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REPORT No. 47/14
PETITION 406-99
REPORT ON ADMISSIBILITY

MARIELA DEL CARMEN ECHEVERRÍA DE SANGUINO
COLOMBIA

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ADMISSIBILITY

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I. SUMMARY

1. On September 9, 1999, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by Jaime Sanguino Santander (hereinafter “the petitioner”) alleging that the Republic of Colombia (hereinafter “the State”) was responsible for violations of the right to a fair trial, supposedly committed during criminal proceedings against Mariela del Carmen Echeverría de Sanguino (hereinafter “the alleged victim”).

2. The petitioner claims that the State is responsible for violation of the rights to personal liberty, a fair trial, and judicial protection, enshrined in Articles 7, 8, and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in relation to Article 1.1 thereof, to the detriment of the alleged victim. For its part, the State alleges that the petition does not state facts that tend to establish violations of human rights, since the alleged victim’s claims were reviewed domestically through adequate and effective remedies, the rulings on which, although unfavorable for her, were handed down in conformity with the rights and guarantees enshrined in the Convention. Accordingly, it argues that the IACHR cannot act as a fourth instance.

3. Without prejudice to the merits of the complaint, after examining the positions of the parties and compliance with the requirements established in Articles 46 and 47 of the American Convention, the Commission decided to declare the petition admissible for purposes of examining the alleged violation of Articles 8 and 25 of the American Convention, in relation to Article 1.1 thereof. Likewise, it decided to declare the petition inadmissible with respect to the alleged violation of Article 7 of the same instrument, to notify the parties of this decision, and to order its publication in the Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

4. The Commission registered the petition as number P-406-99. On April 30, 2004 the petitioner submitted additional information. After a preliminary review, on May 30, 2008, transmitted the pertinent parts thereof to the State for its observations. On July 30 and September 5, 2008, the State requested extensions, the first of which was granted by the IACHR and the second rejected since the time period established in Article 30.3 of the Rules of Procedure of the Commission had lapsed.

5. On September 24, 2008, the State submitted its response, which was forwarded to the petitioner for his observations. The petitioner presented his response on October 25, 2008, which was relayed to the State for its observations. On December 1 and 30, 2008, the State requested extensions for its response, which were granted. On February 27, 2009, the States submitted its response, which was transmitted to the petitioner for information.

6. On March 16, 2010, and July 27, 2010, the petitioner and the State each submitted additional observations, which were forwarded to the parties for information.

III. POSITION OF THE PARTIES

A. The petitioner

7. The petitioner claims that the alleged victim and other individuals were the subject of criminal proceedings, for the alleged offense of use of a false public document in conjunction with fictitious

exportation, falsification of a private document, and fraud, to the detriment of the Bank of the Republic and Bancoldex. He asserts that a preliminary inquiry was ordered by a decision of February 12, 1990, but alleges that the accused in the case were never notified of that decision. He further contends that during the first phase of the pretrial proceedings, a number of pieces of evidence were allegedly taken and then accepted as valid at trial. In particular, he claims that some of the evidence was improperly introduced in the proceedings; however, he claims that because the alleged victim never received notification, she was unable to exercise her right of defense to challenge this point.

8. The petitioner states that the order setting the matter for trial was issued on July 24, 1990, as was a warrant for the arrest of the alleged victim and the other accused persons. He alleges that at the time, Mrs. Echeverría had still “not been notified by the judge that she was being prosecuted.” The petitioner further contends that on August 15, 1990, the judge presiding over the case supposedly ordered the defendants to appear for questioning; however, the petitioner contends that no notification was ever served either “by telegram or any other means.”

9. The petitioner states that on August 27, 1990, the alleged victim was declared *in absentia*, and the Second Criminal Examining Court appointed Filomena Urbina de García as her assigned attorney. The petitioner further contends that the assigned defense counsel was negligent in representing the alleged victim, specifically because she allegedly did not offer any arguments, did not file any requests to introduce evidence and did not object to any evidence introduced; she allegedly was not present for the questioning, failed to present any concluding arguments at the close of the pretrial process and, lastly, failed to appeal the decision to bind the alleged victim over for trial, even though she had been notified of the decision.

10. The petitioner states that thereafter, in the trial phase, the alleged victim was represented by private defense counsel on a number of occasions; at other times, court-appointed counsel was assigned to represent her. The petitioner explained that although an assigned counsel was initially appointed, the only action he is alleged to have taken was to request house arrest for the alleged victim –even though the alleged victim had supposedly already been declared *in absentia*; his request, moreover, was reportedly denied. According to the information available, this attorney was said to have been replaced by private defense counsel retained by the alleged victim; this attorney, too, is alleged to have resigned as her legal counsel, telling the judge that Mrs. Echeverría “d[id] not have money to pay for her own legal representation.”

11. The petitioner alleges that a new court-appointed attorney was assigned, but that on August 30, 1995, the alleged victim filed a complaint against him with the Court claiming the attorney had failed to provide an adequate legal defense. In turn, the court-appointed attorney had petitioned the Court to be relieved as the alleged victim’s defense counsel. The court, for its part, appointed new assigned counsel to represent the alleged victim.

12. The petitioner alleges that by this point in time, the trial hearings were already underway; he further contends that Mrs. Echeverría’s court-appointed attorney failed to provide an adequate defense, and alleged that the attorney had not prepared “the study, arguments and evaluation of the case file necessary for [her] defense.” Furthermore, the petitioner alleges that following the hearings phase, Mrs. Echeverría’s defense counsel did not make any arguments, did not request tests or evidence and did not present any arguments; hence, the alleged victim herself –by way of her spouse- reportedly had to make her own concluding arguments and file her own requests for tests and evidence.

13. The petitioner indicates that on March 7, 1996, the Fourth Criminal Court Judge handed down the lower court conviction of all the defendants, and sentenced the alleged victim to six years and one day in prison and payment of a fine. The petitioner contends that Mrs. Echeverría asked her court-appointed attorney to appeal the court ruling, but that the attorney had failed to take timely action on her request. The petitioner contends that the alleged victim also filed an appeal on March 27, 1996, alleging, *inter alia*, that the conviction ruling was practically a copy of the order of indictment which –although her court-appointed counsel had not filed an appeal- she herself had questioned on several occasions at trial. She also alleged that the Court had not issued any finding on the allegation of inadequate legal counsel during the examining phase. The petitioner states that by a decision of April 15, 1996, the Fourth Criminal Court had denied the

appeal on the grounds that it was filed late. The petitioner adds that a petition of cassation was filed, which was also denied.

14. The allegation made in the cassation petition was that the alleged victim filed an action to have her lower-court conviction overturned, arguing violations of due process and of the right of defense during the criminal trial. The petition was reportedly declared inadmissible by a Supreme Court ruling of May 26, 1998.

15. Similarly, on October 20, 1998, she reportedly filed an action for *tutela* relief with the Cúcuta Sectional Council of the Judiciary, alleging an inadequate legal defense detrimental to the alleged victim. However, that petition was reportedly denied in first and second instance and precluded from Constitutional Court review. The petitioner argues that with these decisions, there were no further avenues to explore with the domestic courts, and that the latter had failed to do a substantive analysis of the violations being alleged; all they had managed to determine was that objectively speaking Mrs. Echeverría had allegedly always been assisted by counsel; however, the petitioner argues, they never examined the argument that inaction on the part of the assigned counsel had prevented the alleged victim from obtaining a review of her conviction and claiming the alleged due process violations committed at trial.

B. The State

16. The State contends that the petition is inadmissible because “the domestic courts have already had occasion to decide each of the complaints that the [alleged victim] presents;” therefore, the State argues, the IACHR cannot take the place of a court of appeal. It further contends that the case does not state facts that tend to establish, *prima facie*, violations of the rights guaranteed by the American Convention. It maintains that the alleged victim was given an opportunity for a hearing in the various courts that heard her case, and the decisions she obtained were well-founded and based on the law; although the decisions were not in her favor, neither were they the kind of arbitrary decisions that could have compromised the State’s international responsibility.

17. The State argues that the alleged victim was assisted by legal counsel, both privately retained representation and assigned representation; the latter were appointed by judicial authorities when the situation so warranted or at the alleged victim’s request. Although Mrs. Echeverría de Sanguino was –in the State’s view- in contempt of court and *in absentia* throughout the process, the State alleges that this did not prevent her from exercising her right to be represented by counsel and her right to due process during the investigation and criminal proceedings.

18. Concerning the criminal proceedings, the State maintains that the claims made regarding the alleged violations of due process, involving the failure to notify the alleged victim of some decisions, the procedure followed for taking evidence, the consideration given to the briefs presented by the alleged victim’s defense counsel, and even matters related to the assessment of the evidence in that proceeding, are matters already decided by the domestic courts as a result of the exhaustion of the effective remedies available and the decisions on those remedies, which were taken in accordance with the standards required by the American Convention.

19. The State observes, in this regard, that the criminal proceeding was the subject of an appeal that Mrs. Echeverría’s private defense counsel filed with the Supreme Court seeking a review of the decision handed down. It claims that the appeal was declared inadmissible on the grounds that it was not the proper vehicle for arguing the “procedural errors” being claimed. It also makes reference to the cassation appeal, an extraordinary remedy which, the State claims, under the laws in force at the time could only be used to challenge “second instance decisions that have not yet been enforced [...]”

20. It notes that the alleged victim also filed a criminal complaint against the Second Criminal Examining Judge who handed down the indictment against her. The Vice Attorney General of the Nation decided to dismiss the complaint, whereupon the alleged victim filed an appeal, which was declared out of order. The State observes that in response to these decisions, the petitioner filed an action for *tutela* relief,

which had allegedly been denied in first and second instance and finally precluded from review by the Constitutional Court.

21. The State contends that the actions the alleged victim filed seeking protective relief gave the national authorities the opportunity to examine the claims made regarding supposed violations of due process, the right of defense and the right of petition. It maintains that the decisions delivered on those actions were well-reasoned and based on law; they addressed the merits of the alleged victim's claims and allegedly held that the guarantees of due process had been observed in the criminal proceedings. The State highlights the fact that the first- and second-instance court rulings on the petition filed by the alleged victim's private defense counsel seeking *tutela* relief on the grounds of supposed errors committed by the State-appointed defense counsel held that "one cannot make the case that [the alleged victim] did not have a legal defense, either in terms of substance or form [...]."

22. The State also points out that the petitioner filed a complaint with the Sectional Council of the Judiciary against only two of the court-appointed defense attorneys. It observes that once the necessary investigation was completed, the decision was that no punitive action was called for. The State adds that a case was also brought in the disciplinary jurisdiction, by virtue of a complaint filed against the Second Criminal Examining Court. The decision in that case was that no disciplinary offense had been committed.

23. Based on the foregoing, the State contends that the alleged victim had access to all the mechanisms available within the Colombian judicial system to have her situation reviewed by competent judges of varying ranks and from various jurisdictions, and that although the decisions did not turn out in the alleged victim's favor, they did nothing to compromise its international responsibility. It adds that while it is true that criminal proceedings can be conducted *in absentia*, the legal defense may not be as effective in such cases, since the failure of the person on trial to appear may mean that his or her defense counsel does not have a complete and detailed command of all the facts that he or she is called upon to defend. It adds that the alleged victim sometimes "opted to represent herself", which may also have affected the quality of her defense.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci*

24. The petitioner is entitled, in principle, under Article 44 of the American Convention, to lodge petitions with the Commission. The petition identifies as the alleged victim an individual whose rights under the American Convention the Colombian State has undertaken to respect and ensure. As regards the State, the Commission points out that Colombia has been a State party to the American Convention since July 31, 1977, the date on which it deposited its instrument of ratification. Therefore, the Commission has competence *ratione personae* to review the petition. Additionally, the Commission has competence *ratione loci* to review the petition since it alleges violations of rights protected by the American Convention that are said to have taken place within the territory of Colombia, a State party to that treaty.

25. The Commission has competence *ratione temporis* inasmuch as the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State on the date when the facts alleged in the petition are said to have occurred. Lastly, the Commission is competent *ratione materiae* because the petition alleges possible violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

26. Article 46.1.a of the American Convention provides that for a petition alleging violations of the Convention to be admitted, the remedies under domestic law must have been exhausted in accordance with generally recognized principles of international law.

27. In applying these principles to the instant case, the IACHR observes that the State has not raised the exception to the exhaustion of domestic remedies but rather has stated that the alleged victim exhausted all ordinary and extraordinary remedies under domestic law. The IACHR notes that, in its response of February 27, 2009, the State claimed that the remedies pursued under the disciplinary jurisdiction against all the lawyers assigned to the alleged victim during the criminal proceedings against her had not yet been exhausted. However, the State's position on the instant petition is that the action for protection was the appropriate and effective remedy for seeking redress for the alleged violations of basic rights to the detriment of Mrs. Echeverría de Sanguino. For his part, the petitioner alleges that he filed various appeals to remedy the supposed violations addressed in the petition.

28. In this regard, the IACHR notes that the instant petition is related to criminal case No. 0064 brought against the alleged victim and other persons for the offense of use of a false public document, in conjunction with the offenses of fictitious exportation, falsification of a public document, and fraud. In said case, the alleged victim was declared absent in a court decision dated August 27, 1990, from which time—on several occasions—she was assigned court-appointed defense attorneys. By a decision of the Fourth Criminal Judge dated March 7, 1996, the alleged victim was found guilty of the offenses for which she was charged and was given a prison term and other accessory penalties. According to available information, that decision was reviewed on appeal, exclusively, as indicated in the decision of the Superior Court dated August 15, 1996, with regard to those challengers who had supported the appeal. As concerns the alleged victim, the appeal that she herself filed was rejected as untimely by a ruling of the Fourth Criminal Court dated April 15, 1996.

29. Based on the foregoing, the Commission deems that the claim concerns alleged violations of the guarantees of due process, particularly the absence of an adequate legal defense, said to be the fault of the court-appointed defense attorney. Within that framework, the Commission takes into account the information available on the various remedies the alleged victim attempted at the domestic level to assert her claim, such as the various briefs that the alleged victim presented to the Court hearing the case against her, and the briefs entered before the conviction was handed down, in which she filed complaints pertaining to her defense during the proceedings.

30. The IACHR also notes that on March 28, 1996, the alleged victim filed a complaint with the Office of the Departmental Prosecutor, against the Second Criminal Examining Court that handed down the indictment against her. By a decision of November 15, 1996, the Disciplinary Chamber of the Sectional Council of the Judiciary dismissed the alleged victim's complaint and ordered the record closed. Similarly, on May 10, 1996, the alleged victim filed a complaint with the Sectional Council of the Judiciary against two of the court-appointed defense attorneys assigned to represent her. By a decision of April 17, 1997, the Chamber declined to bring an ethics case against the attorneys. The Disciplinary Chamber confirmed this decision on May 8, 1997.

31. In addition, on October 20, 1998, the alleged victim's private defense counsel instituted an action for protection with the Cúcuta Sectional Council of the Judiciary alleging violations of due process and the inadequate defense provided by court-appointed counsel. By a decision of October 28, 1998, the Jurisdictional Chamber of the Sectional Council of the Judiciary declared the appeal out of order as it considered there had not been any "substantive, organic, factual or procedural defects" in the criminal proceedings. Said ruling was appealed and, by a decision dated December 10, 1998, the Jurisdictional Discipline Chamber of the Superior Council of the Judiciary upheld the challenged ruling. By an order of the Constitutional Court dated February 2, 1999, the matter was barred from review. The alleged victim was notified of the decision on March 17, 1999.

32. According to available information, on August 2, 1999, the petitioner instituted another action for protection, alleging violations of the alleged victim's rights to due process and a defense. The matter was decided, on September 16, 1999, by a ruling of the Jurisdictional Discipline Chamber of the

Superior Council of the Judiciary, which ordered that the action for protection be rejected because it related to a matter that had already been resolved by the decision dated December 10, 1998, *supra*, and because the petitioner was not qualified to provide legal representation as he was not a lawyer.

33. In light of the foregoing, the Commission concludes that, with the aforementioned court decisions on protection, the domestic remedies were exhausted, and the petition therefore meets the requirement established in Article 46.1.a of the American Convention.

2. Time period for lodging a petition with the Commission

34. The Convention provides that for a petition to be deemed admissible by the Commission, it must be lodged within a period of six months from the date on which the alleged victim is notified of the final judgment.

35. In the case at hand, the petition was received on September 9, 1999, and the final judgments rejecting the protection action were issued on February 2, 1999, and September 16, 1999, respectively. The alleged victim received notification of the ruling on the first protection action on March 17, 1999. Accordingly, the petition was lodged within the six-month period established in Article 46.1.b of the American Convention.

3. Duplication of proceedings and *res judicata*

36. Nothing in the case file suggests that the subject of the petition is pending in another international proceeding for settlement or that it has been previously decided on by the Inter-American Commission. Thus, the IACHR concludes that the exceptions provided in Articles 46.1.d and 47.d of the Convention are not applicable.

4. Characterization of the alleged facts

37. As stated by the Commission in other cases, it is not appropriate at this stage of the proceedings to determine whether or not a violation of the American Convention took place. For purposes of admissibility, the IACHR must simply decide whether the allegations state facts that tend to establish a violation of the Convention, as stipulated in Article 47.b thereof, and whether the petition is “manifestly groundless” or “obviously out of order,” in accordance with Article 47.c. The standard for assessing these matters is different from that required for deciding on the merits of the complaint. At this stage, the Commission must conduct a *prima facie* analysis that does not imply any prejudgment or advance any opinion as to the merits of the case

38. In the matter before the Commission, the State is arguing that the petition does not state facts that tend to establish violations of rights protected by the Convention, and argues that the petitioner’s claims have been decided in the domestic courts through well-reasoned decisions based on the law, and which the Commission may not review because it would then be acting as a court of fourth instance. For his part, the petitioner is claiming that the omissions alleged to have been committed by the court-appointed defense attorneys assigned during the criminal case brought against the alleged victim had the effect of restricting her chances of mounting an effective defense and of seeking justice for the supposed irregularities committed during the criminal case against her, in particular the failure to file an appeal challenging the decision to indict her and her conviction. The petitioner argues that the only consideration in the domestic court rulings that decided the case was that the alleged victim had, objectively speaking, been assisted by defense counsel; those decisions, the petitioner contends, did not take into consideration the effect that the purportedly negligent conduct of defense counsel had had.

39. Given the information presented by the parties and the nature of the matter put to it for consideration, the Commission finds that the petitioner’s allegations require an in-depth analysis of the scope and application of the guarantee of the right of defense, given the particulars of the criminal case conducted against the alleged victim and based on the requirements dictated by articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof. The Commission therefore decides to declare the petition

admissible as it pertains to those articles, for purposes of examining, during the merits phase of the present case, the possibility that those rights were violated.

40. Lastly, the IACHR considers that the petitioner has not presented basic information making it possible to establish, *prima facie*, his claims concerning a potential violation of the right to personal liberty, protected by Article 7 of the American Convention. Consequently, the IACHR declares this part of the petition inadmissible, in accordance with Article 47.b of the Convention.

V. CONCLUSIONS

41. The Commission concludes that it is competent to examine the claims submitted by the petitioner for the alleged violation of Articles 8 and 25 in relation to Article 1.1 of the American Convention and that these are admissible, pursuant to the requirements established under Articles 46 and 47 of the American Convention. Likewise, it concludes that the claim regarding the alleged violation of Article 7 of the American Convention should be declared inadmissible.

42. Based on the foregoing considerations of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible with regard to Articles 8 and 25 of the American Convention in relation to Article 1.1 thereof.
2. To rule the instant petition with respect to Article 7 of the American Convention inadmissible.
3. To notify the State of Colombia and the petitioner of this decision.
4. To continue the analysis of the merits of the case.
5. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 4th day of the month of April, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; José de Jesús Orozco, Rosa María Ortiz, Paulo Vannuchi and James Cavallaro, Commissioners.