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REPORT No. 95/14
PETITION 671-05
REPORT ON ADMISSIBILITY

MATT SHIRZAD
COSTA RICA

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

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2014.

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ADMISSIBILITY

MATT SHIRZAD

COSTA RICA

November 6, 2014

I. SUMMARY

1. On June 13, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by Matt Shirzad (hereinafter “the petitioner” or “the alleged victim”) in which he alleged the international responsibility of the State of Costa Rica (hereinafter “Costa Rica,” “the State,” or “the Costa Rican State”) for alleged violations of rights enshrined in the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) arising from purported ill-treatment and torture committed against him, from an alleged illegal arrest, from the alleged failure to investigate and punish those facts, and from the alleged imposition of disproportionate precautionary measures.

2. In particular, the petitioner claims that due to the excessive use of force, he was tortured by state agents at the time of his arrest, which he claims was illegal. He also contends that the precautionary measures imposed in the proceedings brought against him were disproportionate and gravely affected his health, which in turn led to a permanent physical disability, in that he is now unable to move his right arm. Consequently the petitioner maintains that the State of Costa Rica is internationally responsible for alleged violations of Articles 1 (obligation to respect rights), 2 (domestic legal effects), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 9 (freedom from *ex post facto* laws), 10 (right to compensation), 11 (right to privacy), 13 (freedom of thought and expression), 22 (freedom of movement and residence), 24 (right to equal protection), and 25 (right to judicial protection). In addition, he claims violations of Articles 2, 3, 6, 7, 8, and 9 of the Inter-American Convention to Prevent and Punish Torture.

3. In turn, the State contends that it committed no human rights violations; that the petitioner has not exhausted the remedies offered by domestic jurisdiction; and that he is seeking to use the IACHR as a fourth instance.

4. Without prejudging the merits of the case, after analyzing the positions of the parties and in compliance with the requirements set forth in Articles 46 and 47, the Commission decided to rule the petition admissible in order to examine the alleged violation of Articles 5, 7, 8, 22, and 25 of the Convention, in conjunction with Article 1.1 thereof. It also decided to find the petition admissible with respect to the alleged violation of the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. In addition, it decided to rule it inadmissible as regards the alleged violation of Articles 2, 9, 10, 11, 13, 24, and 26 of the American Convention. Finally, it resolved to notify the parties of this report, to order its publication, and to include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On June 13, 2005, the Commission received the petition and recorded it as No. 671-05. On May 27, 2009, it forwarded the petition to the State and requested that it reply within a period of two months, in compliance with the provisions of Article 30.2 of the IACHR’s Rules of Procedure. The State’s reply was received on August 6, 2009, and forwarded to the petitioner on August 27, 2009. In addition, further information from the petitioner was received on the following dates: November 18, 2009; April 30, 2010; September 8, 2010; March 2, 2011; January 11, 2011; May 25, 2012; and June 23, 2013. Those communications were duly forwarded to the State. In turn, Costa Rica submitted information on February 1 and 22, 2010; July 15, 2010; May 11, 2011; February 22, 2012; August 7, 2012; and March 1, 2013. Those communications were duly conveyed to the petitioner.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

6. The petitioner, a U.S. national and living in Costa Rica at the time of the facts, states that proceedings were brought against him for the alleged offense of making criminal threats in the letters he sent to the coordinating judge of the Criminal Court of the First Judicial Circuit of San José, in connection with the alleged illegal search carried out at the premises of the company Ofinter S.A., which was accused of money laundering and in which the petitioner claims to have been an investor. As a consequence of those proceedings, he claims he was illegally arrested and subjected to ill-treatment and torture by officials of the Judicial Investigation Agency (hereinafter "OIJ").

7. In particular, he contends that his arrest was illegal in that he was never formally summoned to appear in the proceedings brought against him and that, on the contrary, on August 21, 2003, while he was presenting to the Court of Justice of San José a complaint "for corruption" against the judicial authorities involved in the case against the company Ofinter S.A., he was arrested by four officials of the OIJ, absent any warrant, "in a sudden and violent way," and with the sole aim of intimidating him for presenting the aforesaid complaint. He also states that he was not informed of the charges or read his rights; neither was he shown an order issued by a judge, provided with the assistance of a translator to help him understand Spanish, or allowed to contact his attorney or the U.S. embassy. The petitioner claims that on that same day, six hours after his arrest, he was released at approximately 7:00 p.m.

8. Regarding the mistreatment and torture he allegedly suffered, he indicates that he told the OIJ agents that he would be unable to bend his arms for them to handcuff him behind his back because his right arm had previously been operated on in the United States; in spite of this warning, however, he claims that the OIJ agents brutally forced his arm in order to cuff him, rupturing the nerve that controlled his elbow, forearm, and fingers. He also contends that they beat him while still at the Court of Justice, pushed him down the stairs with excessive force, put him in a prisoner transport vehicle, and finally pushed him into a cell.

9. The petitioner claims that during the proceedings, for more than ten months he was placed under precautionary measures preventing him from leaving the country, as a result of which he was unable to obtain the medical treatment needed to take care of his injury. He states that Costa Rican specialists said it was "totally necessary" for him to be seen by the specialist physician who had operated on his arm fifteen years previously in his home country, since that doctor was the only one who could carry out the transplant of the elbow nerve. The ban on leaving Costa Rica, according to the petitioner, had an irreparable impact on his health, which caused him a disability: his arm lost strength and, as a result, he was unable to work as a chiropractic physician. In connection with the precautionary measures imposed on him and subsequently extended, the petitioner states that he lodged three appeal remedies with the Criminal Court on August 28, 2003, and February 11, 2004, but that they were dismissed. He also claims to have filed two habeas corpus suits with the Constitutional Chamber of the Supreme Court of Justice (hereinafter "the Constitutional Chamber"): the first of these, presented on December 3, 2003, was dismissed on December 16, 2003; and the second habeas corpus filing, lodged on February 25, 2004, was upheld on March 26, 2004. However, in spite of that favorable judgment, the alleged victim claims he remained under the aforesaid precautionary measure for a further 80 days. The measures were effectively lifted on June 17, 2004, when the petitioner requested a notarial deed in which the prosecutor, pursuant to the resolution of March 26, 2004, indicated that he could now leave the country. In addition, he notes that he filed *amparo* relief and habeas corpus remedies on December 1, 2003, claiming alleged violations of his rights to life, to physical integrity, and to health as a result of the impact of the precautionary measures imposed on him.

10. The petitioner states that as a result of the alleged illegal detention and the torture he suffered during and after his arrest, he filed a complaint alleging abuse of authority and grievous bodily injuries with the Prosecutor for Crimes against Life on December 18, 2003, but that it was dismissed on February 15, 2004, because of the "insufficient evidence and lack of interest of the complainant." According to the petitioner, he did not receive notification of this decision. He claims that on June 8, 2005, he sought

redress as a civil complainant and that, on August 3, 2006, he filed with the Criminal Court for reactivation, submitting the irrevocable dismissal of his case as a new piece of evidence; he states, however, that this evidence was not even registered in the case file. He adds that since he received no reply to his application for redress as a civil complainant or to the reactivation remedy, he lodged prompt dispatch requests on July 24, 2006, April 27, 2007, and March 4, 2008. In addition to the criminal complaint, the petitioner reports that on June 25, 2006, he lodged a complaint with the Judicial Inspection Court, which was dismissed on September 28, 2006.

11. To summarize, the petitioner contends that with the filing of the remedies in the proceedings for his complaint alleging abuse of authority and grievous bodily harm, he exhausted the domestic jurisdiction available in Costa Rica; however, he adds that the exception to domestic exhaustion provided in Article 46.2.b of the ACHR also applies, in light of the obstacles that Costa Rica placed on the pursuit of domestic remedies, such as the failure to notify him of the dismissal of his criminal suit for abuse of authority and grievous bodily harm.

12. Moreover, in connection with the alleged violation of his rights, the petitioner contends that Articles 2 (domestic legal effects) and 1 (obligation to respect rights) were also violated, in that the Costa Rican Constitution and Criminal Code fail to define torture. Regarding the right to life (Article 4), he states that this right was violated in that, while he was subject to precautionary measures, he suffered a series of attacks and threats. Regarding the right to humane treatment (Article 5), he claims that during his detention, he suffered torture and cruel, inhumane, and degrading treatment.

13. The right to personal liberty (Article 7), the petitioner contends, was violated by the absence of a warrant for his arrest, and by the disproportionate precautionary measures that prevented him from leaving the country for eleven months, when the maximum punishment for the crime with which he was charged was sixty days. Similarly, he claims that the principle of legality and freedom from *ex post facto* laws (Article 9) was violated in that the authorities did not establish the assumptions necessary to determine the commission of the crime of making threats with which he was charged.

14. His right to privacy (Article 11), he claims, was violated in that during his detention, he was asked about personal matters not germane to his case. Regarding the freedom of thought and expression (Article 13), he contends that with the imposition of a precautionary measure prohibiting him from having contact with judicial officials, he was prevented from seeking and obtaining information for the "correct development" of his case.

15. In addition, the petitioner holds that the State violated his freedom of movement and residence (Article 22), in that for a period of more than 80 days, the habeas corpus filed on his behalf was not executed. Regarding the possible violation of the right of equality before the law (Article 24), the petitioner claims this right was violated through the discrimination he faced as a foreigner, with that status used as the only grounds for the imposition of precautionary measures.

16. Finally, as regards the right to a fair trial and judicial protection, the petitioner claims that in the case brought against him, they were violated through the delay in reaching the dismissal resolution. In connection with the criminal trial for abuse of authority and grievous bodily harm, he contends that his case was dismissed without an investigation into the alleged facts and without his being notified of the dismissal hearing or of the corresponding decision: that, he claims, prevented him from exercising his right of defense; in addition, he also claims he was not afforded access to the case file or given an opportunity to participate in his own proceedings. Finally, he states that it is clear that the relevant authorities assigned no importance to his case, as seen by the fact that the criminal proceedings were neither initiated nor pursued by the State.

B. Position of the State

17. According to the information submitted by the State, during the petitioner's arrest there was no struggle when the agents of the OIJ handcuffed him. It also contends that the precautionary measures in his case were imposed in strict compliance with the principles of need, proportion, and reasonableness. In

particular, the State indicates that the criteria for ordering measures of this kind – established in Article 239 of the Criminal Code – are the following: (a) the nationality of the petitioner, (b) the recent commencement of the investigation, and (c) flight risk. On this point, the State concurs with the petitioner’s affirmations regarding the dates on which the precautionary measures were imposed and their extensions ordered, together with the appeals and habeas corpus remedies – and the decisions thereon – dealing with the imposition and extension of the measures.

18. Regarding the exhaustion of domestic law, the State indicates that the petitioner did not exhaust the domestic remedies in that he did not pursue the appropriate and effective resources that Costa Rican law provides. In particular, regarding the alleged illegal arrest and purported excessive use of force, the State points out that the situation could have been addressed in the following ways: (a) through judicial channels, through the Criminal Court and the Judicial Inspection Court, and (b) through administrative channels, using the investigation procedure carried out by the Office of Internal Affairs of the OIJ. Regarding the latter procedure, the State indicates that on December 11, 2003, the OIJ opened an administrative disciplinary proceeding against two of its members, which was ruled groundless by means of resolution No. 196-DEC-04(b) on September 6, 2004. The State made no reference to the *amparo* filing claiming alleged violations of the petitioner’s right to life, to physical integrity, and to health arising from the imposition of those measures.

19. Regarding the judicial channels, the State concurs with the petitioner regarding the filing and conclusion dates of a complaint lodged with the Judicial Inspection Court against the agents of the OIJ on June 25, 2006, which was dismissed on September 28, 2006.

20. Regarding the complaint of December 18, 2003, lodged with the Criminal Court for the crimes of grievous bodily harm and abuse of authority, the State reports that it was dismissed on February 15, 2004, since it lacked the evidence necessary to establish the commission of the crime, such as the x-rays that the petitioner was reportedly asked to submit to establish the age of his fracture. The State also concurs with the presentation of the remedies described by the petitioner, with the exception of the filing for the reactivation of the proceedings, for which no request was lodged with the Office of the Prosecutor. Similarly, the State contends that the petitioner did not exhaust the domestic remedies in that he failed to present the evidence requested, to appeal against the dismissal of the case, or to ask the Office of the Prosecutor to reactivate the proceedings.

21. Regarding the alleged human rights violations, the State contends that the facts described by the petitioner do not constitute violations of the American Convention, of the American Declaration, or of the Inter-American Convention to Prevent and Punish Torture. In particular, as regards the torture allegations, the State notes that those claims were posed differently at the domestic level, in that the petitioner presented a claim for “the crime of grievous bodily harm and abuse of authority” and not for torture. Regarding the purported violations in the proceedings into the alleged illegal arrest and injuries suffered by the petitioner, the State reports that it attempted to notify the petitioner that the case had been dismissed but that its efforts were fruitless.

22. To summarize, the Costa Rican State concludes that the petitioner is seeking to use the IACHR as a court of appeal since the results of the corresponding proceedings were not satisfactory to him; accordingly, it asks that the Commission rule the petition inadmissible.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae*

23. The petitioner is entitled, in principle, to lodge petitions with the Commission under Article 44 of the American Convention. The petition names, as its alleged victim, an individual person with respect to whom the Costa Rican State had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. With reference to the State, the Commission notes that Costa Rica has been a state party to the American Convention since April 8, 1970, when it deposited its instrument of ratification. The

Commission therefore has competence *ratione personae* to examine the petition. The Commission has also competence *ratione loci* to deal with the petition since it alleges violations of rights protected by the American Convention occurring within the territory of Costa Rica, which is a state party to that treaty.

24. The Commission has competence *ratione temporis* since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred. Finally, the Commission has competence *ratione materiae*, because the petition alleges possible violations of human rights protected by the American Convention and the Inter-American Convention to Prevent and Punish Torture.

B. Admissibility requirements

1. Exhaustion of domestic remedies

25. Article 46.1.a of the American Convention provides that for a petition submitted to the Inter-American Commission in accordance with Article 44 of the Convention to be admitted, remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. This requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, to resolve it before it is placed before an international venue. Article 46.2 of the Convention establishes three situations in which the rule requiring the exhaustion of domestic remedies does not apply: (a) when 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) when 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) when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. Those precepts address not only to the formal existence of such remedies, but also their adequacy and effectiveness.

26. In the case at hand, the Commission notes that the petitioner's main contentions deal with the alleged ill-treatment, torture, and illegal arrest arising from proceedings brought against him, and with the imposition of disproportionate precautionary measures and the repercussions thereof on his rights. Accordingly, the Commission will proceed to analyze the domestic remedies in light of these contentions.

27. The first task is to identify the domestic remedies that, according to the jurisprudence of the inter-American system, should have been exhausted in the case at hand. Thus, the Commission's established precedents stipulate that whenever a publicly actionable offense is purportedly committed, the State has the obligation of conducting an investigation and that, in such cases, that is the ideal way to cast light on the facts, and, if appropriate, to prosecute the guilty and establish the relevant criminal sanctions.¹ The facts in the case at hand involve an alleged violation of rights that possibly translates – according to the Costa Rican Code of Criminal Procedure – into publicly actionable offenses.²

28. The IACHR notes that on December 18, 2003, the petitioner filed a complaint alleging abuse of authority and grievous bodily harm against four officers of the OIJ, which was dismissed by the Criminal Court on February 15, 2005, on the grounds that “the lack of evidence and lack of interest on the part of the offended party, who did not report to the proceedings,” prevented the investigation from continuing. The petitioner claims he did not appeal that decision because he was not notified of it. The State, in turn, claims that it attempted to notify the petitioner of the dismissal decision but that its efforts were “fruitless.”

29. In the case at hand, one of the petitioner's main contentions is that he was not notified of the hearing that ruled to dismiss his case, or of the corresponding decision; consequently, he was unable to

¹ IACHR, Report No. 99/09, Petition 12.335, Admissibility, Gustavo Giraldo Villamizar Durán, Colombia, October 29, 2009, para. 33.

² The Commission notes that since the crime of grievous bodily harm is not among those covered by Article 18 of the Costa Rican Code of Criminal Procedure – which lists the publicly actionable offenses that may be prosecuted only following a private complaint – it is therefore a publicly actionable crime that may be prosecuted on an ex officio basis.

secure access to justice. Thus, the record indicates that although the petitioner's legal representative sent a communication, received at the Criminal Court on January 12, 2004, informing it of a change in the fax number for receiving notifications, the State did not notify the petitioner of the dismissal by means of the fax number indicated, but instead attempted to use the fax number given at the start of the proceedings. In addition, the IACHR notes that although on June 8, 2005, the petitioner submitted to the fast-track prosecution office of the First Judicial Circuit an application to be registered as a civil complainant in those proceedings, the competent authorities failed to inform him of the dismissal of the case; and that it was not until July 25, 2006, that the Criminal Court, in responding to a second application for prompt dispatch lodged by the petitioner the previous day, informed him of the dismissal of his case in 2005.

30. It should be noted that the obligation of pursuing an investigation falls to the State, on an ex officio basis. In connection with the claims regarding the possibility of appealing against the dismissal ruling, the Commission believes that in any event, the petitioner would have been unable to challenge that resolution on account of the alleged failure to notify him.³ Therefore, in light of the above determinations, the Inter-American Commission concludes that as regards this matter, the exception to the exhaustion of domestic remedies provided for in Article 46.2.b of the American Convention is applicable.

31. In relation to the remedies lodged against the precautionary measures ordered against the petitioner, the Commission notes that he presented remedies centered on two allegations: first, regarding the requirements for their admissibility, and, second, regarding the repercussions their imposition had on his right to health.

32. Regarding the remedies filed to demand compliance with the admissibility requirements, the Commission notes that the petitioner lodged three appeals with the Criminal Court of the First Judicial Circuit, which were rejected.⁴ He also filed two habeas corpus remedies with the Constitutional Chamber. The first of these was presented on March 10, 2004, and ruled groundless on December 16, 2003. According to the information furnished by the parties, the Constitutional Chamber admitted the second habeas corpus filing on March 24, 2004, and ordered "the State to pay damages." On March 26, 2004, the Office of the Prosecutor ordered the termination of the precautionary measures. The IACHR notes that it was not until June 17, 2004, by means of a notarial deed requested by the petitioner, that the prosecutor for sundry crimes indicated that the precautionary measures had been lifted and that there was no longer any impediment preventing the petitioner from leaving the country. In consideration whereof, the IACHR believes that the Constitutional Chamber's decision of March 24, 2004, exhausted the domestic remedies related to the compliance of the admissibility requirements for the imposition and extension of the precautionary measures ordered.

33. Similarly, in connection with the impact on his health allegedly caused by the imposition of the precautionary measures, the Commission notes that on December 1, 2003, the petitioner jointly lodged habeas corpus and *amparo* remedies with the Constitutional Chamber, primarily arguing violations of his right to life, physical integrity, and health. The judicial case file indicates that on December 10, 2003, the Constitutional Chamber only informed the OIJ of the filing of the habeas corpus complaint; as a result of which, on December 11, 2003, administrative disciplinary proceedings "for abuse of authority and undue arrest" were opened against two judicial officers (No A.I. 437-03(5)), which were ruled groundless by resolution No. 196-DIC-04(b) of the OIJ's Department of Criminal Investigations on September 6, 2004.

34. In connection with this, the Commission notes that under Article 29 of the Law of Constitutional Jurisdiction,⁵ the *amparo* remedy would be the ideal means to protect the alleged violations

³ The IACHR ruled along these lines in its Report No. 55/14, Admissibility, Felipe Matías Calmo, Faustino Mejía Bautista, and Others (Inhabitants of Caserío Tres Cruces), para. 31.

⁴ The case file indicates that the following remedies were filed: (a) appeal of August 28, 2003, against the decision imposing precautionary measures of August 25, 2003; ruled groundless on September 24, 2003; (b) appeal of October 29, 2003, against the decision extending the measures of October 24, 2003; found groundless on November 21, 2003, and also reduced the bond to five thousand dollars; and (c) appeal of February 11, 2004, against the decision extending the measures of January 23, 2004; was not analyzed because "the claims [...] were satisfied" (document of the Criminal Court of April 22, 2004).

⁵ In turn, Article 29 of the Law of Constitutional Jurisdiction states that the *amparo* remedy ensures the fundamental rights and freedoms referred in that law, with the exception of those protected by habeas corpus.

the petitioner describes. Although the State holds that the petitioner failed to exhaust the remedies provided by domestic law in that he did not file for *amparo* relief with the Constitutional Chamber, the IACHR notes that according to the information furnished by the parties, the petitioner did lodge an *amparo* remedy that the Constitutional Chamber failed to pursue. Thus, under Article 28 of Costa Rica's Law of Constitutional Jurisdiction, the Constitutional Chamber must continue its processing in accordance with the rules governing *amparo*, when a habeas corpus remedy that addresses matters of *amparo* is filed. In consideration whereof, the IACHR finds that the exception to the exhaustion rule provided for in Article 46.2.c of the American Convention is applicable.

C. Time for filing the petition

35. As provided for in Article 46.1.b of the Convention, for a petition to be admitted, it must have been lodged within a period of six months following the date on which the complainant was notified of the final judgment at the national level. In the instant case, the IACHR has admitted the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the Convention. In this regard, Article 32 of the Commission's Rules of Procedure states that in cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, petitions must be presented within what the Commission considers a reasonable period of time. For that purpose, the Commission is to consider the date on which the alleged violation of rights occurred and the circumstances of each case.

36. Given the context and characteristics of the case at hand, in determining whether the petition was presented within a reasonable time according to the circumstances, the IACHR notes that the petition was lodged on June 13, 2005; that the substance of the claim began with the incident in which the petitioner was allegedly injured on August 21, 2003; and that its alleged effects in terms of the alleged administration of justice continue into the present. Moreover, it takes into account the connection between the claims and the remedies filed to denounce the arrest, the purported abuse, and the alleged impact on his health that he attributes to the inability to seek the treatment he needed in his own country. Based on the foregoing, the IACHR concludes that the petition was lodged within a reasonable time, in accordance with the terms of Article 32 of its Rules of Procedure, and that the admissibility requirement referring to the timeliness of the petition must be taken as met.

D. Duplication on procedures and international *res judicata*

37. Article 46.1.c of the Convention provides that the admission of a petition is subject to the requirement that the matter "is not pending in another international proceeding for settlement," and Article 47.d of the Convention stipulates that the Commission will not admit a petition that is substantially the same as one previously studied by the Commission or by another international organization. In this case, the parties have not cited the existence of either of those two circumstances, nor can they be inferred from the case documents.

1. Characterization of the facts alleged

38. In ruling on admissibility, the IACHR must decide whether the claim describes incidents that could tend to establish a violation of the Convention, as required by Article 47.b, and whether the petition is "manifestly groundless" or "obviously out of order," as stipulated in Article 47.c. of the Convention.

39. Moreover, neither the American Convention nor the IACHR's Rules of Procedure require the petitioners to identify the specific rights that they claim were violated by the State in a matter placed before the Commission, although the petitioners may do so. Instead, it falls to the Commission, based on the precedents set by the system, to determine in its admissibility reports what provisions of the relevant inter-American instruments are applicable, the violation of which could be established if the alleged facts are proven by means of adequate evidence.

40. The petitioner claims he was arrested without any judicial order for his detention, in a sudden and violent manner, and without being informed of the charges against him; he also claims that

during his arrest, he suffered mistreatment and torture. He further contends that the precautionary measures imposed on him were disproportionate, in that he was prevented from leaving the country for eleven months, when the maximum punishment for the crime with which he was charged was a period of sixty days in prison. In connection with the imposition of the precautionary measures, he adds that he was prevented from seeking the medical attention he needed during the proceedings, as a result of which he acquired a permanent physical disability. In turn, the State argues that the facts described by the petitioner are groundless and therefore do not constitute violations of the American Convention, the American Declaration, or the Inter-American Convention to Prevent and Punish Torture.

41. After examining the facts described by the petitioner, the Commission finds that the petitioner has made claims that are not “manifestly groundless” or “obviously out of order” and that, if proven true, could constitute violations of Articles 5, 7, 8, 22, and 25 of the American Convention, in connection with Article 1.1 of that same international instrument. Regardless of this, in its analysis of whether the State incurred in international responsibility under the American Convention, the IACHR may take into consideration other instruments that make up of the *corpus juris* as regards the rights of persons with disabilities with respect to the petitioner.

42. In particular, the Commission notes that the contentions in this petition are basically related to the alleged international responsibility of the Costa Rican State arising from the mistreatment and torture reportedly suffered by the petitioner at the hands of state agents at the time of his illegal arrest. They are also related to the alleged imposition of disproportionate precautionary measures, under which he was prevented from leaving the country to seek treatment for the injuries arising from the purported mistreatment and torture he suffered, and to the fact that the State failed to provide him with the medical care he required. If these claims are proven at the merits stage, they could constitute violations of the rights protected by Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 22 (freedom of movement and residence), and 25 (right to judicial protection) of the ACHR, and of the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to the petitioner.

43. In connection with the criminal proceedings for abuse of authority and grievous bodily harm brought against the officials of the OIJ, the petitioner claims that he was unable to defend himself and file the corresponding remedies because he was not notified that he was required to submit evidence for the investigation of his case to continue, and also because he was not notified of the hearing at which his case was dismissed or of the corresponding decision. He states he was not given access to his case file or afforded the opportunity to participate in his own case. In response, the State claims it attempted to inform the petitioner about the relevant judicial proceedings but that its efforts were fruitless. In this regard, the Commission believes that if the contentions relating to the alleged violations of the right to a fair trial are proven, they could tend to establish violations of Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in conjunction with Article 1.1 thereof, with respect to the petitioner.

44. At the same time, the IACHR finds that the petitioner has not offered arguments of fact or of law to establish, at this stage in the proceedings, a possible violation of the principle of domestic legal effects, the principle of legality and freedom from *ex post facto* laws, the right to compensation, the right to privacy, to freedom of thought and expression, to freedom of movement and residence, and to equality before the law, as enshrined in articles 2 (domestic legal effects), 9 (freedom from *ex post facto* laws), 10 (right to compensation), 11 (right to privacy), 13 (freedom of thought and expression), and 24 (right to equal protection) of the American Convention.

45. Consequently, the Commission finds that the requirements contained in Articles 47.b and 47.c of the Convention have been met.

V. CONCLUSIONS

In light of the above considerations of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible as regards the alleged violations of the rights established in Articles 5, 7, 8, 22, and 25 of the ACHR, in conjunction with Article 1.1 thereof, with respect to the petitioner. Additionally, to rule the case admissible as regards the alleged violation of the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to the petitioner.

2. To rule this petition inadmissible as regards the alleged violations of Articles 2, 9, 10, 11, 13, 24, and 26 of the American Convention.

3. To notify the parties of this decision.

4. To publish this decision and to include it in its 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.