

**REPORT No. 150/11<sup>1</sup>**  
PETITION 123-05  
ADMISSIBILITY  
ÁNGEL ALBERTO DUQUE  
COLOMBIA  
November 2, 2011

**I. SUMMARY**

1. On February 8, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition presented by the Comisión Colombiana de Juristas and Germán Humberto Rincón Perfetti (hereinafter “the petitioners”) alleging the responsibility of the Republic of Colombia (hereinafter “the State,” “the Colombian State,” or “Colombia”) for the inability of Ángel Alberto Duque (hereinafter “the alleged victim”) to access the survivor’s pension of his deceased partner, considering that the norms that regulate the right to social security excluded same-sex couples from that benefit.

2. The petitioners alleged that the State is responsible for violating the rights to life, humane treatment, judicial guarantees, equality before the law, and judicial protection established at Articles 4, 5, 8, 24, and 25 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”) in conjunction with Article 1(1) of the same treaty. For its part, the State alleged that the petitioners’ claims are inadmissible since the petitioners failed to exhaust domestic remedies as required by Article 46(1)(a) of the American Convention. For their part, the petitioners alleged that the domestic legal order does not provide for such due process of law as to enable Ángel Alberto Duque to obtain effective, timely, and adequate protection of his rights; accordingly, the exception to the exhaustion of domestic remedies requirement provided for at Article 46(2)(a) of the American Convention, they argue, applies to his case.

3. After examining the parties’ positions in light of the admissibility requirements set out at Article 46 of the American Convention, the Commission decided to declare the claim admissible for the purposes of examining the alleged violation of Articles 5, 8(1), 24, and 25, in conjunction with the obligations established at Article 1(1) and 2 of the American Convention, and it decided to declare inadmissible Article 4 in conjunction with Article 1(1) of the American Convention, to notify the parties of this decision, and to order its publication in its Annual Report to the OAS General Assembly.

**II. PROCESSING BEFORE THE COMMISSION**

4. The IACHR recorded the petition under number 123-05, and, after a preliminary analysis, proceeded to transmit a copy of the pertinent parts to the State on March 8, 2005, giving the State two months to present information in keeping with Article 30 of the Rules of Procedure. On May 11, 2005, the State requested an extension, which was granted by the Commission. On January 17, 2006, the Commission reiterated its request for information to the State. The State presented its observations on February 6, 2006, and these were transmitted to the petitioners for observations. On June 22, 2006, the petitioners requested an extension, which was granted by the Commission.

5. On August 14, 2006, the petitioners presented their observations, which were transmitted to the State for its observations. On October 24, 2008, a working meeting was held in the context of the 134<sup>th</sup> period of sessions of the Commission. On February 4, 2009, the State presented a brief with additional information, which was transmitted to the petitioners for their observations. On May 4, 2009, the petitioners presented their observations, which were transmitted to the State for its observations. On

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<sup>1</sup> In keeping with Article 17(2) of the Commission’s Rules of Procedure, Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not participate in the deliberations or decision in the instant case.

June 5, 2009, the State requested an extension, which was granted by the Commission. On June 8, 2009, an *amicus curiae* brief was received from the Asociación Española para el Derecho Internacional de los Derechos Humanos, which was transmitted to the petitioners and the State.

6. On July 7, 2009, the State presented a brief with observations, which was transmitted to the petitioners for their observations. On August 14, 2009, the petitioners requested an extension, which was granted by the Commission. On September 14, 2009, an *amicus curiae* brief was received from the organization Colombia Diversa, which was transmitted to the petitioners and the State. On September 30, 2009, the petitioners presented a brief with observations, which was transmitted to the State for its observations. On November 3, 2009, the State presented its final observations.

### III. THE PARTIES' POSITIONS

#### A. The petitioners' position

7. The petitioners argue that on August 4, 1997, Ángel Alberto Duque entered the STD-HIV/AIDS Program of the Social Security Institute (ISS: Instituto del Seguro Social) with a diagnosis of human immunodeficiency virus (HIV). They indicate that Ángel Alberto Duque and JOJG lived together permanently, in consensual union, for 10 years and three months until the death of the latter on September 15, 2001, as the result of acquired immunodeficiency syndrome (AIDS). They argue that the alleged victim received economic support from his partner for his personal expenses and health care. They indicate that by means of such support, the alleged victim affiliated with a Health Provider Enterprise (EPS: Empresa Prestadora de Salud) under which he received the services necessary for his health situation.

8. The petitioners indicate that at the time of his death JOJG was affiliated as a worker with the Compañía Colombiana Administradora de Fondos de Pensiones y Cesantías COLFONDOS S.A. (Colfondos). They indicate that after his partner's death, on March 19, 2002, Ángel Alberto Duque presented a request to Colfondos for them to inform him of the requirements he would have to satisfy to access the survivor's pension based on his status as the permanent partner of JOJG.

9. They indicate that on April 3, 2002, Colfondos responded to the request for information and indicated that the applicant "does not show the status of beneficiary in the terms of the law so as to be able to access the survivor's pension and consequently the transaction requested cannot be completed." Colfondos based its response on the fact that Colombian legislation on social security, specifically Article 74 of Law 100 of 1993, provides that the beneficiaries of the survivor's are the spouse or surviving partner, yet it indicates that the law establishes that said status derives from the union of a man and a woman, and not from the union of two persons of the same sex.

10. The petitioners argue that in view of the refusal of Colfondos, on April 26, 2002 Ángel Alberto Duque filed a *tutela* action (special constitutional remedy) to have his right to the survivor's pension recognized. The alleged victim argued that the recognition of the survivor's pension implied guaranteeing his access to social security health services. They indicate that on June 5, 2002, the Tenth Municipal Judge for Civil Matters denied the *tutela* action based on the same arguments as those put forth by Colfondos and indicated that the action is unfounded based on the consideration that the alleged victim's claim is statutory and that it is not appropriate to have recourse to the *tutela* action to resolve it, but to a regular (contentious-administrative) action, or to the remedies of appeal (*apelación*) or reconsideration (*reposición*), within the legal terms, against the resolution of Colfondos. He also indicated that if the alleged victim requires any type of social security in health, he can turn to the program offered by the System for Identification of Potential Beneficiaries of Social Programs (SISBEN) for persons without economic resources, and that based on the statements by the alleged victim, it appears that at present he is receiving health services from the ISS.

11. The petitioners appealed the decision and on July 19, 2002, the Twelfth Civil Law Circuit Court upheld the judgment of first instance. They indicate that the Twelfth Civil Court referred the *tutela* action to the Constitutional Court for possible review, and as of the date the petition was filed the alleged

victim is said not to have received any notice from the Constitutional Court, thus it appears that it was not selected for review.

12. The petitioners argue that Ángel Alberto Duque has had to obtain, on his own account, the resources he needs to remain affiliated with an EPS and maintain the medical treatment he needs. They also argue that Ángel Alberto Duque met the requirements for acceding to the survivor's pension as spelled out in Law 100 of 1993, except as provided for in Article 47, which provides: "In the event that the survivor's pension is triggered by the death of the pensioner the surviving spouse or female or male permanent partner [*cónyuge o la compañera o compañero permanente*] who shall show that he or she was engaged in marital life with the predecessor in title." In this respect, they indicate that Article 1 of Law 54 of 1990 establishes: "As of the entry into force of this statute and for all civil purposes, a *de facto* marital union [*unión marital de hecho*] shall refer to such a union as formed between a man and a woman, who without being married, constitute a permanent and unique community of life. In addition and for all civil purposes, permanent *compañero* and *compañera* shall refer to the man and the woman who are party to a *de facto* marital union." Similarly they indicate that Decree 1889 of 1994, which partially regulates Law 100 of 1993, provides at its Article 10: "For purposes of the survivor's pension of the affiliate, permanent *compañero* or *compañera* shall refer to the last person, of a sex different from that of the predecessor in title, who has engaged in marital life with him..."

13. They argue that the circumstances described above constitute violations of the rights to life, human treatment, and equality before the law enshrined in its Articles 4, 5, and 24 in connection with Article 1(1) of the American Convention. They allege that judicial decisions have unjustifiably excluded, Ángel Alberto Duque from his right to social security, specifically the survivor's pension, discriminating against him based on sexual option. They argue that said exclusion has had an impact on the health of Ángel Alberto Duque and an imminent impact on his life.

14. They argue that the Colombian authorities, based on a narrow interpretation of the relevant provisions, and under statutes that introduce factors of discrimination in relation to same-sex couples, have kept such couples from acceding to the right to the survivor's pension. In addition, they argue that the judicial authorities did not afford Ángel Alberto Duque an appropriate judicial remedy to protect him when his legitimate right to accede to his partner's survivor's pension was repudiated, constituting a violation of the rights to judicial guarantees and to judicial protection established at Articles 8(1) and 25 of the American Convention on Human Rights.

15. In addition, the petitioners subsequently argue that in terms of the advances in the case law in Judgment C-336 de 2008, which recognizes the right to a survivor's pension for same-sex couples, and Judgment T-1241 of 2008, which provides for the possibility of retroactively recognizing the *de facto* marital union constituted by same-sex couples in order to claim the survivor's pension so long as one makes a showing of one's status as permanent partner in such a union, Ángel Alberto Duque "could never meet (some of the requirements) because his partner has died."

16. As for meeting the requirement of prior exhaustion of domestic remedies provided for at Article 46(1)(a) of the American Convention, the petitioners argue that the actions claiming, calling for recognition of, and securing payment of survivor's pensions has been restricted in a discriminatory and unjustified manner in favor of heterosexual couples. As a result, they argue that there is no due process in the domestic legal order that enables the alleged victim to obtain protection for his rights in an effective, timely, and adequate manner, thus they argue the exception to the rule of prior exhaustion of domestic remedies established at Article 46(2)(a) of the American Convention. In terms of the time for submitting the petition, the petitioners argue that a *tutela* action does not exhaust domestic remedies, for in the domestic legal order there is no due process of law that guarantees the protection of Ángel Alberto Duque's rights.

17. In summary, the petitioner alleges that the State is responsible for violating the rights to life, humane treatment, judicial guarantees, equality before the law, and judicial protection, protected at Articles 4, 5, 8, 24, and 25 of the American Convention, in conjunction with Article 1(1) of that treaty.

## B. The State's position

18. The State alleges that throughout the process the violations that the petitioners argue had already been consolidated have not been shown. In this respect, it notes that in the processing of the *tutela* actions and the judgments in the first and second instance one finds the complainants' assert that Ángel Alberto Duque is receiving anti-retroviral treatment. It also notes that from appellate *tutela* judgment of July 18, 2002 until the filing of the petition with the Inter-American Commission in 2005 and even during the processing of the petition before the Commission, there is no record from which one can conclude that the alleged victim did not have access to the treatments and medicines necessary in view of his illness.

19. It argues that the possibility that Ángel Alberto Duque cannot gain access to the medical treatment he needs is a hypothesis that has not materialized. Accordingly, it asks that the Commission reject the petitioners' arguments on the right to health of Ángel Alberto Duque considering that it is a possible harm that has not materialized.

20. The State adds that according to the law in force and the case-law of the Constitutional Court, an HIV/AIDS patient who is affiliated to a Health Provider Enterprise (EPS), but who has yet to pay in more than the 10 weeks required by law for such treatments may be provided care if he or she pays the percentage corresponding to the weeks that he or she has yet to pay. Nonetheless, if the patient does not have economic resources and requires treatment urgently, the EPS must assume the cost of the treatments, and subsequently seek recovery from the subaccount of the Solidarity and Guarantee Fund of the System of Social Security in Health. In addition, it indicates that in the event that the patient, at the time of the diagnosis, is not affiliated with an EPS, and does not have resources, he or she should register with an administrator entity of the subsidized regime.

21. The State indicates that the petition should be found inadmissible considering that domestic remedies have not been exhausted, specifically the *tutela* action for claiming the survivor's pension and the eventual retroactive application of Judgment C-336 of 2008. It alleges that the pronouncements by the Constitutional Court on the rights of same-sex couples constitute "supervening information or evidence," and consequently the assessment of the admissibility of the case should consider all the information and evidence presented at the proceeding.

22. As for the exhaustion of domestic remedies, the State indicates that it was informed by Colfondos that as of October 22, 2009, Ángel Alberto Duque had not formally lodged his pension claim, since in his communication of March 19, 2002, he asked "please give me information to find out what I must do or what requirements I must meet to request the pension of Mr. [JOJG]." In view of the foregoing, the State argues that from the judgments of first and second instance in the *tutela* action, it appears that the response by Colfondos to the request of the alleged victim only addressed the legislation applicable at the time with respect to who could be beneficiaries of the survivor's pension, and does not mean that it had received a formal request claiming the survivor's pension. It argues that mindful that to date Colfondos has not made a final decision on the case of Ángel Alberto Duque, one cannot consider that domestic remedies have been exhausted.

23. In terms of the petitioners' argument regarding the lack of an adequate and effective remedy in the domestic jurisdiction, the State argues that with the case-law of Judgment C-336 of 2008, which recognizes the right to the survivor's pension for same-sex couples, and Judgment T-1241 of 2008, which provides for the possibility of retroactive recognition of the *de facto* marital union constituted by same-sex couples for the purpose of claiming the survivor's pension so long as one makes a showing that one was indeed a permanent partner in such a union, the legal situation is such as to enable Ángel Alberto Duque to claim the survivor's pension.

24. As for the petitioners' argument that Ángel Alberto Duque "will never be able to meet (some requirements) because his partner has died" and that therefore the precedent cited does not apply, the State alleges that as of Judgment T-1241 of 2008, that status can be shown by the "mere informal expression of one of the members of the presumed couple," and that moreover, in such events one takes

into account other means of proof such as the out-of-court statement of one who seeks such status and two additional witnesses.

25. Finally, the State argues that the petition was filed after the six-month time frame established in the American Convention for filing a petition with the Commission. Specifically, it notes that the decision on appeal handed down by the Twelfth Civil Circuit Court of Bogotá that denied the motion of appeal filed by the alleged victim was dated July 18, 2002, and the petition was filed with the Commission on March 8, 2005. As for the review by the Constitutional Court, the State indicates that the record in the *tutela* was filed there on August 26, 2002, and that review was barred by order of September 19, 2003. In this respect, the State argues that as provided by Decree 2591 of 1991, the review cannot be considered an additional remedy, but an act within the powers of the Constitutional Court, which “without express motivation and based on its judgment” determines which *tutela* judgments will be reviewed.

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

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

26. The petitioners are authorized, in principle, by Article 44 of the American Convention to file petitions with the Commission. The petition notes as the alleged victim an individual person with respect to whom the Colombian State undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Colombia has been a state party to the American Convention since July 31, 1973, the date on which it deposited its instrument of ratification; therefore, the Commission is competent *ratione personae* to examine the petition.

27. In addition, the Commission is competent *ratione loci* to take cognizance of the petition, insofar as it alleges violations of rights protected in the American Convention in the territory of Colombia, a state party to that treaty. The Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention were already in force for the State on the date the facts alleged in the petition are said to have taken place. Finally, the Commission is competent *ratione materiae*, because the petition alleges possible violations of human rights protected by the American Convention.

##### **B. Admissibility requirements**

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

28. Article 46(1)(a) of the American Convention requires the prior exhaustion of remedies available in the domestic jurisdiction in keeping with generally recognized principles of international law in order to admit a claim concerning an alleged violation of the American Convention.

29. Article 46(2) of the Convention provides 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.

As indicated by Article 31(3) of the Commission’s Rules of Procedure, and as indicated by the Inter-American Court, whenever a state alleges that petitioners have failed to exhaust domestic remedies, it bears the burden of showing that the remedies that have not been exhausted are “adequate” to cure the

violation alleged, that is, that the function of those remedies in domestic law is suitable for protecting the legal situation infringed.<sup>2</sup>

30. In the instant case the State alleges that the petition does not satisfy the prior exhaustion requirement, provided for at Article 46(1)(a) of the American Convention considering that to date Colfondos has not made a final decision on the case of Ángel Alberto Duque. For their part, the petitioners argue that there is no due process in the domestic legal order so as to enable the alleged victim to get, in effective, timely, and adequate fashion, protection for his rights, accordingly they argue the exception to the prior exhaustion rule established at Article 46(2)(a) of the American Convention. The Commission observes that the response of Colfondos, on indicating that the alleged victim “does not show the status of beneficiary before the law so as to be able to access the survivor’s pension and consequently the transaction requested cannot be carried out,” would constitute a negative response to his claims.

31. In view of the parties’ arguments, one must first clarify what domestic remedies need be exhausted in a case such as this, in light of the case-law of the inter-American system. The Commission observes that the petitioners’ claims refer to the alleged *de jure* discrimination in relation to same-sex couples. Specifically, they allege that legal provisions were applied to the alleged victim that impeded his access to the survivor’s pension of his partner.

32. The Commission observes that the petitioners allege that the *tutela* action filed by the alleged victim was not aimed at recognizing substitution in respect of a pension, since there is a specific procedure for such recognition that must be initiated separately, but rather was aimed at obtaining a pronouncement that interprets the provisions on social security so as to benefit same-sex couples. In this respect, the Commission observes that the petitioners sought, through the *tutela* action, recognition of the principle of equality for same-sex couples in the granting of survivor’s pensions.

33. The Commission observes that the *tutela* action was denied in the first and second instances, considering that

... it is not for the constitutional judge to order the recognition and payment of the survivor's pension, due to the death of his partner since ... the moving party has available the regular jurisdiction, and enjoys the remedies afforded by law, to file, with due legal reasoning before the competent authority insofar as ... the survivor's pension and all other social benefits are eminently statutory rights, and, as such, are not in principle protected by the *tutela* action....<sup>3</sup>

34. In this respect, the Commission observes that the State itself indicated that subsequently, with the judgments of the Constitutional Court C-336 of 2008 and T-1241 of 2008, a change had taken place in the legal outlook that apparently should have permitted the alleged victim to access the survivor’s pension. Accordingly, the State argues that the petitioners, after initiating the procedure with Colfondos and obtaining a final decision, should have filed a *tutela* action to secure retroactive recognition of the *de facto* marital union made up of same-sex couples in keeping with the precedents of the Constitutional Court in judgments C-336 of 2008 and T-1241 of 2008.

35. In that regard, in keeping with its consistent practice<sup>4</sup>, the Commission evaluates the requirement of exhaustion of domestic remedies in light of the current circumstances that the State has reported as relevant for the analysis of that requirement.

<sup>2</sup> Article 31(3) of the Commission’s Rules of Procedure. See also I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, para. 64.

<sup>3</sup> Twelfth Civil Court of the Circuit of Bogotá, *Tutela* Judgment of July 19, 2002. Annex 6 to the initial petition received at the Commission on February 8, 2005.

<sup>4</sup> In situations in which the evolution of the facts initially presented domestically implies a change in fulfillment or failure to fulfill admissibility requirements, the Commission has indicated that its analysis should be done based on the situation at the moment of the decision on admissibility. IACHR, Report No. 20/05, Petition 714/00 (“Rafael Correa Díaz”), February 25, 2005, Peru, para. 32; IACHR, Report No. 25/04, Case 12,361 (“Ana Victoria Sánchez Villalobos et al.”), March 11, 2004, Costa Rica, para. Continúa...

36. The Commission first observes that the Constitutional Court, by *tutela* judgment T-911-09, established that Judgment C-336 of 2008 only has future effect, and so

... it is not possible to bring a claim for the derivative effects of Judgment C-336 of 2008 with respect to situations consolidated before it was handed down. Accordingly, although naturally it is valid to seek their application for the case of homosexual marital unions begun before that date, it is clear that in every case it will be necessary to have a notarial declaration to which reference was made there, and that obtaining said declaration, as well as the death of the person that would generate the right to the pension in the same-sex partner, must have occurred after the issuance of that judgment, which was on April 16, 2008.<sup>5</sup>

37. Second, the Commission observes that in terms of the requirements for showing the *de facto* union when one partner has already died, which is a prerequisite to acceding to the survivor's pension, contrary to what was indicated by the State, Judgment T-1241 of 2008<sup>6</sup> established that "there must be at least a sworn statement before a notary since the mere informal expression of one of the members of the purported couple is unable to show the decision to enter into a permanent bond," and along those same lines Judgment T-911 of 2009 established that "there must be a sufficient showing, by a statement before a notary, of the will of the deceased to form a *de facto* marital union with the person who subsequently claims the right to the survivor's pension."<sup>7</sup> In view of the constitutional precedents mentioned, the Commission observes that the death of Ángel Alberto Duque's partner occurred prior to Judgment C-336 of 2008; therefore, he does not benefit from its effects.

38. In view of the foregoing, the Commission concludes that the petitioners' claim, analyzed in light of current circumstances, fits within the exception to the prior exhaustion rule provided for at Article 46(2)(a) of the Convention, which establishes that the exception applies when "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."

39. The invocation of the exceptions to the rule on exhaustion of domestic remedies provided for at Article 46(2) of the Convention is closely tied to the determination of possible violations of certain rights enshrined therein, such as the guarantees to access to justice. Nonetheless, Article 46(2), given its nature and purpose, is a provision with autonomous content vis-à-vis the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the prior exhaustion rule apply to the case in question must be made prior to and separate from the analysis of the merits, since it depends on a different standard of appreciation from that used to determine the possible violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that impeded the exhaustion of domestic remedies will be analyzed in the report the Commission adopts on the merits, so as to determine whether there are violations of the American Convention.

## 2. Time for submitting the petition

40. The American Convention establishes that in order for a petition to be found admissible by the Commission it must be submitted within six months of the date on which the alleged injured party has been given notice of the final decision. In the petition under analysis, the IACHR has established that the exceptions to the exhaustion of domestic remedies apply, as per Article 46(2)(c) of the American Convention. In this respect, Article 32 of the Commission's Rules of Procedure establishes that in those

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45; IACHR, Report No. 52/00. Cases 11,830 and 12,038. (Dismissed Works of the Congress of the Republic), June 15, 2001, Peru, para. 21.

<sup>5</sup> Constitutional Court of Colombia, Judgment T-911-09, December 7, 2009, Judge Nilson Pinilla Pinilla for the Court.

<sup>6</sup> Constitutional Court of Colombia, Judgment T-1241-08, December 11, 2008, Judge Clara Inés Vargas Hernández for the Court.

<sup>7</sup> Constitutional Court of Colombia, Judgment T-911-09, December 7, 2009, Judge Nilson Pinilla Pinilla for the Court.

cases in which the exceptions to the prior exhaustion of domestic remedies apply, the petition must be submitted within a reasonable time, to be judged by the Commission. To that end, the Commission must consider the date of the alleged violation of rights and the circumstances of each case.

41. In the instant case, the petition was received on February 8, 2005, and its effects in terms of the alleged continuity of the failure to recognize the alleged victim's rights extend to the present day. Therefore, in view of the context and the characteristics of the instant case, the Commission considers that the petition was presented within a reasonable time, and that the admissibility requirement regarding the time for submission should be considered satisfied.

### **3. Duplication and *res judicata***

42. Article 46(1)(c) of the Convention requires, for a petition to be admitted by the Commission, "that the subject of the petition or communication is not pending in another international proceeding for settlement"; and Article 47(d) of the Convention provides that the Commission shall declare inadmissible any petition or communication when "the petition or communication is substantially the same as one previously studied by the Commission or by another international organization." It does not appear from the record that the subject matter of the petition is pending another procedure for international settlement, or that it reproduces a petition already examined by this or any other international organ. Therefore, the requirements established at Articles 46(1)(c) and 47(d) of the Convention have been satisfied.

### **4. Characterization of the facts alleged**

43. In view of the elements of fact and law presented by the parties and the nature of the matter put before it, the IACHR considers that the petitioners' allegations tend to establish possible violations of the rights judicial guarantees, and judicial protection, protected at Articles 8(1), and 25, in conjunction with Article 1(1), all of the American Convention.

44. Neither the American Convention nor the IACHR 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. The Commission observes that as for the petitioners' claim on alleged *de jure* discrimination with respect to same-sex couples in relation to Article 24 of the American Convention on Human Rights, in conjunction with Article 1(1) and 2 of the same treaty, the arguments put forth require an analysis on the merits in light of the standards of the American Convention.

45. The Inter-American Commission considers the allegations made with respect to Article 5 of the American Convention to be secondary in nature and to be contingent on the conclusion reached with respect to the merits of the allegations mentioned in the foregoing paragraphs. Therefore, the arguments put forth require an analysis on the merits in light of the standards of the American Convention.

46. As for the petitioners' claim of an alleged violation of Article 4 of the American Convention on Human Rights, the Commission observes that the petitioners did not offer specific or sufficient information regarding its alleged violation, thus that claim is not found admissible.

## **V. CONCLUSIONS**

47. The Commission concludes that it is competent to examine the claims presented by the petitioners on the alleged violation of Articles 5, 8(1), 24, and 25 in conjunction with Articles 1(1) and 2 of the American Convention, and that they are admissible, pursuant to the requirements set forth in Articles 46 and 47 of the American Convention. It also concludes that the claim on the alleged violation of Article 4 of the American Convention is found inadmissible.

48. Based on the foregoing arguments of fact and law, and without this representing any prejudgment on the merits,

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

**DECIDES:**

1. To declare this petition admissible with respect to Articles 5, 8(1), 24, and 25 in conjunction with Articles 1(1) and 2 of the Convention.
2. To notify the Colombian State and the petitioner of this decision.
3. To continue with the analysis on the merits.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 2nd day of November 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.