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REPORT No. 6/18
PETITION 1172-09
REPORT ON ADMISSIBILITY

MARIO FRANCISCO TADIC ASTORGA ET AL.
BOLIVIA

Approved by the Commission at its session No. 2115 held on February 24, 2018.
167th Special Period of Sessions.

Cite as: IACHR, Report No. 6/18, Petition 1172-09. Admissibility. Mario Francisco Tadic Astorga et al. Bolivia. February 24, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Gerardo Gianni Prado Herrera and Caroline Dwyer
Alleged victim:	Mario Francisco Tadic Astorga et al. ¹
Respondent State:	Bolivia
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 9 (freedom from ex post facto laws), 11 (protection of honor and dignity), 21 (private property), and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition⁴:	September 21, 2009
Additional information received at the stage of initial review:	November 18, December 4, 2009; January 19, March 16, April 22, 2010; April 26 and 27, May 16, June 8, 2011; March 14, September 7, 2012; January 18, February 15, April 2, May 29, June 19, 24, 25 and 27, July 2 and 9, August 16 and 19, October 4, November 18, 2013; April 21, October 3 and November 21, 2014
Notification of the petition to the State:	March 4, 2016
State's first response:	September 6, 2016
Additional observations from the petitioner:	March 10, 2016; February 24, and April 10, 2017
Additional observations from the State:	June 6 and July 7, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument of ratification deposited July 19, 1979), and Inter-American Convention to Prevent and Punish Torture ⁵ (instrument of ratification deposited November 21, 2006)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
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¹ Elöd Tóásó, Michael Martin Dwyer, Alcides Mendoza Mazaby, and Juan Carlos Guedes Bruno.

² Hereinafter "the Convention" or "the American Convention."

³ The observations submitted by each party were duly transmitted to the opposing party.

⁴ The petition was initially filed in representation of Mr. Mario Francisco Tadic Astorga. Subsequently, on January 19, 2010, Messrs. Alcides Mendoza Mazaby and Juan Carlos Guedes Bruno joined the petition. Later, on April 22, 2010, the petitioner communicated the accession to the petition of Mr. Elöd Tóásó. Finally, on January 18, 2013, petitioner informed that Ms. Caroline Dwyer, in representation of her son Michael Martin Dwyer, acceded to the petition as co-petitioner.

⁵ Hereinafter "IACPPT."

Rights declared admissible	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 9 (freedom from ex post facto laws), 11 (protection of honor and dignity), 21 (private property), 24 (equality before the law), and 25 (judicial protection) of the American Convention, in relation to its Articles 1(1) and 2; and Articles 1, 6, and 8 of the IACPPT
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of section VI
Timeliness of the petition:	Yes, in the terms of section VI

V. ALLEGED FACTS

1. The petitioners indicate that in 2009, Jorge Eduardo Rózsa Flores (hereinafter “Eduardo Rózsa” or “Mr. Rózsa”), of Bolivian, Hungarian, and Croatian nationality, Arpad Magyarosi (hereinafter also “Mr. Magyarosi”), of Romanian nationality, Michael Martin Dwyer (hereinafter “Michael Dwyer”), of Irish nationality, Mario Francisco Tadic Astorga (hereinafter “Mario Tadic” or “Mr. Tadic”), of Bolivian and Croatian nationality, Elöd Tóásó (hereinafter also “Mr. Tóásó”), of Hungarian nationality, and Bolivian citizens Juan Carlos Guedes Bruno (hereinafter “Juan Guedes” or “Mr. Guedes”) and Alcides Mendoza Mazaby (hereinafter “Alcides Mendoza” or “Mr. Mendoza”), were accused of being part of an alleged terrorist cell in Bolivia which, according to the version of the national authorities, sought to create a paramilitary group to support a purported separatist initiative whereby the department of Santa Cruz would separate from the rest of Bolivia, promoted by opposition political leaders. The petition before the Commission was filed in the name of Messrs. Michael Dwyer, Mario Tadic, Elöd Tóásó, Juan Guedes, and Alcides Mendoza.

2. The petitioners state that on April 14, 2009, the Ministry of Interior (Ministerio de Gobierno) filed a complaint with the Office of the Attorney General of the city of La Paz alleging crimes of terrorism, sedition, and attacks directed at the President and other dignitaries of the State, arguing that intelligence reports indicated that “groups of armed persons in Santa Cruz had organized a series of acts aimed at attacking the national State and even intending to assassinate the two highest authorities of the government.” Accordingly, that same day a prosecutor was said to have been designated to investigate the matter. The petitioners note that the complaint did not specify names of possible suspects nor did it state precise facts.

3. The petitioners indicate that in the early morning hours of April 15, 2009, in Santa Cruz a group of unidentified persons, using an explosive device, carried out an attack on the home of Cardinal Julio Terrazas, causing property damage. They assert that based on the purported intelligence investigations by the Ministry of Interior, the alleged victims were held liable for that criminal act. As a result, the Bolivian Police, without any judicial control or oversight, decided to carry out an operation to arrest them at the Hotel “Las Américas,” where they were staying.

4. They argue that in the early morning hours of April 16, 2009, while the alleged victims were sleeping, a contingent of the Tactical Crisis Resolution Group (hereinafter “UTARC”: Unidad Táctica de Resolución de Crisis), an elite group of the Bolivian Police, entered the hotel premises, set off explosives on the fourth floor, and broke into their rooms firing their weapons. According to the alleged victims, the police officers shot at them without giving them any time whatsoever to react. They indicate that as a result of the violent operation, Eduardo Rózsa, Arpad Magyarosi, and Michael Dwyer were killed; and that Mario Tadic and Elöd Tóásó were arrested and transferred that same morning to the city of La Paz.

5. They note that the police operation was carried out illegally, as there was no judicial warrant nor was the prosecutor assigned to the case present. They argue that the prosecutor arrived at the scene at approximately noon on April 16, 2009. They state that the security cameras of the hotel were cut as of the night of April 14, 2009, the date the alleged victims registered as guests. In addition, they state that it was possible to establish that hotel guests, until hours before the operation, included high-level authorities of the Ministry of Interior and the Bolivian Police. Along the same lines, they state that in September 2009, a video

circulated in the national media recorded months before the operation that showed how the forces of the UTARC were preparing, carrying out simulations in a space for training, that was said to be a re-creation of the hotel facilities. They further indicate that in October 2009 another video was disseminated that was recorded minutes after the operation by a member of the UTARC, with evidence of how police agents contaminated the crime scene, removing and planting objects (such as firearms and explosives) in the hotel rooms.

6. In addition, they argue that from the first public accusations by the President of Bolivia on April 16, 2009, characterizing the alleged victims as “international mercenaries” and “terrorists,” the State has impaired their rights to the presumption of innocence, and to honor and dignity, as government authorities depicted them as guilty continuously through publicity spots, documentaries, supplements, and special issues in national circulation newspapers, as well as reports, photographs, and pamphlets, among other means.

Alleged extrajudicial executions

7. The petitioners assert that the violent police operation was disproportionate and that there was no crossfire for half-an-hour, as stated in the authorities’ official version. To the contrary, they note that the shooting lasted approximately 10 minutes and that the alleged victims were taken by surprise, which rendered them unable to use their weapons or to get dressed, as they were partially undressed.

8. They indicate that the official autopsies performed by the Bolivian authorities of the corpses of Magyarosi and Dwyer were subsequently questioned by the expert reports prepared in Hungary and Ireland, which established that there was disproportionate use of force. They further state that the Police reported that Dwyer’s body was found in room 457 and that the autopsy established that six gunshot wounds were found in the thorax and abdomen, and that the cause of death was hypovolemic shock and multiple gunshot wounds. Nonetheless, after the repatriation of his remains to Ireland, the family of the alleged victim requested that other expert forensic examinations be performed. Those studies revealed that the actual cause of death was a gunshot wound to the front of the chest that directly penetrated his heart. In addition, it was possible to establish that in view of the trajectory of the projectile (downward), the shot was fired while the alleged victim was below his assailant. The expert report indicated, moreover, that while on the ground the alleged victim was shot five more times in the back.

9. With respect to Mr. Dwyer, Elöd Tóásó states that after being detained in the hotel he was transferred to an airport in Santa Cruz, along with two other persons. He indicates that even though his captors covered their heads with light blue t-shirts, he could see that alongside him were Mario Tadic and Michael Dwyer, on their knees. Tadic and Tóásó say that they were put on an airplane and that in the interim they heard one shot fired. Mr. Tóásó stated that he was shaken up on arriving in La Paz and realizing that only he and Tadic had arrived.

10. The petitioners state that on May 7, 2009, Elöd Tóásó lodged a complaint stating these facts with the Parliamentary Commission of the Chamber of Deputies that was established to investigate the facts, but that no investigation was ordered. They note that during the substantiation of the criminal proceeding brought against him he reiterated those denunciations to the judicial authorities, without any response. The petitioners emphasize that to date no criminal investigation has been initiated into the violent deaths, and that the State has refused to take any action despite the repeated requests by the Irish authorities and directly by Michael Dwyer’s mother since 2009.

Alleged torture and forced transfers

a) Mario Tadic and Elöd Tóásó

11. Mario Tadic and Elöd Tóásó state that during the police operation the agents forcibly opened the doors to their room and removed them almost undressed to the hallway, where they handcuffed them, beat them, and kicked them all over the body. They emphasize that neither of them put up any resistance and

that firearms were not found in their rooms; and that this was subsequently confirmed by the police reports. After they were violently restrained, Mr. Tadic was covered with a white sheet, and a light blue t-shirt was placed over Mr. Tóásó's head. They were subsequently transported in a vehicle to an airport in the city of Santa Cruz, and on the way, they were interrogated, insulted, and beaten. They assert that before being placed on the airplane they were made to sit on their knees, threatened with firearms, and that they heard a shot fired. They state that during the flight they continued to be beaten. They indicate that after landing they were transferred to a vehicle and only then could they see that they were at the international airport in the city of El Alto. They indicate that they were held there for a few hours and that because of the cold they were given clothes and the handcuffs were removed.

12. Both state that afterwards they were taken to the office of the Office of the Attorney General in La Paz. They note that despite the evident signs of torture and lesions they were not given immediate medical care, for they were taken to a room to be interrogated and threatened by individuals who did not identify themselves, without the presence of counsel. They indicate that afterwards they were taken to a police hospital where they received a superficial check-up and an injection of a medicine without being told what it was. They say that they began to feel sleepy and nauseous, and that in those conditions they were once again transferred to the Office of the Attorney General to continue giving their statements.

13. They say that after a few hours of interrogation two women public defenders introduced themselves and said they would be their defense counsel. They note that the public defenders did not denounce, in the hearing on precautionary measures, the clear signs of torture suffered by the alleged victims, such as the hematomas on the face of Mr. Tóásó and the injuries on Mr. Tadic's mouth. They argue that despite that, Mario Tadic said that they had been tortured, but that the judge failed to address the allegation of torture in her ruling.

14. The petitioners indicated that the torture the alleged victims suffered was reported to various national entities at different times, without orders being issued, to date, for any criminal investigation into those allegations. They explain that they gave a detailed description of the acts of torture in the appellate brief challenging the pretrial detention before the Third Criminal Chamber of the Superior Court of Justice of La Paz, which did not rule on the allegations when it ruled on that challenge on June 30, 2009. Subsequently, they reported the acts of torture in the context of the actions seeking their release, filed on June 15, 2009 before the Second Criminal Court (Juzgado Segundo de Sentencia Penal), and on August 7, 2009 before the Third Criminal Chamber. Those courts dismissed the actions on June 25 and August 12, 2009, respectively, and despite the express allegations of torture, did not order any action or investigation.

15. They also state that on November 27, 2009, Mr. Tadic lodged a complaint with the Office of the Attorney General regarding two members of the UTARC who participated in the operation for the crimes of very serious lesions and attempted murder. Yet it was dismissed on November 17, 2010, arguing that sufficient elements had not been found regarding the agents' participation; that decision was ratified on April 29, 2011 by the departmental prosecutor of La Paz. Subsequently, on April 1, 2014, the alleged victims once again denounced the acts to the attorney general, who on April 2 decided against opening an investigation, arguing that the complaint did not comply with the formalities required by law.

16. In addition, the petitioners state that the alleged victims reported the torture they suffered when they were questioned by the Parliamentary Commission of the Chamber of Deputies on May 5, 2009; it also failed to order any action. They indicate the Mr. Tadic filed a complaint with the departmental office of the Office of the Human Rights Ombudsperson (Defensoría del Pueblo) of La Paz on June 17, 2009, which issued Office of Ombudsperson Resolution (Resolución Defensorial) No. 111/2009, recommending that the facts be investigated by the Office of the Attorney General and by the National Bureau of Professional Responsibility of the Bolivian Police. On January 4, 2010, Mr. Tóásó also filed a complaint with the same office of the Office of the Human Rights Ombudsperson; despite addressing the same facts referred to by Mario Tadic earlier, it was dismissed. They indicate that this negative response was because at that time a former official of the Ministry of Interior who had participated in the operation at the at the Hotel Las Américas was working in the Office of the Human Rights Ombudsperson.

b) Alcides Mendoza and Juan Guedes

17. The petitioners state that Alcides Mendoza and Juan Guedes, civic leaders in Santa Cruz, were illegally arrested by members of the UTARC on April 28, 2009, while engaged in their normal activities in Santa Cruz. They say that both were intercepted on the street and forcibly placed in two vehicles, where they were blindfolded, handcuffed, their heads covered with plastic bags, and they were beaten violently. They argue that the agents interrogated them about their relationship with Eduardo Rózsa, the arms he supposedly possessed, and they asked them several questions about other opposition leaders in Santa Cruz. According to their account, on at least six occasions during the trip they were taken from the cars to be beaten and tortured along the highway.

18. They indicate that on April 29, 2009, Messrs. Mendoza and Guedes arrived in the city of La Paz and were transferred to the Office of the Attorney General to be interrogated in the context of the investigations into the so-called “terrorism case.” They note that their arrival at the facilities of the Office of the Attorney General, blindfolded and with signs of having been beaten, was covered by some media outlets. They indicate that after receiving their statements, the prosecutor presented them in a press conference as persons associated with Eduardo Rózsa. They further state that they were formally indicted for the crime of terrorism that same day. They argue that they were detained in judicial cells until May 2, 2009, when their precautionary measures hearing was held before the Sixth Judge of Criminal Investigation, who ordered house arrest for the alleged victims yet failed to rule on the allegations of torture and unlawful arrest. They argue that even though the torture suffered throughout the criminal proceeding was reported to both judges and prosecutors, neither the judicial authorities or the Office of the Attorney General did anything at all to investigate the facts.

*Alleged illegal detentions and due process violations**(a) Mario Tadic and Elöd Tóásó*

19. The petitioners allege that after their forced and illegal transfer to the city of La Paz the alleged victims were interrogated without a judicial warrant or any order from any authority, and without the presence of their counsel from the outset. They emphasize that the arrest warrant was not issued by the prosecutor until noon on April 16, 2009, and that on the same day it was ordered that they be held in incommunicado detention. They argue that when Mr. Tadic was halfway through his statement, a public defender walked in and it was only then that the official from the Office of the Attorney General informed him of the reason he was detained and made him sign a paper on which he could barely make out the word “notification” and nothing else.

20. As regards Elöd Tóásó, the petitioners note that his native language is Hungarian, he did not speak Spanish, he could barely understand English, and he did not have an interpreter from the outset of the criminal proceeding. They say that an initial interrogation at the Office of the Attorney General was carried out by individuals who did not identify themselves, using threats and intimidation, and that hours later a defense attorney and officials from the Office of the Attorney General came to take statements from him once again. They indicate that the honorary consul of Hungary in Bolivia (a Hungarian-Bolivian citizen who spoke very little Hungarian) arrived, as well as an English-language interpreter; as a result, he was not able to understand what was happening.

21. They recount that on April 17, 2009, the representatives of the Ministry of Interior filed a criminal complaint against Mario Tadic and Elöd Tóásó for the crimes of terrorism and manufacture, commerce, or possession of explosive substances. On that same day the prosecutor formally indicted the alleged victims for the crime of terrorism and requested their preventive detention. They argue that the Seventh Judge of Criminal Investigation of La Paz ordered the pretrial detention of the alleged victims in the early morning hours of April 18, 2009. They note that the hearing unfolded without a Hungarian-language interpreter. They also state that in light of the illegality of the detention, they appealed that decision on April 21, 2009 to the Third Criminal Chamber of La Paz; the appeal was rejected on June 30, 2009 based on the

argument that the illegality of the detention should have been alleged in the precautionary measures hearing, thus the pretrial detention was upheld.

22. They assert that since their transfer to the San Pedro prison the alleged victims were held in incommunicado detention in a sector of the prison where they were not allowed to receive visits, even from their attorneys. They state that on April 25, 2009, the consul of Hungary in Argentina went to the prison, and only then were the alleged victims able to leave their cells. They emphasize that it was the first time since his arrest that Elöd Tóásó was able to communicate with anyone in his native language.

23. They also argue that in light of the illegal and arbitrary pretrial detention, they filed two actions for release (*acciones de libertad*), which were rejected on June 25 and August 12, 2009, arguing that there were no acts or omissions that had violated the right to liberty. They indicate that the review by the Constitutional Court was not done until 2011, for as of 2009 all the members of that court had resigned, and constitutional cases were brought to a standstill. The constitutional judgments affirmed the decisions to dismiss the motion, leaving them in a defenseless position.

24. The petitioners noted that on May 20, 2009, the then-president of Bolivia issued Supreme Decree No. 138, which established the city of La Paz, as the proper jurisdiction for trying crimes of terrorism, sedition, and armed uprising against the security and sovereignty of the State, as it is the seat of government where the principal institutions of the State are located. They indicate that said law was applied retroactively to keep the case from being referred to Santa Cruz which, according to the Criminal Code, was where the judicial proceeding should have been conducted, since it is where the crimes were allegedly committed.

25. They note further that on several occasions in 2009 and 2010 officials of the Ministry of Interior went to the prison to threaten the alleged victims and take their personal documents from them. They state that even though they tried to lodge a complaint over such conduct it was impossible for them to prove those visits, for the prison authorities did not record the entry of the officials to the prison. They also note that the personal effects of the alleged victims, such as clothes, watches, laptop computers, and video cameras, among others, that were taken from them during the operation at the hotel and in the searches in the prison, were not returned to them by the Office of the Attorney General despite their repeated formal requests, and complaints made during the criminal proceeding.

26. The petitioners note that as of November 2010 they challenged the excessive duration of their pretrial detention, filing at least 10 motions for cessation of detention, processed with excessive unwarranted delay and dismissed on every occasion because of the retroactive application of a less favorable law. They note that on May 18, 2010, Law No. 007 was promulgated; it incorporated amendments to the Code of Criminal Procedure, providing that "*preventive detention will cease when its duration exceeds 18 months without an indictment, or 36 months without a judgment having been handed down, so long as the delay is not attributable to the dilatory acts of the accused.*" The previous wording, in force at the time the trial began, provided that pretrial detention would cease when its duration exceeded 18 months without a judgment or 24 months without the judgment having become *res judicata*, without specifying anything about the procedural conduct of the accused. Accordingly, the alleged victims also filed at least 11 actions for release, which were rejected in the first instance and by the Plurinational Constitutional Court in the review stage, based on the argument that the delay was due to the activity of the accused. In addition, challenging the validity of the law, on October 10, 2011, they asked the Fifth Precautionary Investigative Judge (Juez Cautelar Quinto de Instrucción) of La Paz to bring a specific action to challenge the constitutionality of Law No. 007, but that action was never taken up by that judicial authority.

27. They indicate that in January 2011 a video was disseminated in the media that evidenced how a former official of the Ministry of Interior, who had participated in the operation at the hotel, and who was also the person who had on some occasions gone to the San Pedro prison to threaten the alleged victims, would give money to a person with precise instructions to leave the country for a time. They explain that the individual who received the money was the driver of Eduardo Rozsa, who had been presented as a "key witness" by the Office of the Attorney General and the Ministry of Interior, for his testimony was used to indict the alleged victims and other leaders of the political opposition in Santa Cruz.

28. Moreover, they state that the prosecutor assigned to the case resigned and in March 2014 went into exile in Brazil, where he resides to this day as a political refugee. They note that since going into exile the former prosecutor denounced that he had been pressured by government authorities to direct the investigations of the “terrorism” case against some political leaders of the opposition, and that as a result he was being persecuted by the national government. They indicate that he confirmed that extrajudicial executions and torture resulted from the excessive use of force.

29. Finally, they argue that due to the violations of their procedural guarantees, the excessive duration of the criminal proceeding, the absence of a judgment, and the clear lack of judicial independence, on February 18, 2015 Mario Tadic and Elöd Tóásó decided to avail themselves of an abbreviated procedure in which they recognized their participation in the act of which they were accused, in exchange for a reduction in the sentence. Accordingly, on February 20, 2015, the First Court of Judgments (Tribunal de Sentencia Primero) of La Paz sentenced them to five years and 10 months in prison. As the time they were held in pretrial detention was equal to the sentence imposed, the alleged victims were released in March 2015.

c) Alcides Mendoza and Juan Guedes

30. The petitioners note that while Messrs. Mendoza and Guedes were under house arrest, on October 12, 2009, they were transferred once again to the city of La Paz to make an informational statement at the Office of the Attorney General. They allege that the prosecutor in the case arbitrarily ordered that they remain in judicial cells while awaiting a second precautionary measures hearing, without the already-existing judicial ruling in this respect having been revoked. In response, the alleged victims’ family members filed an action for release before the Second Criminal Chamber of Santa Cruz, which was granted on October 14, 2009, indicating that the arrest ordered by the prosecutor was illegal, as they were already subject to a measure ordering house arrest. Nonetheless, that ruling was violated by the Office of the Attorney General for La Paz, for the alleged victims were illegally detained for more than 115 days, awaiting the scheduling of a new precautionary measures hearing. They state that on February 5, 2010, the Seventh Judge of Criminal Investigation of La Paz ordered their pretrial detention at the San Pedro prison.

31. They argue that it was only on December 17, 2010, that the Office of the Attorney General filed a criminal indictment for the crime of terrorism against Messrs. Mendoza and Guedes. Subsequently, due to health problems, both were transferred to the Palmasola prison in Santa Cruz. They state that since 2009 and to this day they have been held in pretrial detention, as the proceeding is in the phase of public hearings, without any final judgment. Moreover, they indicate that on October 30, 2014, Law No. 586 was promulgated, implementing a new amendment to Article 239 of the Code of Criminal Procedure. While it provides that “*pretrial detention shall cease when its duration exceeds 12 months without an indictment, or 24 months without a judgment*,” it establishes that it shall not be in order *in the case of a proceeding for crimes committed against state security*.” They argue that the purpose of this rule is to keep them in pretrial detention indefinitely.

The State’s position

32. The State, for its part, notes that in 2009 an “irregular armed terrorist group” formed in Bolivia whose objective was to divide the national territory and assassinate the president, vice-president, and other high-level dignitaries of the State. It indicates that the activity of the group began with the attack on the home of the Cardinal in Santa Cruz on April 15, 2009; and through the intelligence reports it was possible to establish that its members, foreigners who had fought in the Balkans War, were at the Hotel Las Américas. For this reason, in the early morning hours of April 16, 2009, the UTARC of the Bolivian Police entered the hotel for the purpose of apprehending them *in flagrante delicto*. Nonetheless, since they put up resistance there was a confrontation that ended with the deaths of three persons and the detention of two more. The State emphasizes that the detention of two persons alive demonstrates that the action of the security forces was rational and reasonable. It also states that after the operation and due to the statements by Mario Tadic and Elöd Tóásó, an arsenal of arms and explosives was found in the stands at the Feria Exposición de Santa Cruz (EXPOCRUZ trade show).

33. It argues that in light of what happened a Special Multi-Party Commission of the Chamber of Deputies was formed, which after conducting an investigation, concluded on November 18, 2009 that an armed terrorist group had been formed that was carrying out illegal activities in the country, and therefore recommended that its members who were already detained be investigated, and also that several opposition leaders who were tied to the armed cell be prosecuted.

34. The State indicates that the detention of Messrs. Tadic and Tóásó was legal for it occurred in the context of a confrontation; and that the medical certificates established from eight to ten days of restricted activity for the alleged victims, which correspond to typical lesions resulting from being forcibly disarmed. Along those same lines, it notes that the arrest of Alcides Mendoza and Juan Guedes was due to their formal indictment by the prosecutor, and that it was done respecting their rights.

35. It notes that the criminal proceeding against the alleged victims unfolded respecting all their judicial guarantees. It indicates that the guarantee of a competent tribunal was respected, since the crimes committed by the armed group were intended to fracture the constitutional order and divide the national territory. Accordingly, any judge in the seat of government, i.e. the city of La Paz, has jurisdiction to take cognizance of the case. In addition, it indicates that there was judicial oversight at every moment over the acts of the Bolivian Police and the Office of the Attorney General. Accordingly, it argues that the facts stated by the alleged victims, if true, do not tend to establish violations of human rights.

36. In addition, it argues that the petition is inadmissible as the remedies provided for in the domestic jurisdiction were not exhausted. In this respect, it indicates that no complaint was ever filed with the Office of the Attorney General for the death of Michael Dwyer or for the alleged torture of the other four alleged victims. Regarding the case of Michael Dwyer, the State asserts that once the criminal proceeding for terrorism and armed uprisings against the alleged victims and other persons implicated concludes, there will be a sufficient basis to enable the authorities to begin an investigation into his death.

37. It also indicates that the guilty verdict handed down against Mario Tadic and Elöd Tóásó on February 20, 2015, was not challenged, is a final judgment, and constitutes an acceptance of the guilt of the persons convicted and of their participation in the facts. As regards the criminal proceeding against Alcides Mendoza and Juan Guedes, the State emphasizes that it has not yet concluded, and therefore domestic remedies are available to the petitioners.

38. Finally, the State indicates that Mario Tadic, Elöd Tóásó, Alcides Mendoza, and Juan Guedes seek to have the Commission review the judicial acts issued by competent authorities in respect of domestic laws. Accordingly, it considers that if it admits the petition the IACHR would be acting as a fourth instance.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

39. The petitioners state that impunity subsists in the case, as no investigation or criminal proceeding was initiated into the death of Michael Dwyer, despite the complaints filed repeatedly with the national authorities. They indicate that situation is the same with respect to the alleged acts of torture committed against the alleged victims, for notwithstanding the complaints lodged in different judicial forums, to date the facts alleged have not been investigated. Finally, they note that in the context of the proceeding against Mario Tadic, Elöd Tóásó, Juan Guedes, and Alcides Mendoza, for terrorism and armed uprising, the alleged victims did not have access to effective judicial remedies due to the alleged irregularities committed by the prosecutor and the judicial authorities.

40. The State, for its part, as regards the alleged extrajudicial execution of Michael Dwyer, argues that domestic remedies were not exhausted, as no complaint was lodged, and also considering that it is only when the principal investigation of the case is concluded that it will have the elements needed to determine the facts alleged by the petitioners. In addition, with respect to Mario Tadic and Elöd Tóásó it indicates that they did not exhaust domestic remedies since they did not challenge the judgment of February 20, 2015, by which they were convicted and sentenced. As regards the situation of Juan Guedes and Alcides Mendoza, it

emphasizes that the criminal proceeding against them is pending resolution, since the phase of receiving witness testimony is unfolding at this time. Accordingly, it indicates that the petitioners have available to them the remedies provided for by the criminal law, and eventually constitutional actions to challenge the judicial decisions in the future.

41. In keeping with its case-law, the Commission has established that in cases such as the instant case, involving possible violations of human rights, that is, that are to be prosecuted at the initiative of the authorities, and particularly when agents of the State are said to be involved in the alleged facts, the State is obligated to investigate them. This burden must be assumed by the State as its own legal duty, and not as a matter of responding to the interests of private persons or one that depends on their initiative or on the production of evidence by them.⁶ Based on the information produced by the parties, the Commission observes that the violent death of Michael Dwyer, which occurred in the context of the police operation carried out at the Hotel Las Américas, was taken cognizance of directly by the judicial authorities the very day of his death, i.e. on April 16, 2009. To date no investigation has been opened such as would make it possible to determine the circumstances of the facts or to impose punishment on those responsible. Moreover, the Commission takes into account that in the context of the criminal proceeding brought against Elöd Tóásó, the accused repeatedly lodged complaints with the judicial authorities concerning the death of the alleged victim, without them having taken any action. The Commission also observes that there is an obstacle to the exhaustion of domestic remedies since the State has repeatedly indicated that the investigations into the death of Mr. Dwyer will be initiated only once the criminal proceeding for the crimes of terrorism concludes. In this respect, the Commission considers that the opening of an investigation into the alleged extrajudicial executions cannot be subject to the culmination of said criminal proceeding, for these are procedures with different objectives. Accordingly, the Commission considers that the exceptions provided for at Article 46(2)(b) and (c) of the Convention apply.

42. As regards the alleged torture committed against Mario Tadic, Elöd Tóásó, Juan Guedes, and Alcides Mendoza, the Commission recalls that in cases in which torture is alleged, it is a crime of public action in Bolivia, the adequate and effective remedy is an investigation and criminal proceeding, and the State is obligated to promote and give impetus to such proceedings. Based on the documentation produced by the parties, the Commission considers that the State has had direct knowledge of the alleged torture on at least four occasions: (a) with the complaints lodged by the alleged victims with the judges who defined their pretrial detention and house arrest in April 2009; (b) through the declarations made by the alleged victims to the Office of the Attorney General and the judicial authorities in the context of the criminal proceeding concerning terrorism; (c) through the motions for release filed to challenge the decisions on pretrial detention; and (d) with the statements made by the alleged victims to the Multi-party Commission of the Chamber of Deputies constituted to investigate the facts. According to the information available, it is observed that to this day the authorities have not initiated the corresponding investigations. In addition, specifically in relation to Mario Tadic and Elöd Tóásó, the IACHR considers that Mr. Tadic filed a complaint, on November 27, 2009, against two police officers who were said to have participated in the operation, but that it was rejected by the prosecutor on November 17, 2010, and the decision was confirmed by the Office of the Departmental Prosecutor on April 29, 2011. In addition, it observes that the alleged victims once again submitted a complaint concerning the facts to the attorney general on April 1, 2014, which was dismissed the next day. Accordingly, the IACHR concludes that on this point the exceptions to the prior exhaustion of domestic remedies established at Article 46(2)(b) and (c) of the Convention apply.

43. As regards the alleged illegal detentions and violations of judicial guarantees, first as regards Messrs. Mario Tadic and Elöd Tóásó, the Commission takes into account that they were challenged by the alleged victims by motion for appeal of April 21, 2009, which was rejected on June 30, 2009 by the Third Criminal Chamber of La Paz. Subsequently they filed two actions for release that were rejected in first instance by the judges of guarantees on June 25 and August 12, 2009, and upon review in 2011 by the Constitutional Court. Furthermore, with respect to Messrs. Alcides Mendoza and Juan Guedes, the Commission observes that according to the information presented, in response to the second arrest ordered

⁶ IACHR, Report No. 68/08, Petition 231-98, Admissibility, *Ernesto Trevisi*, Argentina, October 16, 2008, para. 32.

by the Office of the Attorney General on October 12, 2009, without having revoked the house arrest they enjoyed, the alleged victims filed an action for release. Even though it was granted by the Second Criminal Chamber of Santa Cruz by resolution of October 14, 2009, it was never implemented. Accordingly, from the information available the IACHR considers that with respect to the specific situation of the four alleged victims, both the motion for appeal, and the actions for release pursued in timely fashion with respect to each of them, were suitable remedies to challenge the violations of the guarantees of due process. Moreover, as regards the alleged confiscation of personal property of the alleged victims by the authorities, the Commission notes that the petitioners filed the remedies available, such as formal requests to the Office of the Attorney General and complaints lodged during the criminal proceeding, without obtaining any result whatsoever. Therefore, it concludes that the requirement set out at Article 46(1)(a) of the Convention has been met.

44. With respect to the alleged excessive pretrial detention, the IACHR observes that Messrs. Mario Tadic and Elöd Tóásó, throughout the proceeding they filed at least 10 motions for cessation of the detention and at least 11 actions for release, suitable remedies, which were dismissed by the judicial authorities. In addition, the Commission considers that as the application of the provisions on the cessation of preventive detention contained in Law No. 007 were unfavorable to them, the alleged victims attempted to pursue the specific motion of unconstitutionality to challenge that provision, yet the Fifth Precautionary Judge of Investigation of La Paz did not address the matter. Accordingly, and in keeping with its case-law on the issue⁷, the Commission considers that the petitioners exhausted domestic remedies, complying with the requirement set forth at Article 46(1)(a) of the Convention.

45. In addition, with respect to Messrs. Alcides Mendoza and Juan Guedes, the Commission observes that as per the information produced by the parties, as per Article 239 of the Code of Criminal Procedure amended by Law No. 586, the cessation of pretrial detention is not in order in proceedings related to crimes against state security, a situation that is in evidence in the case of the alleged victims. Accordingly, the Commission concludes that the exception provided for at Article 46(2)(a) of the American Convention applies.

46. Finally, with respect to the time for filing, the petition was filed on September 21, 2009, accordingly it meets that requirements with respect to the arguments in which it was concluded that there was exhaustion of domestic remedies, and with respect to those in which an exception applies. Accordingly, mindful of the characteristics of the instant case, the Commission considers that the petition was filed within a reasonable time and that the admissibility requirement regarding timely filing has been met.

VII. ANALYSIS OF COLORABLE CLAIM

47. In view of the elements of fact and law set forth by the parties, and the nature of the matter put before it, the Commission considers that if the alleged extrajudicial execution of Mr. Michael Dwyer as a result of the police actions in the operation carried out at the Hotel Las Américas is proven, along with the alleged failure to investigate and punish the persons responsible, it would tend to establish possible violations of Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention, in relation to its Article 1(1), to the detriment of the alleged victim and his family, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

48. In addition, the alleged torture and threats committed against Messrs. Mario Tadic, Elöd Tóásó, Alcides Mendoza, and Juan Guedes, and the lack of effective judicial protection in relation to them, if proven, would tend to establish possible violations of Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), and 25 (judicial protection) of the American Convention in relation to its Article 1(1); as well as

⁷ See IACHR. Report on measures aimed at reducing the use of pretrial detention in the Americas. December 30, 2013, para. 201. IACHR. Report No. 12/96, Case 11,245, Merits, Jorge A. Giménez, Argentina, March 1, 1996, para. 57.

Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the alleged victims and their family members.

49. The alleged violations in the criminal proceeding against Mario Tadic, Elöd Tóásó, Alcides Mendoza, and Juan Guedes, and their purported continuous exposure in the media by government authorities as “terrorists,” the alleged retroactive application of laws, the purported confiscation of personal property, the alleged excessive pretrial detention of the alleged victims, and the impossibility of challenging it due to the nature of the crimes for which they are prosecuted, if proven, would tend to establish possible violations of Articles 7 (personal liberty), 8 (fair trial), 9 (freedom from ex post facto laws), 11 (protection of honor and dignity), 21 (private property), 24 (equality before the law), and 25 (judicial protection) of the American Convention, in relation to its Articles 1(1) and 2.

50. Finally, as regards the State’s arguments concerning the fourth instance formula, the Commission recognizes that it is not competent to review judgments handed down by domestic courts that act within the scope of their jurisdiction, and that apply due process and judicial guarantees. Nonetheless, it reiterates that within the framework of its mandate it is competent to find a petition admissible and to rule on the merits when the petition refers to domestic proceedings that may violate rights guaranteed by the American Convention.

VIII. DECISION

1. To find this petition admissible in relation to Articles 4, 5, 7, 8, 9, 11, 21, 24, and 25 in conjunction with Articles 1(1) and 2 of the American Convention; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Bogotá, Colombia, on the 24th day of the month of February, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.