OEA/Ser.L/V/II.153
Doc. 10
6 November 2014
Original:English

REPORT No. 94/14
PETITION 623-03

REPORT ON ADMISSIBILITY

JAIME HUMBERTO USCÁTEGUI RAMÍREZ AND FAMILY MEMBERS
COLOMBIA

Approved by the Commission at its session No. 2013 held on November 6, 2014
153 Regular Period of Sessions

Cite as: IACHR, Report No. 94/14, Petition 623-03. Admissibility. Jaime Humberto Uscátegui Ramírez and family members. Colombia. November 6, 2014.

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I. SUMMARY

1. On August 18, 2003, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition alleging international responsibility of the Republic of Colombia (hereinafter "the State" or "the Colombian State") for unwarranted delay and failure to protect fair trial rights in criminal proceedings brought against retired Brigadier General Jaime Humberto UscátéguiRamírez (hereinafter "the alleged victim"), as a result of his purported responsibility for the crimes known as the "Mapiripán Massacre[1]." It is also contended in the petition that the alleged victim was held for an excessively long period of time in pretrial detention, his right to privacy and freedom of expression were infringed and that the safety and lives of his next-of-kin were placed at risk[2]. The original petition was lodged by Mr. Jaime Uscátegui and, while the case was being processed by the IACHR, Mr. Björn Arp of the law firm Aparicio, Arp, Schmais& Associates LLC, and Jose Jaime Uscátegui, the son of the alleged victim, acted as co-petitioners.

2. The petitioners contend that the State is responsible for violation of Articles 7, 8, 11, 13 and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") in connection with Article 1(1) thereof. In response, the State argues that the claim is inadmissible because it deals with acts that have been settled with the status of international *res judicata* and, as to Mr. Uscátegui's particular situation, that the State has met its obligations under the Convention regarding access to justice, fair trial rights and judicial protection, but the petitioners have failed to exhaust domestic remedies and the facts of the case do not tend to establish human rights violations. It argues that the IACHR may not act as a court of appeals and, in keeping with the subsidiary nature of the Inter-American human rights protection system, the Commission may not review court rulings issued in keeping with the law that were not favorable to the alleged victim.

3. After examining the positions of the parties and whether the requirements set forth under Articles 46 and 47 of the Convention have been met, the Commission decided to find the petition admissible as to the alleged violation of Article 5 (humane treatment), Article 7 (personal liberty), Article 8 (right to a fair trial) and Article 25 (judicial protection) of the American Convention, in conjunction with Article 1(1). It also decided to find the petition inadmissible as to the alleged violation of Article 11 (right to privacy) and Article 13 (freedom of thought and expression) of the American Convention, to notify the parties and order the publication of this decision in the IACHR Annual Report to the OAS General Assembly.

[1]On October 6, 1999, the IACHR received a petition, which was lodged against the Republic of Colombia and assigned the number 12.250, alleging that from July 15 to 20, 1997, members of the paramilitary group "United Self-Defense Forces of Colombia" (AUC, acronym from the Spanish *AutodefensasUnidas de Colombia*) deprived of their liberty, tortured and then slaughtered approximately 49 civilians, in the municipality of Mapiripán, Department of Meta, with the collaboration of members of the Colombian National Army, by their actions and failure to act. See: Admissibility Report No. 34/01, Case 12.250, Mapiripán Massacre (Colombia), February 22, 2001 and Merits Report No. 38/03, approved by the IACHR on March 4, 2003 in the same case. On September 15, 2005, the Inter-American Court of Human Rights issued its judgment finding the State internationally responsible for the crimes that took place in Mapiripán..*Cfr*. IA Ct. of HR. Case of the "Mapiripán Massacre" vs. Colombia.Merits, reparations and costs. Judgment of September 15, 2005. Series C No. 134.

[2]During the proceedings before the IACHR, the following members of the immediate family of Mr. Uscátegui were also identified as alleged victims in the petition: ConstanzaPastrana de Uscátegui (wife), José Jaime UscátéguiPastrana (son), María AngélicaUscátegui (daughter), Mariana Uscátegui (daughter), and JuliánUscátegui (son).

II. PROCEEDINGS BEFORE THE COMMISSION

4. The Commission received the petition on August 18, 2003, and assigned it number 623-03. In communications of June 23 and September 17, 2009, the IACHR requested additional information from the petitioners. On March 6, 2007, August 18, December 16 and 29, 2009, and April 13, 2010, the petitioners submitted their reply to said requests and also provided further information. After conducting a preliminary examination, on May 14, 2010, the Commission forwarded the relevant portions of the petition to the State in order for it to submit its response.

5. On July 14, 2010, the State requested an extension for the submission of its response, which was granted by the IACHR setting the date of August 14, 2010 as the deadline for its reply, pursuant to Article 30(3) of the Commission's Rules of Procedure in force at the time. On August 17, 2010, the State requested another extension of 15 days. In a communication of August 19, 2010, the IACHR reported to the State that the extension requested by it could not be granted pursuant to the time limit established in Article 30(3) of the IACHR Rules of Procedure cited above.

6. On October 28, 2010, the petitioners submitted additional information, which was forwarded to the State for it to submit its response within a maximum period of one month. On December 6, 2010, additional information was received from the State, which was forwarded to the petitioners for their reference. On January 13, 2011, the petitioners submitted a response and provided additional information. In a communication of January 24, 2011, the IACHR forwarded this information to the State.

7. On January 31, 2011, the State sent a communication noting that it had submitted its observations on September 1, 2010, and requested that the observations be forwarded to the petitioners. In a communication of February 24, 2011, the IACHR advised the State that, after conducting a thorough search for the note referenced by the State, it had been unable to find it either in the electronic or the physical files of the Executive Secretariat of the Commission. Consequently, it requested the State to forward a copy of the aforementioned note to the Secretariat. On February 25, 2011, the reply of the State was received, which was forwarded to the petitioners for their observations.

8. On April 20, 2011, the petitioners' response was received and was forwarded to the State for its observations. On June 8, 2011, the State requested a one-month extension, which was granted by the IACHR. The State's response was received on July 18, 2011, and was forwarded to the petitioners for their reference.

9. On December 13 and 14, 2011, a power of attorney for Mr. Björn Arp, Esquire, to act as co-petitioner in the case was received, as well as an additional submission of observations, which was forwarded to the State for its observations. The State submitted its response on March 2, 2012, which was forwarded to the petitioners for their observations. On March 13, 2012, the petitioners' response was received and was forwarded to the State for its reference.

10. On November 28, 2012, the petitioners submitted a request for the IACHR to hold a working meeting with the alleged victim during its country visit to Colombia from December 3 to 7, 2012. In a communication of January 23, 2013, the IACHR advised them that no individual cases or petitions had been heard or examined during the visit and, for that reason, it could not grant that request. Additionally, during the time the petition has been processed before the IACHR, the petitioners filed requests for hearings to be held during the respective IACHR sessions on January 22, 2010, January 24 and August 19, 2011, and these requests could not be granted because of the high number of hearings requested on said occasions.

11. On March 26, 2013 and March 26, 2014, communications were received from the Mission to Support the Peace Process in Colombia of the Organization of American States (MAPP/OAS), whereby the Mission forwarded communications submitted by Mr. Jose Jaime UscátéguiPastrana, providing additional information about the instant matter. Information was also received from the petitioners on January 31, March 31 and April 3, 2014.

12. On June 11 and 13, 2014, the State and the petitioners, respectively, provided additional information, which was forwarded to the opposing party for reference.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

13. In the instant matter, retired Brigadier General Jaime Humberto UscátéguiRamírez of the Colombian National Army claims to have been subjected to an ongoing criminal proceeding dating back to 1999, for his alleged involvement in the crimes known as the "Mapiripán Massacre," which took place in July 1997. According to the account, at that time Mr. Uscátegui was the Commander of the Seventh Brigade of the Fourth Division of the National Army (hereinafter "Seventh Brigade"), which was stationed in the city of Villavicencio, Department of Meta. He contends that the "willful disinterest" of the Colombian State in administering justice for the crimes committed at Mapiripán has constituted "an obstacle to the exercise of [his] legitimate right to a defense" in the criminal proceedings brought against him, which purportedly have spanned almost 15 years with no dispositive judgment ever being handed down and he remained deprived of his liberty for most of that time.

14. The petitioners argue that one of the main events that has altered the "course and length of time of the court proceeding," as a result of the State's own actions, is that Mr. Uscátegui had been initially charged, prosecuted and punished under the military criminal justice system, but that these proceedings were eventually vacated, pursuant to a November 13, 2001 decision of the Constitutional Court, awarding jurisdiction to the ordinary civilian justice system, which then retried him for the same crimes.

15. The petitioners allege that there was excessive delay at four points of the criminal proceedings, based on the statutory time periods set forth in the Colombian Code of Criminal Procedure (CPPC, as it is known by its Spanish acronym), and these points are: i) the trial court judgment in the ordinary justice system should have been handed down within 15 days of completion of the public trial, which ended in July 2005; the judgment, however, was handed down on November 28, 2007, two years and four months later; ii) the appeal of said decision should have been settled within 15 days of the date of filing, but the Superior Court of Bogota issued its judgment on November 23, 2009; iii) the statutory period of time provided for by law for the administrative process of notification and filing a petition for a writ of reversal of judgment on cassation is 30 days, with an additional period of 15 days provided as well; however, in these proceedings, 347 days elapsed; and iv) the petition for writ of reversal on cassation filed with the Supreme Court of Justice (hereinafter the "CSJ") on October 6, 2010, should have been granted or denied within 30 days of the filing thereof; the CSJ, however, granted the writ on November 1, 2011 and handed down its decision on June 5, 2014.

16. The petitioners contend that during the course of the proceedings, violations of the right to a fair trial were also committed, mainly because judicial authorities "deliberately did not tell the truth" on a "central point of the procedural debate," regarding what jurisdiction Mr. Uscátegui had over the municipality of Maparipán in his operational command so as to be able to ascribe responsibility to him for a crime. They claim that this was done by ignoring and concealing some evidence, and partially examining other evidence. They also argue that at different levels of the judiciary, testimony has been "misrepresented" and official documents have been "doctored." As an example of this, they contend that the wording of the Constitutional Court's 2001 decision referenced above cites verbatim testimony reputedly given during the proceedings, which had not actually been given. They also argue that the March 10, 2003 decision by the Office of the Attorney General of the Nation to file the formal charges was based on an official document of the Seventh Brigade Command, from which information had been left out, "substantially changing the content" of the document to the detriment of the alleged victim. They also claim that the judgment of conviction issued on November 23, 2009 by the appeals court was based on facts gleaned from testimony that had not been given in the trial proceedings.

17. The petitioners note that the above referenced judgment of conviction on appeal, which was also upheld by the Supreme Court in the decision on the petition for writ of reversal on cassation, sentenced the alleged victim to a prison term of 40 years for his purported participation as a "co-perpetrator," presumably in collusion with paramilitary groups, in the crimes of homicide and aggravated abduction, and tampering with a public document by a public official. They further noted that in the 2013 decision to indict Mr. Uscátegui, he had been charged instead with the crime of "breach of duty to protect the civilian population," and any investigation into the offense of criminal association had been precluded. In this regard, they contend that the "title of the criminal offense" had been changed, which also infringed his right to due process of the law and to a defense. They also claim that the criminal charges were brought in an "abstract and plural" way, inasmuch as the victims of the crimes he was convicted of had not been individually identified by name.

18. The petitioners also contend that the judicial authorities convicted him without assessing "all of the evidence introduced at the trial" by the defense team of Mr. Uscátegui, and had no grounds to not admit it, especially the evidence pertaining to the operational command position held by the alleged victim in his capacity as Commander of the Seventh Brigade. In particular, they argue that the November 2009 conviction was broadly based on the testimony of another military official, who had been implicated in the criminal case; nonetheless, some of the evidence, which purportedly went unexamined in the case, contained records that this person had an "arrangement" with the attorneys of the party seeking civil damages to testify against Mr. Uscátegui.

19. As to the deprivation of liberty, the petitioners contend that the first pretrial custody order against Mr. Uscátegui was issued on May 20, 1999, and that even though pretrial release was granted to him on at least two occasions, when the case was being heard by the military courts, this order was revoked for good when the civilian courts were granted jurisdiction in the case, and after the indictment was issued by the Office of the Attorney General on March 10, 2003. They note that in December 2004, he filed another motion for pretrial release on the grounds that the period of time to bring him to trial had lapsed, but that said motion had been denied without further recourse in a ruling of April 4, 2005 of the Superior Court of the Judicial District of Bogota.

20. The petitioners allege that Mr. Uscátegui remained in pretrial detention awaiting a conviction for 56 months straight as of the date of the indictment of 2003, until November 28, 2007, when the Ninth Criminal Court of Bogota issued a judgment of conviction at the trial level. They contend that on said occasion, he was sentenced to a jail term of 41 months for the crime of tampering with a public document, but that the Court had ascertained on its own that he had already been deprived of his liberty for 74 months, a longer time in prison than the prison term to which he was sentenced and, therefore, he was granted release on parole. Nonetheless, the alleged victim was once again deprived of his liberty when the appeals court upheld his conviction on November 23, 2009. They reiterate in this regard, that the petition for a writ of reversal of judgment on cassation filed against this decision took almost four years to be settled and the alleged victim remained in custody over the course of this time even though no final judgment of conviction against him had been handed down.

21. Another claim in the petition is that José Jaime Uscátegui, the alleged victim's son, produced a documentary film titled *¿Porquélloró el General?* ["Why did the General cry?"], wherein the court proceedings against his father are probed and called into question. It is argued that the producers of the documentary engaged the services of the theater "Teatro Patria" of the Northern Military Canton of the City of Bogota to feature the film on September 5, 2006. However, an Army Coronel censured the documentary and, thereby, precluded the alleged victim from disseminating information on his case. On this issue, it is noted that on September 14, 2006, a petition for constitutional relief (*tutela*) was filed, but it was denied "under criteria of form, not substance" in a decision of the Fourteenth Civil Court of Bogota on October 24, 2006.

22. It is further argued in the petition that the next-of-kin of Mr. Uscátegui have been subjected to great suffering over the course of the time that he was deprived of his liberty and subjected to the court proceedings purportedly in an arbitrary fashion and without respect for his fair trial rights. Mr. Uscátegui also claimed in the original petition that he feared for the security of his family and, then, on October 23,

2008, he contended that the building in which his residence is located had been damaged as a result of an explosive device being set off and that as a consequence of this act, he had filed complaints with the Presidential Agency for Social Action and the Office of the Attorney General of the Nation.

B. Position of the State

23. As of the time of the submission of its original response, the State has requested the Commission to find the petition inadmissible, firstly on the grounds that the petition deals with crimes for which the bodies of the Inter-American system have previously established international responsibility of the State. It further claims that the allegations regarding "willful disinterest" of the Colombian authorities in investigating the crimes connected to the "Mapiripán Massacre" may not be reviewed again by the IACHR inasmuch as they have taken on the status of international *res judicata.*

24. Secondly, regarding the bail status of Mr. Jaime Uscátegui, the State alleges that the criminal proceedings brought against him were conducted with strict adherence to due process guarantees, without any improper delay, this proceeding was an adequate and effective remedy provided for by the State, and that a decision on the petition for writ of reversal of judgment on cassation was still pending. The State thus contended that domestic remedies had not been exhausted and that the facts, as described in the petition, did not tend to establish *prima facie* violations of rights enshrined in the American Convention.

25. The State contends that no purported action by agents of the State have been proven "for the purpose of preventing the exercise of the right to defense" of Mr. Uscátegui, nor has it been proven that "some evidence has been partially ignored and other evidence, concealed" during the trial. It claims that the facts of the case are related to judicial decisions that have been issued by the competent bodies, under standards of law in keeping with the Colombian legal system, and that the alleged victim has had access to all remedies provided to him under criminal law.

26. In support of this argument, the State has submitted a detailed account of the proceedings, from the time the preliminary investigation was opened ex officio in the ordinary justice system against the alleged victim, as one of the individuals allegedly responsible for the crimes committed during the "Mapiripán Massacre," in performance of his duties as Brigadier General and Commander of the Seventh Brigade. In this regard, it claims that on April 9, 1999, the Human Rights Unit of the Office of the Regional Prosecuting Attorney's Office ordered Mr. Uscátegui to become the subject of a preliminary investigation and on May 20 of that year, his bail status was set, ordering that he be taken into pretrial custody for alleged responsibility in the crimes of homicide, aggravated abduction and misrepresentation of facts in a public document, while it refrained from issuing the same custody order for the crimes of terrorism and criminal association.

27. The State notes that after the jurisdictional dispute was settled, on August 18, 1999, the Superior Council of the Judiciary assigned the criminal case to the military justice system and that that decision was subsequently overturned by a decision of the Constitutional Court on November 13, 2001, in reviewing a petition for constitutional relief (*tutela*) brought by the representatives of the victims of Mapiripán. It is noted that Mr. Uscátegui was convicted by the military trial court and sentenced to a prison term of 40 months for "dereliction of duty by failing to act" and was acquitted of the crime of "misrepresentation of the facts in performance of his official duties," but that in compliance with the decision of the Constitutional Court, the judgments of the military courts were vacated, including the appeal filed by his defense team, which was pending before the appeals court at the time.

28. The State notes that on March 10, 2003, the decision was made to indict Mr. Uscátegui "as perpetrator responsible for improperly failing to act to prevent the crimes of aggravated homicide and aggravated abduction" and "as the alleged perpetrator of misrepresentation of facts in public documents." Consistent with the account of the petitioners (see III.A above), the State noted that the alleged victim was convicted by the trial court on November 28, 2007 and, then, in a decision of November 23, 2009, the Superior Court of Bogota sentenced him to forty years in prison, payment of a fine of ten million Colombian pesos, as "co-perpetrator" of the crimes of homicide and aggravated abduction, and misrepresentation of facts

in a public document. As an accessory punishment, he was also disqualified for ten years from exercising certain rights and holding public office.

29. In light of the foregoing, the State claims that all fair trial guarantees have been respected and protected in the criminal proceeding against Mr. Uscátegui, that he has not be subjected to delays that can be attributable to the State, and that the investigation has been conducted "within limits that are foreseeable by interested parties pursuing the procedures and particularly taking into account the complexity of the acts giving rise to the criminal investigation […]." The State also raised the disciplinary case brought by the Office of the Procurator General of the Nation, wherein the alleged victim was punished under the code of discipline with "absolute removal" from the Military Forces in a decision of April 24, 2001, which does not allow further appeal.

30. As for the allegations on the purported protracted deprivation of liberty, the State reiterates that the alleged victim has enjoyed all rights to a fair trial, and that on several opportunities, he was granted the benefit of pretrial release and parole, in keeping with applicable law. It also contends that his detention has been ordered under court decisions supported by legal reasoning and a basis in the laws in effect, which provide for imposing this type of custodial measures in cases in which "the commission of serious crimes such as those perpetrated in the Mapiripán Massacre" are being investigated. Based on the accounts of the State, during the criminal proceedings in both the military and civilian courts, the alleged victim was granted the benefit of pretrial release on November 18, 1999 (because his bail situation had not been settled), in July 2001 (because he had already served 3/5 of the prison sentence given by the military court), and on November 30, 2007, after the appeal of the civilian trial court judgment was filed.

31. The State further argues that no case has been brought by the alleged victim in the administrative courts, inasmuch as this is a suitable and effective remedy to secure reparation for the consequences of the alleged human rights violations. As for the claims for reparation for pecuniary and non pecuniary damages, the State reiterates its position that such claims should be found inadmissible, inasmuch as the alleged victim has not exhausted this administrative remedy prior to resorting to the Inter-American system, as he has done in filing the instant petition.

32. Furthermore, regarding the alleged situation of risk of the family members of Mr. Uscátegui, the State claims that no evidence has been introduced in domestic courts to prove that the facts of the instant petition place his family at risk jeopardizing their safety and lives, as evidenced by the fact that they have not even filed for any protective measures from the courts for themselves.

33. The State additionally contends that the petition lays out no facts as to how the State has arbitrarily interfered in the alleged victim's private life, affecting his honor and reputation, or how it has infringed his right to freedom of thought and expression.

34. Lastly, it must be noted that in the State's submissions received on February 25, July 18, 2011 and March 2, 2012, it contends that the petition for writ of reversal of judgment on cassation filed by the alleged victim with the CSJ is currently under review and therefore the conviction was not final and the criminal proceeding is still pending disposition. The State noted that the issues to be decided by the CJS are "essentially" the same ones that are the subject of the claim before the IACHR. Subsequently, in the communication received on June 11, 2014, the State requested the Commission to rule on the admissibility of the petition in keeping with the process set forth in the IACHR Rules of Procedure.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

35. The petitioners are entitled under Article 44 of the American Convention to lodge petitions before the Commission. The petition identifies as the alleged victims Jaime Humberto Uscátegui and his immediate family members, for whom the Colombian State undertook to respect and ensure the rights enshrined in the American Convention. As for the State, the Commission notes that Colombia has been a State

Party to the American Convention since July 31, 1973, when it deposited the respective instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to hear the petition, inasmuch as violations of rights protected in the American Convention are alleged therein to have taken place within the territory of Colombia, a State Party to this instrument..

36. The Commission is competent *rationetemporis*because the obligation to respect and ensure the rights protected in the American Convention was already in effect on the State when the facts alleged in the petition took place. Lastly, the Commission is competent ratione*materiae*being that the petition charges potential violations of human rights protected under the American Convention.

B. Admissibility Requirements

1. Exhaustion of Domestic Remedies

37. Article 46(1)(a) of the American Convention requires prior exhaustion of domestic remedies in order for a petition to be admitted in accordance with generally recognized principles of international law. However, Article 46(2) of the Convention provides that the prior exhaustion rule shall not apply when (i) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (ii) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

38. In the matter *sub judice,* the State's first contention was that domestic remedies had not been exhausted, specifically because the petition for writ of reversal of judgment on cassation against the decision of the appellate panel of the Superior Court of Bogota of November 23, 2009, filed by the alleged victim was pending disposition. The petitioners, however, argued that the requirement was not enforceable in this matter as a result of the unwarranted delay in the criminal proceedings, thus rendering it an ineffective remedy to the purported failure to administer justice in the case of Mr. Uscátegui, and that the decision on the writ of cassation had taken much longer than the time it should have as provided by law.

39. As has been established on other occasions, in order to determine whether or not domestic remedies have been exhausted, the current situation at the time of the decision on admissibility must be taken into account, inasmuch as the situation at the time of the filing of the petition is not the same as at the time of the ruling on admissibility[3]. Accordingly, the Commission finds that, without prejudice to conducting the appropriate examination of the nature of the petition for writ of reversal of judgment on cassation and the prior exhaustion requirement as provided for in the Convention, the objection raised by State on this issue would no longer be valid at the time of the issuing of the instant report, inasmuch as based on the information available in the case record, said petition was previously adjudicated in a June 5, 2014 decision of the Cassation Chamber of the Supreme Court of Justice.

40. Furthermore, it is alleged in the instant petition that there has been unwarranted delay in the criminal proceedings against Mr. Uscátegui, which has amounted to an infringement of several of his rights. In response, the State contends that the length of the proceedings has been the result of, among other reasons, the procedural activity of the parties and the complexity of the facts that are under consideration and, therefore, under the criterion of reasonable period of time, it does not amount to any violation of the Convention.

41. In this regard, it must be noted that it is not the job of the IACHR to rule on the determination of guilt or innocence of a defendant in a criminal proceeding[4]. However, it is indeed

[3]IACHR, Report Nº 52/00, Dismissed Congressional Employees, Peru, June 15, 2000, par. 21. IACHR, Report No. 65/12, Alejandro Peñafiel Salgado.Ecuador, March 29, 2012, para. 35.

[4]IACHR, Report No. 65/12, Alejandro Peñafiel Salgado, Ecuador, March 29, 2012, para. 38.

incumbent upon this body to examine whether rights to a fair trial, as protected under the Convention, have been undermined. Accordingly, the Commission notes that the instant petition alleges violations of personal liberty, fair trial rights and judicial protection, purportedly committed in the context of the criminal proceedings against Jaime Uscátegui, which include the right to a defense, the presumption of innocence, the right to be tried within a reasonable period of time, protection against excessively long pretrial detention, as well as alleging failure to provide a basis in law and fact for judicial rulings, and failure to provide for effective domestic remedies to substantiate arguments on the alleged violations.

42. The Commission notes that even though the petitioners have argued that the exceptions to the rule of prior exhaustion of domestic remedies are applicable in this case, the claims referenced above have been raised in the domestic courts in processing the criminal case against the alleged victim. Thus, based on available information, the alleged victim appealed the conviction that was handed down both in the military justice system and in the ordinary justice system, as well as the decision of March 10, 2003, which was upheld in the decision of July 30, 2003 of the Assistant Prosecuting Attorney before the Superior Court of Bogota. With regard to the alleged impact of the fact that the case was heard by military authorities and that these proceedings were subsequently vacated, the contention is that no remedy was available to make it possible to directly challenge the decision of the Constitutional Court of November 13, 2001. The State has not disputed this allegation.

43. With regard to protracted detention, the Commission finds that this allegation is directly connected to the circumstances of the purported delay in the criminal proceedings against Mr. Uscátegui. Notwithstanding, based on the information available to the IACHR, the Commission has taken into consideration that the first pretrial custody order issued against Mr. Uscátegui was on May 20, 1999 and was executed on May 27 of that month. As established in the November 28, 2007 trial court decision of the ordinary justice system, the alleged victim remained in pretrial detention, up until that time, for a total of 62 months and two days, though he had been granted release on two occasions, when the proceedings were conducted before the military courts. The petitioners contended that in December 2004, Mr. Uscátegui's defense attorney filed a motion for him to be released, because the deadline for him to be tried had lapsed, but this motion had been flatly denied in a decision of April 4, 2005 by the Superior Court of the Judicial District of Bogota.

44. The State, however, also argued that the alleged victim had not exhausted administrative remedies to obtain reparation for potential human rights violations. In this regard, the Commission reiterates that for the purposes of admissibility requirements, this remedy does not constitute a remedy that must be exhausted because it is does not constitute adequate means to try, punish and redress the consequences of human rights violations. Therefore, given the circumstances of the instant case, and taking into account that the bail situation of Mr. Uscátegui had been dispositively settled in the June 5, 2014 decision of the CSJ, the Commission concludes that the requirement set forth in Article 46(1)(a) of the Convention has been satisfied.

45. Lastly, with regard to the argument on the alleged preclusion by the military authorities from releasing to the public the documentary film about the court case of Mr. Uscátegui, "Why did the General cry?" the Commission notes that, based on the information available to it, a motion for constitutional relief (*tutela*) was filed and was denied in a decision of the Fourteen Civil Court of the Circuit of Bogota on October 24, 2006. The petitioners have not provided information as to whether or not they have pursued any means to challenge this decision and on the scope of the claims raised in the domestic legal system regarding this issue. Therefore, not enough information is available to the IACHR at this time to be able to determine whether the requirement under consideration has been met with regard to the alleged violation of the right to freedom of expression and, consequently, this claim must be declared inadmissible.

2. Timeliness of the Petition

46. Pursuant to the American Convention, for a petition to be admitted it must be submitted within six months from the date on which the party alleging violation of his rights was notified of the final judgment exhausting domestic remedies. Article 32 of the Commission's Rules of Procedure also establishes

that when any of the exceptions to the prior exhaustion of domestic remedies rule is applicable, the petition must be lodged within a reasonable period of time, as determined by the Commission.

47. The petition was received on August 18, 2003. In this case, the Commission notes, on the one hand, that at the time when the petition was lodged, it was alleged that there was unwarranted delay in the domestic proceeding and that the exceptions to the rule of prior exhaustion of domestic remedies were applicable to the case, as provided for under Article 46(2) of the Convention; and, on the other hand, that the criminal proceeding against Mr. Uscátegui came to a final disposition with the decision of the Criminal Cassation Chamber of the Supreme Court of Justice on June 5, 2014. Therefore, in view of the context and the circumstances of the instant case, the Commission finds that the petition was lodged within a reasonable period of time and that the admissibility requirement pertaining to timeliness of filing must be regarded as satisfied.

3. Duplication and International *res judicata*

48. For a petition to be admitted, Article 46(1)(c) of the Convention establishes that the matter may not be "pending in another international proceeding for settlement" and Article 47(d) of the Convention provides that the Commission shall not admit any petition that is "substantially the same as a petition or communication previously studied by the Commission or by another international organization."

49. In the instant matter, the State alleges that the IACHR may not hear petitions that are "substantially the same as one previously studied," and that to the extent that the instant matter deals with acts related to the "Mapiripán massacre," it must be found inadmissible because both the Inter-American Court and the Commission have already established international responsibility for that case. The petitioners dispute said argument contending that even though the instant petition is "closely related" to the Mapiripán case, inasmuch as both matters stem from the same "historic crimes," the purpose of this petition is different, that is, the alleged violation of the fair trial rights and right to a defense, among other ones, to the detriment of Mr. Uscátegui, is an issue that has not yet been settled, much less has it been the subject of any ruling in the Inter-American system.

50. In light of the arguments of the parties, it is fitting to first reiterate prior rulings of the Commission as to the phrase "substantially the same" and what is required in this regard in keeping with Article 47(d) of the Convention and current Article 33(1)(b) of the IACHR Rules of Procedure. On this score, the IACHR has established that "[…] a prohibited instance of duplication involves, in principle, the same person, the same legal claims and guarantees, and the same facts adduced in support thereof."[5] Likewise, the Inter-American Court has established that for a case to acquire the status of *res judicata,*there must be identity between the cases and for this purpose, "the presence of three elements is necessary, these are: that the parties are the same, that the object of the action is the same and that the legal grounds are identical."[6]

51. In this regard, the Commission notes that in Merits Report No. 38/03, approved by it on March 4, 2003, it concluded that in case 12.250, Colombia had violated the rights "[…] to life, humane treatment and personal liberty of the [approximately 49] victims of the massacre perpetrated in Mapiripán between July 15 and 20, 1997 […] Additionally, [that] the State [was] responsible for the violation of the right to due process and judicial protection of the victims and their family members […]." Separately, in the judgment of September 15, 2005, the Inter-American Court determined international responsibility of the State for violations of the rights enshrined in Articles 4, 5, 7, 8, 19, 22 and 25 of the American Convention on Human Rights, to the detriment of a number of victims who were individually identified during the course of the proceedings before the Court.

[5]IACHR Report No. 96/98 Case 11.827 Peter Blaine Vs. Jamaica, December 17, 1998.

[6]*Case of the Saramaka People v. Surinam* Judgment of November 28, 2007. Series C No. 172, pars. 46 and 47.

52. In light of the foregoing, the Commission notes that the object of the instant petition pertains to alleged violations of due process rights and judicial protection to the detriment of Mr. Jaime Uscátegui, in the criminal proceeding brought against him as one of the individuals allegedly responsible for the "Mapiripán Massacre." Additionally, violations of his right to personal liberty are alleged for having been held in purportedly protracted detention, as well as violations of his right to privacy and the alleged situation of risk and harm inflicted upon his immediate family members. Therefore, the petition deals with the rights of these individuals whose legal interests are different from those of the victims of case 12.250, previously adjudicated by the Commission and by the Inter-American Court. In light of this, the instant matter does not fulfill the requirements to be declared *res judicata.*

53. Consequently, the IACHR finds that the exceptions set forth in Article 46(1)(d) and Article 47(d) of the American Convention are not applicable.

4. Colorable Claim

54. For the purposes of admissibility, the IACHR must decide whether the allegations state facts which would tend to establish violations of the American Convention, as provided in Article 47(b) thereof, and whether the petition is "manifestly groundless" or "obviously out of order," in accordance with paragraph (c) of the same Article.The standard for evaluating these requirements is different from the one used to judge the merits of a complaint. The IACHR must undertake a *prima facie* evaluation to determine whether the complaint demonstrates an apparent or potential violation of a right protected by the American Convention, but not whether such a violation occurred. Such an evaluation is a summary review that does not prejudice or advance an opinion on the merits of the matter.[7]

55. Moreover, neither the American Convention nor the Rules of Procedure of the Inter-American Commission on Human Rights requires petitioners to identify the specific rights allegedly violated by the State in matters submitted to the Commission, even though the petitioners may do so. However, it is the duty of the Commission, in following the system of legal precedents, to determine in its admissibility reports, what provision of relevant Inter-American instruments is applicable and could be concluded to have been violated, should the alleged facts be proven by means of sufficient evidence and legal argument.

56. In light of the elements of fact and law submitted by the parties and the nature of the matter before it, the IACHR finds that the allegations of the petitioners regarding the alleged protracted detention in which Mr. Uscátegui was purportedly held as a result of the criminal proceeding he was undergoing, and the alleged delay thereof and infringements of fair trial rights in relation with the presumption of innocence, his right to a defense and to be tried within a reasonable period of time, could tend to establish violations of the rights provided for in Articles 7, 8 and 25 of the American Convention. During the merits stage, the Commission will also consider the allegations regarding the situation of the next-of-kin of Mr. Uscátegui, as it pertains to Article 5 of the American Convention.

57. Lastly, the Commission finds that the petitioners have not submitted enough basic evidence and argument to enable it to make a *prima facie* determination of their claims as to a potential violation of the right protected under Article 11 of the American Convention. Accordingly, the IACHR finds this allegation inadmissible in keeping with Article 47(d) of the aforementioned instrument.

V. CONCLUSIONS

58. The Commission concludes that it is competent to examine the claims brought by the petitioners regarding the alleged violation of Articles 5, 7, 8 and 25 of the American Convention in connection with Article 1(1) thereof and that it must find the petition inadmissible with regard to Articles 11 and 13 of the Convention.

[7] IACHR, Report N° 21/04, Petition 12.190, Admissibility, *José Luis Tapia González et al*, Chile, February 24, 2004, par. 33.

59. Based on the foregoing arguments of fact and law and without prejudice to the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find the instant case admissible with regard to Articles 5, 7, 8 and 25 of the American Convention in connection with Article 1(1) thereof.

2. To notify the Colombian State and the petitioners of this decision.

3. To proceed to the examination of the merits of the matter.

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

Done and signed in the city of Washington, D.C., on the 6th day of the month of November, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González,Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi and James L. Cavallaro, Commissioners.