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REPORT No. 24/16

PETITION 66-07

REPORT ON ADMISSIBILITY

SANTIAGO LEGUIZAMÓN ZAVÁN AND FAMILY
PARAGUAY

Approved by the Commission at its session No. 2065 held on April 15, 2016.
157th Regular Period of Sessions.

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ADMISSIBILITY
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I. SUMMARY

1. On January 19, 2007, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") received a petition from Inter American Press Association (hereinafter "the petitioner")¹, alleging the international responsibility of the State of Paraguay (hereinafter "the State," or "Paraguay," or "Paraguayan State") for the violation of rights enshrined in the American Convention on Human Rights (hereinafter "American Convention" or "Convention"), as a result of the murder of journalist Santiago Leguizamón Zaván (hereinafter "alleged victim").

2. The petitioner alleged that journalist Santiago Leguizamón, host of the afternoon radio program "Puertas Abiertas" on *Radio Mburucuyá* and correspondent for the newspaper *Noticias*, was murdered for reasons connected to his profession on April 26, 1991, in the border city of Pedro Juan Caballero, Paraguay. According to the petition, Leguizamón was murdered by hit men, after receiving earlier threats because of his constant criticism of local corruption and his reports on smuggling, drug trafficking, and money laundering on the Paraguay-Brazil border. The petitioner asserted that his investigations and reports "hinted at the alleged complicity between the crime bosses and President Andrés Rodríguez's administration," and that there was evidence to indicate that local businessmen and then-President Andrés Rodríguez (who died in 1997) were the masterminds behind the journalist's murder. The petitioner maintained that the investigation of these events was not conducted with due diligence, that the relatives of the alleged victim were prevented from taking part in the criminal proceedings for security reasons, and that to this day the crime has been met with total impunity.

3. Without prejudging the merits of the case, after examining the positions of the parties in light of the requirements established in Articles 46 and 47 of the Convention, the IACHR decided to declare the petition admissible for purposes of examining the alleged violation of the rights enshrined in Articles 4 (Right to Life) and 13 (Freedom of Thought and Expression), to the detriment of journalist Santiago Leguizamón Zaván. In addition, it decided to declare the petition admissible for purposes of examining the alleged violation of Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention, to the detriment of the relatives of Santiago Leguizamón Zaván, all in connection with Article 1.1 thereof, to the detriment of the alleged victim and his relatives. The Commission additionally decided to give notice to the parties of this Admissibility Report, and order its publication in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION

4. On January 19, 2007, the Commission received the petition and assigned it number 66-07. The petitioner submitted additional information on November 26, 2007, and June 20, 29, and 30, 2008. On September 7, 2010, the IACHR forwarded a copy of the pertinent parts to the State, giving it two months to present its observations, pursuant to Article 30.3 of its Rules of Procedure in force at the time. On November 4, 2010, the Paraguayan State requested a one-month extension to reply to the complaint, which the IACHR granted on December 1, 2010. On December 13, 2010, the Paraguayan State sent its reply, which was

¹ In a communication received on October 22, 2015, the widow of Santiago Leguizamón, Ana María Morra, appointed Dante Leguizamón Ariel Morra as a legal representative of the Leguizamón family in the present case.

forwarded to the petitioner on March 1, 2011. The State submitted additional information on February 7, 2011, which was forwarded to the petitioner on March 28, 2011.

5. On May 10, 2011 the petitioner requested an extension, which was granted. The petitioner presented its additional observations on September 30, 2011. As said observation was sent in English, the IACHR requested the petitioner to send it in Spanish. The information in Spanish was received on January 12, 2012. On March 27, 2012, the IACHR granted the State time to submit observations, and reiterated its request for observations on April 14, 2014. The State did not submit additional observations. On October 22, 2015, Ana María Morra, widow of Santiago Leguizamón, requested the Commission to continue the examination of the petition and dismissed any possibility of reaching a friendly settlement. On December 16, 2015 the Commission informed the parties that it terminated its intervention in the friendly settlement proceeding and that decided to continue with the processing of the petition.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

6. The petitioner alleged that Santiago Leguizamón Zaván was a seasoned journalist based in Pedro Juan Caballero, a city on the Brazilian border, in the Department of Amambay, Paraguay. At the time of the events in question, Leguizamón was working as a correspondent for the Asunción-based newspaper *Noticias*, and hosting the afternoon radio program “Puertas Abiertas” on *Radio Mburucuyá*, a small local station he founded in 1975. The petitioner indicated that Pedro Juan Caballero was a “lawless area,” plagued by corruption, violence, and crime. It explained that the journalist “made the radio the voice of the voiceless, with journalistic content that was extremely critical of the actions of the borderlands mafia.”

7. The petitioner stated that on April 26, 1991, while on his way to celebrate Journalists’ Day at a restaurant with his colleague Baldomero Cabral, Santiago Leguizamón was intercepted by a black Volkswagen Gol, from which three individuals shot and killed him with weapons of various calibers. According to the petition, the journalist was shot 21 times. This was reportedly—the petitioner asserted—the first murder of a journalist for reasons connected to his profession in post-dictatorship Paraguay.

8. One month before his murder, the newspaper *Noticias*, for which Leguizamón worked as a correspondent, published a series entitled “Organized Crime in Pedro Juan.” The articles disclosed the involvement of a businessman of Brazilian origin, known by the alias “El Turco,” in businesses tied to smuggling, drug trafficking, and corruption. According to the petitioner, the reports “hinted at the alleged complicity between the crime bosses and President Andrés Rodríguez’s administration,” and there was evidence to indicate that local businessmen and then-President Andrés Rodríguez were the masterminds behind the journalist’s murder.

9. According to the complaint, the direct perpetrators of Santiago Leguizamón’s murder are 4 Brazilian hit men, who—according to information provided by the Brazilian police—confessed to having committed the crime and said that they had been hired by a son of “El Turco’s” to carry it out. The petition states that “El Turco’s” son was a “godson of President Rodríguez’s, a military man who—following the coup of La Candelaria headed by Lino Oviedo in 1989—succeeded another military ruler, Alfredo Stroessner.”

10. The petitioner also explained that, at the time of the events, the journalist was in possession of “a compromising photograph” in which “the head of the Medellín Cartel, Pablo Escobar [sic] Gaviria, [was posing] with ‘El Turco’ and President Rodríguez.” It maintained that Santiago Leguizamón was going to reveal the photograph, along with other incriminating documents. It further alleged that, after his death, neither the photo nor the documents could be found.

11. It explained that President Andrés Rodríguez was criticized “for alleged ties to drug trafficking and suspicion about the origins of his wealth.” The petitioner indicated that Rodríguez had visited the town of Pedro Juan Caballero on February 14, 1991, two months before the journalist’s murder, for the inauguration of a hotel and casino owned by “El Turco.” On that occasion, the landless peasant movement had

held a protest demanding solutions of the president, and Leguizamón had reportedly “embraced their cause on his radio program and in his dispatches as a correspondent.” According to the petition, a witness reportedly heard the then-president of the Republic say. “Something has to be done about that guy.” The petitioner maintained that “with that, [the president] gave his consent for the worst.”

12. The petitioner indicated that the journalist had been receiving threats. It stated that Leguizamón had “told [his team] to be careful,” and that they should “be in a constant state of alert”; and in view of the threats, he had said that he “preferred physical death to ethical death.” The petitioner stated that the journalist’s wife and 4 children were living in the capital city because the border town of Pedro Juan Caballero was not safe.

13. The petitioner alleged that Santiago Leguizamón’s murder has gone unpunished. It stated that although the judicial investigation was opened on the day of his murder, it was carried out “superficially, in an obsolete manner, and with striking instances of negligence.” It maintained that the Paraguayan police acted negligently and failed to assist in the investigation in order to establish the facts of the case and detain the perpetrators. It asserted that a review of the court file by attorneys and journalists at the request of the Journalists Union of Paraguay revealed the basic and inexplicable clumsiness of the investigation from the very beginning and the multiple and suspicious loose ends that were never tied up; it was as if the authorities deliberately intended to allow the crime against Santiago Leguizamón to remain in absolute impunity, while his murderers roamed the streets in broad daylight.

14. According to the initial petition, more than 15 years after Santiago Leguizamón’s murder, the masterminds had been neither identified nor prosecuted. The petitioner also stated that, as of the filing date of the initial petition, the Paraguayan State had not made a formal request to Brazil for the prosecution of the alleged direct perpetrators, who were Brazilian nationals residing in Brazil. The petitioner stated that the victim’s relatives found out through the news media that the case had been shelved in 2002, but had never been given notice of that decision.

15. Later, and in response to the information provided by the State, the petitioner indicated that after making numerous inquiries to courts, prosecutors, and police authorities in Mato Grosso do Sul, Brazil, it determined that there had been no judicial action taken in that country with regard to the 4 Brazilians alleged to be the direct perpetrators of Santiago Leguizamón’s murder.

16. The petitioner maintained that the Paraguayan State is responsible for the violation of Articles 4, 13, 8, and 25 of the American Convention, to the detriment of journalist Santiago Leguizamón and his relatives.

B. Position of the State

17. The State argued that the petition should be declared inadmissible due to the failure to exhaust domestic judicial remedies in keeping with Article 46 of the American Convention and the absence of a colorable claim alleging violations of the rights enshrined in the American Convention.

18. The State indicated that “according to the court file, on April 26, 1991, journalist SANTIAGO LEGUIZAMON was the victim of the crime of murder on a public street in the city of Pedro Juan Caballero, having been shot 22 times. Immediately after the events, the judge and prosecutor on duty reported to the scene, and by means of Interlocutory Order No. 169 of April 26, 1991, the Court opened the investigation into the act and the identification of its perpetrator or perpetrators, accomplices, and accessories.” It added that the court case was assigned to the Criminal Trial Court No. 3 [*Juzgado en lo Penal de Liquidación y Sentencia*] of the Judicial District of Amambay. The State explained that this case was processed under the inquisitorial system in accordance with the 1890 Code of Criminal Procedure, in force when the murder was committed.

19. The State asserted that the judge amended the criminal investigation through a February 18, 1992 order to include fourteen suspects, all Brazilian nationals. It reported that the Court issued a pretrial detention order on April 29, 1992 to extradite the suspects from Brazil, if they were there. It indicated that on

September 21, 1992, the Court found all of the defendants to be in contempt of court. It stated that on September 26, 1997, the Court amended the investigation to include a Brazilian national and ordered his pretrial detention.

20. The State explained that on April 8, 1998, the criminal investigation was once again amended to include a Paraguayan citizen as one of the masterminds of the crime; however, on May 14, 1999, the trial court judge suspended the investigation without prejudice with respect to that person, as “it was not able to prove his participation.”

21. The State reported that 4 of the defendants had allegedly been killed in other acts of violence, and therefore ruled to close the criminal case against them. The case reportedly remained open with respect to 8 other individuals who were fugitives from justice.

22. The State additionally reported that on February 20, 2002, it ordered that official copies of the case file be forwarded to the Attorney General of the State in order for the case to be transferred to and tried in Brazil because, the State argues, Brazil prohibits the extradition of its citizens. It stated that in July 2006 the Court forwarded authenticated copies of the 17 volumes of the case file to the Public Ministry, which in turn sent them to Paraguay’s Foreign Ministry in order to forward them to the Public Ministry of Brazil. The State reported that the documents were returned because of problems with the translation, and that they were resent on February 27, 2009. According to the State, “Brazil’s Foreign Ministry acknowledged receipt of the note and accompanying records and confirmed that it had been forwarded to the Ministry of Justice for the necessary orders to be issued.”

23. Based on the above, the State indicated that “the domestic judicial remedies have still not been exhausted, because the defendants are fugitives from justice with warrants out for their arrest, and there is a formal request from the Paraguayan State for the Brazilian citizens involved in the case to be investigated in their country of origin.”

24. The State additionally maintained that the petitioners have failed to make a colorable claim that the State violated rights enshrined in the American Convention on Human Rights, given that: a) no agent of the State is accused of being involved in the journalist’s death; b) the State did not take actions to impede the journalist’s work, and c) the State has investigated the murder on its own initiative and prosecuted the suspects, within the limits of its jurisdiction.

25. Finally, in a subsequent communication, the State indicated that “In spite of the fact that the crime against journalist Santiago Leguizamón was committed on Paraguayan soil, the specific place is a land border area where there is free movement between the Paraguayan city of Pedro Juan Caballero and the Brazilian city of Ponta Pora.” The State indicated that, for those reasons, it would appear that the police investigations into the murder were opened in Brazil; however, the State had not verified whether an investigation into Santiago Leguizamón’s murder had in fact been opened in Brazil in 1991.

IV. COMPETENCE OF THE COMMISSION *RATIONE MATERIAE, RATIONE PERSONAE, RATIONE TEMPORIS, AND RATIONE LOCI*

A. Competence

26. In principle, according to Article 44 of the American Convention, the petitioner has standing to file petitions before the Commission. The alleged victim is an individual with respect to whom the State agreed to guarantee the rights enshrined in the American Convention as of the date on which it deposited its ratification instrument. Accordingly, and because the alleged violations reportedly took place in the territory of a State Party to the Convention, the IACHR concludes that it has jurisdiction *ratione personae, ratione loci, ratione temporis*, and *ratione materiae* to examine the petition.

B. Requirements for the Admissibility of the Petition

1. Exhaustion of domestic remedies

27. Article 46.1.a of the American Convention provides that for a petition alleging a violation of the Convention to be admissible, the petitioner must first have pursued and exhausted domestic remedies, in keeping with generally recognized principles of international law. This requirement is intended to allow national authorities to consider an alleged violation of a protected right and, when applicable, to give them the opportunity to correct it before it is heard and decided by an international body. Article 46.2 of the Convention provides that the rule on the exhaustion of domestic remedies does 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.

28. The precedents established by the Commission indicate that, with respect to crimes subject to prosecution on the State's own initiative, the State has the obligation to initiate and pursue the criminal proceedings and that, in such cases, that is the suitable process for establishing the facts, trying the perpetrators, and determining the appropriate penalties in these cases, in addition to making other appropriate means of reparation possible. Under the domestic law, the facts alleged by the petitioners in relation to Santiago Leguizamón Zaván's murder constitute an offense that must be investigated and prosecuted by the State on its own initiative.

29. The Commission observes that Leguizamón Zaván was murdered on April 26, 1991. Nearly twenty-five years have passed since the murder without the conclusion of an investigation establishing the facts of the case. The IACHR notes that, according to Article 46.2.c of the American Convention, one of the grounds for an exception to the exhaustion of domestic remedies requirement is the "unwarranted delay in rendering a final judgment under the aforementioned remedies." In the opinion of the Commission, the fact that the investigation remains open and unsolved at this point constitutes an unwarranted delay under the terms of Article 46.2.c of the Convention.

30. Therefore, the Commission concludes that the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention applies to this case.

2. Timeliness of the petition

31. In the complaint under examination, the IACHR has determined that the exceptions to the exhaustion of domestic remedies under Article 46.2.c of the American Convention are applicable. Article 32 of the Rules of Procedure of the Commission establishes that in cases where those exceptions are applicable, the petition must be filed within a reasonable period of time, as determined by the Commission. To this end, the Commission must consider the date on which the alleged violation of rights took place and the circumstances of each case.

32. The petition before the IACHR was received on January 19, 2007, Santiago Leguizamón Zaván was murdered in April 1991, and the investigation is reportedly ongoing to this day. Given the context and the specific circumstances of this case, the IACHR concludes that the petition was filed within a reasonable period of time, and that the requirement set forth in Article 32.2 of the IACHR's Rules of Procedure has been met.

3. Duplication of proceedings and international res judicata

33. The case file does not contain any information to indicate that the subject of the petition is pending in another international proceeding, or that it duplicates a petition previously decided by the IACHR or another international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

4. Colorable claim

34. For purposes of determining admissibility, the Inter-American Commission must decide whether the alleged facts amount to a violation of the rights enshrined in the American Convention pursuant to the requirements of Article 47.b, or whether the petition is “manifestly groundless” or “obviously out of order,” as described in Article 47.c. The criterion for examining admissibility differs from the one used to examine the merits, as the Commission only performs a *prima facie* evaluation to determine whether the petitioners establish the apparent or potential violation of a right guaranteed in the American Convention. This is a summary analysis that does not entail prejudgment or a preliminary opinion on the merits of the case.

35. Additionally, neither the American Convention nor the IACHR’s Rules of Procedure require petitioners to identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, although they may do so if they wish. It falls to the Commission, on the basis of the system’s jurisprudence, to determine in its reports on admissibility which provisions of the pertinent inter-American instruments are applicable, and the violation thereof may be established if the facts alleged are demonstrated with sufficient evidence.

36. The petitioner alleged that journalist Santiago Leguizamón, host of the afternoon radio program “Puertas Abiertas” on *Radio Mburucuyá* and correspondent for the newspaper *Noticias*, was murdered for reasons connected to his profession on April 26, 1991, in the border city of Pedro Juan Caballero, Paraguay. According to the petition, Leguizamón was murdered by hit men, after receiving prior threats because of his constant criticism of local corruption and his reports on smuggling, drug trafficking, and money laundering on the Paraguay-Brazil border. The petitioner maintained that his investigations and reports “hinted at the alleged complicity between the crime bosses and President Andrés Rodríguez’s administration,” and that there was evidence to indicate that local businessmen and then-President Andrés Rodríguez were the masterminds behind the journalist’s murder. The petitioner maintained that the investigation of these events was not conducted with due diligence, that the relatives of the alleged victim were prevented from taking part in the criminal proceedings for security reasons, and that to this day the crime has been met with total impunity.

37. The State, for its part, indicated that the petitioners have failed to make a colorable claim that the State violated rights enshrined in the American Convention on Human Rights, given that: a) no agent of the State is accused of being involved in the journalist’s death; b) the State did not take actions to impede the journalist’s work, and c) the State has investigated the murder on its own initiative and prosecuted the suspects, within the limits of its jurisdiction.

38. In view of the legal and factual elements presented by the parties and the nature of the matter brought before it, the Commission finds that, if proven, the petitioner’s allegations of State responsibility for the facts set forth in the petition could potentially constitute a violation of the right to a fair trial and the right to judicial protection contained in Articles 8 and 25 of the American Convention, to the detriment of the alleged victim’s relatives. In addition, it follows from the nature of the facts alleged in the petition that they could be violations of Article 5 of the American Convention, with respect to the relatives of the alleged victim. The Commission will examine the potential violation of these provisions in light of the general obligations enshrined in Article 1.1 of the Convention.

39. The Commission is also of the opinion that, if it proves to be true that there is evidence pointing to the participation and responsibility of criminal groups as masterminds of Santiago Leguizamón’s murder in complicity with then-President Andrés Rodríguez, that the murder was not investigated diligently, and that the motive was to silence the journalist’s work, there would be a violation of the right to life and the right to freedom of expression under Articles 4 and 13 of the American Convention, to the detriment of the alleged victim.

40. In conclusion, the IACHR finds that this petition is neither “manifestly groundless” nor “obviously out of order,” and therefore declares that the petitioner has met *prima facie* the requirements

established in Article 47.b. of the American Convention with respect to potential violations of Articles 4, 5, 8, 13, and 25 of the American Convention, in conjunction with Article 1.1 thereto, as detailed above.

V. CONCLUSIONS

41. The Inter-American Commission concludes that it is competent to hear and decide the merits of this case, and that the petition is admissible under Articles 46 and 47 of the American Convention. Based on the foregoing legal and factual considerations, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with respect to alleged violations of the rights protected under Articles 4, 5, 8, 25, and 13 of the American Convention, in relation to Article 1.1 thereto.

2. To provide notice of this decision to the parties, continue with the analysis of the merits of the case; 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 15nd day of the month of April, 2016.
(Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; José de Jesús Orozco Henríquez, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.