

OEA/Ser.L/V/II.155  
Doc. 5  
August 15, 2014  
Original: Spanish

**REPORT No. 73/14**  
**PETITION 272-05**  
REPORT ON ADMISSIBILITY

GUSTAVO JAVIER ALARCÓN ET AL.  
ARGENTINA

Approved by the Commission at its session No. 2002 held on August 15, 2014  
152 Regular Period of Sessions

**Cite as:** IACHR, Report No. 73/14, Petition 272-05. Admissibility. Gustavo Javier Alarcón et Al.  
Argentina. August 15, 2014.

**REPORT No. 73/14**  
**PETITION 272-05**  
ADMISSIBILITY  
GUSTAVO JAVIER ALARCÓN ET AL.  
ARGENTINA  
August 15, 2014

**I. SUMMARY**

1. The Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition on March 11, 2005 submitted by Mr. Omar Eduardo Gebruers and Mrs. Ana María Isolina Herren (hereinafter “the petitioners”) alleging international responsibility on the part of the Republic of Argentina (hereinafter “the State” or “Argentina”) for alleged acts of torture committed against Gustavo Javier Alarcón, Miguel Ángel Rodríguez, Pedro Andrés Roveda, Alejandro Oscar Tressen, and Andrés Sebastian Chehade (hereinafter “the alleged victims”), in the context of the criminal case regarding the death of Mr. Juan Carlos Canale.<sup>1</sup> The petition also reports the alleged failure to investigate these allegations, the excessive duration of the criminal process against the alleged victims, and other violations of due process.

2. The petitioners claim that the State is responsible for violating the rights to humane treatment, a fair trial, and judicial protection established in Articles 5, 8, and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) in connection with Article 1.1 thereof, to the detriment of the alleged victims. The petitioners believe that police officers were responsible for the death of Mr. Canale, and that the officers tried to cover it up by means of the alleged victims’ coerced confessions. In this regard, the petitioners argue that the alleged victims were blamed for the death of Mr. Juan Carlos Canale, which occurred while he was detained in the General Acha Police Station, because they were subjected to torture and physical mistreatment from the officials in that police station, and were subjected to a biased trial in which procedural irregularities occurred. They also report that the torture and mistreatment of the alleged victims persisted throughout their detention; allegedly in reprisal for having complained to the IACHR; and that these actions were not duly investigated.

3. For its part, the State argues that the judicial remedies filed by the alleged victims in the criminal process against them were effective to rectify any error or irregularity committed by the judicial branch, which resulted in their being released and their submission to a new trial. Thus, the domestic route was considered adequate and suitable by the State. The State also argues that there is not sufficient evidence to determine the responsibility of the police officers or State officials with respect to the alleged acts of torture and mistreatment committed, so that the alleged victims would incriminate themselves.

4. Without prejudging the merits of the complaint, after analyzing the positions of the parties, and in compliance with the requirements established in Articles 46 and 47 of the American Convention, the Commission decides to declare the case admissible for purposes of examining the alleged violation of Articles 5 (humane treatment personal), 7 (personal liberty), 8 (a fair trial), 17 (rights of the family), and 25 (judicial protection) of the American Convention, consistent with Article 1.1 thereof, to the detriment of the alleged victims and their families, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, all related to the duty to investigate and punish possible acts of torture. In addition, the Commission decides to inform the parties of its report and to order its publication in its Annual Report for the General Assembly of the OAS.

---

<sup>1</sup> The petition was submitted on behalf of these five individuals who were criminally prosecuted. The petitioners are not acting as representatives for Mr. Canale, but rather for the individuals who were later accused of his murder.

## II. PROCESSING BY THE COMMISSION

5. On March 11, 2005 the Inter-American Commission received the petition and assigned it number P-272-05. On April 25, 2006 the IACHR forwarded to the State the relevant portions of the petition, and subsequent communications, allowing it a period of two months to submit observations in accordance with Article 30(3) of the IACHR Rules of Procedure then in effect. On July 5, 2006 the State requested an extension, which was not granted.

6. The State's response was received on April 30, 2007 and forwarded to the petitioners on May 7, 2007 (the annexes to the State's response were received on May 22, 2007 and also forwarded to the petitioners on June 14, 2007). Subsequently, additional information was received from the petitioners on October 27, 2010 and was forwarded to the State on February 7, 2011. The State requested an extension on March 10, 2011, which the IACHR granted on March 22, 2011. Subsequently, the State's final response was received on October 4, 2011 and was forwarded for information purposes to the petitioners on October 24, 2011.

## I. III. POSITIONS OF THE PARTIES

### 1. Position of the petitioners

7. The petitioners state that on October 31, 2002 Mr. Juan Carlos Canale was arrested at his home and transferred to the General Acha Police Station in La Pampa Province in order to submit a statement to the police regarding the alleged commission of a criminal offense.

8. They state that at 3:15 PM on that day, after the schedule of visits to the detainees was over, another prisoner found Mr. Canale dead in the last cell of his cellblock. They indicate that the autopsy conducted on him provided evidence of multiple wounds (rib fracture, perforated lung, exploded diaphragm, appearance of organs from the abdomen in the thorax, and fractured septum). His death was caused by a possible beating and that the blows noted had been delivered approximately three hours before his death, which was calculated to have occurred between 2:00 and 3:00 p.m. They allege that, according to this scenario, the time when Mr. Canale was beaten matched with the time when he was in the presence of only the police officers and physician at the police station.

9. The petitioners state that a police investigation was initiated during the night of that same day regarding the death of Mr. Canale and against five individuals who were detained at that police station (Gustavo Javier Alarcón, Miguel Ángel Rodríguez, Pedro Andrés Roveda, Alejandro Óscar Tressen, and Andrés Sebastián Chegade), who were later placed in individual and separate cells.

10. They allege that four of the alleged victims (excluding Mr. Alejandro Oscar Tressen) and Mr. Sandro Omar Luna,<sup>2</sup> a witness to what had happened, showed serious wounds on their bodies when they submitted their statements to the court on the day following the events, wounds that had not been recorded in a medical examination conducted hours before the police interrogations the previous night. In their statements, the alleged victims reported having been beaten by police officers who had demanded that they incriminate themselves in the death of Juan Carlos Canale.

11. They state that the alleged victims tried to report these alleged acts of torture to the investigating judge who decided upon their prosecution, and to the prosecutor in charge of the case, who decided not to proceed with investigations, since he considered that these facts would qualify as battery (*lesiones personales*) and as such would be covered by a private complaint in accordance with the domestic

---

<sup>2</sup> The petitioners indicate that this person is a former police officer and the principal witness to what happened, who was detained along with the petitioners and had been tortured and forced to testify against them. They also state that he is not an alleged victim in the petition.

law. The petitioners indicate that the prosecutor also felt that the criminal action could not be filed because the alleged victims had not “formally ratified” their complaint.

12. The petitioners also report that in the course of the process against the alleged victims (investigation by the prosecutor and judicial proceeding) there were various irregularities such as suppression of some evidence for acquittal, testimony, confrontations, reconstruction of the events, and the failure to hear the accused; and that the indictment was based only on statements from other detainees that were neither consistent nor conclusive. They also allege that during the process two key witnesses died under suspicious conditions shortly after making their statements.<sup>3</sup>

13. The alleged victims appealed the indictments issued by the investigating judge (*juez de instrucción*); as a result, the Criminal Appeals Chamber No. 2 confirmed four of the five indictments (excluding the one against Mr. Chehade). The petitioners indicate that the process was later referred for oral hearing to the same Criminal Chamber No. 2, which sentenced the accused to 12 years in prison, on April 23, 2004. They state that they filed a cassation appeal against that decision on May 7, 2004 with the La Pampa Superior Court of Justice (hereinafter the “Superior Court”), which confirmed the first instance decision in a ruling dated July 6, 2005. They indicated that they later filed an extraordinary federal appeal with the Supreme Court of Justice of the Nation (hereinafter “CSJN”), which in a decision dated July 4, 2006 overturned the decision of the Superior Court and nullified the decision of the Criminal Chamber No. 2.

14. They stated that as a result of the overturn orders were issued for the release of the four detainees and a new oral proceeding was initiated before Criminal Chamber No. 1, which finally delivered judgment of acquittal (No. 41/2009) on September 4, 2009, in favor of the four accused. This ruling is final. In summary, they allege that Messrs. Gustavo Javier Alarcón, Miguel Ángel Rodríguez, Pedro Andrés Roveda, and Alejandro Oscar Tressen were held for nearly four years in pre-trial detention.

15. The petitioners also allege that on March 20, 2005 Mr. Alejandro Oscar Tressen was arbitrarily and unjustifiably transferred to Penitentiary Unit No. 1 in Ezeiza, in the province of Buenos Aires, more than 600 kilometers from the city of Santa Rosa, La Pampa, where he was originally detained. This move made it impossible for him to have family visits. They also allege that during the transfers, Mr. Tressen was mistreated by the officers in charge of his custody.

16. They also allege that on January 25, 2006 Messrs. Miguel Ángel Rodríguez and Pedro Andrés Roveda were transferred from Detention Center No. 4 in the city of Santa Rosa to Detention Center No. 9 in the city of Neuquén, in the province of the same name, more than 800 kilometers away, which also made it impossible for them to receive family visits. It is alleged that they also suffered mistreatment during their transfer, which continued inside the detention center to which they were taken. In this regard, the mother of Mr. Rodríguez submitted two *habeas corpus* (the first on February 2, 2006, and no record of the date of the second appeal), in which she sought to have Messrs. Rodríguez and Roveda returned to Detention Center No. 4, to put an end to the torture and any type of mistreatment and corporal punishment, and to have both of them examined medically. In this regard, they allege that the CSJN denied one of the appeals on February 14, 2006, due to the court’s lack of jurisdiction.

17. They allege that Gustavo Javier Alarcón was also transferred to Neuquén on February 14, 2006, under similar conditions.

18. They also claim that the alleged victims were tortured after their transfer in reprisal for their complaints before the IACHR and the media. They allege that these actions (which included mock hangings, beatings, death threats, and isolation under inhumane conditions) were covered up as “self-inflicted injuries” due to falls and accidents in the records the alleged victims were forced to sign. They maintain that such

---

<sup>3</sup> The petitioners stated that these witnesses were Mr. Víctor Hugo Zwenger, whose statement “prejudiced” the indictment, and Mr. Sandro Omar Luna, who was allegedly subjected to torture so he would submit testimony incriminating the accused.

forms of retaliation ceased as of March 2006, due to the “significance taken on by the events and the large number of national and provincial public officials who intervened directly” in these events.

19. In the petition, the petitioners invoked Article 46.2(c) of the Convention, alleging unwarranted delay in the handling of the judicial process basically due to the Superior Court’s alleged delay in deciding on the admissibility of the cassation appeal.

**B. Position of the State**

20. The State indicates that Mr. Canale was found dead on October 31, 2002 at the General Acha Police Station, La Pampa Province, and after witness statements were taken from those who were detained with him, the decision was made to prosecute and hold in pretrial detention four of the alleged victims and to dismiss the case against Mr. Andrés Sebastián Chehade.

21. It states that on September 1, 2003 the Prosecutor’s Office filed an indictment against the accused and the case was brought to trial. On April 23, 2004 a conviction was handed down by Criminal Appeals Chamber No. 2, which was appealed through a cassation appeal submitted on May 11, 2004. The Superior Court denied the cassation appeal in a ruling of July 6, 2005. The State indicates that the petitioners filed an extraordinary federal appeal against this final ruling before the CSJN, which overturned the cassation decision of the Superior Court in a decision dated July 4, 2006.

22. The State indicates that once the case was brought again before the Superior Court, the La Pampa Public Defender suggested overturning the first instance decision because the alleged victims had not been judged by an impartial tribunal, maintaining in the appeal that Criminal Chamber No. 2 was the same chamber that had confirmed their prosecution, acting as a superior instance in the investigation phase. The State indicates that, as a result, on September 6, 2006 the case file was referred to Criminal Chamber No. 1 for its review. That instance ordered the release of the four prisoners on September 14, 2006. Following a new trial before Criminal Chamber No. 1, they were definitively acquitted in a decision dated September 4, 2009.

23. Regarding the reports of torture allegedly committed against Messrs. Alarcón, Rodríguez, Roveda, and Chehade so they would incriminate themselves, the State acknowledges that the forensic doctor examined the alleged victims twice and wrote up two reports. It maintains that the forensic doctor recorded in the first report that at 12:45 the accused “showed no recent injuries”; and later in a second report indicated that at 11:10 P.M. they “showed injuries produced with or against a hard, blunt object.” Given this, the State argues that “it will be the competent Court that should investigate the merits of the case and determine whether the injuries were inflicted by police officers for the purpose of forcing them to incriminate themselves.”

24. Regarding the allegations concerning the transfers of Messrs. Alarcón, Rodríguez, Roveda, and Tressen, which include reports of mistreatment, the State alleges that after the respective proceedings were conducted, including a visit by the First Instance Federal Judge of Neuquén to Penitentiary Unit No. 9, it was determined that there was no evidence that they had been subjected mistreatment of any kind. The State asserts that the opinion issued by the Human Rights Secretariat, a division of the Ministry of Justice and Human Rights of the Nation, indicates that the prisoners were in good condition and there were medical reports signed by those same prisoners reflecting that assertion. The State makes no reference to the domestic remedies exhausted to dispute the transfer of the alleged victims to penitentiary units far from their family residence.

25. The State questioned the failure to exhaust domestic remedies regarding the alleged violations committed in the context of the criminal proceeding against the alleged victims when the case was before La Pampa Criminal Chamber No. 1.

26. Subsequent to the acquittal of the accused, the State alleged that suitable decisions and procedural measures were adopted in the domestic jurisdiction to safeguard the alleged victims’ right to a fair trial, so that the acquittal and dismissal of the charges against these individuals adequately satisfied

through domestic law the potential violations of rights and procedural guarantees contained in Articles 8 and 25 of the American Convention.

### III. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

27. In principle, petitioners are authorized by Article 44 of the American Convention to submit petitions to the Commission. The petition indicates as alleged victims, individuals with respect to whom the Argentine State agreed to respect and guarantee the rights enshrined in the American Convention. With regard to the State, the Commission indicates that Argentina has been a State party to the American Convention since September 5, 1984, when it deposited its ratifying instrument. It also notes that Argentina deposited the instrument ratifying the Inter-American Convention to Prevent and Punish Torture on March 31, 1989. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to hear the petition, in that it alleges violations of rights protected in the American Convention and occurring within the territory of the Republic of Argentina, a State party to that convention.

28. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention and in the Inter-American Convention to Prevent and Punish Torture were already in effect for the State on the date when the events alleged in the petition occurred. Finally, the Commission is competent *ratione materiae* because the petition reports possible violations of human rights protected by the American Convention.

#### B. Admissibility requirements

##### 1. Exhaustion of domestic remedies

29. Article 46.1(a) of the American Convention requires the prior exhaustion of the remedies available in the domestic jurisdiction in accordance with generally recognized principles of international law as a requirement for the admission of complaints regarding the alleged violation of the American Convention. The purpose of this requirement is to allow national authorities to examine the alleged violation of a protected right and, if appropriate, to resolve the matter before it is heard by an international body. For its part, Article 46.2 of the Convention establishes three instances where the exhaustion of domestic remedies rule does not apply: 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; and c) there has been unwarranted delay in rendering final judgment under the aforementioned remedies.

30. The Commission notes that the alleged acts of torture committed against four of the alleged victims while statements were being taken at the police station following the death of Mr. Canale had been reported to the investigating judge and the prosecutor in charge of the case. In this regard, the Commission has established that “in cases where torture is alleged [...] the adequate and effective remedy is normally an investigation and criminal trial, which the State has an obligation to set in motion...”<sup>4</sup> In this sense, both the Commission and the Inter-American Court have consistently established<sup>5</sup> that when there are “indications” or

<sup>4</sup> IACHR, Report No. 49/13, Admissibility, Gerardo Cruz Pacheco, Mexico, July 12, 2013, para. 35. In this regard, see also, I/A Court H.R., Case of Gutiérrez Soler v. Colombia. Judgment of September 12, 2005. Series C, No. 132, para. 54.

<sup>5</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II, adopted December 31, 2011, para. 344; I/A Court H.R. *Vélez Loor v. Panama Case*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C, No. 218, para. 240; I/A Court H.R. *Bayarri v. Argentina Case*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of October 30, 2008. Series C, No. 187, para. 92; I/A Court H.R. *Bueno Alves Case*. Judgment of May 11, 2007. Series C, No. 164, para. 88; I/A Court H.R. *Gutiérrez Soler v. Colombia Case*. Judgment of September 12, 2005. Series C, No. 132, para. 54.

“well-founded” reasons to believe that acts of torture have been committed, “the State has the duty to immediately and *ex officio* begin an effective investigation.”

31. In this petition the Commission notes that according to the information available it does not appear that the authorities to whom the alleged acts of torture were reported undertook the corresponding investigations. Consequently, the IACHR concludes that the exception to the exhaustion of domestic remedies applies in accordance with the provisions of Article 46.2(c) of the Convention.

32. In addition, the Commission notes that criminal prosecution of the alleged victims for the death of Mr. Juan Carlos Canale was definitively concluded with the judgment of acquittal issued on September 4, 2009 by Criminal Chamber No. 1, making the matter *res judicata*. Therefore, the domestic remedies are considered exhausted with respect to the violations alleged to have occurred in the context of the referenced criminal process, in accordance to Article 46.1(a) of the American Convention.

33. Finally, it is alleged that two appeals were filed and the information provided confirms the decision in one of the appeals with respect to Messrs. Miguel Ángel Rodríguez and Pedro Andrés Roveda. In its arguments, the State maintains it investigated the reports regarding the transfers and mistreatment of the four alleged victims and that a federal judge, in 2006, found them to be in good shape (see *supra* para.24). The State did not indicate any other remedies that should have been filed. In light of this considerations the IACHR deems satisfied the present requirement.

34. Regarding the allegations concerning the transfer of the alleged victims to penitentiary units too far from their homes, and subsequent alleged acts of torture and mistreatment, the Commission notes that a *habeas corpus* action was filed on behalf of Messrs. Rodríguez and Roveda, which was denied on February 14, 2006 by the CSJN, based on its lack of jurisdiction. For its part, the State does not dispute the exhaustion of domestic remedies with regard to these facts. Accordingly, the Inter-American Commission feels that the exhaustion of domestic remedies requirement has been met, in accordance with Article 46.1(a) of the American Convention with respect to these points in the petition as regards Messrs. Miguel Ángel Rodríguez and Pedro Andrés Roveda. However, with respect to similar allegations made regarding Messrs. Alarcón and Tressen, the petitioners do not provide concrete information on the basis of which to establish the exhaustion of domestic remedies and they are thus inadmissible with respect to these two alleged victims.

## **2. Deadline for filing the petition**

35. Article 46.1(b) of the Convention establishes that in order for a petition to be declared admissible it must have been submitted within a period of six months from the date when the interested party was notified of the final judgment that exhausted the domestic jurisdiction.

36. In this regard, the Commission notes that the final judgment handed down in the criminal case against the alleged victims was issued on September 4, 2009 and the decision regarding the alleged transfers to distant locations and subsequent alleged acts of torture of two of the petitioners was issued on February 14, 2006. With this, in both cases the exhaustion of domestic remedies occurred after the submission of the petition on March 11, 2005.

37. The Commission also reiterates that the situation that should be considered in order to establish whether the domestic remedies have been exhausted is the situation existing when deciding on admissibility, since the moment when the complaint is submitted and the moment when the ruling on admissibility is issued are different,<sup>6</sup> and the petitions system allows ample opportunity for both parties to provide information and make allegations during the admissibility phase.

---

<sup>6</sup> IACHR, Report N°. 45/13, Admissibility, *Eduardo Julian Parrilla Ortiz*, Ecuador, July 11, 2013, para. 23; IACHR, Report N°. 52/00, Admissibility, *Dismissed Congressional Employees, Perú*, June 15, 2000, par. 21.

38. In addition, regarding the alleged violations of the right to humane treatment and the subsequent failure of the competent authorities to investigate, the Commission reiterates that in accordance with Article 46.2 of the American Convention the deadline for submission requirement is not applicable in those cases where, as in the instant case, there has been an exception to the exhaustion of domestic remedies. Thus, pursuant to Article 32.2 of the IACHR Rules of Procedure, in those cases where the exceptions to the prior exhaustion of domestic remedies requirement are applicable, the petition must be submitted within a reasonable period of time in the judgment of the Commission. To this end, the Commission must consider the date on which the alleged violation of rights occurred and the circumstances in each case. This petition alleges that the alleged victims were subjected to torture on various occasions since November 1, 2002 and the petition was submitted on March 2005, so the petition is considered to have been submitted within a reasonable period of time.

39. In view of the above considerations, the Commission concludes that this petition is admissible in accordance with the terms of Article 46.1(b) of the American Convention.

### **3. Duplication of proceedings and international *res judicata***

40. Nothing in the case file suggests that the petition duplicates a petition already examined by the IACHR or another international governmental organization. Therefore, the requirements established in articles 46(1)(c) and 47(d) of the American Convention are deemed to have been satisfied.

### **4. Colorable claim**

41. For admissibility purposes, at this point in the proceedings the IACHR need only determine whether the facts alleged, if proved, would tend to establish violations of the American Convention, as its Article 47(b) stipulates, or whether the petition is “manifestly groundless” or “obviously out of order,” as provided in paragraph (c) of that article. The standard for assessing these factors is different from the standard required for deciding the merits of a complaint. In the admissibility phase, the Commission must do a *prima facie* assessment to examine whether the complaint establishes the apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination constitutes a preliminary analysis that does not entail prejudging the substance of the case.<sup>7</sup>

42. Neither the American Convention nor the IACHR Rules of Procedure require the petitioner to identify the specific rights that are alleged to have been violated by the State in the matter submitted to the Commission, although they may do so. It is up to the Commission, based on the system’s case law, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable and whether the violation thereof could be established should the alleged facts be proven on the basis of sufficient evidence.

43. The information provided by the petitioners indicates that the criminal process against the alleged victims for the death of Juan Carlos Canale began on November 18, 2002 and continued (for four of them) until September 4, 2009, when a new decision was issued acquitting the accused. In this respect, the Commission will analyze in the merits phase whether in this specific case the process continued beyond a reasonable period of time in accordance with the standards of the inter-American system.

44. In addition, the Commission notes that four of the alleged victims were deprived of liberty, in connection with that criminal process, from November 18, 2002 to September 14, 2006, when the decision was made to release them. Thus, they were held in pre-trial detention for nearly four years, which *prima facie* could constitute a violation of Article 7 of the American Convention.

---

<sup>7</sup> See among other precedents, IACHR, Report No. 173/11, Petition 897-04, Alejandro Daniel Esteve and Sons, Brazil, November 2, 2011, para. 43; IACHR, Report No. 3/11, P-491-98, Admissibility, Néstor Rolando López et al. January 5, 2011, para. 37; IACHR, Report No. 12/10, Case 12.106, Admissibility, Enrique Hermann Pfister Frías and Lucrecia Pfister Frías, Argentina, March 16, 2010, para. 46; IACHR, Report No. 10/10, Petition No. 214-08, Admissibility, Koempai et al., Suriname, March 16, 2010, para. 43.



45. The IACHR also notes that the facts alleged by the petitioners regarding the alleged acts of torture committed at the police station prior to the start of the criminal process against Mr. Canale, and the competent authorities' alleged failure to investigate could constitute violations of Articles 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the Convention, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

46. Similarly, the IACHR considers that the transfers to penitentiary units located extremely far from the homes of the alleged victims, the alleged violations of the right to humane treatment that followed those transfers, as well as the alleged failure to investigate those facts could constitute violations of Articles 5 (right to humane treatment), 8 (right to a fair trial), 17 (rights of the family), and 25 (right to judicial protection) of the Convention<sup>8</sup> as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

47. The Commission will also consider the possible violation of Articles 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the Convention with respect to the families of the alleged victims, specifically Mrs. Margarita Ballesterero and Mrs. Rosa Aurelia Gómez, mothers of Miguel Ángel Rodríguez and Pedro Andrés Roveda, respectively, as well as those family members who may be identified during the merits stage.

## V. CONCLUSIONS

48. The Commission concludes that it is competent to examine the complaints submitted by the petitioners regarding the alleged violation of the rights contained in Articles 5 (humane treatment), 8 (a fair trial), 7 (personal liberty), 17 (protection of the family), and 25 (judicial protection) in connection with Article 1.1 (obligation to respect rights) of the American Convention, in accordance with the requirements established in Articles 46 and 47 of the same instrument, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, all of which relate to the duty to investigate and punish possible acts of torture.

49. Based on the factual and legal arguments presented above,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

#### **DECIDES:**

1. To declare this petition admissible with respect to Articles 5, 8, 7, 17, and 25, in connection with Article 1(1) of the American Convention, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To inform the Argentine State and the petitioners of this decision.

3. To continue with analysis of the merits of the matter.

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

---

<sup>8</sup> See in this regard, *mutatis mutandis*, analysis of the Commission's characterization of transfers to locations excessively far from prisoners' homes in IACHR, Report No. 3/11, Petition 491-98, Néstor Rolando López et al., Argentina, January 5, 2011, paras. 38-39