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REPORT No. 247/22
PETITION 1146-09
REPORT ON ADMISSIBILITY

SAMMY SEGEBRE NARANJO
PANAMA

Approved electronically by the Commission on August 28, 2022.

Cite as: IACHR, Report No. 247/22. Petition 1146-09. Admissibility. Sammy Segebre Naranjo. Panama. August 28, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Ana Angulo
Alleged victim:	Sammy Segebre Naranjo
Respondent State:	Panama ¹
Rights invoked:	The petition does not specifically invoke any international instrument. However, it denounces violations to the rights to “presumption of innocence, to a defense, to liberty, to due process, disrespect for human dignity and physical integrity, right to health.”

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	September 15, 2009
Additional information received at the stage of initial review:	August 22, 2012; November 28, 2017; July 7, 2020; and May 10, 2021 ³
Notification of the petition to the State:	December 23, 2021
State’s first response:	April 21, 2022
Additional observations from the petitioner:	May 30, 2022

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 on Human Rights ⁴

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 5 (personal integrity), 7 (personal liberty), 8 (right to a fair trial), 24 (equality before the law) and 25 (judicial protection) of the American Convention in relation to Article 1.1 (obligation to respect rights) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, November 27, 2014
Timeliness of the petition:	Yes

V. POSITION OF THE PARTIES

1. The petitioner alleges that her husband, Mr. Sammy Segebre Naranjo, was tried and convicted in criminal proceedings that were not compatible with the principles of presumption of innocence

¹ In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner Esmeralda Arosemena de Troitiño, a Panamanian national, did not participate in the discussion or decision of the instant case.

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

³ In addition to her communications with substantive information, the petitioner submitted several communications in which she requested information or the processing of her petition.

⁴ Hereinafter “the American Convention.”

and impartiality, and that he was convicted with the purpose of exculpating a politically influential person. She further alleges that Mr. Segebre was deprived of his liberty for eleven months without being brought before a judicial authority and that he has developed serious health problems as a consequence of being denied medical care while he was imprisoned.

2. According to the petitioner, Mr. Segebre, a Colombian national, emigrated to Panama, where he began to work in a nightclub as a bar and cashier manager at nights. He performed this job while on an irregular migration status since his employer had promised to obtain a work permit for him. However, his employer never filed said request. In May 2007, this employer was detained under drug trafficking and money laundering charges. However, the petitioner's husband continued to work in the nightclub, since he thought that this situation would not affect him because he was not involved in those activities.

3. On November 10, 2007, around 3 a.m., a search warrant was executed in the nightclub at the request of the Office of the Public Prosecutor. The petitioner argues that this search warrant was issued based on a series of previous undercover operations in which only one undercover purchase of drugs was recorded, and during which Mr. Segebre cooperated fully with the undercover agents, provided them with more than four bottles of alcohol, allowed them to sit in two tables placed strategically, and refrained from informing the rest of the nightclub staff about these operations. In spite of this, the petitioner's husband, along with other nightclub employees, was arrested during the execution of the search warrant.

4. The petitioner alleges that, after the execution of the search warrant, her husband was detained for a full month in the premises of the office of the drugs prosecutor, and that he was not informed of the reasons for his detention nor provided with any other type of information regarding his situation. The petitioner also indicates that her husband was held *incommunicado* for a month, except for a few minutes during which he was allowed to see a lawyer, so that he could sign a power of attorney. He was finally called to testify afterwards, and he did so with the assistance of an inexperienced lawyer who had been assigned to him by the nightclub. After this, he was transferred to the La Joyita prison where, sometime later, he was informed that he was accused of being a member of a criminal gang. The petitioner indicates that the brief submitted by the prosecutor contained the false allegation that her husband was found with drugs and money in his possession. She further alleges that her husband was not brought before a judge until October 2008, eleven months after he had been arrested.

5. As a result of these proceedings, on January 30, 2009, the Fourteenth Circuit Court of Panama sentenced Mr. Segebre to one hundred months in prison for the crime of illicit sale of drugs. The petitioner argues that this judgement violated the principle of presumption of innocence since it was based solely on the testimony of a police officer who declared that he had seen her husband exchanging something with a co-accused, although the same witness also acknowledged that he had not been able to see if the exchanged items were drugs, and that he had seen this exchange from a great distance and while the lights were low. The petitioner adds that, according to the statements from the co-accused and the people questioned, her husband was not involved in the facts. On the contrary, these statements released him from any responsibility. She additionally complains that her husband's lawyers submitted a request in which they asked to be informed of the identity of the undercover agents who were assisted by him before the execution of the search warrant. However, this request was never answered.

6. The petitioner also points out that her husband's name had never been mentioned in the investigation file until after he was arrested during the execution of the search warrant. She claims that the investigation was opened against another person whose name and physical description were actually included in the file, unlike her husband's. Nevertheless, according to the petitioner, that person had close ties with the Panamanian government and with officials from the Office of the General Prosecutor. For these reasons, Mr. Segebre was purportedly used as a "scapegoat" to deflect the investigation from its original target. The petitioner highlights that the person against whom the investigation had been reportedly opened was never arrested or prosecuted and that, on the contrary, he was appointed as a consul while the criminal proceedings against her husband and his co-accused were ongoing. The petitioner adds that her husband's lawyers submitted a request asking for access to another file that involved the person against whom the investigation had been initially opened. However, this request was never answered.

7. The petitioner further contends that her husband's conviction was motivated by the need of the Office of the General Prosecutor to justify an operation that involved more than eighty of their agents but yielded no results. She additionally argues that the conviction was as a result of the prejudices of the Panamanian criminal authorities and their tendency to equate having a Colombian nationality with being involved in drug trafficking.

8. The petitioner's husband appealed his conviction and, consequently, on January 19, 2010, the Second Court of the First Judicial District of Panama rendered a judgement in which he was acquitted of all the charges filed against him. The Court considered that the evidence against him was merely circumstantial; that there was uncertainty as to whether he had handed over drugs to the co-accused; and that he had not been found in the possession of any drugs, packaging equipment or marked bills.

9. The Office of the General Prosecutor filed a cassation appeal against the judgement of the appeals court which had acquitted Mr. Segebre. His defense opposed this appeal. On November 27, 2014, the Second Criminal Chamber of the Supreme Court of Justice ruled to overturn the appeals court's decision and reinstate the conviction and sentence imposed by the lower court. The petitioner complains that Justice José Ayú Prado was part of the court that resolved the cassation appeal and that he was not impartial since he had been the general director of the Judicial Technical Police at the time of the investigations and operations that had led to the arrest of her husband.

10. The petitioner also claims that her husband did not receive the medical care he needed while he was deprived of his liberty and that, as a consequence of this, he reportedly lost the vision of his left eye and suffered damages to his hearing, as well as episodes of anxiety and depression. The petitioner provided a copy of an urgent request for ophthalmologic medical care submitted by the lawyers of her husband to the Fourteenth Criminal Circuit Judge, which she alleges was never answered.

11. The petitioner also alleges that after his arrest, the Panamanian authorities never notified her husband that he had the right to contact the Colombian consular authorities and to receive assistance from them. However, she explains that, on her own initiative, she informed the Consulate of Colombia in Panama and the Ministry of Foreign Affairs of Colombia of her husband's situation, but these efforts did not yield major results. The petitioner also indicates that she reported the abuses perpetrated against her husband to the Office of the General Prosecutor of Panama, the Office of the Ombudsperson of Panama, and several Panamanian civil society organizations, but she did not obtain any results.

12. For its part, the Panamanian State considers that the petition should be declared inadmissible since the domestic remedies were not exhausted, the petition is not timely, the petitioner incorrectly expects the IACHR to act as a "fourth instance court", and because the judgement rendered on the cassation appeal filed by the Office of the Public Prosecutor did not violate the guarantee of impartiality.

13. According to the State, Mr. Segebre Naranjo left La Joyita detention center on January 26, 2010, after the appeals court rendered the judgement acquitting him of all the charges filed against him. After that, he was remanded to the National Migration Service due to his status as a foreigner. The State did not provide any additional information with regards to what had happened to Mr. Segebre Naranjo after he was placed under the authority of the National Migration Service, that is, the State did not specify whether he was removed from Panama or not. However, the State indicated that, according to its records, Mr. Segebre Naranjo has not re-entered any Panamanian detention center, and that it has not been able to notify him in person of the judgement that reinstated his conviction, although he has been summoned and his defense lawyer has been notified. For the foregoing reason, on January 16, 2018 the Fourteenth Criminal Circuit Judge declared him in contempt, ordered his arrest and declared that the statute of limitations of his conviction was suspended.

14. In its sole brief, submitted on April 21, 2022, the State indicated that the criminal proceedings against Mr. Segebre Naranjo had been suspended since he was declared to be in contempt for having failed to appear before the court. Likewise, the State indicated that Mr. Segebre Naranjo had not

exhausted his appeal for review which, despite being an extraordinary appeal, is an adequate and effective remedy for the specific situation denounced in the petition (alleged confusion of Mr. Segebre Naranjo with another person.) In addition, it alleged that the petition was filed when a decision by the appeals court was pending in the proceedings against Mr. Segebre Naranjo. For these reasons, the State considers that the petition does not meet the requirements of exhaustion of domestic remedies and timeliness set forth in Article 46.1.b of the American Convention and Article 32.2 of the Rules of Procedure of the Commission.

15. The State also alleges that the petition seeks to turn the inter-American system into a “fourth instance” in an effort to acquit Mr. Segebre Naranjo of a conviction that was imposed against him after a thorough investigation. In this regard, it indicates that the petition should be declared inadmissible since the petitioner has not shown that there were substantial breaches of the due process, discrimination, or violations to any other right recognized by the inter-American system in the proceedings against Mr. Segebre Naranjo.

16. With regard to the alleged lack of impartiality of Justice José Ayú Prado, the State explains that this justice expressed that there was a situation that rendered him unable to hear this case. However, the Second Criminal Chamber of the Supreme Court of Justice determined that the impediment expressed by the justice was not applicable because, although he had served as director of the Judicial Technical Police, he had not performed any actions that would justify his recusal in the extraordinary appeal. The State adds that another two justices also expressed that there were situations which rendered them unable to hear the cassation appeal filed against the judgement that acquitted Mr. Segebre Naranjo and that, in both cases, the justices were actually recused from the case.

17. The State also informed that, according to the records of its Department of Prison Health Care, Mr. Segebre Naranjo was treated only once in the Virgen de la Merced Medical Center, on December 29, 2009.

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

18. The petitioner has informed of the different stages in the criminal proceedings against Mr. Segebre Naranjo and of the different actions carried out to defend his rights. The State, for its part, argues that the petition does not meet the requirement on the exhaustion of domestic remedies since it was filed when a decision by the appeals court was pending in the criminal proceedings against Mr. Segebre Naranjo; because these proceedings were suspended pursuant to an order declaring that Mr. Segebre Naranjo was in contempt for having failed to appear before the court; and since Mr. Segebre Naranjo has not filed an extraordinary appeal for review.

19. With regard to the main issue of the petition, the criminal proceedings followed against Mr. Segebre Naranjo, the Commission notes that the Fourteenth Circuit Court of Panama rendered its judgement on January 30, 2009, and convicted him for the crime of illicit sale of drugs. This conviction was reversed on appeal by the Second Court of the First Judicial District of Panama on January 19, 2010. The Office of the General Prosecutor filed a cassation appeal against the judgement of the appeals court, and this led to a decision issued by the Second Criminal Chamber of the Supreme Court of Justice on November 27, 2014, which overturned the decision of the appeals court and reinstated the conviction against the alleged victim. In addition, the file shows that the lawyers of Mr. Segebre Naranjo requested urgent medical care for their client before the judge in charge of his case.

20. The Commission considers that the decision on the cassation appeal issued on November 27, 2014, is the final decision in the criminal proceedings which gave rise to the petition. With respect to the State’s claim regarding the non-exhaustion of the extraordinary appeal for review, the Commission has already determined that, as a general rule, the requirement set forth in Article 46.1.a of the American

Convention is fulfilled by exhausting ordinary remedies, not extraordinary ones.⁵ In the instant case, the Commission considers that the arguments advanced by the State do not provide sufficient grounds to conclude that the exhaustion of the extraordinary appeal for review could be required in the situation of Mr. Segebre Naranjo.

21. The Commission takes note of the State's indication that the judgement issued against Mr. Segebre Naranjo has not been executed and that he was declared to be in default for having failed to appear before the court. In this regard, the Commission notes that the State has not explained if Mr. Segebre Naranjo is in Panama and, if not, whether he left the country voluntarily or due to any other cause. In all circumstances, regardless of the fact that the sentence has not been served, the judgement that convicted Mr. Segebre Naranjo was the final decision in the criminal proceedings against him, which is ultimately the main issue raised by the petition.

22. With regard to the State's argument that domestic remedies were exhausted only after the petition had been filed, the IACHR reaffirms that what should be taken into account in determining whether domestic remedies have been exhausted is the situation at the time of the decision on admissibility.

23. For these reasons, the Commission concludes that this petition meets the requirement set forth in Article 46.1.a of the American Convention. Since the final decision by the domestic legal system was issued on November 27, 2014, and the petition was filed on September 15, 2009, the Commission concludes that this petition also meets the requirement set forth in Article 46.1.b of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

24. Preliminarily, and since the State has raised allegations about the Commission acting as a fourth instance, the Commission ratifies that, for purposes of admissibility, it must decide whether the facts alleged could characterize a violation of rights, according to the provisions of Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," pursuant to subparagraph (c) of said article. The standard of appraisal of these extremes is different from the required to decide on the merits of a petition. Likewise, within the scope of its mandate, the Inter-American Commission is competent to declare a petition admissible if it refers to domestic proceedings which may violate rights guaranteed by the American Convention. In other words, pursuant to the aforementioned rules of the Convention, and in accordance with Article 34 of the Rules of Procedure, the analysis on admissibility is centered on the verification of such requirements, which refer to elements that, if proven, could *prima facie* lead to determine violations of the American Convention.⁶

25. The petition at hand includes allegations according to which Mr. Segebre Naranjo was deprived of his liberty during the criminal proceedings followed against him without being brought promptly before a judicial authority or informed of the reasons for his detention or his right to contact the consular authorities of his country of nationality and request their assistance. The petitioner further alleges that Mr. Segebre Naranjo was denied the medical care he required while he was deprived of his liberty, and that he suffered from prejudice due to his nationality and was convicted by a court in which one of its members did not provide objective guarantees of impartiality.

26. The State has not provided nor does the file show any information that could *prima facie* lead to conclude that the allegations raised by the petitioner [according to which, after his arrest, Mr. Segebre Naranjo was not brought promptly before a judicial authority or informed of the reasons for his detention or his rights to receive consular assistance in a timely manner] are manifestly groundless. With regard to the alleged denial of medical care, the State informed of one occasion in which Mr. Segebre Naranjo received medical care, but did not provide any further detail. The Commission considers that, at this stage, this

⁵ IACHR, Report No. 161/17. Petition 29-07. Admissibility. Andy Williams Garcés Suárez and family. Peru. November 30, 2017; para. 12.

⁶ IACHR, Report No. 143/18. Petition 940-08. Admissibility. Luis Américo Ayala Gonzáles v. Peru. December 04, 2018; para. 12.

information does not provide sufficient grounds to determine that these allegations are manifestly groundless and, therefore, this issue should be discussed during the merits stage of this case. With respect to the alleged discrimination based on nationality, the Commission considers that, given the context in which the criminal proceedings were carried out, these allegations cannot *prima facie* be considered as manifestly groundless.

27. With regard to the alleged violation of the right to be tried before an impartial court in its objective aspect, the petitioner supports these allegations on the fact that one member of the court that ultimately convicted Mr. Segebre Naranjo had served as director of the Judicial Technical Police at the time of the investigations and operations which led to his arrest and to the subsequent criminal proceedings followed against him. The Commission considers that these arguments need to be studied on the merits stage since they are not manifestly groundless.

28. In view of these considerations and after examining the elements of fact and law set forth by the parties, the Commission considers that the claims of the petitioner are not unfounded and need to be studied on the merits since the alleged facts, if corroborated, could imply violations of Articles 5 (personal integrity), 7 (personal liberty), 8 (right to a fair trial), 24 (equality before the law) and 25 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights) thereof, to the detriment of Mr. Segebre Naranjo.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 5, 7, 8, 24 and 25 of the American Convention in accordance with Article 1.1 thereof;

2. To notify the parties of this decision; to proceed with the merits of the case; 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 28th day of the month of August, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Joel Hernández, and Roberta Clarke, Commissioners.

