

OEA/SER.L/V/II  
Doc. 62  
17 May 2024  
Original: Spanish

**REPORT No. 59/24**  
**PETITION 1250-13**  
REPORT ON ADMISSIBILITY

EDGAR EULISES TORRES MURILLO  
COLOMBIA

Approved electronically by the Commission on May 17, 2024.

**Cite as:** IACHR Report No. 59/24. Petition 1250-13. Admissibility.  
Edgar Eulises Torres Murillo. Colombia. May 17, 2024.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Víctor Mosquera Marín <sup>1</sup>
<b>Alleged victim:</b>	Edgar Eulises Torres Murillo
<b>Respondent State:</b>	Colombia <sup>2</sup>
<b>Rights invoked:</b>	Articles 7 (personal liberty), 8 (fair trial), 9 (freedom from Ex Post Facto laws), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights; <sup>3</sup> and Articles 2, 2(3), 14(1), 14(2), 14(5), 15(1), and 26 of the International Covenant on Civil and Political Rights

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	August 2, 2013
<b>Additional information received at the review stage:</b>	August 16, 2013, December 20, 2019, February 3, 2021, February 10, 2021, February 23, 2021, June 28, 2021
<b>Notification of the petition to the State:</b>	February 18, 2016
<b>State's first response:</b>	August 31, 2016
<b>Additional observations from the petitioner:</b>	November 20, 2019
<b>Additional observations from the State:</b>	November 8, 2021
<b>Notification of the possible archiving of the petition:</b>	October 15, 2019
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	October 21, 2019

**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 (ratification 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 (personal liberty), 8 (fair trial), 9 (freedom from Ex Post Facto laws), 24 (equal protection) and 25 (judicial protection) of the American Convention

<sup>1</sup> The initial petition was filed by Mauricio Alarcón Rojas; however, on February 10, 2021, the alleged victim reported a change of representation and that Víctor Mosquera Marín would assume representation of the petition before the IACHR and act as the petitioner.

<sup>2</sup> Commissioner Carlos Bernal Pulido, of Colombian nationality, did not participate in the deliberations nor in the decision in this matter, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

<sup>3</sup> Hereinafter "the American Convention" or "the Convention."

<sup>4</sup> The observations presented by each party were duly transmitted to the opposing party.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes
Timeliness of the petition:	Yes, on February 6, 2013

## V. FACTS ALLEGED

### *Petitioner*

1. The petitioner alleges violations of the right to a fair trial and racial discrimination in a single-instance criminal proceeding against Edgar Eduardo Torres Murillo for the crime of criminal conspiracy.

2. The petitioner emphasizes that Edgar Eduardo Torres Murillo is a native of the department of Chocó, whose majority population is Afro-descendant, and as such, he has worked to defend human rights and provide social leadership in the department. He relates that Mr. Torres Murillo held elected office and was a member of Congress for nine years before the criminal proceedings against him began. The petitioner states that on April 14, 2009, paramilitary chief Fredy Rendón Herrera, alias "El Alemán," testified against Mr. Torres Murillo, accusing him of links to paramilitary groups.

3. The petitioner indicates that at that time, Mr. Torres Murillo was a representative in the House of Representatives for the department of Chocó, and he served as the vice chair of the Accusations Committee. He states that on April 20, 2009, the Criminal Chamber ordered the opening of the preliminary investigation against him, signed by seven judges, and ordered the Technical Investigation Corps (hereinafter "CTI") of the Attorney General's Office to conduct several evidence-gathering procedures. He notes that during the preliminary investigation stage, the defense attorney of the alleged victim sought recusal of the nine judges comprising the Criminal Chamber, as because he was part of the Accusations Commission of the Chamber, he had competence and authority to investigate and issue charges against officials with constitutional investiture, including the judges of the Supreme Court of Justice. He argues that, at that time, the Accusations Committee had eight open investigations against several justices of the Criminal Chamber of the Supreme Court. However, the petitioner emphasizes that on July 3, 2009, the justices denied the request for recusal without stating their grounds, and the Supreme Court continued with the investigation, to the point of convicting the chair and vice chair of the Accusations Committee, along with two other members of the Committee.

4. The petitioner recounts that on August 31, 2009, the Criminal Chamber issued an order to commence an investigation and a warrant for the arrest of Edgar Eulises Torres Murillo. He alleges a violation of due process with the issuance of this order, since the alleged victim's defense counsel had requested a preliminary investigation hearing and procedural regulations establish that he could not be deprived of his liberty without a preliminary hearing or immediately following that hearing, but only with the issuance of an order establishing his juridical status. The petitioner also states that Mr. Torres Murillo had resigned his office in the House of Representatives on August 28, 2009, and therefore the Supreme Court of Justice was no longer competent to investigate and try him since he no longer had constitutional privilege as a member of Congress.

5. The petitioner states that on September 1, 2009, the secretary general of the House of Representatives accepted Mr. Torres Murillo's resignation and forwarded certification thereof to the Supreme Court of Justice. However, he notes that on that day the Supreme Court began the inquiry to hear Edgar Eulises Torres Murillo's side, upon learning of the alleged victim's resignation, the Chamber suspended the proceedings and subsequently issued a ruling assuming functional competence over the case, arguing that the crime was related to the performance of his duties. Four of the nine justices declined to join the judgment. The petitioner therefore argues that the State violated the right to a natural judge, protected by Article 8(1) of the American Convention.

6. The petitioner states that the Criminal Chamber placed Edgar Eulises Torres Murillo in pretrial detention and on July 27, 2011, convicted of the crime of aggravated criminal conspiracy, sentencing him to 108 months of imprisonment. He indicates that the defendant's defense challenged the Court's move to

assume competence on September 1, 2009, but it rejected the appeal on September 23, 2009, and continued with the proceedings. He emphasizes that at the trial hearing, the Attorney General's Office asked the Court to declare the proceeding null and void for lack of competence, arguing that the crime of criminal conspiracy was not related to the functions of a member of congress.

7. He also argued that the Supreme Court lacked impartiality during the trial, given that it acted as both investigator and judge in the case. The petitioner also claims that false witnesses testified during the trial, indicating that Fredy Rendón Herrera had stated that the paramilitaries in the department of Chocó had not signed any agreement or pact with local politicians, and two of the witnesses who had testified before the CTI against Mr. Torres Murillo recanted at trial, stating that they had been prepped and coached by CTI investigators to incriminate Edgar Eulises Torres Murillo. Additionally, a former member of the National Liberation Army ("ELN") guerrilla group declared on April 29, 2011, that the allegations against the alleged victim were part of a set-up arranged by Fredy Rendón Herrera and two members of the ELN in the Itagüí, Antioquia, prison to retaliate against Mr. Torres Murillo for his refusal to meet with the paramilitary leader. The petitioner alleges a violation of the right to presumption of innocence established in Article 8(2) of the Convention, as the conviction handed down by the Supreme Court of Justice was based on the initial statements made by the two witnesses before the CTI and not the statements given at trial, in which they recanted their accusations. He also argues that the Chamber used evidence that should be declared null and void because it was a secret recording of an interview with a witness, meaning that it was produced illegally, without informing the witness beforehand that he was being recorded.

8. The petitioner argues that the trial and conviction of Mr. Torres Murillo were discriminatory, as they were the result of racist stigmas against the alleged victim from a court that had yet to have a single Afro-Colombian justice. He asserts that the violation of the principle of the natural judge was based on racial discrimination. He argues that the incrimination by members of paramilitary groups was also based on racist motives because he was the only representative of Afro-descendant to denounce the attacks by armed groups on Afro-Colombian populations. Lastly, the petitioner alleges violation of the right to appeal a conviction, set forth in Article 8(2)(h) of the Convention, because the criminal process against a member of Congress provides for no appeal.

9. Because the Colombian Constitution did not provide ordinary remedies for appealing the judgment, the petitioner indicates that he filed suit for Constitutional protection against both the September 1, 2009, decision assuming competence and against the conviction handed down on July 14, 2011. The first suit for Constitutional protection was denied by the Superior Council of the Judiciary on December 3, 2009, in the first instance and on December 9, 2009, in the second instance. The petitioner indicates that the second suit for Constitutional protection filed against the conviction was declared inadmissible on August 16, 2012, in the first instance and rejected on the merits on February 6, 2013, in the second instance. The petitioner argues that he has exhausted the remedies available under domestic jurisdiction.

#### *State*

10. The State, for its part, maintains that this petition is inadmissible for amounting to what it calls a "forth instance formula," in the sense that the allegations do not constitute violations of the Convention. It argues that some of the allegations are manifestly groundless, and the petitioner also failed to exhaust the direct reparations remedies available through the administrative courts.

11. First, the State notes that the petitioner based his allegation of a violation of the right to personal liberty on a failure to observe the law in force on imposing pretrial detention. Second, it states that the petitioner based his claim of a violation of personal liberty, due process, and the principle of legality on the violation of a guarantee of a natural judge. Regarding the former, the State explains that pursuant to article 336 of the Code of Criminal Procedure in force at the time of the case, regarding crimes where resolving the legal status was required, it was not necessary to call for a preliminary investigation before issuing the arrest warrant.

12. Regarding the latter—the guarantee of a natural judge—it contends that the move by the Supreme Court of Justice to assume competence in the case of Mr. Torres Murillo was duly substantiated in accordance with the rules in force at the time of the proceedings. It therefore argues that since the allegations regarding the alleged violation of the guarantee of a natural judge were dismissed at the domestic level, the alleged victim is turning to the IACHR as a court of fourth instance to overturn the decisions adopted in this regard. The State asserts that the case law changed in 2009 with an interpretation of the Supreme Court’s competence. Prior to this change, the Supreme Court was understood to have personal competence over members of Congress, but afterwards, it was established that its competence is functional, applying to crimes committed in the course of official duties. Under this interpretation of the Colombian Constitution, the Supreme Court maintained competence over the criminal process. The State indicates that the change in case law is valid and within the sphere of competence of domestic courts, and therefore, the guarantee of a natural judge was not violated, and the petition seeks for the Commission to act as a fourth instance.

13. Colombia also asserts that the facts do not amount to a violation of the right to be judged by an impartial judge, as the petitioner also bases this violation on his allegation of a violation of the principle of a natural judge, which, as indicated, did not take place. Regarding the alleged violation of the right to a presumption of innocence and contradiction due to the supposed use of false testimony, the State holds that these arguments are manifestly groundless in that all the evidence—both inculpatory and exculpatory—was objectively assessed and substantiated. Regarding the alleged violation of the right to equal protection due to the alleged racial discrimination in the trial, the Colombian State also maintains that it is manifestly groundless because the petitioner does not provide evidence of differentiated treatment based on the racial or ethnic origin of the alleged victim. It also argues that the facts do not amount to a violation of the principle of legality and non-retroactivity because no *corpus delicti* or supposed *corpus delicti* was established at the time of the facts, nor were more serious punishments imposed.

14. Additionally, with respect to the alleged violation of the guarantee of appeal, Colombia states that this has also been the subject of domestic rulings that have established the existence of remedies like the motion for Constitutional protection in response to judicial rulings as suitable and effective for guaranteeing analysis of the judgments handed down in processes against privileged persons. In this regard, the State argues that the Inter-American Court of Human Rights has recognized that a criminal system is compatible with the American Convention when it has a remedy that allows the defendant to effectively appeal a conviction. It argues that guaranteeing a conviction can be appealed does not mean guaranteeing that it has to be reviewed by a higher judge, as the establishment of special systems for trying senior officials is permitted. Thus, the State argues that the writ of Constitutional protection in response to a single-instance judgment and the action for reviewing criminal processes brought against privileged persons are remedies that satisfy the requirements of the guarantee of appeal. It therefore alleges that the petitioner is appealing to the IACHR as a court of fourth instance in order to have the IACHR overturn the Constitutional protection judgments issued in accordance with domestic law and in compliance with the right to appeal a conviction.

15. The State additionally argues that the alleged victim also intends to use the IACHR as a court of fourth instance in relation to the alleged violation of the guarantee of impartiality and presumption of innocence, since the allegation of the violation is a mere disagreement with how the domestic courts assessed the evidence.

16. Lastly, Colombia raises the objection of non-exhaustion of domestic remedies, since the petitioner did not file a lawsuit against the State for direct reparations. It asserts that, if Mr. Torres Murillo thought his rights to personal liberty and judicial due process guarantees were violated by the lack of an appeal remedy in processes brought against privileged persons, he could have brought suit for direct reparations in order to have the State declared administratively responsible “for what happened to the legislator.” Since he failed to do so, the State argues that the petition does not comply with the requirement of exhaustion of domestic remedies.

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

17. This petition involves an alleged violation of the judicial guarantees to a natural judge, to an appeal of a conviction, to the presumption of innocence, and to the principle of legality, as well as the rights to personal liberty and equal protection, in the framework of the criminal proceeding against Mr. Torres Murillo for the crime of conspiracy to commit a crime. The petitioner argues that he exhausted domestic remedies with the second instance decision in the suit for Constitutional protection filed in response to the conviction. The State contests the claim of exhaustion of domestic remedies and argues that the alleged victim should have brought a lawsuit for direct reparation to obtain compensation for the damage caused.

18. In this regard, the Commission has repeatedly established that the suitable remedies to exhaust in cases in which violations of due process, personal liberty, and other human rights are alleged in the course of judicial proceedings are generally the ones provided for under national procedural law for challenging the actions and decisions taken over the course of the proceeding.<sup>5</sup>

19. Regarding compliance with the requirement of exhaustion of remedies in the special single-instance criminal proceeding, the Commission notes that at the time Mr. Torres Murillo's conviction was handed down (i.e., before the entry into force of Legislative Act 01 of 2018), the Colombian legal system did not provide for any ordinary remedy to appeal judgments issued against persons with constitutional given privilege. The IACHR takes into consideration that—as indicated by the State—there were two types of extraordinary remedies available for challenging single instance rulings: the extraordinary remedy of review and the writ of Constitutional protection. A review is admissible upon six narrowly-defined grounds, mostly related to supervening evidence or a change in legal standards, or to the admissibility of grounds for vacating a criminal action. A writ of Constitutional protection, meanwhile, was admitted exceptionally for judicial decisions on special admissibility grounds developed in Constitutional case law.

20. Regarding extraordinary remedies, the Commission reiterates that although they may be appropriate in some cases for addressing human rights violations domestically, as a general rule, the only remedies that must be exhausted are those provided by law to remedy the situation alleged, which, in principle, are the ordinary, not extraordinary, remedies.<sup>6</sup> In this case, the petitioner chose to file a writ of Constitutional protection, which culminated in the judgment issued in the second instance by the Superior Council of the Judiciary on February 6, 2013. The IACHR concludes that this was the decision that exhausted domestic remedies, and given that this petition was filed on August 2, 2013, it concludes that it meets the requirements of Article 46(1)(a) and (b) of the American Convention.

## VII. ANALYSIS OF COLORABLE CLAIM

21. The Commission notes that this petition includes allegations of a violation of personal liberty, the failure to provide a full review of the sentence imposed on Mr. Torres Murillo, a violation of the principle of the natural judge, a violation of the presumption of innocence, and the use of false testimony, as well as an allegation that the decisions and the violation of the principle of legality were based on racial discrimination. The State argues that the petitioner's allegations do not amount to the alleged violations, are manifestly groundless, and seek to have the IACHR act as an international court of fourth instance. It also maintains that the petitioner's allegations have already been dismissed by the domestic courts in the writ of Constitutional review rulings, and that the criminal proceeding complied with judicial guarantees, specifically due to the change in case law for rules governing criminal competence.

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<sup>5</sup> IACHR Report No. 96/21. Petition 546-13. Inadmissibility. Rafael de Jesús Gómez Gómez. Venezuela. April 29, 2010, para. 10; IACHR Report 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.

<sup>6</sup> IACHR Report No. 161/17, Petition 29-07. Admissibility. Andy Williams Garcés Suárez and family. Peru. November 30, 2017, para. 12.

22. The Inter-American Commission's stance has been uniform and consistent in the sense of admitting cases to the merits stage in which privileged persons allege violation of their right to appeal a conviction handed down in single instance processes in Colombia.<sup>7</sup> The claims raised in this case are based on Mr. Torres Murillo's allegation that the Supreme Court irregularly assumed competence, discriminated against him, and violated guarantees of a natural and impartial judge, along with the allegation that testimony was used that was later retracted during the trial, and that illegally-gathered evidence was used, the result of which was that the alleged victim did not have access to a comprehensive review of the guilty verdict handed down against him. The parties are also in dispute as to the legality of the warrant issued for his arrest and the pretrial detention ordered. However, such allegations are not to be analyzed at this stage of the proceedings.

23. The IACHR therefore concludes that the arguments put forward by the petitioner to substantiate violations of the rights invoked are clear and should be examined in the merits stage of the inter-American proceeding, together with the substantive arguments presented by the State. Likewise, the arguments relating to equal protection and the principle of racial non-discrimination, as well as relating to judicial guarantees of the presumption of innocence with respect to the use of irregular evidence, should be analyzed in the merits stage.

24. In view of these considerations and upon examination of the elements of fact and law set forth by the parties, the Commission concludes that the petitioner's allegations are not manifestly groundless and must be examined on their merits, as should the facts alleged be found to be true, they could represent violations of articles 7 (personal liberty), 8 (fair trial), 9 (principle of legality and non-retroactivity), 24 (equal protection), and 25 (judicial protection) of the American Convention read in conjunction with its articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal effects), to the detriment of Edgar Eulises Torres Murillo, pursuant to the terms of this report.

25. Additionally, with regard to the International Covenant on Civil and Political Rights, the Commission lacks competence to establish violations of the norms of said treaty, without prejudice to the fact that it may take it into account when interpreting the norms of the American Convention in the merits stage of the present case, pursuant to the terms of Article 29 of the Convention.

## VIII. DECISION

1. To declare this petition admissible in relation to articles 7, 8, 9, 24 and 25 of the American Convention.

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

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<sup>7</sup> IACHR Report No. 241/23. Petition 596-10. Admissibility. Mauricio Pimiento Barrera. Colombia. Oct. 10, 2023; IACHR, Report 46/23. Petition 297-12. Admissibility. Fabio Arango Torres. Colombia. March 16, 2023; IACHR, Report 45/23. Petition 1237-11. Admissibility. Luis Humberto Gómez Gallo. Colombia. March 16, 2023; IACHR, Report 9/23. Petition 367-13. Admissibility. José Gerardo Piamba Castro y familia. Colombia. February 24, 2023; IACHR, Report 316/22. Petition 2172-13. Admissibility. Jorge Luis Feris Chadid. Colombia. Nov. 23, 2022; IACHR, Report 121/22. Petition 1165-12. Admissibility. Héctor José Ospina Avilés. Colombia. May 17, 2022; IACHR, Report 37/22, Petition 1688-12. Admissibility. Ramón Antonio Valencia Duque. Colombia. March 20, 2022; IACHR, Report IACHR, Report No. 430/21, Petition 1846-12. Admissibility. Óscar Leónidas Wilchez Carreño. Colombia. Dec. 19, 2021; IACHR, Report 427/21. Petition 140-12. Admissibility. Odín Horacio Sánchez Montes de Oca. Colombia. December 19, 2021; IACHR, Report 426/21. Petition 78-12. Admissibility. Óscar de Jesús López Cadavid. Dec. 19, 2021; IACHR, Report 243/21. Petition 1791-10. Admissibility. Gonzalo García Angarita. Colombia. Sept. 20, 2021; IACHR, Report 79/21. Petition 1050-10. Admissibility. Luis Eduardo Vives Lacouture. Colombia. March 29, 2021; IACHR, Report 63/21. Petition 1294-11. Admissibility. Jorge de Jesús Castro. Colombia. March 17, 2021; IACHR, Report 46/21. Petition 1165-11. Admissibility. Ciro Ramírez Pinzón. Colombia. March 9, 2021; IACHR, Report 15/21. Petition 953-11. Admissibility. Humberto Builes Correa. Colombia. March 9, 2021; IACHR, Report IACHR, Report No. 311/20, Petition 1331-11. Admissibility. Jorge Aurelio Noguera Cotes. Colombia. Oct. 16, 2020; IACHR, Report 121/20. Petition 1133-11. Admissibility. Mario Uribe Escobar. Colombia. April 27, 2020; IACHR, Report 120/20. Petition 186-11. Admissibility. S. A. S. Colombia. April 27, 2020; IACHR, Report 61/20. Petition 1039-10. Admissibility. Diego Rojas Girón. Colombia. April 27, 2020.

Approved by the Inter-American Commission on Human Rights on the 17<sup>th</sup> day of the month of May, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.