

**REPORT No. 104/12**  
DECISION TO ARCHIVE  
PETITION 12.273  
ECUADOR  
November 8, 2012

**ALLEGED VICTIM:** Ricardo Sánchez Romo

**PETITIONERS:** María Concepción Romo Hanan and Mercedes Vascones Martínez Viuda de Sánchez

**ALLEGED VIOLATIONS:** Articles 4, 5, 7, 8, 11, and 24 of the American Convention on Human Rights.

**DATE PROCESSING BEGAN:** May 1, 2000

**I. THE PETITIONERS' POSITION**

1. On June 10, 1999, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition submitted by María Concepción Romo Hanan and Mercedes Vascones Martínez viuda de Sánchez, mother and widow of the alleged victim, respectively (hereinafter, "the petitioners") alleging the responsibility of the State of Ecuador for violating the rights to life, humane treatment, personal liberty, right to a fair trial, right to honor and dignity, and right to equality before the law of attorney Ricardo Sánchez Romo by the authorities during his detention and the two criminal proceedings brought against him, and for his death, which occurred while he was in the custody of the State.

2. The petitioners argued that on December 11, 1995, a complaint was filed against the alleged victim for the crime of attempted homicide of Jaime Nebot Saadi, candidate for the Presidency of the Republic. They alleged that within two hours of the commencement of the criminal proceeding, all the rulings had already been issued, in violation of Article 5 of the Code of Criminal Procedure, with respect to territorial jurisdiction.

3. Based on information presented by the petitioners it appears that in March 1996 the alleged victim had been thrown from a third floor by persons close to Jaime Nebot. Given his medical condition he required two surgeries.

4. The petitioners indicated that on May 9, 1996, the First Criminal Judge of Guayas instituted preliminary criminal proceedings against the alleged victim, for attempted homicide, and ordered pretrial detention, in violation of Article 162 of the Criminal Code of Ecuador. They argued that the judge declined to continue taking cognizance of the case for lack of jurisdiction, on June 17, 1996, without annulling his actions to date.

5. The petitioners argued that along with the arrest warrant, on April 10, 1997, the Second Criminal Judge of Guayas issued a search warrant with which his properties were searched, the "La República" estate in the community (*cantón*) of Sanborondón, and his house in the "Los Almendros" residential complex. They indicated that in the search of his house the alleged victim was detained and in addition criminal charges were brought against him for illegal possession of firearms. They argued that said search was illegal under Article 202 of the Code of Criminal Procedure. They also alleged that the judge should not have ordered pretrial detention insofar as the penalty for unlawful possession of firearms did not exceed one year.

6. They argued that the alleged victim was held at the Centro de Rehabilitación Social de Varones del Litoral (Center for Social Rehabilitation of Men and Boys of the Coast) and that despite the

request made of the authorities to keep him in the hospital in view of his delicate health, on July 12, 1997, it was ordered that he be transferred to the Center for Social Rehabilitation of Quito No.1.

7. They argued that in the proceeding for unlawful possession of firearms they filed a motion for annulment and appealed the order for the trial to begin of July 22, 1997, by which the order was affirmed on July 31, 1998.

8. They argued that in view of the decision to transfer the alleged victim, they filed a constitutional *amparo* action before the Thirteenth Civil Judge of Quito, which was admitted on October 12, 1998. They argued that the National Director for Social Rehabilitation appealed that resolution, showing partiality and a denial of justice, labeling the alleged victim a “dangerous element.” There is no information on the result of this appeal.

9. The petitioners indicated that in the proceeding over unlawful possession of firearms, on December 22, 1998, the Second Criminal Court handed down a guilty judgment of two years of prison. They also indicated that in the criminal proceeding for attempted homicide, on January 6, 1999, the Third Criminal Court handed down a judgment of two years of prison.

10. They argued that when the alleged victim had shown good conduct in the Center for Social Rehabilitation, he was not granted a reduction in the penalty. They indicated that during the week of January 25 to 28, 1999, arms were seized at the Rehabilitation Center. They alleged that on January 28, 1999, despite the prison guide, two prisoners from another pavilion gained access to the cell of the alleged victim, who was resting, and inflicted several gunshot wounds with a revolver, killing him. They indicated that on January 29, 1999, criminal charges were instituted for the death of the alleged victim. There is no information on this prosecution.

## II. THE STATE’S POSITION

11. In response to the petitioners’ claim, the State considered that the petition was inadmissible due to the failure to exhaust domestic remedies.

12. In relation to the alleged violation of the right to life, the State argued that the alleged victim’s next-of-kin did not go before the competent judicial authorities to have the persons responsible punished; and that they should have filed a private accusation against them, or a complaint to the Judicial Police. In this regard, the State considered that so long as there is no complaint or well-founded reason, the State cannot investigate and punish the persons responsible.

13. The State alleged that the petition did not have consistent presumptions that would lead to the conclusion that the death of the alleged victim had occurred with the support or tolerance of the government authorities, accordingly the State could not be held responsible for his death.

14. The State argued that the proceedings went forward and that the courts with jurisdiction proceeded to resolve them in keeping with the law. It alleged that its resolutions, independent of whether they were favorable to the alleged victim, were suitable for resolving the situation of the petitioners. It argued that “the mere fact that a domestic remedy does not produce a favorable result for the claimant does not itself show the non-existence or exhaustion of all remedies.”

15. The State alleged that if the petitioners considered that they were negatively impacted by the decision of a court with jurisdiction, they could file a motion for review against the judgment of liability, in keeping with Article 385 of the Code of Criminal Procedure.

16. The State also argued that the petition was time-barred as it was filed on May 1, 2000<sup>1</sup>, approximately 10 months after the declaration that the criminal action against the alleged victim was extinguished – the last definitive ruling – which was handed down on June 15, 1999.

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<sup>1</sup> The State considered the date the petition began to be processed as the date of submission of the petition.

17. With respect to the petitioners' argument concerning the violation of Article 8 of the American Convention, the State argued that this article does not establish the obligation of the existence of a judicial remedy *per se*, but rather it makes reference to the set of requirements that must be observed in the procedures "so that one can speak of real and proper judicial guarantees of the Convention." It alleged that these guarantees are the ones that constitute due process and encompass the conditions that should be met to ensure the defense of those whose rights and obligations are under judicial consideration.

18. Finally, the State argued that the petitioners had free access to the judicial apparatus and that at no time were they impeded from exercising their right to be heard in equal conditions by the organs with jurisdiction.

### **III. PROCEDURE BEFORE THE IACHR**

19. The petition was recorded under number 12.273 and after making a preliminary analysis, on May 1, 2000, the IACHR forwarded it to the State for its observations. On August 25, 2000, the State submitted its response, which was forwarded to the petitioners for their observations.

20. On April 16, 2009, and July 6, 2010, the Commission requested updated information from the petitioners and in this last communication indicated that if it did not receive that information within one month, the IACHR might archive the matter. On August 11, 2010, the petitioners sought an extension, which was granted by the IACHR on August 23, 2010. On February 6, 2012, the IACHR once again forwarded that communication to the petitioners; it had not received their response as of the date of approval of this report.

### **IV. BASIS FOR THE DECISION TO ARCHIVE**

21. Both Article 48(1)(b) of the American Convention and Article 42 of the IACHR's Rules of Procedure establish that within the steps for processing a petition, once the information is received or the time set has lapsed without it having been received, the IACHR will verify whether the motives for the petition or communication exist or subsist, and if not it will order that the matter be archived.

22. The instant petition alleges violations of the rights enshrined in Articles 4, 5, 7, 8, 11, and 24 of the American Convention. For its part, the State argued that the petition was inadmissible, as the petitioners' arguments did not tend to establish violations of the American Convention, and given that the petition was time-barred.

23. The Commission has only the petition submitted in June 1999, and has not received any updated information from the petitioners since then. The petitioners did not respond to the request for information of August 2000 or to that of April 2009. Nor did they submit information when asked to do so in 2010. In such circumstances, it is not possible to determine whether the motives that led to the initial petition subsist. Thus in keeping with Article 48(1)(b) of the Convention as well as Article 42 of the IACHR's Rules of Procedure, it decides to archive this petition.

Done and signed in the city of Washington, D.C., on the 8th day of the month of November 2012.  
(Signed): José de Jesús Orozco Henríquez, President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Belle Antoine, Commissioners.