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REPORT No. 108/21
PETITION 87-10
REPORT ON ADMISSIBILITY

RODRIGO PARRA VARGAS
COLOMBIA

Approved by the Commission electronically on June 3, 2021.

Cite as: IACHR, Report No. 108/21, Petition 87-10. Admissibility. Rodrigo Parra Vargas.
Colombia. June 3, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Rodrigo Parra Vargas
Alleged victim:	Rodrigo Parra Vargas
Respondent State:	Colombia
Rights invoked:	Articles 7 (personal liberty), 8 (fair trial), 11 (right to privacy), 17 (rights of the family), 19 (rights of the child), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	January 20, 2010
Notification of the petition to the State:	November 5, 2014
State's first response:	March 25, 2015
Additional observations from the petitioner:	July 22, 2016; July 21, 2017, September 21, 2017, October 26, 2017, November 16, 2017, November 23, 2017, June 7, 2018 and May 14, 2019.
Additional observations from the State:	November 24, 2015

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 (deposit of the instrument on July 31, 1973)

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
Rights declared admissible	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on December 9, 2009
Timeliness of the petition:	Yes, on January 20, 2009

V. FACTS ALLEGED

1. Rodrigo Parra Vargas. (hereinafter "the petitioner") claims he was criminally convicted in a proceeding which did not fully prove his culpability. He also claims being denied access to justice, due to the rejection of the cassation remedy he filed against the conviction, based on an alleged untimeliness, although the remedy was filed pursuant to the deadline communicated to him by the court who heard the matter on second instance.

¹ Hereinafter "the American Convention".

² The observations submitted by each party were duly transmitted to the opposing party.

2. The petitioner was deprived of his liberty by virtue of an arrest warrant issued on January 23, 2007 by the 17 Delegate Prosecutor's Office, for his alleged responsibility in a crime of aggravated carnal access. On November 26, 2008 the first instance judgment was issued, in which he was found responsible for the referred crime and was sentenced to 200-month imprisonment and the inhabitation to work at any public office for 20 years. He holds that the proceedings were biased against him, since no due investigation was conducted so as to clarify the facts.

3. The counselor of the petitioner appealed the condemnatory judgment, which was confirmed by the Superior Court of the Judicial District of Bogotá in a hearing held on March 10, 2009. The petitioner holds that he did not attend such hearing because he was not transported by the penitentiary system; for this reason, the court of appeals ordered for the referred judgment to be personally notified to him in the incarceration center at which was imprisoned. On April 14, 2009 the second instance court issued a secretarial report which indicated that as of that date started the countdown of 60 common working days to file the cassation remedy; and expressly established that the deadline to file such cassation remedy expired on July 13, 2009. The defense counsel of the petitioner filed the cassation remedy on July 13, 2009, but the remedy was rejected by the Cassation Chamber of the Supreme Court of Justice on November 9, 2009, based on an alleged untimeliness and with no assessment concerning merits. In the Cassation Court's view, the court of appeals made a mistake by ordering that the petitioner be personally notified of the judgment since what law mandated was only a personal communication. Therefore, it understood that the last notifications for purposes of calculating the filing deadline had been those given to the defender of the petitioner and to the Prosecutor's Office at the very hearing in which the appeal was decided. The petitioner adds that he filed an appeal for reversal against the judgment to reject the cassation remedy on account of untimeliness, but that the remedy was unsuccessful.

4. The petitioner considers that the rejection of his cassation remedy with no assessment on its merits infringed his access to justice based on a mistake from the very magistrates; and that the parties had to legitimately trust in what had been notified by the court of appeals concerning the legal deadline. The petitioner highlights that the secretarial report was not manifestly contrary to the legal order since, even if the court of appeals were to have erred in ordering him to be personally notified of the judgment, such order was complied with. This is why he considers that the court of appeals acted within legal parameters when setting the date of personal notification carried out in the incarceration center as the starting point for the calculation of the deadline for the filing of the cassation remedy.

5. On its part, the State controverts the facts exposed by the petitioner and holds that all of the evidence in the proceedings was integrally valued; considers in consequence, that the matter subject of the petition was heard and judged by domestic jurisdiction. It holds that the State acted in accordance with the principles which lead the right to due process on criminal matters and that it complied with the structural elements which conform it: the presumption of innocence, the right to defense, public due process without delays, the right to submit evidence and the right to appeal a condemnatory judgment.

6. It also holds that the cassation remedy was filed a month past the deadline, which is why it was rejected. It explains that, according to applicable law, the time to file the remedy expired 60 working days as of the last notification of the recurred judgment. The last notification of the appeal's judgment against which the cassation remedy was filed took place on March 10, 2009 at the same hearing in which the appeal was decided. Therefore, the time ended on June 12, 2009 yet the remedy was not filed until July 13, 2009.

7. The Cassation Chamber of the Supreme Court of Justice decided on December 9, 2009 not to reinstate the rejection for untimeliness via a duly motivated judgment in which it expressed that "if the reporting Magistrate of the Court gave a wrong approach to the 4th subsection of Article 169 of the procedural statute, which simply orders to communicate the prosecuted deprived of liberty of the decisions notified at hearings, this does not excuse any party to take advantage of this situation"; and that the error of the magistrate who decided the appeal did not exempt the parties since "whenever the text of the law is clear, as in this case, there is no contrary interpretation admitted". The judgment rejects the argument that the alleged victim had the legitimate right to trust the time indicated to him on the secretarial report and it is held that "it is clear that

the slip cannot generate legal effects, as it would be, in this matter, altering the rules for the calculation of times and deadlines stipulated in the law.

8. The State holds that the petition verses on mere inconformity with the judgment of the national courts and that the petitioner does not know the subsidiary and complementary nature of the Inter-American system, since he intends to controvert before the IACHR a matter already heard, examined and judged by domestic jurisdiction. For this reason, it requests that the petition be unadmitted for being manifestly unfounded pursuant to Article 47.c of the American Convention.

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

9. The Commission observes that the alleged victim has informed about the remedies he filed domestically and that the State has not submitted observations concerning compliance of such requirement, nor the timeliness of the petition.

10. The petitioning alleged victim challenged the criminal sentence against him by means of an appeal that was rejected on March 10, 2009 by the Superior Court of Bogotá; then filed a cassation remedy before the Cassation Chamber of the Supreme Court of Justice, which was dismissed on account of untimeliness on November 9, 2009. Finally, he filed a reversal remedy against untimeliness, which was dismissed on December 9, 2009. The State has not raised, nor does it appear on the casefile information as to any additional unexhausted remedies which may be suitable to address the claims of the petitioner domestically. For these reasons, the IACHR concludes that the petition meets the requirements of Article 46.1(a) of the American Convention. Since the definitive decision was issued on December 9, 2009 and the petition was filed on January 20, 2010, the Commission concludes it also meets the requirement of Article 46.1(b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

11. The petitioner claims denial of justice due to the rejection of his cassation remedy on account of untimeliness, although he filed it within the time he had available according to the secretarial report which had been issued by a court of the State and that was not manifestly illegal.

12. On this point, the Inter-American Court has determined that “the States must not put obstacles to persons who resort to judges or courts seeking to determine or protect their rights. Any domestic norm or measure which imposes costs or that complicates in any other way the access of individuals to courts, and that it is not justified by reasonable needs of the very administration of justice, is to be understood as contrary to the aforesaid Article 8.1 of the Convention”³.

13. On the instant matter, the petitioner holds that he filed a cassation remedy trusting that the deadline for filing which had been published in a secretarial report of the second instance court was correct. The Cassation Court considered that the legal counselor of the petitioner should have known that the applicable deadline was set by law regardless of a secretarial report informing of a different one. On this point, the Commission considers that a study on merits is required concerning the instant case in order to assess the proportionality, reasonability and necessity of imposing upon the petitioner the burden to foresee that the second instance court may erred in ordering for him to be personally notified and in indicating to him that the deadline to file the remedy would start counting as of that very notification.

14. In view of these considerations, and after examining the factual and legal elements set forth by the parties, the IACHR considers that the petitioner’s claims are not manifestly unfounded and require a study on the merits, since the alleged facts, if corroborated, may characterize violations of rights established in Articles 8 (fair trial) and 25 (judicial protection) of the American Convention in relation to its Article 1.1.(obligation to respect rights).

³ I.H.R. Court., Cantos vs. Argentina. Judgment on Merits, Reparations and Costs. November 28, 2002, para. 50.

15. In regard to the alleged violations of Articles 7 (personal liberty), 11 (right to privacy), 17 (rights of the family), 19 (rights of the child), and 24 (equality before the law) of the American Convention, the Commission considers that the petitioner has not contributed, nor does the casefile contain, enough elements or grounds so as to consider, *prima facie*, their possible violation.

16. In terms of admissibility, the Commission must decide whether the petition exposes facts that may characterize a violation, as Article 47 b) of the American Convention stipulates, or if the petition is “manifestly unfounded” or if “its inadmissibility is totally evident”, according to subsection (c) of the same article. The standard of appraisal of these extremes is different from the required to decide on the merits of a claim. Likewise, within the scope of its mandate the IACHR is competent to declare a petition admissible if it refers to domestic proceedings which may violate rights guaranteed by the American Convention. This means that, in accordance with the conventional norms cited above, pursuant to Article 34 of its Rules for Procedure, the analysis on admissibility is centered in the verification of such requirements⁴.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8 and 25 of the American Convention in connection to its Article 1.1.

2. To find the instant petition inadmissible in relation to Articles 7, 11, 17, 19 and 24 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 3rd day of the month of June, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.

⁴ IACHR, Report No 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Peru. December 4, 2018, Para. 12.