

REPORT No. 136/09
PETITION 321-05
ADMISSIBILITY
MARIA INES CHINCHILLA SANDOVAL
GUATEMALA
November 13, 2009

I. SUMMARY

1. On March 23, 2005, the Inter-American Commission on Human Rights (hereinafter the "Commission," the "Inter-American Commission," or the "IACHR") received a complaint lodged by the Guatemalan Institute for Comparative Studies in Criminal and Social Science (ICCPG), represented by Alejandro Rodríguez Barillas (hereinafter "the petitioners"), alleging the international responsibility of the State of Guatemala (hereinafter "the State," "Guatemala" or the "Guatemalan State"), for the death of María Inés Chinchilla (hereinafter the "alleged victim") on May 25, 2004, presumably, as a result of negligent conduct on the part of the staff of the correctional institution where she was serving her sentence.

2. The petitioners allege that María Inés Chinchilla, who was an inmate at the Female Orientation Center [Centro de Orientación Femenino (COF)], located in Fraijanes, Department of Guatemala, suffered from an illness that had become more serious due to the lack of appropriate medical care which, in addition to the effects of a fall from the wheelchair that she used to get around and for which she received no immediate medical attention, allegedly, caused her death. With regard to admissibility requirements, the petitioners allege that the facts described in the complaint constituted a crime against public order and, therefore, should have been officially investigated by the competent authorities, and that, consequently, the poorly executed investigation carried out by the Prosecutors Office and the subsequent closing of the case had exhausted the domestic remedies. Furthermore, the petitioners allege that filing a civil complaint would be unproductive given the excessive amount of time it would take to reach a resolution of the matter and, therefore, they consider that, under the provisions of Articles 46.2(b) and 46.2(c) of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"), it is not necessary to exhaust remedies such as those because they lack the requirements of due process and are ineffective.

3. For its part, the State contends that the alleged victim received proper medical care both inside the Female Orientation Center and outside of the correctional institution when required, and argues that, in certain instances, the alleged victim herself refused to follow medical advice. With regard to the investigation of the death of the alleged victim, the State also argues that the Prosecutors Office followed the law and that it requested the Judge to dismiss the complaint and to close the case, due to the fact that the alleged victim had died of natural causes, and that it did not constitute a crime. The State points out that although the domestic legislation provides for joint plaintiffs or private prosecutors, no one took on that role, nor did anyone question the decision or made any effort to continue the investigation or to request that it be extended. With regard to possible compensation, the State points out that since no action was filed to claim compensation for loss or damages in connection with the death of Mrs. Chinchilla, the domestic remedies had not been exhausted; therefore, in accordance with Article 46.1 of the Convention and Article 31 of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter the "Rules of Procedure of the Commission"), the petition should be declared inadmissible.

4. After analyzing the position of the parties and the requirements established in Articles 46 and 47 of the Convention, and without prejudging the merits of the complaint, the Commission concludes that the petition is admissible with regard to alleged violations of Articles 4, 5, 8, and 25 of the American Convention in connection with Articles 1.1 and 2 of the same instrument. The IACHR also decides to notify the parties of this decision, to publish this report and to include it in its Annual Report to the General Assembly.

II. PROCESSING BEFORE THE COMMISSION

5. On March 23, 2005, the Commission received a complaint dated February 25, 2005, lodged by the Guatemalan Institute for Comparative Studies in Criminal and Social Science (ICCPG) and assigned it No. 321-05. On May 12, 2005, the Commission forwarded the relevant parts to the State and requested that it submit its response within two months in accordance with the provisions of Article 30.2 of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter the "Rules of Procedure"). The State's response was received on March 7, 2006.

6. Furthermore; the IACHR received information from the petitioners on the following dates: May 31, 2005; April 16, 2006; August 9, 2006; November 2, 2006; February 18, 2008; July 3, 2008; March 2, 2009 and on July 15, 2009. Those communications were duly forwarded to the State.

7. The IACHR also received observations from the State on the following dates: June 12, 2006; September 26, 2006; January 10, 2007; November 24, 2008; on May 29, 2008, and on October 14, 2009. Those communications were forwarded to the petitioners.

III. POSITIONS OF THE PARTIES

A. The Petitioners

8. The petitioners allege that Mrs. María Inés Chinchilla, who was sentenced to 30 years in prison for committing homicide, died on May 25, 2004, while serving her sentence at the Female Orientation Center.

9. The petitioners contend that the death of the alleged victim was the result of two interrelated causes. First, because the alleged victim suffered from diabetes mellitus and from high blood pressure that became more serious due to the lack of proper medical care while in prison, and, second, due to the negligence of the staff of the correctional institution after she fell on May 25, 2004, and subsequently died.

10. Specifically, with regard to the medical care provided to the alleged victim, the petitioners contend that the correctional institution did not have the proper medication, care or diet needed to treat her illnesses. The petitioners point out that to schedule medical appointments outside of the correctional institution required long and bureaucratic procedures that had to be approved by the judge. They also point out that the alleged victim missed several medical appointments because, in addition to the fact that often times the penitentiary system did not have a sufficient number of guards to transport the alleged victim to the hospital, the National Civil Police could not provide agents for the guard detail or did not have fuel for the vehicle.

11. With regard to diet, the petitioners allege that the State has the obligation to provide the proper food and the diet established for each individual and that the diet must be administered by the penitentiary system staff in accordance with established national and international standards. Therefore, when the State indicates that Mrs. Chinchilla did not follow the diet and that she ate sugar and other inappropriate foods, the State demonstrates that it did not fulfill its obligation to exercise control and provide care for the individual.

12. The petitioners maintain that the physical deterioration of Mrs. Chinchilla, as a result of the poor medical care provided in the correctional institution, had led to the development of tumors; diabetic comas on several occasions; the debridement of her feet; retinopathy; and, – in August 2002– the supracondylar amputation of her right leg. The petitioners also point out that because of the diabetes, the alleged victim had developed an infection in the amputated limb which prevented her mobility and required her to resort to a wheelchair. The petitioners further allege that those circumstances made it quite evident that the alleged victim's health demanded continuous specialized care outside of a correctional institution because the

treatment required hospitalization. As a result, the petitioners allege, the lack of proper medical care derived in cruel and inhuman punishment of Mrs. Chinchilla, and the severity of that punishment grew as it continued over time, constituting torture.

13. With regard to the circumstances of her death, the petitioners state that on May 25, 2004, Mrs. Chinchilla left her cell on her wheelchair and subsequently fell. Inmates, who became aware that she had fallen, came to her aid, took her to the director's office and asked for the chief of medical care of the correctional system, who did not come until after Mrs. Chinchilla had died. The petitioners point out that a nurse at the institution provided first aid to the alleged victim, and it was the nurse who confirmed that Mrs. Chinchilla's blood pressure was very high and who said that she should be taken to a hospital, a procedure that, according to the petitioners, was, allegedly, not authorized. The petitioners state that in the three hours that elapsed between the moment Mrs. Chinchilla fell from the wheelchair and the time of her death, the alleged victim did not receive proper medical care; that she was in agony, exhibiting respiratory problems and problems related to her sugar level; and that she was expelling saliva from her mouth.

14. In sum, the petitioners contend that both, the extremely poor medical care the alleged victim received during the years she was incarcerated, evidenced by the absence of adequate diet and medication, and, consequently, the worsening of her illness, as well as the negligence displayed by the authorities in not providing her with proper and immediate medical care on the day she fell, led to her death as a result of a diabetic coma. The petitioners point out that there is no agreement in the official reports, given that the autopsy reveals that Mrs. Chinchilla died as a result of a pulmonary edema and hemorrhagic pancreatitis, but, the legal certificate authorizing the removal of the corpse indicates that the cause of death could have been myocardial infarction and diabetes mellitus type II. The petitioners also indicate that the Public Ministry determined that the facts did not constitute a crime and, therefore, requested that the case be closed.

15. Therefore, the petitioners conclude, the facts denounced in the complaint violate Articles 1, 2, 4, 5, 8, and 25 of the American Convention. Furthermore, the petitioners assert that the failure to provide proper medical care falls within the provisions of Article 419 of the Criminal Code of Guatemala¹ and, at the same time, the petitioners add, those omissions constitute a violation of Article 19 of the Constitution of Guatemala² and of Article 5 of the American Convention. The petitioners allege that, in this case, there is a violation of the right to life, classified in domestic legislation as manslaughter, in accordance with the provisions of Articles 127 and 421 of the Criminal Code. With regard to this fact, the petitioners point out that the investigation that was carried out by the Prosecutors Office met neither the seriousness nor the exhaustiveness required by Article 1(1) of the American Convention because not even minimal efforts were made to try to determine the level of responsibility of the correctional staff bore in the death of the alleged victim; and, thus, the closing of the case exhausted the domestic remedies. In fact, the petitioners contend, in this case, the Public Ministry only tried to ascertain whether Mrs. Chinchilla's body showed any evidence of violence or foul play, without trying to determine whether the death was the result of medical negligence, which was fully documented, considering her physical condition and the lack of proper care which the State was obligated to provide.

16. With regard to the exhaustion of domestic remedies, the petitioners allege that the death of Mrs. Chinchilla inside a correctional institution constituted a crime against the public order that should have been prosecuted by initiative of the Prosecutors Office itself. With regard to the State's allegations that there was no request for an investigation lodged under the provisions of Article 116 of the Criminal Code, which establishes that the aggrieved party may motivate the criminal prosecution or join the prosecution already initiated by the Public Ministry, the

¹ The petitioners cite Article 419 of the Criminal Code of Guatemala which establishes: The civil servant or civil service employee who omits, refuses to carry out, or delays any action that falls within the scope of its responsibilities or position, shall be punished with one to three years in prison.

² Article 19.- Penitentiary system. The penitentiary system must aim for the social readaptation and the reeducation of the inmates and to provide care for them that meets the following minimum standards [...]

petitioners allege that the State did not adhere to the principle of participation, that is, it did not meet its obligation to guarantee the participation of the victim, whom it must inform that it is conducting an *ex officio* investigation which the victim may join.

17. The petitioners point out that Article 8 of the Public Ministry Law states: "The Public Ministry shall inform the victim of the results of the investigation and will notify the same of the resolution to close the case." In other words, the petitioners allege that Guatemalan legislation guarantees the participation of the victim in the criminal investigation, but it requires that the entity responsible for conducting the investigation provide the victim information about it and about the results of the same, otherwise, the petitioners allege, the victim or victims would not be informed and would not be in a position to participate in the investigation or make any decisions about it. The petitioners point out that the State had not introduced any documentation dated around the time of Mrs. Chinchilla's death that provided any evidence that the Prosecutors Office had notified the relatives of the alleged victim of the investigation or of the results obtained³.

18. In sum, the petitioners point out that the relatives of the alleged victim were never informed about the possibility of joining in the prosecution as joint plaintiffs, and, therefore, they were never provided the legal assistance available to those who wish to become joint plaintiffs but do not have the resources necessary to do so, as provided in Article 539 of the Code of Criminal Procedure. The petitioners say that, that fact combined with the family's tenuous economic situation and their lack of knowledge about Guatemala's criminal procedures, prevented them from taking advantage of the opportunity. The petitioners further allege that, in any case, the relatives could not be assigned responsibility for an investigation that the State was obligated to carry out.

19. With regard to the allegation that the State was unable to provide medical care to the alleged victim inside the correctional institution, the petitioners point out that four motions for early release of Mrs. Chinchilla were filed and all of them denied by the Second Criminal Enforcement Court.

20. Last, with regard to the legal process to claim reparation for loss and damages, the petitioners allege that they did not file any legal action because it would have been unproductive, given the delays that those proceedings normally entail. Specifically, the petitioners point out, only once in the last 20 years has the State been found guilty of a death that occurred inside a prison and, in that instance, compensation was never paid. Therefore, the petitioners assert, the exceptions to the requirement of exhaustion of domestic remedies established in Article 46(2b) and (c) of the Convention apply by virtue of the "unwarranted delay in rendering a judgment on the remedies" and by the ineffectiveness of those remedies.

B. The State

21. In its communications, the State contends that the alleged victim was provided proper medical care inside the correctional institution and, that she was also taken to the hospital any time her condition or treatment required it. The State also points out that, on several occasions, when Mrs. Chinchilla was provided the required medicine and food she rejected them and refused to follow medical advice, and, furthermore—according to the information provided by the Office of the Director of the Penitentiary System—she ate foods harmful to her health in order to be taken to the hospital, all of which resulted in the deterioration of her health.

22. In a communication received on October 14, 2009, the State submitted detailed information regarding the medical care provided to the alleged victim while she was imprisoned. The State argues that Ms. Chinchilla Sandoval requested to have several medical appointments, most of which were approved; that she never suffered the alleged acts of torture in the detention center where she was being held (*Female Orientation Center [Centro de Orientación Femenino (COF)]*;

³ The petitioners specifically requested that the IACHR keep the identity of Mrs. Chinchilla Sandoval's relatives secret.

and that she died as a result of a previous degenerative disease she suffered from. It further asserts that Ms. Chinchilla Sandoval was provided health care services, medicines and hospitalization, since from March 1997 until March 2004 she was authorized to attend medical appointments on a total of 121 days, she was interned 8 times in a period of 401 days; which means that she was provided health care services during 1 year, 5 months and 6 days out of the 7 years of her detention. Furthermore, the State submitted information on the reasons why the medical appointments that were authorized on behalf of Ms. Chinchilla ended up not taking place. In addition, the State argues that the available medical reports did not prescribe hospitalization.

23. The State also asserts that it carried out a series of actions on behalf of Ms. Chinchilla Sandoval, namely:

- Constructing a special toilet and sink for the handicapped;
- Granting her a scholarship for obtaining a high school degree at the *Instituto Guillermo Putzeys Álvarez*, which she successfully obtained in 1999, after having taken classes Monday to Friday from January to October 1999;
- Authorizing her to study Management at the *Universidad Francisco Marroquín*, from February to June 2000, which she could not continue due to health-related issues;
- Authorizing her to leave the COF in order to buy materials for her craft making;
- Authorizing her to be imprisoned in a special area designed for mothers (*área maternal*) with a private room, and approving the purchase of a refrigerator and a television as a means for making her imprisonment more comfortable.

24. With regard to the petitions for early release lodged by the alleged victim, the State explained the reasons why those petitions had been denied. The State pointed out that on February 14, 2003, the Second Sentence Enforcement Court dismissed the petition because, based on the expert testimony and on the medical records, the alleged victim was not terminally ill. Likewise, the State pointed out that in a decision issued on August 29, 2003, the judge dismissed the second petition lodged by the alleged victim based on the fact that, in the opinion of the experts of the Judicial Body, of the Prosecutors Office and of the attending physician at the San Juan de Dios Hospital, the illness afflicting the alleged victim was not in its terminal stage. On September 25, 2003, the State added, the Fourth Chamber of the Court of Appeals confirmed the decision of the Sentence Enforcement Court and stated that the experts had categorically asserted that inmate María Inés Chinchilla Sandoval was not in imminent danger of dying. Lastly, the State pointed out that on April 29, 2004, the judge rejected another petition lodged by the inmate arguing that, as Article 7(c) of the Law of Reduction of Sentences established, "it is essential for the inmate to have carried out altruistic, heroic or acts with humanitarian impact," something that had not been demonstrated in this case. The State also indicated that the alleged victim had lodged a petition based on those grounds, but that the petition was dismissed due to the fact that the petitioner had died on May 25, 2004, and there was no need for a ruling by the court.

25. With regard to the events that unfolded on May 25, 2004, the State points out that the nurse on duty had treated the alleged victim after her fall at 9:20 a.m., giving her the appropriate medication and notifying the coordinator of medical care. The State asserts that at 11:05 a.m., inmates at the Female Orientation Center had informed the nurse that Mrs. Chinchilla Sandoval could not breathe. The State points out that when the alleged victim was evaluated she was found to have no pulse, she was not breathing, her pupils were dilated and did not react to light and, therefore, cardio pulmonary resuscitation (CPR) was performed but to no avail, and that she was pronounced dead at 11:25 a.m. Firefighters were called in and they also attempted to resuscitate the alleged victim but were unsuccessful.

26. The State argues that with regard to the investigation into the death of Mrs. Chinchilla Sandoval, the Public Ministry followed every investigative procedure step by step and concluded that the elements necessary to categorize the death of Mrs. Chinchilla Sandoval as a crime were not present, since the autopsy clearly established that the death of the alleged victim was due to "natural causes and that there was no foul play involved." Based on the

foregoing, the State points out that the Prosecutors Office,, in accordance with internal regulations and adhering to the principle of objectivity, requested that the investigation be closed. The State adds that the relatives of the alleged victim did not become joint plaintiffs in the process although, according to the State, they had the opportunity to do so. Furthermore, the State argues, had the relatives done so when the Public Ministry prosecutor filed for "dismissal," they could have exercised the right established in Article 116 of the Code of Criminal Procedure, objecting to the prosecutor's petition. The State points out that the investigation finally concluded when the judge ordered the case closed.

27. With regard to reparation, the State argues that under domestic legislation in force at the time the petition was lodged with the IACHR, the deadline to execute that action had not yet been established. The State adds that to seek compensation before the Inter-American Commission without first having filed a petition for domestic remedy to claim reparation for loss and damages would imply using the system as a fourth instance, and violate the provisions of Article 31 of the Rules of Procedure of the Commission. Based on the foregoing, the State considers that in accordance with Article 46.1 of the American Convention and Article 31 of the Rules of Procedure of the Commission, the petition must be declared inadmissible because domestic remedies have not been exhausted.

28. Regarding the admissibility of the petition, the State, based on the foregoing, concludes by requesting that the IACHR declare the petition inadmissible, alleging that the petitioners must exhaust the remedies provided for in the domestic legislation and not use international mechanisms as an alternative.

IV. ANALYSIS

A. Competence *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae* of the Inter-American Commission

29. The petitioners are authorized by Article 44 of the American Convention to lodge petitions before the IACHR. The petition identifies an individual as the alleged victim, whose rights, enshrined in the American Convention and in other international instruments, the Guatemalan State has vowed to protect and guarantee. Therefore, the IACHR has competence *ratione personae* to examine the petition.

30. The Commission is also competent *ratione loci* to hear the petition, given that the complaint alleges violations of rights protected under the American Convention that presumably took place within the territory of a State Party to that treaty. The IACHR is competent *ratione temporis* to examine the claim based on the fact that Guatemala ratified the American Convention on May 25, 1978, and, thus, the obligation of the State to respect and guarantee the rights protected under the American Convention was already in force at the time in which the facts alleged in the petition occurred.

31. The Commission is competent *ratione materiae*, because the petition alleges violations of human rights protected by the American Convention on Human Rights.

B. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

32. Article 46(1)(a) of the American Convention provides that, for a complaint lodged with the Inter-American Commission in accordance with Article 44 of the Convention to be admissible, it is necessary that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.⁴ The purpose of this

⁴ See IA Court HR, Case *Chaparro Álvarez and Lapo Íñiguez*. Preliminary Exception, Merits, Reparations and Costs. Judgment dated November 21, 2007. Series C No. 170, para. 16; IA Court HR, Case *Nogueira de Carvalho et al...* Preliminary Exceptions and Merits. Judgment dated November 28, 2006. Series C No 161, para. 50; IA Court HR., Case

requirement is to allow domestic authorities to hear about the alleged violation of a protected right and, if appropriate, to provide a solution before it is heard in an international venue.

33. For the purposes of determining whether the conventional requirement of prior exhaustion of domestic remedies has been met, it is necessary to specify the object of the complaint and to analyze the legal actions filed in the domestic courts with regard to the situation that is the object of the complaint. In that sense, the Commission points out that the object of the complaint refers to: 1) the alleged lack of adequate and sufficient medical care provided to the alleged victim while in jail, specially during the time just prior to her death; and 2) the alleged absence of a proper investigation of the circumstances leading to her death.

· Alleged absence of adequate and sufficient medical care

34. In this regard, the Commission notes that while serving time in jail, Mrs. Chinchilla Sandoval pursued a number of administrative and legal avenues for the purpose of obtaining proper medical care for the ailments that afflicted her. In fact, the information provided by the petitioners shows that beginning in 1997, Mrs. Chinchilla Sandoval filed a series of administrative petitions with penitentiary authorities regarding her health – for example, requests for authorization to go to medical appointments at the hospital. It is also evident from the information provided by the parties that the alleged victim filed with the Second Court of Enforcement of Sentences of Guatemala, three petitions for Early Release for Reduction of Sentence. In that regard, it would seem clear that in the aforementioned petitions for early release, the alleged victim informed the judicial authorities of her ailments as the basis for requesting her release, defining her health status as “terminally ill,”⁵ and alleging that she was not being provided adequate medical care at the penitentiary.

35. Likewise, the information provided shows that as a result of one of the petitions for early release filed by the alleged victim, on May 19, 2005, the judge ordered the attending physician at the penitentiary institution to do a medical evaluation of Mrs. Chinchilla Sandoval. The medical evaluation done on August 7, 2003, as a result of the order, shows that Mrs. Chinchilla Sandoval suffered from: Diabetes *mellitus*, high blood pressure, fracture of the right femur, arterial occlusions in the left lower limb, cervical cancer, diabetic retinopathy, and that she was on a wheelchair and her health was deteriorating rapidly.

36. Consequently, the IACHR considers that the alleged victim made use of the means at her disposal, both legal and administrative, to obtain adequate and sufficient medical care while serving her sentence in prison. In fact, it is evident that the alleged victim made the State aware of her health which was deteriorating at an accelerated pace due to the various ailments that afflicted her. Therefore, the IACHR considers that the conventional requirement of prior

Acevedo Jaramillo et al. Judgment dated February 7, 2006. Series C No 144, para. 122 and ss; *Case Ximenes Lopes. Preliminary Exception.* Judgment dated November 30, 2005. Series C No. 139, para. 4; among others.

⁵ In fact, the information provided shows that :

On November 26, 2006, Mrs. Chinchilla Sandoval filed a motion for early release under extraordinary remission claiming a terminal illness. On February 14, 2003, the motion was denied and the decision stated that “although the inmate named did indeed suffer from Diabetes Mellitus, at that time the ailment could not be considered a terminal illness, given that from the information provided by the experts and from related reports, the judge infers that the person in question can receive treatment with appropriate control inside the Female Orientation Center, the same way her relatives will eventually be able to provide outside of the correctional institution.” On March 3, 2003, the appeal of that decision was denied on grounds that it was not filed within the prescribed time period.

On August 6, 2003, a new petition was filed requesting Early Release Due to Terminal Illness. In a decision dated August 29, 2003, the court dismissed the petition arguing that, based on the evidence available, the illness afflicting the inmate was not in its terminal phase. The appeal of that decision was resolved by the Fourth Chamber of the Court of Appeals on September 25, 2003 when it confirmed the decision of the lower court.

On March 3, 2004, Mrs. Chinchilla Sandoval again filed in the Second Criminal Enforcement Court a motion for early release under extraordinary remission, and again claiming a terminal illness. The motion was denied in a decision dated April 29, 2004, which in relevant parts stated, “it is the opinion of the judge that in order to grant the relief requested it is not necessary for the convict to suffer from a particular illness but, rather, as Article 7(c) of the Law of Remission of Sentences, it is essential for the convict to have carried out: acts of altruism, of heroism or any other humanitarian act, none of which was ever established or documented.” As stated in the resolution dated June 3, 2004, the appeal of the decision was never resolved by the Fourth Appeals Chamber due to the death of Mrs. Chinchilla.

exhaustion of domestic remedies has been met with regard to the object of the complaint pertaining to the alleged lack of medical care provided to Mrs. Chinchilla Sandoval at the Women Orientation Center.

· Investigation of the circumstances of the death

37. With regard to the circumstances of the death of Mrs. Chinchilla Sandoval, the petitioners allege that the domestic remedies were exhausted when the criminal investigation that had been initiated for that purpose was closed. The petitioners allege that the State did not adhere to the principle of participation, that is, the obligation to guarantee the participation of the victim, which requires that the State notify the alleged victim that an *anex officio* investigation is being conducted which the victim may join, and, the petitioners say, that was the reason they had not appealed the decision to end the investigation. With regard to civil reparation, the petitioners claim that an exception to the requirement of prior exhaustion should apply, given the inefficiency of those remedies because the processes to pursue those remedies go on indefinitely, and, therefore, they request that the provisions of Articles 46(2).(b) and 46(2).(c) of the Convention be applied.

38. For its part, the State alleges that the petitioners did not attempt to exhaust the domestic remedies in both civil and criminal courts, and, therefore, the petition should be declared inadmissible due to the failure to exhaust the domestic remedies as established in Article 46(1) of the American Convention.⁶ In that regard, the State specifically argues that there is a procedure to claim compensation for loss and damages that has not been pursued, and that, during the investigation, the relatives or representatives of the alleged victim did not file objections or requested the sponsorship of the Prosecutors Office, and that, had they joined in as joint plaintiffs they could have petitioned the judge to continue with the investigation because they considered that there was indeed a crime to be investigated.

39. The information contained in the case file reveals that on the day that Mrs. María Inés Chinchilla Sandoval died, May 25, 2004, the Prosecutors Office proceeded with the removal of the body and transported it to the Department of Forensic Medicine for the autopsy to be performed; thus, initiating an investigation on its own. The autopsy concluded that the causes of death were pulmonary edema and hemorrhaging pancreatitis.⁷

40. The Prosecutors Office requested the dismissal and closing of the complaint because it considered that "after studying and analyzing the investigative actions carried out and contained in the case file [...] there is no compelling evidence or legal certainty that would justify initiating criminal prosecution, specially, taking into account that according to the autopsy report, the causes of María Inés Chinchilla Sandoval's death were pulmonary edema and hemorrhaging pancreatitis, and therefore, the Ministry cannot proceed."⁸

⁶ It should be pointed out that Article 116 of the Code of Criminal Procedure of Guatemala provide that:
Joint plaintiff: In criminal offenses, a victim who is legally competent or his representative or guardian in cases of legal incapacity may criminal prosecution in motion or may join in the prosecution initiated by the Public Ministry. That same right may be exercised by any citizen or association of citizens against public officials or employees who have directly engaged in human rights violations while performing their duties or taking advantage of that opportunity, or when it pertains to criminal offenses committed by public servants who abuse their positions.
For its part, Article 404 of the aforementioned Code establishes:
Appeals: Decisions issued by courts of the first instance may be appealed if they resolve:
(...)

5) Authorize the Ministry to abstain from initiating prosecutions.
Lawsuits against government entities and agencies may only be pursued through the Public Ministry. An exception is made for autonomous agencies with legal standing.

⁷ Autopsy n° 1499-2004, June 3, 2004. Forensic Medicine Service.

⁸ C-394-2005, Decision issued on January 18, 2005, by the Seventh Criminal Court of First Instance on Criminal Matters, Drug Trafficking and Environmental Crimes of the Department of Guatemala.

41. On January 18, 2005, the Seventh Criminal Court of First Instance on Criminal Matters, Drug Trafficking and Environmental Crimes of the Department of Guatemala, acting on the request made by the Public Ministry, dismissed the complaint and ordered the case closed.⁹

42. As a result, based on the information and documents provided by the parties, on January 18, 2005, the aforementioned court dismissed the complaint and ordered the case closed. That decision was not challenged and there is no record of joint plaintiffs appearing in court during criminal proceedings.

43. The Commission observes that according to the information in the case file, the relatives of the alleged victim were not notified of the investigation initiated by the Prosecutors Office or of the outcome of the same.

44. In the opinion of the IACHR, the lack of information and notification made it impossible for the relatives of Mrs. Chinchilla Sandoval to file a petition to change the decision to close the case, to present their allegations and evidence of the deficient medical care provided to the alleged victim after she fell, as they have done in their petition lodged with the IACHR.

45. In addition, the Commission considers that, in the present case, the alleged facts refer to the alleged violation of fundamental rights such as the right to life and to personal integrity, violations that in the domestic legislation are categorized as crimes that can be prosecuted by a court on its own, and whose investigation and prosecution should be pursued by the State.¹⁰ Based on the foregoing and the fact that Mrs. Chinchilla Sandoval was in jail and under the custody of the Guatemalan State when she died, it should be, first, the responsibility of the State to clarify the circumstances of her death and not the efforts of private interests, or for the investigation to depend on the initiative of those private interests.¹¹

46. In conclusion, the IACHR considers that in this part of the complaint relating to the death of Mrs. Chinchilla Sandoval, the exception to the requirement of prior exhaustion of domestic remedies established in Article 46(2)(b) applies. That provision establishes that the aforementioned requirement will not apply when the alleged victim has not been allowed access to the domestic remedies, or has been prevented from exhausting them.

47. In this sense, it should be pointed out that compensation for loss and damages which, according to the State, the petitioners did not claim could not, in this case, be considered an efficient and sufficient remedy to investigate, clarify and, if warranted, prosecute the consequences of a death, allegedly, caused by the negligence and the failure on the part of government employees to provide adequate medical care to a person deprived of liberty.

48. Lastly, the Commission notes, the request for the application of the exceptions provided in Article 46 (2) of the Convention is closely linked to the determination of possible violations of certain rights enshrined in the Convention, such as the guarantee of access to justice. However, the Commission bears in mind that Article 46(2), by its nature and purpose, is a norm with autonomous content *vis à vis* the substantive norms of the Convention. Therefore, the determination of whether the exceptions to the requirement of prior exhaustion of

⁹ *Ibidem*. With regard to domestic legislation, it should be pointed out that Articles 310 and 311 of the Code of Criminal Procedure provides that:

Dismissal. The Public Ministry shall petition the court of first instance to close a case, lawsuit or police investigation when it is evident that the fact is not punishable or when it is not possible to proceed. If the judge does not agree with the request to close the case, and the order is final, the head of the Public Ministry will then decide whether the investigation shall continue under the direction of the same official or if a substitute official must be designated.

Effects. The decision that orders the closing of the case may not be modified as long as the known circumstances on which the decision is based do not change or the obstacle that prevents prosecution from moving forward persists, without detriment to the powers of opportunity this Code grants to the Public Ministry.

In ordering a case closed, the judge will forward the record to the Public Ministry.

¹⁰ IACHR, Report No. 52/97, Case 11.218, Arges Sequeira Mangas, *IACHR Annual Report 1997*, paragraphs 96 and 97; Report No. 55/97, paragraph 392; Report No. 75/03, paragraph 27.

¹¹ IACHR, Report No. 44/07, July 23, 2007, par. 65; Report No. 24/06, March 2, 2006, para. 37, and Report N° 52/97, paragraph 96.

domestic remedies are applicable in the present case must be made separately and prior to the analysis on the merits of the case, since it must meet a different standard than the one used to determine the possible violation of Articles 8 and 25 of the Convention.¹²

2. Time period to submit the petition

49. Article 46(1)(b) of the Convention provides that for a petition to be admissible, it must be lodged within a period of six months from the date on which the petitioner was notified of the final judgment in the domestic jurisdiction. Article 32 of the Rules of Procedure of the Commission provides that in those cases in which the exceptions to the requirement of prior exhaustion 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.

50. In the present case, with regard to that part of the complaint pertaining to the investigation into the circumstances surrounding the death of the alleged victim, the Commission notes that her death occurred on May 25, 2004; that the criminal investigation was closed on January 18, 2005, without allegedly notifying the relatives of the alleged victim; and that the petition was lodged on March 23, 2005. Therefore, given the context and the characteristics of the present case, the Commission considers that the petition was filed within a reasonable period of time and that the provisions of Article 32 of the Rules of Procedure of the Commission, regarding the timely filing of the petition for the purpose of admissibility, shall be considered met.

51. With regard to that part of the complaint pertaining to Mrs. Chinchilla Sandoval's access to adequate medical care while in prison, the Commission notes that the last petition for release filed concluded with the decision issued by the Fourth Chamber of the Court of Appeals of Guatemala on June 3, 2004. On that date, the court ruled that the appeal filed could not be resolved due to the death of Mrs. Chinchilla. Through order of certification dated August 9, 2004, the Administrative Office of the Second Chamber of the Court of Appeals for Criminal Matters, Drug Trafficking and Environmental Crimes, attested to the fact that there was no pending notification. In that sense, taking into consideration that the petition was lodged on March 23, 2005, the Commission considers that the aforementioned part of the complaint was presented extemporaneously and, therefore, it will not be taken into consideration for the purposes of characterization.

3. Duplication of proceedings and international *res judicata*

52. It is not evident from the record that the subject of the petition is pending in another international proceeding for settlement, nor that it is substantially the same as one previously studied by the Commission or by another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) have been met.

4. Characterization of the alleged facts

53. As the Commission has previously stated in other cases, this is not the stage in the process of examining the petition in which to establish whether or not there has been a violation of the American Convention. For admissibility purposes, the IACHR must simply decide if the allegations constitute facts that could characterize a violation of the American Convention, as provided for in Article 47(b) of the same instrument, or if the petition is "manifestly groundless or obviously out of order" as outlined in subparagraph (c) of the same article. The standard to evaluate those extremes is different than the standard required to decide on the merits of the complaint. At this stage, the IACHR must carry out a *prima facie* evaluation which does not imply a prejudgment or a preliminary opinion on the merits. The Commission's own Rules of Procedure reflect this distinction between the evaluation that must be done for the purpose of declaring a petition admissible and the evaluation required to establish whether or not the

¹² Report No. 85/08, Petition 162-06, Melba del Carmen Suárez Peralta, Ecuador, October 30, 2008, para. 43.

State is in fact responsible, by establishing clearly differentiated stages for examining the admissibility and the merits of the petition.

54. Based on the facts presented by the petitioners, the IACHR considers that the allegations regarding the eventual responsibility of government agents for the medical attention provided to the alleged victim on May 25, 2004, just moments before her death, should be taken into account during the analysis on the merits of case. Furthermore, the IACHR must determine whether the State acted with due diligence in investigating the cause of Mrs. Chinchilla Sandoval's death. Therefore, the Commission considers that the petitioners have presented allegations that are not "manifestly groundless" or "obviously out of order" and that, if proven true, could constitute possible violations of Articles 4, 5, 8 and 25 of the American Convention with regard to Article 1.1 of the same international instrument.

55. Since it is not evident from the record at this stage that the facts presented in the complaint are groundless or obviously out of order, the Commission considers that the requirements established in Article 47(b) and (c) of the American Convention have been met.

V. CONCLUSIONS

56. The Commission concludes that the petition is admissible and that the Commission is competent to examine the complaint lodged by the petitioners with regard to alleged violations of Articles 4, 5, 8, and 25 of the American Convention with regard to Articles 1(1) and 2 of the same instrument.

57. Based on the foregoing arguments in fact and in law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

1.To declare this petition admissible, for the alleged violation of Articles 4, 5, 8, and 25 of the American Convention with regard to Articles 1(1) and 2 of the same instrument.

2.To forward this report to the petitioners and to the State.

3.To continue with the analysis on the merits of the petition.

4.To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 13th day of the month of November, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-President; Felipe González, Second Vice-President; Sir Clare K. Roberts, and Paolo G. Carozza, members of the Commission.