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**REPORT No. 98/14**  
**PETITION 101-06**  
REPORT ON ADMISSIBILITY

EDGAR FERNANDO VON QUEDNOW PONCE  
GUATEMALA

Approved by the Commission at its session No. 2013 held on November 6, 2014  
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NOVEMBER 6<sup>TH</sup>, 2014

**I. SUMMARY**

1. On February 2, 2006, the Inter-American Commission on Human Rights (hereinafter, “the Commission,” “Inter-American Commission,” or “IACHR”) received a petition filed by the *Instituto de Estudios Comparados en Ciencias Penales de Guatemala* [Guatemalan Institute for Comparative Studies in Criminal Science] (ICCPG) (hereinafter, the “petitioners”), in representation of Mr. Edgar Fernando Von Quednow Ponce (hereinafter, the “alleged victim”), against the State of Guatemala (hereinafter, the “State” or “Guatemalan state”), in which they allege the international responsibility of the State for procedural irregularities and unwarranted delays in the murder case brought against the alleged victim, as well as for the mandatory and protracted imposition of pretrial detention and the conditions in which he was being held throughout.

2. The petitioners hold that the State of Guatemala is responsible for violating the alleged victim’s rights to humane treatment, personal liberty, a fair trial, privacy, and judicial protection, provided for under Articles 5, 7, 8, 11, and 25, respectively, of the American Convention (hereinafter, the “Convention” or the “American Convention”), relative to the general duties enshrined in Articles 1 and 2, thereof. They note that the alleged victim was the target of an arbitrary arrest and search of his home; that there were irregularities and unwarranted delays in the criminal prosecution against him; that his pretrial detention was automatic based on the type of crime, but the imposition thereof was not duly justified; and that he was deprived of his liberty in conditions that ran counter to humane treatment. Regarding the requirements for admissibility, the petitioners maintain the domestic remedies that correspond to the facts being alleged in this petition have been exhausted.

3. For its part, the State claims that all procedures were consistent with existing criminal law as well as with the American Convention, and though it admits there was a delay in the criminal trial, the State indicates that such delay was the result of bad faith on the part of the “joint complainant” (*querellante adhesivo*\* and not the actions of the courts. The State further points out that the criminal case pursued against Mr. Von Quednow ended in his acquittal. Regarding the exhaustion of domestic remedies, the State affirms that the alleged victim never filed an action challenging the constitutionality of the use of pretrial detention in the specific case, nor did he file any criminal actions against the violations being alleged.

4. Without prejudging the merits, and having analyzed the positions of the parties and verified compliance with the admissibility requirements set forth in Articles 46 and 47 of the American Convention on Human Rights, the Commission concludes that the petition is admissible for purposes of examining the alleged violation of the rights enshrined in Articles 5 (humane treatment), 7 (personal liberty), 8 (a fair trial), 11 (privacy), and 25 (judicial protection), in conjunction with Articles 1(1) and 2 thereof, with respect to Mr. Edgar Fernando Von Quednow Ponce.

**II. PROCESSING BY THE COMMISSION**

5. The Commission received the petition on February 2, 2006, and assigned it number 101-06. On April 13, 2006, the IACHR forwarded the relevant portions of the petition to the State of Guatemala, providing it two months to submit its comments, in keeping with Article 30(2) of the Rules of Procedure of

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\* In many Latin American legal systems, like the present in Guatemala, the victims, his next of kin or his legal representatives have legal standing to participate in the proceedings. In so doing they are entitled to request the practice of evidence, to present evidence, to deliver arguments and pursue legal remedies. In contrast with other legal systems in which only the office of the prosecutor is entitled to act against the defendant.

the IACHR in force at the time. Following a 30-day extension that was granted on June 12, 2006, the State's response was received on July 20, 2006 and was duly forwarded to the petitioners.

6. The petitioners submitted their observations on September 5, 2006, and these were forwarded to the State on September 18, 2006. The State sent its response on January 24, 2007. The IACHR received additional information from the petitioners on December 12, 2006, March 26, 2007, July 24, 2007, October 26, 2012, and January 21, 2013. Such communications were duly forwarded to the State.

7. The Inter-American Commission received further information from the State on June 13, 2007, August 3, 2012, November 27, 2012, January 29, 2013, and June 11, 2013. Such communications were duly forwarded to the petitioners.

### **III. POSITION OF THE PARTIES**

#### **A. The Petitioners**

8. The petitioners state that on May 16, 2004, Ms. Alexia Franco was found in her room with a bullet wound to the head that reportedly caused her death just hours later in the hospital. They indicate that, while in theory a determination was made that this had been a suicide, the investigation thereafter was said to have focused on Mr. Von Quednow when it was discovered that he had apparently sold a cell phone that reportedly belonged to the deceased.

9. The petitioners note that on July 15, 2004, a search and arrest warrant was issued against the alleged victim. They claim that such warrant failed to comply with any minimum requirements as it apparently included no description whatsoever of the facts behind it or any mention of the crime for which the arrest was being ordered; all it said was that the accused "was involved in the commission of the crime being investigated." In addition, the inquiry was said to have been opened originally to investigate the concealment of a crime; nevertheless, at the time of his arrest, Mr. Von Quednow was reportedly apprehended for murder.

10. They allege that on July 16, 2004, when the search warrant was executed and Mr. Von Quednow was detained, he was not told why he was being arrested, nor was he informed of his constitutional rights —such as the right to an attorney— which would have placed him in a situation of defenselessness in which he could not have anyone there to supervise the search of his home. The petitioners further allege that this situation was aggravated by the fact that the search had reportedly been conducted without proper judicial authorization, since the warrant issued by the judge apparently only permitted a search for purposes of finding and apprehending the alleged victim, not to search his home for evidence; which, the petitioners allege, is precisely what happened. In addition, Mr. Von Quednow was reportedly not allowed to be present during the search, despite what is called for under the Code of Criminal Procedure (hereinafter, the "CCP"). The petitioners conclude that this intrusion into the home of the alleged victim, in addition to nullifying the criminal case brought against him, constitutes a violation of Article 11 of the Convention.

11. The petitioners further state that agents of the Public Ministry (prosecutor agency) planted the deceased's garage door opener in Mr. Von Quednow's home during the search, supposedly in order to incriminate him in the case under investigation. Because of this, one of the officers who participated in the search was reportedly prosecuted for staging a crime. In addition, the Assistant Prosecutor who executed the warrant was allegedly prosecuted for abuse of authority due to the apparent lack of judicial authorization to search the home.

12. The petitioners indicate that that same day, July 16, 2004, the alleged victim was brought before the Fifth Judge of the Criminal Trial Court, who indicted him for murder and ordered his placement on remand pursuant to Article 264 of the Guatemalan CCP. This Article expressly states that there can be no

substitute for pretrial detention in cases involving certain crimes, such as murder.<sup>1</sup> They allege that, in applying this provision, the Public Ministry never invoked the risk of absconding or obstruction of justice and that the judge reportedly based his decision solely on the existence of enough reasonable evidence that might indicate that the accused had been involved in the events under investigation. According to the petitioners, this would constitute a violation of the right to personal liberty and the presumption of innocence established under Articles 7 and 8 of the American Convention.

13. They claim that the Criminal Chamber of the Supreme Court of Justice, via a resolution issued on July 5, 2005, extended the pretrial detention by one month. Such extension was requested by the Public Ministry and granted as a simple administrative step, using a half-page long pre-written form, in which no reason whatsoever was given with respect to the need to keep the alleged victim in pretrial detention. The petitioners indicated that, pursuant to Article 268 of the CCP, pretrial detention is normally to last a maximum of one year, but may be extended *sua sponte* by a judge or at the request of the Public Ministry as often as necessary.

14. The petitioners state that, on February 6, 2006, Mr. Von Quednow formally requested a review of his pretrial detention, which had been ordered on July 16, 2004. The Third Trial Court, via a ruling issued on March 31, 2006, dismissed his request, noting that Mr. Von Quednow had been indicted for the crime of murder, for which other precautionary measures were not admitted. The petitioners state the alleged victim appealed this ruling on April 5, 2006; however, he withdrew his appeal three months after filing it, since he deemed it would delay his criminal case even further. In this regard, the petitioners claim that the alleged victim lacked an adequate and effective remedy to challenge the pretrial detention order, since Article 264 of the CCP does not allow to apply other precautionary measures than pretrial detention for individuals accused of murder; and since the three-day deadline provided for under Article 411 of the CCP for ruling on this type of trial-court decision had not been met.

15. They further allege excessive delays in the criminal proceedings, with a resulting protraction of pretrial detention beyond a reasonable time period. The intermediate phase of a criminal prosecution, which, according to Article 340 of the CCP, should not exceed 15 days, reportedly lasted eight months. According to the petitioners, the Public Ministry issued a formal indictment on November 10, 2004, going more than one month over the legal period of three months established under Article 323 of the CCP. Furthermore, the hearing in which the Public Ministry's investigation is assessed and a case committed to trial (intermediate phase of the process), was suspended five times: December 1, 2004, March 1, 2005, April 25, 2005, May 16, 2005, and July 11, 2005. This, due to alleged acts of bad faith in the proceedings by the joint complainant (mother of the deceased), who reportedly filed numerous appeals and baseless legal actions in order to delay the case and prolong the alleged victim's time in pretrial detention. The hearing in question was finally held on July 20, 2005, and the case was committed to trial.

16. The petitioners point out that, because of protracted delays throughout the trial, the trial court did not issue a judgment until September 25, 2006, finally acquitting Mr. Von Quednow of all charges. This means Mr. Von Quednow spent a total of two years and two months in pretrial detention. They claim that while delays in the proceedings may have been due in part to the malicious legal tactics of the joint complainant—who reportedly lodged more than 13 legal appeals—this was seemingly tolerated by the courts and by the Guatemalan criminal system, inasmuch as they allowed continuous interruptions to the trial. The petitioners indicate that the fines assessed on the joint complainant for the acts of bad faith she committed during the proceedings were not enough to remedy the effects of her delay tactics or allow the prosecution to proceed at a reasonable pace.

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<sup>1</sup> Article 264 of the CCP provides that: "Whenever the risk of flight or obstruction in the process to uncover the truth might be reasonably avoided by enforcing another, less serious measure against the accused, the competent court or judge may impose, *sua sponte*, one or several of the following measures: [...] None of the aforementioned alternative measures may be granted in cases against repeat offenders or habitual criminals, or for the crimes of first-degree murder, murder, parricide, aggravated rape, rape, rape of a minor below the age of 12, abduction or kidnapping of any kind, sabotage, aggravated robbery, or aggravated theft. Also excluded from alternative measures are the crimes contained in Chapter VII of Congressional Decree No, 48-92. Law against Drug Trafficking."

17. The petitioners allege that despite the fact that the trial court acquitted the alleged victim and that he was ultimately released, the criminal case against Mr. Von Quednow was drawn out until May 18, 2010, the day on which the Supreme Court of Justice ruled the appeal filed by the joint complainant to be inadmissible. After the First Chamber of the Court of Appeals for Criminal Sentencing, Drug Trafficking, and Environmental Crime had declared inadmissible the special appeals filed by the joint complainant and Public Ministry on February 7, 2008. Based on these considerations, the petitioners conclude that the criminal case as a whole was prolonged unreasonably.

18. The petitioners further allege the violation of Article 5 of the Convention because of the conditions in which the alleged victim was held during pretrial detention. In such regard, they indicate that Mr. Von Quednow was held at the Zone 18 Pretrial Detention Center from July 16, 2004 to March 23, 2005, when he was transferred (at his own request) to the Pavoncito Pretrial Detention Center. They claim that in the first of these two penitentiaries, the alleged victim was the target of constant threats and extortion by other inmates. They also allege that the family of the deceased offered a reward for his death, which forced Mr. Von Quednow to constantly monitored for his safety. This situation was reportedly exacerbated by the de facto conveyance of disciplinary functions to certain groups of inmates. Furthermore, Mr. Von Quednow was apparently kept locked up for extended periods of time without access to physical, recreational, or work-related activities.

19. Once he had been transferred to Pavoncito Detention Center, Mr. Von Quednow was reportedly placed in the isolation cellblock to prevent attacks against him. Nevertheless, while he was being held there, several riots broke out; such as the one that took place on August 15, 2005, in which eight prisoners were killed. Moreover, inmates held in the isolation cellblock were reportedly in an especially dangerous situation since prisoners from other areas were said to have threatened to kill them all, primarily because of clashes between “*maras*” or gangs. In addition, on September 25, 2006 (the day before Mr. Von Quednow was released), a police and military operation was conducted at Pavoncito, leaving seven dead in its wake (the so-called “*Pavo Real*” [“Peacock”] operation). In this context, the petitioners claim the alleged victim suffered due to the ongoing state of anguish and fear caused by the structural situation of violence in the jails in which he was held.

## **B. The State**

20. Regarding the alleged violation of the right to personal liberty, the State holds that there were investigative elements that were both necessary and reasonable for issuing the arrest warrant for Mr. Von Quednow, insofar as the judge had a number of different statements, reports, and grounds. The State likewise alleges that from the time the arrest warrant for Mr. Von Quednow was served, he and his family were made aware of the authority that had issued the warrant, the charges for which he was being detained, and where he would be taken. Based on these consideration, the State argues that at no time the alleged victim was held in a state of defenselessness.

21. The State contends that the lack of an attorney during the alleged victim’s arrest and the search of his home would not constitute the violation of any of his rights, since notifying him ahead of time that he was to be arrested, such that he would have, hypothetically, had the opportunity to seek in advance legal counsel, would have been unfeasible.

22. Although the State admitted “it is clear that there were irregularities during the search conducted on July 16, 2004,” it points out that the arrest of Mr. Quednow was made pursuant to existing constitutional provisions and to Article 7 of the American Convention. The State likewise underscores that the individuals responsible for the abuses said to have been committed during the search of the alleged victim’s home were prosecuted by the competent judicial authorities. In this regard, in its most recent communication to the Commission (dated June 11, 2013), the State indicated that, on October 19, 2010, the trial court issued a judgment of acquittal in the criminal prosecution of the Public Ministry officials who had taken part in the search. Such ruling was reportedly upheld in a judgment issued by the Criminal Chamber of the Supreme Court of Justice on August 26, 2011, in which it rejected the appeal filed by the Public Ministry.

23. As to the pretrial detention, the State claims that it was not solely based on the nature of the crime (murder) the alleged victim was charged with, nor was it groundless. Rather, the judge took into account the findings of the investigation in concluding that there was a reasonable possibility that the alleged victim might have been involved in the events being investigated. According to the State, the alleged victim's right to presumption of innocence would also not have been violated, fundamentally because he reportedly had all the means of defense provided by law. The State further claims that Article 264 of the CCP does not automatically prescribe pretrial detention for the crimes listed therein, rather it requires judicial assessment to determine whether detention is to be ordered. The State also alleges that all the appeals lodged requesting an alternative measure be applied were ruled on and denied in accordance with the law, and the extensions of pretrial detention were properly granted.

24. The State alleges that the apparent delay in the criminal case against Mr. Von Quednow, and the ensuing prolongation of his time in pretrial detention for more than two years, was the result of malicious legal tactics by the joint complainant and not the fault of the Guatemalan courts, which reportedly fulfilled their duty to hear the appeals and requests filed. It notes that over the course of the proceedings, the joint complainant was assessed fines and penalties for her bad faith maneuvers. The State thus considers that there was no delay in the proceedings that could be attributable to it. The State further indicates that the alleged victim did not report these actions to the Guatemalan Bar Association's Honor Tribunal so that appropriate measures could be taken against the complainant's legal counsel.

25. The State further notes that Mr. Von Quednow was separated from other inmates during his time in pretrial detention, so would have never been in danger of physical harm. It claims that the conditions in the detention centers in which he was held are good and that, although Mr. Von Quednow was initially the target of threats from other prisoners, that situation was remedied when he was transferred, such that he would no longer have been the target of any blackmail or extortion.

26. Regarding the exhaustion of domestic remedies, the State indicates that if the alleged victim considered that any of his basic rights had been violated in the enforcement of Article 264 of the CCP, he could have challenged the constitutionality of that Article. Such remedy would reportedly have been appropriate and suitable for addressing the alleged victim's claims with respect to the use of pretrial detention.

27. The State concludes that the facts put forth by the petitioners do not constitute any violation whatsoever of the American Convention and therefore requests that this petition be ruled inadmissible and archived.

#### **IV. ANALYSIS OF ADMISSIBILITY**

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

28. The petitioners are entitled, under Article 44 of the American Convention, to file complaints with the Commission. The petition names as alleged victim an individual on whose behalf the State of Guatemala undertook to respect and ensure the rights enshrined in the American Convention. Regarding the State, the Commission notes that Guatemala has been party to the American Convention since May 25, 1978, when it deposited the respective instrument of ratification. The Commission, therefore, has *ratione personae* to examine the petition. The Commission likewise has *ratione loci* to examine the petition inasmuch as it alleges violations of rights protected under the American Convention that are said to have taken place within the territory of Guatemala, a state party to said treaty.

29. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention was already in force for the State when the facts alleged in the petition are said to have occurred. Lastly, the Commission is competent *ratione materiae* because the petition alleges possible violations of human rights protected by the American Convention.



## B. Other Admissibility Requirements

### 1. Exhaustion of domestic remedies

30. Article 46(1)(a) of the American Convention states that for a petition presented to the IACHR alleging violations of the rights enshrined therein to be admitted, the remedies offered by domestic jurisdiction must have been pursued and exhausted in accordance with generally recognized principles of international law. The requirement of prior exhaustion applies when adequate and effective remedies for correcting an alleged violation are effectively available in the national system. Article 46(2) of the American Convention and Article 31(2) of the Commission's Rules of Procedure recognize three circumstances in which the rule of prior 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 or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. These circumstances refer not only to the formal existence of such remedies, but also that these be adequate and effective.

31. In the instant case, the State affirms in general terms that, supposing any of Mr. Von Quednow's basic rights had been violated, he did not avail himself of any of the domestic avenues for the restitution or protection thereof provided for under Guatemalan law. And specifically, the State notes that if the alleged victim believed that one of his fundamental rights had been violated, or that he had been discriminated against when Article 264 of the CCP was used as legal grounds for the judicial order calling for pretrial detention, the remedy he should have pursued in this regard was a challenge to the constitutionality of such Article.

32. In this regard, the petitioners allege, firstly, that an action of unconstitutionality by its very nature is not suitable for getting the release of an individual being held in pretrial detention; moreover, it would not be effective, it could take months or even years for a decision [on such an action] to be rendered. They further noted that the Constitutional Court has consistently ruled in favor of the compatibility of Article 264 of the CCP with the norms of the National Constitution of Guatemala.<sup>2</sup> Thus, the petitioners allege that the appropriate remedy bringing Mr. Von Quednow's pretrial detention to an end was the request for a review of such measure. This request was filed on February 6, 2006, and rejected by the Third Trial Court via its March 31, 2006 ruling.

33. The organs of the Inter-American System have established as a guiding principle "that it is not necessary to exhaust all resources available in the domestic jurisdiction, but only those that are suitable for effectively remedying the alleged harm."<sup>3</sup> In this regard, the IACHR has consistently indicated that claims involving potential violations of human rights stemming from the use of pretrial detention have their own dynamic as far as exhaustion of domestic remedies is concerned, apart from those pertinent to the criminal case as a whole. Along these lines, the Commission has considered that "[i]n the context of pretrial detention, the presentation of the request for conditional release followed by the denial thereof suffices to substantiate the exhaustion of remedies." This should also be analyzed based on the particular circumstances of the specific case.<sup>4</sup>

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<sup>2</sup> Petition received on February 2, 2006, Annex J: Constitutional Court Judgment of December 16, 1999, Case file No. 105-99; and Constitutional Court Judgment of February 1, 2000, Case file No. 305-99.

<sup>3</sup> See, among others: IACHR, Report No. 55/14, Petition 818-06, Admissibility, Felipe Matías Calmo, Faustino Mejía Bautista, *et al.* (Residents of Caserío Tres Cruces), Guatemala, July 21, 2014, paragraph 28; IACHR, Report No. 108/13, Petition 4636-02, Inadmissibility, Juan Echeverría Manzo and Mauricio Espinoza González, Chile, November 5, 2013, paragraph 49; Inter-American Court of Human Rights. Case of Velásquez-Rodríguez v. Honduras. Judgment of June 26, 1987. Series C, No. 1, paragraph 64; Case of Fairén Garbí and Solís Corrales v. Honduras. Judgment of June 26, 1987. Series C, No. 2, paragraph 88; and, Case of Godínez Cruz v. Honduras. Judgment of June 26, 1987. Series C, No. 3; paragraph 88.

<sup>4</sup> IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II Doc 46/13, adopted on December 30, 2013, paragraph 201; IACHR, Report No. 12/96, Case 11.245, Merits, Jorge A. Giménez, Argentina, March 1, 1996, paragraph 57.

34. In the case at hand, the Inter-American Commission observes that this petition is fundamentally about the purported violation of the alleged victim's rights to personal liberty, humane treatment, and the presumption of innocence, stemming from the pretrial detention to which he was subjected. In this regard, there is evidence in the petition's case file that Mr. Von Quednow did request a review of the pretrial detention measure pursuant to domestic procedural law, and that the competent authority dismissed his request on March 31, 2006. Such decision was appealed on April 5, 2006; nevertheless, three months after the appeal was filed, the Appeals Court had yet to rule thereon, despite the fact that Article 411 of the CCP provides that such rulings must be made within a period of three days. The petitioner thus availed himself of the remedies provided for by law, under the terms established therein, and the State, in turn, had the opportunity to remedy the situation in the framework of its legal system and institutions. The Commission likewise observes that the State, for its part, never questioned the lack of exhaustion of remedies through this avenue; nor did it explain why a potential action of unconstitutionality regarding Article 264 of the CCP would be the appropriate and effective remedy in the specific case of Mr. Von Quednow. Based on the foregoing considerations, the Commission concludes that the requirement of prior exhaustion of domestic remedies has been met with respect to the allegations pertaining to pretrial detention.

35. Regarding the criminal case brought against Mr. Von Quednow, it is a fact accepted by both parties that on September 25, 2006, the trial court issued a judgment of acquittal; and this decision became final after a ruling handed down by Supreme Court of Justice on May 18, 2010. Domestic remedies have therefore been exhausted regarding the claims pertaining to the way the criminal prosecution of the alleged victim was conducted.

36. The Inter-American Commission therefore concludes that in the instant case, domestic remedies were duly exhausted under the terms of Article 46(1)(a) de the American Convention.

## **2. Timeliness of the petition**

37. Article 46(1)(b) of the American Convention requires that for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was notified of the final judgment.

38. In the case at hand, the Commission observes that the petition was received on February 2, 2006, and the request for review of the pretrial detention measure —imposed on alleged victim starting on July 16, 2004— was dismissed on March 31, 2006. In addition, the final ruling in the criminal case was handed down on May 18, 2010. Hence, both decisions through which domestic remedies were exhausted were issued subsequent to the petition being filed with the IACHR.

39. In this respect, the Commission reiterates that the situation that is to be kept in mind when determining if domestic remedies have been exhausted is the one that exists when ruling on admissibility since when a petition is filed and when a decision on admissibility is made are different,<sup>5</sup> and the petitions system provides plenty of opportunities for each party to offer information and present arguments during the admissibility phase.

40. In view of the foregoing, the Commission concludes that the petition at hand is admissible under the terms of Article 46(1)(b) de the American Convention.

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<sup>5</sup> See, among others, IACHR, Report No. 73/14, Admissibility, Gustavo Javier Alarcón, *et. al.*, Argentina, August 15, 2014, paragraph 37; IACHR, Report No. 45/13, Admissibility, Eduardo Julian Parrilla Ortiz, Ecuador, July 11, 2013, paragraph 23; IACHR, Report No. 52/00, Admissibility, Dismissed Congressional Employees, Peru, June 15, 2000, paragraph 21.



### 3. International duplication of proceedings and res judicata

41. The case file does not indicate that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as another petition already examined by this Commission or any other international body. Hence, the requirements set forth in Articles 46(1)(c) and 47(d) of the American Convention have been met.

### 4. Characterization of the alleged facts

42. For purposes of admissibility, the Commission must decide whether the alleged facts might constitute a violation of rights pursuant to the provisions of Article 47(b) of the American Convention, or if the petition is “manifestly groundless” or “obviously out of order,” pursuant to Article 47(c). The criteria for evaluating those requirements differ from the ones used to rule on the merits of a petition; the Commission must conduct a *prima facie* evaluation to determine whether the petition establishes the grounds for the possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. Such determination constitutes a preliminary analysis, but does not prejudice the merits of the case.<sup>6</sup>

43. Neither the American Convention nor the IACHR’s Rules of Procedure require the petitioner to identify the specific rights allegedly violated by the State in the matter submitted to the Commission, although the petitioners may do so. It falls to the Commission, based on the system’s jurisprudence, to determine in its admissibility reports what provision of the relevant inter-American instruments applies and could establish a violation in the facts are proven sufficiently.

44. The petitioners fundamentally claim that: (a) The alleged victim was held in pretrial detention for a period of two years and two months, from July 16, 2004 through September 26, 2006; (b) the specific law that regulates the application of pretrial detention expressly excluded the possibility of using other precautionary measures in cases of individuals charged with murder; moreover, the further denial of a review of the measure was solely based on the said law; (c) the alleged victim was the target of a reportedly abusive search of his home conducted by the authorities, in the course of the investigations against him; (d) the alleged victim was said to have been held in conditions that posed a general danger to his life and physical safety, in which he was the target of threats and extortion, and was subjected to an overall environment of violence and self-governance in the penitentiaries in which he was held; and (e) the criminal prosecution as a whole was unduly prolonged for six years, until May 2010.

45. The State, for its part, alleges that the apparent delay in the criminal case against Mr. Von Quednow, and the ensuing prolongation of his time in pretrial detention for more than two years, was the result of malicious legal tactics by the joint complainant and not the fault of the Guatemalan courts, which reportedly fulfilled their duty to hear the appeals and requests filed. Regarding the use of pretrial detention, the State maintains that it was consistent with existing law, and that the judicial authorities had all the evidence they needed to support the imposition thereof. With respect to the situation of the alleged victim while he was deprived of his liberty, the State claimed that the necessary measures were taken to remove him from any danger he might have encountered initially.

46. Based on the foregoing considerations, the IACHR observes that the facts alleged by the petitioners might constitute a violation of Articles 5 (humane treatment), 7 (personal liberty), 8 (a fair trial), 11 (privacy)—with respect to the alleged infringements stemming from the search of Mr. Von Quednow’s home—and 25 (judicial protection) of the American Convention, in conjunction with Articles 1(1) and 2 thereof, to the detriment of Mr. Edgar Fernando Von Quednow.

<sup>6</sup> See, among other precedents: IACHR, Report No. 173/11, Petition 897-04, Alejandro Daniel Esteve and Sons, Brazil, November 2, 2011, paragraph 43; IACHR, Report No. 3/11, P-491-98, Admissibility, Néstor Rolando López, *et. al.*, January 5, 2011, paragraph 37; IACHR, Report No. 12/10, Case 12.106, Admissibility, Enrique Hermann Pfister Frías and Lucrecia Pfister Frías, Argentina, March 16, 2010, paragraph 46; IACHR, Report No. 10/10, Petition No. 214-08, Admissibility, Koempai, *et. al.*, Suriname, March 16, 2010, paragraph 43; IACHR, Report No. 73/14, Admissibility, Gustavo Javier Alarcón, *et. al.*, Argentina, August 15, 2014, paragraph 41.

**V. CONCLUSIONS**

47. The Commission concludes that it is competent to examine the claims put forth by the petitioners regarding the alleged violation of Articles 5, 7, 8, 11, and 25, in accordance with Articles 1(1) and 2 of the American Convention, and that they are admissible pursuant to the requirements established under Articles 46 and 47 of the American Convention.

48. Based on the foregoing considerations of fact and law,

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

**DECIDES:**

1. To declare this petition admissible with regard to the potential violation of Articles 5, 7, 8, 11, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof, to the detriment of Mr. Edgar Fernando Von Quednow Ponce.

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

3. To continue with its analysis of the merits of the complaint.

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

Done and signed in the city of Washington, D.C., on the 6<sup>th</sup> 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.