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**REPORT No. 23/24**  
**PETITION 1176-07**  
REPORT ON ADMISSIBILITY

GABRIEL PASCUAL DEL ROSARIO ET AL.  
PANAMA

Approved by the Commission electronically on April 30, 2024.

**Cite as:** IACHR, Report No. 23/24. Petition 1176-07. Admissibility.  
Gabriel Pascual del Rosario et al. Panama. April 30, 2024.

**I. PETITION DATA**

<b>Petitioners:</b>	Gabriel Pascual and MDZ (requests that identity remain confidential)
<b>Alleged victims:</b>	Gabriel Pascual Del Rosario et al. (See annex) <sup>1</sup>
<b>State denounced:</b>	Panama
<b>Rights invoked:</b>	Articles 4 (life), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights <sup>2</sup>

**II. PROCESSING BY THE IACHR<sup>3</sup>**

<b>Presentation of the petition:</b>	September 11, 2007
<b>Additional information received during the examination stage:</b>	April 15, 2010, December 7, 2016, December 9, 2016, August 12, 2020, and June 27, 2022
<b>Notification to the State of the petition:</b>	June 27, 2022
<b>First reply by the State:</b>	October 18, 2022
<b>Additional observations by the petitioners</b>	November 8, 2022, September 26, 2023, and December 5, 2023
<b>Notice of archiving of case</b>	August 11, 2020
<b>Reply to notice of archiving of case</b>	August 12, 2020

**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 of ratification deposited on June 22, 1978)

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

<b>Duplication of proceedings and international res judicata:</b>	No
<b>Rights declared admissible:</b>	Articles 5 (personal integrity) 8 (fair trial), 13 (freedom of expression), 15 (assembly), and 25 (judicial protection) of the American Convention
<b>Exhaustion of domestic remedies or admissibility of an exception:</b>	Yes, in the terms of section VI
<b>Timeliness of presentation:</b>	Yes, in the terms of section VI

<sup>1</sup> The petition identifies: (1) Gabriel Pascual, (2) Beatriz Villar, (3) Ariel Poveda, (4) Vicenta Alvarado, (5) Daniel José Sarmiento, (6) Esther Atencio, (7) Anabel Herrera, (8) Adolfo Nieto, (9) Viodelda Amaya, (10) Felicito Navarro, (11) Briceyda Moreno, (12) María Elena Pascual, (13) Rafael Tejada, (14) Omayra Tristán, (15) Doris Gutiérrez, (16) Ezequiel Gómez, (17) Agilio Diaz, (18) Elizabeth Matias, (19) Auda Garcés, (20) Vitorina Camarena, (21) Marita de González, (22) Rosa González, (23) Ramases García Rodríguez, (24) Iris Rodríguez, and (25) Zoraida Williams.

<sup>2</sup> Hereinafter “the American Convention” or “the Convention.”

<sup>3</sup> The observations of each party were duly forwarded to the other.

## V. POSITIONS OF THE PARTIES

### *Allegations of the petitioners*

1. The petitioners report that members of the Institutional Protection Service (SPI-its Spanish acronym] assaulted the alleged victims while they were demonstrating peacefully at the site of the Office of the President of the Republic because they had been poisoned through the negligence of the Social Security Fund [*Caja de Seguridad Social*].

2. By way of context, they explain that from 2004 to 2006, the Social Security Fund distributed throughout the country thousands of containers of products contaminated by a toxic substance known as diethylene glycol, and prescriptions for it, this negligence resulting in 12,600 deaths, with some 3,000 survivors. It states that, although as of 2006, the rising number of deaths from this substance was evident, the authorities sought to conceal what was happening until the media outlets “Mi Diario” and “La Prensa” reported several deaths due to kidney failure and neurological disorders.

3. They note that, based on claims made by injured parties, on March 16, 2007, the national government provided humanitarian financial assistance to the surviving victims and patients suffering from acute kidney failure, because the above-described situation had created socioeconomic crisis in many Panamanian families. Subsequently, on June 25, 2007, the government also established the procedure to obtain executive branch assistance for those suffering from acute kidney failure resulting from the use of medicines prepared in the Social Security Fund’s Medications Laboratory contaminated with diethylene glycol. They state that this procedure was only available to victims whose cases had been recognized by the Interinstitutional Technical Commission of the Ministry of Health and the Social Security Fund, together with the Clinical Pathology Subcommittees created to identify persons allegedly suffering from kidney failure.

4. However, the petitioners indicate that the alleged victims were unhappy about the different criteria of the Interinstitutional Technical Commission of the Ministry of Health, the Social Security Fund, and Clinical Pathology Subcommittees, and so, on July 19, 2007, they demonstrated at the site of the Office of the President of the Republic to deliver a list of demands. There, having waited over three hours, the alleged victims tried to march into the Office of the President of the Republic itself, for which reason members of the SPI forcibly blocked their entry, injuring even persons who were already ill. The petitioners note that, in some cases, alleged victims required medical care owing to the blows they had received.

5. In view of the latter events, the Public Prosecutor’s Office launched an investigation of four members of the SPI for the crimes of abuse of authority, breach of public servant duties, and infringement of personal liberty. However, on February 24, 2012, the Eighth Court of the Criminal Judicial Circuit, having settled various cases, acquitted all of those charged. The petitioners state that the 15<sup>th</sup> Prosecutor’s Office of the First Judicial Circuit of Panama appealed this decision, but on June 28, 2013, the Second Superior Court of Justice of the First Judicial District of Panama upheld the lower court’s acquittal. The petitioners state that they were notified of this decision on August 19, 2013. These are some of the main grounds for the latter decision to uphold the acquittal of the four defendants:

[...] with regard to the responsibility of the defendant [...], in his deposition, he indicated [that] his action was based on Article 2142 of the Judicial Code--which refers to *flagrante delicto* and level of aggression maintained by Mr. Gabriel Pascual, that he [Mr. Pascual] kicked at the defendant but never reached him—and was done to distract Mr. PASCUAL in order to apprehend him and recover his baton, [with which] [Mr. Pascual] had assaulted other units [...]. A viewing of the video provided by Medcom Corporation confirms the defendant’s account [...]. Mr. Olmedo [sic] Pascual’s forensic medical examination, performed by Dr. Gabriel Barrios Sing Vang of the Institute of Forensic Medicine, granted him six (6) days’ leave for incapacity from the date of the incident and the injuries were not life-threatening. From this it may be inferred that the defendant [...] acted in accordance with the procedural rules established in Decree Law No. 2, of July 8, 1999.

[...] with regard to the criminal responsibility of the defendant [...], who Mrs. BETRIZ [sic] VILLAR CAMARENA indicated was the one who beat her on her stomach with a police baton, we must establish: The party impacted, Mr. [sic] Beatriz Villar, in sworn testimony, states “*Mr. PASCUAL had not just said that the 30 minutes that we were crushed against the police had ended, and I had the bad luck that the lieutenant stuck her baton into my stomach and I lost consciousness.*” In this first account of the events of July 19, 2007, Mrs. Villar indicates that her injuries were caused by a [female] lieutenant. Then, in viewing the video, containing views filmed by the MEDCON [sic] Corporation, she corrects herself, indicating [that] it was not the [female] lieutenant [...], but rather the officer next to her. In viewing the video provided by Medcom Corporation, we can see that a person with straight black hair and a yellow blouse (Mrs. Beatriz Villar) faints, and was helped by private individuals and members of the Institutional Protection Service. Therefore, we can establish [that], [sic] there is no evidence that would establish the criminal responsibility of defendant Omar Abdiel Berrío for the act investigated. He correctly applied the levels of force established in Decree Law No. 2, of July 8, 1999.

[...] with regard to the criminal responsibility of Messrs. [...], we must establish: [...] Although the defendants on the day of the events were tasked with monitoring the demonstration, to establish responsibility for the crime with which they are charged, premeditation, intent, willfulness, and perpetration of acts consistent with it must be demonstrated, abusing their position to perpetrate, to the detriment of an individual, any attributed act not specifically criminalized in the Law. This means that intent to cause harm to the patients affected by diethylene glycol is not demonstrated in this proceeding, especially since viewings of the videos establishes [sic] [that] the demonstrators were within the distance prohibited, i.e., 147.35 meters from the Office of the President of the Republic, and, according to a note issuance [sic] by the General Secretariat of the Municipality of Panama City, [the organization] Family of Patients for the Right to Health and Life did not give notice of a demonstration to be held on July 19, 2007, at the site of the Office of the President of the Republic. And also violent acts occurred that required intervention by units of the Institutional Protection Service to prevent an agitated [misspelled] crowd from entering the Presidential Palace.

[...] with regard to the criminal responsibility of the defendant [...], we must establish: The defendant is charged with [...], having sprayed irritant gas in the face of demonstrator Mr. Ramsés García at times when he was already handcuffed and neutralized by other law enforcement officers. In fact, on the day of the events, Mr. García, was apprehended by members of the Institutional Protection Service, after grabbing a standard issue baton from a unit of the Institutional Protection Service [sic] according to a viewing of the video provided by the MEDCOM company, he [Mr. Ramsés García] was resisting arrest, he pushes a deputy police officer, for which reason the defendant [...], sprays him in the face in order to prevent Mr. Ramsés García from resisting arrest. This is consistent with the requirements established in Decree Law No. 2, of July 8, 1999, which limits the use of force by members of the Institutional Protection Service. Therefore, he applied appropriate non-lethal force so as not to injure Mr. Ramses García permanently.

Therefore, willful misconduct in the action of the defendants has not been demonstrated [...] since the evidence submitted in the proceeding, such as testimony, videos, and viewing, raise serious doubts as to their criminal responsibility.

6. Based on these considerations of fact, the petitioners report that thus far, there is still impunity for the beating of the alleged victims because the courts acquitted the perpetrators.

#### *Allegations of the Panamanian State*

7. For its part, the State requests the IACHR to declare the instant matter inadmissible since, in its view, the alleged victims did not duly exhaust the remedies of domestic jurisdiction. It maintains, in that

regard, that the petitioners had not exhausted domestic remedies at the time of lodging their petition, since the criminal proceeding regarding the events of July 19, 2007, took place subsequent to the lodging of instant petition. The State indicated that, during the criminal proceeding, the alleged victims, to their detriment, did not timely pursue any remedy, such an appeal to the court of last instance [*recurso de casación*], or any other action to challenge the findings of the courts. Therefore, it requests the IACHR to declare this petition inadmissible because it does not meet the requirement set forth in Article 46.1.a of the Convention.

8. The State maintains that, nonetheless, if the Commission considers that domestic remedies were duly exhausted, the petitioners did not timely lodge their petition. It indicates that the petitioners were notified on August 19, 2013, of the final order in the proceeding regarding the events at the site of the Office of the President of the Republic, and that, despite this, the petitioners only reported this situation on December 1, 2016, three years later, without submitting any type of documentation in that regard. In the State's view, this is especially serious, since on August 6, 2012, the IACHR requested the petitioners to provide information on the exhaustion of domestic remedies and to confirm whether the grounds for the petition subsisted, granting one month for them to submit information, and giving notice that, if this documentation were not received, the case would be archived. Therefore, the State requests that, in application of Article 46.1.b of the Convention, the IACHR declare the instant matter inadmissible for lack of procedural activity since the judgment that exhausted domestic remedies was issued and the request for information received by the petitioners.

9. Lastly, Panama argues that the facts denounced cannot be characterized as human rights violations attributable to it. It mentions that the SPI members acted in accordance with the law, and that their action was in proportion to the action of the demonstrators and was aimed at guaranteeing the security of the most vulnerable demonstrators themselves and maintaining order at the site of the Office of the President of the Republic. In addition, they only resorted to force when public order was truly threatened; and that that intervention lasted only ten minutes and was in proportion to the threat it was sought to control, since only irritant gas and the standard issue baton were used. For these reasons, it requests the Commission to declare the instant matter inadmissible and to archive the case.

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

10. As for the challenge by the State regarding the exhaustion of domestic remedies subsequent to the lodging of the petition, the IACHR reiterates its doctrine according to which the requirements set out at Articles 46 and 47 of the Convention should be analyzed in light of the situation at the time of the ruling on the admissibility or inadmissibility of the claim. It is very common, during the processing of a matter, for changes to occur in the status of exhaustion of domestic remedies. Nonetheless, the system of petitions and cases ensures that both the State and the petitioner have the full opportunity to submit information and arguments on this point.<sup>4</sup>

11. In the instant case, the petitioners expressly indicate that the aim of this petition is not related to the poisoning of the alleged victims through the consumption of diethylene glycol but is instead to challenge the failure to punish the perpetrators of the physical aggression they suffered when seeking to present a list of demands to the then-President. Accordingly, the IACHR will focus its analysis of exhaustion of domestic remedies on that aspect.

12. This clarified, the Commission notes that once the State takes cognizance of facts that may involve violations of [the rights to] life or personal integrity, it is incumbent upon the authorities to conduct the investigations at their own initiative, these being actionable offenses.<sup>5</sup> In the view of the Commission, this burden must be assumed by the State as its own legal obligation, and not by private parties or depend on evidence submitted by them. To expect the petitioners to assume these responsibilities would not only be

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<sup>4</sup> IACHR, Report No. 35/16, Petition 4480-02. Admissibility. Carlos Manuel Veraza Ustusuástegui. Mexico. July 29, 2016, par. 33.

<sup>5</sup> IACHR, Report 93/22, Petition 1316-12, Admissibility. Yolanda Guerrero Caballero et al.. Mexico. April 6, 2022, par. 26. [At the time of this translation, available only in Spanish].

inconsistent with the system's jurisprudence, it would also place an inequitable burden on those who generally lack the means and expertise to fulfill these responsibilities.<sup>6</sup>

13. The petitioners consider that they exhausted domestic remedies as of the decision of the Second Superior Court of Justice of the First Judicial District of Panama of June 28, 2013, which upheld the acquittal in the proceeding related to the facts denounced in this petition. Panama maintains that the alleged victims did not timely pursue any remedy, such as appeal to the court of last instance or any other action to challenge the findings of the courts. In that regard, the IACHR notes that when a State alleges that domestic remedies have not been exhausted, it not only has the burden of identifying the remedies to be exhausted, but also the burden of demonstrating that the remedies that have not been exhausted are "appropriate" for redressing the alleged violation—in other words, that the function of those remedies within the national legal system is suitable for protecting the legal right infringed.<sup>7</sup> Since, as a general rule, the only remedies necessary to be exhausted are those which, within the legal system, are suitable and effective for providing the protection needed to remedy the infringement of a specific legal right.<sup>8</sup>

14. In the instant case, the State has not provided such information, for which reason the Commission does not have elements by which to determine whether the avenues mentioned are truly suitable and effective. Moreover, the appeal to the court of last instance is a special remedy, whose exhaustion in a case such as this is not essential for the requirement of exhaustion of domestic remedies to be met. Having exhausted the remedy of the second criminal tier, the petitioners exhausted the ordinary remedies.

15. Therefore, the Commission considers that the instant matter meets the requirement established in Article 46.1.a of the Convention. In addition, since the Commission received the instant petition on September 11, 2007, and the decision that exhausted domestic remedies was issued while the admissibility of this matter was under analysis, it meets the requirement of Article 46.1.b of the Convention.

## VII. COLORABLE CLAIM

16. The IACHR notes that, at this procedural stage, it must make a *prima facie* determination as to whether the petition states grounds that tend to establish the violation, possible or potential, of a right guaranteed by the Convention, but not establish the existence of a violation of rights. This determination as to whether facts may be characterized as violations of the American Convention entails a preliminary analysis that does not imply prejudgment of the merits. For purposes of admissibility, the Commission must decide whether the petition states facts that tend to establish 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*" under 47.c of the American Convention.

17. Given these considerations and having examined the elements of fact and law set forth by the parties, the Commission considers that the allegations of the petitioners regarding the disproportionate use of force against the alleged victims while they were peacefully protesting and the alleged impunity for these acts resulting from an incorrect decision to acquit are not manifestly groundless and call for an analysis of the merits, since the facts alleged, if corroborated and found to be true, would tend to establish violations of Articles 5 (right to personal integrity), 8 (right to a fair trial), 13 (right to freedom of expression), 15 (right of assembly), and 25 (right to judicial protection) of the American Convention, read in conjunction with Article 1.1 thereof, to the detriment of the alleged victims identified in the instant report.

18. Lastly, regarding Article 4 of the American Convention, the Commission considers that the petitioners did not submit arguments or information that would make possible the *prima facie* identification of a possible violation thereof.

<sup>6</sup> IACHR, Report No. 87/08, Petition 55-05. Admissibility. Jeremy Smith. Jamaica. October 30, 2008, par. 36.

<sup>7</sup> IACHR, Report No. 26/16, Petition 932-03 (Admissibility), Rómulo Jonás Ponce Santamaría, Peru, April 15, 2016, par. 25 and IACHR, Report No. 83/17, Petition 151-08. (Admissibility), José Francisco Cid. Argentina. July 7, 2017, par. 17.

<sup>8</sup> IACHR, Report No. 161/17, Petition 29-07. Admissibility. Andy Williams Garcés Suárez and Family. Peru. November 30, 2017, par. 12.

**VIII. DECISION**

1. To declare the instant petition admissible in relation to Articles 5, 8, 13, 15, and 25 of the American Convention; and

2. To notify the parties of this decision; to continue with its analysis of the merits of the matter; 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 30<sup>th</sup> day of the month of April, 2024. (Signed:) Roberta Clarke, President; Carlos Bernal Pulido, Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

## Annex

- (1) Gabriel Pascual,
- (2) Beatriz Villar,
- (3) Ariel Poveda,
- (4) Vicenta Alvarado,
- (5) Daniel José Sarmiento,
- (6) Esther Atencio,
- (7) Anabel Herrera,
- (8) Adolfo Nieto,
- (9) Viodelda Amaya,
- (10) Felicito Navarro,
- (11) Briceyda Moreno,
- (12) María Elena Pascual,
- (13) Rafael Tejada,
- (14) Omayra Tristán,
- (15) Doris Gutiérrez,
- (16) Ezequiel Gómez,
- (17) Agilio Diaz,
- (18) Elizabeth Matias,
- (19) Auda Garcés,
- (20) Vitorina Camarena,
- (21) Marita de González,
- (22) Rosa González,
- (23) Ramases García Rodríguez;
- (24) Iris Rodríguez, and
- (25) Zoraida Williams.