such as this one. The Commission's established precedent indicates that any time an offense is committed that the State may prosecute of its own initiative, the State has the obligation to promote and pursue criminal prosecution<sup>6</sup> and that, in those cases, this process constitutes the most suitable avenue to shed light on the facts, to bring those responsible to trial and to establish the appropriate legal sanctions, in addition to making other types of monetary reparation possible. The Commission considers that the facts presented by the petitioners with regard to the disappearance of César Gustavo Garzón Guzmán constitute, under domestic legislation, criminal conduct that the State may prosecute of its own initiative and whose investigation and prosecution must be pursued by the State itself.

29. The Commission notes that 20 years after the facts that are the basis of this complaint occurred, the criminal investigation remains at the preliminary stage, no person has been formally charged with a crime, and the State has not provided any information regarding what measures are being considered to complete the investigation. In that regard, the Commission notes that, as a general rule, a criminal investigation must be initiated quickly in order to protect the interests of the victim, to preserve the evidence and even to safeguard the rights of any person who within the context of the investigation may be considered a suspect. As the Inter-American Court has pointed out, although every criminal investigation must meet a series of legal requirements, the prior exhaustion of domestic remedies rule

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<sup>5</sup> Article 31(3) of the Rules of Procedure of the Commission. See IA Court H.R., *Velásquez Rodríguez Case*, Judgment dated July 29, 1988, paragraph 64.

<sup>6</sup> IACHR, Report No. 52/97, Case 11.218, *Arges Sequeira Mangas*, *IACHR Annual Report 1997*, paras.. 96 and 97. See also, Report No. 55/97, Case 11.137, *Abella et al.*, para. 392.

must not lead to the point where international action to assist the victim is stopped or delayed so long that it becomes useless.<sup>7</sup>

30. With regard to the effectiveness of the action for injunction, the non-compliance action and the extraordinary action for injunction, the Commission notes that these actions were established in the Constitution passed in 2008, 18 years after the facts occurred and, therefore, they would not have been the most suitable remedies to resolve the complaint lodged by the petitioners.

31. With regard to the action for *habeas corpus* established in Article 19, paragraph 18(i) of the Constitution in force at the time the facts occurred, the Commission notes that although the petitioners did not lodge this remedy, they allege that, on the day of César Gustavo Garzón's disappearance, they did go to the Criminal Investigation Service of Pichincha to report it but that, on that occasion, the authorities refused to take the complaint so they returned on November 16, 1990, in order to lodge it. The Commission notes that, to date, the investigation remains in the preliminary stage. In its allegations, the State did not make reference to any progress made in the development of evidence by the judicial authorities in the, supposedly, still continuing investigation to identify the responsible individuals. With regard to the obligation of the State to investigate, the Inter-American Court has indicated that an investigation "must have an objective and be assumed by the State as its own legal duty and not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the proof by the government."<sup>8</sup>

32. Therefore, given the characteristics of the instant case, the still pending nature of an open investigation without any information regarding specific measures since 1990, and the amount of time elapsed since the facts that are the basis of the petition occurred, the Commission considers that the exception established in Article 46(2)(c) of the American Convention with regard to unwarranted delay by the domestic criminal proceedings to render a decision is applicable, and, therefore, the requirement of prior exhaustion of domestic remedies does not apply.

33. The claiming of exceptions to the requirement of prior exhaustion of domestic remedies established in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights enshrined in the Convention, such as the guarantee of access to justice. However, Article 46(2), by its nature and purpose, is a norm with autonomous content *vis à vis* the substantive norms of the Convention. Therefore, the determination of whether the exceptions to the rule of prior exhaustion of domestic remedies apply to the case in question must be made prior to and separate from the analysis on the merits of the case, since it depends on a different standard from that used to determine the possible violation of Articles 8 and 25 of the Convention.

## **2. Time period to submit the petition**

34. The American Convention establishes that for a petition to be declared admissible by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment. In the complaint being examined, the IACHR has determined the applicability of the exceptions to the exhaustion of domestic remedies in accordance with Article 46(2)(c) of the American Convention. Article 32 of the Rules of Procedure of the Commission establishes that in cases in which the exceptions to prior exhaustion of domestic remedies apply, the petition must be lodged within a reasonable period of time, as determined by the Commission. To that effect, the Commission must take into account the date on which the presumed rights violation occurred and the circumstances of each case.

35. In the instant case, the petition was received on November 8, 1994, and the facts that are the basis of the complaint occurred on November 10, 1990, and their impact in terms of the alleged lack

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<sup>7</sup> IA Court H.R., *Velásquez Rodríguez Case. Preliminary Exceptions*. Judgment dated June 26, 1987. Series C No. 1, para. 3.

<sup>8</sup> IA Court H.R., *Velásquez Rodríguez Case*. Judgment dated July 29, 1988. Series C No. 4, par. 177.

of administration of justice extends to this date. Therefore, based on the context and the characteristics of the instant case regarding the presumed disappearance of César Gustavo Garzón Guzmán, as well as on the fact that the investigation remains in the preliminary stage and, therefore, presumably pending, the Commission considers that the petition was lodged within a reasonable period of time and that the admissibility requirement regarding the deadline to submit the petition has been met.

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

36. The Commission takes note that the State alleged that the Commission was not competent to hear the petition due to pending international litigation before the United Nations Working Group on Enforced or Involuntary Disappearances based on a complaint against the Ecuadorian State regarding the disappearance of César Gustavo Garzón Guzmán. Article 46(1)(c) of the Convention establishes that for a petition to be admitted by the Commission, that “the subject of the petition or communication is not pending in another international proceeding for settlement,” and Article 47(d) of the Convention establishes that the Commission shall consider inadmissible any petition or communication when “it is substantially the same as one previously studied by the Commission or by another international organization.”

37. The Inter-American Court has established that:

[t]he phrase “substantially the same” signifies that there should be identity between the cases. In order for this identity to exist, the presence of three elements is required, these are: that the parties are the same, that the object of the action is the same, and that the legal grounds are identical. In the instant case, there is no duplication of proceedings.<sup>9</sup>

38. For its part, the Commission has maintained that in order to consider that there is duplication of proceedings or international *res judicata* in a case, the petition must be under consideration or must have been decided<sup>10</sup> by an international organization competent to adopt decisions regarding the specific facts contained in the petition, and to adopt measures aimed at the effective resolution of whatever dispute is being examined.<sup>11</sup> Based on this norm, the Commission considers that the Working Group mentioned above does not belong in the same category of international organs as those whose mandate could produce the duplication referred to in Articles 46(1)(c) y 47(1)(d) of the American Convention. In fact, it is a mechanism that can bring up specific cases of disappearances with the States but it does not have a case system for the purpose of rendering decisions that adjudicate specific responsibilities. Furthermore, the State has not provided background information that would make it possible to establish that the situation of the alleged victim in the instant case has been resolved by the aforementioned organ. Therefore, the Commission considers that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

### 4. Characterization of the alleged facts

39. Based on the facts presented by the parties and on the nature of the matter under examination, the Commission finds that, in the instant case, the allegations made by the petitioners regarding the lack of judicial resolution of the facts surrounding the disappearance of César Gustavo Garzón Guzmán presumably carried out by agents of the State, as well as the lack of due diligence on the part of the State to investigate and sanction the responsible individuals, could characterize possible violations of the rights to life, to judicial guarantees and to judicial protection enshrined in Articles 4(1), 8(1) and 25 in connection to Article 1(1) of the American Convention. Likewise, under the principle of *iura*

<sup>9</sup> IA Court H.R., *Case Baena Ricardo et al. Preliminary Exceptions*. Judgment dated November 18, 1999. Series C No. 61, para. 53.

<sup>10</sup> *Cfr.* IACHR. Report No. 89/05, Petition 12.103, Inadmissibility, *Cecilia Rosa Núñez Chipana*, Peru, October 24, 2005, para. 37. IACHR Report No. 96/98, Petition 11.828, Admissibility, *Peter Blaine*, Jamaica, December 17, 1998, para. 40.

<sup>11</sup> IA Court H.R., *Case Baena Ricardo et al. Preliminary Exceptions*. Judgment dated November 18, 1999. Series C No. 61, para. 53.

*novit curia*, it is the responsibility of the Commission to establish the possible responsibility of the State for the alleged violation of the rights to recognition of juridical personality and to personal liberty established in Articles 3 and 7 of the Convention in connection to Article 1(1) of the same treaty.

40. Likewise, under the principle of *iura novit curia*, it is the responsibility of the Commission to establish the possible responsibility of the State for the alleged violation of Article 1 of the Inter-American Convention on Forced Disappearance of Persons due to the continuing lack of resolution of the crime of forced disappearance based on the allegations made by the petitioners with regard to the alleged participation of government agents in the disappearance of César Gustavo Garzón Guzmán.

41. In the analysis on the merits, the Commission will also consider *iura novit curia* the presumed violation of Article 5 of the American Convention to the detriment of the relatives of the alleged victim.

42. Since it is not evident that the facts alleged in the complaint are either groundless or without merit, the Commission considers that the requirements established in Articles 47(b) and (c) of the American Convention have been met.

## V. CONCLUSIONS

43. The Commission concludes that it is competent to examine the claims lodged by the petitioners with regard to the alleged violation of Articles 4(1), 8(1) and 25 in connection to Article 1(1) and, under the principle of *iura novit curia*, Articles 3, 5 and 7 of the American Convention and Article 1 of the Inter-American Convention on Forced Disappearance of Persons, with regard to the alleged disappearance of César Gustavo Garzón Guzmán and the judicial resolution of the same, and that these facts are admissible in accordance with the requirements established in Articles 46 and 47 of the American Convention.

44. Based on the foregoing arguments in fact and in law and without prejudging the analysis on the merits of the case,

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

#### DECIDES:

1. To declare admissible the claims regarding the alleged violation of Articles 3, 4(1), 5, 7, 8(1) and 25 of the American Convention in connection to Article 1(1) of the Convention and Article 1 of the Inter-American Convention on Forced Disappearance of Persons.

2. To notify the Ecuadorian State and the petitioners of this decision.

3. To continue with the analysis on the merits of the case.

4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 12<sup>th</sup> day of the month of July, 2010. (Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, Rodrigo Escobar Gil, and Luz Patricia Mejía Guerrero, members of the Commission.