

**REPORT No. 55/12**  
PETITION 179-05  
ADMISSIBILITY  
JESÚS AMADO SARRIA AGREDO AND CHILDREN  
COLOMBIA<sup>1</sup>  
20 March 2012

**I. SUMMARY**

1. On 23 February 2005 the Inter-American Commission on Human Rights (hereinafter, “the Commission” or “the IACHR”) received a petition lodged by Myriam Stella Romero Galindo (hereinafter, “the petitioner”). In that petition, she claims that the Republic of Colombia (hereinafter, “the State” or “the State of Colombia”) is liable for violations of due process allegedly committed by court officials in prosecuting the forfeiture of assets belonging to Jesús Amado Sarria Agredo, his spouse Elizabeth Montoya<sup>2</sup>, and her minor children, Stephanie Inés, Lizje Andre, and Andrew Sarria Montoya (hereinafter, “the alleged victims”), thus illegitimately depriving them of their right to private property.

2. The petitioner claims that the State is liable for the violation of rights to a fair trial, property, freedom from ex-post facto laws, equal protection, and judicial protection, rights enshrined in Articles 8, 9, 21, 24, and 25 of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”) as pertains to Article 1.1, to the injury of the alleged victims. For its part, the State claims the absence of facts that could be characterized as human rights violations, given that domestic legal remedies were properly decided by verdicts that respected the rights and guarantees enshrined in the Convention. Thus, the State holds that the IACHR cannot act as a court of fourth resort to review domestic rulings that went against the alleged victims, and that the petition is inadmissible.

3. Without prejudging on the merits of the matter, after analyzing the positions of the parties and in compliance with the requirements provided in Articles 46 and 47 of the American Convention, the Commission has made its decision to declare the case admissible for the purposes of examining the alleged violations of Articles 8, 9, 21, and 25 of the American Convention, pursuant to Articles 1.1 and 2 of that Convention. The Commission has further decided to declare the petition inadmissible with respect to the alleged violation of Article 24 of that same Convention, to notify the parties of this decision, and to order that it be published in its Annual Report to the General Assembly of the Organization of American States (OAS).

**II. PROCEEDINGS BEFORE THE COMMISSION**

4. On 23 February 2005, the Commission received the petition and entered it as case number 179-05.<sup>3</sup> On 10 September 2009, after carrying out a preliminary analysis, the IACHR transmitted the relevant portions to the State for its observations. On 10 November and 18 December 2009, the State requested extensions. The first request was granted and the second denied, given that the maximum time frame permitted by Article 30.3 of IACHR Regulations had expired.

5. On 31 December 2009, the State filed its response, which was forwarded to the petitioner for her observations. The petitioner filed her response on 28 January 2010, which was forwarded to the State for its observations. On 19 March 2010, the State requested an extension for filing its response, which was granted. On 23 April 2010, the State filed its response, which was forwarded to the petitioner for her information.

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<sup>1</sup> In keeping with the provisions of Article 17.2 of the Regulations of the Commission, Commissioner Rodrigo Escobar Gil, a Colombian national, did not participate in the debate or decision on this petition.

<sup>2</sup> According to the information in the case file, Ms. Elizabeth Montoya had died by the time the petition was filed with the IACHR.

<sup>3</sup> On 28 June 2005, the petitioner filed a petition for cautionary measures. The Commission, through a communication on 1 September 2005, informed her that it did not meet the requirements established in Article 25 of IACHR Regulations.

6. On 27 August 2010, the petitioner filed additional observations, which were forwarded to the State. On 18 October 2010, the State requested an extension to file its additional observations, which was granted. On 26 November 2010, the State filed its observations, which were forwarded to the petitioner for her information.

### **III. POSITIONS OF THE PARTIES**

#### **A. Position of the petitioner**

7. As an antecedent, the petitioner refers to criminal case No. 26925, filed against Jesús Amado Sarria Agredo, for the crimes of illicit enrichment and breaking of Law 30 of 1986 ("Whereby the National Drug Statute is adopted and other provisions are decreed"). She indicates that during prosecution of that case the Regional Prosecutor's Office ordered, on 21 December 1995, a "preventive attachment" of Mr. Sarria Agredo's assets.

8. On 11 April 1997, the Deputy Prosecutor's Office of the National Court ordered seizure of 82 assets, including assets belonging to Mr. Sarria, his spouse, children, and family businesses. At that time, the Prosecutor's Office also ordered that a separate case be opened to prosecute for asset forfeiture under Law 333 of 1996 (hereinafter, "Law 333/96"), which established the rules for forfeiture of illicitly gained assets. This proceeding was assigned to Deputy Prosecutor's Office 11 of the National Asset Forfeiture and Anti-Money Laundering Unit (hereinafter, "Prosecutor's Office 11").

9. The petitioner adds that, through a resolution dated 13 November 1998, the Prosecutor's Office ordered the asset forfeiture action to be opened against all property belonging to the Sarria Montoya family. In the process of that legal action, written documents were submitted objecting to evidence taken from Criminal Case No. 26925, as well as evidence demonstrating the origin and ownership of the property. Nevertheless, on 27 January 2000, it was ruled that there was cause for forfeiture of 70 of the assets and there was no cause for forfeiture of the remainder.

10. The petitioner maintains that evidence it introduced "was entered and made part of the file, but was not considered by the Prosecutor's Office" and that the ruling on cause or no-cause was partially contested through an appeal and consultation. Nevertheless, on 21 June 2000 the Deputy Prosecutor's Office of the Superior District Court upheld the ruling in all its terms. The petitioner adds that once the ruling of no cause was upheld, the appropriate court to hear the case was the Seventh Criminal Court of the Specialized Circuit of Bogotá, the same court that was hearing Criminal Case No. 26925. Therefore, by writ dated 6 March 2001, the Court ordered that the asset forfeiture case be combined with the criminal case.

11. The petitioner states that on 3 September 2002, Decree 1975 was enacted, which suspended Law 333/96 and regulated asset forfeiture actions and proceedings, modifying court jurisdiction for cases of this sort. As a result, the Seventh Court revoked the decision to combine the cases and ordered the asset forfeiture case to the Sole Criminal Court of the Specialized Circuit of San Andrés Islas, on 9 September 2002.

12. The petitioner holds that on 27 December 2002, Law 793 was enacted, revoking Law 333/96 and Decree 1975 of 2002. Once again, the court jurisdiction for prosecuting asset forfeiture cases was modified. Nevertheless, the Sole Specialized Criminal Court of San Andrés Islas issued a ruling on 7 February 2003, declaring groundless the forfeiture of assets belonging to the alleged victims.<sup>4</sup>

13. The petitioner claims that the Court of San Andrés took into account that the time frame for issuing a ruling had begun while Decree 1975 of 2002 was still in force. For this reason, the court

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<sup>4</sup> She indicates that during the trial the ruling by the Seventh Court, which absolved Mr. Sarria in Criminal Case No. 26925, was provided as "subsequent evidence".

retained jurisdiction and issued its ruling on 7 February 2003. This ruling was appealed and on 24 April 2003 the Criminal Bench of the Superior Court of the Judicial District of the Archipelago of San Andrés, Providencia, and Santa Catalina, declared nullified the ruling due to lack of jurisdiction, pursuant to the provisions set forth in Law 793.<sup>5</sup>

14. As a result, the case was sent to the Seventh Criminal Court of Bogotá, which took charge of hearing of the case. On 15 July 2003 this court issued a ruling, declaring the asset forfeiture without cause. Nevertheless, on 4 December 2003, this ruling was appealed and revoked by the Criminal Bench of the Superior Court of Bogotá, which also declared the ruling on 27 January 2000 partially nullified (see paragraph 9, above), as pertained to the finding that there was no cause to forfeit some of the assets. Furthermore, it ordered that investigations be opened into the alleged commission of punishable and disciplinary behavior on the part of “the public servants that intervened in one way or another in this matter.”

15. The petitioner believes this decision by the Superior Court of Bogotá violated the principle of *res judicata*, first by failing to acknowledge the ruling of acquittal in Criminal Case No. 26925 and, second by revoking the no-cause ruling of January 2000, which had already become a firm ruling. The petitioner adds that the Criminal Bench of the Superior Court of Bogotá did not have jurisdiction to revoke that ruling, given that the matter was not the object of the appeal the Court was hearing.

16. The petitioner indicates that the Superior Court’s decision was contested through an extraordinary appeal for reversal, which was denied. Subsequently, two *amparo* appeals were filed against the ruling, each of which was ruled groundless, on 25 March and 19 May 2004, respectively. Furthermore, the Constitutional Court denied review of the rulings by the Supreme Court of, through writs dated 27 August and 15 October 2004, respectively.

17. The petitioner believes that the rulings that found the *amparo* appeals to be groundless constitute rulings that violated the alleged victims’ rights to due process and to private property. She claims that the only the “formal parts” of the contested rulings were reviewed, but not the “substantive parts”. Therefore, though the formality of review was fulfilled, the petitioner does not believe the arguments put forth are consonant with the actual procedural experience. Because of this, the petitioner maintains that despite the fact that the *amparo* appeal can serve to show that a domestic legal remedy existed “in fact”, it did not prove to be an effective mechanism for correcting a wrongful legal situation.

18. The petitioner adds that the rulings were arbitrary and that in the asset forfeiture process the State bore the obligation to prove that those assets had been gained through illicit activities, which did not happen. Furthermore, the petitioner indicates that in the legal actions taken against those earlier authorities that had ruled the asset forfeiture without cause (see paragraph 14, above), it was determined that they had not committed any illegal act whatsoever.

19. Lastly, the petitioner states that by filing this complaint she does not seek a revision of the rulings issued by domestic judicial bodies, but rather she is filing a formal complaint accusing State court officials of violations of rights contained in the Convention. She adds that though available domestic remedies were exhausted, these proved “fruitless” in restoring the rights of the alleged victims that claim to have been violated. Therefore, the petitioner believes the requirements provided in the Convention have been met for declaring the petition admissible, as pertains to Articles 8, 9, 21, 24, and 25 of the Convention.

## **B. Position of the State**

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<sup>5</sup> The petitioner claims that the ruling by the Criminal Bench of the Superior Court “did not acknowledge” the criteria put forth by the Court of San Andrés for maintaining jurisdiction and the content of Article 20 of Law 793 pertaining to legal processes that were underway on the date that Law went took effect. Further, she cites the contents of that Article, which says that “the terms and appeals that have begun will carry through and be governed under the Law in force at the time such terms and appeals were initiated; for all else, this Law is to be applied.”

20. The State filed a detailed timeline of the procedural actions though there is no dispute between the parties as to the main stages of the process. Therefore, the IACHR will summarize the position of the State of Colombia based on the claims it has submitted that contradict the petition.

21. The State maintains that any complaint that seeks to challenge rulings issued at the domestic level that have complied with the provisions of the American Convention is groundless, given that the IACHR cannot be a court of fourth resort to reverse domestic judicial rulings that are unfavorable to alleged victims. Therefore, the State claims that the petition is inadmissible due to the absence of facts that could be characterized as human rights violations, given that the alleged victims had available "adequate and effective remedies appropriate to this case". These remedies were effectively exhausted and decided but, in light of their unfavorable results, the alleged victims expect the Inter-American System to serve as an "appeals court".

22. The State claims that it is not a function of the IACHR to determine if a ruling by domestic courts was wrong or unfair in and of itself, but only to determine if a ruling was arbitrary under the terms of the Convention. The State maintains that the fact that rulings by national courts went against the expectations of the alleged victims does not mean that available domestic remedies were inappropriate or inadequate for guaranteeing their rights. In this regard, the State cites decisions by the IACHR in which it has determined that mere disagreement with a ruling is insufficient reason for a petitioner to claim a violation of Convention rights.

23. The State believes it has not been proven that the rulings issued by domestic courts were arbitrary. About this, the State maintains that according to Inter-American jurisprudence, for a ruling to be considered arbitrary it must reveal "defects so severe as to disqualify it as a jurisdictional act", which has not happened in this case, given that in the exhaustion of all available domestic remedies the case was studied by competent judges "of varied rank and members of diverse jurisdictions", in response to which the victims obtained "rulings that were expeditious and based on the merits of the case, judgments that were founded in existing law."

24. In this regard, the State manifests that in prosecuting the action initiated under Law 333/96, Prosecutor's Office 11 ordered that asset forfeiture proceedings be opened against the assets of Mr. Sarria and those of his spouse and children, considering that evidence brought in from Criminal Case No. 26925 enabled it to ascertain that all of the assets in question belonged to Mr. Sarria. The State adds that the allegations and evidence provided by the alleged victims were "entered, made part of the file, and evaluated" by the Prosecutor's Office, and that the appeal and consultation that challenged the cause and no-cause rulings was processed and decided in a timely manner.

25. The State indicates that although the Seventh Criminal Court of the Specialized Circuit of Bogotá ordered that the asset forfeiture case be combined with the criminal case, when Decree 1975 was issued, which modified court jurisdiction for these types of cases, the court order that the case to be sent to the Sole Criminal Court of the Specialized Circuit of San Andrés Islas. Further, the State asserts that the Court of San Andrés heard the verdict of acquittal issued in the criminal case of Mr. Sarria, but this ruling was not binding on the asset forfeiture case (see paragraph 30, below).

26. The State indicates that when the Superior Court heard the appeal of the ruling by the Court of San Andrés on 7 February 2003, the Superior Court was taken into account that Law 793 of 2002 had been enacted, which returned "jurisdiction for this case to the Courts of the city of Bogotá", for which reason it declared the ruling null, arguing that the Court did not have jurisdiction.

27. The State claims that, subsequent to the ruling of 4 December 2003 by the Criminal Bench of the Superior Court of Bogotá, the alleged victims filed the ordinary and extraordinary appeals that were available to them, namely: an appeal for reversal, *amparo* appeals for violations of due process, and requests for review by the Constitutional Court. The State adds that these actions were processed and decided in a timely manner, with negative outcomes for the alleged victims.

28. The State holds that the diversity of verdicts on the case serves to demonstrate that competent judicial bodies arrived at the same conclusion, with appropriate supports, that the claims of the alleged victims were groundless, resulting in rulings that went against their interests. Specifically, the State refers to the *amparo* appeals filed by the alleged victims, which were ruled to be groundless. The State argues that the *amparo* appeals were the “appropriate and adequate” recourse for the alleged victims to exhaust in seeking relief from their allegedly infringed legal situation. Nevertheless, the rulings determined that the alleged violations had not been proven.

29. As an example, the State indicates that the *amparo* appeal filed by Mr. Jesús Amado Sarria contesting the ruling by the Criminal Bench of the Superior Court of Bogotá, was ruled groundless by decision of the Criminal Cassation Court of the Supreme Court of Justice on 25 March 2004, noting the following:

In the matter submitted for examination by this Bench, it can hardly be argued that the procedural defects or flaws raised can be found in the contested ruling, given that pursuant to Law 793 of 2002, which the Constitutional court declared to be in line with the Political Charter by its ruling C-740 of 2003, the judge of record applied the law to the case the plaintiff now seeks again to debate, seeking protection in this court under the pretext that his fundamental guarantees were violated, this court being the third resort.

[...]

The plaintiff has not managed to prove the arbitrary evidentiary violation he claims, a charge the sole ground of which is his disagreement with the court’s interpretation of the evidence in the asset forfeiture case. Though this court is aware that the contested evidence was derived from the criminal case being conducted against him by a specialized judge, he can hardly expect that the outcomes would be identical in both cases, that is, that the acquittal ruling he received in the criminal case would redound to a similar outcome in the property case, despite the fact that this case “is different and independent of any other criminal case that was simultaneously opened, or from which it stems, or in which it originated (...)”, as the aforementioned constitutional opinion stated; neither did the court disregard the evidence of the case. It simply gave the evidence scope and meaning different than the plaintiff, in seeking his own interests, hopes to give them here.”<sup>6</sup>

30. The State asserts that this ruling was upheld by the Civil Cassation Bench of the Supreme Court of Justice. The State further claims that Criminal Cassation Bench of the Supreme Court of Justice, in its ruling of 19 May 2004, declared groundless the *amparo* appeal filed by Stephanie Inés Sarria Montoya – in which she claimed *res judicata* in reference to the ruling of 27 January 2000 by the Prosecutor’s Office 11 (see paragraph 15, above), which was revoked by the Superior Court of Bogotá in its ruling of 4 December 2003, was declared groundless by the Criminal Cassation Court of the Supreme Court of Justice in its ruling on 19 May 2004, based on the following considerations:

The declaration of nullity, though it could appear controversial, is not proven to be abusive and is clearly not injurious of the legal system and of the fundamental rights of the appellant.

This decision is properly founded by the court, supported by Articles 13 (clauses 11, 15, and 16), 20, and 24, *ejusdem*, of Law 793 of 2002, which were in force at the time the ruling was adopted.

These rules empower judges at the trial and first appellate level to exercise control over all matters of the case, to the point that in the first article cited they are authorized to decide “whether or not to forfeit owned assets, including when a prosecutor determines a lack of grounds for forfeiture of assets not mentioned in this clause – referring here to assets belonging to good-faith third parties.”

Article 15 provides that any nullity claimed by the parties “will be considered in the ruling of cause or in the ruling by the trial or appellate courts.

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<sup>6</sup> Ruling by the Criminal Cassation Bench of the Supreme Court of Justice, 25 March 2004. Cited in Note DDH.GOI. No. 71404/3367 of the Ministry of Foreign Relations of Colombia, 31 December 2009, page 29.

And in this case, from what can be determined from documentation provided by the appellant, it was at the petition of the National Drug Directorate, a petition raised prior to the trial court ruling, for which the trial judge inexplicably did not pronounce his decision [...] that the Court adopted the ruling here contested upon finding one of the causes for nullification provided in Article 16.

Things being as they are, one cannot validly assert that the Court lacked jurisdiction to rule on the nullification, neither that it deviated from established procedure.

Therefore, the Court, without further consideration, denies the *amparo* appeal, finding it groundless.<sup>7</sup>

31. Lastly, the State maintains that the facts described in the petition do not characterize violations of human rights and that the petition is manifestly groundless, for which it should be declared inadmissible pursuant to the provisions of Article 47 of the Convention.

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<sup>7</sup> Ruling by the Criminal Cassation Court of the Supreme Court of Justice, 19 May 2004. Cited in Note DDH.GOI. No. 71404/3367 of the Ministry of Foreign Relations of Colombia, 31 December 2009, page 31.

#### **IV. ANALYSIS OF ADMISSIBILITY**

##### **A. Jurisdiction: *ratione materiae*, *ratione personae*, *ratione temporis* and *ratione loci* of the Commission**

32. The petitioner is qualified, in principle, by Article 44 of the American Convention, to lodge petitions with the Commission. The petition identifies as the alleged victims individual persons to whom the State of Colombia committed itself to respect and guarantee the rights enshrined in the Convention. As for the State, the Commission indicates that Colombia has been a State Party to the Convention since 31 July 1973, the date on which it deposited its ratification instrument. Therefore, the Commission has *ratione personae* jurisdiction to examine the petition. The Commission also has *ratione loci* jurisdiction to study the petition, given that the alleged violations of rights protected in the American Convention took place in the territory of Colombia, a State Party to the treaty.

33. The Commission has *ratione temporis* jurisdiction because the obligation to respect and guarantee the rights protected in the Convention was already in force for the State on the date the alleged facts in the petition occurred. Lastly, the Commission has *ratione materiae* jurisdiction because the petition alleges violations of human rights protected by the Convention.

##### **B. Other requirements for admissibility of the petition**

###### **1. Exhaustion of all domestic remedies**

34. Article 46.1 of the American Convention provides that, for a petition filed with the Inter-American Commission to be admissible, in accordance with Article 44 of the Convention, all domestic legal remedies must have been pursued and exhausted, in keeping with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to hear of the alleged violation of a protected right and, if appropriate, to have the opportunity to resolve it before the case is heard in an international court.

35. Applying these principles to this case, the Commission observes that the State has not disputed the exhaustion of domestic remedies and, instead, has affirmed that the alleged victims exhausted all ordinary and extraordinary domestic remedies available to them. The Commission also notes that this petition refers specifically to the facts related to the alleged violation of the rights to due process and private property resulting from the forfeiture of assets belonging to the alleged victims, and it observes that the parties have agreed that the available mechanism for disputing the alleged violations of fundamental rights in the domestic legal system was through the amparo appeal.

36. The Commission observes that in this case two amparo appeals were filed that were decided by the Supreme Court of Justice in 2004, and that both were denied review by the Constitutional Court through writs on 27 August and 15 October 2004. Therefore, the IACHR concludes that the petition meets the requirement established in Article 46.1(a) of the American Convention.

###### **2. Deadline for Submitting the Petition**

37. The Convention establishes that for the Commission to determine that a petition is admissible it must be lodged within a period of six months from the date the alleged victim is notified of the final ruling. In the case in question, the petition was received on 23 February 2005, and the writs by the Constitutional Court denying review of the amparo appeals were issued on 27 August and 15 October 2004, respectively. Therefore, the petition was lodged within the six-month time frame established in Article 46.1(b) of the American Convention.

###### **3. Duplication of Proceedings and International *Res Judicata***

38. The file does not contain information that would lead to the determination that this matter is pending in another international proceeding, or that it has been decided previously by the Inter-American Commission. Therefore, the IACHR concludes that the exceptions contained in Articles 46.1(d) and 47(c) of the American Convention do not apply to this case.

#### 4. Characterization of the alleged facts

39. Pursuant to the Commission's manifestations in other cases, it is not appropriate at this stage of the proceeding to determine whether or not the alleged violations of the American Convention occurred. For purposes of admissibility, the IACHR must simply determine if the allegations raise facts that could characterize a violation of the Convention, as stipulated in Article 47.b, and if the petition is "manifestly groundless" or "obviously out of order", pursuant to paragraph (c) of that Article. The standard for evaluating these particulars is different than the standard required for ruling on the petition's merits. In this stage the IACHR must conduct a *prima facie* examination, which does not imply prejudgment or an advance opinion on the merits.

40. This petition alleges that with the ruling by the Criminal Bench of the Superior Court of Bogotá, on 4 December 2003, the alleged victims' rights to judicial protection and guarantees, as well as their rights to private property, were violated. It also claims that this ruling retroactively applied a law that was not in force at the time the asset forfeiture case was opened, which affected the alleged victim's right to fair trial, especially because under Law 333/96, the asset forfeiture action was "complementary" to the criminal case, given that it derived from the case opened against Mr. Sarria Agredo in the criminal courts. Nevertheless, the petition claims that in light of what is set forth in Law 793, which entered into force in 2002, this complementarity was "not acknowledged" and therefore disregarded the fact that Mr. Sarria Agredo had been acquitted of the charge of criminal illicit enrichment, a charge upon which intrinsically linked to the possibility of proving that his assets were of illicit origin, which led to the asset forfeiture case being opened. It is in this sense that the petitioner claims the State violated the right of a presumption of innocence of the alleged victims, by inverting the burden of proof in the case, relieving national authorities of the duty to prove the illicit origin of the assets, the consequence of which was that the alleged victims were illegitimately denied full enjoyment of their property.

41. The petitioner further claims that the domestic legal remedies pursued did not prove effective because. Though she acknowledges that these remedies complied with their own motivations, she believes they were not compatible with the State's obligations *vis-à-vis* the American Convention. In regards to claims that the right to equality under the law was violated, the petitioner does not present specific arguments about the alleged violation of Article 24 of the Convention.

42. For its part, the State claims the absence of facts that could be characterized as violations of the Convention, given that the petitioner was unable to demonstrate that rulings by domestic courts were "arbitrary" under the terms of the Convention and Inter-American jurisprudence. The State claims that the alleged victims exhausted all available domestic remedies, these having followed appropriate procedure and having produced rulings grounded in current applicable law, and that therefore the Commission cannot be expected to serve as an "appeals court" to review court decisions solely because those rulings did not favor the interests of the alleged victims.

43. The Commission observes that the analysis of possible characterization of violations of the American Convention due to (i) the alleged retroactive application of laws that regulate asset forfeiture cases, and (ii) the inversion of the burden of proof in that action, is directly related to the nature of the case. If the case were of a sanctioning nature, the guarantees of non-retroactivity and presumed innocence would be fully applicable.

44. Though in this case the IACHR has noted that the Colombian legal system has established, in principle, that this action is not of a sanctioning nature, as the Constitutional Court has interpreted it<sup>8</sup>, the Commission considers that the allegations of the petition relate to the substantive

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<sup>8</sup> In the words of the Constitutional Court is:

"[...] an autonomous and independent action of the *jus puniendi* of the State, such as civil law. First, because it is not a punishment imposed for commission of a punishable act, but rather it arises independently of judgment of guilt to which the plaintiff is susceptible. And, second, because it is an action not founded in estate interests but rather by superior interests of the State. [...]"



effects of a process that derived from the criminal trial against Mr. Sarria Agredo, a trial in which he was later acquitted, demand a study of the merits to determine the grounds and application of the guarantees contained in Articles 8.1, 9, and 25 of the American Convention for these types of cases, taking into account the nature of the case and the impact it would have on the effectiveness of the right contained in Article 21 of the Convention. Therefore, the Commission determines to declare those articles admissible for the purpose of analyzing their possible violation in the merits phase of this matter.

45. Neither the American Convention nor the Regulations of the IACHR require the petitioner to identify the specific rights that have allegedly been violated by the State in the matter submitted to the Commission, though petitioners may do so. It is incumbent on the Commission, based on the jurisprudence of the system, to determine in its admissibility reports which provisions of the relevant Inter-American instruments are applicable and could characterize rights violations if the alleged facts are proven by sufficient elements. In this case the Commission observes that the allegations relating to applicable legal provisions to regulate the asset forfeiture action require a study of the merits, given that these raise questions related to the scope of the obligation contained in Article 2 of the American Convention, as it pertains to the rights contained therein that the Commission has determined require analysis in the merits phase of this matter.

46. Lastly, the Commission considers that the petitioner has not presented supporting elements to establish, *prima facie*, her complaints about the possible violation of the right to equal protection under the law, as per Article 24 of the American Convention. Therefore, the IACHR declares that this allegation is inadmissible as it pertains to these claims, in keeping with Article 47.b of the American Convention.

## **V. CONCLUSIONS**

47. The Commission concludes that it has jurisdiction to examine the complaints presented by the petitioner concerning alleged violations of Articles 8, 9, 21, and 25 of the American Convention, pursuant to Articles 1.1 and 2 of that Convention and that these are admissible, in keeping with the requirements established in Articles 46 and 47 of the American Convention. Furthermore, the Commission concludes that it is appropriate to declare inadmissible the complaints pertaining to the alleged violation of Article 24 of the American Convention.

48. Supported by the arguments of fact and law as presented, and without prejudging on the merits of the matter,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

**DECIDES:**

1. To declare this case admissible as pertains to Articles 8, 9, 21, and 25, as related to Articles 1.1 and 2 of the American Convention.
2. To declare this case inadmissible as pertains to Article 24 of the American Convention.
3. To notify the State of Colombia and the petitioner of this decision.
4. To move forward with the analysis of the merits of the matter.
5. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 20<sup>th</sup> day of the month of March 2012.  
(Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rosa María Ortiz, and Rose-Marie Belle Antoine, members of the Commission.