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REPORT No. 68/24

PETITION 693-21

REPORT ON INADMISSIBILITY

GILBERTO VENTURA CEBALLOS
PANAMA

Approved electronically by the Commission on May 21, 2024.

Cite as: IACHR, Report No. 68/ 24. Petition 693-21. Inadmissibility.
Gilberto Ventura Ceballos. Panama. May 21, 2024.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Identity protected, pursuant to the Rules of Procedure.
Alleged victim::	Gilberto Ventura Ceballos
Respondent State:	Panama
Rights invoked:	The petition makes no specific reference to any international instrument over which the Inter-American Commission has jurisdiction; however, it denounces the violations of: “the presumption of innocence, torture and cruel treatment, unfair trial and death threat”

II. PROCEEDINGS BEFORE THE IACHR¹

Filing of the petition:	April 26, 2021
Additional information received at the stage of initial review:	May 19, June 15, October 20 and 27, November 8 and December 16, 2021; March 21, July 26 and August 22, 2022
Notification of the petition to the State:	November 3, 2022
State’s first response:	March 3, 2023
Additional observations from the petitioner:	December 9, 2022; April 23, May 19, August 2, and November 22-23, 2023
Additional observations from the State:	November 21, 2023

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 ² (deposit of instrument of ratification on June 22, 1978)

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:	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in terms of Section VI
Timeliness of the petition:	Yes, in terms of Section VI

¹ The observations submitted by each party were duly transmitted to the opposing part.

² Hereinafter, the “American Convention” or the “Convention.”

V. FACTS ALLEGED

Position of the petitioner

1. The petitioner alleges Panama's international responsibility for violations of due process against Mr. Gilberto Ventura Ceballos (hereinafter, "Mr. Ventura") in the context of a criminal case that sentenced him to 30 years in prison for the crimes of kidnapping and homicide. Additionally, they allege that he suffered mistreatment and torture during his detention, perpetrated by Panamanian police officers who detained and guarded him.

Background and criminal proceedings against Mr. Ventura³

2. As a background, it is stated in the petition that in 2004 Mr. Ventura, a Dominican Republic citizen, was sentenced to twenty years of imprisonment for the crime of kidnapping as a retaliation for exercising as a left-wing politician. Mr. Ventura states, verbatim, that: "*Years after the government changed, I was unlawfully released due to some political alliances*". Mr. Ventura points out that he took on various identities to exercise his right to vote more than once and that, after his release, he changed his residence to Panama and removed his fingerprints; nevertheless, he continued to travel to the Dominican Republic for labor issues.

3. Subsequently, he indicates that in 2011 he was charged with the crime of kidnapping and murder in Panama, and that his face began to be broadcast in various media of the country as the alleged responsible. He continues to report that, as a result, in November 2011 —no day specified— he was arrested in the Dominican Republic and immediately extradited to Panama.

4. In this regard, he reports that he was taken to the facilities of the Department of Judicial Investigation, where three policemen put a cloth bag on his head, took him to a cell, sat him in a chair, tied him by his feet and tortured him to get him to confess the murder of several people of Asian descent. Regarding the acts of torture inflicted against him, he claims that he was beaten in the stomach and chest, subjected to pressurized water in his mouth while he had a bag on his head, and he was reportedly threatened by police officers with killing him and his mother.

5. Mr. Ventura states that, because of the acts of torture to which he was subjected, he suffered injuries to his throat and to various parts of his body; his hands became swollen due to lack of circulation when he was handcuffed; he urinated with blood as a result of the beatings, and he did not receive medical attention. He notes that in November 2011 —no day specified— he was presented to the Assistant Prosecutor's Office of the Ancon Police Facilities, where he was informed that he was under investigation for the kidnapping and homicide of three persons of Asian descent. In this regard, Mr. Ventura contends that he declared before this authority the acts of torture inflicted against him.

6. He states that on December 23, 2011, he was transferred to the "La Joyita" Penitentiary Center in the province of Panama. Mr. Ventura points out that in this prison he received threats against his life and was subsequently transferred to the detention center called "La Chirola". Mr. Ventura relates that he was placed in a cell without ventilation, with artificial light turned on 24 hours a day and lacking hygienic conditions, where he remained for two years and a month. He reports that in February 2014, he was transferred again to the "La Joyita" Penitentiary Center, being in the maximum-security ward.

7. Mr. Ventura himself states that on December 28, 2016, he escaped from "La Joyita" prison to safeguard his life and personal integrity. He states that, on September 22, 2017, he was captured in Costa Rica and extradited that same day to Panama. He says that Panamanian police officers beat him heavily in the head and chest when transferring him to the detention center "La Chirola". Moreover, he claims that these police officers expressly told him: "*Chinese-killer, do not mention the police involvement in those crimes*"; and that he remained handcuffed for a week. He indicates that on September 30, 2017, he was brought before a supervisory

³ By means of a handwritten communication, Mr. Ventura details the background of his arrest, trial and criminal conviction.

judge so he could be remanded in custody for the criminal case of evasion. He claims that during the hearing he informed the judge about the beatings he received by police officers when he arrived in Panama.

8. In a judgment of June 22, 2018, the Second High Court of Justice of the First Judicial District of Panama sentenced Mr. Ventura to fifty years in prison for the crimes of kidnapping and homicide against five people. In this regard, Mr. Ventura argues that the court violated the extradition agreement concluded between the Dominican Republic and Panama, in virtue of which Mr. Ventura would be sentenced to a maximum sentence of thirty years' imprisonment if he had been held criminally responsible.

Additional observations from the petitioner

9. The petitioner alleges a series of violations of due process in the criminal proceeding against him for the crimes of kidnapping and homicide. In this regard, Mr. Ventura argues that: (i) the extradition treaty between the Dominican Republic and Panama was not observed, since it establishes, among other provisions, that Mr. Ventura could not be sentenced to more than thirty years in prison if found guilty; therefore, the first instance judgment handed down against him constituted a violation of the agreement; (ii) he was exposed to several media by Panamanian authorities as the responsible for the aforementioned charged crimes even though no sentence had been yet pronounced against him; (iii) he was tortured by the police officers who arrested him in order to get him to confess for crimes he alleges he did not commit, and was also exposed to inhuman prison conditions; and (iv) his ex officio lawyer failed to conduct an adequate defense on his behalf. In this regard, he alleges violations of the rights of presumption of innocence, torture and cruel treatment, unfair trial, and threat of death.

Position of the State

10. In its reply, Panama confirms and complements the facts stated by the petitioner. In this regard, it adds that, in the judgment rendered on November 13, 2020, the Second Criminal Chamber of the Supreme Court of Justice of Panama, in response to the appeal filed against the first instance judgment handed down against Mr. Ventura, he reduced the sentence to thirty years in prison, as follows:

In the latter case, the defendant had been sentenced to 50 years' imprisonment by the Second High Court of Justice. However, in response to the appeal filed in its favor, the Chamber had to accept and recognize the argument presented, in the sense that when this person was extradited from the Dominican Republic to Panama, the extraditing State stipulated that the defendant could not be sentenced to more than the maximum penalty in force in that country, i.e. 30 years. By recognizing this fact, the Chamber is avoiding the risk that the Republic of Panama will, in the future, be the subject of claims before international organizations.

We, the judges forming the Criminal Chamber, are aware of the great harm suffered by the victims, including their families, and of the impact and great commotion that these crimes produced in Panamanian society. It is surely appropriate at the level to apply the same to recognize the right of those who assist him.

11. In addition, the State establishes that Mr. Ventura Ceballos engaged in several escapes — jailbreaks— from the prisons where he was held, to avoid the criminal proceedings against him for the kidnapping and murder of five young men of Asian descent. In this regard, the State indicates that the first breakout was carried out on December 28, 2016, and that he was recaptured on September 22, 2017, in the Republic of Costa Rica; and the second, on February 3, 2020, being recaptured ten days later. In this regard, he points out that Mr. Ventura faces two criminal proceedings as part of criminal cases 2016000035562 and 202000008314, both for crime against the administration of justice, none of which had been resolved as of March 2023.

12. In addition, the State says that as of March 2023, Mr. Ventura was being held in the Preventive Detention Centre, located at the main headquarters of the National Police of the Ancon district of Panama. In this regard, it argues that during his detention Mr. Ventura Ceballos has been respected in his rights and

guarantees enshrined in the Panamanian Constitution and other national and international legal bodies, such as dignified treatment, communication with his relatives, lawyers, and representatives of his country, as well as the right to food, health, among others.

13. Next, Panama requests the IACHR that this petition be inadmissible because in the instant case: (A) The remedies available under domestic law have not been exhausted; and (b) the facts alleged in the petition do not characterize violations of the human rights enshrined in the American Convention. Regarding point (a), the State argues that two criminal proceedings are currently pending for crimes against the administration of justice on account of Mr. Ventura's escapes and, therefore, he has not met the requirement set out in Article 46.1.a) of the American Convention.

14. On the other hand, regarding point (b), Panama establishes that the facts of the petition do not characterize violations of the rights enshrined in the American Convention. First, because in its judgment of November 13, 2020, the Second Criminal Chamber of the Supreme Court of Justice, in ruling on the appeal filed by Mr. Ventura, reduced Mr. Ventura's sentence to thirty years in prison, in accordance with the extradition treaty concluded between the Dominican Republic and Panama. Likewise, in said resolution it was established that:

"[...] there is no evidence of cruel or degrading treatment against the detainee, nor is there any indication that his human dignity is being deprived or affected. There is also no information or evidence proving that at the National Police headquarters located in Ancón, where GILBERTO VENTURA CEBALLOS (sic) is detained, any unjustified restrictions have been imposed on visits from his defense attorney, thus affecting his right to defense. In exercising this right to defense, it is clear that the detainee has had the assistance of his defense attorney. It is necessary to clarify to the attorney that it is not possible for legal representatives to visit him as often as they require, but that these visits must be carried out in coordination with the Authorities responsible for the detainee, in order to safeguard his security."

15. It also establishes that Mr. Ventura was assisted by a technical defense counsel throughout the criminal proceedings against him. In this regard, it specifies that Mr. Ventura's ex officio lawyer filed a writ of habeas corpus, which was issued in a resolution of January 25, 2018, by the Plenary of the Supreme Court of Justice of the Republic of Panama: "[...] analyzed the conditions of Gilberto Ventura Ceballos and ensured that the guarantee of an adequate exercise of the right to technical defense was respected, safeguarding his rights and dignity as a human being [...]".

16. With regard to the alleged death threats and acts of torture that forced Mr. Ventura to flee, the State establishes that, on January 24, 2023, the Office of the Attorney General of the Nation submitted the Report PGN-SG-022-2023, in which it states that the acts of torture and abuse of authority denounced by Mr. Ventura were investigated by the Public Prosecutor's Office, in files 2020000853, 202000014814, 202100043082 and 202100080279, in which, after carrying out the proceedings with the aim of clarifying the facts and, where appropriate, the persons responsible were identified and punished, and provisional detention was ordered in accordance with Art. 275 of the Code of Criminal Procedure. Along these lines, Panama states that: "*In the first two cases it was not possible to prove the existence of the punishable act and in the other two, the evidence obtained was not sufficient to prove the crime. However, the provisional file allows the possibility of reopening the investigation if elements of conviction arise subsequently. Similarly, the victim can request review by the jurisdictional authority of the decision to file*". Finally, he states that Mr. Ventura's own evasive acts caused the delay in the criminal proceedings against him.

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

17. For the analysis of the exhaustion of domestic remedies in the present case, the IACHR recalls that, according to its consolidated and repeated practice, in order to identify the appropriate remedies that should have been exhausted by a petitioner before recourse to the Inter-American System, the first methodological step of the analysis consists of identifying the different claims made in the corresponding

petition for an individualized examination.⁴ In this case, the Commission identifies two main claims raised by the petitioner: (i) Violations of due process, personal liberty and honor and dignity, to the detriment of Mr. Ventura, because he was found guilty of the crimes of kidnapping and murder before different media; and (ii) the violation of the right to personal integrity, for having been the victim of physical and psychological torture by his captors during the hours following his initial detention, tending to extract from him a confession for crimes that he claims not to have committed.

18. In relation to point (i), the Commission notes, on the one hand, that Mr. Ventura's legal defense filed a writ of habeas corpus alleging the conditions of his detention, as well as the lack of an adequate ex officio defense; however, in a judgment of January 15, 2018, the Plenary of the Supreme Court of Justice of the Republic of Panama dismissed the writ stating that the guarantee of an adequate exercise of the right to technical defense was respected and that its fundamental rights were safeguarded. On the other hand, in connection with the criminal conviction handed down against Mr. Ventura, it appears that his legal defense lodged an appeal; and in a decision of November 13, 2020, the Second Criminal Chamber of the Supreme Court of Justice of Panama modified the guilty verdict, reducing it to thirty years in prison, in response to the agreement on the extradition of Mr. Ventura, concluded between Panama and the Dominican Republic. The State, for its part, does not contest the exhaustion of domestic remedies, with respect to this point of the petition. In this regard, the Commission concludes that this part of the petition meets the requirement set forth in Article 46(1)(a) of the Convention.

19. On the other hand, about the deadline for submission, the Commission notes that the "final decision" is that issued on November 13, 2020, by the Second Criminal Chamber of the Supreme Court of Justice of Panama, under the terms of Article 46.1.b) for the purpose of accounting for the six-month period. Consequently, considering that the petition was presented on April 26, 2021, the IACHR concludes that the petition was presented within the time limit established in the aforementioned treaty provision.

20. Regarding point (ii), in cases related to torture, the IACHR recalls that, in the face of possible crimes against personal integrity committed by agents of the State, the domestic remedies to be considered for the purposes of admissibility of petitions are those relating to the criminal investigation and punishment of those responsible.⁵ In this regard, the IACHR has repeatedly held that, whenever the State becomes aware of the commission of a crime that is prosecutable ex officio, it has the obligation to initiate or file a criminal action, since this is the appropriate means to clarify the facts, prosecute those responsible and determine the corresponding criminal penalties, as well as facilitate other forms of monetary reparation. Moreover, as a general rule, criminal investigations must be conducted promptly in order to protect the interests of victims, preserve evidence and even safeguard the rights of any person who, in the context of the investigation, is considered a suspect.⁶

21. In this regard, from the information provided by the parties, it appears that the alleged torture was brought to the State's attention as early as November 2011 and 2016. In this regard, the Commission notes that in the judgment of November 13, 2020, the Second Criminal Chamber of the Supreme Court of Justice, in resolving the appeal, established, among other things, that: "[...] *there is no evidence of cruel or degrading treatment against the detainee, nor is there any indication that his human dignity is being deprived or affected. There is also no information or evidence proving that at the National Police headquarters located in Ancón, where*

⁴ In an illustrative way, the following IACHR admissibility reports can be consulted: Report No. 117/19. Petition 833-11. Admissibility. Workers released from the Boa-Fé Caru Plantation. Brazil. June 07, 2019, para. 11, 12; Report No. 4/19. Petition 673-11. Admissibility. Fernando Alcântara de Figueiredo and Laci Marinho de Araujo. Brazil. January 03, 2019, para. 19 et seq; Report No. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017, para. 12; Report No. 57/17. Petition 406-04. Admissibility. Washington David Espino Munoz. Dominican Republic. June 05, 2017, para. 26, 27; Report No. 168/17. Admissibility. Miguel Angel Morales Morales. Peru. December 01, 2017, para. 15- 16; Report No. 122/17. Petition 156-08. Admissibility. Williams Mariano Paria Tapia. Peru. September 07, 2017, para. 12 et seq; Report No. 167/17. Admissibility. Alberto Patishtan Gomez. Mexico. December 1, 2017, paras. 13 et seq; Report No. 114/19. Petition 1403-09. Admissibility. Carlos Pizarro Leongomez, Maria Jose Pizarro Rodriguez and their family members. Colombia. June 07, 2019, para. 20 et seq.

⁵IACHR, Report No. 72/ 18, Petition 1131- 08. Admissibility. Moses de Jesus Hernandez Pinto and family. Guatemala. June 20, 2018, para. 10.

⁶ IACHR, Report No. 159/17, Petition 712-08, Admissibility, Sebastian Larroza Velazquez and family, Paraguay, November 30, 2017, para. 14; IACHR, Report No. 108/19, Petition 81-09, Admissibility, Anael Fidel Sanjuanelo Polo and family, Colombia, July 0028, 2019, para. 17-19.

GILBERTO VENTURA CEBALLOS is detained, any unjustified restrictions have been imposed on visits from his defense attorney, thus affecting his right to defense."

22. Regarding this allegation, the Commission points out that the last judicial decision, a copy of which is in the case file, that issued a value judgment in relation to the alleged mistreatment reported by Mr. Ventura, was issued on November 13, 2020, by the Supreme Court of Justice. The State has not referred to the existence of unexhausted domestic remedies that could be suitable for challenging this resolution. Therefore, the Commission considers that this part of the petition meets the requirements of Article 46.1.a) of the American Convention.

23. Finally, regarding the filing deadline, the Commission notes that the "final decision" was issued on November 13, 2020, by the Second Criminal Chamber of the Supreme Court of Justice of Panama. Consequently, considering that the petition was filed on April 26, 2021, the IACHR concludes that the petition was submitted within the time limit established in Article 46.1.b) of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM OF THE POSITION OF THE PARTIES

24. The IACHR recalls that, at this procedural stage, it must conduct a prima facie evaluation to determine whether the petition establishes the basis for the possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination on the characterization of violations of the American Convention constitutes a primary analysis, which does not imply prejudging the merits of the matter.⁷ For the purposes of admissibility, the Commission must decide whether the facts alleged may characterize a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly unfounded" or "manifestly out of order," according to Article 47(c) of the American Convention.

Analysis of the Alleged Violation of Due Process of Mr. Ventura

25. In the present case, the petitioner claims a violation of Mr. Gilberto Ventura Ceballos' due process, because, in the context of the criminal proceedings against him, his right to an adequate defense would not have been respected, as well as for the non-compliance with the extradition treaty concluded between the Dominican Republic and Panama. For its part, the State maintains that Mr. Ventura had a public defender throughout the criminal proceedings against him, and that in a judgment of January 25, 2018, the Plenary of the Supreme Court of Justice of the Republic of Panama guaranteed that it was respected to guarantee an adequate exercise of technical defense. On the other hand, regarding the breach of the extradition agreement, it is noted that in the judgment of November 13, 2020, the Second Criminal Chamber of the Supreme Court of Justice, when resolving the appeal, reduced his sentence to thirty years in prison, precisely in adherence to the extradition agreement between the Dominican Republic and Panama.

26. However, in close connection with the foregoing, the Commission stresses that the petition does not present arguments or evidence intended to demonstrate why the aforementioned decisions violated any of the rights enshrined in the American Convention, by merely repeating the breach of the extradition agreement and the lack of an adequate ex officio defense in favor of Mr. Ventura. In addition to the absence of such arguments, the Commission notes that the judicial decisions at issue, based on the evidence presented by the parties, gave concrete answers to each of the questions raised by the alleged victim, without prima facie evidence, that such reasoning has failed to comply with an international obligation or unknown any right. Consequently, due to the lack of elements to identify a possible violation of rights to the detriment of the alleged victim and/or his family members, the Commission considers that this petition is inadmissible under the terms of Article 47(b) of the American Convention.

⁷ See, for example: IACHR, Report No. 69/ 08, Petition 681 -00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, para. 48.

Analysis of the abuse and torture reported by Mr. Ventura.

27. Regarding the alleged assaults and torture suffered by Mr. Ventura, both during his initial detention in 2011 and his recapture in 2017, the Commission notes that the Supreme Court of Justice, when ruling on the appeal filed by Mr. Ventura's defense, determined that there were no elements to confirm that he suffered cruel or degrading treatment. Likewise, based on the judicial decisions issued in the criminal proceedings for the crimes of kidnapping and homicide, it is observed that the conviction was based on third-party testimonies incriminating Mr. Ventura, and not on a confession made by him. In this same vein, the IACHR points out that Mr. Ventura declared himself innocent during the various stages of the criminal process, maintaining this position before the Inter-American System. Therefore, the Commission does not identify that these facts constitute a possible violation of a right guaranteed by the American Convention, particularly regarding the acts of torture allegedly inflicted on him or being convicted based on a confession obtained through coercion, which could contravene Article 8.3 of the Convention.

General Considerations

28. Along these lines, the Commission reiterates that the mere discrepancy of the petitioners with the interpretation that the domestic courts have made of the relevant legal norms is not sufficient to constitute violations of the Convention. The interpretation of the law, the relevant procedure, and the assessment of evidence is, among others, the exercise of the function of domestic jurisdiction, which cannot be replaced by the IACHR.⁸ In this sense, the role of the Commission is to guarantee the observance of the obligations assumed by the States parties to the American Convention, but it cannot act as an appellate court to examine alleged errors of law or fact that may have been committed by national courts acting within the limits of its jurisdiction.⁹

29. Thus, by virtue of the complementary nature of the international protection offered by the Inter-American System, the commission recalls that this "cannot act as an appellate court to examine alleged errors of fact or law that may have been committed by national courts acting within the limits of their jurisdiction, unless there is unequivocal evidence of violation of the guarantees of due process enshrined in the American Convention."¹⁰ Along these lines, the Commission considers that *prima facie* there is insufficient information to determine a standard of denial of justice or violation of due process and the right to personal liberty of Mr. Gilberto Ventura Ceballos. Likewise, the Commission considers it pertinent to reiterate that it does not constitute a fourth instance that can assess the evidence regarding the possible guilt or not of the alleged victim in the instant case.¹¹ The purpose is not to determine the innocence or guilt of the alleged victims, but to determine whether the judicial authorities have affected obligations under the Convention, in particular the rights to a fair trial and judicial protection.

30. Therefore, the Commission concludes that the allegations made by the petitioner are inadmissible based on Article 47(b) of the American Convention, since the facts presented do not even *prima facie* reveal possible violations of the Convention.

VIII. DECISION

1. To declare the instant petition inadmissible based on Article 47(b) of the American Convention.

⁸ IACHR, Report N° 83/05 (Inadmissibility), Petition 644/00, Carlos Alberto Lopez Urquia, Honduras, October 24, 2005, para. 72.

⁹ IACHR, Report N° 70/08, (Admissibility), Petition 12.242, Pediatric Clinic of the Lake Region, Brazil, October 16, 2008, para. 47.

¹⁰ IACHR, Report No. 27/16, Petition 30-04, Inadmissibility. Luis Alexander Santillan Hermoza, Peru, April 15, 2016, para. 32.

¹¹ In a similar sense: Court IDH, Case of the "Street Children" (Villagran Morales et al.) vs. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, para. 222, Inter-American Court, Moya Solis v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 03, 2021. Series C No. 425, para. 28; and Court of Human Rights, Manuela et al. v. El Salvador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 02, 2021. Series C No. 441, para. 147.

2. To notify the parties of this decision; 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 21st day of the month of May, 2024.
(Signed:) Roberta Clarke, President; Carlos Bernal Pulido, Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.