

REPORT No. 157/11¹
PETITION 902-03
ADMISSIBILITY
RENÉ MAURICIO ARTIGA NAVARRO ET AL.
EL SALVADOR
November 2, 2011

I. SUMMARY

1. On October 16, 2003, the Inter-American Commission on Human Rights (hereinafter the "Commission," "Inter-American Commission," or "IACHR") received a petition submitted by the Foundation for Studies on the Application of Law (hereinafter "FESPAD"),² the Foundation Center for Defense of the Consumer, Vivian Lizeth Gutiérrez Luna,³ Saúl Antonio Baños,⁴ and Carolina Paz Narváez (hereinafter the "petitioners") against the State of El Salvador (hereinafter the "State" or "Salvadoran State") for the State's alleged violation of the duty to prevent with regard to personal integrity, because it allowed the sale of alcohol products prepared with methyl alcohol, causing most of those who consumed the product to die, become blind, or suffer damage to their nervous and respiratory systems. Specifically, the petitioners report the following survivors: 1) René Mauricio Artiga Navarro, 2) Antonio López Maldonado, 3) Santiago Bermúdez Bermúdez, 4) Carlos Alberto Ramírez Romero, and, 5) Rosalina de Jesús Menjívar. They also individually identify the following persons who died: 1) Carlos Arsenio Cubías, 2) José Inés Mendoza, 3) Mauricio Antonio Constanza, 4) Mario Roberto Paiz Godoy, 5) Julio de Jesús Palacios Mejía, 6) Luis Miguel Guzmán González, 7) Ángel Norberto Umaña, 8) Santos Sabino Díaz, 9) Fredy Benedicto Flores, 10) Iván Antonio Vázquez, 11) Pedro Efraín Martínez Montano, 12) Santos Fulgencio Alfaro, 13) Ángel Méndez García, 14) Jesús Vidal Cubías Rivas, 15) Andrés Hernández, 16) José Benigno Gálvez Ramírez, 17) Ofelio (or Rogelio) López, 18) Pedro Juan Valladares Morales, 19) José Horacio Herrera García, 20) Marcos Antonio Flores Hidalgo, 21) Víctor Antonio Rosales Ramírez, 22) Bernabé López, 23) Manuel Francisco Rivas, 24) José Fermín Rivas, 25) Jorge Alberto Molina Mercado, 26) Aurean Merino, 27) Felipe Álvaro Hernández Alvarado, 28) José Alfredo Rivas Rivas, 29) Jesús Napoleón Mejía Guardado, 30) José Mauricio Sánchez Vásquez, 31) Manuel Antonio Ramírez Romero, and 32) Agruelio de Jesús Gómez Rivas (all hereinafter referred to as the "alleged victims").

2. The petitioners allege that the Salvadoran State is responsible for violating the rights enshrined in Articles 5 (personal integrity), 8.1 (judicial guarantees), 25 (judicial protection), and 26 (progressive development) of the American Convention on Human Rights (hereinafter the "Convention" or "American Convention"), consistent with the general obligation established in Articles 1.1 and 2 of that international instrument, to the detriment of the alleged victims and their relatives. They also allege the violation of Article 10 of the Protocol of San Salvador and Article XI of the American Declaration.

3. For its part, the State asserts that the Chamber for Constitutional Matters ruled on the case, rejecting the appeal for constitutional protection, because the Ministry of Health had demonstrated its preventive efforts in this matter. As a result, the State asks that the petition be declared inadmissible.

4. Without prejudging the merits of the case, after analyzing the positions of the parties and in accordance with the requirements of Articles 46 and 47 of the American Convention, the Commission decides to declare the petition admissible with respect to the alleged violations of the rights established in

¹ As provided in Article 17.2.a of the Commission's Rules of Procedure, Commissioner María Silvia Guillén, a Salvadoran national, did not participate in the discussion or the decision regarding this case.

² On October 17, 2010, the Foundation for Studies on the Application of Law expressly renounced its legal representation of the alleged victims.

³ Vivian Lizeth Gutiérrez Luna presented her credentials as a petitioner on October 29, 2010.

⁴ Saúl Antonio Baños presented his credentials as a petitioner on October 29, 2010.

Articles 5.1, 8.1, 25 and 26 of the Convention, consistent with Articles 1.1 and 2 of that instrument, with respect to the alleged surviving and deceased victims, as well as the relatives of the alleged deceased victims. It also decides to declare the petition admissible in accordance with the principle of *iura novit curia*, with respect to the alleged violation of the right enshrined in Article 4 of the Convention, as it relates to Articles 1.1 and 2 of that instrument, with respect to the alleged deceased victims. The Commission also decides to inform the parties of this decision, to public it and include it in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BY THE COMMISSION

5. On October 16, 2003 the Commission received the petition and assigned it number 902-03. On December 2, 2003, it forwarded the petition to the State of El Salvador, asking it to submit its response within a period of two months, in accordance with the provisions of Article 30.2 of the Rules of Procedure of the IACtHR. The State's response was received on February 4, 2004. That communication was duly forwarded to the petitioners.

6. The IACtHR also received information from the petitioners in communications dated February 26, 2004, May 17, 2004, October 19, 2005, December 16, 2005, December 4, 2006, September 2, 2010, October 29, 2010, November 27, 2010, and January 31, 2011. Those communications were duly forwarded to the State. It also received information from the State on the following dates: March 14, 2005, April 26, 2006, April 2, 2007, and February 17, 2011, which were duly forwarded to the petitioners.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. The petitioners state that between October 2000 and August 2001, in various areas of El Salvador and particularly in the central and western areas of the country, several people were poisoned by drinking intoxicating beverages prepared on the basis of methyl alcohol. They state that 127 deaths were reported in addition to many cases of physical, psychological, and moral damage among those who survived. According to the information provided by the petitioners, most of those who ingested this substance did not even make it to the hospital. The damage suffered by those who survived ingesting methyl alcohol includes reported cases of blindness and serious harm to the nervous and respiratory systems. The petitioners maintain that most of the relatives of those affected have limited resources and that some were able to file appeals on the domestic level in order to seek or petition for just compensation. They allege that due to their economic conditions many relatives had to incur loans, including the coverage of the cost of funerals.

8. The petitioners allege that methyl alcohol is an industrial use alcohol that is highly toxic and potentially fatal if ingested by humans. As a chemical, it is used to strip varnish. They argue that despite this, the State failed to act to prevent or prohibit its free circulation and purchase for ingestion at the national level.

9. They state that although the authorities knew about the situation due to the alarm sounded in society based on the events reported starting in early October 2000, the Ministry of Health did not remove the adulterated products from commerce, failing to meet its obligations under the Constitution of the Republic and the Health Code, as well as other standards, particularly the obligation to supervise products offered publicly for human consumption, and failing to comply with international treaties on the protection of human rights. The petitioners state that most of the alleged victims died on different dates during the month of October 2000 and report some deaths occurring up to the month of March 2001.

10. They assert that the State has indicated to the IACtHR that the law in effect at the time of the event established only an optional power of the Ministry of Health to conduct the inspections it considered advisable, in alcohol-producing factories and warehouses, as well as of the distributors and retailers of alcoholic beverages. They emphasize that the State has stipulated that the law regulating the production and sale of alcohol and alcoholic beverages, at the time when the deaths caused by imbibing

adulterated alcohol occurred, excluded from its regulation alcoholic products in which "methyl alcohol" was involved.

11. Regarding the rights alleged to have been violated, the petitioners point to the right to personal integrity. In addition, through the Chamber for Constitutional Matters of the Supreme Court of Justice, they allege that the right to judicial protection was violated because the Court failed to diligently handle the appeals proceedings filed and because the process did not adhere to the characteristics of simplicity, rapidity, and effectiveness required under Article 25.1 of the American Convention. In addition, they maintain that the State violated the alleged victims' right to health in accordance with the provisions of the American Convention, the Protocol of San Salvador, and the American Declaration on the Rights and Duties of Man, because it allowed the production, sale, purchase, and consumption of intoxicating beverages prepared with toxic alcohol, producing severe damage to health such as blindness, reduced mobility of the lower limbs, as well as the deaths of more than one hundred people, among them several of the alleged victims.

12. They allege that in failing to guarantee the alleged victims' rights, the State has failed to demonstrate a willingness to repair the damage caused, even medical opinions demonstrate that the alleged effects on human rights were caused by ingesting ethyl alcohol. They indicate that the State initiated investigations on the domestic level without due follow-up, allowing the cases to remain in impunity. They assert that the conduct of the authorities was passive and not at all diligent, and that the delay in settling the appeals is another indication of this fact.

13. Regarding the exhaustion of domestic remedies, the petitioners maintain that individual appeals for constitutional protection were filed against the Ministry of Public Health and Social Assistance before the Chamber for Constitutional Matters of the Supreme Court of Justice, arguing that the Ministry's failure to meet its obligations led to the poisoning of the alleged victims due to the consumption of methyl alcohol. They report that the appeals for constitutional protection were filed on November 27, 2000 (630-2000), November 20, 2001 (670-2001), November 28, 2001 (634-2000), and November 20, 2001 (671-2001) and that no decision had been obtained as of the date the petition was submitted to the IACtHR. They thus argue for the exception to the exhaustion of domestic remedies due to the unwarranted delay of the Supreme Court to issue the decisions.

14. They indicate that the Chamber for Constitutional Matters decided in 2004 not to admit the appeals for constitutional protection filed because it felt that there had been preventive health protection and that the actions of the Ministry had been consistent with the law. However, they state that one judge on that panel indicated in her dissenting vote that the Chamber should have protected the alleged victims based on the violation of their relatives' right to life, right to health, and right to protection by conserving and defending health, given the social impact and irreparable damage caused. They allege that the domestic remedies were exhausted when the respective decisions were issued in the appeals for constitutional protection.

15. Regarding the complaint appeal that the State alleges could have been exhausted, the petitioners assert that that appeal is used as legal measure for remedying delay in the administration of justice but is ineffective for attacking the human rights violations being claimed.

16. The petitioners recognize that Legislative Decree No. 543 of December 16, 2004 amended the Law Regulating the Production and Sale of Alcohol and Alcoholic Beverages as a result of the alarm sounded in society because of this case. However, they report that cases of adulterated liquor causing poisoning continue to be reported in some areas of the country. According to the petitioners, this shows the ineffectiveness of the measures adopted to guarantee the Salvadoran population's right to life, health, and integrity.

B. The State

17. The State alleges that the Ministry of Public Health and Social Assistance, an institution questioned in the domestic jurisdiction with respect to this case, suggested with respect to the claims

submitted by the interested parties before the Supreme Court in Appeal Proceedings 630/2000, 634/2001, 671/2001, that the Law Regulating the Production and Sale of Alcohol and Alcoholic Beverages, at the time when the deaths due to consumption of adulterated alcohol occurred, excluded from its regulation alcohol products in which "methyl alcohol" was involved. Therefore, it argues that the Ministry had no involvement in the matter at the time. It adds that, according to the Ministry, that law only established an optional power to conduct the inspections it considered advisable in factories and warehouses that produced alcohol, as well as of producers, distributors, and retailers of alcoholic beverages, something that that Ministry did continuously through 400 environmental health inspectors, according to a schedule of activities, taking random samples and performing laboratory analyses for different purposes such as quality control, health records, or to handle complaints.

18. Like the petitioners, the State reports that the Supreme Court decided not to admit the appeals for constitutional protection because there had been preventive health protection and that the actions of that Ministry had adhered to the law. The State alleges that state legal actions in the case were effective, since a response was provided in the appeals and, although the response was not favorable to the interests of the petitioners, the ruling was based on the facts and consistent with the law. The State asserts that the time the Supreme Court took to issue the ruling was justified, considering the magnitude of the alleged facts and the rights alleged to have been violated.

19. Regarding investigations conducted at the domestic level in order to determine responsibility for what had happened, the State notes that the respective investigations were conducted in the criminal sphere and seizure orders were issued against persons selling methyl alcohol illegally in clandestine commercial establishments. Nonetheless, it adds that the Office of the Attorney General of the Republic has not reported "information documenting progress" in the criminal investigations.

20. The State also reports that on October 11, 2000 the Legislative Assembly issued Legislative Decree 162, extended by Decree 370 of March 30, 2001, establishing a prohibition for a period of ten days on the distribution, sale, and consumption of alcohol and alcoholic beverages distilled with a concentration of 25 alc/vol and up, sold in liquor stores and pharmacies. It also provided for the legal presumption of product adulteration when products sold contain substances harmful to human health and established the obligation of the Ministry of Finance to inform the Ministry of Health regarding imports in this area.

21. In addition, according to the State, important amendments were made to the Law Regulating the Production and Sale of Alcohol and Alcoholic Beverages. In this respect, it reports that Legislative Decree 543 of December 16, 2004 expanded aspects relating to operations, health records, quality controls, payment of taxes, and consumer guarantees with respect to the production, processing, and sale of ethyl or industrial alcohol, methyl alcohol, and other alcohols. The controls on the sale of methyl alcohol included the Ministry of Health's power to authorize any individual or legal entity that needs to purchase this type of alcohol and to maintain a registry of the users of this product. With respect to retail sales, it reports that anyone with a license to market or sell alcohol was prohibited from having methyl alcohol on their premises, and the National Civil Police were empowered to verify and guarantee compliance with these provisions.

22. Regarding the prior exhaustion of domestic remedies, the State initially maintained that the petitioners had not met this requirement and indicated that it is complicated to establish the State's obligation to prevent damage to health and life, under a concept of public policy rather than events that violated constitutional rights and guarantees. Subsequently, it referred to the Supreme Court decision that did not admit the appeals. It asserts that the time the Supreme Court took to issue the decisions was justified, considering the magnitude of the alleged events and the rights alleged to have been violated. It adds that regarding the alleged delay of the Supreme Court in rendering the decision, the petitioners had at their disposal the complaint appeal based on a delay in justice. As a result, the State asks that the petition be declared inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

23. In principle, the petitioners are empowered by Article 44 of the American Convention to submit petitions to the Commission. In this regard, the IACtHR notes that the petitioners, in their initial brief, identified as the alleged victims five surviving persons⁵ and 32⁶ deceased persons and individually identified some of the relatives of the alleged victims.⁷ Thus, the Commission notes that the petition indicates as alleged victims, individuals with respect to whom the State of El Salvador committed to respect and guarantee the rights enshrined in the American Convention.

24. With respect to the State, the Commission points out that El Salvador has been a State Party to the American Convention since June 23, 1978, the date when it deposited its ratifying instrument. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to hear the petition in that it alleges violations of rights protected by the American Convention that occurred within the territory of El Salvador, a State Party to that instrument. The Commission reiterates that once the Convention took effect in a State, the Convention and not the Declaration became a primary source of law applicable by the IACtHR, provided that the petition refers to the alleged violation of rights contained in both instruments and does not involve a situation of continued violation.⁸ Therefore, the IACtHR will refer only to the standards of the Convention.

25. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date the events alleged in the petition would have taken place. Finally, the Commission is competent *ratione materiae*, because the petition reports possible violations of human rights protected by the American Convention.

⁵ Alleged surviving victims individually identified by the petitioners: 1) René Mauricio Artiga Navarro, 2) Antonio López Maldonado, 3) Santiago Bermúdez Bermúdez, 4) Carlos Alberto Ramírez Romero, and 5) Rosalina de Jesús Menjívar.

⁶ Alleged deceased victims individually identified by the petitioners 1) Carlos Arsenio Cubías, 2) José Inés Mendoza, 3) Mauricio Antonio Constanza, 4) Mario Roberto Paiz Godoy, 5) Julio de Jesús Palacios Mejía, 6) Luis Miguel Guzmán González, 7) Ángel Norberto Umaña, 8) Santos Sabino Díaz, 9) Fredy Benedicto Flores, 10) Iván Antonio Vázquez, 11) Pedro Efraín Martínez Montano, 12) Santos Fulgencio Alfaro, 13) Ángel Méndez García, 14) Jesús Vidal Cubías Rivas, 15) Andrés Hernández, 16) José Benigno Gálvez Ramírez, 17) Ofelio (or Rogelio) López, 18) Pedro Juan Valladares Morales, 19) José Horacio Herrera García, 20) Marcos Antonio Flores Hidalgo, 21) Víctor Antonio Rosales Ramírez, 22) Bernabé López, 23) Manuel Francisco Rivas, 24) José Fermín Rivas, 25) Jorge Alberto Molina Mercado, 26) Aurean Merino, 27) Felipe Álvaro Hernández Alvarado, 28) José Alfredo Rivas Rivas, 29) Jesús Napoleón Mejía Guardado, 30) José Mauricio Sánchez Vásquez, 31) Manuel Antonio Ramírez Romero, 32) Agruelio de Jesús Gómez Rivas.

⁷ In the initial petition dated October 16, 2003, the petitioners individually identified the following relatives of the alleged victims: Santos Corvera de Cubías (mother of Carlos Arsenio Cubías) who died on November 12, 2010, Francisco Paniagua Guerrero (father of José Inés Mendoza), Marcos Cándido Constanza Salinas (brother of Mauricio Antonio Constanza), María del Carmen Guevara Martínez (partner of Mario Roberto Paiz Godoy), Juana de Jesús Palacios Viuda de García (mother of Julio de Jesús Palacios Mejía), Antonia Elizabeth García Guzmán (daughter of Luis Miguel Guzmán González), Ricardo Antonio Umaña Mejía (father of Ángel Norberto Umaña), María Arcadia Díaz Ramos (mother of Santos Sabino Díaz), Gloria Elizabeth Espinoza Cubías (partner of Fredy Benedicto Flores), María Cristina Vásquez de Osorio (mother of Iván Antonio Vázquez), Rogelio Humberto Martínez (father of Pedro Efraín Martínez Montano), María Margarita Reyes Rodríguez (partner of Santos Fulgencio Alfaro), Cristina Méndez de Bardales (sister of Ángel Méndez García), Elba Devora Rivas (mother of Jesús Vidal Cubías Rivas), María Antonia Carmona (sister of Andrés Hernández), Rosa Elvira Abarca Tobar (partner of José Benigno Gálvez Ramírez), Margarita López (daughter of Ofelio (or Rogelio) López), granted power of attorney to Dina López de Portillo, Romelia Morales Lara (mother of Pedro Juan Valladares Morales), María Gladys Herrera de Ramírez (sister of José Horacio Herrera García), Balbina Hidalgo Cubías Viuda de Flores (mother of Marcos Antonio Flores Hidalgo), Guadalupe de Jesús Rosales González (mother of Víctor Antonio Rosales Ramírez), María Magdalena López de López (daughter of Bernabé López), Julia Rivas de Rivas (spouse of Manuel Francisco Rivas), María Santos Delgado Viuda de Rivas (spouse of José Fermín Rivas), María Dominga Molina de Palacios (mother of Jorge Alberto Molina Mercado), Esperanza Rafael Merino (sister of Aurean Merino), María Bonifacia Hernández Viuda de Hernández (mother of Felipe Álvaro Hernández Alvarado), Teresa de Jesús Mejía Viuda de Rivas (spouse of José Alfredo Rivas Rivas), María Reina Monge Viuda de Mejía (spouse of Jesús Napoleón Mejía Guardado), Santos Tomás Sánchez Sánchez (father of José Mauricio Sánchez Vásquez), Carlos Alberto Ramírez Romero (brother of Manuel Antonio Ramírez Romero), Ignacio del Tránsito Gómez Pérez (son of Agruelio de Jesús Gómez Rivas).

⁸ IACtHR, Report No. 03/01 (Admissibility), Case 11.670, Amílcar Menéndez, Juan Manuel Caride et al. (Social Security System), Argentina, January 19, 2001, para. 41 et seq.

26. Regarding the Protocol of San Salvador, although the IACtHR lacks competence to establish violations of Article 10 of that instrument in individual cases, the IACtHR will take into consideration the provisions referring to those rights in its analysis of the merits of this case, as established in Article 29 of the American Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

27. Article 46.1.a of the American Convention provides that in order for a complaint submitted to the Inter-American Commission to be admissible in accordance with Article 44 of the Convention, domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to become aware of the alleged violation of a protected right and, if appropriate, to have the opportunity to resolve the matter before it is heard by an international body. Article 46.2 of the Convention establishes three assumptions under which the exhaustion of domestic remedies rules does not apply: 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; and c) there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies. These assumptions refer not only to the formal existence of such remedies but to their adequacy and effectiveness.

28. In the instant case, the State maintains that the petitioners exhausted the domestic remedies even though they did not obtain the result they expected, and that they had at their disposal the complaint appeal based on the alleged delay in justice. For their part, the petitioners argue that they exhausted the domestic remedies and that the appeals were not decided on a timely basis.

29. The Commission has indicated that in order to meet the prior exhaustion requirement, the petitioners must only exhaust the appropriate remedies, i.e., the remedies available and effective for remedying the situation reported. In the instant case, the Commission notes that appeals for constitutional protection were filed at the domestic level against the Ministry of Public Health and Social Assistance, arguing a failure to meet its obligation to provide sufficient and reasonable prevention with respect to the sales of alcoholic products adulterated with methyl alcohol, which had consequences for the health and life of the alleged victims. According to the information provided by the parties, the following appeals for constitutional protection were filed:

- Appeal for Constitutional Protection No. 630-2000 filed on November 27, 2000, regarding the deaths of Carlos Arsenio Cubías, Mauricio Antonio Constanza, Julio de Jesús Palacios Mejía, Luis Miguel Guzmán González, Iván Antonio Vázquez, Santos Fulgencio Alfaro, Ofelio (or Rogelio) López, Marcos Antonio Flores Hidalgo, Víctor Antonio Rosales Ramírez, Bernabé López, José Fermín Rivas, Jorge Alberto Molina Mercado, Felipe Álvaro Hernández Alvarado, José Mauricio Sánchez Vásquez, and Agruelio de Jesús Gómez Rivas et al.
- Appeal for Constitutional Protection No. 634-2000, filed on November 28, 2000 on behalf of René Mauricio Artiga Navarro and Santiago Bermúdez Bermúdez, survivors et al.
- Appeal for Constitutional Protection No. 670-2001 filed on November 20, 2001 on behalf of Antonio López Maldonado and Rosalina de Jesús Menjívar, survivors et al.
- Appeal for Constitutional Protection No. 671-2001 filed on November 20, 2001 on behalf of Carlos Alberto Ramírez Romero, survivor and regarding the deaths of José Inés Mendoza, Ángel Norberto Umaña, Santos Sabino Díaz, Ángel Méndez García, Jesús Vidal Cubías Rivas, José Benigno Gálvez Ramírez, Manuel Francisco Rivas, Aurean Merino, Jesús Napoleón Mejía Guardado, Manuel Antonio Ramírez Romero, et al.

30. The Appeal for Constitutional Protection No. 630-2000 was decided by the Chamber for Constitutional Matters of the Supreme Court on May 19, 2004. Subsequently, Appeals for Constitutional

Protection Nos. 670-2001 and 671-2001 were joined to No. 634-2000, and the Chamber for Constitutional Matters of the Supreme Court of Justice decided them on June 20, 2005. In both cases, the Constitutional Chamber decided not to admit the appeals because it felt there had been preventive health protection and that the actions of the Ministry had adhered to the law.

31. The Commission notes that the parties do not disagree that the appeal for constitutional protection was, in principle, the suitable remedy for addressing the facts presented. On the other hand, the IACtHR considers that the petitioners were not required to submit a complaint to the Supreme Court for delay in justice as suggested by the State, because such a complaint is neither a judicial remedy nor an effective means for resolving the alleged violation of rights reported.

32. The IACtHR concludes that the decisions of May 19, 2004 and June 20, 2005 issued by the Chamber for Constitutional Matters of the Supreme Court regarding the above-mentioned appeals for constitutional protection exhausted the domestic jurisdiction. As a result, it concludes that the requirement established in Article 46.1.b of the American Convention has been met.

33. In addition, the Commission has information in the case file regarding the limited socioeconomic resources of the relatives of the individuals affected. It also notes that the decisions on the above-mentioned appeals for constitutional protection, all decided in the same way by the highest judicial body of El Salvador, exhausted the substance of the matter. As a result, with respect to the victims or relatives who did not have sufficient resources and felt that the result of the exercise would be negligible, the Commission considers it reasonable to admit their claims based on the undisputed fact that the factual and legal issues were presented to the State through multiple appeals for constitutional protection, so that the State had the opportunity to hear and rule on the issues.

34. It remains only to point out that invoking the exceptions to the rule of the 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 therein, such as the guarantees on access to justice. However, Article 46.2, given its nature and purpose, is a rule with autonomous content *vis à vis* the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the rule of exhausting domestic remedies provided in that article are applicable to the case in question must be made prior to and separate from the analysis of the merits of the case, in that it depends on a standard of evaluation different from that used to determine the violation of Articles 8 and 25 of the Convention. It should be made clear that the causes and effects that have prevented the exhaustion of domestic remedies in the instant case will be analyzed, as relevant, in the report the Commission adopts regarding the merits of the dispute, in order to establish whether they are actually violations of the Convention.

2. Deadline for submitting the petition

35. Regarding the requirement under Article 46.1.b of the Convention, according to which the petition must be submitted within six months of the time when the victim is notified of the final decision exhausting the domestic remedies, the IACtHR notes that the petition under review was submitted on October 16, 2003, prior to the date of the decisions that exhausted the domestic remedies. Therefore, the requirement established in Article 46.1.b of the American Convention is satisfied.

3. Duplication of proceedings and international *res judicata*

36. The file does not indicate that the subject of the petition is pending settlement in another international proceeding or that it reproduces a petition already examined by this or any other international body. Therefore, it is appropriate to consider that the requirements established in Articles 46.1.c and 47.d of the Convention have been met.

4. Characterization of the alleged facts

37. The Commission considers it inappropriate at this stage of the proceeding to decide whether or not the alleged violations to the detriment of the alleged victims actually occurred. For purposes of admissibility, the IACtHR must only rule at this point on whether facts are presented that, if proven to be true, would characterize violations of the American Convention, as stipulated in Article 47.b thereof, and whether the petition is “manifestly groundless” or “obviously out of order” in accordance with subparagraph (c) of the same article.

38. The criterion for evaluating these points is different from that required to rule on the merits of a complaint. The IACtHR must perform a *prima facie* evaluation and determine whether the complaint provides the basis for the apparent or potential violation of a right guaranteed by the American Convention; it need not establish the existence of that violation.⁹ At this stage, it is appropriate to perform a summary analysis that does not imply any prejudgment or an advance opinion regarding the merits. The Rules of Procedure of the Inter-American Commission, by establishing an admissibility phase and another merits phase, reflect this distinction between the evaluation the Inter-American Commission must perform to declare a petition admissible and the evaluation to establish whether a violation attributable to the State has been committed.¹⁰

39. Neither the American Convention nor the IACtHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

40. The petitioners maintain that the State violated the right to personal integrity and the right to health of the alleged victims because the State failed to perform obligations established in domestic and international law by allowing the production, sale, purchase, and consumption of intoxicating beverages prepared with toxic alcohol, leading to severe complications in the health of those affected and even death. In addition, they allege that the judicial proceeding filed was not consistent with the characteristics required under Articles 8.1 and 25 of the American Convention. For its part, the State asserts that the Chamber for Constitutional Matters ruled on the matter and did not admit the appeals for constitutional protection because the Ministry of Health demonstrated its preventive efforts on the matter.

41. According to the information and documents provided by the parties, the IACtHR considers that the facts alleged regarding the State's failure to prevent harm to and guarantee the rights of the alleged victims, if proven, could characterize alleged violations of the right guaranteed in Article 5.1 of the American Convention, as it relates to Articles 1.1 and 2 of that instrument, with respect to the alleged surviving victims and the relatives of the alleged deceased victims.

42. Similarly, it feels that the alleged delay of the Supreme Court of Justice in issuing the respective decisions in the appeals, as well as the alleged failure to investigate the facts, if proven, could characterize alleged violations of the rights guaranteed under Articles 8.1 and 25 of the American Convention, as they relate to Article 1.1 of that instrument, with respect to the alleged surviving victims and the relatives of the alleged deceased victims.

43. Also, it considers that the alleged facts on the case could characterize alleged violations of the right guaranteed under Article 26 of the American Convention, in relation to Articles 1.1 and 2 of that instrument.

⁹ See IACtHR, Report No. 128/01, Case 12.367 *Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of the “La Nación” Newspaper* (Costa Rica), December 3, 2001, para. 50; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 43; Report No. 32/07, Petition 429-05, *Juan Patricio Marileo Saravia et al.* (Chile), April 23, 2007, para. 54.

¹⁰ See IACtHR, Report No. 31/03, Case 12.195, *Mario Alberto Jara Oñate et al.* (Chile), March 7, 2003, para. 41; Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 43; Petition 429-05, *Juan Patricio Marileo Saravia et al.* (Chile), April 23, 2007, para. 54; Petition 581-05, *Víctor Manuel Ancalaf LLaupe* (Chile), May 2, 2007, para. 46.

44. In accordance with the principle of *iura novit curia*, the Commission decides to declare the petition admissible with respect to the alleged violation of the duty to prevent and guarantee under Article 4 of the American Convention, consistent with Articles 1.1 and 2 of that instrument, with respect to the alleged deceased victims. In the merits phase, the IACHR will analyze whether the State knew or should have known of the existence of a real or immediate risk to the life of the alleged victims due to the sale of methyl alcohol, as well as the measures that could have been expected from the State to avoid that risk.

V. CONCLUSIONS

45. The Commission concludes that it is competent to hear the merits of this case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention and decides to continue with analysis of the merits regarding the alleged violation of Articles 5.1, 8.1, 25 and 26, consistent with Articles 1.1 and 2 of that instrument, with respect to the alleged surviving victims and the relatives of the alleged deceased victims.

46. The IACHR also decides to declare the case admissible in accordance with the principle of *iura novit curia*, with respect to the alleged violation of the right enshrined in Article 4 of the American Convention, consistent with Articles 1.1 and 2 of that instrument, with respect to the alleged deceased victims.

47. Based on the factual and legal arguments presented above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible with respect to the alleged violations of the rights established in Articles 5.1, 8.1, 25 and 26 of the Convention, consistent with Articles 1.1 and 2 of that instrument, with respect to the alleged surviving victims and the relatives of the alleged deceased victims.

2. To declare the petition admissible, in accordance with the principle of *iura novit curia*, with respect to the alleged violation of the right enshrined in Article 4 of the Convention, in relation to Articles 1.1 and 2 of that instrument, with respect to the alleged deceased victims.

3. To inform the parties of this decision.

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., a los 2nd day of the month of November, 2011. (Signed): Dinah Shelton, President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, and Luz Patricia Mejía Guerrero, Commissioners.