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**REPORT No. 66/15**  
**PETITION P-1436-11**  
REPORT ON ADMISSIBILITY

EMILIO PALACIO URRUTIA ET AL. (*El Universo* Newspaper)  
ECUADOR

Approved by the Commission at its session No. 2051 held on October 27, 2015  
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**I. SUMMARY**

1. On October 24, 2011, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition alleging the international responsibility of the Republic of Ecuador (hereinafter “the State” or “Ecuador”) for the violation of Articles 7 (right to personal liberty), 8 (right to a fair trial), 13 (freedom of thought and expression), and 21 (right to property) of the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”), in relation to Articles 1.1 and 2 thereof, to the detriment of Emilio Palacio Urrutia, journalist and editorial columnist of the newspaper *El Universo*, and the newspaper’s directors Carlos Nicolás Pérez Lapentti, Carlos Eduardo Pérez Barriga, and César Enrique Pérez Barriga (hereinafter “the petitioners” or “the alleged victims”).

2. The petitioners alleged that they were sentenced, in a trial plagued by irregularities, to three years in prison and ordered to pay thirty million dollars in damages for the alleged commission of “the offense of serious criminal defamation of an authority [*injuria calumniosa grave a la autoridad*].” They stated that the complaint was brought against them by the President of the Republic, Rafael Correa, after *El Universo* published an opinion column by journalist Emilio Palacio regarding an issue of public interest. They maintain that the convictions imposed are contrary to the international human rights obligations of the State, especially the right to freedom of expression; that they arose in a context where the Judiciary lacks independence, and that they demonstrate “the systematic way in which the State of Ecuador uses the government to persecute and censor journalists.” They asserted that “the domestic remedies have been exhausted,” and that the rest of the requirements provided for in the American Convention have been satisfied, and they asked the Commission to declare this petition admissible.

3. For its part, the State alleged that the petition fails to meet the requirements established in Article 46 of the Convention, that the facts stated therein do not constitute human rights violations, and that it is therefore manifestly groundless. It asked the IACHR to declare the petition inadmissible “because, at the domestic level, the National Court of Justice granted the request to commute the sentences [filed by Rafael Correa] of Messrs. Emilio Palacio Urrutia, Carlos Nicolás Pérez Lapentti, Carlos Eduardo Pérez Barriga, and César Enrique Pérez Barriga, and forgive of the obligation to pay damages, and consequently ordered that the criminal case against the petitioners be shelved.”

4. After examining the positions of the parties in light of the admissibility requirements established in Articles 46 and 47 of the Convention, the IACHR decided to declare the petition admissible with respect to the alleged violation of Articles 8, 13 and 25 of the American Convention in connection with the general obligations enshrined in Articles 1.1 and 2 thereof. It also concludes that the petition is inadmissible regarding the alleged violation of Articles 7 and 21 of the American Convention. In addition, the Commission decided to give notice to the parties, publish this decision, and include it in its Annual Report to the General Assembly of the Organization of American States.

**II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION**

5. This petition was received by the IACHR on October 24, 2011, together with a request for precautionary measures. After the adoption of precautionary measures (*infra* para. 6), on February 21, 2012 the IACHR instructed the Executive Secretariat to expedite the evaluation of the petition, as provided for Article 29.1. iv) of its Rules of Procedure. On March 8, 2012, the IACHR forwarded the pertinent parts of the

petition to the State, requesting the submission of its reply within two months. After being granted an extension, the State submitted its reply in a communication dated June 7, 2012, which was forwarded to the petitioners. The petitioners presented additional observations on July 25, 2012, which was forwarded to the State on July 31, 2012. On July 24 and September 19, 2012, the State submitted its new observations, which were duly forwarded to the petitioners.

- **Precautionary measures**

6. On February 21, 2012, the IACHR decided to grant precautionary measures No. 406-11 on behalf of Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga, and César Pérez Barriga. On February 29, 2012, the beneficiaries requested that the precautionary measures be lifted, in view of the fact that the underlying grounds of immediate urgency had ceased to exist. On March 9, 2012, the IACHR lifted the precautionary measures and shelved the case file.

**III. POSITIONS OF THE PARTIES**

**A. Position of the petitioners**

7. The petitioners stated that on February 6, 2011, an article was published in the newspaper *El Universo* entitled "*No a las mentiras*" ["No to Lies"], written and signed by journalist Emilio Palacio Urrutia.<sup>1</sup> The petition states that, in that article, the journalist "expressed his opinion regarding the events that took place on September 30, 2010 in Ecuador, in relation to the government's actions when members of the National Police of Ecuador started a protest in their barracks, staged a walk-out, blocked highways, and blocked the entrance to Parliament in Quito; he also expressed his critical opinion of the subsequent actions and reactions of the President of the Republic with respect to those events."

8. They indicated that, because of that article, on March 21, 2011 Rafael Correa Delgado, President of the Republic of Ecuador, filed a private criminal complaint before the Supervisory Criminal Judge of Guayas [*Supervisory Criminal Judge of Guayas*] alleging the offense of serious criminal defamation of an

<sup>1</sup> The petition indicates that the text of the column published is as follows: "This week, for the second time, the Dictatorship reported through one of its spokespersons that the Dictator is considering the possibility of forgiving the criminals who rose up on September 30, and therefore is considering a pardon. I do not know whether the proposal includes me (according to the dictatorial broadcasts, I was one of the instigators of the coup); but if so, I reject it. I understand that the Dictator (a devout Christian, a man of peace) never misses an opportunity to pardon criminals. He pardoned the drug trafficking mules, he showed pity toward the murderers being held at the Litoral Penitentiary, he asked citizens to let themselves be robbed so there wouldn't be any victims, he cultivated a great friendship with the squatters and made them legislators until they betrayed him. But Ecuador is a secular State where it is not allowed to use faith as a legal basis for exempting criminals from the payment of their debts. If I committed a crime, I demand that it be proven; otherwise, I expect not a judicial pardon, but rather the proper apologies. What is really happening is that the Dictator finally understood (or his lawyers made him understand) that he has no way to demonstrate the supposed crime of September 30, since it was all the product of an improvised script, in the midst of all the panic, to conceal the Dictator's irresponsibility of going into a barracks in revolt, to open his shirt and shout for them to kill him, just like professional wrestler putting on his show in a circus tent in some forgotten little town. At this point, all of the "evidence" against the "coup conspirators" has fallen apart: The Dictator acknowledges that the terrible idea of going to the Quito Regiment and entering by force was his. But at the time, no one was able to prepare for his assassination because no one was expecting him. The Dictator swears that the former director of the Police Hospital locked the doors to keep him out. But there was no conspiracy there either because they did not even want to see his face. The bullets that killed the police officers disappeared—not from Fidel Araujo's office but rather from premises guarded by forces loyal to the Dictatorship. To show that he was not wearing a bulletproof vest on September 30, Araujo put one on in front of his judges and then donned the same T-shirt he had been wearing that day. His accusers had to blush at the palpable demonstration that the bulletproof vests cannot simply be concealed. I could go on, but space does not allow me to. Nevertheless, now that the Dictator understands that he should step back with his ghost story, I offer him a way out: he should pursue amnesty in the National Assembly rather than a pardon. Amnesty is not a pardon; it is legal forgetting. If passed, it would mean that society reached the conclusion that too many stupid mistakes were committed on September 30, on both sides, and that it would be unfair to condemn some and reward others. Why was the Dictator able to propose amnesty for the "big-wigs" Gustavo Noboa and Alberto Dahik, whereas he wants to pardon the "nobody" police officers? The Dictator should recall, finally—and this is very important—that with a pardon, a new president—perhaps an enemy of his—could have him brought before a criminal court in the future for having ordered fire discretionarily, without advance notice, on a hospital full of civilians and innocent people. Crimes against humanity, do not forget, are not subject to any statute of limitations."

authority<sup>2</sup> against the petitioners: Emilio Palacio Urrutia (journalist and editorial columnist of the newspaper *El Universo*), Carlos Nicolás Pérez Lapentti, Carlos Eduardo Pérez Barriga, and Cesar Enrique Pérez Barriga (directors of the newspaper *El Universo*), and against Compañía Anónima *El Universo*, the company that owned the paper. The petitioners specified that “President Rafael Correa expressly requested that his role as ‘Head of State and Government’ be taken into account, basing his complaint on the allegation that he was attacked and discredited for actions related directly to his office, considering his ‘authority’ status as President of the Republic.” They assert that “[While the President] says he is pursuing legal action as a private citizen, he is doing so with respect to criticism of his actions as President, and requests the imposition of a penalty that is only applicable to someone who defames a government authority.” In his complaint, President Correa “asked for the maximum penalty of three years in prison, and the payment of restitution in the requested amount of US \$50 million [...] to be imposed against the journalist and the directors jointly and severally, and for the penalty of US \$30 million [...] to be assessed against Compañía Anónima *El Universo*.”

9. The petitioners maintained that the criminal case was heard by multiple judges, some of whom recused themselves, or left the case, while others were suspended, substituted, or appointed, including for just a few hours. They stated that the trial was held on July 19, 2011, presided over by a temporary judge, “who said he was put on the case at just at that moment.” The petitioners stated that the hearing was held in “an intensely political and confrontational environment.”

10. They indicated that on July 20, 2011, the day after the abovementioned hearing had concluded, the temporary judge of the Fifteenth Supervisory Criminal Court of Guayas, Juan Paredes, issued a judgment convicting the defendants of the crime, sentencing them to three years in prison, and ordering them to pay a fine of US \$12,000. He also ordered them to pay damages to complainant Rafael Correa in the amount of US \$30,000, and entered a civil judgment against Compañía Anónima *El Universo* in the amount of US \$10,000. Additionally, the petitioners were ordered to pay US \$2,000 in attorney fees to President Correa’s lawyers. The petitioners underscored the physical impossibility of publishing a 156-page judgment in 25 hours (following the hearing), by a judge who has just taken cognizance of the case. According to the petitioners, when the temporary judge rendered his decision, the case file contained 5,878 pages.

11. The petitioners stated that on July 22, 2011, President Rafael Correa appealed the trial court’s decision. On that same day Carlos Nicolás Pérez Lapentti, Carlos Eduardo Pérez Barriga, and Cesar Enrique Pérez Barriga reportedly filed appeals and motions to vacate the judgment, and Emilio Palacio did the same on July 26. The petitioners added that the case was assigned to the Second Criminal Division of Guayas, which held the appeal hearing on September 16 and 20, 2011, after several continuances and irregular changes in the composition of the court.

12. On this point, the petitioners indicated that on September 5, 2011, the Court issued an order to conduct “two hearings: first, to adjudicate the motion to vacate, and later, if appropriate, to hear the appeal.” It continued to Tuesday, October 4, the hearing at which it would “exclusively hear the grounds for the motion to vacate.” That same day, President Rafael Correa issued Executive Order No. 872, declaring a state of emergency in the judiciary, which allowed for “the mobilization of all judiciary personnel,” including the judges assigned to this case.

13. The petitioners asserted that, indeed, on September 13, the regular judge of the Second Division, Primo Díaz Garaycoa, was transferred to another judicial position from September 13 to 19, and that during his brief absence the new members of the Court issued a ruling to revoke the September 5 order, which had scheduled the hearing on the motion to vacate for October 4. The Court reportedly decided to set the appeal and motion to vacate hearing for September 16. The petitioners indicated that Judge Primo Díaz

<sup>2</sup> According to the petitioners, Article 489 of the Criminal Code in force at the time of the events provided that criminal defamation [*injuria calumniosa*] consists of “falsely accusing another of a crime,” which under Article 493 of the Criminal Code “shall be punishable by a term of imprisonment of three years and a fine when accusations that amount to criminal defamation are directed toward government authorities.”

completed the duties assigned to him in the other position earlier than anticipated and returned to the Second Division on September 15. Upon learning of the decision made in his absence, Judge Primo Díaz Garaycoa resigned.

14. The petitioners alleged that they found out that the Court had set the hearing for the following day (September 16) through a message posted at 6:00 am by Rafael Correa on his Twitter account “[...] they have set the hearing for the *El Universo* case for tomorrow, Friday.” The petitioners stated that, because of this, the defense attorneys went before the Second Criminal Division of Guayas that Thursday morning to challenge the order announcing the hearing. Before the hearing began the following day, the defense attorneys also requested the recusal of the judges of the Second Criminal Division “for lack of integrity, as well as for lack of impartiality.” They stated that the request for recusal “was not addressed, not even in writing.”

15. At the end of the hearing, the Second Division affirmed the conviction in its entirety. The petitioners stated that on September 27, 2011, attorneys for Emilio Palacio filed a petition for cassation challenging the conviction. On September 30, 2011, the rest of the petitioners also filed petitions for cassation. Nevertheless, they indicated that on October 4 the Second Criminal Division declined to admit Emilio Palacio’s petition for cassation, “on the grounds that he had abandoned his appeal and motion to vacate, and therefore is barred from filing a petition for cassation.” At the same time, the Court decided to entertain the petition for cassation filed by the other parties to the case.

16. The petitioners explained that on October 4, 2011, Emilio Palacio filed a petition for review of a denied appeal in order to challenge the order refusing to entertain his petition for cassation, with the objective of preventing the enforcement of his conviction. The petition for review of a denied appeal was reportedly granted, suspending the enforcement of the judgment against Emilio Palacio until the National Court of Justice adjudicated the petition for cassation filed by the other parties. On February 17, 2012, the National Court issued its judgment on the petition for cassation, denying the appeal. The petitioners reported that several days later President Rafael Correa pardoned the conviction and the National Court of Justice ordered that the case be shelved.

17. Based on these facts, the petitioners affirm that the State is internationally responsible for the violation of Articles 7 (right to personal liberty), 8 (right to a fair trial), 13 (freedom of thought and expression), and 21 (right to property) of the American Convention, in relation to Articles 1.1 and 2 thereof, to the detriment of the alleged victims.

18. On this point, and in response to the State’s allegation that the facts of this case do not entail human rights violations, the petitioners stated that the petition does not only assert that the outcome of the criminal case—that is, the three-year prisons sentence plus the “million-dollar civil judgment”—is a violation of the American Convention. The petitioners also alleged that the criminal case itself was a violation of the Convention. They explained that, “The harm was in fact done when the criminal complaint was filed by reason of a *desacato* [criminal defamation] provision, in the terms developed by the Commission.” They stated that, “Although the pardon terminates the sentence, it does not erase the conviction handed down by the courts of the Ecuadorian State that imposed criminal responsibility through the application of a *desacato* law, not only upholding the conviction against the victims but also upholding a precedent that is perfectly applicable to other journalists and media outlets that attempt to make use of their freedom of expression on matters of public interest.” They further maintain that, “The mere use of a crime of this nature to impose a jail sentence is a violation of Article 7 of the American Convention, as that measure would be unlawful and arbitrary because it is contrary to the international standards on freedom of expression and criminal law, in addition to being unreasonable and disproportionate.”

19. The petitioners alleged that these violations took place in a context where the Judiciary lacks independence, and that they demonstrate “the systematic way in which the State of Ecuador uses the

government to persecute and censor journalists.” They believe that the lack of independence in the Judiciary has resulted in “the scant and ineffective judicial protection of citizens’ rights and the politicization of the justice system, which obviously has a bearing on this case [which started] with a complaint filed by none other than the President of the Republic.”

20. They added that the newspaper *El Universo* has been subject to extensive and aggravated harassment, and that journalist Emilio Palacio Urrutia in particular has been the victim of stigmatization and persecution by State agencies. They alleged that the harassment of *El Universo* has worsened in the past five years. According to the petition, “In 2007, President Rafael Correa directly attacked the newspaper *El Universo* in a presidential broadcast, using language such as, ‘garbage,’ ‘bad faith,’ ‘shysters,’ ‘liars,’ ‘ignorant,’ ‘idiots,’ ‘personal enemies.’” In 2008, “President Correa accused the newspaper *El Universo* of not paying taxes, saying, “Do not fall prey to the crooked, many of them, media outlets that don’t pay their taxes—Crooks!” He also reportedly accused them of being corrupt: “This is what corruption is like, this is what the disinformation of the corrupt media is like. People, don’t allow yourselves to be insulted by this newspaper, by this rag; a shame.” The petitioners stated that in 2010 the President stated, referring to the newspaper, “This is the free press. In fact, this is the vulture press. It’s not condemning the carrion, the putrefaction—it’s creating it, because that’s what it lives on, this carrion, this rot, this pestilence. Let’s not believe anything from this vulture press, compatriots.” The petitioners indicated that the newspaper *El Universo*—with more than 90 years of history—is the most widely read paper in Guayaquil.

21. The petitioners argue that they have met the exhaustion of domestic remedies requirement, since they availed themselves of the valid, suitable, and available domestic remedies, including the extraordinary remedy of the petition for cassation. The petitioners indicated that, contrary to the State’s argument, the action to enforce constitutional rights is extraordinary and does not constitute a suitable remedy. The extraordinary action to enforce constitutional rights is discretionary and does not have the effect of suspending the harm; its purpose would not be the review of the criminal case but rather the analysis of the constitutionality of the laws.

22. Finally, they asked the IACHR to deny the State’s request for recusal on the grounds of its manifest inadmissibility.

## **B. Position of the State**

23. The State indicated that on March 21, 2011, Rafael Correa filed a private criminal complaint before the Supervisory Criminal Judge of Guayas against Messrs. Emilio Palacio, Carlos Pérez Lapentti, Carlos Pérez Barriga, and César Pérez Barriga for the “alleged offense of serious criminal defamation of an authority, provided for in Articles 489, 491, and 493 of the Criminal Code,” based on an op-ed piece published in the newspaper *El Universo* by Emilio Palacio. According to the State, “in his complaint, Mr. Correa stated that ‘[...] the defendants’ intent in that publication [...] is [...] to accuse me of acts that are criminal, illegal, improper, and unlawful’ and that therefore ‘I am not accusing them of the crime of *desacato* [...] I am accusing them of making defamatory accusations against me [*injurias calumniosas*] [...]’” It added that, “On July 20, 2011, the Fifteenth Supervisory Criminal Court of Guayas issued the respective judgment, which stated: ‘considering that the existence of the crime and defendants’ responsibility for it have been proven, I find [...] all of the defendants guilty, imposing the respective sentence and fine and awarding damages to the complainant.’”

24. The State said that, “On July 22, Rafael Correa filed his appeal, and on July 22 and 26 the defendants filed their appeals and motions to vacate the trial court’s judgment.” It explained that “the hearing on the appeal was bifurcated: the first part was held on September 16, 2011, and the second on September 20, before the Second Criminal and Traffic Division of the Provincial Court of Justice of Guayas. The appeal judgment upheld ‘the decision of the trial judge in its entirety.’” The State noted that “the defendants filed a petition for cassation on September 27, 28, and 30, 2011, respectively. On October 4, the Court declined to hear Emilio Palacio’s petition for cassation and upheld his conviction, while the petitions for cassation filed by

the other defendants were admitted.” The State of Ecuador indicated that when the petition was filed with the IACHR, the petition for cassation was still being litigated.

25. Ecuador specified that on October 7 Emilio Palacio “filed a petition for review of a denied appeal challenging the order whereby the court declined to entertain his petition for cassation [...]. This petition for review of a denied appeal was based on Article 327 of the Code of Criminal Procedure, which establishes that ‘when an appeal is filed by one defendant in a case with various codefendants, it will benefit all of them.’” It explained that the Second Criminal Division of Guayas granted the petition for review of a denied appeal and ordered the suspension of the judgment against defendant Emilio Palacio until the adjudication of the petition for cassation filed by the rest of the defendants. Thus, in the opinion of the State “the only person who had concluded his local proceedings when the petition was filed [before the IACHR] should have waited for the outcome of his codefendants’ petition for cassation since, as the judge stated, the result of the others’ appeal could have changed Mr. Palacio’s legal situation.”

26. Later, the State explained that the Criminal Division of the National Court of Justice announced its decision to deny the petition for cassation during a hearing on February 16, 2012. It further reported that, “In a pleading dated February 27, 2012, the complainant in the case alleging criminal defamation [*injurias calumniosas*], economist Rafael Correa Delgado, filed a pardon with the National Court of Justice on behalf of Messrs. Emilio Palacio Urrutia, Carlos Eduardo Pérez Lapentti, Carlos Eduardo Pérez Barriga, and César Enrique Pérez Barriga, as well as a reprieve or remission of the obligation to pay damages. He further specified that his defense attorneys waived their right to request the payment of the attorney fees ordered as part of the court costs. In the same pleading, he requested that that case be shelved, stating for the record that the judgment must have no effects whatsoever, as such effects were terminated by the complainant’s pardon.” The State added that in an order dated February 28, 2012, the National Court of Justice accepted the request for the commutation of the sentence and the remission of the payment of damages and court costs, and ordered that the case be shelved.

27. With respect to meeting the admissibility requirements, the State indicated that “the domestic remedies were not exhausted, and the facts alleged do not constitute the violation of any right enshrined in the American Convention; therefore, this petition cannot be admitted.” The State asserted that in this case “only the petitioner’s dissatisfaction with the court decisions handed down in Ecuador can be inferred.” In view of that situation, the State asserted that the Inter-American Commission “is prevented from acting as a fourth instance to review the merits of local proceedings.”

28. With regard to the exhaustion of domestic remedies, the State asserted that if the petitioners “are of the opinion that the case for criminal defamation of an authority is a violation of the right to freedom of expression, and that this case is tacitly voided by virtue of the repeal provision of the Ecuadorian Constitution of 2008, Ecuadorian law provides an action of unconstitutionality, which could have been filed at the national level, allowing Ecuador to adjudicate the allegedly harmful act, [and] issue the appropriate decision.” The State explained that the petitioners “had and still have the opportunity to file an action of unconstitutionality.”

29. The State additionally maintained that if alleged victim Emilio Palacio “sought to vacate a judgment issued against him, both the extraordinary action to enforce constitutional rights and the petition for cassation were the local remedies that the alleged victims should have exhausted prior to availing themselves of Inter-American System.” It added that, “since a party to legal proceedings cannot benefit from his own negligence, the State regrets that the outcome of the petition for cassation was adverse to the petitioner’s aims, but it recalls that the obligation of the State is limited to offering the remedy rather than guaranteeing its results; in this case, the inaction of the litigant’s legal representative has allowed the statute of limitations to expire on the extraordinary action to enforce constitutional rights, the effectiveness of which has been repeatedly demonstrated in Ecuador.”

30. Although the State acknowledged the extraordinary nature of the aforementioned remedies (petition for cassation, action of unconstitutionality, and action to enforce constitutional rights), it underscored that, according to the inter-American case law and doctrine the remedies that must be exhausted “must be suitable and effective to redress the alleged violations, and whether they are regular or extraordinary remedies is a secondary matter.” In its opinion, the doctrine of the Inter-American Court has “left the door open in certain cases—those in which the situation alleged can be effectively remedied through the use of an extraordinary remedy—for the obligation to exhaust extraordinary measures.” Finally, the State said it was a “mistake to bring a case before a subsidiary international justice system prior to the conclusion of the local proceedings.”

31. As for the allegation that the facts do not describe human rights violations, the State maintained that, with the February 28, 2012 decision in which the National Court of Justice admitted the pardon of the sentence and the remission of the damages and court costs, and ordered that the case be shelved “the outcome of the case for criminal defamation [*injurias y calumnias*] reaffirms that the facts stated by the alleged victims do not describe a violation of the rights protected by the American Convention, and demonstrates that the petition is manifestly groundless.” It maintained that “The specific harm that the petitioners wish to attribute to the State has not arisen: Mr. Emilio Palacio and the other defendants never paid a single cent, nor did they spend a single minute in prison.” The State concluded by affirming that “The System cannot hear and decide cases through the individual petition system based on assumptions, and in the instant case, the petitioner has not been able to prove how the State is responsible for violating the right to personal liberty, the right to a fair trial, or the right to property, in the manner in which the content of those articles of the Convention has been developed in the case law, as the judgment was never enforced.”

32. Finally, in communications dated July 24 and September 19, 2012, the State requested that the IACHR’s then-Special Rapporteur for Freedom of Expression, Catalina Botero, “be removed from the examination of this case before the Inter-American Commission,” as it considered that the press releases issued by the Special Rapporteur “have adversely affected Ecuador’s right to a defense, by taking an institutional stance on the responsibility of Ecuador with respect to the petition de Emilio Palacio and others.” Ecuador also requested the recusal of the Commissioners “who supported the Special Rapporteur’s actions.”

#### **IV. ANALYSIS**

##### **A. Threshold issue: request for recusal of the Special Rapporteur for Freedom of Expression and the members of the IACHR**

33. Under the American Convention, the main function of the Inter-American Commission is to observe and defend human rights in the region. In order to fulfill this mandate, the IACHR was given the authority to monitor the situation of human rights in the region and recommend that the OAS Member States take measures that contribute to the protection of human rights in the countries of the hemisphere. The decisions and reports it issues pursuant to this authority, especially those issued through its different thematic rapporteurships, are based on the thorough study and deliberation of the information received, and their purpose is to promote the national implementation of the applicable human rights standards and contribute to the capacity-building of the countries in that respect. It also plays a preventive role, through the early alert of situations that jeopardize human rights in the region.

34. Although it is distinct in nature, this function must be seen as complementary to the other powers of the IACHR, such as the processing and examination of individual petitions alleging the violation of human rights, the purpose of which is to make recommendations to the responsible State in order to reestablish the enjoyment of rights to the extent possible, so that similar acts do not occur again in the future, and to ensure that the events in question are investigated and redressed—which ultimately also aims to reinforce State responsibility for the protection of human rights.

35. To this extent, a public statement from the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission that, after a rigorous examination of the information, alerted the State to possible violations of the individual right to freedom of expression, cannot be interpreted as compromising the impartiality of the IACHR; rather, it is the exercise of its powers of promotion and protection. In fact, to assert that the issuance of a press release is grounds to prevent the members of this body from hearing and deciding an individual petition individual about specific events unreasonably restricts the essence of the IACHR's main function, and renders ineffective two of the most important promotion and protection mechanisms of the Inter-American Human Rights System, to the detriment of the victims of human rights violations in the hemisphere.

36. Added to the aforementioned, the Special Rapporteur for Freedom of Expression is not a member of the Commission, and therefore, does not vote for the approval of the reports on individual petitions.

37. For these reasons, the Commission finds no merit in Ecuador's request for recusal in this case.

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

38. Under Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR, the petitioner has *locus standi* to file petitions before the Inter-American Commission. With respect to the State, Ecuador is a party to the American Convention, and therefore is internationally accountable for violations of that instrument. The alleged victims are individuals with respect to whom the State agreed to guarantee the rights enshrined in the American Convention. Accordingly, the Commission has jurisdiction *ratione personae* to examine the petition.

39. The IACHR has jurisdiction *ratione materiae* because the petition concerns alleged violations of human rights protected by the American Convention. In addition, the Commission notes that Ecuador has been a State Party to the Convention since December 28, 1977, the date on which it deposited its ratification instrument. Therefore, the Commission has jurisdiction *ratione temporis* to examine the petition. Finally, the Inter-American Commission has jurisdiction *ratione loci* to examine petition because it alleges the violation of rights protected in the American Convention that reportedly took place in Ecuador.

**C. Admissibility requirements**

**1. Exhaustion of domestic remedies**

40. Article 46.1.a of the American Convention provides that for a petition submitted to the Inter-American Commission to be admissible under Article 44 of the Convention, the petitioner must first have pursued and exhausted domestic remedies, in keeping with generally recognized principles of international law.

41. The analysis of the exhaustion of domestic remedies must start by identifying the remedies that must be exhausted, understanding as such those remedies that are suitable to address an infringement of a legal right.<sup>3</sup> The Commission has similarly established that the requirement of the exhaustion of domestic remedies does not mean that the alleged victims have the obligation to exhaust all of the remedies available to them. Both the Court and the Commission have held repeatedly that "(...), the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the

<sup>3</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4. para. 64.

opportunity to remedy them by internal means.<sup>4</sup> Therefore, if the alleged victim raised the issue by any lawful and appropriate alternative under the domestic juridical system and the State had the opportunity to remedy the matter within its jurisdiction, then the purpose of the international rule has thus been served.<sup>5</sup>

42. The Commission observes that in this case the alleged victims filed the ordinary remedies provided for under Ecuadorian law: their defense from the criminal complaint and the motion for appeal. In their defense the alleged victims denied the commission of any crime and challenged the constitutionality of the provisions of the Criminal Code invoked in the criminal complaint against them and for that reason their inapplicability in trial. The Commission notes that on July 20, 2011, the Fifteenth Supervisory Criminal Court of Guayas issued the judgment of first instance, convicting the petitioners. That judgment was appealed and affirmed on September 20, 2011, by the Second Criminal and Traffic Division of the Provincial Court of Justice of Guayas.

43. The alleged victims also filed extraordinary remedies. The Commission observes that Emilio Palacio filed a petition for cassation against his conviction on September 27, 2011, and on September 30, 2011, the rest of the petitioners did the same. On September 4, the Second Criminal Division declined to entertain Emilio Palacio's petition for cassation, and on October 4, 2011, he appealed that decision through a petition for review of a denied appeal. The petition for review of a denied appeal was granted, suspending the enforcement of the judgment against Emilio Palacio until the National Court of Justice adjudicated the petition for cassation filed by the other parties. Later, in a hearing held on February 16, 2012, the Criminal Division of the National Court of Justice dismissed the petition for cassation, rendering the conviction final and unappealable.

44. Finally, at the request of the complainant, in an order dated February 28, 2012, the National Court of Justice admitted the request for the pardon of the sentence and remission of the payment of damages and court costs, and ordered that the case be shelved.

45. Based on the foregoing, the Commission concludes that this petition meets the requirement provided for in Article 46.1.a of the American Convention.

## **2 Timeliness of the petition**

46. Article 46(1)(b) of the Convention establishes that, in order for the petition to be declared admissible, it must be filed within six months of the date on which the interested party was served notice of the final decision that exhausted the domestic remedies. The petitioners filed their complaint with the Commission on October 24, 2011. The ordinary remedies provided for under Ecuadorian law were exhausted on September 20, 2011, and the extraordinary remedies on February 16, 2012. The Commission concludes that the petition was filed within the time period established in Article 46(1)(b) of the Convention.

## **3 Duplication of international proceedings**

47. The case file does not contain any information to indicate that the subject of the petition is pending in another international proceeding, or that it duplicates a petition previously decided by the IACHR or another international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

<sup>4</sup> 1/A Court H.R., *In the Matter of Viviana Gallardo et al.* Series A No. G 101/81, para. 26.

<sup>5</sup> IACHR, Report No. 57/03 (Admissibility), Petition 12.337, Marcela Andrea Valdés Díaz v. Chile, October 10, 2003, para. 40.

### C. Colorable claim

48. The Inter-American Commission must decide whether the alleged facts amount to a violation of the rights enshrined in the American Convention pursuant to the requirements of Article 47.b, or whether the petition is “manifestly groundless” or “obviously out of order,” as described in Article 47.c. At this stage of the proceedings, the Commission must perform a *prima facie* evaluation, not to establish the alleged violations of the American Convention, but to examine whether the petition alleges acts that could potentially constitute violations of the rights guaranteed in the American Convention. This determination does not entail the prejudgment of the merits of the case.

49. Neither the American Convention nor the IACHR’s Rules of Procedure require petitioners to identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, although they may do so if they wish. It falls to the Commission, on the basis of the system’s jurisprudence, to determine in its reports on admissibility which provisions of the pertinent inter-American instruments are applicable, and the violation thereof may be established if the facts alleged are demonstrated with sufficient evidence.

50. The petitioners asserted that the imposition of a criminal conviction and civil penalties against the journalists and directors of a newspaper for having published an opinion column on a matter of significant public interest based on the argument that the opinion column constituted the offense of “serious criminal defamation of an authority” violates Article 13 of the American Convention to the detriment of the alleged victims. The petitioners additionally stated that the criminal case against them was based on a provision that was arbitrarily contrary to the American Convention and plagued by procedural irregularities, and therefore violated their rights.

51. The State, for its part, argued that the facts alleged in the petition do not describe a human rights violation, and that the petition therefore is manifestly groundless. It asserted that the IACHR’s review of these events would be tantamount to assuming the role of a fourth instance.

52. The Commission is of the opinion that the petitioners’ arguments concerning the potential violation of the rights enshrined in Articles 13, 8, and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof, are not manifestly groundless. The Commission notes, however, that no elements of fact and law are verified to discuss a possible violation of Articles 7 and 21 of the American Convention.

53. In this respect, it bears repeating that the Inter-American Commission has jurisdiction to declare a petition admissible and rule on its merits when it concerns a national court decision that may substantially affect a right guaranteed by the American Convention.<sup>6</sup> In this case, the Commission must identify whether the requirements under the Convention have been met for the State imposition of subsequent liability for the abuse of the right to freedom of thought and expression, and whether the criminal proceedings that resulted in the conviction met the international standards of due process and access to justice.

54. In conclusion, the IACHR finds that this petition is neither “manifestly groundless” nor “obviously out of order,” and therefore declares that the petitioner has met *prima facie* the requirements established in Article 47.b. of the American Convention with respect to potential violations of Articles 8, 13 and 25 of the American Convention, in relation to the general obligations enshrined in Articles 1.1 and 2 thereof, as stated above.

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<sup>6</sup> See, IACHR, Report No. 32/07, Petition 452-05. *Juan Patricio Marielo Saravia et al.* (Chile), May 2, 2007, para. 57; Report No. 1/03, Case 12.221, *Jorge Omar Gutiérrez* (Argentina), February 20, 2003, para. 46, citing Report No. 39/96, Case 11.673, *Marzioni*, Argentina, October 15, 1996, paras. 50-51. See, IACHR, Report No. 4/04, Petition 12.324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 44.

**V. CONCLUSIONS**

55. The Commission concludes that it is competent to examine the claims presented by the petitioners regarding the alleged violation of Articles 8, 13 and 25, in relation to Articles 1.1 and 2 of the American Convention, and that those claims are admissible pursuant to the requirements set forth in Articles 46 and 47 of the American Convention.

56. Based on the foregoing legal and factual considerations,

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

**DECIDES:**

1. To find this petition admissible with respect to Articles 8, 13 and 25, in connection with Articles 1.1 and 2 of the American Convention.
2. To find this petition inadmissible with respect to Articles 7 and 21 of the American Convention.
3. To provide notice of this decision to the State and to the petitioners.
4. To continue with the analysis of the merits of the case.
5. 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 27<sup>th</sup> day of the month of October, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; Felipe González, and Tracy Robinson; and Rosa María Ortiz and Paulo Vannuchi (dissenting opinion), Commissioners.