

REPORT No. 90/12
PETITION 1056-07
ADMISSIBILITY
DIANA MAIDANIC ET AL.
URUGUAY
November 8, 2012

I. SUMMARY

1. On August 15, 2007, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by the Instituto de Estudios Legales y Sociales del Uruguay (IELSUR) (hereinafter the “petitioner”) alleging the responsibility of the Oriental Republic of Uruguay (hereinafter “Uruguay” or the “State”) for the failure to investigate and to provide an effective judicial response to the forced disappearances of Luis Eduardo González González on December 13, 1974 and of Oscar Tassino Asteazu on July 19, 1977, as well as the extrajudicial executions of Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes on April 21, 1974 (hereinafter the “alleged victims”). The petitioner alleges only that the State is responsible for violating the rights contained in Articles 8, 13, and 25 in relation to the obligation to respect and ensure the rights, contained in Article 1(1) of the American Convention on Human Rights (hereinafter the “American Convention”), to the detriment of the alleged victims’ next-of-kin.

2. With respect to meeting the admissibility requirements, the petitioner alleged that the State has not met its obligation to conduct an exhaustive, impartial, and serious investigation into the forced disappearances and extrajudicial executions of the alleged victims so as to determine the truth of what happened. The State did not specifically allege the failure to meet the requirement of exhaustion of domestic remedies, but it did report on progress in the investigation and search for truth and justice, and it undertook actions to clarify the facts associated with the above-named persons who were detained and disappeared.

3. After analyzing the parties’ positions, and in application of the requirements set forth at Articles 46 and 47 of the American Convention, the Commission decides to declare the petition admissible for the purpose of examining the alleged violation of the rights of Oscar Tassino Asteazu and Luis Eduardo González González enshrined in Articles I, IX, XVII, XVIII, and XXV of the American Declaration of the Rights and Duties of Man (hereinafter the “American Declaration”); Articles 3, 4, 5, 7, 8, and 25, in relation to Articles 1(1) and 2 of the American Convention; Articles I, III, IV, V, and XI of the Inter-American Convention on Forced Disappearance of Persons; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. It also admits the case to examine the alleged violation of the rights of Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes contained in Articles I, IX, and XVII of the American Declaration; and of the rights of the next-of-kin of the alleged victims enshrined in Articles I and XVIII of the American Declaration; Articles 5, 8, and 25, in relation to Articles 1(1) and 2 of the American Convention; and Articles I, III, IV, V, and XI of the Inter-American Convention on Forced Disappearance of Persons and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. It also decides to declare the petition inadmissible with respect to the alleged violation of the rights contained in Article 13 of the American Convention. The Commission also decides to notify the parties of this decision, and to publish it and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BEFORE THE COMMISSION

4. The petition was received by the IACHR on August 15, 2007, and was assigned number P-1056-07. On November 13, 2007, the IACHR transmitted the petition to the State, which

was given two months to submit its answer. The Commission received the State's answer on January 11, 2008; it was duly transmitted to the petitioner. The petitioner submitted observations on February 20, 2008, which were duly forwarded to the State.

III. THE PARTIES' POSITIONS

A. The petitioner

5. The petitioner alleged that the State is responsible for the failure to investigate the forced disappearances of Luis Eduardo González González and Oscar Tassino Asteazu, and the extrajudicial executions of Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes during the military dictatorship in Uruguay. In addition, it argues that the State has not guaranteed the right to truth with regard to what happened, or access to justice through adequate and effective remedies.

Luis Eduardo González González

6. The petitioner indicated that on December 13, 1974, Luis Eduardo González González, a medical student and member of the *Partido Comunista Revolucionario*, was detained at his home along with his wife, Elena Zaffaroni, who was pregnant¹, in Montevideo, Uruguay. Nonetheless, it indicated that subsequently Army Division I issued a communiqué on December 26, 1974, in which it indicated that Luis Eduardo González González "had fled a procedure for identification" and that on January 11, 1975, had been summonsed through a press release by the Joint Forces. In addition, it asserted that Army Division I informed his mother and complainant María Amalia González that he had fled. The petitioner reported that that the last time his wife saw him he was in very poor physical condition.

7. In addition, the petitioner indicated that other persons who were also detained testified that Luis Eduardo González González had been seen at the Sixth Cavalry Regiment, noting his physical and psychological deterioration due to the torture to which he had been subjected. It reported that those persons argued that given the state of Luis Eduardo González González's health, it was impossible for him to have taken flight.

8. Finally, it asserted that on July 2, 2003, the Peace Commission (*Comisión para la Paz*) concluded that Luis Eduardo González González and his wife were transferred to Cavalry Regiment No. 6; that he had died on December 26, 1974 at that military unit as a result of the torture he suffered; that, as in other cases, the military authorities made up the version that he had fled the military establishment; and that his remains had been buried in the building corresponding to Battalion 14 of Toledo and exhumed, incinerated, and cast into the River Plate in late 1984.

9. Despite the conclusions of the Peace Commission, the petitioner argued that Luis Eduardo González González continues to be a victim of forced disappearance and alleged that the false information provided by military personnel constituted a strategy for preserving impunity.

Oscar Tassino Asteazu

10. The petitioner indicated, as reported by his wife Ms. Disnarda Flores, that Oscar Tassino Asteazu, a trade union leader and activist in the *Partido Comunista Revolucionario*, had been brutally beaten by members of the Joint Forces on the property in Montevideo, Uruguay

¹ Based on the information in the record, the Commission does not have other information related to Ms. Elena Zaffaroni upon admitting this petition.

occupied by Ana Regnier and Hermes Fulle, and subsequently placed into a vehicle with his face covered on July 19, 1977. It asserted that based on the information obtained, the perpetrators of that detention had been identified as Colonel Ernesto Ramas and Lieutenant Colonel Augusto Ferro.

11. The petitioner argued that subsequent to the detention of Oscar Tassino Asteazu on July 19, 1977, a person heard the torture to which Oscar Tassino Asteazu was subjected at the clandestine center of detention known as "*La Tablada*" in Uruguay, since that person was also detained at said center.

12. In addition, the petitioner noted that in the context of the steps taken to determine his whereabouts, a captain with the Intelligence Service informed Disnarda Flores at the Joint High Command (*Estado Mayor Conjunto*) that Oscar Tassino Asteazu was summonsed as of May 1, 1977, to go to the National Directorate of Information and Intelligence of the Office of the Chief of Police of Montevideo. It indicated that said office reported that Oscar Tassino Asteazu had been detained in January 1974 and released within four days of his detention. It indicated that by communiqué of December 15, 1980, the Government reported that Oscar Tassino Asteazu was summoned by the authorities for having participated in subversive activities. It indicated that in 1988, the Office of the Military Prosecutor reported that he had not been able to obtain evidence that there had been participation of a given operational group belonging to the Armed Forces or Police Forces at that property, and that as a result Oscar Tassino Asteazu had been detained.

13. It asserted that the Peace Commission concluded on July 2, 2003, that Oscar Tassino Asteazu was detained on July 19, 1977, at a property with the address calle Máximo Tajés No. 6632, where military personnel had set up a "mousetrap" ("*ratonera*"); that he was taken to the clandestine detention center known as "*La Tablada*", where he was tortured; that on July 21, 1977 he died due to a violent blow to the head; and that his remains had been buried on the property corresponding to Battalion 14 of Toledo, and in late 1984 exhumed, incinerated, and cast into the River Plate.

14. In contrast to what was found by the Peace Commission, the petitioner indicated that on August 8, 2005, the Commander of the Army informed President Tabaré Vázquez that Oscar Tassino Asteazu was detained by the OCOA and taken to "*La Tablada*"; that he died approximately July 24, 1977, by suicide while going to the bathroom without his guards; and that his remains were buried on the property of Battalion I MEC No. 13 and not at Battalion I PARAC No. 14.

15. Despite the conclusions of the Peace Commission, and what was reported by the Army Commander in 2005, the petitioner argued that Oscar Tassino Asteazu continues to be a victim of forced disappearance.

Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes

16. The petitioner indicated that in the early morning hours of April 21, 1974, members of the Joint Forces of the State forcibly entered the property situated at calle Mariano Soler No. 3098 bis, apartment five in Montevideo, Uruguay, the home where Mr. Washington Barrios, his wife Ms. Hilda Fernández, and their daughter Jacqueline Barrios lived, since they were looking for their son, Mr. Washington Barrios Fernández, who was an activist in the *Movimiento de Liberación Nacional*. It noted that when Mr. Washington Barrios indicated that he was unaware of his son's whereabouts, the members of the military went to the third apartment, where the son lived with his wife, Silvia Reyes, 19 years of age. They indicated that at that moment Mr. Washington Barrios Fernández was not in the apartment, but that Silvia Reyes was there, along with two friends, Diana Maidanic, 21 years of age, and Laura Raggio Odizzio, 19 years of age. It asserted that when the members of the

military entered the apartment they opened fire and shot up Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes, who were sleeping.

17. The petitioner asserts that the press at the time said that on that day there was a confrontation at that property. Nonetheless, it argued that Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes were extrajudicially executed.

Common arguments

18. The petitioner argued that the complaints regarding the forced disappearance of Luis Eduardo González González and Oscar Tassino Asteazu and regarding the extrajudicial execution of Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes were filed on May 20, 1985, under Law No. 15,737 called the "Amnesty Law for Persons Persecuted for Political and Trade Union Activity" ("*Ley de Amnistía a los Perseguidos Políticos y Sindicales*") and of the Conclusions of November 4, 1985, of the Investigative Commission on the Disappearance of Persons and the Acts that Caused Them.

19. It alleged that the Executive branch did away with the possibility of bringing to trial those responsible for crimes against humanity by adopting Law No. 15,848, which amended Law No. 15,737. It argued that Law No. 15,848 was approved since the members of the military challenged the jurisdiction of the civilian courts, claiming that the complaints should be heard in the military courts. It argued that as the Supreme Court of Justice ruled that it was up to the civilian courts to investigate the alleged wrongful acts, the legislature approved Law No. 15,848, which authorized impunity for those alleged to bear responsibility for serious human rights violations.

20. It asserted that with the adoption of Law No. 15,848, IELSUR filed "constitutional motions in all cases lodged before the Judicial branch," based on the principle of separation of powers, the right to due process, judicial independence, and the right to equality before the law, and noted that the Supreme Court of Justice dismissed the constitutional motions brought against Articles 1, 2, 3, and 4 of Law No. 15,848 by judgment of May 2, 1988.

21. It argued that even after the IACHR issued its Report No. 29/1992, in which it found Law No. 15,848 incompatible with the American Convention and the American Declaration of the Rights and Duties of Man, the State has continued to have the institutional position of respecting the force of Law No. 15,848, on occasion excluding certain cases from the scope of application of that law, such as the case of María Claudia García de Gelman, and in other cases, allowing for investigations but reserving the possibility of ruling on the application of that law.

22. It indicated that in 2005, the next-of-kin of the alleged victims once again called for the reopening of the investigations archived under Law No. 15,848, based on compliance with Report No. 29/1992 of the IACHR and the rights of access to justice and the right to the truth. The petitioner alleged that the prosecutor found in his report that the cases of Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes, and the case of Oscar Tassino Asteazu, should be archived, given that Law 15,848 provides that the procedure of searching for the truth does not correspond to the Judicial branch but to the Executive branch. The petitioner argued that said prosecutor did not consider the resolution of December 12, 2005 of the Executive branch, which indicated that it does not have sufficient criteria to find a case to fall or not fall within Article 1 of Law 15,848. It argued that based on that report, the judge who heard the case ruled on February 16, 2007 to archive the cases without explaining the grounds for that decision. With respect to the forced disappearance of Luis Eduardo González González, the petitioner reported that the prosecutor in charge of investigating the case found in favor of reopening the case. Nonetheless, he argued that the judge, by resolution of December 19, 2006, ruled that it was up to the Executive branch to continue the investigations.

23. The petitioner argued that Law No. 15,848 is contrary to the American Convention and that even though it was ratified by the plebiscite, the effective observance of human rights “is not a matter for a plebiscite” (“*no es plebiscitable*”). He argued that independent of the interpretation that the Executive may make of it, it has discretionally reserved its power to exclude or not exclude cases from the caducity (or expiry) regime (*régimen de caducidad*) referred to in the law, as happened in the cases that are the subject of the petition, also violating the principle of equality before the law.

24. In addition, the petitioner argued that although the Executive branch may have authorized investigations, the Judicial branch has not issued a ruling that clarifies the official truth of the facts. In addition, it alleged that the Peace Commission did not determine responsibilities, and based its investigation on confidential sources; moreover, based on data derived from some cases, such as that of Fernando Miranda, the reliability of its conclusions has been called into question, including the truth of the so-called “Operation Carrot” (“*Operación Zanahoria*”).

25. The petitioner argued that it was up to the Judicial branch and not the Executive branch to investigate the facts and to guarantee the right to the truth and access to justice through adequate and effective judicial remedies, since it is in the area of the administration of justice that the effective observance of fundamental rights is defined in democratic societies. Based on the foregoing arguments, the petitioner concluded that the State has violated the rights contained in Articles 8, 13, and 25 of the American Convention, in relation to the obligation contained in Article 1(1) of said instrument, to the detriment of the alleged victims’ next-of-kin.

B. The State

26. The State argued that the cases of the alleged victims were excluded from the Law on the Caducity of the Criminal Action of the State (*Ley de Caducidad de la Pretensión Punitiva del Estado*) (known as the “Caducity Law” or the “Expiry Law”; hereinafter “Law No. 15,848”); that it was actively investigating the disappearances of Oscar Tassino Asteazu and Luis Eduardo González González and the executions of Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes; and that most of the persons allegedly responsible for participating in cases of forced disappearances or extrajudicial executions are currently in prison.

27. It recognized that the cases reported as forced disappearances of Luis Eduardo González González and Oscar Tassino Asteazu, as well as extrajudicial executions of Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes, were unfortunate events that occurred in Uruguay during the military dictatorship of 1973 to 1985. Nonetheless, it alleged that the cases had been clarified due to the laborious investigative and humanitarian work of the Peace Commission, which was indicated by the petitioner and which demonstrated the commitment of the current administration to clarify, investigate, and search for truth and justice in each of the cases mentioned. He argued that within the framework of the investigations into persons who were detained and disappearance during the military dictatorship, several former members of the military had spoken of the so-called “Operation Carrot” (“*Operación Zanahoria*”) as a result of which the bony remains of several detained and disappeared persons who died – after having suffered torture during interrogations – so as to cast them into the sea.

28. The State alleged that from March 1, 2005, the Executive branch fostered an interpretation of Law 15,848 that has substantially modified its orientation and aim, on turning it into a tool for furthering the search for the truth, and on interpreting it such that judges, before submitting a case to the Executive branch for its consideration, must investigate and call witnesses, so that there be sufficient information to evaluate to determine whether the case is excluded from

or included in the regime provided for in Law 15,848. It argued that Law 15,848 had been “violated *de facto*” (“*vulnerada de hecho*”), given that all the case records that have been forwarded to the Executive branch had been returned to the Judicial branch with the express order to investigate each of the cases. With respect to the Executive branch decree of December 12, 2005 to which the petitioner makes reference, the State clarified that the Executive branch held, in the specific case submitted for consultation by the Judicial branch, that the Executive branch had no authority to impede the search for the truth pursuant to Law 15,848, and that its legal mandate is limited to determining whether the criminal action has become time-barred.

29. With respect to the cases referred to in the petition, the State argued that they were not covered by Law 15,848, given that the Executive ordered in December 2005 that they be excluded. With respect to the cases of Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes, it argued that as regards the case of Mr. Washington Barrios, the husband of Silvia Reyes, the Executive branch concluded that the judges should have investigated the facts related to persons detained and disappeared instead of forwarding the records to the Executive branch for the purposes set out at Article 3 of Law 15,848. It alleged that as the cases of Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes were associated with the disappearance of Washington Barrios, these were being investigated, since “without prejudice to an extrajudicial execution having been committed [those who carried out the operation] pillaged goods at the home.”

30. The State argued that most of the persons allegedly responsible for participating in cases of forced disappearances or extrajudicial executions are currently behind bars at the prison known as Establecimiento de Reclusión No. 6. It emphasized that in that framework, eight officers had been tried and convicted (six military officers and two police officers) for committing crimes related to “Plan Cóndor” as a result of the investigations into the disappearance of Adalberto Soba in the Republic of Argentina on September 26, 1976, after the Executive determined that its judicial action was appropriate, on declaring that said case was not covered by Law 15,848. It mentioned the detention and prosecution of the former President, Juan María Bordaberry, and of the former foreign minister, Juan Carlos Blanco, for the assassinations during the military dictatorship of legislators Zelmar Michelini and Héctor Gutiérrez Ruiz and of citizens Rosario Barredo and William Whitelaw in the Republic of Argentina in May 1976. Finally, it reported that Lieutenant General Gregorio Álvarez had been tried on December 17, 2007, and convicted, under Article 21 of Law 18,026, that incorporates the crime of forced disappearance provided for in the Rome Statute of the International Criminal Court.

IV. ANALYSIS OF ADMISSIBILITY

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

31. The petitioner has standing to file a petition with the Commission under Article 44 of the American Convention and Article 23 of its Rules of Procedure. The petition describes as alleged victims individuals with respect to which the State has assumed the commitment to respect and ensure the rights recognized in the American Declaration, the American Convention as of April 19, 1985, the Inter-American Convention on Forced Disappearance of Persons as of April 2, 1996, and the Inter-American Convention to Prevent and Punish Torture as of November 10, 1992. Therefore, the Commission is competent *ratione personae* to examine the petition.

32. The Commission is competent *ratione loci* to consider the petition, since from the facts alleged one deduces possible violations of the rights protected by the American Declaration, the American Convention, the Inter-American Convention on Forced Disappearance of Persons, and

the Inter-American Convention to Prevent and Punish Torture that occurred within the territory of a state party to said instruments.

33. With respect to competence *ratione temporis*, the Commission notes that the alleged forced disappearances of Luis Eduardo González González and Oscar Tassino Asteazu of December 13, 1974 and July 19, 1977 respectively and the alleged extrajudicial executions of Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes of April 21, 1974, began and occurred before Uruguay ratified the American Convention on April 19, 1985. Accordingly, the source of applicable law is initially the American Declaration.² Nonetheless, the IACHR notes that with respect to the facts that occurred as of April 19, 1985 or those that it could well consider as a situation of continuing violation of rights that subsisted after that date, the Commission is also competent *ratione temporis* to examine this petition under the American Convention. In addition, the Commission is competent *ratione temporis* to examine the facts alleged in this petition under the Inter-American Convention on Forced Disappearance of Persons as of April 2, 1996, and under the Inter-American Convention to Prevent and Punish Torture as of November 10, 1992, dates on which it deposited the corresponding instruments of ratification.

34. Finally, the Commission is competent *ratione materiae* because the facts alleged suggest possible violations of the rights protected by the American Declaration, the American Convention, the Inter-American Convention on Forced Disappearance, and the Inter-American Convention to Prevent and Punish Torture.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

35. In order for a claim to be admitted for the alleged violation of the provisions of the American Convention, it must comply with the requirements established in Article 46(1) of that international instrument, and in Article 31 of its Rules of Procedure. Article 46(1)(a) of the American Convention provides that in order to determine the admissibility of a petition or communication presented to the IACHR in keeping with Articles 44 or 45 of that treaty one must have first pursued and exhausted domestic remedies, in keeping with generally accepted principles of international law. According to Article 31(1) of its Rules of Procedure, the Inter-American Commission should verify whether domestic remedies have been pursued and exhausted, in keeping with generally recognized principles of international law.

36. Article 46(2) of the American Convention and Article 31(2) of the Commission's Rules of Procedure provide that the prior exhaustion requirement does not apply when: (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

37. With respect to the exhaustion of domestic remedies, the State did not make specific arguments. Nonetheless, it reported that its Executive branch had gone forward in the investigation

² Articles 1 and 20(b) of the Statute of the IACHR; Charter of the Organization of American States, Articles 3, 16, 51, 112, and 150; Rules of Procedure of the IACHR, Articles 23 and 51; and IACHR, Report No. 3/87, Case 9647, Admissibility and Merits, *James Terry Roach and Jay Pinkerton*, United States, September 22, 1987, paras. 46-49. *See also* I/A Court H.R. *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, paras. 35-45.

and search for truth and justice, and that it had taken actions to clarify the facts related to the persons who were detained and disappeared. It also indicated that the facts alleged in the petition had been clarified by the Peace Commission. For its part, the petitioner argued that even though the Executive had authorized investigations under Law 15,848, the Judicial branch has not issued a pronouncement that clarifies the official truth of the facts. The petitioner also alleged that the Peace Commission did not determine criminal or other liability, and based its investigation on confidential sources; moreover, according to data from some cases, the reliability of its conclusions is cast in doubt. Finally, it argued that even though it requested that the cases be reopened in 2005, the criminal law judges decided to archive the cases.

38. Both the Inter-American Commission and the Inter-American Court of Human Rights have indicated that one need only exhaust those remedies adequate to rectify the alleged violations.³ In this respect, the Commission observes that as the instant claim involves the alleged forced disappearances of two men and the alleged extrajudicial executions of three women, the suitable remedy for clarifying the facts is a criminal investigation to determine the truth of what happened and thereby to establish the responsibility of the state agents involved.

39. The Commission observes that based on the parties' arguments, the criminal investigations were archived on December 19, 2006, with respect to the forced disappearance of Luis Eduardo González González, and on February 16, 2007, with respect to the extrajudicial executions of Diana Maidanic, Laura Raggio Odizzio, Silvia Reyes, and the forced disappearance of Oscar Tassino Asteazu. It also notes that the Peace Commission concluded in its 2003 final report that the remains of Luis Eduardo González González and Oscar Tassino Asteazu were buried in facilities of the armed forces.

40. Nonetheless, according to the facts alleged and taking into account what the Inter-American Court of Human Rights and the Commission have concluded in other cases⁴, the Commission considers that the criminal investigations opened in each case did not clarify the circumstances of the alleged forced disappearances and possible extrajudicial executions, considering that during the dictatorship of 1973 to 1985 in Uruguay and since the entry into force of Law 15,848 in 1986, the State had not guaranteed, through its laws, the right to the truth and access to justice. In addition, the Commission considers *prima facie* that the Peace Commission does not constitute a judicial remedy; accordingly, its conclusions cannot be taken into account for the purposes of complying with the prior exhaustion requirement. In this regard, the Commission considers that the exception to the exhaustion of domestic remedies provided for at Article 46(2)(a)

³ The I/A Court H.R. has determined that an adequate remedy is one that is suitable for protecting the legal situation impaired, such that remedies that do not have that effect or that are manifestly absurd or unreasonable need not be exhausted. I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, paras. 63 and 64. See IACHR, Report No. 4/12, Petition 4115-02, Admissibility, *Ricardo Javier Kaplun and family*, Argentina, March 19, 2012, para. 28, IACHR, Report No. 14/12, Petition 670-06, Admissibility, *Carlos Andrés Rodríguez Cárdenas and family*, Ecuador, March 20, 2012, para. 32.

⁴ The Commission observes that the Inter-American Court of Human Rights, on handing down its judgment of February 24, 2011 in the case of *Gelman v. Uruguay*, concluded that "the Expiry Law lacks the effects because of its incompatibility with the American Convention and the Inter-American Convention on Forced Disappearance of Persons, in as much as it can impede the investigation and possible sanction of those responsible for serious human right violations." See I/A Court H.R. *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 253. It also notes that the Commission concluded since 1992 that "Law 15,848 of December 22, 1986, is incompatible with Article XVIII (Right to a Fair Trial) of the American Declaration of the Rights and Duties of Man, and Articles 1, 8 and 25 of the American Convention on Human Rights." IACHR, Report No. 29/92, Cases 10,029, 10,036, 10,145, 10,305, 10,372, 10,373, 10,374, and 10,375, *Hugo Leonardo de los Santos Mendoza, Álvaro Balbi, Enrique Rodríguez Larreta Pieri, Noris Alejandra Menotti Cobas, Luis Alberto Estradet, Josefina Mirta Detta Paolino, Rita Ibarburu, Federico Martínez, Jorge Burgell, William Torres Ramírez, Guillermo Francisco Stoll, Osiris Elías Musso Casalas, Clarel de los Santos Flores, Juan Manuel Brieba, Felix Sebastián Ortiz, Amelia Sanjurjo Casal, and Antonio Omar Paitta*, Uruguay, October 2, 1992, Operative paragraph 1.

of the American Convention and at Article 31(2)(a) of the its Rules of Procedure applies, since *prima facie* there was no legislation in the State that guaranteed due process of law to protect the rights that the petitioner argues were violated in respect of the alleged victims' next-of-kin.

41. In addition, given that the criminal investigation was never carried out under laws that guaranteed due process, the Commission considers *prima facie* that there is unwarranted delay, thus the exception to the exhaustion of domestic remedies provided for at Article 46(2)(c) of the American Convention and Article 31(2)(c) of the Commission's Rules of Procedure is also applicable.

42. It should be clarified that Article 46(2), given its nature and purpose, is a provision with autonomous content vis-à-vis the substantive provisions of the American Convention. Therefore, the determination of whether the exceptions to the prior exhaustion rule are applicable to the case in question should be made prior to and separate from the analysis of the merits, for it depends on a different standard of appreciation from that used to determine a possible violation of the American Convention.⁵ The foregoing also applies to Article 31(2) of the Commission's Rules of Procedure.

2. Time period for submitting the petition

43. The American Convention establishes that for a petition to be admissible by the Commission it must be submitted within six months from the date on which the alleged victim was notified of the final decision. In the claim under analysis, the IACHR has established the application of one of the exceptions to the exhaustion of domestic remedies established at Article 46(2)(a) of the American Convention and Article 31(2)(a) of the Commission's Rules of Procedure. In this respect, Article 32 of the Commission's Rules of Procedure establishes that in the cases in which the exceptions to the prior exhaustion of domestic remedies apply, the petition should be submitted within a time which, in the view of the Commission, is reasonable. To that end, the Commission should consider the date on which the alleged violation of rights has taken place, and the circumstances of each case.

44. In the instant case, the petition was received on August 15, 2007. In addition, the alleged facts that are the subject of the claim are said to have begun on December 13, 1974, with respect to Luis Eduardo González González, on July 19, 1977, with respect to Oscar Tassino Asteazu, and occurred on April 21, 1974 with respect to Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes; and the criminal investigations were said to have been archived by the Judicial branch on December 19, 2006, with respect to the alleged forced disappearance of Luis Eduardo González González, and on February 16, 2007 with respect to the alleged extrajudicial executions of Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes, and the forced disappearance of Oscar Tassino Asteazu.

45. Considering that after more than 30 years the criminal investigations initiated had not clarified the circumstances of the alleged forced disappearances and extrajudicial executions, due allegedly to the non-existence of a legal framework to guarantee criminal due process, and considering that the effects of the alleged failure of the administration of justice are said to extend to the present day, the Commission considers that the petition was filed within a reasonable time, and that one should consider the admissibility requirement related to the time for submitting the matter to have been met in all cases.

3. Duplication of procedures and international *res judicata*

⁵ IACHR, Report No. 13/09, Petition 339-02, Admissibility, *Vinicio Poblete Vilches*, Chile, March 19, 2009, para. 54.

46. The record of the petition does not contain any information that could lead one to determine that this matter is pending another international procedure for settlement or that it has previously been decided by the Commission. Therefore, the IACHR concludes that the potential bars to admissibility provided for at Article 46(1)(c) and Article 47(d) of the American Convention and Article 33 of the Commission's Rules of Procedure do not apply.

4. Characterization of the facts alleged

47. For the purposes of admissibility, the Commission must decide whether the facts alleged tend to establish a violation of rights, as provided for in Article 47(b) of the American Convention and Article 34(a) of the Commission's Rules of Procedure, or whether the petition is "manifestly groundless" or out of order, as per Article 47(c) of the American Convention and Article 34(b) of the Commission's Rules of Procedure. The criterion for evaluating those requirements differs from that used to rule on the merits of a petition; the Commission must make a *prima facie* evaluation to determine whether the petition establishes the basis of the possible or potential violation of a right guaranteed by the American Convention, but not to establish the existence of a violation of rights. This determination constitutes a preliminary analysis, which does not entail prejudging on the merits of the case.⁶

48. Neither the American Convention or the IACHR's Rules of Procedure require the petitioners to identify the specific rights that it is alleged have been violated by the State in the matter submitted to the Commission, although petitioners may do so. By way of contrast, it is up to the Commission, based on the case-law of the system, to determine in its admissibility reports what provision of the relevant inter-American instruments is applicable, and that one could conclude had been violated if the facts alleged are proven by sufficient evidence and legal arguments.

49. Given the factual and legal arguments of the parties, and the nature of the matter before it, with respect to the alleged victims' next-of-kin, the Commission considers that they tend to establish to establish violations of the rights enshrined in Articles I (right to personal security), and XVIII (right to a fair trial) of the American Declaration, with respect to the alleged failure to investigate prior to April 19, 1985, and of the rights contained in Articles 5, 8, and 25, in relation to Articles 1(1) and 2 of the American Convention and Articles I, III, IV, V, and XI of the Inter-American Convention on Forced Disappearance of Persons, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to the alleged failure to carry out an effective investigation into the facts alleged, including the alleged acts of torture, the alleged failure to prosecute and punish the persons allegedly responsible, in keeping with a legal framework that has not guaranteed due process, the alleged lack of access to information to determine the truth, as well as the possible violation of the personal integrity of the alleged victims' next-of-kin stemming from the alleged violations. However, the Commission considers that the petitioners have not presented sufficient evidence to establish the characterization of a possible violation of Article 13 of the American Convention, which corresponds declare this claim inadmissible.

50. As regards the alleged forced disappearance of Luis Eduardo González González and Oscar Tassino Asteazu, the Commission considers that they tend to establish violations of the rights enshrined in Articles I (right to life and personal security), IX (right to inviolability of the home), XVII (right to recognition of juridical personality and civil rights), XVIII (right to a fair trial), and XXV (right to protection from arbitrary arrest) of the American Declaration, respectively, for the period from December 13, 1974 and July 19, 1977 until April 19, 1985, and of the rights contained in Articles 3, 4,

⁶ See IACHR, Report No. 3/11, Petition 491-98, Admissibility, *Néstor Rolando López et al.* Argentina, January 5, 2011, para. 37.

5, 7, 8, and 25 in relation to Articles 1(1) and 2 of the American Convention, Articles I, III, IV, V, and XI of the Inter-American Convention on Forced Disappearance of Persons, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

51. Finally, with respect to the alleged extrajudicial execution of Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes, the Commission considers that the petition tends to establish violations of the rights contained in Articles I (right to personal security), IX (right to inviolability of the home), and XVII (right to recognition of juridical personality and civil rights) of the American Declaration, as they died before April 19, 1985.

VI. CONCLUSIONS

52. The Commission concludes that it is competent to examine the claims presented in this matter and that the petition is admissible under Articles 46 and 47 of the American Convention. Based on the arguments of facts and law set forth above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant case admissible in relation to the alleged violations of the rights recognized in Articles I, IX, XVII, XVIII, and XXV of the American Declaration, Articles 3, 4, 5, 7, 8, and 25 in relation to Articles 1(1) and 2 of the American Convention, Articles I, III, IV, V, and XI of the Inter-American Convention on Forced Disappearance of Persons, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to Oscar Tassino Asteazu and Luis Eduardo González González; the rights recognized in Articles I, IX, and XVII of the American Declaration with respect to Diana Maidanic, Laura Raggio Odizzio, and Silvia Reyes; and at Articles I and XVIII of the American Declaration, Articles 5, 8, and 25, in relation to Articles 1(1) and 2 of the American Convention, and Articles I, III, IV, V, and XI of the Inter-American Convention on Forced Disappearance of Persons, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to the alleged victims' next-of-kin.

2. To declare inadmissible the instant case in relation to the alleged violations of the rights contained in Article 13 of the American Convention.

3. To notify the parties of this decision.

4. To proceed with the analysis on the merits.

5. To make this report public and to publish it in its Annual Report to the OAS General Assembly.