

**REPORT No. 7/11**<sup>1</sup>  
PETITION 843-04  
ADMISSIBILITY  
LEONEL ENRIQUE LÁZARO OSPINA AND OTHERS  
COLOMBIA  
March 22, 2011

**I. SUMMARY**

1. On September 10, 2004, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition presented by Luis Hernando Van Strahlen Pedraza (hereinafter "the petitioner") alleging the responsibility of agents of the Republic of Colombia (hereinafter "the State", "the State of Colombia", or "Colombia") for the detention and death of Leonel Enrique Lázaro Ospina, Fidel Palomino Bustamante, Wilber Antonio Fernández Linares, José Vicente Simanca Galvis, Luis Manuel Obregón Martínez and another still unidentified person (hereinafter "the alleged victims") on March 15, 1993, in the country property of La Raya, Pailitas Municipality, Cesar Department, as well as for the lack of judicial clarification of the events.

2. The petitioners alleged that the State was responsible for the violation of the rights to life, personal integrity, personal liberty and judicial guarantees, set out in Articles 4, 5, 7 and 8 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). For its part, the State alleged that the petitioners' claims were inadmissible in view of the fact that they had failed to exhaust domestic remedies, established in Article 46.1.a of the American Convention.

3. After examining the position of the parties and compliance with the requirements set out in Articles 46 and 47 of the American Convention, the Commission decided to declare the claim admissible regarding Articles 4, 5, 7 and 8 of the American Convention and --applying the principle of *iura novit curia*-- Article 25 in conjunction with Article 1.1 of the American Convention and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. In addition, it decided to notify the report to the parties and order its publication in its Annual Report before the OAS.

**II. PROCEEDINGS BEFORE THE COMMISSION**

4. The IACHR registered the petition under number P843-04 and after a preliminary analysis, on March 18, 2009, proceeded to send a copy of the relevant parts to the State, with a time limit of two months for it to present information in accordance with Article 30.3 of its Rules. In response, the State requested an extension, which was granted by the IACHR. The State presented its response and the corresponding annexes on June 25 and July 30, 2009 respectively, which were then sent to the petitioner for observations. On August 19, 2009, the petitioner presented its observations, which were sent to the State for its observations. In reply, the State requested an extension, which was granted by the IACHR.

5. On December 22, 2009, the State presented its response, which was sent to the petitioner for observations. On February 1, 2010, the petitioner presented its response, which was sent to the State for its observations. On March 19, 2010, the State presented its observations, which were sent to the petitioner for its information. On April 14, 2010, the State presented observations, which were sent to the petitioner for its information.

**III. POSITION OF THE PARTIES**

---

<sup>1</sup> 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.

## A. Position of the Petitioner

6. The petitioner alleges that on March 15, 1993, between 9:00 and 10:00 pm, on the road that leads from the La Raya farmstead to the La Rivera district in the Pailitas Municipality and Zapatosa in the Chimichagua Municipality, within the boundary of the rural property of La Raya in the Pailitas Municipality, Cesar Department, a group of individuals who were driving in a Ford 350 truck were intercepted and lead off the highway to the mountains by members of a National Army patrol.

7. It is alleged that on March 16, 1993, the bodies of Leonel Enrique Lázaro Ospina, Fidel Palomino Bustamante, Wilber Antonio Fernández Linares, José Vicente Simanca Galvis, Luis Manuel Obregón Martínez and another still unidentified individual appeared beside the Barrancabermeja-Pozos Colorados pipeline on the La Raya farmstead property. Allegedly, it was only around 8:30 am that the National Army soldiers informed the Pailitas Police Inspector and at approximately 10:00 am steps were taken to remove the bodies. According to the petitioner, the autopsies concluded that the alleged victims died due to profuse hemorrhaging from vascular injuries caused by the multiple discharges of explosive bullets. It also alleges that the bodies showed signs of abrasions, peeling skin, excision of muscle tissue and torn clothing, implying that the alleged victims had been tortured by being violently dragged about before being executed.

8. The petitioner alleges that Army justified its role in the deaths of these individuals indicating that they had died in a confrontation on being surprised in the act of stealing gasoline and that this information had been published in various media outlets. It indicates that after the events, the Human Rights Committee of Pailitas filed a complaint before the Presidential Counselor for Human Rights, who in turn, informed the Procurator General of the events.

9. As regards a clarification of the events, the petitioner indicates that on March 18, 1993, the Pailitas Municipal Civil and Criminal Judge ordered the initiation of a preliminary investigation for the crime of homicide. It indicates that on March 30, 1993, the homicide investigation was sent to the 24th Deputy Prosecutor of Chiriguana and that on April 1, 1993, this prosecutor referred the investigation to the Regional Prosecutor of Barranquilla. The petitioner alleges that the Regional Prosecutor of Barranquilla changed the homicide investigation into an investigation of theft in which the alleged victims were turned into the accused. Thus, it alleges that on April 8, 1994, the Regional Prosecutor of Barranquilla decided not to pursue the investigation for the deaths of the accused. It alleges that the Prosecutor stressed in this decision that the Army surprised the alleged victims, who were carrying weapons reserved for the Armed Forces, as they were in the act of puncturing a petrol pipe in a section of pipeline in the Pailitas municipality, after which the alleged victims opened fire on the military personnel, and as a result were killed. It alleges that on May 7, 1996, the Deputy Prosecutor before the Regional Judges confirmed the said decision and that on June 29, 1999, the Deputy Prosecutor before the Regional Judges decided to suspend the investigation.

10. As regards the disciplinary jurisdiction, the petitioner alleges that on January 31, 1996, the Provincial Procurator of Valledupar drew up charges against Lieutenant Francisco Manrique Carvajal and Seargent José Flores Buitrago for abuse in the exercise of their duties by causing the death of Fidel Palomino Bustamante, José Vicente Simanca Galvis, Leonel Enrique Lázaro Ospina and Wilber Antonio Fernández Linares. On June 27, 1997, the aforementioned members of the Army were found guilty of the charges and were punished with 30 days suspension from duty without pay. On June 18, 1998, the Departmental Prosecutor of Cesar, in deciding an appeal petition lodged by one of the accused, declared the disciplinary action time barred in view of the fact that five years had elapsed since the events..

11. With regards to the contentious administrative jurisdiction, the petitioner --who is the legal representative of the alleged victims on the domestic level-- alleges that he filed a direct compensation suit and that on April 12, 1996, the Administrative Court of César rejected the claim. In this regard, the Court stressed that although it is certain that the counter-guerilla squad "Destructor 2" caused the alleged victims' deaths, this does not necessarily imply State responsibility. In addition, it added that there was "insubstantial evidence", that there was no basis for the alleged fault in the performance of duty, and that on the contrary, the members of the counter guerilla squad acted lawfully to prevent the theft of gasoline

in the interests of national property, and to protect their own lives against violence or the threat of violence.

12. The petitioner alleges that it lodged appeal proceedings and that on September 19, 2002, the Council of State upheld the appealed judgment. On October 31, 2002, the petitioner lodged an extraordinary review request. In response, on November 7, 2002, the Council of State requested the presentation of the power of attorney assigning authority to the petitioner to lodge the said appeal. On November 19, 2002, the petitioner sent a brief to the Council of State requesting that it take into account the powers of attorney already annexed to the original direct compensation claim, which were in the case file.

13. On December 16, 2002, the Third Chamber of the Council of State decided not to admit the extraordinary review request. The Third Chamber of the Council of State stressed in its decision that such requests are extraordinary in nature and can only be invoked as a means to impugn judgments already enforced, and thus require express authority to lodge them; and that the powers annexed to the direct compensation claim failed to grant the petitioner the authority to lodge an extraordinary review request. In addition, it pointed out that the protest filed by the petitioner against the order of November 7, 2002, was lodged outside the enforcement time limit, and therefore the said order remained final however the same was not fulfilled by the presentation of a power of attorney conferring on the legal representative the express ability to lodge a request for review.

14. The petitioner alleges that it filed an extraordinary request appeal against the December 16, 2002, decision and on July 10, 2003, the Third Chamber of the Council of State confirmed the order pleaded. It alleges that in view of the foregoing he lodged a *tutela* protection action for violation of due process, which was denied by the Forth Chamber of the Council of State in February 2004, and that on April 30, 2004, the Constitutional Court decided not to review the *tutelage* action. He alleges that he became aware of this decision on June 3, 2004.

15. In brief, the petitioner alleges that when changing the object of the criminal investigation of homicide into theft, the judicial authorities failed to investigate the deaths of the alleged victims, which constitutes a violation of due process. In addition, it alleges that the denial of the extraordinary review request by the Third Chamber of the Council of State constitutes a violation of due process. In this sense, the petitioner alleges that the State has violated the rights to life, personal integrity, personal liberty, and judicial guarantees protected in Articles 4, 5, 7 and 8 of the American Convention.

16. In regard to the fulfillment of the requirement of exhaustion of domestic remedies, set out in Article 46.1.a of the American Convention, the petitioner alleges that as far as concerns the proceedings underway before the contentious administrative courts, the remedies were exhausted with the decision of the Constitutional Court on April 30, 2004, and communicated on June 3, 2004, which excluded a revision of the *tutela* judgment lodged against the denial of the extraordinary review request. As regards the criminal proceedings, the petitioner alleges that changing the murder investigation to one of theft made it impossible to lodge appeals so that the exception set out in Article 46.2.b is applicable - when the party alleging a violation of his rights has been prevented from exhausting the remedies under domestic law.

## **B. Position of the State**

17. In the first place, the State alleges that the characterization of the events presented by the petitioner is distorted and contradicts the evidence in the criminal and disciplinary proceedings based on the gathered technical, documentary, expert and witness evidence, and as such do not represent violations of the rights enshrined in Articles 4, 5, and 7 of the American Convention on Human Rights. In effect, the State alleges that the counter-guerilla squad "Destructor 2" travelled to the area of the events to undertake registration and land control tasks, aimed at preventing the repeated theft of petroleum from the pipeline, which transports hydrocarbons between Barrancabermeja and Santa Marta. It points out that during a night patrol they surprised a number of individuals who were puncturing the pipe of the pipeline after which they gave the hands up signal and identified themselves as members of the Army,

after which they were met with shooting and they were obliged to respond. It alleges during the proceedings to remove the bodies, members of the Police Inspection Unit found a Ford truck which was loaded with, *inter alia*, twenty 55 gallon metal drums (17 of which were full and three empty), hoses, as well as four firearms and two shrapnel grenades reserved for Military use. In addition, it points out that in the statement made on August 12, 1993, the coroner who carried out the autopsy procedures pointed out that he found no signs of torture.

18. In the second place, as regards the criminal trial underway for the crime of theft, the State confirms that on June 29, 1999, the Coordination Unit of the Regional Prosecutors of Barranquilla suspended the previous investigation, and states that on March 31, 2000, the case file was referred to the General Prosecutors' Directorate in Valledupar. The State also indicates that although there is an investigation open for the crime of homicide, it has not been possible to compile any information on these proceedings and that such information will be referred to the IACHR once the General Prosecutor's Office makes it available.

19. In the third place, the State alleges that as regards the procedure conducted in the contentious administrative jurisdiction, the petitioner is attempting to use the Inter-American System as a fourth instance court. It underlines that the only violation of due process alleged in the claim is the refusal of the Council of State to rule on the extraordinary review request. It alleges that this decision of the Council of State is based on Article 194 of the Contentious Administrative Code, which provides that "the extraordinary review request is admissible against final judgments [...]" meaning that it is a remedy through which a different proceeding from the one finished with the final judgment, is initiated.

20. It also points out that the only reason that the Council of State did not rule on the review request was the omission by the petitioner to provide the power of attorney establishing him as the legal representative of the alleged victims, requested from him in the order of November 7, 2002. In this regard, the State indicates that the Council of State had been asking for the specific power of attorney to lodge an extraordinary review request since its Order S-022 dated August 25, 1999, or that the original power of attorney accompanying the initiation of the direct reparation claim expressly contemplated the power to lodge the extraordinary review.

21. The State also alleges that in view of the petitioner's disagreement with this rejection, he lodged a *tutela* protection action, which was admitted for consideration; however, his arguments did not prevail. It points out that the fact that just because the decision resolving the *tutela* proceedings were not favorable to the arguments of the petitioner, this does not characterize a violation of the rights enshrined in the Convention, given that the petitioner has failed to prove a violation of the right to due process. It indicates that even though the *tutela* case was not selected for review by the Constitutional Court, it had the opportunity to rule on the matter in its judgment T-563 of 2004 in which it concluded that the decision to request a new power of attorney was valid since the said remedy was not part of the ordinary proceedings which ended with the executory judgment. In summary, the State alleges that measures underway in the contentious administrative jurisdiction do not imply any arbitrary act or omission of judicial guarantees, which could be considered in violation of Article 8 of the American Convention.

22. Finally, the State requests that the Commission declare the complaint inadmissible for a failure to fulfill the requirements established in Article 46 of the Convention.

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

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

23. The petitioner has standing, in principle, under Article 44 of the American Convention, to file petitions with the Commission. The petition indicates as alleged victims individual persons, with respect to whom the State of Colombia undertook to respect and guarantee the rights enshrined in the American Convention. As regards the State, the Commission observes that Colombia has been a State party to the American Convention since July 31, 1973, the date it deposited its instrument of ratification. The Commission therefore has competence *ratione personae* to examine the petition.

24. The Commission also has competence *ratione loci* to examine the petition, since it alleges violations of rights protected in the American Convention, which occurred within the territory of Colombia, a State party to the said treaty. 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 time the events alleged in the petition took place. In addition, the Inter-American Convention to Prevent and Punish Torture entered into force for Colombia on January 19, 1999, i.e. subsequent to the material events of the claim. Without prejudice to the foregoing, the Commission has competence *ratione temporis* to apply the Inter-American Convention to Prevent and Punish Torture in that it refers to the obligation to investigate and punish the alleged acts of torture and the alleged denial of justice for the events occurring subsequent to its ratification.

25. Finally, the Commission has competence *ratione materiae*, because the petition contains complaints of possible violations of human rights protected by the American Convention.

## **B. Requirements for Admissibility**

### **1. Exhaustion of Domestic Remedies**

26. 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 requirement for the admission of claims on the alleged violation of the American Convention.

27. Article 46.2 of the Convention provides that the requirement of the prior exhaustion of domestic remedies are not applicable when:

- a) the domestic legislation of the state concerned does not afford due process of law for the protection of the rights or rights that have allegedly been violated;
- b) the party alleging the violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and
- c) there has been unwarranted delay in rendering final judgment under the aforementioned remedies.

As the Rules of the Commission establish, and according to statements by the Inter-American Court, each time that the State alleges a petitioner's failure to exhaust domestic remedies, it has the burden to identify which are the remedies to be exhausted and demonstrate that the remedies that have not been exhausted are "adequate" to address an alleged violation, in other words that the function of these remedies within the domestic legal system is appropriate to protect the legal right infringed.<sup>2</sup>

28. In the present case, as regards the criminal proceedings, the State alleges that the petition does not satisfy the requirement of prior exhaustion of domestic remedies, laid down in Article 46.1.a of the American Convention; as regards the disciplinary proceedings it alleges that the action was judged to be time-barred; and as regards the contentious administrative proceedings it alleges that the petitioner obtained rulings on the merits which exhausted the domestic remedies. For its part, the petitioner alleges that as regards the contentious administrative proceedings, the domestic remedies were exhausted with the decision of the Constitutional Court of April 30, 2004, which excluded reconsideration of the *tutela* decision denying an alleged violation of due process for the inadmission of the extraordinary review request, communicated to the petitioner on June 3, 2004. As regards the criminal proceedings, the petitioner alleges that the exception set out in Article 46.2.b of the American Convention applies, in view of the fact that the change of the homicide investigation into one of theft prevented them from exhausting remedies.

---

<sup>2</sup> Article 31.3 of the Commission's Rules. See also I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, para. 64.

29. In view of the parties' allegations, it is necessary in the first place to clarify which are the internal remedies to be exhausted in a case such as the present, in light of the jurisprudence of the Inter-American System. The Commission's case law points out that each time that an alleged crime subject to public prosecution is committed, the State has the obligation to promote and encourage the criminal proceedings<sup>3</sup> and that, in such cases, this constitutes the appropriate way to clarify the events, try those responsible and to establish the appropriate criminal sanctions, as well as to facilitate other methods of pecuniary reparations. The Commission considers that the events referred to in the petition involve the possible violation of fundamental rights such as the right to life, personal integrity and personal liberty, which corresponds in the domestic law to crimes subject to public prosecution whose investigation and trial must be encouraged by the State itself.

30. In this regard, the Commission observes that, as a general rule, a criminal investigation must be undertaken promptly to protect the victims' interests, to preserve evidence, including safeguarding the rights of every individual who may be considered a suspect in the context of the investigation. As the Inter-American Court has pointed out, even though every criminal investigation must comply with a series of legal requirements, the rule of the prior exhaustion of domestic remedies must not lead to a halt or delay that would render international action in support of the victims ineffective.<sup>4</sup>

31. In this regard, the petitioner alleged that on March 18, 1993, the Municipal Judge for Criminal and Civil Matters of Pailitas ordered the initiation of a preliminary investigation for the crime of homicide. Subsequently, on April 1, 1993, the Prosecutor in charge sent the investigation to the Regional Prosecutor of Barranquilla, who changed the homicide investigation into an investigation for theft of gasoline from the pipeline, which turned the alleged victims into the accused in the proceedings. He alleged that on June 29, 1999, the Deputy Prosecutor before the Regional Judges decided to suspend the investigation. For its part, the State alleged that there might be a pending homicide investigation but that it had failed to compile the corresponding information. However, according to information supplied by the parties, the Commission understands that even if this said investigation were to exist, it would still be at a preliminary stage.

32. In view of the foregoing the Commission notes that more than 17 years have elapsed since the events referred to in the petition allegedly occurred, and there is no determination of criminal responsibility. Therefore, given the characteristics of the present case, and the time passed since the events of the petition, the Commission considers that the exception set out in Article 46.2.c of the American Convention regarding delay in the domestic proceedings, is applicable. As such the requirement laid down with regard to the prior exhaustion of domestic remedies is not applicable.

33. Invoking the exceptions to the rule of the exhaustion of domestic remedies set out in Article 46.2 of the Convention is inextricably linked to the determination of possible violations of certain rights enshrined therein, such as the guarantees of access to justice. However, Article 46.2, in its nature and effect, is a self-contained rule vis-à-vis the substantive norms of the Convention. Therefore, the determination as to whether the exceptions to the rule of the exhaustion of domestic remedies apply in the case at hand must be made in a prior manner and separate from an analysis of the merits of the case, since it relies upon a standard of appreciation different from that used to determine a possible violation of Articles 8 and 25 of the Convention. It is necessary to point out that the causes and effects which prevent the exhaustion of domestic remedies will be analyzed in the report which the Commission will adopt on the merits of the claim in order to confirm whether there have been violations of the American Convention.

---

<sup>3</sup> IACHR, Report No. 99/09, Petition 12.335, *Gustavo Giraldo Villamizar Durán*, Colombia, October 29, 2009, para. 33. See also IACHR, Report No. 52/97, Case 11.218, *Arges Sequeira Mangas*, IACHR Annual Report 1997 paras. 96 and 97, and IACHR, Report No. 55/97, Case 11.137, *Abella et. al.*, para. 392.

<sup>4</sup> I/A Court H.R., *Case of Velásquez Rodríguez*, *Preliminary Objections*. Judgment of June 26, 1987, Series C No. 1, para. 93.

34. As regards the claim of an alleged violation of Article 8 of the American Convention over the denial of the extraordinary review request, the Commission observes that that remedy is laid down in Article 194 of the Contentious Administrative Code, supplemented by Article 57 of Law 446 of 1998, which governs executory judgments issued by the various Chambers of the Council of State, for a direct violation of substantive rules due to their wrongful application, omission or mistaken interpretation. In this respect in a session of December 1, 1998 the Contentious Administrative Plenary Chamber of the Council of State agreed to "demand a new power of attorney for the processing of the extraordinary review request and establish a time limit for the application of Article 143 [...]".<sup>5</sup> Subsequently, in August 1999, the same Chamber reiterated the request on the basis that "it was an extraordinary remedy -in this case a request for review- that can only be filed against final judgments issued by the Chambers of the Council of State, and therefore it should be accompanied by a special power of attorney, unless the petitioner acts in his own name and possesses and demonstrates the status of a registered attorney."<sup>6</sup>

35. The Commission observes that after the lodging of this remedy, the Council of State issued its order of November 7, 2002 in which it requested that the petitioner file the power of attorney authorizing this lodging. However, in a brief dated November 19, 2002, the petitioner requested that the Council of State take into account the power of attorney enclosed with the original direct reparation suit, already contained in the case file. However, these powers of attorney failed to confer express authority to lodge an extraordinary review request. The Commission observes that according to the information available, the presentation of specific powers of attorney was a requirement and the petitioner has not explained why he could not comply with the Court's request, nor has it been specifically and factually alleged why this requirement would be unreasonable. The Commission considers that on this point, the petitioner has failed to duly exhaust the available domestic remedies.

## **2. Timeliness**

36. The American Convention establishes that for a petition to be admissible before the Commission, it must be lodged with a time limit of six months from the date on which the party alleging the violation of rights was notified of the final decision. In the current claim, 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 respect, Article 32 of the Commission's Rules establishes that in those cases where exceptions to the prior exhaustion of domestic remedies are found to apply, the petition must be presented within a reasonable time, at the Commission's discretion. To this end, the Commission must consider the date on which the alleged violation of the rights occurred and the circumstances of each case.

37. In the present case, the petition was received on September 10, 2004, and the events relevant to the claim took place on March 16, 1993, and their effects in terms of the alleged failings in the administration of justice extend up to the present date. Therefore, in view of the context and characteristics of the present case, as well as the fact that there is a pending investigation, the Commission considers that the petition was lodged within a reasonable time, and that the requirement of admissibility with regards to the time limit for presentation must be considered to be satisfied.

## **3. Duplication of Proceedings and International *Res Judicata***

38. It is not apparent from the case file that the content of the petition is currently pending before another international instance, nor that it is a petition previously studied by this or any other international organ. Therefore, it is appropriate to consider the requirements established in Articles 46.1.c and 47.d of the Convention to be fulfilled.

---

<sup>5</sup> Council of State, Plenary Contentious Administrative Chamber, Judge Rapporteur Alberto Arango Mantilla, August 25, 1999, filing number S-022, of August 25, 1999.

<sup>6</sup> Council of State, Plenary Contentious Administrative Chamber, Judge Rapporteur Alberto Arango Mantilla, August 25, 1999, filing number S-022, of August 25, 1999.

#### **4. Colorable Claim**

39. In view of the elements of fact and law presented by the parties and the nature of the claim submitted for its analysis, the IACHR considers that the petitioner's allegations on the scope of State responsibility regarding the lack of judicial clarification of the events alleged in the petition may constitute colorable claims on the violation of the rights to life, personal integrity, personal liberty and judicial guarantees protected by Articles 4, 5, 7 and 8, in conjunction with Article 1.1 of the American Convention.

40. Similarly, given the allegations of the parties, and in application of the principle *iura novit curia*, it is appropriate for the Commission to establish the possible responsibility of the State for the alleged violation of Article 25 of the American Convention and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.



## V. CONCLUSIONS

41. The Commission concludes that it is competent to examine the claims presented by the petitioner on the alleged violation of Articles 4, 5, 7, 8 and 25, in conjunction with Article 1.1 of the American Convention and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and that they are admissible, in accordance with the requirements laid down in Articles 46 and 47 of the American Convention. In addition, it concludes that the claim concerning the alleged violation of Article 8 of the American Convention for the denial of the extraordinary review request is not admissible due to failure to exhaust domestic remedies.

42. Based on the arguments of fact and law expressed above, and without prejudice to an analysis on the merits of the claim,

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

#### **DECIDES:**

1. To declare admissible the claims presented with regard to Articles 4, 5, 7, 8 and 25 in conjunction with Article 1(1) of the American Convention and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To notify this decision to the State of Colombia and to the petitioner.

3. To continue with an analysis on the merits.

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

Done and signed in the city of Washington, D.C., on the 22nd day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.