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REPORT No. 58/17
PETITION 242-07
REPORT ON ADMISSIBILITY

ADRIÁN MELÉNDEZ QUIJANO AND FAMILY
EL SALVADOR

Approved by the Commission at its session No. 2085 held on May 25, 2017
162nd Extraordinary Period of Sessions

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I. INFORMATION ABOUT THE PETITION

Petitioners:	Adrián Meléndez Quijano and Sandra Ivette Meléndez Quijano ¹
Alleged victim:	Adrián Meléndez Quijano and family
State denounced:	El Salvador
Rights invoked:	Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 11 (Right to Privacy) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	March 5, 2007
Date on which the petition was transmitted to the State:	January 13, 2011
Date of the State's first response:	April 15, 2011
Additional observations from the petitioners:	December 20, 2011 and October 10, 2012
Additional observations from the State:	July 3, 2012
Date of warning that the case might be closed:	October 11, 2016
Date of the petitioning party's response to the warning that the case might be closed:	October 28, 2016
Precautionary measure granted:	October 10, 2006
Provisional measure granted:	March 23, 2007

III. COMPETENCE

Jurisdiction <i>ratione personae</i>:	Yes
Jurisdiction <i>ratione loci</i>:	Yes
Jurisdiction <i>ratione temporis</i>:	Yes
Jurisdiction <i>ratione materiae</i>:	Yes, American Convention (instrument of ratification deposited on May 12, 1994)

¹ The petition was initially filed by the Human Rights Institute at José Simeón Cañas Central American University (known by the Spanish acronym IDHUCA) and Eurípides Manuel Meléndez Quijano. Eurípides Manuel Meléndez Quijano died in 2009 and, on June 19, 2012, the alleged victim said the IDHUCA had ended its representation. The alleged victim then established itself as a petitioner. On October 10, 2012, Sandra Ivette Meléndez Quijano adopted joint representation with the alleged victim.

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

³ The observations presented by each party were duly forwarded to the opposing party.

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

Duplication:	No
Rights declared admissible:	Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a fair trial), 11 (Right to Privacy), 13 (Right to Freedom of Thought and Expression) and 25 (Right to Judicial Protection) of the American Convention, in accordance with Article 1.1
Exhaustion of domestic remedies or appropriateness of exceptions:	Yes, under the terms of Section VII
Timeliness of submission:	Yes, under the terms of Section VII

V. ALLEGED FACTS

1. The petitioners claim that, since 2001, Meléndez Quijano, a member of the Armed Forces, has suffered a series of acts of retaliation and institutional harassment on the part of more senior members of the Armed Forces and of the Defense Minister. They claim that, in 1996, when the alleged victim was Head of the Human Rights Department at the Ministry of National Defense, he notified his superiors of the contents of a complaint filed against an Army Major, who was arrested for 30 days as a result of that complaint. They note that the Major had become a Colonel by the time the petition was filed and became Commander General of the Salvadoran Air Force in 2006. They claim that Meléndez Quijano was subjected to arbitrary arrest on July 19, 2001, December 31, 2004, and September 2, 2005, and filed *habeas corpus* appeals in relation to those instances. His release was only ordered in the most recent case. In the other cases the action was dismissed because, by the time a decision was made, incarceration had ceased.

2. The petitioners say that, on November 30, 2001, the victim was arbitrarily discharged from service by the Honor Tribunal of the Armed Forces. A writ of *amparo* was filed against that decision. A ruling on November 3, 2003 recognized that the Tribunal had violated due process and ordered that the victim's status be returned to how it was before his discharge. The petitioners allege that, although he was reinstated in service, the sentence was not fully implemented, particularly regarding his rank and financial benefits, although the country's President said in a report on the execution of that sentence that it had been implemented. To complain about that fact, the alleged victim filed a request for coercive enforcement that was ruled baseless on July 26, 2004, and a request for a reversal of the ruling that said the sentence had been implemented, which was dismissed on September 7, 2004.

3. The petitioners say that, on February 2, 2005, a military trial for insubordination was initiated against the alleged victim, based on the comments he had made to a national newspaper on the second anniversary of his father's death. The petitioners say that, in the newspaper, he publicly blamed the Defense Minister for any retaliation he or his family might suffer as a consequence of their struggle for human rights. They say that, on April 19, 2006, the Military Judge of First Instance sentenced the alleged victim to one year and three months' imprisonment, sentence that was reduced to nine months' imprisonment on appeal. Following a motion to vacate the judgment filed by the alleged victim, the conviction was confirmed on November 18, 2009, and the sentence to nine months' imprisonment was upheld. The petitioners say that sentence was later commuted to sixty working weeks of community service and accessory sentences involving the loss of his civil rights, the loss of his job while he served his sentence, disqualification from holding public office or public employment, and a delay in his promotion to the next rank. A precautionary measure was also issued that restricted his migration rights.

4. The petitioners claim that, in those criminal proceedings, the alleged victim was not guaranteed independent or impartial judges, nor the right to defense. The victim therefore filed a writ of *amparo*. The decision on that writ of *amparo*, notified on July 13, 2011, dismissed the writ and noted that the proceedings correspond to another jurisdiction. In relation to the restriction of the alleged victim's migration

rights, the petitioners allege that it was in force longer than the conviction. For this reason, the alleged victim filed a *habeas corpus* that allowed the restriction was be lifted only on October 18, 2011.

5. The petitioners allege that other military trials were initiated against the alleged victim, which led to his arrest or to suspensions without pay. The petitioners allege that, in accordance with internal rules, those penalties can only be objects of complaints once they have been served. They allege that military law does not allow simple, fast and effective appeals against such decisions.

6. Lastly, they note that, in 2005, the alleged victim filed criminal complaints against the Defense Minister for the offences of misrepresentation and incarceration by a public servant or a public official or by an authority or public authority figure. Those complaints were archived in 2012. They further note that he filed a criminal complaint for malicious accusation of a crime against several members of the Assessment and Selection Tribunal of the Armed Forces, whose investigation was suspended in 2005. They allege that the State has failed to fulfil its obligation to investigate in those cases. They note that the brother of the alleged victim has suffered physical damage, probably for events linked to the complaints filed by the victim. They further allege that the alleged victim and his family have received threats and been subjected to harassment. The petitioners say that those events were reported in 2005 and 2006 respectively and the resulting criminal trials remain pending, in complete impunity.

7. The State alleges that the petition is inadmissible. It says that all the remedies of *habeas corpus* regarding the arrests were resolved by constitutional judges who made the relevant decisions. The State says that, if the alleged victim had deemed that the official who ordered his arrest had caused damages, he could have gone to civil courts to claim compensation. However, the alleged victim did not exhaust that remedy.

8. The State claims that there are no ongoing military proceedings against the alleged victim and that the circumstances that led to the filing of the petition have therefore ceased to exist. As for the allegations related to the alleged rights violations committed in those proceedings, the State says that they came to the attention of the relevant authorities and that remedies were available to challenge those decisions. It also claims that, in relation to the alleged lack of adequate remedies with respect to decisions in military proceedings, the alleged victim could have challenged those decisions before the Supreme Court of Justice, in either constitutional or administrative proceedings.

9. With relation to the enforcement of the sentence that followed the writ of *amparo* against the decision of discharging the alleged victim from service, the State says that the Constitutional Chamber of the Supreme Court of Justice resolved on September 7, 2004, to regard the sentence as fully executed with respect to its material restitution effect, since the alleged victim was reinstated and promoted to the relevant rank and the period during which he was discharged was counted as effective time in service. The State says that, if the alleged victim disagreed with the President's report on the execution of the sentence, he had unrestricted access to challenge what the President had said, but the alleged victim did not exhaust that remedy. Regarding the financial benefits that the petitioners allege were not recognized, the State says that legislation on social security contributions allowed the alleged victim to enter a "voluntary registration" regime and to claim back such payments as damages, once the sentence had been issued on the writ of *amparo*, in civil proceedings. The State says the alleged victim did not exhaust that remedy.

10. Lastly, the State alleges that measures have been taken to guarantee that the obligation to investigate be enforced in relation to the criminal proceedings and the acts of harassment and threats the alleged victim and his family suffered. Further, the investigation is ongoing regarding physical damage suffered by the brother of the alleged victim. The cause or motive of those events has not been established, and neither have the participation or acquiescence of the State nor the identities of those responsible.

VI. PRECAUTIONARY AND PROVISIONAL MEASURES

11. On July 11, 2006, the petitioners requested precautionary measures before the Commission, which were granted on October 4, 2006, to protect the life and the integrity of the alleged victim, his brother and their respective families. Given the State's failure to implement the precautionary measures that were granted and the persistence of extremely serious and urgent conditions, on March 21, 2007, the Commission requested before the Inter-American Court of Human Rights provisional measures that were granted on March 23, 2007 and remain in force.

VII. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

12. The IACHR notes that, in relation to the alleged rights violations committed in the arrest warrants that were allegedly issued arbitrarily, the alleged victim filed remedies of *habeas corpus*. With respect to the alleged rights violations committed during the military trial that was held against the alleged victim, appeals and motions to vacate the judgment were filed, as was a writ of *amparo*. In relation to the rights violations that are alleged as a consequence of the decision to discharge the victim from service, the Commission notes that a writ of *amparo*, a request for coercive enforcement and a request for a reversal of the ruling that said the sentence had been executed were all filed. The Commission considers that the remedies that have been exhausted have been adequate to challenge the rights violations that were alleged in each instance, and therefore that it cannot also be demanded that civil actions be exhausted, as the State alleges.

13. With respect to the physical damage suffered by the brother of the alleged victim and to the alleged acts of harassment and threats that the alleged victim and his family have suffered, the relevant criminal complaints were filed in 2005 and 2006 and remained pending after almost six years, on the date when the State filed its response in 2011. In this respect, the Commission considers that there is sufficient evidence to apply an exception to the rule of exhaustion of domestic remedies pursuant to Article 46(2)(c) of the American Convention, based on unjustified delays. In relation to the alleged lack of exhaustion of constitutional or administrative proceedings, the State fails to detail in which of the decisions by military criminal courts such remedies might have been exhausted.

14. Further, in relation to the timeliness of the petition, the Commission notes that the petitioners do not allege isolated events regarding which this requirement might be analyzed independently. Instead, they allege a series of alleged rights violations that were sustained over time, all of them with the alleged aims of retaliation and institutional harassment. In this sense, the Commission considers that the date of the last exhausted remedy in the series of events that is the subject of the complaint must be taken into account with a view to enforcing the submission deadline. In this concrete case, the date of the last exhausted remedy was July 13, 2011, when the writ of *amparo* was resolved in the military trial against the victim. Given that the petition was filed on March 5, 2007, the Commission considers that this requirement has been satisfied. With respect to the events to which an exception to the rule of exhaustion of domestic remedies has been applied, the Commission considers that the petition was filed within a reasonable timeframe.

VIII. COLORABLE CLAIM

15. In light of the factual and legal arguments provided by the parties and the nature of the matter being heard, the Commission considers that, were the events to be proven, particularly the alleged arbitrary incarceration and the lack of due process in legal proceedings initiated by the petitioner or held against him, as acts of retaliation or institutional harassment, these acts would tend to establish violations of the rights recognized in Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy) and 25 (right to judicial protection) of the American Convention. The Commission will further need to analyze in its assessment of the merits whether the military trial that was initiated against the alleged victim, allegedly based on comments made to the press, might tend to establish violations of the rights recognized in Article 13 (right to freedom of thought and expression) of the American Convention.

IX. DECISION

1. To declare this petition admissible with regard to Articles 5, 7, 8, 11, 13 and 25 of the American Convention, in accordance with Article 1.1 of said Convention;
2. To notify the parties of the present decision;
3. To continue examining the merits of the case; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of Buenos Aires, Argentina, on the 25 day of the month of May, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.