

**REPORT No. 41/13**  
PETITION 12.295  
ADMISSIBILITY  
JESÚS RAMIRO ZAPATA *ET AL.*  
COLOMBIA<sup>1</sup>  
July 11, 2013

**I. SUMMARY**

1. On June 9, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by the *Corporación Colectivo de Abogados “José Alvear Restrepo”* [*Jose Alvear Restrepo Lawyers Group*] and the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”) in which they allege that the international responsibility of the Republic of Colombia (hereinafter “the State” or “the Colombian State”) has been engaged by the events surrounding the death of human rights defender Jesús Ramiro Zapata (hereinafter “the alleged victim”) on May 3, 2000, in the municipality of Segovia, Antioquia, and by the justice system’s failure to shed light on what happened.

2. The petitioners are alleging that the facts denounced constitute violations of the rights recognized in articles 4, 5, 7, 8, 13, 11, 16, 22 and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), read in conjunction with articles 1(1) and 2 thereof, to the detriment of the alleged victim and his next of kin. The State, for its part, alleges that the petition should be declared inadmissible on the basis of Article 46(1)(a) of the Convention, since it took the necessary measures to protect the life of Mr. Jesús Ramiro Zapata, that he refused to accept the measures of protection offered, and that since his return to the city of Segovia it had received no complaint of new dangers and threats to the alleged victim. It adds that a criminal case is currently underway to shed light on the facts surrounding his murder and punish those responsible.

3. After examining the parties’ positions and without prejudging the merits of the matter, the IACHR concludes that it is competent to decide the petition filed by the petitioners; hence, the case is admissible with respect to the alleged violations of articles 4, 5, 7, 8, 11, 13, 16, 22 and 25 of the American Convention, in conjunction with Article 1 thereof, and inadmissible with respect to the alleged violation of Convention Article 2. It also decides to notify the parties and order publication of the admissibility report in its Annual Report to the OAS General Assembly.

**II. PROCESSING WITH THE COMMISSION**

4. On December 5, 1997, the Commission received a request filed by Mr. Jesús Ramiro Zapata seeking precautionary measures. After examining the request and in a note dated February 11, 1998, the Commission asked the Colombian State to take precautionary measures to protect his life and personal integrity. While the precautionary measures were still in force, the IACHR received communications from both parties concerning Mr. Jesús Zapata’s situation and the implementation of the precautionary measures. When it was informed of Mr. Zapata’s murder<sup>2</sup> and the circumstances

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<sup>1</sup> In accordance with Article 17(2) of the Commission’s Rules of Procedure, Commissioner Rodrigo Escobar Gil, a Colombian national, did not participate in either the discussion of or decision on the present petition.

<sup>2</sup> On May 3, 2000.

surrounding it, the IACHR requested immediate information from the State in a communication dated May 5, 2000. The State of Colombia presented its reply on May 15, 2000. Subsequent to that communication, on May 23, 2003 the IACHR again asked the State to report what specific measures it had taken to protect Mr. Zapata, but received no reply from the State.

5. On June 9, 2000, the Commission received a petition related to Mr. Zapata's death and registered it as number 12,295. That petition was forwarded to the State on June 21, 2000, for it to present its observations. Thereafter, on June 26, 2000, the Commission received additional information related to the petition, the pertinent parts of which were duly forwarded to the State. The State presented its reply on October 3, 2000, which was brought to the petitioners' attention. They, in turn, filed their observations on January 4, 2001.

6. On February 29, 2001, during its 110th session, the IACHR held a hearing on the case, attended by the petitioners and representatives for the State. The petitioners filed briefs on September 9, 2002 and May 29, 2003, which were promptly forwarded to the State. By a communication dated October 15, 2008, the IACHR requested updated information from the petitioners. The latter provided that information on May 25 and June 1, 2012. That information was sent to the State. Finally, the State presented a brief dated December 26, 2012, containing its observations on the petitioners' brief. Those observations were then sent to the petitioners for their information.

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

#### **A. The petitioners**

7. The petitioners point out that Mr. Jesús Ramiro Zapata was a human rights defender in Segovia, which is in the northeastern quadrant of the department of Antioquía, an area hit hard by the armed conflict in Colombia. They add that he had worked as a teacher at the "María Goretti" school since 1990, was a member of the "ADIDA" syndicate and a "Unión Patriótica" activist. The petitioners state that Mr. Zapata was Coordinator of the Segovia Human Rights Committee and a member of the "Seeds of Liberty" Group, an organization that is an alliance of several organizations dedicated to defending human rights in Antioquía. They also observe that in February 1993, the Segovia Municipal Council appointed Mr. Zapata as a human rights defender. In that capacity, he launched investigations into massacres said to have occurred in 1988, 1996 and August 1999 in that municipality; paramilitary, working with members of the armed forces, were said to have been involved in those massacres.

8. The petitioners state that as a result of his work defending human rights, in the years leading up to his death, Mr. Zapata lived under constant threats and harassment and was branded as and falsely accused of being a "subversive" by the military authorities. The petitioners state further that in 1994, all the members of the Segovia Human Rights Committee, one of whom was Mr. Zapata, were threatened by paramilitary groups. They also assert that in 1996 Mr. Zapata was accused by a State official alleged to have been involved in the Segovia massacre on April 22, 1996, of having engaged in a "judicial frame-up" to implicate the State official in the massacre. The petitioners also assert that on May 25, 1996, Mr. Zapata's home was searched by the security forces on the grounds that he was a "promoter of human rights in northeastern Antioquia and a member of the E.L.N. criminal organization." The petitioners state that during the search, agents of the State had deliberately planted explosive materials in Mr. Zapata's home to justify the arrest of one of his family members, since Mr. Zapata himself was not at home at the time. The petitioners also point out that on July 18, 1996, Mr. Zapata

was held in custody for close to 5 hours by Medellín Local Prosecutor 245 who alleged that the citizenship card shown by Mr. Zapata might have been a false document.

9. The petitioners allege that the harassment continued in 1997, a year in which a number of criminal investigations were conducted against Mr. Zapata based on military intelligence reports and statements by witnesses whose identity was withheld. In this connection, they note that Mr. Zapata was falsely accused of having participated in the abduction of the Segovia Municipal Registrar; he was twice accused of the crime of rebellion; without any proof, he was accused of having participated in meetings with and having maintained ties with subversives, and of having organized anti-authority demonstrations and meetings and of attacks against the forces of law and order. They also assert that, as a member of the "Seeds of Liberty" Group, the alleged victim was unjustly accused of attempts against the security of the State.<sup>3</sup>

10. The petitioners maintain that on August 13, 1997, a commander of the Intelligence Battalion prepared a report in which he said, *inter alia*, that Mr. Zapata was a member of the militia and led the "Seeds of Liberty" Group, an organization that he claimed was actually a "subversive" group, and that the security forces had been repeatedly "framed" by Mr. Zapata, who had accused them of supposed human rights violations, all for the purpose of bringing cases against the State seeking huge settlements. The petitioners point out that on August 28, 1997, a new intelligence report was presented that said, *inter alia*, that Mr. Zapata was an activist in the "Unión Patriótica".

11. The petitioners contend that as a result of the threats and constant harassment in the form of judicial inquiries and intelligence activities against Mr. Zapata, in March 1997 the alleged victim was forced to move to protect his own life and the lives of his loved ones; in the process, he had to suspend his work as a teacher and a human rights defender in Segovia. The petitioners assert that Mr. Zapata remained in Medellín for 18 months.

12. The petitioners further assert that in the second half of 1997, Mr. Jesús Ramiro Zapata was received by the Special Committee of Threatened Teachers of the Education Secretariat of the Antioquia Governor's Office. They also point out that Mr. Zapata requested precautionary measures to protect his life during the on-site visit that the Inter-American Commission on Human Rights made to Colombia, and had filed a formal request on December 5, 1997. They contend also that in a communication dated February 11, 1998, the Commission asked the State to take the measures necessary to protect Mr. Zapata's life and the integrity of his person.

13. The petitioners also claim that in response to the precautionary measures granted by the IACHR, on March 18, 1998 the Special Administrative Unit for Human Rights of the Ministry of the Interior met with Mr. Zapata. They add that on that occasion, Mr. Zapata expressed his intention to return to the city of Segovia since, despite his request to be transferred as a teacher to areas where he would be safe, the administrative authorities in education had reprimanded him for "abandonment of post" and suspended his teaching contract and payment of his wages. This had left him in a difficult financial situation that forced him to return to Segovia to carry on his work, despite the risk to his life and safety. The petitioners state that during the meeting, the authorities agreed to support Mr. Zapata so that he could carry on his work in Segovia in a safe environment; to that end, they would be sending

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<sup>3</sup> The judicial cases were reportedly classified as numbers 14,807, 20,564, 20,573, 21,578, 20,702 and 24.239.

communications to a number of civilian and military authorities laying out his case, informing them of the precautionary measures granted by the IACHR, and asking for their cooperation.

14. The petitioners contend that between March and April 1998, those communications went out to various authorities with the Municipality of Segovia. However, the State did not provide the alleged victim with proper protection since, upon Mr. Zapata's return to Segovia, the paramilitary forces had reportedly become even stronger and the State had allegedly not succeeded in eradicating the sources of danger and did not heed his requests when he asked for help. They specifically mention that on November 9, 1998, Mr. Zapata filed a complaint against a member of the military, whom he was unable to identify; Mr. Zapata claimed that the person in question had refused to provide him with help when he was being followed by an unknown person. They further indicate that in the days leading up to his death, Mr. Zapata filed complaints about various authorities in the wake of a paramilitary incursion between April 15 and 28, 2000 in which some paramilitary in the area were inquiring about his whereabouts, yet the authorities had ignored his call for help.

15. The petitioners maintain that in view of the danger facing him, Mr. Zapata wrote a letter to his attorney on May 2, 2000, in which he said that his safety situation had not improved and that the authorities refused to provide him with assurances and protection. They contend further that one of Mr. Zapata's nephews said that during that period, Mr. Zapata received a number of threatening phone calls, and that this event coincided with the painting of cars -supposedly by a paramilitary group called "Autodefensas Unidas de Colombia"- and the murder of three other people in the area.

16. The petitioners recount how, on May 3, 2000, while he was in a pool hall in the city of Segovia, Mr. Zapata was taken by force by two armed men who identified themselves as "members of the Carlos Castaño Self-Defense Forces." They forced Mr. Zapata into a taxi and drove him to an area called "El Marmajito" where they executed him with one bullet fired in the rear of his head, after which they shot up his body. The petitioners assert that no authority went to the scene where the alleged victim's body had been left in order to remove the corpse, even though they were immediately notified by family members. They point out that it was Mr. Zapata's own family who had to remove the alleged victim's lifeless body, take the body home and the next day take it to the "San Juan de Dios de Segovia" Hospital where the autopsy was conducted.

17. The petitioners contend that these events led to a criminal inquiry conducted by the National Human Rights Unit of the Office of the Attorney General of the Nation under case number UDH 782. The petitioners point out that during that inquiry, several forensic tests were done and some testimony was taken about who the possible authors of the crime might be; however, they point out that to this day, no one has been made to answer for the crime, and the prosecutor's office has failed to follow certain leads to identify the material and intellectual authors of the crime. They also maintain that on May 16, 2011, the National Unit for Justice and Peace reported that Mr. Zapata's murder "is assigned to Metro Block office 45, but no one has confessed to the crime." The petitioners contend that no proper investigations have been done of any paramilitary or police and military forces that may have been involved in the crime, even though there are reportedly sufficient indicia to warrant such an investigation.

18. The petitioners also contend that the State has not demonstrated that it has conducted a serious and effective investigation to ascertain the reasons why the precautionary measures ordered by the Commission to protect the alleged victim's life were not properly provided or why those responsible for the failure to provide the precautionary protection ordered were not penalized. The petitioners assert that while on July 7, 2000, a preliminary inquiry into the matter was instituted, the Office of the Provincial Prosecutor of Puerto Berrío had reportedly permanently closed the case in 2009 on the grounds that there was insufficient merit and evidence to open a formal disciplinary investigation.

19. The petitioners add that Mr. Zapata's family members have filed suit seeking direct reparations via the contentious-administrative courts, naming as respondents the National Police, the National Army, and the Ministries of the Interior, Justice and Defense. The suit is currently in the evidentiary phase with the 10th Administrative Law Court of Segovia, classified as Case No. 05001233100020020232200.

20. As for the exhaustion of domestic remedies, the petitioners are claiming the exception allowed under Article 46(2)(c) of the American Convention, as they believe there has an unwarranted delay in the prosecution of the criminal case, which is still in the examining phase more than 12 years after the alleged victim's execution-style killing.

21. Finally, the petitioners maintain that the events associated with the constant harassment, threats and extrajudicial execution of the alleged victim -the beneficiary of IACHR precautionary measures-, the fact that no one has been held accountable for these events, and the State's failure to protect the alleged victim, tend to establish a violation of articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty and security), 8 (right to a fair trial), 13 (freedom of expression), 11 (right to one's honor and dignity), 16 (freedom of association), 22 (freedom of movement and residence), and 25 (right to judicial protection), all read in conjunction with Article 1(1) (the State's obligation to respect and ensure rights) of the American Convention. They also assert that Article 5 (right to humane treatment) has been violated to the detriment of the members of the alleged victim's family because of the mental and moral suffering they have endured as a result of the acts committed against their loved one.

22. The petitioners also mention the violation of the obligation to adopt domestic legislative measures to make those rights effective; they contend that the State has not taken all the necessary steps to guarantee that the measures taken to protect human rights defenders are effective.

## **B. The State**

23. The State contends that because Mr. Zapata was a human rights defender and the beneficiary of precautionary measures granted by the IACHR, multiple measures were taken to protect his life and the integrity of his person. First, the State indicates that on March 5, 1998, the Ministry of the Interior contacted Mr. Zapata and agreed that a meeting would take place on March 10, to decide on the protective measures. It indicates that on the following day, the Ministry sent a letter to Mr. Zapata, enclosing a roundtrip Medellín-Bogotá airline ticket. Nevertheless, on March 10, the Witness and Threatened Persons Protection Area reported that Mr. Zapata did not turn up for the meeting.

24. The State alleges that on March 18, 1998, Mr. Zapata met with delegates from the Presidential Human Rights Advisory Office and from the Ministry of the Interior to discuss possible protective measures that could be offered to him. It claims that on that occasion, Mr. Zapata expressed his interest in returning to the city of Segovia, as he believed that the danger that had once threatened him no longer existed; the delegates present at the meeting agreed to assist him in making his return.

25. The State contends that with that in mind, communications were sent to a number of civilian and military authorities in the region informing them of Mr. Zapata's case, of the precautionary measures requested by the IACHR, their implications, and the need to provide Mr. Zapata with support in effecting his return to Segovia to enable him to continue to engage normally in his teaching and his human rights work. It notes that the National Police reported "*on all the steps taken to adopt measures to protect Mr. Zapata, which included a study of the extent of the danger to him, and an investigation of the sources of and circumstances surrounding the threats made against Mr. Zapata.*"

26. The State maintains that by note of July 16, 1998, the petitioners reported that Mr. Zapata would be returning to his home on July 13 of that year. The State asserted that Mr. Zapata's representatives allegedly reported that "he does want bodyguards from the police, the Army, the DAS or any other security force. Nor does he want the house guarded, but he does want assurances for his teaching work in that municipality (Segovia) and his human rights work."

27. The State observes that since 1998, Mr. Zapata filed no complaints or reports with the authorities concerning new threats, as the Mayor of Segovia, the Inspector of the Police and Municipal Traffic, and the Antioquia Police Department reported that they had received no complaints to that effect. The State contends that the persons who attacked Mr. Zapata were not agents of the State and did not act under its supervision or protection or with its tolerance or acquiescence. Hence, it argues, the State cannot be accused of direct or indirect responsibility in these events. The State claims that it was unaware of the previous existence of a danger and had no effective means to prevent a totally unforeseeable event like Mr. Zapata's murder. It points out that Mr. Zapata had allegedly indicated how the measures granted should be implemented and, acting upon his wishes, those measures were guaranteed through his return and the security he enjoyed to practice his work as a teacher and human rights defender.

28. As for the exhaustion of the remedies under domestic law, the State contends that the petitioners have failed to demonstrate that internal remedies were exhausted, because while the events at issue in this petition occurred in 2000, all steps are still being taken to investigate and punish those responsible for the murder of Mr. Zapata. It reports that the National Human Rights Unit of the Attorney General's Office is in charge of the investigation, which is classified as No. 782, and makes a general claim to the effect that the investigation work has been constant, even though it is still in its preliminary phase; it also claims that despite the evidence and the probative material compiled for the investigation, no causal relationship linking the evidence to a specific group of persons has been established; however, to date there is no evidence suggesting the involvement of members of the public security forces in these events. It adds that there is no unwarranted delay in the investigation since the slow pace is due to the difficult situation the region is up against, the lack of cooperation from the citizenry, the complexity of the case, the characteristics of the crime, and the *modus operandi* of the criminal groups operating in the area where the events took place.

29. As for the disciplinary inquiry, the State reports that three different inquiries were instituted into the alleged failure to protect Mr. Zapata. One was closed in November 1998 and another in October 2003, for lack of merit. In the third inquiry, instituted on June 12, 2000 and conducted by the National Bureau of Special Investigations as Case No. 009-045340-2000, orders had been given to institute a preliminary investigation of certain members of the public security force for failure to protect Mr. Zapata. That inquiry is still underway.

30. Finally, the State argues that the petition does not state facts that tend to establish violations for which the State would be responsible, either by its action or omission, and either directly or indirectly. Furthermore, it argues, the facts of the petition are entirely the fault of third parties. It therefore asks the Commission to declare the petition inadmissible.

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

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

31. The petitioners are, in principle, authorized to file petitions with the Commission under Article 44 of the American Convention. The alleged victims named in the petition are natural persons whose rights under the American Convention the Colombian State undertook to respect and ensure. As for the State, the Commission notes that Colombia has been a State party to the Convention since July 31, 1973, the date on which it deposited its instrument of ratification. Hence, the Commission has competence *ratione personae* to examine the petition.

32. The Commission also has competence *ratione loci* to take up the petition, as the latter alleges violations of human rights said to have occurred within the territory of Colombia, a State Party to the Convention. The Commission has competence *ratione temporis* because the obligation to respect and ensure the rights protected under the American Convention was already in effect for the State on the date when the facts alleged in the petition were said to have occurred. Finally, the Commission has competence *ratione materiae* because the petition denounces possible violations of human rights protected by the American Convention.

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

###### **1. Exhaustion of the remedies under domestic law**

33. Article 46(1)(a) of the American Convention provides that for a petition alleging a violation of the Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow the domestic authorities an opportunity to apprise themselves of the alleged violation of a protected right and, if appropriate, to resolve the matter before it is taken up by an international body.

34. Article 46(2) of the Convention provides that the rule requiring prior exhaustion of local 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.

35. In the instant case, the State is alleging that the remedies under domestic law have not been exhausted pursuant to Article 46(1)(a) of the Convention, because the criminal inquiry instituted into Mr. Zapata's murder is still underway. It claims that while significant progress has been made, the State has not yet been able to identify and punish the guilty parties. The State maintains that this is because of the difficult situation in the region where the city of Segovia is located, the lack of cooperation from the citizenry, the complexity and characteristics of the crime, and the *modus operandi* of the criminal groups that engaged in their activities in the area where the events in this petition occurred. The petitioners, for their part, are requesting application of the exception allowed under Article 46(2)(c) of the Convention in a case of an unwarranted delay in rendering a final judgment on the domestic remedies filed.

36. The first matter that needs to be addressed is what remedies remain to be exhausted in the present case. The Inter-American Court has written that the only remedies that need be exhausted are those that are adequate to correct the violations alleged to have been committed. Adequate remedies are those that

are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.<sup>4</sup>

37. The precedents established by the Commission recognize that whenever a crime prosecuted by the State is committed, the State has an obligation to set the criminal law system in motion and prosecute the criminal case until the end.<sup>5</sup> In such cases, this is the proper avenue to clarify the facts, prosecute those responsible and establish the corresponding criminal penalties, and also make possible other forms of pecuniary reparations. The IACHR considers that the facts claimed in the present case involve the alleged violation of such fundamental rights as the right to life, which under domestic law are crimes prosecuted by the State *ex officio*; therefore it is this process, set in motion by the State itself, which must be considered for purposes of determining the admissibility of the petition. The Commission must again make the point that, in keeping with its practice, the analysis to be done is

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<sup>4</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, paragraph 64.

<sup>5</sup> Report No. 52/97, Case 11,218, *Arges Sequeira Mangas*, Nicaragua, *Annual Report of the IACHR 1997*, paragraphs 96 and 97. See also: Report No. 55/97, Case 11,137, *Juan Carlos Abella*, Argentina, paragraph 392. Report No. 62/00, Case 11,727, *Hernando Osorio Correa*, Colombia, paragraph 24. *Annual Report of the IACHR 2000*.

of the situation existing at the time the admissibility of the case is decided, based on the present circumstances.<sup>6</sup>

38. In the present case, the Commission observes that the facts recounted concerning the murder of human rights defender Jesús Ramiro Zapata on May 3, 2000, are, under Colombia's laws, crimes that the State prosecutes *ex officio*; the investigation and trial are to be prosecuted by the Colombian State itself.

39. The Commission observes that as a general rule, a criminal investigation must be carried out promptly to protect the victims' interests; to preserve the evidence and even safeguard the rights of any person who, in the course of the investigation, might be regarded as a suspect.<sup>7</sup> Furthermore, as the Inter-American Court has held since its first judgments, while every criminal investigation must comply with a number of legal requirements, the rule of prior exhaustion of domestic remedies must never lead to delays that render international action in support of the defenseless victim ineffective.<sup>8</sup>

40. In the instant case, the Commission observes that on May 17, 2000 the National Human Rights Unit of the Office of the Attorney General of the Nation reportedly instituted an investigation into the facts, but after 13 years that investigation is still in its preliminary phase and has not managed to identify who had a hand in the murder of Mr. Jesús Ramiro Zapata. Therefore, given the specific characteristics of this case, the Commission considers that for purposes of admissibility, the exception allowed under Article 46(2)(c) of the American Convention is in order.

41. As for the other remedies to which the parties refer, the Commission has previously held that decisions issued in disciplinary and contentious-administrative law cases are not the adequate remedies to which Article 46(1) of the Convention refers. Disciplinary jurisdiction is not an adequate avenue for prosecuting and punishing violations of human rights and redressing their consequences. The contentious-administrative jurisdiction, for its part, is a mechanism for overseeing the State's administrative business, and only allows for damages and injuries resulting from an abuse of authority. Therefore, in a case such as the present one, these are not remedies that need be exhausted before turning to the inter-American system.<sup>9</sup>

42. The IACHR reiterates that invocation of the exceptions to the rule requiring exhaustion of domestic remedies, which are set out in Article 46(2) of the Convention, is closely linked to the determination of possible violations of certain Convention-protected rights, such as the guarantees of

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<sup>6</sup> In situations in which the facts as originally presented at the domestic level have evolved and that evolution implies a change in compliance or non-compliance with the admissibility requirements, the Commission has held that the analysis must be done on the basis of the situation as it is at the time the petition is declared admissible. IACHR, Report No. 20/05, Petition 714/00 ("Rafael Correa Díaz"), February 25, 2005, Peru, paragraph 32; IACHR, Report No. 25/04, Case 12,361 ("Ana Victoria Sánchez Villalobos *et al.*"), March 11, 2004, Costa Rica, paragraph 45; IACHR, Report No. 52/00, Cases 11.830 and 12.038. (Dismissed Congressional Employees), June 15, 2001, Peru. Paragraph 21.

<sup>7</sup> IACHR, Report No. 87/06, *Carlos Alberto Valbuena and Luis Alfonso Hamburger Diazgranados*, October 21, 2006, paragraph 25; Report No. 70/09, *José Rusbell Lara*, August 5, 2009, paragraph 31; and Report No. 15/09, *Massacre and Forced Displacement of Montes de María*, March 19, 2009.

<sup>8</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, paragraph 93.

<sup>9</sup> IACHR. Report No. 74/07 *José Antonio Romero Cruz, Rolando Ordoñez Álvarez and Norberto Hernández* (Colombia), October 15, 2007, paragraph 34.

access to justice. However, given its nature and purpose, Article 46(2) stands separate and apart from the Convention's substantive provisions. Therefore, the determination as to whether the exceptions to the rule of prior exhaustion of domestic remedies apply to the case at hand must be done prior to and separate from the analysis of the merits, because it relies on a standard of assessment that is different from the standard used to determine possible violations of Articles 8 and 25 of the Convention. It is worth noting that the causes and specific circumstances that State contends delayed the investigation will be examined in the report that the Commission adopts on the merits, to determine whether violations of the American Convention have occurred.

## **2. Deadline for filing the petition**

43. Article 46(1)(b) of the American Convention provides that for the Commission to declare a petition admissible, the latter must be lodged within six months of the date on which the alleged aggrieved party was notified of the final decision in his or her case. Article 32 of the Commission's Rules of Procedure provides that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

44. As it has already been decided that the Article 46(2)(c) exception to the rule requiring exhaustion of domestic remedies applies in this case, the IACHR must now determine whether the petition was filed within a reasonable period of time. Here, the IACHR notes that the petition was filed on June 9, 2000, subsequent to Mr. Zapata's murder. Given the specific circumstances of this petition, particularly the fact that the State was aware of the danger to the alleged victim, as he was the beneficiary of precautionary measures ordered by the IACHR, and also taking account of the claims alleging that the impunity persists to this day, the IACHR concludes that the petition was filed within a reasonable period of time.

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

45. Nothing in the case file suggests that the subject of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by the Commission. Thus, the Commission considers that the requirements established in Articles 46(1)(d) and 47(d) of the Convention have been met.

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

46. For admissibility purposes, the Commission must decide whether the petition states facts that could tend to establish a violation, as set forth in Article 47(d) of the Convention, and whether the petition is "manifestly unfounded" or "obviously out of order", as provided in subparagraph c) of that article. At this stage in the proceedings, the Commission is called upon to do a *prima facie* analysis, not for the purpose of establishing alleged violations of the American Convention, but to examine whether the petition states facts that could potentially constitute violations of rights protected under the Convention. This examination does not imply any prejudgment or advance any opinion as to the merits of the case<sup>10</sup>.

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<sup>10</sup> See, IACHR, Report No. 21/04, Petition 12,190, José Luís Tapia González *et al.* (Chile), February 24, 2004, paragraph 33.

47. Neither the American Convention nor the Commission's Rules of Procedure require a petitioner to identify the specific rights alleged to have been violated by the State in the matter brought to the Commission, although the petitioners are free to do so. It is up to the Commission, based on the jurisprudence of the system, to determine in its admissibility reports which provisions of the relevant inter-American instruments are applicable; it may determine that those instruments were violated if the facts as alleged are proven based on sufficient evidence and information.

48. The Commission observes that the petitioners have made a number of allegations claiming the alleged international responsibility of the Colombian State for the death of Mr. Jesús Zapata. These allegations range from the danger created by the move that Mr. Zapata was reportedly forced to make to escape the constant harassment to which police, military and paramilitary subjected him, and in particular the alleged intelligence activities and the fact that he was fingered as a "subversive" by State officials, to the allegation of the State's responsibility for Mr. Zapata's abduction and murder by paramilitary groups and the State's alleged noncompliance with its obligation to protect through effective implementation of the precautionary measures requested by the IACHR. In view of the elements of fact and of law presented by the parties and the nature of the matter put to it for consideration, the IACHR is of the view that the petitioners' allegations regarding the extent of the State's alleged responsibility in the facts that are the subject of the complaint could, in the merits phase, tend to establish possible violations of the rights recognized in articles 4, 5, 7, 11 and 22, to the detriment of Mr. Jesús Ramiro Zapata.

49. The IACHR also considers that the allegations regarding the State's failure to adopt the measures for which it was responsible in order to guarantee that Mr. Zapata would continue to perform his work of defending human rights and as a unionized teacher and member of organizations dedicated to the defense of human rights, as well as the allegations regarding the possible relationship between the execution of the alleged victim by paramilitary groups and his activities, following an analysis of the merits of the case, could constitute a violation of articles 13 and 16 of the American Convention.<sup>11</sup>

50. The Commission also considers that the petitioners have not presented sufficient information to establish a possible violation of Article 2 of the American Convention so that the petition with respect to that claim is deemed inadmissible.

51. In conclusion, the IACHR finds that the petition is neither "manifestly unfounded" nor "obviously out of order" and therefore declares that the petitioners have, *prima facie*, complied with the requirements set forth in articles 47(b) of the American Convention with respect to alleged violations of articles 4, 5, 8, 11, 13, 16, 22 and 25 of the American Convention, read in conjunction with Article 1(1) thereof.

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<sup>11</sup> See, *mutatis mutandi*, IACHR. Report No. 71/08, Petition 1290-04, Admissibility, *José Dutra da Costa* (Brazil), October 16, 2008, paragraph 47; Report No. 73/08, Petition 1236-06, Admissibility, *Gabriel Sales Pimenta* (Brazil), October 16, 2008, paragraph 36; and Inter-American Court of Human Rights, *Fleury Et. Al vs. Haiti* case, Merits and Redress. Judgment of November 23, 2011. Series C, No. 236, paragraphs 99-102.

**V. CONCLUSIONS**

53. The Commission concludes that it has competence to examine the claims made by the petitioners concerning the alleged violation of articles 4, 5, 7, 8, 11, 13, 16, 22 and 25 of the American Convention, read in conjunction with Article 1 thereof, and that the allegations are admissible and meet the requirements established in articles 46 and 47 of the American Convention.

54. Based on the arguments of fact and of law set out above and without prejudging the merits of the matter,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS****DECIDES:**

1. To declare the present case admissible with respect to articles 4, 5, 7, 8, 11, 13, 16, 22 and 25 of the American Convention, read in conjunction with Article 1 thereof.
2. To declare the present case inadmissible with respect to Article 2 of the American Convention.
3. To notify the Colombian State and the petitioners of this decision.
4. To proceed to its analysis of the merits of the case.
5. 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 11 day of July 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Felipe González, Dinah Shelton, Rose-Marie Antoine, Commissioners.