

OEA/Ser.L/V/II.152
Doc. 6
15 August 2014
Original: Spanish

REPORT No. 74/14
PETITION 1294-05
REPORT ON ADMISSIBILITY

MÁRIO DE ALMEIDA COELHO FILHO AND FAMILY
BRAZIL

Approved by the Commission at its session No. 2002 held on August 15, 2014
152 Extraordinary Period of Sessions

Cite as: IACHR, Report No. 74/14, Petition 1294-05. Admissibility. Mário de Almeida Coelho Filho and Family. Brazil. August 15, 2014.

REPORT NO. 74/14¹
PETITION 1294-05
ADMISSIBILITY
MÁRIO DE ALMEIDA COELHO FILHO AND FAMILY
BRAZIL
AUGUST 15, 2014

I. SUMMARY

1. On November 14, 2005, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received a petition filed by the Inter-American Press Association (hereinafter "the petitioner") alleging that the State of Brazil (hereinafter "the State" or "Brazil") is internationally responsible for violating Articles 4 (right to life), 13 (freedom of expression) 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention") to the detriment of journalist Mário de Almeida Coelho Filho and his relatives.

2. According to the petitioner, Mário de Almeida Coelho Filho, a reporter, photographer, and administrative director for the newspaper *A Verdade* in the city of Magé, Rio de Janeiro state, was murdered on August 16, 2001, when he was shot five times after arriving in a vehicle to his home, which also served as the newspaper's headquarters. According to the petitioner, the probable motives behind the murder included allegations published in *A Verdade* against politicians in the Baixada Fluminense region, one of the most violent regions in the state of Rio de Janeiro. The petitioner indicates that the murder of the journalist and the absence of a proper investigation by the State into the facts represent a violation of the rights enshrined in the American Convention.

3. For its part, the State maintains that the petition is inadmissible because it does not meet the basic standards for admissibility established in articles 46 and 47 of the American Convention. In this sense, the State argued that: (i) domestic remedies had not been exhausted; (ii) the facts established did not represent violations of rights enshrined in the Convention; and (iii) the petition would require the Commission to act as a "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, as well as Articles 30 and 36 of the Rules of Procedure of the IACHR, and without prejudging the merits of the matter, the Inter-American Commission decides to declare the petition admissible with regard to the alleged violation of Articles 4, 5, 8, 13, and 25 of the American Convention, in light of the general obligation enshrined in Article 1(1) of the same instrument. Finally, the Commission decides to notify the parties and publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDING BEFORE THE INTER-AMERICAN COMMISSION

5. The petition was received by the IACHR on November 14, 2005. On April 24, 2006, the petition was accepted for processing by the IACHR, and on that same day, the Commission sent the pertinent parts to the State, asking that it submit its response within the two months of receiving that communication. On July 11, 2006, the State asked for an extension of the deadline for submitting its response. On July 25, 2006, the IACHR granted the State a deadline extension of 60 days. On August 4, 2006, the State submitted its response to this petition, and its pertinent parts were sent to the petitioner on August 11, 2006.

6. On September 26, 2006, the petitioner submitted its brief with observations, and its pertinent parts were sent to the State on October 11, 2006. On December 1, 2006, the State asked that the

¹ Commissioner Paulo Vannuchi, a Brazilian national, did not participate in the deliberations or the decision regarding the present petition, in conformity with Article 17.2.a of the Commission's Rules of Procedure.

petitioner's brief with observations be translated into Portuguese. On January 16, 2007, the IACHR asked the petitioner for a copy of its brief in Portuguese. This was submitted by the petitioner on January 22, 2007. On March 21, 2007, this communication was sent to the State. On June 29, 2007, the State submitted additional observations, which the Commission sent to the petitioner on July 26, 2007. On August 27, 2007, the petitioner asked for an extension of the deadline for submitting observations. This was granted by the IACHR on September 6, 2007.

7. On July 30, 2009, the IACHR asked for additional information from the parties regarding the petition. On August 31, 2009, the State asked for a deadline extension, which was granted by the Commission on September 18, 2009. On January 8, 2010, and January 19, 2010, the State submitted additional information on the petition. This was sent to the petitioner on January 22, 2010, and on February 19, 2010. On May 9, 2012, the IACHR asked the petitioner for additional information. On July 19, 2013, the petitioner submitted additional observations. These were sent to the State on October 2, 2013. On November 11, 2013, the State submitted additional observations. On December 17, 2013, the IACHR sent the State's observations to the petitioner.

III. POSITION OF THE PARTIES

A. Position of the petitioner

8. The petitioner alleged in its petition that Mário de Almeida Coelho Filho, a reporter, photographer, and administrative director for the newspaper *A Verdade* in the city of Magé, was murdered on August 16, 2001. It stated that the alleged victim died when he was shot five times after arriving in a vehicle to his home, which also served as the newspaper's headquarters. According to the petitioner, the probable motives for the murder included allegations published in *A Verdade* against politicians in the Baixada Fluminense region, one of the most violent regions in the state of Rio de Janeiro.

9. In this sense, the petitioner indicated that in the months prior to his murder, Coelho Filho had been accusing members of the Office of the Mayor in the city of Magé of acts of corruption, abuse of economic power, and mismanagement of public funds. It also observed that Coelho Filho was being sued by José Camilo Zito dos Santos - the mayor of the city of Duque de Caxias and husband of Narriman Zito, mayor of the city of Magé - over a report stating that Narriman had had an affair with one of her security guards. It stated that Coelho Filho was murdered one day before he was supposed to testify in this proceeding.

10. Likewise, according to the petitioner, at the time of his death, Coelho Filho was investigating allegations of corruption against Zito dos Santos. The petitioner observed that a number of documents on legal proceedings brought by different individuals and organizations against Zito dos Santos were found with the journalist's body. It also noted that petitions were found that had been filed with the Office of the Mayor of Caxias do Sul on embezzlement of education funds and corruption in the distribution of food.

11. In addition, the petitioner stated that the journalist regularly reported on the actions of Genivaldo Ferreira Nogueira, who at the time was a city councilmember for Magé. The petitioner observed that Coelho Filho had published reports on his relationship with another councilmember in the Municipal Chamber and had insinuated in *A Verdade* that the councilmember did not have a high school diploma.

12. The petitioner also observed that the journalist had received death threats by telephone four months prior to his murder. He had announced receiving these threats in his newspaper. The petitioner also indicated that the journalist had been the victim of death threats over his reports on politicians in the Baixada Fluminense region. It added that in that incident, the journalist had also been violently overtaken by a vehicle while driving his car on the highway. According to the petitioner, Coelho Filho reported the incident to the police in the city of Magé and informed that he had published reports at that time on facts surrounding the activities of councilmember Ferreira Nogueira, councilmember Eliane Franco, and member of the state house of deputies Núbia Cozzolino.

13. According to the petitioner, following the conclusion of the police investigations, on December 17, 2002, the Office of the Public Prosecutor filed charges against councilmember Genivaldo Ferreira Nogueira and former military police officer Reynaldo Polary Stumpf, alleging that they were the mastermind and perpetrator of the victim's murder, respectively. The petitioner observed that the investigations had concluded that, after following the victim for four days, former military police officer Polary Stumpf had murdered the journalist. The petitioner reported that the accused, Polary Stumpf, had fled, so the criminal trial of councilmember Genivaldo Ferreira Nogueira was the only one that moved forward.

14. The petitioner observed that on June 24, 2003, the Magé Criminal Court issued a "*pronuncia*" ruling against Ferreira Nogueira, based on which he was brought to trial before a jury. It explained that on June 30, 2005, Ferreira Nogueira was acquitted by the 3rd Jury Court of Justice of Rio de Janeiro for insufficient evidence. It reported that the Office of the Public Prosecutor itself stated during the trial that it did not have enough evidence to convict the defendant. The petitioner indicated that the decision was final, since the Office of the Public Prosecutor decided not to appeal.

15. The petitioner indicated that former military police officer Polary Stumpf, accused of figuring as the perpetrator of the crime, was arrested in Cabo Frio on December 3, 2004, for another crime. It added that despite this, when councilmember Ferreira Nogueira was tried, the Office of the Public Prosecutor had still not been informed of Polary Stumpf's arrest. It observed that the alleged perpetrator was not heard during the trial in which councilmember Ferreira Nogueira was acquitted due to insufficient evidence. According to the petitioner, the Chief of the Civilian Police in Rio de Janeiro stated in a press release that the letter sent by the Cabo Frio police station to the court in Magé reporting the arrest of the alleged perpetrator was never received, and according to court officials, may have been lost. It added that according to the public prosecutor responsible for the case, Polary Stumpf's testimony could have established a link between the two suspects. It observed that according to the prosecutor, "the investigation was poorly managed" and was "contaminated" from the start.

16. Additionally, the petitioner stated that in May of 2007, former military police officer Polary Stumpf was convicted for murdering journalist Coelho Filho. However, it reiterated that the State had not taken additional measures to determine the motives behind the journalist's murder. In this sense, the petitioner observed that José Camilo Zito dos Santos, who at that time was the mayor of Duque de Caxias, was not investigated even though he was implicated during the initial investigations as a possible mastermind behind the crime.

17. Finally, the petitioner observed that Coelho Filho's sister was threatened during the criminal proceeding into the alleged victim's murder and had tried to leave the city of Magé.

18. Based on these considerations, the petitioner alleged that the State is responsible for the violation of Articles 4, 13, 8, and 25 of the American Convention, to the detriment of journalist Mário de Almeida Coelho Filho and his relatives.

B. Position of the State

19. In its brief dated August 4, 2006, the State alleged that domestic remedies had not been exhausted, arguing that the criminal action against Polary Stumpf was still in progress. The State argued that a "*pronuncia*" judgment had been issued against the accused on May 11, 2006, ruling that Polary Stumpf must be judged by a jury. It added that the proceeding against the accused was taking place within a reasonable period of time, given that "only three and a half years" had passed between the filing of charges by the Office of the Public Prosecutor and the *pronuncia* judgment. The State also observed that Polary Stumpf had been detained, which along with the ruling to subject him to a jury trial, demonstrated the efficiency of the domestic mechanisms of justice. Based on this, the State argued that the petitioner did not meet the requirement established in Article 46(a) of the American Convention.

20. The State also argued that the facts presented in the initial petition do not represent a violation of the rights enshrined in the American Convention. On this point, the State argued that the decision

to acquit councilmember Ferreira was handed down by a domestic court that acted in accordance with its constitutional jurisdiction and in accordance with legal due process. It added that the accused was tried by a jury made up of members of his own community, without intervention from the State. It observed that as this ruling was a final judgment, the IACHR could not evaluate whether it was just or mistaken out of respect for the fourth instance doctrine. It concluded that the petitioner did not present facts that might represent a violation of the American Convention, for which reason the petition is inadmissible based on Article 47(b) of the ACHR.

21. Later, in communication dated June 29, 2007, the State reported that on May 30, 2007, Polary Stumpf was convicted and sentenced to 18 years in prison by a jury. It added that the proceeding took its course within a reasonable period of time. In this sense, the State reiterated that in its initial petition, the petitioner had not indicated which actions it had taken to exhaust domestic remedies. On this point, the State observed that the petitioner had not sought authorization to act as a “third-party assistant to the prosecutor” in the criminal action in progress, which would have allowed it to appeal the decision in the event of the Office of the Public Prosecutor’s failure to do so.

22. The State also argued that its agents had neither acted negligently nor been at fault for the murder of the alleged victim. It added that its police and judicial bodies committed no omission in the investigation and trial of those responsible, leading to the conviction and imprisonment of one of the accused.

23. In communication dated January 8, 2010, the State reiterated these pleadings and presented additional information on the case. The State reported that Polary Stumpf sought remedies before the Superior Tribunal of Justice and the Supreme Federal Tribunal. These motions were rejected on September 26, 2009. It also indicated that the accused had sought a new remedy against that decision, which has not yet been ruled on. Nevertheless, it indicated that Polary Stumpf has remained imprisoned during the entire process.

24. Finally, in communication dated November 11, 2013, the State reiterated its prior pleadings and reported that the remedies sought by Polary Stumpf before the Superior Tribunal of Justice and the Supreme Federal Tribunal had been rejected. It indicated that both the decision to convict Polary Stumpf and the acquittal of Ferreira Nogueira were adopted in accordance with national and international guidelines. It also observed that there is no record indicating that any civil action has been undertaken to punish those responsible or provide civil reparations to the alleged victims.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

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

25. In accordance with Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR, the petitioner has *locus standi* to submit petitions before the Inter-American Commission. With regard to the State, Brazil is party to the American Convention, and therefore responsible internationally for violations of that instrument. The alleged victims are natural persons whose rights, as enshrined in the American Convention, the State has pledged to guarantee. Therefore the Commission has jurisdiction *ratione personae* to examine the petition.

26. The IACHR has jurisdiction *ratione materiae* because the petition refers to the alleged violations of human rights protected by the American Convention. The Commission also noted that Brazil has been a party to the Convention since September 25, 1992, the date on which it deposited its ratification instrument. Therefore the Commission has jurisdiction *ratione temporis* to examine the petition.

27. Finally, the American Commission has *ratione loci* jurisdiction to hear the petition insofar as the petition alleges violations of rights protected by the American Convention that allegedly took place within Brazil’s territory.

B. Other admissibility requirements for the petition

1. Exhaustion of remedies under domestic law

28. Article 46(1)(a) of the American Convention holds that in order for a complaint submitted before the Inter-American Commission under Article 44 of the Convention to be admissible, it is necessary for the complainant to have sought and exhausted all domestic remedies, in keeping with generally accepted principles of international law. The purpose of this requirement is to allow domestic authorities to hear cases of alleged violations of protected rights and, where appropriate, to have the opportunity to resolve them before they are brought before an international authority.

29. The requirement of prior exhaustion is applicable when the domestic system does have remedies that are truly available, adequate, and effective to remedy the alleged violation. In this regard, Article 46(2) specifies that the requirement shall not be applicable when: (i) the domestic legislation of the State concerned does not afford due process of law for the protection of the right allegedly violated; or (ii) the party alleging violation has been denied access to the remedies under domestic law; or (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

30. As indicated by the Commission, to examine compliance with the requirement of prior exhaustion of remedies under domestic law, the adequate remedy that must be previously exhausted, depending on the circumstances of the case, must be identified, meaning the remedy that can settle the legal situation that was infringed.² In this sense, the Commission observes that in those cases of alleged arbitrary violation of the right to life, the adequate remedy entails criminal investigation and proceedings launched and pursued *ex officio* by the State to identify and punish those responsible.³

31. Likewise, in situations in which the domestic development of the facts initially represent a change in compliance or non-compliance with admissibility requirements, the Commission has indicated that its analysis should be based on the case's status at the moment of the admissibility decision.⁴

32. In its response to the initial petition, the State alleged that the available domestic remedies had not been exhausted, as the criminal proceeding against Polary Stumpf was ongoing. Likewise, the State indicated that the petitioner had been allowed to assist the prosecution in the proceeding, but chose not to. Finally, the State indicated that no civil suit was brought to hold those guilty responsible and seek reparations for the alleged victims.

33. In this case, the Commission observes that the State began a criminal investigation into the murder of the alleged victim that led to the Office of the Public Prosecutor filing charges against councilmember Genivaldo Ferreira Nogueira - accused of being the mastermind - and former military police officer Reynaldo Polary Stumpf - accused of being the perpetrator.

34. As indicated in the case file, on May 30, 2007, Polary Stumpf was tried and convicted of being the perpetrator in this case. In response to this decision, the convict filed an appeal, which was rejected on July 17, 2008, by the Rio de Janeiro Tribunal of Justice. He later sought remedies before the Superior Tribunal of Justice and the Supreme Federal Tribunal. These motions were rejected on September 26, 2009. Polary

² IACHR. Report No. 23/07. Eduardo José Landaeta Mejías and others. Petition 435-2006. Admissibility. March 9, 2007. Para. 43.

³ IACHR. Report No. 23/07. Eduardo José Landaeta Mejías et al. Petition 435-2006. Admissibility. March 9, 2007. Para. 43; IACHR. Report No. 15/06. María Emilia González, Paula Micaela González, and María Verónica Villar. Petition 618-01. Admissibility. March 2, 2006. Para. 34; IACHR. Report No. 52/97. Case 11,218. Arges Sequeira Mangas. Annual Report 1997. Paras. 96 and 97. Also see Report No. 55/97. Para. 392, and Report No. 55/04. Para. 25.

⁴ 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 Employees of the Congress of the Republic. Cases 11,830 and 12,038. Peru. June 15, 2001. Para. 21.

Stumpf filed for new remedies before the Supreme Federal Tribunal and the Supreme Tribunal of Justice. These were rejected on October 19, 2009 and June 15, 2009, respectively.

35. At the same time, the IACHR notes that on June 30, 2005, councilmember Ferreira Nogueira, charged as the mastermind in the case, was acquitted by a jury due to insufficient evidence. The Office of the Public Prosecutor did not appeal this decision. The Commission observes that according to the petitioner, this decision was made in a proceeding in which fundamental evidence that was within the State's reach was not presented, including testimony from Polary Stumpf - later convicted as the crime's perpetrator - who was under arrest when the trial was taking place. According to the petitioners, the court responsible for the proceeding against Ferreira Nogueira was not aware of his arrest because a letter informing the court of it was "lost."

36. Finally, the Commission observes that according to the petitioner's pleadings, no additional measures have been taken to determine the motives for the killing of the journalist and identify the mastermind behind the crime. In this sense, the petitioner alleged, among other things, that the mayor of Duque de Caxias was not investigated despite the harsh criticism and reports published by the journalist on his administration and his family. These publications had led to a legal proceeding in which Coelho Filho was to testify the day following his murder. Likewise, the petitioner observed that at the time of his death, the journalist was researching alleged acts of corruption by the mayor, and a number of documents on legal proceedings brought by different individuals and organizations against the official were found with the journalist's body.

37. Now, the IACHR notes that the facts alleged in the present case involve the alleged arbitrary violation of the right to life for reasons presumably associated with the alleged victim's exercise of the right to freedom of expression. In this regard, the IACHR reiterates that States have a duty to investigate, identify, try, and punish all the perpetrators of these crimes, including the masterminds, as it is crucial to uncover the motives behind the crime in order to protect and provide full redress for not only the right to life but also the right to freedom of expression. In the same sense, the IACHR has indicated that for these types of crimes - that is, when there is a logical hypothesis that would lead to the conclusion that it was committed to prevent a journalist from investigating potential criminal organizations to which public officials may be connected - the State must diligently investigate the criminal organizations to which the attackers belong.⁵ In this sense, inter-American case law has established that in compliance with their duty to investigate and try those responsible for acts of violence against journalists, States have a special obligation to exhaust all lines of investigation connected to the victim's journalism work and establish the motives for the crime. As mentioned, this requires an effective investigation of the masterminds.⁶

38. Effectively, an acquittal such as the one in this case does not exhaust the State's obligation to solve the crime and establish the criminal responsibility of the true masterminds behind the facts, nor does it discharge the State's obligation to allow the relatives of the alleged victims to learn the truth about the facts. Under these circumstances, as is evident, the relatives of the alleged victims are entitled to expect that the State will take other actions aimed at clarifying what happened and the State, in turn, has the obligation to continue to conduct, in the performance of its official duties, all the investigations needed to respond to the call for justice presented.⁷

⁵ IACHR. Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 166; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be related to their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008. Para. 40.

⁶ Inter-American Court. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 3, 2012. Series C No. 248. Para. 211; IACHR. Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Para. 203.

⁷ IACHR. Report No. 90/03. Petition 222-10. Josué Vargas Mateus, Miguel Ángel Barajas Collazos, Saúl Castalleda Zúñiga, Silvia Margarita Duzán Sáenz and families. Colombia. November 4, 2013. Para. 40.

39. Based on this, the Commission believes that, for the purposes of the petition's admissibility, the above-mentioned judgment of June 30, 2005, acquitting Ferreira Nogueira, who was accused of being the mastermind behind the journalist's murder, could not conclude the domestic legal proceeding, and that a criminal investigation is the adequate remedy that needs to be exhausted.

40. The IACHR understands that deciding whether or not the exceptions to the rule of exhausting remedies under domestic law is applicable to the present case must be settled prior to, and separately from, a review of the merits of the case, because it relies on a standard of appraisal that is different from the one used to determine the possible violation of Articles 8 and 25 of the Convention.⁸ Consequently, it is necessary to differentiate the issue of unwarranted delay referred to in Article 46(2) of the Convention, applicable to the admissibility phase of the petition, from the standard of reasonable time, applicable to the review of possible violations of Article 8(1) of the Convention, in the examination of the merits of the dispute.

41. On the basis of the information that was provided, it has been concluded that, more than 12 years after the incidents occurred, none of the investigations or proceedings that were conducted have been able to identify and punish the masterminds behind the murder of Coelho Filho, nor have they been able to clear up the facts or provide redress for the relatives of the victims. In this regard, for the purposes of admissibility, the Commission considers that the lapse of 12 years does make it possible to apply the exception set forth in Article 46(2) of the Convention for unwarranted delay.⁹ In any case, the effectiveness of the remedies regarding the rights to protection and a fair trial would have to be reviewed when examining the merits of the case.¹⁰

42. As for the civil jurisdiction remedy indicated by the State, the IACHR deems that, for the purposes of deciding on the admissibility of the complaint, this remedy does not constitute a suitable channel, nor is its exhaustion necessarily required. The Commission reiterates that the criminal proceeding is the suitable one for resolving the facts, trying those responsible, and establishing the corresponding criminal punishment in cases alleging the taking of a life. This is separate from other measures of pecuniary redress.¹¹ In this sense, the IACHR finds that the obligation to provide full reparation arises as a consequence of the violation of the Convention, and full and adequate reparations in the framework of the Convention require measures of rehabilitation and satisfaction, as well as guarantees of non-repetition.¹² In this sense, remedies intended to guarantee indemnity do not *per se* constitute an effective and adequate remedy for fully redressing a violation.¹³

2. Time limits for submitting the petition

43. Article 46(1)(b) of the Convention provides that, for the petition to be declared admissible, the petition must have been lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment that exhausted remedies under domestic law. This rule is not applicable when the Commission finds that one of the exceptions to the exhaustion of remedies under domestic law as enshrined in Article 46(2) of the Convention is applicable. In these cases, the

⁸ IACHR. Report No. 151/11. Luis Giován Laverde Moreno et al. Colombia. Petition 1077-06 Admissibility. November 2, 2011. Para. 31.

⁹ IACHR. Report No. 54/04. Nelson Carvajal Carvajal. Colombia. Petition 559-2002. Admissibility. October 13, 2004. Para. 32.

¹⁰ IACHR. Report No. 90/03. Petition 222-10. Josué Vargas Mateus, Miguel Ángel Barajas Collazos, Saúl Castalleda Zúñiga, Silvia Margarita Duzán Sáenz and families. Colombia. November 4, 2013. Para. 44.

¹¹ IACHR. Report No. 99/09. Petition 12,335. Gustavo Giraldo Villamizar Durán. Colombia. October 29, 2009. Para. 33.

¹² Inter-American Court, *Case of the "La Rochela Massacre."* Judgment of May 11, 2007. Series C No. 163, para. 221.

¹³ Inter-American Court, *Case of the La Rochela Massacre.* Judgment of May 11, 2007. Series C No. 163, para. 220; also see, Inter-American Court, *Case of the Ituango Massacres.* Judgment of July 1, 2006. Series C No. 148, para. 340; and *Case of the "Pueblo Bello Massacre" v. Colombia.* Judgment of January 31, 2006. Series C No. 140, para. 209.

Commission must decide whether or not the petition was lodged within a reasonable period of time in accordance with Article 32(2) of its Rules of Procedure, which 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. In this case, the petition was received on November 14, 2005, less than five months after the decision acquitting the accused mastermind behind the murder of the alleged victim and while the proceeding against the perpetrator was still ongoing. Therefore, the Commission finds that the petition was presented within a reasonable period of time and that the admissibility requirement on the submission deadline is satisfied.

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

45. The case file does not indicate that the issue addressed in the petition is pending before any other international proceeding, nor that it repeats a petition that has already been heard by this or any other international body. Accordingly, the requirements established in article 46(1)(c) and 47(d) of the American Convention have been complied with.

4. Characterization of the facts alleged

46. It is the responsibility of the Inter-American Commission to determine if the facts described in the petition comprise a violation of the rights enshrined in the American Convention in keeping with the requirements of Article 47(b), or if the petition, in keeping with Article 47(c), must be rejected for being “manifestly groundless” or “obviously out of order.” In this procedural stage, it is the IACHR’s responsibility to do a *prima facie* evaluation, not with the purpose of establishing alleged violations of the American Convention, but rather to examine whether the petition alleges facts that could potentially represent violations of rights guaranteed in the American Convention. This examination does not imply a prejudgment or an anticipation of the ruling on the merits in this matter.¹⁴

47. Neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to identify the specific rights that the State is allegedly violating in the case submitted to the Commission, although the petitioners may do so. It falls to the Commission, on the basis of the system’s case law, to decide in its admissibility reports, which provision of the relevant inter-American instruments is applicable and whose violation could be established if the allegations are proven on the basis of sufficient evidence.

48. In this case, the petitioner alleged that the journalist Mario Coelho Filho was murdered as a result of exercising his right to freedom of expression after suffering serious death threats over reports that he was publishing in the newspaper *A Verdade*. These threats have been publicly reported in a timely manner, yet the journalist did not receive protection. The petitioner also stated that the investigations and criminal proceeding carried out to determine the mastermind in the case were seriously flawed. This includes the failure to hear testimony from the perpetrator of the murder despite the fact that he was in State custody. The petitioner also alleged that despite the conviction of the perpetrator of the crime in May of 2007, the State has not taken additional measures to exhaust lines of investigation connected to the journalism work of the alleged victim, determine motives for which the journalist was murdered, and to identify the mastermind behind the crime. Finally, the petitioner stated that the relatives of the alleged victim had been the victims of threats during the investigations carried out in this case.

¹⁴ IACHR. Report No. 21/04. Petition 12,190. Admissibility. José Luís Tapia González *et al.* Chile. February 24, 2004. Para. 33.

49. In view of the elements of fact and law presented by the parties and the nature of the matter under consideration, the Commission finds that, should they be proven, the facts alleged by the petitioner could represent violations to the rights to life, fair trial, and judicial protection as protected by articles 4, 8, and 25, of the American Convention. Likewise, the conclusion can be reached from the character of the facts alleged in the petition that they could represent violations of Article 5(1) of the American Convention with regard to the relatives of the alleged victim. The Commission shall examine the merits of the possible violation of these provisions in light of the general obligation enshrined in Article 1(1) of the Convention.

50. The Commission also understands that should the allegation that this case was the result of a violation of the right to life of a journalist based on the exercise of his right to freedom of expression be proven, this case would include a violation of the right to freedom of expression as enshrined in Article 13 of the American Convention.

51. In conclusion, the IACHR decides that the petition is not “manifestly groundless” or “obviously out of order,” and therefore declares that the petitioner has met *prima facie* the requirements set forth in Article 47(b) of the American Convention in connection with potential violations of the rights enshrined in articles 4, 5, 8, 13, and 25 of the American Convention, in relation to Articles 1(1) of the same instrument, as detailed herein.

IV. CONCLUSION

52. The Inter-American Commission concludes that it has jurisdiction to hear 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 law herein set forth, and without prejudging the merits of the issue,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible in its allegation of violations of the rights protected in articles 4, 5, 8, 13 and 25 of the American Convention, in relation to Article 1(1) of the same instrument.
2. To notify the parties of this ruling, and to continue with the analysis of the merits of the matter; and
3. To publish this ruling and include it in its Annual Report to the General Assembly of the OAS.

Approved in the city of Mexico D.F., on the 15th day of the month of August, 2014. (Signed): Tracy Robinson, President; Rose-Marie Antoine, First Vice-President; Felipe González, Second Vice-President; José de Jesús Orozco Henríquez, and James L. Cavallaro Commissioners.