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**REPORT No. 154/24**  
**PETITION 1118-14**  
REPORT ON ADMISSIBILITY

NÉSTOR IVÁN MORENO ROJAS  
COLOMBIA

Approved electronically by the Commission on September 27, 2024.

**Cite as:** IACHR, Report No. 154/24, Petition 1118-14. Admissibility. Néstor Iván Moreno Rojas. Colombia. September 27, 2024.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Mauricio Alarcón Rojas
<b>Alleged victim:</b>	Néstor Iván Moreno Rojas
<b>Respondent State:</b>	Colombia <sup>1</sup>
<b>Rights invoked:</b>	Articles 7 (personal liberty), 8 (right to a fair trial), 9 (freedom from ex post facto laws), 23 (right to participate in government), and 25 (right to judicial protection) of the American Convention on Human Rights <sup>2</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	August 6, 2014
<b>Additional information received during the initial review stage:</b>	May 13, 2015, May 4, 2018, August 22, 2018, July 27, 2021 and September 19, 2022
<b>Notification of the petition to the State:</b>	November 10, 2022
<b>State's first response:</b>	February 23, 2023
<b>Additional observations from the petitioner:</b>	May 2, 2023
<b>Notification of the possible archiving of the petition:</b>	August 26, 2022
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	September 19, 2022

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (instrument deposited on July 31, 1973).

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

<b>Duplication of procedures and international <i>res judicata</i>:</b>	No
<b>Rights declared admissible:</b>	Articles 7 (personal liberty), 8 (right to a fair trial), 23 (right to participate in government), and 25 (right to judicial protection) of the American Convention, in conjunction with Article 1.1 (obligation to respect rights)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

<sup>1</sup> In accordance with Article 17.2(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the deliberations or in the decision in this case.

<sup>2</sup> Hereinafter referred to as "the American Convention" or "the Convention."

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party. Along with the initial petition, the petitioner asked the Inter-American Commission to grant precautionary measures, a request that was registered as MC-311-14; however, on November 20, 2015, the IACHR notified the petitioner of the decision to deny his request for precautionary measures. On August 19, 2020, the petitioner again sought the granting of precautionary measures; this request, registered as MC-797-20, was denied on April 1, 2021.

## V. FACTS ALLEGED

### *The petitioner*

1. The petitioner alleges violations of the right to personal liberty, the right to be tried by an impartial tribunal previously established by law, and to appeal the judgment of that tribunal (right to a fair trial), the right to participate in government, and the right to judicial protection, to the detriment of former Senator Néstor Iván Moreno Rojas, due to his conviction in a single-instance criminal proceeding on charges of corruption.

2. The petitioner states that Mr. Moreno Rojas was elected to the office of senator for two terms, from 2006 to 2010 and from 2010 to 2014. While he was serving as senator, his brother, Samuel Moreno Rojas, was elected mayor of Bogotá in January 2008. During his brother's mayoral term, public works contract IDU-137-2007 was executed, having been signed in 2007 by the previous mayor and the company Grupo Nule S.A., owned by brothers Miguel Eduardo and Manuel Francisco, both surnamed Nule Velilla, Guido Alberto Nule Marino, and Mauricio Galofre Amín, for the construction of a section of the city's public transportation system. The petitioner states that under this contract, the Urban Development Institute (hereinafter "IDU") found that the contracting company had illegally appropriated approximately US\$35 million from the advances paid by the district for public works in the city that it was to execute in 2008 and 2009. The petitioner emphasizes that the unlawfully appropriated money was subsequently replaced by the insurance company of the public works contract due to the commission of the crime.

3. The petitioner notes that this incident led to the scandal known as "*the contracting carousel*" in Bogotá, which, the petitioner says, dated from 1991 to 2007. Several contractors stated that city council members, heads of decentralized institutions, secretaries of district entities, and the Nule Group intervened in the awarding of public contracts and distributed the money for the works among themselves. The petitioner explains that, during Samuel Moreno's administration, the works under contract No. 137 of 2007 were halted because they were underfinanced due to the diversion of the advance payments, resulting in a declaration of breach of contract and the loss of the advance payment; the contract was subsequently assigned to another contractor to complete its execution. In 2011, the Nule brothers acknowledged their criminal responsibility in the embezzlement of US\$35 million, admitting to the offense of embezzlement by appropriation. They also admitted their criminal responsibility for having falsified the bidding documents in which contract No. 137 of 2007 was awarded, for procedural fraud in the contractor selection process, and for the crime of conspiracy between all the leaders of the Nule Group.

4. In this context, the petitioner contends that the Nule brothers "*took advantage of this investigation to make serious accusations in the media in the second half of 2010, thereby succeeding in getting the investigative authorities to involve them as witnesses against Iván Moreno.*" They say that between November and December 2010, the partners of the Nule Group testified against Samuel Moreno Rojas and Néstor Iván Moreno Rojas, stating that they had committed acts of corruption in 2008. In particular, they note that Mr. Miguel Eduardo Nule Velilla publicly accused Néstor Iván Moreno Rojas on a radio program, asserting that he had requested money to obtain contracts with the Mayor's Office of Bogotá, since his brother was the mayor.

5. He indicates that the Supreme Court of Justice opened criminal investigation file No. 34.282 against the senator on May 27, 2010, three months after the Nule family lost contract IDU-137-2007 and the government contracting fraud was uncovered. The petitioner states that the alleged victim was taken into pretrial custody on April 29, 2011, and has been deprived of his liberty since then.

6. The petitioner notes that, because the trial court for senators as persons with constitutional immunity is the Supreme Court of Justice, on February 19, 2009, the Plenary Chamber of the Supreme Court created a Trial Chamber within the Court for persons with constitutional immunity. The petitioner argues that this constitutes a violation of the principle that the trial court must have been previously established by law, because the Trial Chamber was created after the fact to hear matters that allegedly occurred in May 2008. Therefore, he contends that the right to be tried in a competent court previously established by law and the principles of legality and non-retroactivity have been violated. He further alleges the violation of the right to

personal liberty, since, once the maximum legal term of pretrial detention had elapsed, the Trial Chamber denied Mr. Moreno Rojas' request for release, based on the complexity of the proceedings, and kept him in pretrial detention for three years until his conviction in 2014.

7. The petitioner states that on October 27, 2014, the Trial Chamber of the Supreme Court sentenced the alleged victim to 14 years in prison for his alleged intervention to award the bid to the Nule Group. At the time of the facts, there was no ordinary remedy under domestic law to challenge single-instance decisions against persons with immunity. Therefore, Mr. Moreno Rojas's defense counsel filed a petition for the protection of constitutional rights (*tutela* action) against the Supreme Court ruling, but it was dismissed in both instances on May 25, 2016.

8. The petitioner explains that, in 2018, the Congress of the Republic issued Legislative Act 01 of 2018, amending the Constitution and creating a two-instance procedure for persons with immunity, through the creation of a Special Trial Chamber in the Supreme Court of Justice. This allowed defendants to challenge single-instance convictions in some cases. In view of this, on November 19, 2020, Mr. Néstor Iván Moreno Rojas's defense counsel filed a special request with the Criminal Cassation Chamber of the Supreme Court to challenge his conviction. He reports that this request was granted on April 27, 2021, but the challenge has not yet been adjudicated.

9. Nevertheless, the petitioner argues that the alleged victim's right to appeal the judgment has been violated, since he has already served his sentence. He maintains that this rendered the remedy granted ineffective and inoperative, and that the amendment to the Constitution did not remedy that violation. The petitioner submitted a certificate from the National Penitentiary and Prison Institute stating that, as of April 2023, Mr. Moreno Rojas had been physically deprived of his liberty for 143 months and 14 days. He was granted a 33-month and 27-day reduction in sentence, which, when credited to him in the computation of his sentence, brings the total to 177 months and 11 days of deprivation of liberty; that is, nine months more than what he should have received based on the 14-year sentence (168 months). However, he argues that the Supreme Court denied his request for release because it found that it lacked jurisdiction to rule on the matter. With this, the petitioner alleges that the State again violated Mr. Moreno Rojas's right to personal liberty and his right to participate in government due to the accessory penalty of disqualification, which prevents him from holding public office.

#### *The State*

10. The State replies that the petition is inadmissible because the facts contained therein do not *prima facie* constitute a violation of the rights invoked.

11. The State asserts that the complaint that gave rise to the criminal proceedings against Senator Iván Moreno was based on his interference in the contracting for the Bogotá road network, the manipulation of the bidding process, and his demand to be awarded two free zones in the Bogotá-Girardot road concession. As a result, the Supreme Court opened a criminal investigation against him on April 27, 2011, and issued a warrant for his arrest on April 28, 2011. Based on these facts, the Supreme Court convicted him on October 27, 2014, for the crimes of extortion and influence peddling, and for undue interest in the execution of contracts.

12. The alleged victim's defense counsel filed a *tutela* action against the judgment, which was ruled inadmissible by the Labor Chamber of the Supreme Court on December 11, 2014. Mr. Moreno Rojas challenged that ruling, and on May 21, 2015, the Civil Cassation Chamber of the Supreme Court adjudicated the appeal and declared the action unfounded. The State indicates that the alleged victim filed another *tutela* action, which was also denied on May 25, 2016.

13. Two years later, the Congress of the Republic issued Legislative Act 01 of 2018, creating the two-instance procedure in the Supreme Court for persons with immunity. The State notes that defense counsel for the alleged victim filed two *tutela* actions, one requesting that his challenge be granted, and the other alleging the violation of his right to personal liberty because a measure granting him house arrest had not been implemented. Both actions were denied on appeal in February and August 2020. Finally, Colombia indicates

that on November 19, 2020, Mr. Moreno Rojas's defense counsel filed a petition to challenge the conviction in the Supreme Court. The petition was granted on April 27, 2021, and the appeal is pending.

14. The State maintains that this petition is inadmissible under the terms of Article 47(b) of the American Convention, since it does not state facts that would establish a violation of the rights protected in the Convention. It further asserts that there is no violation of the right to appeal the judgment, due to the changes made in the Colombian legal system, which guarantee the comprehensive review of criminal convictions handed down against persons with immunity.

15. Colombia reports that the Constitutional Court initially exercised conventionality control through Judgment C-792 of 2014, ordering the legislature to create a remedy to provide persons with constitutional immunity with the right to challenge judgments. Accordingly, Congress issued Legislative Act 01 of 2018, amending the constitution to create the Special Examining Chamber and the Special First Instance Chamber to complement the Trial Chamber of the Supreme Court of Justice and guarantee the right to challenge criminal judgments before the Court. In addition, the Constitutional Court clarified in Judgment SU-146 of 2020 that said right exists as of January 20, 2014, date on which the Inter-American Court of Human Rights issued its decision in the *Case of Liakat Ali Alibuz v. Suriname*, in which it determined the content and scope of the right enshrined in Article 8.2(h) of the American Convention.

16. The State considers that, with this new fact, the alleged violation of the right to appeal a criminal conviction has been overcome thanks to the progress made in the domestic legal system. It argues that the facts alleged do not *prima facie* constitute a violation of the American Convention, and therefore the instant petition should be declared inadmissible.

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

17. This petition concerns alleged violations of the due process rights of Mr. Néstor Iván Moreno Rojas in the course of a single-instance criminal proceeding brought against him for acts of corruption in awarding of government contracts in the city of Bogotá. The petitioner argues that the appeal remedy afforded to persons with immunity was ineffective in this case. The State, for its part, does not dispute the exhaustion of domestic remedies.

18. Article 46.1(a) of the American Convention provides that the admission of a petition is subject to the requirement "*that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.*" In this regard, the IACHR has determined repeatedly in its decisions that the appropriate remedies to be exhausted in cases of alleged violations of due process and other human rights during judicial proceedings are, as a general rule, those means available under national procedural law that make it possible to challenge—during the proceedings in question—actions and decisions made in those same proceedings.<sup>4</sup>

19. Regarding compliance with the requirement of exhaustion of remedies in the special single-instance criminal proceeding, the Commission notes that the Colombian legal system did not provide for any ordinary remedy to challenge the judgment handed down against persons with immunity at the time of Mr. Moreno Rojas's conviction; that is, prior to the entry into force of Legislative Act 01 of 2018. However, thanks to the clarification made by the Constitutional Court in Judgment SU-146 of 2020, as noted by the State, the alleged victim had a new opportunity to challenge his conviction (since it was issued after January 30, 2014), and the parties report that his appeal is pending.

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<sup>4</sup> IACHR, Report No. 96/21. Petition 546-13. Inadmissibility. Rafael de Jesús Gómez Gómez. Venezuela. April 29, 2010, para. 10; IACHR, Report No. 346/20. Admissibility. Emilio Palacio Urrutia. Ecuador. November 23, 2020, para. 14; Report No. 108/19. Petition 81-09. Admissibility. Anael Fidel Sanjuanelo Polo and family. Colombia. July 28, 2019, paras. 6, 15; Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, para. 15.

20. The Commission notes that the criminal proceedings against Mr. Moreno Rojas were reopened and more than thirteen years after they were first brought, and they have still not been completed. In view of the foregoing, the IACHR considers that the exception to exhaustion for unwarranted delay in the adjudication of domestic remedies, contained in Article 46.2(c) of the Convention, is applicable. Given that the petition was filed on August 6, 2014, the Commission concludes that it was filed within a reasonable period, in the terms of Article 32.2 of the Rules of Procedure of the IACHR.

## VII. ANALYSIS OF COLORABLE CLAIM

21. The Commission notes that this petition includes allegations regarding the violation of the right to personal liberty, the right to be tried by an impartial tribunal previously established by law, and to appeal the judgment of that tribunal (right to a fair trial), as well as right to participate in government and the right to judicial protection, in connection with the criminal proceedings against Néstor Iván Moreno Rojas. The petitioner asserts that the violation of the right to appeal the conviction still exists, since the alleged victim has served his sentence without the conviction having been reviewed by a higher court, as well as other procedural violations such as the excessive duration of his pretrial detention. Colombia replies that the alleged violation of the right of appeal was remedied by the constitutional amendment of 2018 and its interpretation by the Constitutional Court in 2020.

22. For the purposes of admissibility, the Commission must decide whether the alleged facts may constitute a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” in accordance with subparagraph (c) of the same article. The standard for evaluating these requirements differs from that used to decide on the merits of a petition; the Commission must make a *prima facie* assessment at this stage to determine whether the petition establishes the basis for a possible or potential violation of a right guaranteed by the Convention, but not to establish whether such violation actually exists. This determination as to whether the petition establishes a colorable claim of violations of the American Convention is a preliminary analysis, not a prejudgment of the merits of the case.

23. The IACHR notes that the State did not dispute the petitioner’s allegations regarding the ineffectiveness of the remedy provided to the alleged victim in 2020. Nor did it address the alleged violations of his right to personal liberty, right to be tried by a tribunal previously established by law, and right to participate in government. It is therefore clear that a debate remains as to the Colombian State’s compliance with its international obligations to provide a simple, prompt, effective, and adequate remedy for the alleged violations of Articles 8.2(h) and 25.1 of the American Convention, as well as the other alleged violations.

24. In view of these considerations and after examining the factual and legal elements presented by the parties, the Commission finds that the petitioner’s allegations are not manifestly groundless and require a study of the merits, since the alleged facts, if corroborated as true, could constitute violations of Articles 7 (personal liberty), 8 (right to a fair trial), 23 (right to participate in government) and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 thereof (obligation to respect rights) to the detriment of Néstor Iván Moreno Rojas, as described in this report.

25. As to the claim of the alleged violation of Article 9 (freedom from ex post facto laws) of the American Convention, the Commission finds that the petitioner has not offered allegations or sufficient support for a *prima facie* consideration of a possible violation.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 7, 8, 23, and 25 of the American Convention.
2. To find the instant petition inadmissible in relation to Article 9 of the American Convention.

3. 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.

Approved by the Inter-American Commission on Human Rights on the 27<sup>th</sup> day of the month of September, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Andrea Pochak, and Gloria Monique de Mees, Commissioners.