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REPORT No. 63/14
PETITION 519-03
REPORT ON ADMISSIBILITY

MARTA COLOMINA AND LILIANA VELÁSQUEZ
VENEZUELA

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REPORT No. 63/14**PETITION 519-03**

ADMISSIBILITY

MARTA COLOMINA AND LILIANA VELÁSQUEZ

VENEZUELA

July 24, 2014

I. SUMMARY

1. On March 22, 2002, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) granted precautionary measures as the result of a request that was filed on February 1, 2002, on behalf of four journalists from the newspaper *Así es la Noticia*, including the Marta Colomina. The measure was granted due to the urgent danger arising from the events of January 31, 2002 at the main offices of *Así es la Noticia* where an explosive device was detonated, and due to the subsequent threats that the journalists received.¹ On June 27, 2003, journalist Marta Colomina was the victim of a new attack in which someone attempted to set off an explosive device against her car. On July 16, the IACHR received a request for provisional measures from Raúl Arrieta and Cecilia Sosa (hereinafter “the petitioners”) on behalf of Marta Colomina and Liliana Velásquez (hereinafter “the alleged victims”). On July 21, 2003, the IACHR decided to open a petition for processing with respect to this matter, and assigned it the number 519/2003. That same day, the IACHR filed a request for provisional measures before the Inter-American Court of Human Rights on behalf of Marta Colomina and Liliana Velásquez. The measures were granted in an order dated July 30, 2003.²

2. In petition No. 519/2003, the petitioners alleged the international responsibility of the Bolivarian Republic of Venezuela (hereinafter “the State,” “the Venezuelan State,” or “Venezuela”) for the alleged violation of Articles 1 (obligation to respect rights), 2 (domestic legal effects), 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 11 (right to privacy), 13 (freedom of thought and expression), 20 (right to nationality), 21 (right to property), 22 (freedom of movement and residence), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”). The petitioners further asserted the international responsibility of Venezuela for the alleged violation of Articles I (right to life, liberty and personal security), II (right to equality before the law), IV (right to freedom of investigation, opinion, expression and dissemination), V (right to protection of honor, personal reputation, and private and family life), VIII (right to residence and movement), XIV (right to work and to fair remuneration), XVIII (right to a fair trial), XIX (right to nationality), XXIII (right to property), and XXIV (right of petition) of the American Declaration on the Rights and Duties of Man (hereinafter the “Declaration”).

3. According to the petitioners, an attempt was made on Marta Colomina’s life on June 27, 2003, by an alleged group of personnel from the Department of Intelligence and Prevention Services [*Dirección de los Servicios de Inteligencia y Prevención*], as a direct consequence of the work she was doing as a journalist. Liliana Velásquez, the producer of Marta Colomina’s television program, reportedly witnessed the attempt and suffered the consequences of the attack. They indicated that subsequent to the attack, the assaults, intimidation, and threats against Marta Colomina worsened. They asserted that the State failed to meet its obligation to investigate and punish the perpetrators of the events. Accordingly, they alleged that the existing remedies were neither effective nor adequate to protect the rights of the alleged victims, and that the case therefore falls within the exceptions to the exhaustion of domestic remedies provided for in Article 46, paragraph 2, subsections (a) and (c) of the American Convention.

¹ IACHR. 2002 Annual Report. Chapter III (Petition System and Individual Cases). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. C. 1. Para. 94. Available at: <http://www.cidh.org/annualrep/2002eng/toc.htm>

² I/A Court H.R. *Matter of Marta Colomina and Liliana Velásquez regarding Venezuela*. Order of the President of the Inter-American Court of Human Rights of July 30, 2003. Available at: http://corteidh.or.cr/docs/medidas/martililiana_se_01_ing.pdf

4. For its part, the State indicated that it had assumed the task of establishing the facts and/or disproving those complaints and/or petitions regarding alleged human rights violations. It asserted that the alleged acts of violence were perpetrated by private individuals and that a number of steps were taken to establish the facts. Accordingly, it asked the IACHR to dismiss the petition in this matter.

5. Upon 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 case, the Inter-American Commission decided to declare the petition admissible with respect to the alleged violation of Articles 4, 5, 8, 13 and 25 of the American Convention, in connection with Article 1.1 thereof. Finally, the Commission decided to publish this report and include it in the Annual Report to be submitted to the General Assembly of the Organization of American States.

II. PROCESSING OF PRECAUTIONARY MEASURES AND PROVISIONAL MEASURES

6. On March 22, 2002, the Inter-American Commission on Human Rights granted precautionary measures based on a request that was filed on February 1, and supplemented on March 5, 8 and 19, 2002, on behalf of Venezuelan journalists Ibéyise Pacheco, Patricia Poleo, Marianela Salazar, and Marta Colomina of the newspaper *Así es la Noticia*.³ It was alleged in the request for the measures that on January 30, 2002 the journalists disclosed a video that exposed alleged irregular acts on the part of the Venezuelan Army. It indicated that the day after the video was released, two men on motorcycles threw an explosive device at the door of the newspaper *Así es la Noticia*, which detonated and destroyed the building's front door. It was further indicated that pamphlets containing threats against the journalists were found in the street and that, minutes later, a telephone call was received at the newspaper's main phone number from persons who identified themselves as members of the "Tupacamaru Revolutionary Movement."

7. On July 16, 2003, the IACHR received a request for provisional measures from the petitioners on behalf of Marta Colomina and Liliana Velásquez. In a communication dated July 21, 2003, the IACHR submitted a request to the Inter-American Court of Human Rights for provisional measures on behalf of Marta Colomina and Liliana Velásquez, due to the fact that "the precautionary measures issued by the Commission to protect the life and humane treatment of Marta Colomina were ineffective, the attacks against her [did not cease] and the investigations [yielded] no results whatsoever." The Commission indicated that the protection granted to the beneficiaries of the measures had been inadequate because it was to be provided by municipal officers who lacked the necessary training and experience and the weapons with which to carry out their protection duties. The President of the Inter-American Court granted the urgent measures in an order dated July 30, 2003.⁴ The Inter-American Court affirmed the decision of the President and ordered provisional measures on September 8, 2003.⁵

8. The Inter-American Court affirmed the provisional measures in orders dated December 2, 2003 and May 4, 2004. In its order of July 4, 2006, it ruled to lift the provisional measures with respect to Liliana Velásquez and to uphold the provisional measures with respect to Marta Colomina. On August 19, 2013, the Court ruled to lift the provisional measures ordered on July 30, 2003 on behalf of Marta Colomina, in view of the fact that the Commission and the representatives had not provided information since February 2009 that would make it possible to "substantiate the beneficiary's interest or desire to maintain the

³ In this measure the State was asked to provide protection to journalists Ibéyise Pacheco, Patricia Poleo, Marianela Salazar, and Marta Colomina, investigate the events that took place and the threats received, take the necessary measures to protect the full exercise of freedom of expression by journalists, and abstain from taking any action that could have an intimidating effect on journalists. IACHR. 2002 Annual Report. Chapter III (Petition System and Individual Cases). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003. C. 1. Para. 94. Available at: <http://www.cidh.org/annualrep/2002eng/toc.htm>

⁴ 1/A Court H.R. *Matter of Marta Colomina and Liliana Velásquez regarding Venezuela*. Order of the President of the Inter-American Court of Human Rights of July 30, 2003. Available at: http://corteidh.or.cr/docs/medidas/martaliliana_se_01_ing.pdf

⁵ 1/A Court H.R. *Matter of Marta Colomina and Liliana Velásquez regarding Venezuela*. Order of the Inter-American Court of Human Rights of September 8, 2003. Available at: http://www.corteidh.or.cr/docs/medidas/martaliliana_se_02_ing.pdf

measures in force, or verify the persistence of the situation of extreme gravity and urgency that gave rise to them.”⁶

III. PROCESSING BY THE INTER-AMERICAN COMMISSION

9. On July 21, 2003, the IACHR began processing the petition and forwarded the pertinent parts of the file to the State of Venezuela, requesting that it submit its reply within a period of two months, in accordance with Article 30 (3) of the IACHR’s Rules of Procedure.

10. The IACHR received additional information from the petitioners on the following dates: April 7, 2008, December 1, 2008, December 16, 2008, and February 20, 2009. Those communications were forwarded to the State. In addition, the State submitted information related to the petition on the following dates: September 11, 2006, October 14 and 17, 2008, and February 6, 2009. Those communications were forwarded to the petitioners.

11. In June 2014, the IACHR notified the parties that, in view of the fact that it was connected, the information contained in the files on the provisional measures related to this present matter would also be taken into account during the processing of the petition.

IV. POSITION OF THE PARTIES

A. Position of the petitioners

12. The petitioners alleged that journalist Marta Colomina was the victim of an attempt on her life as a direct consequence of the work she was performing as a journalist. The petitioners asserted that on June 27, 2003, Marta Colomina was riding in her car, driven by Héctor José Herrera, her “driver/bodyguard” (one of the bodyguards provided by the Municipal Government of Chacao pursuant to the IACHR precautionary measures of 2002), to the *Televen* television station, to host her daily program *La Entrevista*, which began at 5:55 A.M. They additionally asserted that that morning Liliana Velásquez, the program’s producer, was following Marta Colomina in her own vehicle. They indicated that the vehicles were intercepted and blocked in a synchronized move by two cars carrying eight individuals. Four subjects, three of whom had their faces covered by ski masks, then approached Marta Colomina’s vehicle with their weapons aimed at both the driver and the journalist. They allege that the subject whose face was uncovered returned to the rear of his vehicle, from which he retrieved a “gigantic Molotov cocktail-type bomb.” They indicated that the subject attempted to activate the Molotov bomb, but was unable to do so because he was “unsettled” by the reaction of journalist Liliana Velásquez, who was honking the horn of her car incessantly. According to the petition, the “Molotov” bomb (which was reportedly made from a large, thick glass bottle with a capacity of 19 liters) hit the journalist’s windshield, which was protected by a special anti-riot security coating. The windshield resisted the impact, caving in and shattering, which kept the bomb from entering the vehicle and resulted in the spillage of the gasoline it contained. They indicated that there was then a failed attempt to set the gasoline on fire with a match.

13. They asserted that while the attack was in progress “other command units, according to expert sources consulted by the press, were carrying out containment missions down the length of the street to repel the potential arrival of any police unit that might endanger the operation.” According to the petitioners, based on consultations with experts published by a media outlet, “the strategy used by the masked men was due to tactical training that demonstrated knowledge of high-risk operations.”

14. The petitioners alleged that, according to the information they received, the Director of the Department of Intelligence and Prevention Services (hereinafter DISIP) and a group of “specially trained” personnel from that agency may have been responsible for the attack.

⁶ I/A Court H.R. *Matter of Marta Colomina regarding Venezuela*. Order of the Inter-American Court of Human Rights of August 19, 2013. Available at: http://www.corteidh.or.cr/docs/medidas/colomina_se_06_ing.pdf

15. With respect to the investigations conducted to establish the facts, the petitioners indicated that the State failed to carry out a serious, thorough, impartial, and conclusive investigation that would enable the identification and punishment of the perpetrators, thus contributing to impunity and the lack of redress. The petitioners indicated that the State security bodies did not report to the scene of the events on June 27, 2003. They stated that Marta Colomina was questioned by members of the Criminal Investigation Corps [*Cuerpo de Investigaciones Penales y Criminalísticas*] who showed up at the *Televen* television station the day of the events at the request of the station's security personnel. The petitioners indicated that *Televen* personnel gathered evidence due to the fact that—hours later—no public authority had reported to the scene of the attack. They further indicated that the alleged victims were not called by the Office of the Public Prosecutor to provide statements, nor were they asked to meet with experts in order to provide a physical description of the perpetrators. They indicated that the only person who was asked to provide a statement was the bodyguard present at the time of the attack, who was questioned first by a Prosecutor from the Public Ministry and later by DISIP agents at the offices of the Public Ministry.

16. The petitioners specified that the government authorities failed to take the necessary measures to preserve the evidence, the Judiciary failed to shed light on the events, the Public Ministry failed to act seriously and effectively to prosecute the perpetrators individually or as co-conspirators. Likewise, they indicated that there are no “domestic legal measures for activating mechanisms to address the prosecutorial incompetence of the Public Ministry.” They indicated that in cases involving crimes in which the State has the exclusive power to prosecute, the Venezuelan State “has a monopoly on punitive action and the obligation to initiate and take action at the various procedural stages in accordance with its obligation to guarantee the victims’ right to justice. This burden must be assumed by the State as a legal duty of its own and not as a procedure that serves the interest of private individuals or that depends on their initiative or on the production of evidence by them.”⁷

17. The petitioners indicated that in a communication dated April 22, 2005, the Twentieth Prosecutor of the Caracas Metropolitan Area gave notice to Marta Colomina of the decision to shelve her case in accordance with Article 315 of the Code of Criminal Procedure. According to the petitioners, this decision was made because the outcome of the investigation was insufficient for an indictment. Subsequently, the petitioners informed the Commission that they requested a review of the case before the Assigning Office of the Criminal Judicial District of the Caracas Metropolitan Area. They indicated that they were informed that there is no “record of any case related to the attack in which Mrs. Colomina was a victim on June 27, 2003.”

18. The petitioners alleged that after the June 27, 2003 events that gave rise to the request for provisional measures, the acts of violence and intimidation against Marta Colomina continued. They stated that on July 21, 2003, Marta Colomina was the victim of another attack in which an explosive device [*“caja sonora”*] containing insulting and threatening pamphlets was set off near her workplace. In addition, they indicated that on February 13, 2008, Héctor José Herrera and Héctor Manuel Herrera—the bodyguards assigned to protect the alleged victim Marta Colomina—were attacked by unknown persons who shot at them inside an auto repair shop. The bodyguards sustained injuries to the head and face. Later, they indicated that on December 1, 2008, alleged members of the group called “La Piedrita” threw tear gas canisters and threatening pamphlets at the journalist at her residence when her daughter was present. The petitioners alleged that the State did not bother to establish the facts in these incidents and that it failed to act in compliance with the necessary measures to protect Marta Colomina’s life, humane treatment, and freedom of expression.

19. In addition, the petitioners alleged that members of the government had made stigmatizing statements against Marta Colomina at various public events.⁸ They indicated that Marta Colomina’s life was

⁷ Communication from the Inter-American Court of Human Rights to the IACHR. July 18, 2005. Received on July 22, 2005. Forwarding the July 8, 2005 communication from the representatives of the beneficiaries of the provisional measures.

⁸ According to the petitioners, on June 28, 2003, Minister of Infrastructure Diosdado Cabello made the following statement to the newspaper *El Universal* in relation to the June 27 attack on the journalists: “What’s happening is that there are people who are losing
[continues ...]”

adversely affected, not only by the attacks to which she was subjected but also by the ongoing threats. They stated that the physical, verbal, and psychological attacks against Colomina have turned her into a *persona non grata* because she is considered dangerous. In this respect, they stated that no one wanted “to be her bodyguard, or part of her work team, or have her listed on their employee payroll [...] [and that she became] the ‘inconvenient employee’ due to the government requirements at the media outlets for which she work[ed].”

20. Thus, for example, the petitioners indicated that on March 4, 2004, during the broadcast of the program *En Confianza* on a State-run channel, in an interview with the Venezuelan Minister of Defense, an anonymous caller phoned in and stated that Colomina had supposedly called for people to protest near the homes of members of the military. The Defense Minister reportedly said, “A woman who has been taken in as Venezuelan but who is really a foreigner should have more respect for a country that gave her the opportunity to live in it.” They indicate that the Defense Minister later stated that Colomina insisted upon “harassment, terrorism, evil, because they (sic) have no other plan.” The petitioners also indicated that on May 14, 2004, the full session of the National Assembly approved a decision to ask the Office of the Public Prosecutor to begin a process to revoke the citizenship of government opponents, including Marta Colomina. They also stated that the Government pressured *Televen’s* Board of Directors to take the program hosted by Marta Colomina off the air.

21. The petitioners indicated that the June 27, 2003 attack was meant to silence the journalist, as were the subsequent threats, attacks, and acts of intimidation. In the opinion of the petitioners, the aforementioned attack was part of a deliberate strategy designed to terrorize Marta Colomina and silence criticism of the government through a variety of means: “incendiary speech,” “personal attacks,” “harassment,” “false accusations,” and others. They similarly stated that the Venezuelan State, “through its authorities, demonstrate[d] an absolute lack of interest, if not contempt, for establishing the facts and resolving this case.”

22. In conclusion, they requested that the IACHR declare the Venezuelan State internationally responsible for the violation of Articles 4, 5, 8, 11, 13, 20, 21, 22, 24 and 25 of the American Convention. The petitioners further alleged the international responsibility of Venezuela for the violation of Articles I, II, IV, V, VIII, XVIII, XIX, XXIII and XXIV of the American Declaration, to the detriment of journalist Marta Colomina.

B. Position of the State

23. The State asked the IACHR to dismiss the petition and asserted that, as a guarantor of human rights, the State assumed the task of establishing the facts and/or disproving all of the complaints and/or petitions regarding the alleged violations of Marta Colomina’s human rights.

24. The State reported with regard to the alleged victims that:

“They are not citizens who were attacked while simply performing the noble task of reporting. On the contrary, the aforementioned media professionals departed from the Journalists’ Code of Ethics and took a political stance, involving the indiscriminate use of their tools according to an idea and at the service of a specific political current which— consistent with what we have just stated—arises from a mistaken cultural expression. We vigorously condemn this, with respect to both the journalist, for her excesses and inordinate remarks, and the offenders, vandals who seek to prove their point by force. We cannot allow this, not only because it is not true, but because there is no evidence on record in the

[... continuation]

their audience, no one watches or listens to them, and because of the vial of poison they drink every morning they say all kinds of things, and they need to call attention to themselves somehow. That is what is going on. For this lady, or anyone else, to tell me that she was the victim of an attack, I’m saying right away that I don’t believe it [...] With all these things, I’m underlining the word “alleged,” putting it in boldface type, in quotation marks, or highlighted in color, because I haven’t believed anything for a long time, or believed these reports saying I was attacked, my car was shot at—always blaming the government.” *El Universal*. June 28, 2003. *Diosdado Cabello atribuye incidente a pérdida de audiencia*.

proceedings that would allow the illustrious Court, or any court, to conclude that the Venezuelan State violated the human rights of Marta Colomina. Of course, the State has the obligation to defend its citizens, but there are situations that are beyond its control. Accordingly, it is impossible to say that the violent acts in which these journalists were unfortunately involved demonstrate the violation of the right to free expression, or that they constitute evidence that would enable the honorable Commission to observe 'objectively' that said right has been infringed."⁹

25. With respect to the events of June 27, 2003, the State indicated that several steps were taken to establish the facts. It asserted that the Chacao Sub-Precinct [*Sub-Precinct de Chacao*] of the Scientific and Criminal Investigation Corps kept a file on the investigation. The Venezuelan State indicated that on the day of the events, June 27, 2003, personnel from that Sub-Precinct reported to Canal *Televén* and interviewed Liliana Velásquez, Marta Colomina, and Colomina's bodyguard Héctor Manuel Herrera. They indicated that Marta Colomina said that she was unable to provide a physical description of the perpetrators. They further indicated that a technical inspection of the vehicle was performed, a technical inspection of the scene was conducted, and a request was made for the Division of Analysis and Scene Reconstruction [*División de Análisis y Reconstrucción de Hechos*] to render composite sketches of the suspects with the information provided by Marta Colomina's bodyguard. The State indicated that the bodyguard appeared at the Division but said that he could not provide information for the rendering of a composite sketch. It indicated that subsequently "the case records were forwarded on October 23, 2003, to the Office of the 20th Public Prosecutor of the Public Ministry of the Caracas Metropolitan Area."

26. The State indicated that there were two situations that were not in the journalists' favor. First, it stated that there were shortcomings at the preliminary stage of the judicial investigations, namely the failure to identify the perpetrators; second, there were shortcomings in the gathering of evidence. Similarly, it stated that "those shortcomings are not attributable to any activity displayed by the State in the performance of its police duties, given that: (a) the victims failed to provide any information that would lead to the identification of the perpetrators [...], neither physical descriptions, nor photographs, much less identification in a lineup; also, the use of gloves by the perpetrators in the commission of the crimes under investigation may have prevented the gathering of fingerprint evidence, which would facilitate their identification, and (b) the victims altered the crime scene, preventing specialized State security personnel from gathering evidence that would make it possible to establish the identity of the criminals."

27. The State of Venezuela reported that the prosecutor's offices handling Marta Colomina's case ordered that it be shelved. They indicated that this decision was made pursuant to Article 315 of the Code of Criminal Procedure, given that the investigative phase, in the opinion of the Public Ministry, failed to yield sufficient results for "the identification of the perpetrators" in order to be able to bring charges. The State indicated that the case was also shelved because the events occurred "in a crowd, which disturb[ed] and invalidate[d] the gathering of clues and evidence." It added that the late arrival of the police resulted in "private citizens" gathering evidence and disturbing the crime scene. It similarly stated that "the prosecutors' decision to shelve the case is a procedure largely based on the desire not to close the investigation, but rather to keep a door open, so that in case new evidence is obtained, whether produced by the authorities or by the interested parties. This is a circumstance [...] that cannot entail [...] a burden on the citizen; rather, on the contrary, it involves the development of an active dynamic in the fight against crime. In any case, if the beneficiaries themselves had not invalidated the evidence and had cooperated with the police authorities in their inquiry, the case would certainly have been solved by now. This must not be [understood] as the State alleging its own clumsiness, which, moreover, would be impossible given that the shelving of the case was due to the abovementioned external factors basically involving the inexperience or negligence of the beneficiaries themselves." Venezuela specified that the Public Ministry's Director General of Fundamental Rights indicated that the shelving of the case by the prosecutors does not close the investigation but rather leaves it open to the possibility that new evidence may arise to support an indictment.

⁹ Communication from the Inter-American Court of Human Rights to the IACHR. May 30, 2005. Received on June 21, 2005. Forwarding communication AGEV/No. 000447 of May 23, 2005 from the State of Venezuela, p. 19.

28. The Venezuelan State addressed the events subsequent to June 27, 2003 that gave rise to the request for provisional measures on behalf of Marta Colomina and Liliana Velásquez. In relation to the December 1, 2008 event in which a tear gas canister and pamphlets were reportedly thrown at Marta Colomina's residence, the State indicated that journalist Marta Colomina was not at home, and thus there was no harm to her personal safety, or to her property. It emphasized that the group called "La Piedrita" is not part of any governmental institution, nor does it have any ties to the National Government, and therefore the State could not be held responsible for these acts. It reported that the investigation was conducted by the Seventy-Fourth Prosecutor of the Caracas Metropolitan Area, and that he coordinated with the Counterterrorism Division of the Scientific and Criminal Investigation Corps [*Cuerpo de Investigaciones Científicas, Penales y Criminalísticas*] (CICPC) to carry out the pertinent procedures. It indicated that CICPC personnel gathered evidence of interest to the criminal investigation.

29. The State additionally informed the IACHR that the investigation of the attack on Marta Colomina's bodyguards, Chacao Municipal Police officers Héctor José Herrera and Héctor Manuel Herrera, was headed by the Sixth Office of the Public Prosecutor of the Public Ministry of the Judicial District of the Caracas Metropolitan Area. According to the State, on February 14, 2008 the prosecutor in charge ordered the respective criminal investigation and took the pertinent steps to establish the facts of the case. The State indicated that the events in which the police officers were injured were not based on their work of guarding Colomina, given that they were not performing job-related duties when they were injured.

30. According to the information provided by the State to the IACHR, on September 4, 2006 a representative of the Venezuelan State, together with the petitioner, went to the *Televen* television station to meet with the president of that company. They indicated that the reason for the meeting was to address the journalist's situation, and that the petitioner reiterated Marta Colomina's desire to rejoin the company. The representative from *Televen* stated that the decision to dispense with the journalist's services was based on an internal situation, and had the aim of "refreshing the screen." The State additionally affirmed that the company's representatives expressed "total adherence to the laws currently in force in Venezuela, in particular the Law on Social Responsibility in Radio and Television, this being one of the arguments that led the channel's board of directors to hold conversations with Colomina in order to prevent the broadcasting of a program inconsistent with the abovementioned provisions."¹⁰

31. In view of the above, the State asked the IACHR to dismiss the petition.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

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

32. Venezuela ratified the American Convention on August 9, 1977, the date on which it deposited its ratification instrument. In a communication dated September 6, 2012, received by the General Secretariat of the Organization of American States on September 10, 2012, the Republic of Venezuela gave notice to the Secretary General of the OAS of its decision to denounce the American Convention. The denunciation became effective one year after the notice date, on September 10, 2013, in accordance with Article 78.1 of the American Convention.

33. The petitioners are authorized under Article 44 of the Convention to lodge complaints. The IACHR has jurisdiction *ratione materiae* due to the fact that the petition concerns the alleged violation of human rights protected by the American Convention. The IACHR additionally observes that the American Convention governed the Venezuelan State at the time the alleged violations reportedly occurred. Accordingly, the IACHR has jurisdiction *ratione temporis* to examine this matter.

¹⁰ Communication AGEV/No. 001293 from the State of Venezuela of September 8, 2006. Received by the IACHR on September 11, 2006.

34. Similarly, the alleged victims are individuals who were under the jurisdiction of the Venezuelan State at the time of the events in question. Accordingly, the Commission has jurisdiction *ratione personae* to examine the petition. Additionally, the Inter-American Commission has jurisdiction *ratione loci* to hear the petition insofar as it alleges violations of rights protected in the American Convention that reportedly occurred in Venezuela.

35. With respect to Articles I, II, IV, V, VIII, XVIII, XIX, XXIII and XXIV of the American Declaration on the Rights and Duties of Man, the Commission recalls that, as a party to the OAS Charter, the State agreed to preserve the rights stipulated in the American Declaration, which is a source of international obligations.¹¹ The Commission observes that the State ratified the American Convention on August 9, 1977, and that at the time of the alleged acts that gave rise to this case that instrument was its principal source of legal obligations.¹² Accordingly, the Commission finds that an analysis of the merits of the instant case should focus on the provisions of the American Convention, without prejudice to the consideration of the provisions of the Declaration as a source of interpretation thereof.

B. Admissibility requirements

1. Exhaustion of domestic remedies

36. The petitioners maintained that the appropriate remedy in this specific matter is the criminal case, which should have been pursued by the State proactively. They asserted that the investigations initiated by the State to establish the facts alleged in the complaint have not been effective, since the prosecutorial investigation was not exhausted and therefore, no defendants were charged in any of the alleged attacks. They also indicated that Marta Colomina did not have an appropriate or effective remedy that would enable her to reasonably obtain redress. On this point, they indicated that although it is possible to file a private criminal complaint [*recurso de querrela*] in the Venezuelan legal system, it is not possible to exhaust that remedy due to the fact that the identity of the alleged perpetrator against whom it should be filed is unknown. They additionally noted that the Public Ministry ordered the case file to be shelved, which prevented the alleged victims from furthering the investigation.

37. The State, for its part, claims that the pertinent investigations were conducted with respect to the reported attacks.

38. Article 46.1(a) of the American Convention provides that, in order for a complaint lodged before the Inter-American Commission to be admissible under Article 44 of the Convention, 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 national authorities to have knowledge of the alleged violation of a protected right and, if appropriate, have the opportunity to resolve the matter before it is heard by an international body.

39. The requirement of prior exhaustion applies when the national system in fact offers available remedies that are adequate and effective to redress the alleged violation. In this respect, Article 46.2 specifies that the requirement does not apply (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.

¹¹ I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No.10. Paras. 43 - 46.

¹² I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No.10. Para. 46.

40. As the Commission has indicated, in order to examine compliance with the exhaustion of domestic remedies requirement it is necessary to identify the appropriate remedy to be exhausted under the circumstances of the case—that is, the one that could potentially resolve the legal violation.¹³ Additionally, in situations in which the development of the facts initially presented at the domestic level involves a change in compliance with the admissibility requirements, the Commission has indicated that its analysis must be done based on the prevailing situation at the time of the decision on admissibility.¹⁴

41. In the opinion of the IACHR, the determination of whether the exceptions to the rule on the exhaustion of domestic remedies are applicable to the case in question must be made in advance and separately from the analysis of the merits of the case, as it involves a different evaluation standard from the one used to determine the possible violation of Articles 8 and 25 of the Convention. Accordingly, it is necessary to distinguish the concept of unwarranted delay referred to in Article 46.2 of the Convention, applicable at the admissibility phase of a petition, from the reasonable time standard applicable to the analysis of potential violations of Article 8.1 of the Convention at the merits phase.

42. The Commission reiterates that criminal proceedings are the appropriate remedy for establishing the facts, putting the potential perpetrators on trial, and establishing the respective criminal penalties in the cases of alleged attacks or harm to a person's life and safety.¹⁵ In cases of violence against a journalist, the criminal investigation of the facts is the suitable means to redress violations of the right to life and/or humane treatment, as well as violations of the right to freedom of thought and expression.¹⁶

43. It follows from the information submitted that the Venezuelan authorities opened an investigation into the attack of June 27, 2003. That investigation was shelved in 2005. The State maintained that “the prosecution’s decision to shelve the case does not close the investigation but rather leaves it open to the possibility that new evidence may arise to support an indictment.” According to the information available as of the date of release of this report, the investigation remains shelved, without the facts having been established or the perpetrators having been identified, tried, and punished. It is additionally observed that in 2008 investigations were opened into an attack on journalist Marta Colomina’s bodyguards and into an alleged act of violence at her residence. As far as the IACHR has been able to confirm, the investigations have not yielded any results to date.

44. To this extent, and for purposes of admissibility, the Commission finds that the period of time that has elapsed since the beginning of the investigations allows for the application of the exception of unwarranted delay contained in Article 46.2 of the Convention.¹⁷ In any event, it will be appropriate at the merits phase to examine the effectiveness of the remedies in relation to the rights to protection and the right to a fair trial.

2. Filing deadline for the petition

45. Article 46.1(b) of the Convention establishes that in order for the petition to be declared admissible, it must have been filed within six months of the date on which the party alleging the violation of his rights was notified of the final judgment that exhausted the domestic remedies. This rule does not apply

¹³ IACHR. Report No. 23/07. *Eduardo José Landaeta Mejías et al.* Venezuela. Petition 435-2006. Admissibility. March 9, 2007. Para. 43.

¹⁴ IACHR. Report No. 20/05. *Rafael Correa Díaz*. Peru. Petition 714/00. Admissibility. February 25, 2005. Para. 32; IACHR. Report No. 25/04. *Ana Victoria Sánchez Villalobos et al.* Costa Rica. Petition 12.361. March 11, 2004. Para. 45; IACHR. Report No. 52/00. *Dismissed Congressional Employees*. Cases 11.830 & 12.038. Peru. June 15, 2001. Para. 21.

¹⁵ IACHR. Report No. 99/09. Petition 12.335. *Gustavo Giraldo Villamizar Durán*. Colombia. October 29, 2009. Para. 33.

¹⁶ I/A Court H.R., *Case of Vélez Restrepo and family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Series C No. 248. Para. 215.

¹⁷ IACHR. Report No. 54/04. *Nelson Carvajal Carvajal*. Colombia. Petition 559-2002. Admissibility. October 13, 2004. Para. 32.

when the Commission finds that the case falls under one of the exceptions to exhaustion of domestic remedies enshrined in Article 46.2 of the Convention. In such cases, the Commission must determine whether the petition was filed within a reasonable time period according to Article 32.2 of its Rules of Procedure, which establishes 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.

46. As indicated in the above paragraphs, the Commission concluded that the exception for unwarranted delay provided for in Article 46.2 of the American Convention is applicable in the instant case. Given the ongoing nature of the alleged violations, the alleged failure to investigate the acts reported, and the July 16, 2003 presentation of the request for provisional measures based on which this petition was opened, the Commission finds that the petition was filed within a reasonable period of time.

3. Duplication of proceedings and international *res judicata*

47. The record in this case contains no indication that the matter is pending in another international proceeding or has been previously decided by the Commission or another international body. Therefore, the IACHR concludes that the requirements of Articles 46.1(c) and 47(d) of the American Convention have been met.

4. Characterization of the alleged facts

48. The Inter-American Commission must determine whether the facts described in the petition amount to violations of rights enshrined in the American Convention, according to the requirements of Article 47(b), or whether the petition, under Article 47(c), must be rejected for being “manifestly groundless” or “out of order.” At this stage in the proceedings, the IACHR must perform a *prima facie* evaluation, not for purposes of establishing alleged violations of the American Convention, but rather in order to examine whether the petition complains of acts that could potentially amount to violations of rights guaranteed in the American Convention. This examination does not entail prejudgment or an advance opinion on the merits of the case.¹⁸

49. Neither the American Convention nor the IACHR’s Rules of Procedure require the petitioner to identify the specific rights alleged to have been violated by the State in the matter brought before the Commission, although the petitioners may do so. It is the responsibility of the Commission, based on the case law of the system, to determine in its admissibility reports which provision of the relevant Inter-American instruments is applicable or may have been violated, if the facts alleged are proven by sufficient evidence.

50. In view of the factual and legal evidence submitted by the parties and the nature of the case submitted for its review, the Commission finds that, if proven, the allegations of the petitioners could constitute violations of Marta Colomina’s right to life, protected under Article 4, and violations of Marta Colomina and Liliana Velásquez’s right to humane treatment, the right to a fair trial, and the right to judicial protection, protected under Articles 5, 8, and 25 of the American Convention.

51. In addition, the Commission finds that attacks and threats aimed at an individual as a result of the exercise of his or her right to freedom of expression, particularly in the case of journalists and media workers, could constitute a violation of the right to freedom of expression enshrined in Article 13 of the American Convention.

52. At the merits phase, the Commission will examine the possible violation of these provisions in light of the general obligation established in Article 1.1 of the Convention.

¹⁸ IACHR. Report No. 21/04. *José Luís Tapia González et al.* Chile. Petition 12.190. Admissibility. February 24, 2004. Paras. 33 & 52.

53. In addition, the Commission finds that the petitioners have not presented facts that would tend to establish violations of the rights to privacy, nationality, private property, freedom of movement and residence, and equal protection in the instant case. Therefore, the Commission finds that the petition is inadmissible with respect to the alleged violations of the rights enshrined in Articles 11, 20, 21, 22 and 24 of the Convention. The Commission further finds that the facts alleged by the petitioners do not constitute a *prima facie* violation of the right to enact provisions of domestic law enshrined in Article 2 of the Convention.

54. In conclusion, the IACHR finds that the petition is neither “manifestly groundless” nor “out of order,” and therefore finds that the petitioners have met 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, in conjunction with Article 1.1 thereof, as previously discussed.

V. CONCLUSION

55. The Inter-American Commission concludes that it has jurisdiction to examine the merits of this case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention. Based on the factual and legal arguments presented above and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with regard to the alleged violations of the rights protected in Articles 4, 5, 8, 13 and 25 of the American Convention, in connection with Article 1.1 thereof.
2. To declare this petition inadmissible with respect to Articles 2, 11, 20, 21, 22 and 24 of the American Convention.
3. To give notice of this decision to the parties, to continue with the analysis of the merits of the case, and
4. To publish this decision and include it in the Annual Report to be submitted to the General Assembly of the OAS.