

REPORT No. 84/12
PETITION 677-04
ADMISSIBILITY
LUIS FERNANDO GARCÍA GARCÍA AND FAMILY
ECUADOR
November 8, 2012

I. SUMMARY

1. On May 24, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition lodged by the Permanent Committee for the Defense of Human Rights [*Comité Permanente por la Defensa de los Derechos Humanos*] (hereinafter “the petitioners”)¹ claiming that the Republic of Ecuador (hereinafter “the State” or “the Ecuadorean State”) is liable for the detention, torture and death of Luis Fernando García García (hereinafter “the alleged victim” or “Mr. García”), allegedly perpetrated by members of the Ecuadorean Air Force after Mr. García was detained on November 18, 1985, as well as for the absence of a fair trial and judicial protection with regard to investigating, trying and punishing those responsible for these acts.

2. The petitioners allege that the State is responsible for violation of the rights to life, humane treatment, a fair trial and judicial protection, enshrined in Articles 4, 5, 8 and 25 of the American Convention on Human Rights (hereinafter “the American Convention”), all of which are pursuant to the general obligation to respect and ensure rights, provided for in Article 1(1) thereof. For its part, the States alleges that the petition is inadmissible given that domestic remedies have not been exhausted in accordance with Article 46(1)(a) of the American Convention. The State likewise alleges that the Commission cannot operate as a fourth instance.

3. After studying the position of the parties in light of the admissibility requirements provided for in Articles 46 and 47 of the American Convention, the Commission has concluded that it is competent to hear the claim and that such claim is admissible for alleged violation of rights enshrined in Articles 4, 5, 7, 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Luis Fernando García García, and Articles 5, 8 and 25 thereof to the detriment of his family members. The Commission shall also analyze during the merits stage the potential violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. As a result, the Commission provides that the parties be notified of the report and orders the report to be published and included in its Annual Report to the OAS General Assembly.

II. PROCEDURE BEFORE THE COMMISSION

4. The Commission received the petition and registered it under number 677-04. After a preliminary evaluation, on September 9, 2009, the IACHR sent the relevant parts of the petition to the State so it could submit its observations. On October 16, 2009, the State requested an extension to submit its response, which was granted by the Commission. On December 1, 2009, the State presented its response, which was forwarded to the petitioners for their observations. The petitioners submitted their response on January 8, 2010, and this was sent to the State for its observations. The State’s response was received on February 16, 2010 and was transmitted to the petitioners for their reference.

5. On March 23, 2010, the petitioners submitted additional information, which was sent to the State for its observations. On April 23, 2010, the State submitted its response, which was transmitted to the petitioners for their reference. On July 20, 2010, the petitioners submitted additional information which was forwarded to the State for its remarks. On September 9 and October 27, 2010, the State requested extensions for submitting its response, which were respectively granted by the IACHR. On November 22, 2010, the State’s observations were received and these were transmitted to the petitioners

¹ Subsequent to the petition’s filing, Mr. Miguel Félix García, Luis Fernando García’s brother, became a co-petitioner before the IACHR.

for their reference. On February 7, 2011, the petitioners provided additional information, which was conveyed to the State for its reference. On February 11, 2011, the petitioners submitted additional information, which was forwarded to the State for its observations. By means of a brief dated June, 28, 2011, the State provided its observations, which were transmitted to the petitioners for their information.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

6. The petitioners submit their claim based on the alleged facts surrounding the death of Luis Fernando García, which occurred in November 1985, while Mr. García was said to be in the custody of agents of the State, whom the petitioners maintain purportedly subjected Mr. García to a series of acts of torture that led to his death. They affirm that these acts have gone unpunished as they have not been properly submitted to trial and all the parties responsible have not been punished. To support their arguments the petitioners state that a "Truth Commission" was created in Ecuador to investigate "crimes of the State" and that Mr. García's case was addressed in a report presented by said Commission.

7. As regards the facts, the petitioners state that Mr. García worked as a stevedore for the firm *Asociación de Servicios Aeroportuarios* (hereinafter referred to as "ASA") in the "Simón Bolívar" Airport in the city of Guayaquil. They allege that on November 18, 1985, Mr. García was detained together with other ASA workers by officials of the Ecuadorean Air Force (hereinafter referred to by the Spanish acronym "FAE"). They allege that the detention took place as part of an investigation of a missing camera that the Commander of the Second Aerial Zone, Lieutenant General Jorge Andrade Cevallos, had ordered at the behest of a retired Air Force Lieutenant Colonel, Alfredo Moncayo Jaramillo. They state that the alleged victim's detention was carried out without a court order and that, instead of being taken before a civilian court judge, he was taken to the Guayaquil Air Force Base where he was allegedly held.

8. The petitioners state that on November 23, Ms. Nancy Cruz Cevallos, wife of the alleged victim, went to visit him at the FAE Base. Mr. García told his wife that he had been the victim of alleged acts of torture at the hands of FAE officials and gave her his work uniform, which was "completely bloodied." The petitioners further state that on November 25, Ms. Cevallos was informed that her husband had passed away and his body had been taken to the morgue.

9. The petitioners state that on November 26, 1985, Ms. Nancy Cevallos filed a complaint with the Sixth Precinct [*Comisario Sexto*] of the National Police regarding her husband's death, accusing several FAE officials as the alleged perpetrators of this act. They point out that on this same day, a "legally-mandated autopsy" was done by two National Police coroners under the oversight of the Sixth Precinct of the National Police. This autopsy concluded that the cause of death was "a heart attack," a version of events that was repeated by the Commander of the Second Aerial Zone, Lieutenant General Jorge Andrade Cevallos, during a press Conference convened as a result of the facts that occurred².

10. The petitioners state that the alleged victim's family members "challenged" the autopsy findings, and on January 2, 1986, the victim's body was exhumed by experts from the Forensic Sciences Institute of the University of Guayaquil. They point out that based on the new examination of the alleged victim's body, it was concluded that his death had come about due to "a combination of causes" that stemmed from "severe multiple trauma to different parts of his body [...] principally to the cranium and right kidney, associated with asphyxiation caused by submersion."

11. The petitioners state that the report submitted by the aforementioned Forensic Sciences Institute was later upheld by the Office of the Prosecutor General of the State [*Procuraduría General del Estado*] on November 10, 1986. In this regard, they assert that it can be deduced from the injuries shown

² They add that in the "preliminary investigation conducted by the Lieutenant of Aviation Justice, Military Criminal Judge of the Second Aerial Zone," dated 25 November 1985, it was stated that Mr. García had felt "intense pain in the chest," falling "flat on his face to the floor" and that despite being taken to the "General Hospital", he died.

in this autopsy that Mr. García had been tortured while in custody of FAE officials, and that these acts caused his death. In this sense, the petitioners assert that the State is liable for violating Mr. Fernando García's right to life and to humane treatment, provided for under Articles 4 and 5 of the American Convention.

12. With regard to investigating and trying the facts, the petitioners point out that on November 25, 1985, proceeding No. 10/85 was initiated in criminal military court. They state that on January 13, 1986, Mr. Miguel García, the alleged victim's brother, filed a motion with the military court hearing the case requesting the court decline jurisdiction over the matter, as the facts in question had nothing to do with the discharging of military duties. The petitioners point out that this motion was denied. They likewise state that the Court of Law for the Second Aerial Zone [*Juzgado de Derecho de la Segunda Zona Aérea*] in a ruling dated June, 21, 1993 convicted Major Raúl Peñafiel Cedeño and Captain Nelson Meza Chimbo of the crime of manslaughter [*homicidio preterintencional*]. They indicate that this decision was appealed by the convicted party's defense attorney and by Mr. Miguel García, who sought to be a party to the proceedings as a private prosecutor. They further indicate that the Court of Military Justice, in its ruling dated November 1, 1994, rejected the appeal submitted by Mr. Miguel García on the grounds that the Military Code of Criminal Procedure does not provide for private prosecution.

13. They allege that pursuant to this decision, Mr. Miguel García was not permitted to be a party to the proceedings and was not notified of subsequent judicial decisions. In this regard, the petitioners maintain that not being allowed to participate in the proceedings impaired the right of the alleged victim's family member's to have access to justice. This left them defenseless, taking into account first of all that the crimes were being tried in a court that was inappropriate for investigating, trying and punishing human rights violations and second of all that they did not have an effective legal remedy available that would ensure their rights and allow them to challenge the decisions handed down in said proceedings. As a result, they maintain that the State is liable for violation of the rights provided for under Articles 8 and 25 of the American Convention.

14. The petitioners also point out that on May 27, 1996, a new judgment was handed down by the Court of Law of the Second Aerial Zone [*Juzgado de Derecho de la Segunda Zona Aérea*], convicting Major Raúl Peñafiel Cedeño, Captain Nelson Meza Chimbo and Captain Fausto Criollo Venegas. They state that this decision was upheld by the Military Court of Justice on October 8, 1997. The petitioners maintain that although it could be deduced from the findings of the autopsy carried out after the exhumation that the injuries to Mr. García's body were caused by "premeditated and cold-blooded cruelty," the above-mentioned officials were convicted of the crime of manslaughter. They allege that the above-mentioned Court also took into account a series of attenuating circumstances in favor of the accused and imposed sentences of two years in prison, in addition to suspending the proceedings against Fausto Criollo Venegas "due to the fact that he did not appear at the proceedings." The petitioners further allege that the other two officials did not service the sentence imposed.

15. With regard to exhaustion of domestic remedies, the petitioners initially alleged that given that one of the officials who had been accused in Ecuador was "a fugitive," until such a time when this individual was tried or the statute of limitations for criminal action lapsed³, it should be understood that the proceedings regarding the alleged victim's death were still pending. They further alleged that the conviction of the other two officials, handed down twelve years after the fact, meant there had been an unwarranted delay in issuing a final decision under the military justice system. They also maintained that the alleged victim's brother had not been notified of said decision for the reasons described previously about his exclusion from the proceedings, which meant that he was unable to challenge the aforementioned decision. In that regard, they argued that the exceptions to the exhaustion of domestic remedies were applicable and that the petition had been submitted within a reasonable deadline.

16. Subsequently, after the State raised the defense that since 2008 there are domestic remedies available in keeping with the new Ecuadorean Constitution, the petitioners maintain that this is

³ They indicated that in keeping with the provisions sets forth under Article 79 of the Military Criminal Law, the statute of limitations for the criminal action lapsed in 2007.

inadmissible: firstly, these remedies did not exist at the time the petition was filed with the IACHR; furthermore, requiring exhaustion of such remedies would undermine the concept of a reasonable deadline, bearing in mind that when such remedies entered into force, 24 years had gone by since the facts occurred. The petitioners also allege that pursuant to the provisions of the Constitution that was valid when the military criminal proceedings were conducted, an “amparo” appeal was not admissible for challenging judicial decisions, and was therefore not a remedy that had to be exhausted.

17. The State argues that it is possible to request that the decision of the Military Court of Justice, which excluded Mr. Félix García from being a party to the proceedings as a private prosecutor, be overturned. In this regard, the petitioners reiterate that the military criminal courts are not appropriate for trying facts like those in this case. They add that the Military Court of Justice’s decision in any case took into account the ordinary Rules of Criminal Procedure and nonetheless decided that “private prosecution is not needed in military criminal proceedings in order to repair damages.”

18. Finally, the petitioners assert that the alleged victim’s death has caused his family members incredible suffering and that they have purportedly been victims of harassment, a situation that has been aggravated by the alleged denial of justice⁴.

B. Position of the State

19. In response to the claim, the State maintains that the petition is inadmissible inasmuch as the remedies provided for domestically have not been exhausted, as required under Article 46(1)(a) of the American Convention.

20. The State first makes reference to the facts described in the petition, stating that Mr. García’s detention was carried out as part of an investigation into the disappearance of a camera in the airport where he worked. As for the circumstances surrounding Mr. García’s death, the State indicates that the causes of his death have already been established in the respective reports on the record in the domestic proceedings, and thus what needs to be done is to analyze whether the claim presented fulfills the admissibility requirements provided for under the American Convention.

21. The State points out that the criminal proceedings conducted in the military court led to the decision of May 27, 1996 by the Court of Law of the Second Aerial Zone, convicting two military officers of manslaughter [*homicidio preterintencional*] and sentencing them to two years in prison. The State also indicates that the proceedings against a third officer indicted were provisionally suspended due to his failure to appear. In this regard the State maintains that when the petition was filed, the statute of limitations on the criminal proceedings suspended had not lapsed and thus all remedies had not been exhausted.

22. The State maintains that said proceedings went forward ensuring due procedural guarantees and that the IACHR may not act as a higher court in reviewing judicial decisions handed down domestically. The State alleges that the petitioners “disapproval” of the proceedings’ outcome does not mean that there has been a violation of the rights set forth under the Convention.

23. Secondly, the State maintains that the claims filed by the petitioners regarding the conducting of the military criminal proceedings were not raised in a timely fashion before the domestic authorities. The State asserts that Mr. Miguel García failed to point out that the Military Code of Criminal Procedure stipulates that the provisions of the Common Code of Criminal Procedure were supplementally applicable in all those matters not provided for under the code of military justice. This would have provided him with grounds for appealing the decision that denied him the opportunity to participate in the proceedings as a private prosecutor. The State further maintains that the failure to provide notice to Mr. Miguel García during the aforementioned proceedings was a “substantial [defect in] formality that was

⁴The petitioners do not submit information on this point. However, they allege that Mr. Miguel García was dismissed from the public institution where he had worked for 28 years, purportedly for the measures he took in demanding justice in his brother’s case.

curable,” which Mr. García could have raised during the proceedings in a motion in order for the military judicial authorities to have examined the situation and corrected the defects that were demonstrated pursuant to the provisions of the Military Code of Criminal Procedure. The State adds that the constitution in force at the time also provided for amparo appeals as a mechanism to allow any act or omission on the part of judicial authorities to be “reviewed, avoided or even remedied,” without having to await issuance of a judgment.

24. Additionally, the State claims that the new Ecuadorean Constitution, which entered into force in 2008, provides for new mechanisms to ensure respect for constitutional guarantees and allows for alleged victims to obtain recognition of their rights and receive the reparations that are fitting. In this regard, the State alleges that there are new options to exhaust; specifically, the following actions stipulated in the constitutional legal system can be brought: (i) action for protection; (ii) action for non-compliance; (iii) special action for protection. In particular, the State maintains that special actions for protection are the appropriate mechanism that would allow for review of final judicial decisions in order to find out whether during the proceedings in question constitutional guarantees were violated, in which case the Constitutional Court would have the authority to overturn the proceedings and order that new proceedings be conducted. The State adds that the petitioner’s argument regarding the use of a military court in the case is not sufficient to warrant not having exhausted the domestic remedies offered in order to assert such claims.

25. In sum, the State claims that from the beginning of the domestic criminal proceedings to date, the petitioners have not submitted any constitutional appeals, although available mechanisms exist to safeguard their rights under the new constitutional judicial framework, and existed at the time of the facts.

26. The State also claims that the facts related to loss of employment by alleged victim’s brother is a complaint that should be analyzed by domestic authorities, and the IACHR cannot act as a fourth instance to review this matter.

27. Additionally, the State purports that the mention made by the petitioners to the content of the report drawn up by the “Truth Commission” in Ecuador can only be considered in a symbolic manner.

28. In light of the foregoing arguments, the State requests that the Commission declare the petitioners claim to be inadmissible.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

29. The petitioners are empowered, in principle, under Article 44 of the American Convention to file petitions with the Commission. The petition identifies individuals as the alleged victims, with regard to whom the Ecuadorean State undertook a commitment to respect and ensure the rights enshrined in the American Convention. The Commission points out that Ecuador is a State party to the American Convention since December 8, 1977, when it deposited its ratification instrument. Thus, the Commission is competent *ratione personae* to examine the petition. The Commission is likewise competent *ratione loci* to hear the petition, inasmuch as said petition alleges the violation of rights protected under the American Convention that may have taken place in Ecuador, a State Party to said instrument.

30. The Commission is competent *ratione temporis* given that the obligation to respect and ensure the rights protected under the American Convention was in force for the State at the time that the facts alleged in the petition are said to have occurred. The Inter-American Convention to Prevent and Punish Torture entered into force on November 9, 1999—i.e., subsequent to the facts which are the subject of the claim. Notwithstanding the foregoing, the Commission is competent *ratione temporis* to apply the Inter-American Convention to Prevent and Punish Torture as regards the obligation to

investigate and punish alleged acts of torture and denial of justice for those facts that occurred after its ratification.

31. Finally, the Commission is competent *ratione materiae* because the petition reports potential violations of human rights protected under the American Convention.

B. Requirements for admissibility

1. Exhaustion of remedies under domestic law

32. Article 46(1)(a) of the American Convention requires prior exhaustion of the available domestic remedies in accordance with the generally recognized principles of international law in order to admit claims regarding an alleged violation of the American Convention. Article 46(2) of the Convention stipulates that the requirement for prior exhaustion of domestic remedies does not apply when: (i) 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; (ii) 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, (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

33. According to the Commission's Rules of Procedure, and as stated by the Inter-American Court, whenever a State alleges a petitioner has failed to exhaust domestic remedies, it has the burden of identifying which remedies are to be exhausted and of demonstrating that the remedies that have not been exhausted are "appropriate" for repairing the alleged violation—in other words, that the function of these remedies within the domestic legal system is suitable for protecting the legal situation infringed⁵.

34. In the case at hand the State maintains that the proceedings held in the military criminal courts on the facts that are the subject of the petition were conducted with respect for due process. Such proceedings resulted in the conviction of those military officers who were found to be responsible for the facts that occurred. The State alleges that the petitioners have not made use of the mechanisms that became available with the entry into force of the new Constitution in 2008, pursuant to which they could have the proceedings reviewed and, if applicable, have the case retried. Given the foregoing, the State claims that the petition does not fulfill the requirement for prior exhaustion of domestic remedies. The petitioners, for their part, maintain that the exceptions provided for under Article 46(2)(b) and (c) of the American Convention apply, given that the case was tried in the military criminal courts, that there was an unwarranted delay in this case and that the alleged victim's family members did not have the opportunity to participate in the proceedings in order to challenge the decisions handed down by the military judicial authorities.

35. In light of the arguments adduced by the parties, it is necessary, first of all, to clarify which domestic remedies are to be exhausted in this case. The precedents established by the Commission indicate that whenever the facts in question involve potential violations of fundamental rights and under domestic legislation such violations are crimes that are prosecutable by operation of law, it is the State that has the obligation to initiate and conduct criminal proceedings⁶. As this claim involves the alleged liability of agents of the State in the detention, torture and death of a civilian, the Commission considers that the appropriate remedy to shed light on these facts is a criminal investigation under the jurisdiction of ordinary courts in order to determine the criminal liability of agents of the State involved and open the door to potential reparations for damages.

⁵ Article 31(3) of the Commission's Rules of Procedures. Also see Inter-American Court of Human Rights, *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, paragraph 64.

⁶ IACHR, Report No. 99/09, Petition 12.335, Gustavo Giraldo Villamizar Durán, Colombia, October, 29, 2009, paragraph 33. Also see IACHR, Report No. 52/97, Case 11.218, Arges Sequeira Mangas, 199 Annual Report of the IACHR, paragraphs 96 and 97, and IACHR Report No. 55/97, Case 11.137, Abella et al., paragraph 392.

36. The Commissions notes that as a result of the death of Luis Fernando García, proceedings were instituted in the military criminal courts, which led to a judgment handed down by the Court of Law of the Second Aerial Zone and upheld by the court of Military Justice, convicting two FAE officers of manslaughter [*homicidio preterintencional*], who were sentenced to two years in prison. According to what has been reported, the proceedings against a third FAE officer were suspended as the officer did not appear, and according to the petitioners' statements the other two officers did not serve the sentence imposed. The Commission further notes that the State has not provided information on the measures undertaken by authorities in order to locate the officer who did not appear at the proceedings or those measures aimed at enforcing the aforementioned conviction.

37. The Commission has repeatedly stated that special courts, such as those of the military or police, are not an appropriate forum and thus are not the appropriate remedy to investigate, try and punish potential violations of the human rights enshrined in the American Convention, such as the right to life, allegedly committed by the members of security forces⁷. As a result, the prosecution in a military court of members of the Ecuadorean Air Force, purportedly involved in conducts related to violations of [the right to] humane treatment of a civilian and to his death, is not an appropriate remedy to shed light on their liability in the violations reported under the terms of Article 46(1) of the American Convention⁸.

38. Furthermore, the Commission notes that the State has indicated that currently there are measures that exist, including a special action for protection that would open up the possibility for review of the domestic proceedings and, if applicable, the overturning of such proceedings. The petitioners on their part have indicated that this action was not provided for under Ecuadorean Legislation when the petition was filed and that due to the time that has passed since the facts occurred, its exhaustion cannot be required in light of the provision regarding a reasonable deadline.

39. The Commission reiterates that the situation that must be taken into account when establishing whether domestic court remedies have been exhausted is that which exists when deciding on admissibility, given that the complaint is filed at a different time from when a decision is made on admissibility⁹.

40. The foregoing means that 20 years after the facts occurred, the complaints regarding the alleged violations of fundamental rights would not have been prosecuted by operation of law by the national authorities in the ordinary criminal courts. Therefore, although there are mechanisms that in theory are available under the new Constitution, given the circumstances of this case, it is deemed that the claim fits under the exception provided for unwarranted delay.

41. Additionally, the Commission observes that during the criminal proceedings in the military courts, the alleged victim's family was unable to be a prosecuting party thereto. As a result, they were unable to raise the respective claims before the authorities hearing the case, a situation which falls under the exception to the exhaustion of domestic remedies under Article 46(2) of the American Convention.

42. Given the characteristics of this case, the Commission therefore deems that the exceptions provided for under Article 46(2)(b) and (c) of the American Convention are applicable, which means that exhaustion of domestic remedies is not required.

⁷ IACHR, Report No. 64/01, Petition 11.712, Leonel de Jesús Isaza Echeverry et al., Colombia, April 6, 2001, paragraph 22. Also see Inter-American Court of Human Rights, *Case of Durand and Ugarte*. Judgment of August 16, 2000, Series C No. 68, paragraph 117; *Case of Cesti Hurtado*. Judgment of September 29, 1999, Series C No. 65, paragraph 151. See also IACHR, *Report on the Situation of Human Rights in Chile*, September 27, 1985, pp. 199, 200. OEA/Ser.L/V/II.66 doc. 17; IACHR, 1996 Annual Report, March 14, 1997, p. 688. IACHR, *Report on the Situation of Human Rights in Ecuador*, April 24, 1997, p. 36. IACHR, *Report on the Human Rights Situation in Brazil*, September 29, 1997, p. 50.

⁸ IACHR, Report No. 16/09; Petition 12.302; Luis Eduardo and Andrés Alejandro Casierra Quiñonez; Ecuador; March 19, 2009; paragraph 33.

⁹ IACHR, Report No. 52/00, *Dismissed Congressional Workers*, June 15, 2000, paragraph 21.

43. Invoking exceptions to the requirement to exhaust domestic remedies provided for in Article 46(2) of the Convention is closely linked to determining potential violations of rights enshrined therein, such as the guarantees for access to justice. However, Article 46(2) by its nature and purpose is a provision whose content is independent from the substantive provisions of the Convention. Therefore, the decision as to whether the exception to the requirement to exhaust domestic remedies is applicable in the case at hand must be taken separately and prior to the analysis of the merits of the matter, as it depends on a standard of reasoning that is different from that used to determine potential violations of Article 8 and 25 of the Convention. It should be specified that the causes and effects that hindered the exhaustion of domestic remedies shall be analyzed in the report that the Commission adopts on the merits of the dispute in order to confirm whether they constitute violations of the American Convention.

2. Deadline for Submitting the Petition

44. Article 46(1)(b) of the American Convention provides that for a petition to be admissible to the Commission it is required to be filed within six months of the date on which the party allegedly affected has been notified of the final decision. In the claim under analysis, the IACHR has decided that the exceptions to the exhaustion of domestic remedies apply in keeping with Article 46(2) of the American Convention. In this regard, Article 32 of the Commission's Rules of Procedures stipulates that in those cases in which the exceptions to the prior exhaustion of domestic remedies apply, the petition is to be filed within what the Commission's deems to be a reasonable period of time. To this end, the Commission is to consider the date when the alleged violation of rights occurred and the circumstances surrounding each case.

45. This petition was received on May 24, 2004 and the acts that are the subject of the claim began between 18 and 25 November 1985. The petitioners moved for the military criminal judge to decline jurisdiction over the case given that the facts had nothing to do with the exercise of military duties. Said motion was denied. The military criminal proceedings led to a decision by the Military Court of Justices dated October 8, 1997, which upheld the conviction against two FAE officers and suspended the proceedings against a third officer indicted. This decision could not be challenged by the alleged victim's family members. It is also alleged that the judgments handed down by the military criminal court were not enforced. Hence, 26 years after the facts occurred, its effects—in terms of the alleged absence of results in administering justice and imposing effective punishment for those responsible—are felt to date¹⁰. Therefore, in view of the circumstances and characteristics of this petition, the Commission considers that it was filed in a reasonable period of time and the admissibility requirement regarding the filing deadline was fulfilled.

3. Duplication of Proceedings and International *Res Judicata*

46. The petition's file contains no information that could lead one to conclude that this matter is pending under any international settlement proceedings or has been previously decided by the Inter-American Commission. The IACHR thus concludes that the exceptions provided for in Article 46(1)(d) and Article 47(d) of the American Convention are not applicable.

4. Characterization of the facts alleged

47. In view of the evidence of fact and law submitted by the parties and the nature of the matter heard by the IACHR, the Commission considers that the arguments of the petitioners may characterize potential violations of the rights to life, humane treatment, a fair trial and judicial protection to the detriment of Luis Fernando García García, as well as the right to a fair trial and judicial protection to the detriment of his family members, respectively contained in Articles 4, 5, 8 and 25 of the American Convention in keeping with Article 1(1) therein. As these aspects of the claim are not evidently without merit or inadmissible, the Commission deems that the requirements set forth under Articles 47(b) and (c) of the Convention have been fulfilled.

¹⁰ IACHR, Report No. 86/07, Petition 680-05, Elías Lindt López Pita and Luis Alberto Shinín Laso, Ecuador, October 17, 2007, paragraph 58.

48. Neither the American Convention nor the IACHR's Rules of Procedure require the petitioner to identify the specific rights allegedly violated by the State in the matter submitted to the Commission, although petitioners may do so. It is incumbent on the Commission, pursuant to the system's case law to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and violation of which could be established were the acts alleged proven by means of sufficient evidence. The Commission notes that the arguments set forth may characterize violations of the right to personal freedom to the detriment of Luis Fernando García García and to humane treatment to the detriment of his family members.¹¹ The IACHR shall also therefore consider during the merits stage of the proceedings the alleged violations of Articles 7 and 5 of the Convention in keeping with what has been stated.

49. Based on the foregoing reasoning, the IACHR likewise considers that the facts alleged in the petition regarding the failure to investigate the purported acts of torture committed, if proven, could characterize violations of the obligation of the State to carry out an investigation and a criminal proceeding as provided for under Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, given that the alleged failure to investigate the facts is said to have continued subsequent to the entry into force of said Convention.

V. CONCLUSIONS

50. The Commission concludes that it is competent to examine the claims submitted by the petitioners on the alleged violation of Articles 4, 5, 7, 8 and 25, in keeping with Article 1(1) of American Convention and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and that these are admissible, pursuant to the requirements set forth under Articles 46 and 47 of the American Convention.

51. This, based on the arguments of fact and law described above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. Declare this petition admissible pursuant to Articles 4, 5, 7, 8 and 25 of the American Convention, in connection with Article 1(1) thereof, and Article 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. Notify the Ecuadorean State and the petitioners of this decision.

3. Continue analyzing the merits of the matter.

4. 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 8th day of November 2012. (Signed): José de Jesús Orozco Henríquez, President; Felipe González, Second Vice-President; Dinah Shelton Rodrigo Escobar Gil, Rosa María Ortiz, Rose-Marie Antoine, Commissioners.

¹¹ Alleged victim's family members are included, taking into account the provisions set forth under Article 35(1) of the Inter-American Court of Human Right's Rules of Procedure and its case law. See Inter-American Court of Human Right's Radilla Pacheco v. Mexico Case. Judgment 23 November, 2009 and I/A Court H.R., Resolution of 19 January, 2009, Case of González et al. ("Cotton Field") v. Mexico. Request to include other alleged victims and refusal to forward written evidence.