

REPORT N° 50/08¹
PETITION 298-07
ADMISSIBILITY
NESTOR JOSE UZCATEGUI *ET AL.*
VENEZUELA
July 24, 2008

I. SUMMARY

1. On March 14, 2007, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission", the "Commission" or "the IACHR") received a petition from the Committee of Relatives of the Victims of the Events of February-March 1989 (COFAVIC), the Center for Justice and International Law (CEJIL), and Mr. Carlos Ayala Corao (hereinafter "the petitioners"), in which they allege that the Bolivarian Republic of Venezuela (hereinafter "Venezuela," "the State" or "the Venezuelan State") violated the rights enshrined in Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), and 25 (judicial protection), to the detriment of Néstor José Uzcátegui; of the rights enshrined in Articles 5 (humane treatment), 8 (judicial guarantees), and 25 (judicial protection), to the detriment of the relatives of Nestor José Uzcátegui; and of the rights enshrined in Articles 5 (humane treatment) and 7 (personal liberty), to the detriment of Luís Uzcátegui and Carlos Eduardo Uzcátegui, all pursuant to Article 1.1 of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention").

2. The petitioners indicated that on January 1, 2001, the youth Néstor José Uzcátegui was extrajudicially executed by police officials from Falcón State when he was defenseless and offered no resistance. According to the petitioners, the officials forcefully entered his residence, shot him in front of other members of the family, and savagely beat his brothers Luís Uzcátegui and Carlos Eduardo Uzcátegui, then a minor, who were detained without a court order until the following day. Additionally, they indicate that Mr. Luís Uzcátegui –who is a beneficiary of precautionary measures– has been the victim of a series of violations since the same day of the death of his brother, including illegal and arbitrary detentions, torture, physical maltreatment, death threats, illegal searches of his residence, and even the processing of criminal charges for aggravated libel, all as a consequence of his activity in the search for justice. The petitioners added that the investigations related to the death of Néstor José, as well as the alleged acts of aggression, threats, and harassment against Luís Uzcátegui, have been in the investigative stage since January 2, 2001, and December 12, 2002, respectively, without any one being charged to date and without the competent authorities having diligently encouraged the investigations. With respect to compliance with the petition's admissibility requirements, the petitioners indicated that the exception of Article 46.2.c of the American Convention is applicable since there has been an unjustified delay in the investigations.

3. At the date this report was approved, the Venezuelan State had not responded to this petition.

4. After examining the information available in light of the admissibility requirements established in Articles 46 and 47 of the American Convention, the Commission concluded that it is competent to hear the complaint and that the petition is admissible for the alleged violation of the rights enshrined in Articles 4, 5, 7, 8, and 25 of the American Convention, in connection with the obligations established in Article 1.1 of the same Convention, to the detriment of persons described in the section on the nature of the alleged violations, *infra* paragraphs 60 – 63. Additionally, based on the *iura novit curia* principle, the IACHR concluded that the described facts may also constitute violations of the rights enshrined in Articles 11, 13, and 19 of the American Convention, as well as of the obligation established in Article 2 of the same

¹ In accordance with Article 17.2 of the Commission's Rules of Procedure, the Commissioner Luz Patricia Mejía, a Venezuelan national, did not participate in the discussion or in the decision adopted of this case.

Convention. Consequently, the Commission decided to notify the parties, make public this admissibility report, and include it in the annual report.

II. PROCEEDINGS BEFORE THE COMMISSION

5. The Commission received the initial petition on March 14, 2007, which was registered with number 298-07.

6. On July 16, 2007, the Commission forwarded the pertinent parts of the petition to the State and, pursuant to its Rules of Procedure, requested it to submit its response within a period of two months.

7. On February 14, 2008, the Commission received a communication from the petitioners requesting the application of Article 37.3 of its Rules of Procedure.

8. At the date this report was approved, the Venezuelan State had not responded to the petition.

III. PROCESSING OF PRECAUTIONARY AND PROVISIONAL MEASURES

9. On October 18, 2002, the IACHR granted precautionary measures on behalf of Luís Enrique Uzcátegui Jiménez, brother of Néstor José Uzcátegui Jiménez, who was killed on January 1, 2001, allegedly by Falcón State police agents. According to the request submitted to the IACHR, Mr. Uzcátegui was the victim of death threats for having organized a committee of relatives of victims of alleged extrajudicial executions by members of the police. In light of new incidents that aggravated the beneficiary's security situation and of the fact that the State did not take the necessary measures to comply with the precautionary measures, on November 25, 2002, the IACHR asked the Inter-American Court of Human Rights to order the adoption of provisional measures. The Court granted that request on November 27, 2002.

10. The Court has been ratifying the measures through judgments on February 20, 2003, December 2, 2003, and May 4, 2005. The provisional measures remain in force.

IV. POSITION OF THE PARTIES

A. Position of the petitioners

11. By way of context, the petitioners indicated that the practice of illegal and arbitrary detentions, followed by extrajudicial executions, is a phenomenon that has been denounced in Venezuela for more than a decade. The petitioners also indicated that said practice follows a pattern characterized by the fact that most of the deaths are attributed to the regional police forces, the victims are young men from lower social strata, there is a very high rate of impunity, and the acts are carried out following a *modus operandi*.

12. According to the petitioners, this *modus operandi* is summarized as: i) the presentation of the incident as a confrontation; ii) the alteration of the scene; iii) the transfer of the wounded by the same agents who assaulted the victim; iv) the abandonment of the victim –most often lifeless– at a public hospital; v) the use of official uniforms, weapons, and equipment; vi) the public discrediting or criminalization of the victim by claiming said person resisted the authorities or had criminal and/or police records; and vii) intimidation, threats, and even the murder of the eyewitnesses and the victim's relatives.

13. Concerning the issue of extrajudicial executions in Falcón State, the place where the incidents occurred in this case, the petitioners indicate that in the year 2000 there was a restructuring of the police force from this state and elite police units were created. According

to the petitioners, since then “the red pages” of the regional newspapers began to report a significant increase in the number of persons who lost their lives “in confrontations with the police.”

14. The petitioners allege that the facts of this case respond to the systematic practice of extrajudicial executions by para-police groups in Venezuela and to the described *modus operandi*. The petitioners described the facts as follows.

15. The petitioners indicated that on January 1, 2001, the youth Néstor José Uzcátegui, 21 years old, was in his residence when, at 12:30 mid-day, 7 officials from the police investigation unit and another group belonging to Falcón State police forces (hereinafter “FSPF”), forcefully entered said residence, attacking the persons present and destroying the property in the place, while other heavily armed police surrounded the residence. As indicated by the petitioners, the officials did not explain their actions or provide a search or arrest warrant; they only said they were looking for Néstor José.

16. The petitioners mentioned that the police officials searched the entire residence and, after they came to the bathroom and found Néstor José, they began to shoot him in front of his relatives. They also indicated that the alleged victim came out of the bathroom bleeding and hugging his niece to impede the officials to kill him. As he realized that the officials were going to continue shooting, he left his niece and hugged his dog despite what the officials continued shooting while some of the officials kept removing the relatives from the residence. They added that a few minutes later four officials came outside dragging the lifeless body of Néstor José, which was “thrown” in a truck. They indicated that the cause of death was acute anemia due to a visceral rupture caused by gunshot wounds in the thorax.

17. According to the petitioners, the police sustain the version of the confrontation between Néstor José and the officials that entered his residence. In turn, the petitioners stressed that, according to Luís Uzcátegui, Néstor José was threatened to death by one of the Falcón State police agents because of a personal problem this youth had had with the agent’s son and that, after having executed him, the police officials put a weapon in Néstor José’s hand.

18. Furthermore, as the petitioner stated, that day and the next, the brothers Néstor José, Carlos Eduardo, and Luís Uzcátegui, who were at the residence at the time of the facts, were detained. The petitioners also stated that Luís Uzcátegui was interrogated by an official at the police headquarters, who asked him whether he was capable of identifying the police officials that participated in the operation resulting in the death of his brother, to which he replied he could. The petitioners also pointed out that during this interrogation Luís Uzcátegui was made to sit with his head between his legs and when he responded to the previous question, another official ordered him to raise his head and asked him whether he was sure. According to the petitioners, at this moment Luís Uzcátegui recognized them, he saw them with their blood soaked uniforms, and he accused them of being the officials that murdered his brother.

19. The petitioners pointed out that afterwards Luís Uzcátegui was put in a truck when two of his uncles appeared who asked the officials where they were taking him. They replied that they were going to the Scientific, Criminal and Criminalistic Investigations Force (CICPC) in order for him to give a statement. They indicated that a hood was placed over Luís Uzcátegui’s head while he was taken to a remote place. Then Luís Uzcátegui told the officials that his uncles already knew of the transfer and that they couldn’t do anything to him since they would be held responsible. The petitioners added that Luís Uzcátegui was returned to the police headquarters, where he was held until the following day.

20. With respect to the domestic proceedings relating to the clarification of the facts, the petitioners indicated that a complaint was filed on January 1, 2001, which was subsequently ratified. They also indicated that the Public Ministry initiated an investigation on January 2, 2001, and that after a series of steps the proceedings were still in the investigative stage, with the last action dated on October 24, 2005.

21. The petitioners gave a long chronological description of each one of the actions included in the investigation undertaken by the Public Ministry, meriting special attention that:

On June 14, 2001, the Second Prosecutorial Unit of the Public Ministry of Falcón State (hereinafter the "Second Prosecutorial Unit") requested the Technical Division of the Investigative Police of the State (hereinafter "the CTPJ") to take statements from the identified officials as protagonists of the events and carry out the planimetric survey of the scene of the events, technical expert assessment of the vehicle or vehicles used in the procedure, ballistic tests, inquiries in the neighborhood and area surrounding the place of the events to identify possible eyewitnesses, and any other necessary step to clarify the facts.

On August 1, 2001, the CTPJ requested to carry out ballistic tests.

On September 19, 2001, the CTPJ requested the FSPF commander to order the presence of the identified police officials as well as the turning over of the weapons and vehicles relating to the event under investigation.

On September 26, 2001, the aforementioned officials –identified as Nelson Gregorio Saavedra, Valdemar Rodríguez, and Juan Alexander Rojas Reyes- appeared before the CTPJ to make statements.

On October 17, 2001, the Superior Prosecutorial Unit of Falcón State informed Mr. Luís Uzcátegui that the case was transferred to the Seventh Prosecutorial Unit of the Public Ministry of Falcón State (hereinafter "The Seventh Prosecutorial Unit").

On November 5, 2001, the CTPJ was requested to carry out the planimetric survey.

On February 21, 2002, the Seventh Prosecutorial Unit requested the CICPC to undertake a series of steps, including the ballistic tests, the planimetric survey, the interview of the citizen María Antonia Toyo so "she could attest to the conduct employed by the murder victim," and any other step that would contribute to the clarification of the facts.

On February 25, 2002, the CTPJ requested to carry out the planimetric survey.

On January 30, 2003, the Seventh Prosecutorial Unit requested the chief police inspector of the CICPC to urgently indicate whether the steps were carried out from February 21, 2002.

On June 17, 2003, the subdelegation of the CTPJ reported that the person in charge of the department of recovered objects indicated, "The firearm had been transferred to the weapons department of [this] police agency in the city of Caracas."

On September 12, 2003, the Seventh Prosecutorial Unit transferred the case to the CTPJ so it would carry out ballistic tests on the gathered elements of criminal interest, a study tracing the trajectory of the bullets, and a study of the control mechanisms at the armory where the officials were assigned.

On September 16, 2003, the CTPJ forwarded an order to the FSPF through which they were informed that the Seventh Prosecutorial Unit had ordered to carry out said steps. On September 17, 2003, the CTPJ requested the Criminal Section to carry out the same steps.

On December 23, 2004, the Seventh Prosecutorial Unit requested CICPC to carry out ballistics tests on the weapon and pieces of lead recovered through an on-site inspection on January 1, 2001, as well as the ballistics tests on the weapons used by the officials Juan Rojas and Valdemar Rodríguez on the same date.

On June 9, 2005, the Seventh Prosecutorial Unit, "in order to conclude the investigation," requested the CICPC to order the following complementary steps: reconstruction of the facts and the planimetric survey of the scene of the crime, summons of the owner or responsible party for the residence where the incidents took place, summons of the seven members allegedly participating in the operation to provide witness testimony, summons of some of the relatives of Néstor José Uzcátegui to provide witness testimony, and photographs of the place of the events.

On October 4, 2005, an official belonging to the subdelegation of the CICPC reported that the evidence was withdrawn from the Department of Recovered Objects, where two bags containing evidence were found. One bag was found in good condition and the other in poor condition and the evidence was wet. He also indicated that much of the evidence was on the floor of the warehouse with the packages compressed. As a result, the evidence was removed from the warehouse, when the minimal conditions for protection were not met given the water filter on the roof.

On October 11, 2005, the Seventh Prosecutorial Unit made official record of having conducted an on-site inspection of the warehouse, finding a deteriorated bag with wet and compressed evidence, the state of which impeded the respective visualization and identification.

On October 24, 2005, the chief of the CICPC subdelegation reported, "The exact location of the evidence is unknown due to the impossibility of individually identifying the elements."

22. According to the petitioners, the summarized steps are the latest actions recorded in the file held at the Seventh Prosecutorial Unit.

23. Additionally, they indicated that Luís Uzcátegui has submitted his statements on the case and has publicly spoken out against the State's inactivity in the investigations in the regional newspapers "La Mañana" and "El Falconiano" as well as before the Commission of Social Affairs and Citizen Participation of the Regional Legislative Council of Falcón State, the Public Ministry of Falcón State, and the Legislative Assembly of the same State.

24. The petitioners added that, as a result of the activity undertaken by Luís Uzcátegui with respect to the death of his brother, he had been affected in his personal integrity and liberty, especially through a series of illegal and arbitrary detentions, alleged acts of torture, and physical aggression, as well as alleged threats to his life and other forms of harassment and intimidation, a situation resulting in him being granted precautionary and provisional measures by the Inter-American Commission and Court, respectively.

25. The petitioners provided an extensive description of these events to the detriment of Luís Uzcátegui, including:

On March 15, 2001, FSPF officials searched Mr. Luis Uzcátegui's home without a court order. The officials knocked down the door and slapped Mr. Uzcátegui's younger brother, a minor, Carlos Eduardo Uzcátegui, while telling him: "Tell your brother to stop speaking out against us, or we will do to him just what we did to your other brother."

On September 10, 2001, Mr. Luís Uzcátegui began to receive anonymous telephone calls at his bedroom telephone as well as at his place of work in the Regional Legislative Council of Falcón State. On the first call to his home, a male voice warned him: "Retire

while there's still time or pay (sic) the consequences." On the second call to his home, another male voice warned his younger brother: "Tell your brother to stop issuing statements or the same thing will happen to him as happened to your brother."

On April 9, 2002, Mr. Luís Uzcátegui left work and at the entrance of his home he noticed the presence of 5 FSPF officials. Consequently, he decided not to enter his home and passed by. Later, he received a call from his secretary, who told him: "Luís, the landlady of the residence where you live called to warn you that they are waiting for you, that they are looking for you, and not to arrest you, but to kill you." The officials searched Mr. Uzcátegui's room, without any court order, in search of an alleged weapon.

On April 13, 2002, FSPF officials in civilian clothes searched Mr. Uzcátegui's family home, without a court order, in search of Mr. Luís Uzcátegui. They also damaged property.

On September 6, 2002, as he was leaving a local store, Mr. Luís Uzcátegui was intercepted by 2 uniformed FSPF officials who were in a patrol car. After requesting Mr. Luís Uzcátegui for identification, they told him they were going to detain him. Mr. Uzcátegui pulled out a copy of the Constitution he carried in his pocket and showed them he could not be detained without a court order. Consequently, one of the officials yanked the Constitution from him and threw it on the ground, proceeding to handcuff him and put him in the patrol car. Afterwards, Mr. Uzcátegui was abandoned in an unpopulated sector where they slapped him and said: "If you open your mouth, you already know what will happen to you."

On June 2, 2003, Mr. Luís Uzcátegui received an anonymous note written with letters cut out from newspapers, with the following text: "You're a dead man Uzcátegui we have warned you stop denouncing the commander, you have the sign of death on your forehead."

On March 14, 2003, four threatening phone calls were received at the home of Mr. Luís Uzcátegui's family.²

On February 29, 2004, Mr. Luís Uzcátegui was illegally detained by alleged officials from the Department of Intelligence Security and Prevention (DISIP), who irregularly entered his home at two in the morning. The aggressors, who were heavily armed and had their faces concealed by ski masks, warned him "to turn himself in." Mr. Uzcátegui, in order to keep them from harming his sister, "turned himself in" and subsequently was beaten and threatened with expressions like: "You're not going to save yourself from this" and "Let's kill this bastard right now." On said occasion, he was transferred in a vehicle to an unknown place where he was tortured, threatened with death, and remained detained for 17 days. These facts were described by the regional newspaper "Nuevo Día" on March 26, 2004.

Afterwards, due to the lack of protection by the State, Mr. Luís Uzcátegui decided to move to Anzoátegui State where his father resides, with the purpose of trying to start a new life in this region. Consequently, Mr. Uzcátegui had to quit his job and his studies in Falcón State.

26. With respect to the investigations carried out domestically on these facts, the petitioners indicated that on December 2, 2002, a "summary investigation" was initiated before the First Prosecutorial Unit of the Public Ministry of Falcón State (hereinafter "the First Prosecutorial Unit"), throughout which Mr. Luís Uzcátegui has continued to report the threats, aggression, and harassment against him.

² According to the description, the contents of the calls included: "Tell him we're going to kill him for attacking the government, that we're going to find where he hid himself [...]. Talk with your relative, the obstacle Luís Uzcátegui. Tell him to get out of our way or pay the consequences. If he keeps denouncing the Falcón police, we're going to get him where it hurts the most [...]. Now that you don't want to give me the location of your relative give him (sic) this message: We're going to find where he's hid himself and we're going to kill him. His days are numbered [...]. I'm going to give you a message to get to him: Tell him his days are numbered, that no one will be able to save him from the hell that awaits him."

27. The petitioners compiled a list of the actions undertaken by the authorities in charge of this investigation, among which the following stand out:

From December 2002 to December 2003 Mr. Luís Uzcátegui and officials from the Office of the Human Rights Ombudsman from Falcón State were summoned.

On December 23, 2004, the CICPC was asked to carry out the following steps: the summons of Luís Uzcátegui to expand his statement; the summons of persons he indicated were eyewitnesses of the incidents; official notice to the police headquarters to forward a chart identifying all the officials working in the city of El Coro, with their respective photos; the summons of additional witnesses; and the summons of members of the Uzcátegui family who were eyewitnesses of the alleged search without a court order.

On January 21, 2005, Mr. Luís Uzcátegui was interviewed.

On February 16, 2005, and March 21, 2005, the request of December 23, 2004, was ratified.

On September 8, 2005, three persons, who were eyewitnesses, received summons.

On September 9, 2005, "a hearing took place" for Mr. Uzcátegui on which he expressed he would provide the names of the officials who had assaulted him.

On October 5, 2005, the CICPC was requested to summon the officials identified by Mr. Uzcátegui in order for them to provide statements.

On November 9, 2005, the relatives of Mr. Uzcátegui appeared in court as eyewitnesses of some of the threats.

On this same date, the representative of the First Prosecutorial Unit went to the CICPC headquarters, with an attorney from COFAVIC, with the purpose of requesting the results of the steps previously required. The agent that assisted them indicated that steps requested by the Public Ministry had not been performed.

28. The petitioners also indicated that on February 7, 2003, the FSPF commanding general filed a complaint against Mr. Luís Uzcátegui before the First Trial Court of the Criminal Circuit Court of Falcón State. The complaint is based on the alleged commission of the crime of aggravated and ongoing defamation pursuant to Articles 444 and 99 of the Venezuelan Criminal Code. As indicated, the complaint is based on statements made by Mr. Uzcátegui before the regional mass media concerning the alleged existence of para-police groups in Falcón State. The petitioners indicated that up to now domestic courts had not issued any decision on the complaint. They stressed that, even though oral and public proceedings had been ordered since April 2005, they were consecutively postponed for over a year with no grounds justifying the legal uncertainty faced by Mr. Uzcátegui.

29. As regards matters of admissibility, the petitioners alleged that the exception to the requirement of exhausting domestic remedies enshrined in Article 46.2.c of the American Convention is applicable in this case, due to the delay in the investigations and the unjustified postponement in the decision. Consequently, the petitioners indicated that the requirement of presentation of the petition within a period of six months from the notification of the definitive decision –as established in Article 46.1.b of the American Convention- should also not be applied.

30. Lastly, the petitioners alleged that the mentioned acts constituted: i) violation of the rights protected by Articles 4, 5, 7, 8, and 25 of the American Convention, to the detriment of Néstor José Uzcátegui; ii) violation of the rights protected by Articles 5 and 7 of the Convention, to the detriment of Luís Uzcátegui and Carlos Eduardo Uzcátegui; and iii) violation of the rights

protected by Articles 5, 8, and 25 of the American Convention, to the detriment of the relatives of Néstor José Uzcátegui, all in relation to the obligations enshrined in Article 1.1 of the Convention.

B. Position of the State

31. As indicated in *supra* paragraphs 3 and 8, at the date this report was approved, the State had not responded to the petition.

V. LEGAL ANALYSIS

A. Jurisdiction

1. The Commission's jurisdiction *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

32. The petitioners are authorized by Article 44 of the Convention to file complaints on behalf of the alleged victims. In this case, the alleged victims were under the jurisdiction of the Venezuelan State at the time of the alleged incidents. In turn, the State of Venezuela ratified the American Convention on August 9, 1977. Consequently, the Commission has jurisdiction *ratione personae* to examine the petition.

33. The Commission has jurisdiction *ratione loci* to hear the petition, in that there are alleged violations of rights protected under the American Convention that would have taken place within the territory of a State Party to that treaty.

34. Furthermore, the Commission has jurisdiction *ratione temporis* in that the obligation to respect and guarantee the rights protected under the American Convention were already in effect for the State on the date on which the events alleged in the petition would have occurred.

35. Finally, the Commission has jurisdiction *ratione materiae*, because the petition claims alleged violations of human rights protected under the American Convention.

2. Exhaustion of domestic remedies

36. Article 46.1.a of the American Convention provides that, for a complaint submitted to the Inter-American Commission to be admissible in conformity with 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 enable the national authorities to examine an alleged violation of a protected right and, if appropriate, to settle it before it is reviewed by an international body.

37. The requirement of prior exhaustion of domestic remedies is applicable when in the national system there is recourse effectively available, which is appropriate and effective to remedy the alleged violation. In this respect, Article 46.2 specifies that the requirement is not applicable if the domestic legislation of the state concerned does not afford due process of law for the protection of the right allegedly violated, if the alleged victim did not have access to the remedies under domestic law, or if there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. Under the provisions of Article 31 of the Commission's Rules of Procedure, when the petitioner invokes one of these exceptions to the rule, it shall be up to the State to demonstrate that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

38. According to the principles of international law as reflected in the precedents established by the Inter-American Commission and Court, it may first be noted that the State in question may expressly or tacitly waive the invocation of this rule.³ Second, in order to be considered timely,

3 IACHR Report N° 69/05, Iván Eladio Torres, Petition 960/03, Admissibility, Argentina, October 13, 2005, para. 42; I/A Court H.R., Ximenes Lopes Case. Preliminary Objections. Judgment of November 30, 2005. Series C No. 139, para.

the objection that domestic remedies have not been exhausted must be raised during the first stages of the proceeding before the Commission; otherwise, it will be presumed that the interested State has tacitly waived its use.⁴ Finally, as to the burden of proof applicable in the matter, the State that alleges non-exhaustion of domestic remedies must indicate which remedies should have been exhausted, as well as provide evidence of their effectiveness.⁵

39. As indicated in *supra* paragraph 31, the Venezuelan State did not respond to this petition and, in this respect, tacitly waived the claim that domestic remedies had not been exhausted. In turn, the petitioners alleged that this case has had an unjustified delay in the criminal investigations and, as a result, the exhaustion of domestic remedies should not be required.

40. The Commission observes that the petitioners have described a series of facts of distinct nature and/or persons involved. As a result, an analysis of the exhaustion of domestic remedies needs to be carried out separately in accordance with the following structure: i) the facts surrounding the death of Néstor José Uzcátegui; ii) the alleged acts of aggression, death threats, and harassment against Luís Uzcátegui; and iii) the criminal proceedings for the aggravated defamation filed against Luís Uzcátegui.

a. With respect to the facts surrounding the death of Néstor José Uzcátegui

41. As indicated by the Commission, in order to analyze compliance with the requirement of exhaustion of domestic remedies, the appropriate remedy to be exhausted must be determined in accordance with the circumstances of the case, this being understood to mean such a remedy that may restore the legal rights violated.⁶ In cases of alleged arbitrary deprivations of the right to life, the appropriate remedy is the investigation and criminal proceeding filed and encouraged by the State, *ex officio*, to identify and punish the responsible parties.⁷

42. With respect to the unjustified delay, the Commission evaluates the circumstances and conducts a case-by-case analysis to determine whether an undue delay occurred. As a general rule, the Commission determines that “a criminal investigation should be carried out promptly to protect the interests of the victims and to preserve evidence [...]”.⁸ To determine whether an investigation has been carried out “promptly,” the Commission takes into account a number of factors, such as the time passed since the crime was committed, whether the investigation has moved beyond the preliminary stage, the measures adopted by the authorities, and the complexity of the case.⁹

43. With respect to the available information, even though a criminal investigation began as a consequence of the death of Néstor José Uzcátegui, domestic investigations have not yet gone

5; I/A Court H.R., *Moiwana Community Case*. Judgment of June 15, 2005. Series C No. 124, para. 49; and I/A Court H.R., *Case of the Serrano Cruz Sisters*. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 135.

4 I/A Court H.R., *Mayagna (Sumo) Awas Tingni Community Case*. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, para. 53; I/A Court H.R., *Castillo Petruzzi et al. Case*. Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 56; and I/A Court H.R., *Loayza Tamayo Case*. Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, para. 40. The Commission and the Court have established that “[t]he first stages of the proceeding” should be understood as “the stage of admissibility of the procedure before the Commission, that is, before any consideration of the merits [...]”. See, for example, IACHR Report N° 71/05, *Ever de Jesús Montero Mindiola*, Petition 543/04, Admissibility, Colombia, October 13, 2005, that cites I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107, para. 81.

5 IACHR Report N° 32/05, *Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS*, Petition 642/03, Admissibility, Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., *Mayagna (Sumo) Awas Tingni Community Case*. Preliminary Objections, *supra* note 3, para. 53; I/A Court H.R., *Durand and Ugarte Case*. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33; and I/A Court H.R., *Cantoral Benavides Case*. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

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

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

8 IACHR, Report No. 16/02, *Sevellón García c. Honduras*, Petition 12.331, Admissibility, para. 31, February 27, 2002.

9 IACHR, Report No. 130/99, *Víctor Manuel Oropeza*, Petition 11.740, Mexico, paras. 30-32.

beyond the preliminary investigation stage after more than seven years since the events occurred.

44. Moreover, the IACHR observes that the last action filed in the case was on October 24, 2005. Furthermore, on this date, many steps repeatedly requested by the Seventh Prosecutorial Unit had yet to be performed, specifically the reconstruction of the facts, the planimetric survey, and ballistics and trajectory analysis.

45. The Commission also notes that significant perspectives of effectiveness do not exist in the investigation of Néstor José's death, since even the officials in charge of the investigation recognized that the wet and poor state of the evidence made impossible their identification and study, due to having remained for so long in an evidence warehouse without the basic conditions of preservation and conservation. Additionally, the Commission considers that the case does not have special complexity, given that it concerns a single victim¹⁰ executed in circumstances in which the police officials participating in the procedure were fully identified.¹¹

46. The Venezuelan State did not challenge the petitioners' description of how the investigation has been conducted. The State also did present arguments to justify the delay in the progress of the investigations. Therefore, the Commission considers that the State did not satisfy the burden of proof on the effectiveness of the domestic remedies when the petitioner alleges some of the exceptions of Article 46.2 of the Convention.

47. Finally, the file demonstrates Mr. Luís Uzcátegui, in representation of his family, has participated actively in this case, requesting steps to be taken and denouncing the delay in carrying out the investigation. In this sense, the Commission deems that the alleged victim's relatives have carried out the actions within their reach in the search for justice in the framework of an investigation to be undertaken by the State on its own motion.

48. The Commission considers that the aforementioned elements are sufficient to conclude that there has been an unjustified delay in the criminal investigation of the facts surrounding Néstor José Uzcátegui's death. The petitioners are therefore exempted from the requirement of exhausting the domestic remedies, as established in Article 46.2.c of the Convention.

b. With respect to the alleged acts of aggression, death threats, and harassment against Luís Uzcátegui

49. According to the available information, on December 2, 2002, an investigation was initiated on the threats and acts of harassment denounced by Mr. Luís Uzcátegui, including the alleged arbitrary and illegal detentions and searches. Since then the Commission has observed that other similar acts have occurred and, as indicated by the petitioners and not challenged by the State, were denounced within the framework of the aforementioned investigation. As regards the file on the petition as well as the follow-up undertaken by the IACHR on the provisional measures on behalf of Luís Uzcátegui, the investigations still remain in the preliminary stage and have not even identified or charged the possible responsible parties.

50. As regards the description by the petitioners, the investigation has been at a standstill since November 9, 2005, date on which a CICPC official indicated to a representative of one of the petitioning organizations that there are still no results from the investigations required by the First Prosecutorial Unit at the end of 2004.

51. The State did not submit allegations on the possible complexity of the investigation, which would not seem to be particularly difficult since there are eyewitnesses for many of the acts and Mr. Luís Uzcátegui has identified his alleged aggressors on the different occasions he made statements. In any case, as mentioned in the previous paragraph, the reason for the delay does not seem to be the complexity of the case, rather to the contrary the alleged lack of diligence by the authorities in charge of the investigation.

10 I/A Court H.R., Case Baldeón García. Judgment of April 6, 2006. Series C No. 147, para. 152.

11 IACHR, Report No. 23/07, Eduardo José Landaeta Mejías, et al., Petition 435-2005, Admissibility, para. 45, March 9, 2007.

52. The Commission also stresses that the facts analyzed in this section should be officially investigated by the State, which has known of these incidents through the complaints filed by Mr. Uzcátegui and the provisional measures granted on his behalf by the Inter-American Court of Human Rights, as threats against the life of the alleged victim and other forms of aggression and harassment by State agents. The duty of the State to officially investigate is especially relevant in this case, which has an order from said Court to adopt the necessary measures to clarify the acts and punish the responsible parties.

53. Based on the foregoing, the Commission concludes that with respect to the acts against Luís Uzcátegui, there has also been an unjustified delay in the decision and, therefore, in light of Article 46.2.c of the Convention, the petitioners are exempted from exhausting the domestic remedies.

c. With Respect to the Criminal Proceedings for Aggravated Defamation Filed against Luís Uzcátegui

54. According to available information, the proceedings for aggravated defamation filed against Luís Uzcátegui, which the petitioners consider to be a form of “judicial harassment,” have been in course since February 7, 2003 (with oral proceedings having been ordered since April 2005, though up to now they have not been completed). The petitioners alleged that there are no grounds sustaining the situation of “legal uncertainty” faced by the alleged victim as a consequence of the aforementioned process. In turn, by not giving a response to the petition, the State did not challenge these acts.

55. Bearing in mind the foregoing, the IACHR considers that the three years without having conducted the oral and public proceedings (and therefore not having a definitive decision in the criminal case against Mr. Luís Uzcátegui), in addition to the fact that the State did not give any grounds for the aforementioned delay, are sufficient elements to consider that there was an unjustified delay in the decision with respect to this fact and, as a result, Article 46.2.c of the Convention should be applied.

56. The Commission reiterates that invoking the exceptions to the prior exhaustion requirement of Article 46.2 of the Convention is closely linked to the determination of the possible violations of certain rights established therein, such as the guarantees of access to justice. Nonetheless, Article 46.2 of the American Convention, by its nature and purpose, is a rule that stands autonomously from the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the rule of prior exhaustion of domestic remedies provided for in said provision are applicable to the case in question should be made prior to and separate from the analysis of the merits, since it depends on a different standard of appreciation from that used to determine violations of Articles 8, and 25 of the Convention. It should be clarified that the causes and effects that have impeded the exhaustion of domestic remedies in this case will be analyzed, as relevant, in the Report the Commission adopts on the merits of the dispute, to determine if violations of the American Convention have indeed taken place.

3. Deadline for lodging the petition

57. Article 46.1.b of the Convention establishes that for a petition to be admissible, it must be submitted within a period of six months from the date on which the interested party was notified of the final judgment that exhausted the domestic jurisdiction. This rule has no application when the Commission deems there to be some of the exceptions to the exhaustion of domestic remedies enshrined in Article 46.2 of the Convention. In these cases, the Commission must determine if the petition was submitted in a reasonable period of time pursuant to Article 32 of its Rules of Procedure.

58. The Commission observes that the facts in this case began to occur on January 1, 2001, existing ongoing grounds domestically with respect to each one of these facts. The petition was submitted on March 14, 2007, and the petitioners alleged the existence of an unjustified delay

in the respective cases, which implies that since the incidents occurred the petitioners have expected to obtain justice and reparations for these incidents. The Commission considers that the foregoing elements are sufficient to conclude that the petition was submitted within a reasonable period of time.

4. Duplication of proceedings and *res judicata*

59. Article 46.1.c of the Convention provides that for a petition to be admissible, “the subject of the petition or communication is not pending in another international proceeding for settlement.” Article 47.d of the Convention provides that the Commission will not admit a petition that is “substantially the same as one previously studied by the Commission or by another international organization.” Neither party in this case has suggested that any of the two grounds for inadmissibility is present in this case, nor can that be inferred from the case.

5. Nature of the alleged violations

60. At the admissibility stage, the Commission must decide whether the presented facts could tend to establish a human rights violation, as stipulated in Article 47.b of the American Convention, and whether the petition is “manifestly groundless” or is “obviously out of order,” as stated in section (c) of that same Article. The standard by which to assess those issues is different from the one needed to decide the merits of a petition. The Commission must conduct a *prima facie* evaluation, not to establish the existence of a violation but rather to examine whether the petition states facts that tend to establish a potential or apparent violation of a right guaranteed by the Convention. That examination is a summary analysis that does not imply any prejudgment or advance opinion on the merits.¹²

61. The Commission considers that, if true, the facts related to the death of Néstor José Uzcátegui could tend to establish a violation, to his detriment, of the rights enshrined in Articles 4 and 5 of the American Convention with respect to the obligations established in Article 1.1 of the same Convention. Moreover, the IACHR deems that the circumstances in which said death would have occurred, as well as the supposed lack of investigation and punishment of the responsible parties could tend to establish a violation to the rights enshrined in Articles 5, 8, and 25 of the American Convention with respect to the obligations established in Article 1.1 of the Convention, to the detriment of the relatives of Néstor José Uzcátegui.

62. The Commission also considers that the alleged physical aggression and the supposedly illegal and arbitrary detentions to the detriment of Luís Uzcátegui and Carlos Eduardo Uzcátegui, the alleged death threats to the detriment of Luís Uzcátegui, and the alleged lack of investigation of these incidents, could tend to establish a violation to the rights enshrined in Articles 5, 7, 8, and 25 of the American Convention with respect to the obligations established in Article 1.1 of the Convention.

63. Finally, and even though it was not alleged by the petitioners, based on the principle *iura novit curia*, the IACHR deems that the facts related to the supposed illegal searches; the beatings, maltreatment, and supposedly illegal and arbitrary detention of Carlos Eduardo Uzcátegui, being a minor; and the criminal proceedings against Luís Uzcátegui for the crime of aggravated defamation, allegedly as a result of the public denunciation he made on the existence of the para-police groups in Falcón State, could constitute a violation to the rights enshrined in Articles 11, 13, and 19 of the American Convention, with respect to the obligations established in Articles 1.1 and 2 of the Convention.

V. CONCLUSIONS

64. Based on the factual and legal considerations presented, and without prejudging as to the merits of the case, the Inter-American Commission concludes that this case satisfies the admissibility requirements enshrined in Articles 46 and 47 of the American Convention.

¹² IACHR, Report No. 21/04, José Luís Tapia González, et al., Petition 435-2005, Admissibility, Chile, February 24, 2004, para. 33.

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

1. To declare the petition under study admissible with respect the rights enshrined in Articles 4, 5, 7, 8, 11, 13, 19, and 25 of the American Convention in connection to the obligations established in Articles 1.1 and 2 of the Convention.
2. To inform the State and the petitioner of this decision.
3. To initiate proceedings on the merits of the matter.
4. To publish this decision and include it in the Annual Report for submission to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 24th day of July, 2008. (Signed): Paolo G. Carozza, Chairman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Víctor E. Abramovich, members of the Commission.