

REPORT No. 123/10
CASE 11.144
ADMISSIBILITY
GERSON JAIRZINHO GONZÁLEZ ARROYO AND OTHERS
COLOMBIA¹
October 23, 2010

I. SUMMARY

1. On April 7, 1993, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition presented by the *Corporación Colectivo de Abogados "José Alvear Restrepo"* (hereinafter "the petitioners") alleging the responsibility of the Republic of Colombia (hereinafter "the State" or "the State of Colombia") for the forced disappearance of Gerson Jairzinho González Arroyo (hereinafter "the alleged victim") on November 20, 1992, in the city of Sincelejo, Department of Sucre, as well as for the judicial authority's lack of due diligence in the investigation and punishment of those responsible for these events.

2. The petitioners allege that the State is responsible for the violation of the rights to life, personal integrity, personal liberty, freedom of expression, judicial guarantees and judicial protection enshrined in Articles 4, 5, 7, 8, 13, and 25 of the American Convention on Human Rights (hereinafter "the American Convention"), all in conjunction with the general obligation to respect and guarantee the rights, set out in Article 1.1 of the same instrument. They maintain that the case is admissible in view of the exception to the exhaustion of domestic remedies set out in Article 46.2.c of the American Convention, based on the unwarranted delay in concluding the criminal proceedings. The State, for its part, alleges that the petition is inadmissible in view of the failure to exhaust domestic remedies, due to the fact that criminal proceedings are still pending. In addition, it alleges that there is no colorable claim on a possible violation of the American Convention pursuant to Article 47.b of the said instrument because the family members of the alleged victim were granted reparations.

3. After examining the position of the parties in the light of the requirements for admissibility set out in Articles 46 and 47 of the Convention, the Commission concludes that it is competent to examine the claim and that it is admissible for the alleged violation of the rights enshrined in Articles 4, 5, 7, 8 and 25 of the American Convention, in relation to Article 1.1 of the same international instrument. In addition, by virtue of the principle *iura novit curia*, the Commission considers admissible the possible violation of Article 3 of the American Convention and of Article I of the Inter-American Convention on Forced Disappearance of Persons (hereinafter "Convention on Forced Disappearance"). Finally, the Commission concludes that the petition is inadmissible in respect to the alleged violation of Article 13 of the American Convention. Consequently, it decides to notify the report to the parties, to order its publication and to include it in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

4. The IACHR registered the complaint under No. 11.144 and, after undertaking a preliminary examination, on April 14, 1993, proceeded to send it to the State of Colombia, with a time limit of 90 days to present information in accordance with the Rules of procedure in force at the time. On January 4, 1994, the State presented its response, which was sent to the petitioners for their observations. The petitioners lodged their response on March 25, 1994, which was sent to the State on April 18, 1994 for its observations. On May 23, 1994, the State presented its response, which was sent to the petitioners on July 19, 1994, for their observations. The petitioners presented their observations on August 19, 1994, which were sent to the State on August 31, 1994, for its observations.

¹ In accordance with the provisions of Article 17.2 of the Commission's Rules, Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not take part in either the deliberations or the decision in the present case.

5. On October 20, 1994, the State presented its response, which was sent to the petitioners for their observations. On January 3, 1995, the petitioners lodged their response, which was sent to the State for its observations. On March 22, 1995, the State presented its response, which was sent to the petitioners for their observations.

6. On May 26, 1995, the petitioners presented their response, which was sent to the State for its observation. The State presented its observations on July 17, 1995, which were sent to the petitioners for their observations. On September 15, 1995, the petitioners lodged their response, which was sent to the State for its observations. On December 4, 1995, the State presented its response brief, which was sent to the petitioners for their observations.

7. On February 15, 1996, the petitioners filed their response, which was sent to the State for its observations. On May 13, 1996, the State requested an extension, which was granted by the IACHR on August 7, 1996. On September 26, 1996, the State presented its response, which was sent to the petitioners for their observations.

8. On October 10, 1996, the IACHR placed itself at the disposal of the parties in order to commence friendly settlement proceedings. On November 12, 1996, the petitioners replied that they agreed to start a dialogue that might permit the reaching of a friendly settlement, provided that the State fulfilled certain requirements. This communication was sent to the State on November 15, 1996. On November 20, 1996, the State replied that, for the time being, it was not willing to attempt a friendly settlement. This communication was sent to the petitioners on January 27, 1997.

9. On February 3, 2000, the petitioners requested precautionary measures in favor of the immediate family of the alleged victim. The IACHR requested information from the State on February 3, 2000, with a time limit of 10 days. On February 15, 2000, the State requested an extension to present its response, which was granted by the IACHR on February 17, 2000. On March 13, 2000, the State sent its response, which was remitted to the petitioners for their observations. The petitioners presented their response on June 9, 2000, which was sent to the State on June 12, 2000, for its observations. The precautionary measures were not granted.

10. On July 14, 2000, the State presented its observations, which were sent to the petitioners for their observations. The petitioners presented their observations on June 2, 2002, which were remitted to the State on June 5, 2003, for its observations. On November 14, 2003, the State presented its response, which was sent to the petitioners for their observations. On April 13, 2009, the IACHR requested up-to-date information from both parties. On May 14, 2009, the State requested an extension to present its response, which was granted by the IACHR. The State replied on June 12, 2009.

III. POSITION OF THE PARTIES

A. Position of the Petitioners

11. The petitioners allege that on the morning of November 20, 1992, Gerson Jairzinho González Arroyo (aged 18) was in the San Antonio neighborhood of the city of Sincelejo, in the Department of Sucre. They state that around 9:30 hours, he was detained, allegedly, by agents of the Administrative Department of Security (hereinafter "DAS"), who took him to a truck and set off for an unknown destination. The petitioners point out that Luis González Espinosa, Gerson González's father, was made aware of what happened due to the fact that one eyewitness was the cousin of the alleged victim.

12. They state that some days prior to Gerson González's disappearance, specifically on November 16, 1992, the Fourth Public Prosecutor's Unit for Economic Assets in Sincelejo had started an investigation for the crime of extortion against various persons, among others the alleged victim. The petitioners allege that it is for this reason that DAS agents were following Gerson González.

13. They allege that on November 21, 1992, Luis González, Gerson González's father, lodged a complaint before the Preliminary and Permanent Unit of the Section Headquarters of Sincelejo Public Prosecutors. They maintain that on December 21, 1992, the Public Prosecutor issued an order for the opening of a preliminary investigation.

14. They allege that on December 31, 1992, Luis González lodged a *habeas corpus* petition before the Sincelejo Third Municipal Criminal Court for the detention and disappearance of his son at the hands of DAS agents. They point out that on January 3, 1993, the Third Judge ruled that the petition was unfounded, finding that Gerson González was not being held at DAS premises.

15. They allege that on June 8, 1993, the Public Prosecutor ordered the suspension of the preliminary investigation on the basis that there were no grounds to issue a resolution ordering the initiation of criminal proceedings, despite the fact that the investigation undertaken by the Procurator General of the Nation (hereinafter "PGN") concluded that there was evidence showing that DAS agents had participated in Gerson González's disappearance and that eyewitnesses had identified such agents. They stress that after more than 18 months, on December 24, 1994, the suspension measure was lifted. They indicate that on February 24, 1995, the case file was sent to the 14th Public Prosecutor for Anti-Extortion and Kidnapping, who, in turn, sent it to the Regional Prosecutor for Barranquilla.

16. The petitioners maintain that on August 28, 1995, they filed an application before the Regional Prosecutor of Barranquilla to become a party in the proceedings in order to claim damages caused by the offense. They stress that they were not permitted to become a party until February 9, 1996, despite the fact that Article 47 of the Code of Criminal Procedure² establishes a time limit of three days for a decision as to whether to accept or reject the application. They stress that on April 11, 1997, the Regional Prosecutor of Barranquilla ordered the closure of the investigation and accused three DAS agents (Isnardo Castellanos, Jorge Muñoz and Alcides Medina) of the crime of kidnapping and extortion.

17. The petitioners allege that the case file was transferred to the Regional Judge of Barranquilla, who on December 28, 1999, pronounced the three agents guilty and sentenced each one of them to eleven years imprisonment. They point out that this sentence was appealed and that on January 11, 2000, the Superior Tribunal of Bogotá declared all the proceedings null and void on the grounds that these agents should have been indicted for simple kidnapping and not kidnapping and extortion.

18. The petitioners state that the investigation was transferred to the 16th Section of the Public Prosecutor for Sincelejo in order to be examined as a simple kidnapping and was subsequently reassigned to the National Unit of Human Rights (hereinafter "UNDH"). They maintain that on March 14, 2003, the UNDH issued an indictment against only one of the agents and that this investigation was sent to the Specialized Circuit Criminal Court of Sincelejo. They allege that this agent was acquitted on July 1, 2005, due to the lack of certainty surrounding his involvement in the events. They state that at present there is an investigation pending at a preliminary stage before the 17th Prosecutor of the UNDH.

19. On the other hand, the petitioners maintain that on March 3, 1993, Luis González filed a complaint with the Office for Special Investigations of the PGN holding agents of the DAS responsible for the disappearance of Gerson González. They state that on May 3, 1993, this office referred the investigation to the Procurator Delegate for Human Rights.

20. They submit that on June 22, 1994, the PGN ordered the initiation of a disciplinary investigation in order to clarify the behavior of four DAS agents (Mario Botello, Jose Luis Guevara, Jorge Muñoz and Isnardo Castellanos) for irregularities in the investigation conducted against Gerson González for the crime of extortion. They point out that on March 8, 1999, the PGN decided to dismiss Jorge Muñoz and Isnardo Castellanos from their posts and to acquit Mario Botello and José Guevara. They indicate that this decision was appealed by the defense and consequently on March 17, 2000, all the

² The petitioners cite Article 47 of the Colombian Code of Criminal Procedure in force at the time. Petitioners' brief received on February 15, 1996.

accused were acquitted. The petitioners submit that there were numerous errors in the proceedings, including the fact that neither the Director of the DAS nor the eyewitnesses were summoned for questioning.

21. In addition, they allege that on June 20, 1994, the family members of the alleged victim filed with the Contentious Tribunal of Sucre a direct damages action against the Nation and the Administrative Department of Security (DAS), which was dismissed on September 11, 1996. They point out that on September 24, 1996, the family appealed this decision and that on November 28, 2002, the Council of State reversed the Contentious Tribunal's decision and ruled that the Nation and the Administrative Department of Security (DAS) were administratively responsible for Gerson González's disappearance.

22. The petitioners argue that the IACHR has established that international state responsibility may be derived from decisions of the domestic administrative courts. Therefore they argue that given the contentious administrative judgment against the DAS, the State had accepted its international responsibility.

23. The petitioners point out that, at present, there are criminal proceedings at the investigatory stage, which have not punished any of those responsible. In this sense, they consider that the exception set out in Article 46.2.c of the American Convention applies due to the unwarranted delay. Without prejudice to this, they allege that, in spite of being exempted from the requirement of exhaustion, they complied with the said disposition by the filing of the *habeas corpus* petition, an adequate remedy in cases of forced disappearance.

24. The petitioners maintain that Gerson González was made to disappear by agents of the State more than sixteen years ago, without the State to date having efficiently investigated the facts described. They point out that Gerson González's whereabouts and the location of his remains are still unknown, and those responsible have not been identified, tried or punished, and the truth of the facts is not known. As a result, they allege that the State of Colombia has violated the right to judicial guarantees and protection of Gerson González's family members.

25. To conclude, the petitioners allege that the State has violated Articles 4, 5, 7 and 13 of the American Convention in relation to Article 1.1 to the prejudice of Gerson González, and Articles 5, 8 and 25 in relation to Article 1.1 of the same instrument to the prejudice of his family members.

B. Position of the State

26. In reply to the petitioners' claim, the State alleges that diligent provision was made in the ordinary criminal, contentious administrative and disciplinary courts for the relevant facts in the petition.

27. It alleges that in the criminal proceedings, on June 8, 1993, the Public Prosecutor ordered the suspension of the preliminary enquiry due to the fact that no suspect could be identified, and that the said suspension was valid as it is based upon a domestic rule.³ It submits that thereafter, based on the evidence collected, the investigation was reopened and included the identification and indictment of three DAS agents allegedly responsible for the aggravated kidnapping of Gerson González.

28. It argues that on December 24, 1998, the Regional Judge of Barranquilla convicted the three accused for the crime of aggravated kidnapping and extortion, and sentenced each one of them to eleven years imprisonment. However, the State points out that, after the defense's appeal, on January 11, 2000, the Superior Court for the Judicial District of Bogotá ordered the annulment of all the proceedings due to the presence of an error in the classification of the type of crime

³ The State cites Article 326 of the Colombian Code of Criminal Procedure which provides: "The director of the prosecutor's unit may suspend the preliminary investigation if one hundred and eighty days have elapsed without there being grounds for ordering the opening of proceedings." Brief of the State received on December 4, 1995.

29. The State alleges that the UNDH of the Public prosecutor General resumed the investigation in a serious, prompt and efficient manner and issued an indictment against Alcides Medina. It alleges that on July 1, 2005, the Criminal Judge of the Special Circuit of Sincelejo acquitted Alcides Medina given that there was no clear evidence about this involvement in the facts.

30. The State alleges that there is a duty to implement the means to carry out a criminal investigation and that such duty is not unfulfilled by the mere fact of not producing a satisfactory outcome. It also alleges that criminal justice would hardly have been served by convicting persons against whom there was no clear evidence of their responsibility, since to do so would be a blatant violation of the accused's right to the presumption of innocence.

31. The State alleges that the criminal investigation continues at a preliminary stage, with the 17th Prosecutor of the UNDH, and that various evidence has been ordered and enquiries made in order to identify those responsible. It submits that the criminal proceedings are being effected with due diligence in order to determine the whereabouts of Gerson González and to punish those responsible for the facts described, so that it considers that the domestic remedies have not been exhausted.

32. In addition, the State indicates that in its ruling of January 17, 2000, the Disciplinary Chamber of the PGN reversed the first instance judgment and acquitted all the accused. It alleges that although there was certainty that a DAS vehicle was used to transport Gerson González, the evidence gathered failed to fully establish whether the agents were involved in the events.

33. On the other hand, the State maintains that on November 28, 2002, the Council of State decided that the DAS was administratively responsible for Gerson González's disappearance. It alleges that the judgment acknowledges the responsibility of the State at the domestic level and that therefore the remedy available to those interested was "adequate and effective *vis-à-vis* reparations".⁴

34. It points out that through Resolution No. 5255 of November 27, 2003, the DAS ordered the payment of the amount of one hundred thousand US dollars established in the sentence. On December 1, 2003, payment was made to the representative of the alleged victim's father. In this sense, it maintains that the alleged victim's family has received compensation and that "when an issue has been finally resolved at the domestic level, pursuant to the provisions of the Convention, it is not necessary to bring the matter to the Court for approval or confirmation."⁵

35. The State considers that in the present petition the decisions adopted in the disciplinary and contentious administrative proceedings were duly grounded and that the alleged negative result cannot be seen as an assumed inadequacy of the domestic remedies or a violation of due process. It alleges that the IACHR cannot act as a fourth instance court so as to examine supposed errors of fact or law that might have been made by the domestic courts within the sphere of their competence and concludes that there is no colorable claim of possible violations of the American Convention.

IV. ANALYSIS OF ADMISSIBILITY

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

36. The petitioners have standing, in principle, to lodge petitions with the Commission, pursuant to Article 44 of the American Convention. The petition identifies as alleged victims individual persons, with respect to whom the State of Colombia has agreed to respect and guarantee the rights

⁴ Note of the Minister for External Relations of the Republic of Colombia DDHH.GOI No. 30741/1558 of June 11, 2009.

⁵ The State cites I/A Court H.R., *Case of Las Palmeras v. Colombia*. Merits. Judgment of December 6, 2001. Series C No. 90, para. 33. Brief of the State received on November 14, 2003.

enshrined in the American Convention. As regards the State, the Commission points out that Colombia has been a State party to the American Convention and the Convention on Forced Disappearance since July 31, 1977, and April 4, 2005, dates on which it deposited its instruments of ratification, respectively. As such, the Commission has competence *ratione personae* to examine the petition. In addition, the Commission has competence *ratione loci* to examine the petition, since it includes allegations of the violation of rights protected in those instruments taking place within the territory of Colombia, a State party to the said Treaties.

37. The Commission has competence *ratione temporis* since the obligation to respect and guarantee the rights protected in the American Convention was already in force for the State at the date when the acts alleged in the petition occurred. The Commission observes that the Convention on Forced Disappearance entered into force for Colombia on April 4, 2005. As such, the IACHR has competence *ratione temporis* with respect to the obligation enshrined in Article I by virtue of the alleged continuing situation of a lack of clarification of the crime of forced disappearance.⁶

38. Finally, the Commission has competence *ratione materiae*, since the petition complains of alleged violations of human rights protected by the American Convention and by the Convention on Forced Disappearance.

B. Requirements for admissibility

1. Exhaustion of domestic remedies

39. Article 46.1.a of the American Convention requires the prior exhaustion of domestic remedies in accordance with generally recognized principles of international law, as a prerequisite to the admission of claims on the alleged violation of the American Convention.⁷ For its part, Article 46.2 of the Convention lays down that 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 party alleging violation of his rights 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 rendering a final judgment under the aforementioned remedies.

40. In the matter at hand, the State maintains that the petition does not satisfy the requirement of prior exhaustion of domestic remedies since there is a criminal proceeding pending at a preliminary stage, currently progressing diligently. In addition, the State alleges that in the judgment issued by the Council of State on November 28, 2002, the DAS was held administratively responsible for Gerson González's disappearance, so that the remedy that those interested had at their disposal was adequate and effective with regard to reparations. For its part, the petitioners maintain that they exhausted the *habeas corpus* remedy, which is the adequate remedy in cases of forced disappearances and that the exception set out in Article 46.2.c of the American Convention also applies in view of the unwarranted delay in the criminal proceedings.

41. As both Article 31.3 of the Rules of the Commission and the jurisprudence of the Inter-American Court provide, each time the State alleges a failure to exhaust the domestic remedies on the

⁶ IACHR Report No. 65/09, *Juan Carlos Flores Bedregal*, August 4, 2009, para. 45; and Report No 72/07, *Edgar Quiroga and Gildardo Fuentes*, October 15, 2007, para. 44.

⁷ I/A Court H.R., *Case of the Comunidad Moiwana v. Surinam*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, para. 48; *Case of Tibi v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 48; and *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 80.

part of the petitioner, it bears the burden of showing that the remedies not exhausted were "adequate" to rectify the alleged violation, that is to say that the purpose of those remedies within the domestic legal system are suitable to protect the judicial situation breached.⁸ In accordance with the jurisprudence of the organs of the Inter-American system, *habeas corpus* is one of the remedies considered adequate to clarify the whereabouts of a disappeared person.⁹

42. In view of the parties' allegations, it is necessary at the outset to clarify which are the domestic remedies that must be exhausted in this case. The Inter-American Court has held that only those suitable to address an infringement allegedly committed need be exhausted. That the remedies be adequate means that

adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.¹⁰

43. The precedents established by the Commission provide that each time that a crime subject to public prosecution is committed, the State has the obligation to initiate and promote the criminal proceedings¹¹ and that, in such cases, this constitutes the appropriate avenue to clarify the facts, to try those responsible and to hand down the corresponding criminal sanctions, as well as to enable other means of redress of a pecuniary nature. The Commission considers that the allegations by the petitioners in the present case encompass the alleged violation of fundamental rights, which corresponds in the domestic legal system to crimes subject to public prosecution and therefore it is this process that must be encouraged by the State itself.

44. In the present case, after the events of November 20, 1992, the alleged victim's father filed a complaint before the Public Prosecutor on November 21, 1992 and a *habeas corpus* petition on December 31, 1992, which was declared unfounded on January 3, 1993. After the conviction at first instance of the three State agents, in 2000, the criminal investigation was declared null and void and the only accused was acquitted on July 1, 2005. At present, the investigation remains at a preliminary stage.

45. Regarding the contentious administrative and disciplinary proceedings referred to by the State, the Commission has pointed out previously that decisions issued in disciplinary and contentious administrative proceedings do not constitute adequate remedies to satisfy Article 46 of the American Convention. The contentious administrative jurisdiction is intended as an oversight of the State's administrative activities, and to establish compensation for damages caused by abuse of authority, as it is noted in the present case (see *supra* III.B). Consequently, it does not constitute an adequate remedy in the context of the present examination¹², despite the compensation obtained by the alleged victim's family.

46. The Commission considers that, given the characteristics of the present case, the alleged victim's father and immediate family have exhausted the *habeas corpus* as an adequate remedy and have availed themselves of other remedies at their disposal to achieve the judicial clarification of the

⁸ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 64.

⁹ I/A Court H.R., *Case of Caballero Delgado and Santana v. Colombia*. Preliminary Objections, Judgment of 21 January 1994, para. 64, *Case of Chitay Nech and others v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, para. 203, *Case of Cantoral Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, para. 165, and *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000. Series C No. 70, para. 192.

¹⁰ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No.4. para. 64.

¹¹ IACHR. Report No. 52/97, *Arges Sequeira Mangas*, February 18, 1998, paras. 96 and 97; Report No. 55/97, *Juan Carlos Abella*, November 18, 1997, para. 392 and Report No. 62/00, *Hernando Osorio Correa*, October 3, 2000, para. 24.

¹² IACHR. Report No. 68/09, *Wilfredo Quiñónez Barcenás and family*, August 5, 2009, para. 42.

circumstances surrounding Gerson González's disappearance and to punish those responsible. The Commission notes that the relevant facts of the case occurred on November 20, 1992. After 16 years the criminal proceedings remain at a preliminary stage which demonstrates an unwarranted delay according to the provisions of Article 46.2.c of the American Convention, and therefore the petitioners must be exempted from exhausting the said remedies before resorting to the protection in the Inter-American system.

2. Timeliness of the petition before the Commission

47. Article 46.b of the American Convention establishes that for a petition to be admissible before the Commission it must be presented within a time limit of six months from the date on which the alleged victim was notified of the final decision. In the complaint under examination, the IACHR has established the application of exceptions to the exhaustion of domestic remedies in accordance with Article 46.2.c of the American Convention. In this regard, Article 32 of the IACHR's Rules of Procedure establishes that in the cases where the exceptions to the prior exhaustion of domestic remedies are applicable, the petition must be presented within a reasonable time, at the Commission's discretion. For this purpose, the Commission must consider the date on which the alleged violation of the rights occurred and the circumstances of each case.

48. In the present case, the petition was received on April 7, 1993, the relevant facts of the claim occurred on November 20, 1992 and their effects in terms of the alleged lack of results in the administration of justice continue up until the present time. Therefore, in view of the background and characteristics of the present case, the Commission considers that the petition was presented within a reasonable time and that the requirement of admissibility relating to timeliness is satisfied.

3. Duplication of proceedings and *res judicata*

49. The case file of the petition does not contain any information indicating that the claim is currently pending before another international proceeding for settlement or that it has been previously examined by the Commission. Therefore, the IACHR concludes that the exceptions provided for in Article 46.1.d and Article 47.d of the American Convention do not apply.

4. Colorable Claim

50. In view of the elements presented by the parties and the nature of the matter brought to its attention, the IACHR finds that the petitioners' allegations relating to the alleged violation of the rights to the recognition of the judicial personality, to life, personal integrity and personal liberty could constitute colorable claims on possible violations of the rights protected in Articles 4, 5, 7, 8 and 25 in conjunction with Article 1.1 of the American Convention to the prejudice of Gerson Jairzinho González Arroyo. In addition, it has been established that the petitioners' allegations may constitute colorable claims on possible violations of the rights enshrined Articles 5, 8 and 25 of the American Convention in relation to Article 1.1, to the prejudice of the alleged victim's family.

51. The IACHR, in applying the principle *iura novit curia*, also considers that there is a colorable claim on the possible violation of Article 3 of the American Convention and Article I of the Inter-American Convention on Forced Disappearance by virtue of alleged lack of clarification of the crime of forced disappearance.

52. As these aspects of the petition are obviously not groundless or out of order, the Commission considers that the requirements laid down in Articles 47.b and c. of the American Convention are satisfied. Finally, the Commission considers that the petitioners have failed to show sufficient elements to sustain a colorable claim on the violation of the right enshrined in Article 13 of the American Convention.

V. CONCLUSIONS

53. The Commission concludes that it is competent to examine the claims presented by the petitioners on the alleged violation of Articles 3, 4, 5, 7, 8 and 25, in conjunction with Article 1.1 of the American Convention and Article I of the Convention on Forced Disappearance and that these are admissible, in conformity with the requirements laid down in Articles 46 and 47 of the American Convention. In addition, it declares inadmissible the claim on the alleged violation of Article 13 of the American Convention.

54. Based on the arguments of fact and law set out above and without prejudice to an examination of the merits of the claim,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition admissible in relation to Articles 3, 4, 5, 7, 8, and 25 in conjunction with Article 1.1 of the American Convention and to Article I of the Convention on Forced Disappearance.

2. To declare the present petition inadmissible in relation to Article 13 of the American Convention.

3. To notify the parties of this decision.

4. To continue with an examination of the merits of the case.

5. To publish this decision and to include it in its Annual Report, to be presented before the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of October 2010.
(Signed): Felipe González, President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, and José de Jesús Orozco Henríquez, members of the Commission.