

REPORT No. 54/13
PETITION 174-08
ADMISSIBILITY
JULIO GARCÍA ROMERO AND FAMILY
ECUADOR
July 16, 2013

I. SUMMARY

1. On February 5, 2008, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by Mrs. Rosario del Pilar Parra Roldán, the *Fundación Regional de Asesoría en Derechos Humanos* [Regional Foundation of Advisory Services in Human Rights] (INREDH) and the Human Rights Center of the *Universidad Católica de Ecuador* (hereinafter “the petitioners”) alleging that the Republic of Ecuador (hereinafter “the State” or “Ecuador”) was responsible for the alleged violation of articles 4 (right to life), 5 (right to humane treatment), 13 (freedom of expression) and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) read in conjunction with Article 1(1) thereof, to the detriment of journalist Julio García Romero, his wife Rosario del Pilar Parra Roldán and their two daughters, Sisa Isadora García Parra and Sami Elena García Parra (hereinafter jointly “the alleged victims”). The violations were said to have been perpetrated by agents of the State

2. According to the petitioners, Julio García Romero (hereinafter “Julio García” or “the alleged victim”) was killed on April 19, 2005, as a consequence of a police crackdown of the demonstrations that ended in the fall of the regime of President Lucio Gutiérrez. The petitioners observe that Julio García had his camera and was covering the demonstrations when police agents sprayed bursts of tear gas on his body, knocking him off his feet. He died of asphyxiation. The petitioners therefore claim that the journalist’s killing by agents of State and the State’s failure to properly investigate these events constitute a violation of the rights recognized in the American Convention.

3. The State, for its part, argues that the petition is inadmissible because it does not meet the basic eligibility requirements set forth in articles 46 and 47 of the American Convention. The State’s contention is (i) this is a complex matter; (ii) the police control used by the State to contain the demonstrations and social protests was done within constitutional and international boundaries; (iii) the domestic remedies were not exhausted; (iv) the facts as set out do not constitute violations of rights recognized in the Convention; and (v) the petitioners’ request requires that the Commission act as a court of “fourth instance.”

4. After examining the positions of the parties in light of the admissibility requirements established in articles 46 and 47 of the American Convention and without prejudging the merits of the matter, the Inter-American Commission decides to declare the petition admissible in respect of the alleged violation of articles 4, 5, 8, 13 and 25 of the American Convention, in light of the general obligation undertaken in Article 1(1) thereof. Lastly, the Commission decides to notify the parties, to publish the present report and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING WITH THE INTER-AMERICAN COMMISSION

5. The IACHR received the petition on February 5, 2008. The petition was opened for processing on October 10 of that year, whereupon the Commission forwarded the pertinent parts of the petition to the State with a request that it present its response within two months from the date on which that communication was sent. On May 13, 2009, the State presented its response to the present petition. The relevant parts of the State's response were sent to the petitioners on May 15, 2009. On June 23, 2009, the petitioners asked the IACHR for a 30-day extension of the date on which they were to deliver their observations on the State's response. The Commission acceded to the petitioners' request and the deadline was extended on July 6, 2009, the date on which the IACHR advised the two parties that the extension had been granted.

6. The petitioners presented their brief of observations on March 18, 2010, the relevant parts of which were forwarded to the State on May 27, 2010. For its part, the State sent observations on August 18, 2010, which were forwarded to the petitioners on August 19, 2010. On January 28, 2010, the petitioners presented additional observations on the brief presented by the State; for its part, the State submitted its additional observations on April 11, 2011. Both communications were duly forward to the respective counterpart.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. In their complaint, the petitioners allege that photo-journalist Julio García Romero was killed on April 19, 2005, as a result of a police crackdown of the demonstrations that ended with the fall of the regime of President Lucio Gutiérrez. The petitioners asserted that Julio García had his camera with him and was covering the demonstrations when police agents sprayed him with tear gas; the burst of tear gas knocked him to the ground and caused his death by asphyxiation.

8. According to the petitioners, the main factors leading up to the April 2005 demonstrations were the dissolution of the Constitutional Court and the Supreme Court on November 25 and December 8, 2004, respectively, and a decision taken by the new Supreme Court that had enormous political repercussions. In that April 1, 2005 decision, the new Supreme Court had reportedly nullified the cases being prosecuted against two former presidents of Ecuador, Abdalá Bucaram and Gustavo Noboa, and a former Vice President, Alberto Dahik. With that, former President Abdalá Bucaram returned to the country. According to the petitioners, this aggravated the existing social and political tensions in the country and triggered an explosion of violence and radicalization of citizen protest.

9. The petitioners recount how, on April 5, 2005, hundreds of judicial workers went to protest in front of the Supreme Court building, and thousands of demonstrators marched on the National Congress, but were dispersed by a contingent of 1500 police wielding tear gas. On April 13, 2005, some 5,000 persons reportedly turned out to protest and were headed for the Supreme Court. Among them were women, children, the elderly and the young; the protests were again suppressed with the use of tear gas. The petitioners asserted that on April 15, the President of the Republic, Colonel Lucio Gutiérrez, declared a state of emergency in the Metropolitan District of Quito. Under the state of emergency, the exercise of civil rights was curtailed and police and military were deployed by the Joint Command of the Armed Forces to control and maintain order. However, in the face of heavy public

opposition, the President decided to end the state of emergency, which he did by executive decree No. 2754 of April 16, 2005. The petitioners allege that on April 15, 2005, the President removed all the members of the Supreme Court who had been appointed in December 2004; on April 17, 2005, the National Congress vacated the December 8, 2004 resolution that had named the members to the Supreme Court. The petitioners made the point that these decisions notwithstanding, no order was ever given to reinstate the justices who were originally on the Supreme Court bench; as a result, Ecuador was left with no Supreme Court. The petitioners point out that the demonstrations continued until President Gutiérrez resigned on April 20, 2005.

10. The petitioners explained that on April 19, 2005, the independent photographer and “defender of the rights of the dispossessed,” Julio García, participated in a peaceful demonstration of at least 100,000 people, who were speaking out against the Government. According to the petitioners, at around 8:00 p.m., demonstrators came face-to-face with 5,000 heavily armed uniformed troops with tear gas grenades and tear gas grenade guns. The petitioners contend that the state agents had orders not to break up the demonstration, but to aim for the places where the demonstrators were most heavily concentrated. According to the petitioners, the demonstrators were forced to separate into two groups, which were ambushed by the police forces armed with tear gas. The strategy, the petitioners say, was to corner the demonstrators. The police were accompanied by “anti-riot vehicles, cavalry, trained dogs and personnel of the Special Corps”. The petitioners indicate that in place of the CM gas traditionally used by the Ecuadorian police, CS gas was used, which is much stronger and has enduring irritant effects.

11. According to the petitioners, at around 9:20 p.m., a police squadron launched a barrage of tear gas grenades at the group that included journalist Julio García, who noticed a child surrounded by a curtain of tear gas; he ran toward him to get him out of danger. The petitioners claim that it was then that the journalist approached the uniformed troops to rebuke them for their brutality. The police responded by firing a burst of tear gas grenades at him, knocking him off his feet. He died there on the grounds of respiratory arrest. The petitioners also indicate that Mr. Wilson Velástegui, an eye witness to the events, immediately went to the journalist and dragged his body a few meters away from the spot where he had fallen; he administered mouth-to-mouth resuscitation and cardiac massage (pumping of the chest). The Ecuadorian Red Cross then attended to the journalist, but found that he was not breathing. They boarded him into an ambulance and transported him to the Eugenio Espejo Hospital, where two physicians worked on him but confirmed that he was dead.

12. The petitioners also allege that the Ombudsperson’s Office recorded that on the night of April 19, 2005, the police used 5,000 tear gas grenades, and the Red Cross and Quito Fire Department reported having treated over 300 people for asphyxia that night, including 80 semi-asphyxiated persons and 16 persons directly hit by the tear gas grenades.

13. The petitioners allege that on June 6, 2005, the journalist’s wife, Rosario del Pilar Parra Roldán, filed a criminal complaint with the Prosecutor’s Office concerning Julio García’s death; at the same time, a prosecutor launched, *ex officio*, a preliminary inquiry into the events. The petitioners state that because the President of the Republic was among those implicated and was under special jurisdiction, the entire investigation was turned over to the Office of the Attorney General and listed as Case No. 36-05-JC. According to the petitioners, at the start of the inquiry a number of investigative measures were taken; however, in 2006 and 2007, the heavy political pressure surrounding the case brought the investigation to a standstill.

14. The petitioners assert that on April 4, 2007, the Attorney General of the Nation notified the Chief Justice of the Supreme Court of his decision to dismiss the complaint filed by the wife of the journalist, saying that the Prosecutor's Office could not assign blame to anyone in the death of Julio García, particularly inasmuch as the deceased had voluntarily placed himself in danger by participating in anti-Government demonstrations. On October 11, 2007, the Chief Justice of the Supreme Court ordered the case closed on the grounds that there was no superior court prosecutor to review the case. The Chief Justice of the Supreme Court stated that under articles 38 and 39 of the Code of Criminal Procedure, a judge seized of a matter is authorized to overrule a decision to dismiss a case by returning the case file to the superior prosecutor to confirm or revoke it; however, this cannot be done when the case is in the hands of the highest prosecutor in the Nation. The petitioners contend that the decision of the Chief Justice of the Supreme Court put an end to the case in the domestic courts.

15. As for the exhaustion of domestic remedies, the petitioners state that the inquiry never moved beyond the preliminary investigative phase, during which the State determines whether a crime has been committed and who might be to blame. Under the internal rules, this stage of the proceedings can last no more than two years. The petitioners emphasize that more than two years after the investigations got underway, they had not produced any results. The petitioners also make the point that under the Code of Criminal Procedure, when a prosecutor asks that a complaint be dismissed and the judge agrees to the request, the case is closed, which exhausts the remedy that is adequate and effective for identifying those responsible for the journalist's death.

16. The petitioners contend that while it might be difficult to identify the material authors of the crime, the intellectual authors are fully identifiable. They maintain that the conduct of the authorities was negligent in every respect and suggest that one cause might be that those alleged to be responsible include powerful political figures. They also argue that important progress was made in the early stages of the investigation. On the one hand, the general in charge of the police forces asserted that the police used non-lethal tear gas and water, and that their intention was not to kill anyone but to disperse the demonstrators; however, then President Lucio Gutiérrez ordered them to break up the demonstrations, whatever the cost. They contend that the general refused to obey the then President's instructions and submitted his resignation on April 20, 2005. The investigation also obtained the forensic report prepared by the "Leopoldo Izquieta Pérez" Science Institute, which established acute pulmonary edema and a pulmonary hemorrhage as the cause of death; the report also stated that the blood tests detected around 25 toxic substances. According to the petitioners, despite the initial progress made in the investigation, it got bogged down, and no investigative measures were taken in the next two years.

17. The petitioners also argue that the domestic criminal justice system –not the civil courts- is the appropriate avenue of criminal law to pursue to solve the journalist's death and identify those responsible. They point out that as the Commission has said in previous cases, civil suits cannot correct irregularities in a criminal investigation or solve the case or identify those responsible.

18. As for the right to life, recognized in Article 4 of the American Convention, the petitioners state that Julio García died of asphyxiation as a result of a police crackdown on the night of April 19, 2005; as a journalist, he was out with his camera, covering the social demonstrations that ultimately toppled the presidency of Colonel Gutiérrez. They argue that in its 2005 Annual Report, the Inter-American Commission recognized that as a result of that two-day crackdown, two persons had

died and more than 360 were treated for asphyxia, beatings, trauma and respiratory problems,¹ one of whom was Julio García Romero. They contend that the journalist died as a result of the actions taken by agents of the State who, exercising their coercive power, launched tear gas grenades at the victim and took his life. The petitioners state that it is the State's duty to prevent its agents from violating the right to life and to take all measures necessary to guarantee this right.

19. As for the right to judicial protection, recognized in Article 25 of the Convention, the petitioners state that criminal investigation and prosecution is the proper avenue to pursue in order to shed light on the facts that caused Julio García's death, identify and punish those responsible and obtain any reparations owed to the victim's next of kin. They make the point that under the Code of Criminal Procedure no one can claim civil liability on the basis of a criminal sentence unless a conviction has been handed down and enforced, declaring an individual responsible for an offense. The petitioners allege that the State was under an obligation to conduct a serious, impartial and effective investigation, using all legal means at its disposal; however, they claim that no one has been made to answer for the crimes committed in this case. They also point out that under Resolution No. R-26-058 of May 31, 2005, the National Congress acknowledged responsibility for the events that occurred in April 2005, and resolved, *inter alia*: (i) to renounce acts of violence and force committed by the forces of law and order against the citizenry, especially the actions committed between April 13 and 20, 2005; (ii) to recognize the State's responsibility for the acts of repression that claimed the lives of some citizens and inflicted irreversible injuries on others; (iii) to express its solidarity with the family of journalist Julio García; (iv) to urge the Executive Branch and the Office of the Attorney General of the State to make reparations to the victims and their next of kin for the repressive acts committed by the forces of law and order, and (v) to urge the Judicial Branch and the Public Prosecutor's Office to continue the measures being taken to identify those responsible, the authors, their accomplices and those who covered up the repression.

20. As for the right to freedom of expression protected under Article 13 of the Convention, the petitioners contend that Julio García's work as a journalist focused on reporting human rights violations and promoting observance and protection of human rights. They point out that at time of his death; the journalist was covering the public demonstrations and government crackdown with his camera and his photographs helped expose to the world the excesses being committed under the regime of Lucio Gutiérrez. They contend that this was a violation of his right to report and express his views publicly, and a violation of the public's right to receive information and know the truth. According to the petitioners, the State did not comply with its obligation to investigate the journalist's killing, a particularly serious situation since, as the Commission has established, the killing of a journalist is an attack upon any citizen dedicated to denouncing abuses in society, and is compounded when the crime goes unpunished, as this instills fear in other journalists and citizens.

21. On the question of the right to mental integrity covered under Article 5 of the American Convention, the petitioners state that this right was violated to the detriment of the victim's next of kin, whose life plans have been affected and their circumstances altered. The situation has only been complicated by the fact that no one has been made to answer for the crime, which will never be solved. The alleged victims they name are Mrs. Rosario del Pilar Parra Roldán, Julio García partner, and their daughters Sisa Isadora García Parra and Sami Elena García Parra. They point out, however, that Julio García had other children who might wish to join this petition.

¹ IACHR. Annual Report 2005. OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006. Chapter IV: Human Rights Developments in the Region. Ecuador. Paragraph 150. Available at: <http://www.cidh.org/annualrep/2005eng/chap.4b.htm>

22. The petitioners also observe that in Article 1(1) of the Convention the State undertakes to organize the apparatus of the State so as to respect and ensure life, mental integrity, and to afford effective protection of the other rights recognized in the Convention. Thus, they argue, by violating the rights protected under articles 4, 5, 13 and 25 of the Convention, it also violated Article 1(1) thereof. They ask the Commission to find that the State of Ecuador violated this right and to order the State: (i) to adequately compensate the persons affected by these violations; (ii) to investigate and punish the material and intellectual authors of these violations; and (iii) to take all measures necessary to ensure that these events never happen again.

23. In referencing the alleged violation of the right to judicial protection, the petitioners argue that the Code of Criminal Procedure in force at the time of the events gave a prosecutor significant charging [indictment] authority, as it stipulated that the trial must be prosecuted on the basis of charges formally brought by the prosecutor. Without those charges there would be no trial. They contend that because of this a court might never get the opportunity to investigate and rule on the commission of an offense. The only review to which a prosecutor's charge was subject was a review by the superior prosecutor. Hence, the petitioners allege, there was no effective recourse to a competent judge or tribunal.

24. The petitioners also assert that in this case, the problem was compounded by the fact that it was the Attorney General of the Nation who desisted from instituting the criminal trial; no higher authority was empowered to review that decision, so that it was not subject to any oversight or control. As the petitioners see it, a regulation that allows the judicial authority to dismiss a criminal complaint, is a violation of the American Convention.

25. As for the use of force by police, the petitioners state that the use of force is inherent to the performance of the police function. However, they argue, where the civilian population is concerned, police recourse to force must be the exception. They rebut the State's contention that in using force, the police did not rely on repressive measures but on deterrents like tear gas and water, both of which -the State claims- are non-lethal methods. The petitioners contend that the indiscriminate use of tear gas grenades can have lethal effects on the human organism. The petitioners point out that CS tear gas is highly poisonous and that it has been scientifically shown that its constant inhalation can do serious damage to one's health. They therefore argue that a disproportionate amount of highly concentrated tear gas does not fit the parameters of rational use of force.

26. Finally, as to the alleged existence of an extrajudicial execution, the petitioners argue that the concept of extrajudicial execution implies that one or more persons have died at the hands of State security forces in the course of discharging their function, either as the result of abusive conduct on the part of an officer or because the force used was excessive and abusive. They point out that force is excessive or abused when an officer who could have used less force and violence, performs the act fully mindful that his conduct may lead to the death of one or more citizens. The petitioners believe that Mr. Julio García's death was a case of extrajudicial execution, because of the indiscriminate use of tear gas grenades in an abusive show of force. They argue that although this type of weapon is allowed, it can be lethal when used incorrectly.

27. Based on the foregoing considerations, the petitioners conclude that the State is responsible for violating articles 4, 5, 13 and 25 of the American Convention, read in conjunction with Article 1(1) thereof, to the detriment of Julio García Romero and his next of kin.

B. The State

28. In its submission of May 13, 2009, the State asks the Commission to declare the petition inadmissible on the grounds that it does not comply with the basic admissibility requirements set forth in articles 46 and 47 of the American Convention. The State argues that (i) this is a complex matter; (ii) the police control used by the State to contain the demonstrations and social protests was done within constitutional and international boundaries; (iii) the domestic resources were not exhausted; (iv) the facts as set out do not constitute violations of rights recognized in the Convention; and (v) the petitioners' request requires that the Commission act as a court of "fourth instance."

29. In addressing the complexity of the matter, the State mentions, on the one hand, the particular conditions in Ecuador at the time of the events, especially the fact that the bench of the Supreme Court was vacant. The State also indicates that it could not be held internationally responsible when the petitioners were abusing the remedies available to them or acting in bad faith, or when the delays in the case were entirely and mainly attributable to their attitude. According to the State, apart from filing a criminal complaint with the Public Prosecutor's Office, the petitioners did not avail themselves of other avenues they could have pursued, such as letters rogatory from the Ombudsperson's Office or other mechanisms available to demand that measures be taken to investigate a potential crime.

30. The State claims that it has complied with its duty to investigate. As the petitioners themselves pointed out, the former Attorney General of the Nation took statements from the then Commandant of the National Police, the Minister of the Interior and members of the Joint Command of the Armed Forces. It also mentions that a number of documents were added to the case file, among them the reports from the Ecuadorian Red Cross and police reports. The State argues that this shows that the proper measures were taken within domestic jurisdiction to investigate and determine whether or not crimes were committed.

31. As for the State-sanctioned force used to contain the public demonstrations in April 2005, the State alleges that it used police force only to maintain public order, to protect public property and keep the citizenry safe. It notes that the National Police prevented any confrontation between government supporters and opponents. According to the State, in this case the use of force was legitimate and adhered to the criteria of necessity and proportionality. It stresses that the legal grounds for the use of force appeared in Article 180 of the Constitution in force at the time of the events, which stipulated that the President of the Republic was authorized to declare a state of emergency. The State claims that by Executive Decree No. 2754, the President declared a state of emergency in the city of Quito, respectful of the principles that a state of emergency must observe, as set forth in Article 164 of the Constitution then in force, which were the principles of necessity, proportionality, and legality and the principles that states of emergency must be temporary and exceptional in nature, must be confined to the geographic area strictly necessary and must be reasonable. The State indicates that the Ecuadorian Constitution makes reference to the State's security function, where it holds that the Armed Forces and the National Police exist to protect the rights and guarantees of the citizenry.

32. The State further argues that the use of physical methods to deal with the disruption of public order was done through the means strictly necessary, and was a rational and proportionate response respectful of the rights to life and to personal integrity. It makes the point that all the special equipment, particularly the anti-riot equipment, was deployed as fences to protect public property and was not there to confront the civilian population. The State alleges that the police chain of command

broke down and the police had publicly withdrawn to avoid any confrontation with the citizenry. The State underscores the fact that the few isolated confrontations that did occur were irrelevant episodes when one looks at the larger political situation in which the country found itself. The State contends that the National Police avoided any crackdown and even defied orders from the former President of the Republic; it never used firearms, or the weaponry used in criminal operations; instead, it used only anti-riot equipment. The State contends that this clearly shows that its intent was not to inflict lethal harm, as the methods by which that degree of harm is inflicted were never used.

33. As for the exhaustion of local remedies, the State alleges that the available internal remedies were not exhausted. If the petitioners believed their rights had been violated, under Ecuador's Code of Civil Procedure they should have pursued a trial seeking disqualification of the administrators of justice. The State also contends that the petitioners should have filed a civil suit for damages and injuries, which is a prompt and simple recourse that leads to reparations and redress. It also contends that before the criminal complaint was dismissed, the petitioners could have filed an action seeking *amparo* relief, which had the potential to re-activate the investigation and prevent justice from being denied.

34. The State argues that this case does not involve any human rights violations; all reasonable measures were taken to prevent any violations from occurring. The State contends that it complied with its obligation of means and makes the point that the State's responsibility is engaged "when it can be shown that government diligence is lacking," which cannot be proven in this case. According to the State, Julio García's death was not caused by the State or its police agents; instead this was a danger that all those present at the demonstrations faced. It asserts that the physical injuries caused could be considered the collateral effects of the degree of disturbance that the events caused and that the National Police also reported injuries among its ranks.

35. The State further alleges that the IACHR does not have competence to examine errors of fact or of law by national courts and that the competent body to determine whether the due process guarantees were violated is the Inter-American Court of Human Rights. According to the State, the petitioners would have the Commission take on the jurisdictional prerogatives of the State in criminal matters, to investigate the facts and punish those responsible, which would make the Commission a court of fourth instance.

36. In its briefs of August 18, 2010 and April 11, 2011, the State made additional observations referring to the allegations made by the petitioners. The State alleged, among other arguments, that the rule requiring exhaustion of local remedies had not been complied with, since the fact that the prosecution dismisses a complaint does not mean that the investigation is closed once and for all. In the view of the State, the petitioners could reactivate their case by introducing new facts, evidence or proceedings in a different prosecutorial case file. The State also makes the point that the decision to dismiss a case is not left entirely to the prosecutor's discretion; instead it can only be done following a rigorous examination of the evidence compiled to determine whether or not a crime has been committed. The State notes that in the 2009 amendment of the Code of Criminal Procedure, significant advances were made in terms of the legitimization of the prosecutorial decision and the need for that decision to be properly substantiated and reasoned. Therefore, the State repeats its request that the petition be declared inadmissible, as it does not satisfy the basic requirements for admissibility under articles 46 and 47 of the American Convention.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. The Commission's competence *ratione materiae*, *ratione personae*, *ratione temporis* and *ratione loci*

37. Under Article 44 of the American Convention and Article 23 of the IACHR's Rules of Procedures, the petitioners have *locus standi* to lodge petitions with the Inter-American Commission. As for the State, Ecuador is party to the American Convention and therefore internationally responsible for violations of that instrument. The alleged victims are natural persons whose Convention-protected rights the State undertook to guarantee, which is why the Commission has competence *ratione personae* to examine the petition.

38. The IACHR has competence *ratione materiae* because the petition alleges violations of human rights protected by the American Convention. The Commission notes that Ecuador has been a State party to the Convention since December 28, 1977, the date on which it deposited its instrument of ratification. The Commission therefore also has competence *ratione temporis* to examine the petition.

39. Lastly, the Inter-American Commission has competence *ratione loci* to take up the petition because it alleges violations of rights protected under the American Convention, said to have occurred within the territory of Ecuador.

B. Other Admissibility Requirements

1. Exhaustion of the remedies under domestic law

40. Article 46(1)(a) of the American Convention provides that for a petition lodged with the Inter-American Commission pursuant to Article 44 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.

41. The prior exhaustion rule applies when the national system has resources available that are adequate and effective for remedying the alleged violation. However, Article 46(2) states that the prior exhaustion rule shall 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.

42. As the Commission has established, when examining compliance with the rule requiring exhaustion of local remedies, the first order of business is to determine which, if any, adequate remedies remain to be exhausted given the circumstances of the case; adequate remedies are understood as those that are suitable for remedying an infringement of a violated right.² The Commission observes that in cases of arbitrary deprivation of the right to life, the adequate remedy is an

² IACHR. Report No. 23/07. Eduardo José Landaeta Mejías *et al.* Petition 435-2006. Admissibility. March 9, 2007. Paragraph 43.

investigation and the criminal proceedings instituted, which are set in motion by the State, *ex officio*, with a view to identifying and punishing those responsible.³

43. In the present case, the State alleged that the available domestic remedies had not been exhausted, since if they believed their rights were violated, the petitioners should have sought disqualification of the administrators of justice. The State also argued that the petitioners should have filed suit for damages and injuries and that the petitioners could have filed a petition seeking *amparo* relief to challenge the fact that the case was dismissed, as this measure might potentially have reactivated the investigation and corrected the denial of justice.

44. The petitioners, for their part, argued that contrary to what the State contends, they did not have to exhaust the remedies for disqualification, a civil suit for damages and injuries or a petition seeking *amparo* relief against the fact that the case had been dismissed. The petitioners' contention was that none of these remedies was suitable for remedying a violation of a protected right, nor were they capable of correcting the alleged ineffectiveness of the criminal process. They reiterated that the proper remedy for determining an alleged homicide was a criminal case, which the petitioner had duly pursued.

45. The Commission observes that on June 6, 2005, Mrs. Rosario del Pilar Parra Roldán had filed a criminal complaint with the Public Prosecutor's Office concerning the death of Julio García; at the same time, a prosecutor launched, *ex officio*, a preliminary inquiry into the events. On April 4, 2007, the Attorney General notified the Chief Justice of the Supreme Court that he had decided to dismiss the complaint filed, and on October 11, 2007, the Chief Justice of the Supreme Court formally ordered the case closed; with that, the criminal investigation concluded. Under Ecuador's criminal laws, the decision of the criminal court dismissing a complaint and ordering it permanently closed cannot be challenged and is final.

46. The Commission reiterates that criminal prosecution is the proper remedy to shed light on the events, prosecute those responsible and determine what penalties apply in cases where a person has been deprived of his or her life; it also allows other forms of reparation, including pecuniary damages.⁴

47. It is worth noting that the rule requiring exhaustion of local remedies does not mean that alleged victims have an obligation to exhaust all remedies available;⁵ instead they need only exhaust those remedies that are adequate for correcting the violated rights. Therefore, the State's argument that there were other remedies available, does not alter the fact that criminal prosecution was the proper avenue to protect the alleged victims' rights in this case.

³ IACHR. Report No. 23/07. Eduardo José Landaeta Mejías *et al.* Petition 435-2006. Admissibility. March 9, 2007. Paragraph 43; IACHR. Report No. 15/06. María Emilia González, Paula Micaela González and María Verónica Villar. Petition 618-01. Admissibility. March 2, e 2006. Paragraph 34; IACHR. Report No. 52/97. Case 11.218. Arges Sequeira Mangas. Annual Report 1997. Paragraphs 96 and 97. See also Report No. 55/97. Paragraph 392 and Report No. 55/04. Paragraph 25.

⁴ IACHR. Report No. 99/09. Petition 12.335. Gustavo Giraldo Villamizar Durán. Colombia. October 29, 2009. Paragraph 33.

⁵ See IACHR. Report No. 70/04: Petition 667/01. Admissibility, Jesús Manuel Naranjo Cárdenas *et al.* (Pensioners of the Venezuelan Aviation Company – VIASA). Venezuela. October 13, 2004, paragraph 54. Available at: <http://www.cidh.org/annualrep/2004eng/Venezuela.667.01eng.htm>

48. The Commission therefore concludes that the alleged victims did exhaust the remedy that was adequate and effective for purposes of identifying and punishing those responsible for the death of journalist Julio García, and thereby complied with the provision in Article 46(1)(a) of the American Convention and Article 31 of the Commission's Rules of Procedure.⁶

2. Deadline for filing the petition

49. 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.

50. The information available in the file on the present case shows that on October 11, 2007, the Chief Justice of the Supreme Court formally closed the investigation instituted into the complaint filed by Rosario del Pilar Parra Roldán after the death of Julio García Romero. Since the petition was filed on February 5, 2008, the Commission considers that the petition was filed within the time period stipulated in Article 46(1)(b) of the Convention.

3. Duplication of proceedings and international *res judicata*

51. 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

52. 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.⁷

53. 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.

⁶ IACHR. Report No. 70/04- Petition 667/01. Admissibility, Jesús Manuel Naranjo Cárdenas *et al.* (Pensioners of the Venezuelan Aviation Company – VIASA). Venezuela. October 13, 2004. Available at: <http://www.cidh.org/annualrep/2004eng/Venezuela.667.01eng.htm>.

⁷ See, IACHR, Report No. 21/04, Petition 12,190, José Luis Tapia González *et al.* (Chile), February 24, 2004, paragraph 33.

54. In view of the elements of fact and of law presented by the parties and the nature of the matter before it, the Commission considers that if proven, the petitioners' allegations regarding the State's alleged responsibility in the death of journalist Julio García Romero and its subsequent failure to investigate and clarify the facts, could tend to establish violations of the rights to life, to judicial guarantees and to judicial protection, recognized in articles 4, 8 and 25 of the American Convention. Furthermore, given the nature of the violations denounced in this petition it is possible to infer that these facts may also constitute violations of Article 5(1) of the American Convention, to the detriment of the alleged victim's next of kin. The Commission will examine the possible violation of these provisions in light of the general obligations undertaken in Article 1(1) of the Convention.

55. Furthermore, the Commission understands that violation of the right to life of a person exercising his right to freedom of expression by participating in a public protest, and especially in the case of a journalist covering events in the practice of his profession, could tend to establish a violation of the right to freedom of expression recognized in Article 13 of the American Convention.

56. In conclusion, the IACHR decides that the petition is not "manifestly unfounded" or "obviously out of order" and therefore declares that the petitioners have, *prima facie*, complied with the requirements contained in Article 47(b) of the American Convention in relation to potential violations of articles 4, 5, 8, 13 and 25 of the American Convention, read in conjunction with Article 1(1) thereof, as described above.

IV. CONCLUSION

57. The Inter-American Commission concludes that it has competence to take up the merits of this case and that the petition is admissible under articles 46 and 47 of the American Convention. Based on the arguments of fact and of law set forth above and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible in respect of articles 4, 5, 8, 13 and 25 of the American Convention, in relation to Article 1(1) thereof;
2. To notify the parties of this decision and proceed to its analysis of the merits, and
3. 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 16 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, Rodrigo Escobar Gil, Rose-Marie Antoine, Commissioners.