

**REPORT No. 36/13**  
PETITION 403-02  
ADMISSIBILITY  
JOSÉ DELFÍN ACOSTA MARTÍNEZ AND FAMILY  
ARGENTINA  
July 11, 2013

**I. SUMMARY**

1. On June 6, 2002, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by the *Comisión de Familiares de Víctimas Indefensas de la Violencia Social* [Committee of Relatives of Defenseless Victims of Social Violence] (COFAVI),<sup>1</sup> *Centro de Investigaciones Sociales y Asesorías Legales Populares* [Social Research Center and People’s Legal Advisory Services] (CISALP), and Paola Gabriela Canova (hereinafter the “petitioners”), in which they argue that the Republic of Argentina (“Argentina” or the “State”) is responsible for the injuries allegedly inflicted on Mr. José Delfin Acosta Martínez (the “presumed victim”) purportedly by police agents while he was in their custody, which resulted in his death, and for the absence of an effective investigation leading to the prosecution and punishment of the persons responsible for the events. The petitioners claim that the State is responsible for violating the rights set forth in Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 24 (equal protection), and 25 (judicial protection) in conjunction with the obligation to respect and guarantee the rights embodied in Article 1.1. of the American Convention on Human Rights (hereinafter the “American Convention”).

2. With regard to the fulfillment of the admissibility requirements, the petitioners claimed that they have exhausted domestic remedies and that they lodged the petition pursuant to Article 46 of the American Convention. For its part, the State argued that the petition is inadmissible because it does not state facts that would constitute a violation of a right guaranteed under the American Convention and that the “fourth-instance” formula is applicable.

3. After reviewing the positions of the parties and in keeping with the requirements established in Articles 46 and 47 of the American Convention, the Commission decides to declare the case admissible for the purpose of examining the alleged violation of the rights of the presumed victim and his relatives embodied in Articles 4, 5, 7, 8, 24, and 25, in conjunction with Article 1.1 and 2 of that instrument. In addition, the Commission decides to inform the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the OAS.

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<sup>1</sup> On May 9, 2006, Mr. Ángel Acosta Martínez, brother of the presumed victim, reported that COFAVI would no longer

## **II. PROCESSING BY THE COMMISSION**

4. The petition was received by the IACHR on June 6, 2002, and recorded as No. P-403-02. The IACHR transmitted it to the State on April 8, 2004, giving the State two months to submit a reply. The State asked the IACHR for a one-month extension for its reply, which was granted on June 8, 2004. The Commission received the State's reply on April 29, 2005, which was duly transmitted to the petitioners.

5. The petitioners submitted additional information on December 21, 2005, May 9, 2006, June 29, 2007, April 13, 2011, and December 12, 2011. The State submitted additional information on April 2, 2007. The additional information was duly transmitted to each of the parties.

## **III. POSITIONS OF THE PARTIES**

### **A. Position of the petitioners**

6. The petitioners maintain that Argentina is internationally responsible for depriving José Delfín Acosta Martínez of his life, owing to various injuries caused by police agents while he was in their custody, for failing to duly investigate the facts, which remain unpunished, and for the discrimination experienced by the presumed victim at the time of his detention due to his race.

7. They indicated that on April 5, 1996, Mr. José Delfín Acosta Martínez, an Uruguayan African descent, was eating breakfast in a confectionery shop at approximately 7:30 a.m. with several other persons present, some of whom had come out of a discotheque across the street. They stated that, after leaving the confectionery shop, the presumed victim started conversing with a Brazilian African descent named Wagner Gonçalves Da Luz, who was with his girlfriend.

8. The petitioners stated that at that time, three patrol vehicles that had been driving slowly in the area arrived at that location; two of them stopped at the intersection of Rodríguez Peña and Sarmiento streets, and the third stopped at the corner of Av. Callao and Sarmiento. The agents who arrived included Sergeant Domingo Alberto Oliva, Corporal Hugo Marcelino Lezcano, and Deputy Inspector Pedro Aguilar. The petitioners said that one of between four and six police agents who got out of the patrol vehicles pointed his weapon at the Brazilian national's head, later placing him against one of the vehicles with his hands raised. They added that, in light of these events, the brother of Wagner Gonçalves Da Luz tried to prevent his brother's detention, so he was introduced into patrol, car number 105, as well. The petitioners stated that on April 5, 1996, the Federal Police was conducting a *razzia* raid in the area where the events occurred.

9. They contended that the presumed victim attempted to reconcile the situation, that he informed the police officers that he was an Uruguayan national, that the persons they had detained had been at the discotheque and had not annoyed anyone, and that the detention was arbitrary "because evidently they had only been arrested because they are black." The petitioners further said that one of the police officers took José Delfín Acosta Martínez's identification document and threw him to the ground, which provoked a strong complaint from the presumed victim. They stated that in light of his complaints, the presumed victim was placed in the patrol vehicle number 305, adding that the presumed victim persistently demanded them to return him his identity document and that, after

that the presumed victim's identity document was returned to him before the patrol vehicle departed from the place.

10. The petitioners alleged that the arrest of the presumed victim was arbitrary, because he had been conversing peacefully without disturbing the peace, was not in a state of inebriation, was not carrying a weapon, and the reasons for his detention were not explained to him. They maintain that, in accordance with the investigations of the police and the judge who heard the case, the detention of the presumed victim was based on two arguments: the first was an alleged anonymous complaint of possible disturbances by an inebriated and armed person on Sarmiento street; the second resulted from the application of the so-called "ebriation ordinance" (*edicto de ebriedad*). They argued that it was never conclusively proven that the police received a call with the complaint, and that the "police ordinances," according to which police officers were empowered to detain people who were altering the peace, had been repealed in 1998 by the *Código de Convivencia Urbana* [Urban Coexistence Code], because they were unconstitutional. In addition, they added that of the total number of detentions in 1996, most resulted from the application of police ordinances for preventive purposes and not the commission of crimes. Therefore, the petitioners allege that the Argentinian State had violated Article 7 of the American Convention.

11. The petitioners also alleged that the presumed victim was detained because of his race. They held that, according to the supposed anonymous call, the person who apparently was causing the disturbance was wearing a black *campera* (jacket) and was carrying a weapon, and that this notwithstanding the police decided to detain three dark-skinned foreign nationals without motive.

12. The petitioners declared that when the presumed victim and the two brothers arrived at Police Station No. 5 of the Federal Police of Argentina, the presumed victim was taken to a place where there was a table and a bench, while the other two were led to a cell in another section of the building. They stated that the authorities justified separating them because they had determined that the presumed victim was under the influence of an addictive (*toxicomanígena*) substance or alcohol. They also stated that the cell where the presumed victim was deprived of his liberty was of very restricted dimensions.

13. They indicated that the presumed victim had been harshly beaten by police agents until he lost consciousness and was critically injured. They stated, however, that the police authorities' version alleges that the presumed victim became aggressive when they took his personal belongings, that he removed his clothes and footwear until he was naked, and that the police officers therefore had to hand-cuff him. The petitioners said that the authorities stated that the presumed victim had intentionally thrown himself head-first to the ground because seven officers of the Federal Police of Argentina had been "impotent" to stop him. They indicated that the seven agents present were: Corporal Marcelino Lezcano, Deputy Inspector Pedro Aguilar, Assistant Officer on Duty Blas Bogado, Sergeant on Duty Corporal Omar Ojeda, Corporal Zulma Orellana, Sergeant Humberto Echegaray, and Corporal Alfredo González.

14. They stated that several witnesses saw when the presumed victim left Police Station No. 5 of the Federal Police of Argentina on a stretcher carried by a nurse and Mr. Luis Alberto Cordero, and that he was naked, having convulsions, and with a hematoma on his head. The presumed victim was introduced into an ambulance of the Emergency Medical Care Service (SAME), where he died at 9:00

15. The petitioners alleged that the Argentinian State should be held responsible for the infringement of Article 5 of the American Convention, due to the severe injuries caused to the presumed victim by the police officers while he was in their custody. In this regard, the petitioners argued that one of the autopsies performed demonstrated that the hematomas on the body of the presumed victim could not have been self-inflicted, that persons detained in Police Station No. 5 of the Federal Police of Argentina had stated that they had heard the presumed victim crying out, and that people who witnessed the detention of the presumed victim affirmed that the presumed victim never demonstrated an aggressive attitude. Finally, they maintain that the Argentinian State should also be held internationally responsible for violating Article 4 of the American Convention, given the insufficiency of all the measures carried out by the officers to keep the prisoner safe, and because it was noted by various types of tests that the blows could not have been self-inflicted by the presumed victim.

16. With regard to the facts and criminal investigations pursued after the death of the presumed victim, the petitioners stated that when the brother of the presumed victim, Angel Acosta Martínez, tried to identify the corpse of the presumed victim, he was interrogated by various police officers to find out if José Delfín Acosta Martínez had a history of epilepsy or addictive behavior; that Angel Acosta Martínez observed that the body showed marks of numerous blows that could not have been self-inflicted; that the police never returned to Angel Acosta Martínez the keys to the apartment where the two brothers lived; and that after his brother's death someone entered to their apartment and removed personal belongings, photographs, and medical records.

17. The petitioners stated that on April 8, 1996, Angel Acosta Martínez held a press conference across from Police Station No. 5 of the Federal Police of Argentina for the purpose of filing proceedings related to the death of his brother, and that on April 9, 1996, the daily newspaper *Clarín* reported that the police communicated officially that the death of the presumed victim was "due to repeated intake of cocaine hydrochloride." They indicated that on April 8, 1996, the police preliminary records on the death of the presumed victim due to inconclusive causes was admitted by the Judicial Branch of the Federation (*Poder Judicial de la Federación*), and that the National Criminal and Correctional Court (*Juzgado Nacional en lo Criminal y Correccional*) No. 10, presided over by Judge Raúl Eduardo Irigoyen, heard the case.

18. The petitioners stated that on April 25, 1996, Judge Raúl Eduardo Irigoyen ruled to dismiss the case. They argued that the only testimonies taken into account for that decision were from two people who reaffirmed the police version (Oscar Darío Almada and Luis Alberto Cordero), and that the judge unjustifiably rejected two testimonies of people who stated that the presumed victim was detained without cause. The petitioners affirmed that, in response to the dismissal of the case, they filed an appeal with the National Criminal and Correctional Chamber (*Cámara Nacional en lo Criminal y Correccional*) to continue the investigation and offer new evidence, and affirmed that the said court confirmed the judgment of the judge of the court of first instance to the effect that no crime had been committed.

19. The petitioners said that the family of the presumed victim contacted the Uruguayan ministry of foreign affairs and that, based on those efforts, initiated proceedings in the Oriental Republic of Uruguay related to the case, with the Learned Criminal Court of First Instance (*Juzgado Letrado de Primera Instancia*) No. 13. It authorized the performance of a new autopsy, the results of which contradicted the version of the Federal Police of Argentina, according to which the presumed victim had

the autopsy, the presumed victim had various injuries, one on the lower back, others on the upper and lower arms, and on the skull.

20. The petitioners indicated that the mother of the presumed victim, taking into account Uruguayan expert opinion, on April 29, 1998, requested Judge Raúl Irigoyen to reopen the case. They stated that the case was reopened on May 12, 1998, to create a medical board made up of four members of the Forensic Medical Corps (*Cuérpo Médico Forense*) attached to the Supreme Court of Justice of the Republic of Argentina, for the purpose of answering various questions. They said that the family of the presumed victim contested the forensic report answering the questions because the experts had based their report on data drawn exclusively from the police investigation, which had been strongly questioned.

21. The petitioners stated that on August 5, 1999, when numerous pieces of evidence required for the complaint were still to be produced, Judge Raúl Irigoyen ruled to dismiss the case because no crime had been committed, and this decision was notified to the relatives of the presumed victim on August 10, 1999. They noted that in light of that judgment, the relatives of the presumed victim lodged an appeal with the National Chamber of Criminal and Correctional Appeals, Court V, which confirmed that the file should be dismissed. They indicated that, in response to that ruling, they filed an appeal for review by a higher court on October 12, 1999, which was denied on October 21, 1999, and notified on November 1 of that year. They further stated that on February 3, 2000, they submitted an appeal for special review (*recurso de casación*) to the National Chamber of Criminal Review (*Cámara Nacional de Casación Penal*), which was declared inadmissible on March 7, and notified on March 15, 2000. Finally, they said that on March 23, 2000 they lodged a complaint remedy (*recurso de queja*) with the Supreme Court of Justice, which was dismissed on December 18, 2001, and notified on December 28, 2001.

22. The petitioners allege that the Argentinian State should be held responsible for violating Articles 8 and 25 of the American Convention because substantially: i) the District Attorney's Office No. 10, under the responsibility of Juan Sansone, never requested any measure or showed interest in the course of the investigation, limiting himself to take note of the judge's ruling; ii) the authorities did not conduct a serious, objective, diligent, and transparent criminal investigation; iii) various pieces of evidence were improperly denied; iv) the case was dismissed even though numerous pieces of evidence suggested by the relatives of the presumed victim were still to be submitted; iv) there was a lack of impartiality and objectivity on the part of the authorities during the course of the judicial process; and v) a reasoned conclusion concerning the death of the presumed victim was not received because the courts that heard the appeals limited themselves to reproduce the arguments of the judge of first instance. They held that "the principle of the effectiveness of the judicial appeal becomes fictitious if its processing is plagued by irregularities ...."

23. Finally, the petitioners contend that Article 24 of the American Convention was violated in the instant case because "the police decided to take with them three citizens who, curiously, happened to be black," that "several civil witnesses stated that there had been no reason to make an arrest, but nonetheless, three persons were arrested", and that "by chance, these three people were foreigners of African descent, which, at the very least, raises the question as to whether the arrests were motivated by racial reasons more than by the alleged 'disturbances on public thoroughfares.'"

24. In conclusion, the petitioners alleged presumed violations of the rights set out in Articles 4 (right to life), 5 (right to the humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 24 (equality before the law ), and 25 (judicial protection) of the American Convention.

25. As concerns fulfillment of the admissibility requirements, the petitioners argued that in the instant case they had exhausted domestic remedies and that the petition had been submitted within six months, pursuant to Article 46 of the American Convention.

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

26. The State argued that the petition is inadmissible because it does not describe facts that tend to constitute a violation of a right guaranteed by the American Convention. It stated that a detailed analysis of the complaint and a thorough reading of the four bodies that make it up shows that the petitioners intend that the Commission serve as a "fourth instance."

27. With regard to the allegations related to the right to personal liberty, the State stated that the presumed victim and the Gonçavez Da Luz brothers were detained due to a complaint which reported that a person who was inebriated and armed was causing disturbances. It held that the file contains evidence that tends to demonstrate that the presumed victim was in a state of inebriation and that he was disturbing the peace. Furthermore, it argued that the presumed victim was detained "for infringing the police ordinance in effect regarding inebriation and other intoxications (article 3) and the police ordinance on disorderly conduct (article 1)," and, pursuant to the proceedings, cases, or circumstances expressly established by law (material aspect) and in strict compliance with the procedure objectively defined by same (formal aspect), the detention was not arbitrary, and was in accordance with Article 7 of the American Convention.<sup>2</sup> With regard to the alleged violation of the right to equality before the law, the State stated that such a serious allegation cannot be sustained by mere assumptions such as those summarized by the petitioners.

28. In regard to the arguments regarding the presumed victim's right to humane treatment, the State stated that the presumed victim was separated from the Gonçavez Da Luz brothers inside the police station because he was under the effects of an addictive substance and because the latter two were under age. It argued that numerous elements of proof made it possible to reach a different conclusion than the one sustained by the petitioners, such as the testimony of Mr. Oscar Almada, a taxi driver who was driving along the street and was called by the police when he passed Police Station No. 5 of the Federal Police of Argentina to serve as a witness when a personal search was performed, and who was present at the time the presumed victim was supposedly struck by police officers. Furthermore, the State alleged that two of the three autopsies did not sustain the petitioners' hypothesis.

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<sup>2</sup> With regard to the regulations applicable at the time of the events, the State affirmed that the police ordinance on inebriation and other intoxications maintains that persons in a full state of inebriation on the streets, plazas, coffee shops, nightclubs, stores, taverns, and other places that sell beverages or public places will be punished with a fine of between 300 and 1,500 pesos, or 3 to 15 days in detention (article 1); persons in the aforementioned places under the influence of alcohol will receive a fine of between 100 and 600 pesos or 1 to 6 days in detention (article 2); and for inebriation, in the case of the aforementioned places, fine or arrest of persons under the influence of alkaloids or narcotics (article 3). It also indicated that in accordance with the Regulations of Contraventional Procedures (*Reglamento de Procedimientos Contravencionales*) in force at the time of the events, if the violator was inebriated or intoxicated by alkaloids, the police agent taking charge should find a way to take the person to the police station in order to reduce the visibility of the disturbance caused by the person (article 89), and that disorderly inebriated persons, whatever their situation or condition, should be held in the prisoners' section, where no

29. With regard to the allegations concerning the alleged violation of the presumed victim's right to life, the State held that, in accordance with the autopsy, it could not be concluded that the injuries to the body of the presumed victim were capable of causing the death of the presumed victim. Furthermore, it argued that, with regard to the second autopsy, the medical board emphasized that none of the injuries found were cause of death, and that the physicians who performed the autopsy in Uruguay stated that it was not possible to determine the cause of death. Regarding the argument that the authorities failed to adopt sufficient measures to ensure the safety of the presumed victim, the State held that, based on the statement of Oscar Almada, it does not follow that the police officers had acted negligently with regard to the care of the presumed victim, that according to the autopsies the death was caused by the consumption of a large amount of alcohol and cocaine, and that the police officers could not do more than immediately call for an ambulance to prevent his death, "even though at that moment they were unaware of the Defin Acosta's state of intoxication."

30. In regard to the alleged violations of Articles 8 and 25 of the American Convention, the State argued that in the instant case, all the investigative lines that reasonably could have led to a determination of the cause of death of José Delfin Acosta Martínez had been pursued; that the investigation had been complete, independent, and impartial; that the testimonies of various witnesses had been considered; that under Argentinian law, the system allows a free appraisal of evidence and the effectiveness of the appraisal of evidence of the different means of proof is not set by rules that are binding on the judge; and that the petitioners asked that the IACHR hold the Argentinian State responsible because of an assessment made by the judges and courts based on the evidence produced in the case. It held that, as complainants, the relatives of the presumed victim had ample possibilities to uphold their position before the judges, and that the only evidence rejected was the request of the complaint to call all the people who had testified in the case, some repeatedly, to testify again. Finally, it alleged that they had access to all the domestic remedies available under domestic law to contest the judgments of the first and second instances.

#### **IV. ANALYSIS OF ADMISSIBILITY**

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

31. The petitioners have a legitimate right to lodge a petition with the Commission as provided for in Article 44 of the American Convention. The petition names as the presumed victim an individual for whom the State has assumed the commitment to respect and guarantee the rights recognized by the American Convention. As for the State, the Commission notes that Argentina has been a State Party to the American Convention since September 5, 1984, when it deposited its instrument of ratification. The Commission is therefore competent *ratione personae* to examine the petition.

32. The Commission is competent *ratione loci* to consider the petition, since it alleges violations of rights protected by the American Convention committed within the territory of a State Party thereto. The IACHR is competent *ratione temporis*, since the State's obligation to respect and guarantee the rights protected in the American Convention existed on the date it is claimed the violations of the rights alleged in the petition occurred. Finally, the Commission is competent *ratione materiae*, because the petition adduces violations of human rights protected by the American

## **B. Other admissibility requirements**

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

33. For a complaint regarding the alleged violation of the provisions of the American Convention to be admitted, it must meet the requirements established in Article 46.1 of that international instrument. Article 46.1.a of the American Convention establishes that to determine the admissibility of a petition or communication submitted to the IACHR pursuant to Articles 44 or 45 of the Convention, domestic remedies must have been pursued and exhausted, in accordance with generally recognized principles of international law.

34. The petitioners state that the relatives of the presumed victim exhausted all the domestic remedies and that the last appeal they presented was the complaint filed with the Supreme Court of Justice of the Nation against the decision that dismissed the federal special appeal (*recurso extraordinario federal*) within the framework of criminal proceedings. For its part, the State did not submit arguments to contravene this assertion and even confirmed the presentation of all the appeals that the petitioners alleged they had exhausted.

35. Both the Commission and the Inter-American Court have stated that only those remedies adequate to redress the violations allegedly committed must be exhausted.<sup>3</sup> In cases such as the instant one, which involve possible crimes that are publicly actionable, that is, those that can be prosecuted officially, particularly when agents of the State are implicated in the offenses, the State is under the obligation to investigate them. In any case, therefore, the State is the holder of the punitive action and of the obligation to promote and pursue the various procedural stages, in fulfillment of its obligation to guarantee the right to justice. This burden must be borne by the State as its own legal duty, and not as an instrument of the interests of individuals, and it may not be contingent upon the initiative of those individuals or evidence they provide.<sup>4</sup>

36. In the present case, the Commission observes *prima facie* that the relatives of the presumed victim not only promoted the criminal investigation, they also lodged various appeals against the judgment of August 5, 1999, that dismissed the case, the complaint constituting the last appeal filed in a sequence of appeals aimed at correcting the violations allegedly committed. In this regard, the Commission considers that domestic remedies were exhausted in accordance with the provisions of Article 46.1.a of the American Convention.

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<sup>3</sup> The Inter-American Court of Human Rights has determined that an adequate remedy is one that is suitable for protecting the infringed legal right; thus, remedies that do not have any effect or are manifestly absurd or unreasonable need not be addressed. Inter-American Court of Human Rights, *Case of Velásquez Rodríguez vs. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, par. 63, and Report No. 4/12, Petition 4115-02, Admissibility, *Ricardo Javier Kaplun and family*, Argentina, March 19, 2012, par. 28.

<sup>4</sup> See IACHR, Report No. 68/08, Petition 231-98, Admissibility, *Ernesto Travesi*, Argentina, October 16, 2008, par. 32.



## 2. Timeliness of the petition

37. In accordance with the provisions of Article 46.1.b of the American Convention, in order for a petition to be declared admissible, it must be lodged within a period of six months from the date on which the party alleging violation of his or her rights was notified of the final judgment.

38. In the instant case, since the judgment of December 18, 2001, which ruled on the complaint appeal (*recurso de queja*), was reported to the relatives of the presumed victim on December 28, 2001, and the petition was submitted on June 6, 2002, the Commission finds that the period of six months provided for in Article 46.1.b of the American Convention is satisfied.

## 3. Duplication of proceedings and international *res judicata*

39. The case file of the petition contains no information that could lead to the determination that the petition is pending settlement in another international proceeding, nor that it has previously been decided by the Commission. Therefore, the IACHR concludes that the exceptions provided for in Article 46.1.c and Article 47.d of the American Convention are not applicable.

## 4. Characterization of the facts alleged

40. For the purposes of admissibility, the Commission must decide whether the facts alleged tend to establish a violation of rights, pursuant to Article 47.b of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," pursuant to Article 47.c. The criterion for evaluating these requirements is different from the one used to decide on the petition's merits; the Commission must carry out a *prima facie* evaluation to determine whether the petition establishes grounds for the possible or potential violation of a right guaranteed under the American Convention, but not to establish whether an infringement of rights has occurred. This determination constitutes a preliminary analysis that does not entail a prejudgment on the merits of the case.<sup>5</sup>

41. Neither the American Convention nor the Rules of Procedure of the IACHR require the petitioners to identify the specific rights allegedly violated by the State in the case brought before the Commission, although the petitioners may do so. However, it is incumbent on the Commission, in keeping with the jurisprudence of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable and could be deemed to have been violated if the alleged facts are proven by means of sufficient evidence and legal arguments.

42. The Commission notes that the characterization of the alleged facts is in dispute. The Argentinian State holds that in the instant case the formula of the "fourth-instance" is applicable and that the petition does not state facts that tend to constitute a violation of a right guaranteed by the American Convention. For their part, the petitioners hold that they are not proposing a review of the judgment that ordered the dismissal of the proceedings relating to the presumed victim, but rather violations of human rights.

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<sup>5</sup> IACHR, Report No. 4/12, Petition 4115-02, Admissibility, *Ricardo Javier Kaplún and family*, Argentina, March 19,

43. The basic premise of the “fourth-instance” formula is that “the Commission cannot review the judgments issued by the domestic courts acting within their competence and with due judicial guarantees, unless it considers that a possible violation of a right protected by the American Convention is involved.”<sup>6</sup> In this regard, the IACHR has established that it is competent “to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of due process or if it appears to violate any other right guaranteed by the Convention.”<sup>7</sup> The Commission recalls that it has admitted petitions when it is inferred *prima facie* from the allegations of the parties that the judgments or procedures followed could have been arbitrary<sup>8</sup> or imply a possible arbitrary unequal treatment or possible discrimination.<sup>9</sup>

44. In view of the foregoing, given the elements of fact and law introduced by the parties and the nature of the matter brought before it, the IACHR finds that in the instant case it must be established that the petitioners’ allegations related to the presumed violation of the right to guarantees and judicial protection to the detriment of the relatives of the presumed victim could tend to constitute violations of the rights protected in Articles 5, 8 and 25, in conjunction with Article 1.1 of the American Convention, since allegations regarding an alleged denial of justice require an analysis in the merits stage where irregularities in investigations and criminal proceedings could be established *prima facie*; also that the judgment dismissing the criminal investigation could be arbitrary in violation of due process.

45. It is also incumbent upon the Commission to establish that the allegations of the petitioners related to the alleged violation of the rights to personal liberty, humane treatment, and life to the detriment of José Delfín Acosta Martínez could tend to constitute violations of the rights protected in Articles 4, 5, and 7, as they relate to Article 1.1 of the American Convention.

46. Furthermore, the Commission considers that a failure to fulfill the obligations set forth in Articles 1.1 and 2 of the American Convention with regard to Article 7 could be characterized since, in accordance with what has been alleged, at the time of the facts the so-called “police ordinances” that justified the detention of the presumed victim were in force; this requires an analysis in the merits stage to establish its compatibility with the State’s duty to adopt the legislative or types of measures necessary to enforce the rights embodied in the aforementioned instrument.

47. Finally, with regard to the alleged violation of the right to equal protection and the alleged failure to prohibit discrimination, the Commission considers that the allegations of the petitioners related to presumed discriminatory acts against José Delfín Acosta Martínez because of his race or national origin could tend to constitute an infringement of the prohibition to discriminate contained in Article 1.1 as relates to the rights contained in Articles 4, 5, 7, 8, and 25 of the American Convention or, in any case, a violation of Article 24 with regard to Article 1.1 of that instrument. Bearing in mind that the allegations that refer to the supposedly discriminatory treatment of the presumed

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<sup>6</sup> IACHR, Report No. 8/98, Case 11.671, Inadmissibility, *Carlos García Saccone*, Argentina, March 2, 1998, par. 53 and Report No. 2/05, Petition 11.618, Admissibility, *Carlos Alberto Mohamed*, Argentina, February 22, 2005, par. 32.

<sup>7</sup> IACHR, Report No. 105, 99, Case 10.194, Admissibility and Merits, *Narciso Palacios*, Argentina, September 29, 1999, par. 45.

<sup>8</sup> IACHR, Report No 62/12, Petition 1471-05, Admissibility, *Yenina Esther Martínez Esquiava*, March 20, 2012, par. 48.

<sup>9</sup> IACHR, Report No. 42/08, Case 12.502, Admissibility, *Karen Atala and daughters*, Chile, July 23, 2008, par. 63 and

victim by the police, due to reasons of race or national origin, and as race and national origin are categories that require especially rigorous scrutiny, the Commission considers these allegations admissible for the purpose of examining them in the merits stage.

## **V. CONCLUSIONS**

48. The Commission concludes that it is competent to examine the claims submitted in the instant case and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention. Based on the arguments of fact and law set forth herein, and without prejudging the merits of the case,

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

#### **DECIDES:**

1. To declare this case admissible with regard to the alleged violations of the rights recognized in Articles 4, 5, 7, 8, 24, and 25 of the American Convention, considered in conjunction with Articles 1.1 and 2 thereof;
2. To notify the parties of this decision;
3. To continue its examination of the merits of the case;
4. To make this report public and to publish it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 11th day of July 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Rose-Marie Belle Antoine, Felipe González, Dinah Shelton and Rodrigo Escobar Gil, Commissioners.