

OEA/Ser.L/V/II.
Doc. 117
28 July 2019
Original: Spanish

REPORT No. 108/19

PETITION 81-09

REPORT ON ADMISSIBILITY

**ANAEL FIDEL SANJUELO POLO AND FAMILY
COLOMBIA**

Approved electronically by the Commission on July 28, 2019.

Cite as: IACHR, Report No. 108/19, Petition 81-09. Admissibility. Anael Fidel Sanjuanelo Polo and family. Colombia. July 28, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Anael Fidel Sanjuelo Polo
Alleged victim:	Anael Fidel Sanjuelo Polo and family
Respondent State:	Colombia ¹
Rights invoked:	Articles 1, 3 and 10 of the Universal Declaration of Human Rights

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	January 26, 2009
Additional information received at the stage of initial review:	May 11 and July 14, 2010; March 6 and 21, April 4 and 13, May 22, July 1 and 24 and September 3, 2013
Notification of the petition to the State:	December 10, 2014
State's first response:	April 20, 2015
Additional observations from the petitioner:	June 9, 2015; April 19, 2016 and February 25, 2018
Additional observations from the State:	October 20, 2017

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 ³ (deposit of instrument of ratification on July 31, 1973)

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	Articles 5 (personal integrity), 7 (personal freedom), 8 (judicial guarantees), 9 (freedom from Ex Post Facto Laws), 11 (honor and dignity), 21 (property), 22 (movement and residence) and 25 (judicial protection) of the American Convention on Human Rights in relation to article 1.1 (obligation to respect) of the same instrument
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of section VI
Timeliness of the petition:	Yes, under the terms of section VI

V. ALLEGED FACTS

1. Mr. Anael Fidel Sanjuanelo Polo (hereinafter "Mr. Sanjuanelo", "the petitioner" or "the alleged victim"), a doctor who lived in the municipality of San Vicente del Caguán in a region with a strong presence of the Revolutionary Armed Forces of Colombia (hereinafter "FARC"), claims to have been illegally

¹ Based on article 17.2.a of the Rules of procedure of the Commission, Commissioner Luis Ernesto Vargas Silva, a Colombian national, did not participate in the debate or decision of this matter.

² The observations submitted by each party were duly transmitted to the opposing party.

³ Hereinafter "the American Convention" or "the Convention".

detained in 2007 and prosecuted by the Colombian authorities for the crime of rebellion for having provided medical care to the FARC. He also states that during the process his rights were violated, and he was subjected to public derision by having presented him at a press conference as a guerrilla member and terrorist who planned to kidnap the children of Álvaro Uribe, the president of Colombia at that time.

2. According to the petitioner, he lived and worked as a doctor for many years in San Vicente del Caguán and from 1995 onwards he and his relatives began to suffer acts of violence and threats from the FARC. The petition alleges that the violence began in 1995 when his father-in-law, Arnulfo Amaya Perdomo, was kidnapped and killed by the FARC. These facts were reported and preliminary investigation number 44,351 was carried out. However, in 2005 an interlocutory act was issued, and the investigation was archived in October 2005. On the other hand, in 2003, her mother-in-law, Maria Cecilia Murcia Pinzón, was kidnapped and extorted by the FARC. These facts gave rise to the previous investigation No. 34.908 that was archived in December 2004.

3. In January 2005, his brother-in-law, Arnulfo Amaya Murcia, was murdered by the FARC. These facts were also denounced, and in the framework of preliminary inquiry No. 41.448, the authorities arrested a person in 2006. He and his wife received threats from the FARC to withdraw the complaint and, in April 2007, they went to the Prosecutor's Office to inform them of these threats. The authorities offered to protect them, but this would require them to leave the municipality and they did not want to leave because they had everything there. He states that later, he and his wife suffered retaliations from the FARC. In that sense, he affirms that they took away their lands and livestock. He states that his wife tried to remove the cattle from the municipality to prevent theft, but the army did not let the trucks that she had hired for transportation go through the checkpoint. On that same night, the FARC took almost 2.000 heads of cattle from their lands in the same trucks that had been hired by his wife and the army let them go through the checkpoint.

4. He affirms that in this context of violence and threats, he received calls from members of the FARC asking for medical attention and medicine. He argues that, like any inhabitant living in regions with a strong presence of these forces, he had no possibility of refusing and responded to their requests because he felt threatened. He adds that, as a doctor, he had an ethical duty to provide medical care to any person who required his services, without distinction or discrimination.

5. He maintains that the authorities learned of the medical care provided to these forces due to the illegal tapping of his telephone line. On December 7, 2007, the police arrived at his clinic and, without an arrest warrant and without reading his rights, took him to the police station. Once there, the policeman who took him to the station, filled out a warrant that had been given in blank by the Special Prosecutor for Anti-Terrorism of Bogotá on December 5, 2007. He adds that, on the same day, the police raided his residence and clinic without the corresponding mandates and without observing the legal procedure. According to Mr. Sanjuanelo, they kept him incommunicado for the rest of the day and at night he was transferred to Bogotá by plane. He indicates that he was detained there and held incommunicado until December 11 when being questioned by the Prosecutor's Office, he was allowed to speak to a lawyer. He adds that he was taken to a press conference that was attended by national and international media, where he was accused of being a terrorist-guerrilla member who tried to kidnap the children of the then President Álvaro Uribe. He maintains that this exhibition constituted a form of psychological and moral torture that damaged his good name and honor.

6. On December 18, 2007, his pre-trial detention was handed down without the benefit of release and on August 13, 2008, charges were filed in the special jurisdiction against the alleged victim for the crime of rebellion. He reports having filed appeals against his detention and deprivation of liberty and the violation of due process. However, he affirms that the appeals were rejected. He maintains that he only obtained his freedom on November 27, 2009 when he was granted provisionally release for the expiration of the maximum term of pre-trial detention. On February 21, 2013, he was convicted of the crime of rebellion and sentenced to eight years of imprisonment. He adds that in 2013 his conviction was confirmed in the second instance and that in 2015, based on his appeal, the Supreme Court of Justice ruled on the statute of limitations of the criminal action.

7. The petitioner states, on the one hand, that the State has not concluded a satisfactory restorative fair and truthful investigation, about the kidnapping, extortion, theft and murders of his family members, and the forced displacement of his wife that took place after his arrest, whose proceedings and complaints were legally brought before the judicial bodies. On the other hand, he affirms that, solely for fulfilling his medical duty, the State has violated his right to personal liberty, due process and honor and dignity.

8. In relation to the alleged acts of violence and threats against the family of Mr. Sanjuelo, the State, for its part, argues that there is no proof that the father-in-law of the alleged victim was kidnapped and killed, that his mother-in-law was a victim of kidnapping, extortion and subsequent displacement, that his brother-in-law was murdered and that his wife had to move after his imprisonment.⁴ It affirms that this information, at most, should be considered as contextual information on the reason why he provided medical attention to the FARC and that these events should not carry out responsibility.

9. On the other hand, it affirms that the arrest and deprivation of liberty of the alleged victim occurred in a legal manner. In that sense, it affirms that the telephone tapings carried out by the authorities were legal. Firstly, lines of people belonging to the moving column Teófilo Forero of the FARC were tapped and, because these tapings mentioned the name of the alleged victim, their telephone line was later intercepted. During the talks, the FARC requested medical attention and medication from the alleged victim.

10. It adds that, based on these facts, an arrest warrant was issued on December 5, 2007, which was complied with on December 7 and, from the minutes it is clear that the alleged victim was communicated his rights and the reasons for his detention when he was captured, and that he was allowed to meet immediately with his defense counsel. It also notes that 32 hours elapsed from the time of his capture until he was placed at the disposal of a competent judge given that he was placed at the disposal of the Prosecutor in charge of the case on December 8. It further submits that the raids on the residence of the alleged victim and place of work were carried out legally as they had been ordered on December 6, 2007 by the competent authority.

11. It adds that the criminal proceeding was carried out in accordance with the judicial guarantees and that the alleged victim was able to challenge the alleged illegality of the detention, searches and judicial decisions. On the arrest and raid, he affirms that, after the pre-trial detention was decided, the alleged victim filed two protective actions. In the first, he claimed the protection of fundamental rights to due process, freedom and good name in terms of the alleged illegality of his detention, the alleged lack of communication and the alleged illegality of the raids. This action was declared inadmissible by the Supreme Court on November 11, 2008 because it was considered that, at that time, it was still "pending to resolve the appeal filed by the defense attorney of Mr. Sanjuanelo Polo against the judgment of first instance." In the second, he challenged the application of the procedure provided in the old criminal procedure code to his process instead of the procedure provided for in the criminal procedure code that had replaced the previous one. Said action was declared inadmissible on December 18, 2008 because the judge considered that the interposed action was aimed at "questioning judicial decisions made within the criminal investigation that he was studying [for] the offense of rebellion, evincing more his disagreement with the judicious and reasonable criteria that the Prosecutor's Office [...] will carry out in order to confirm the request [...] for trial, a circumstance that makes the request for an amparo -action for protection of constitutional rights- [...] evidently inadmissible [...]".

12. In relation to the criminal process and the decisions of the judicial authorities, it affirms that the petitioner appealed the judgment of first instance and the appeal was decided unfavorably on November 6, 2013. It adds that the alleged victim filed an extraordinary appeal that resulted in the declaration of the statute of limitations of the criminal action on January 21, 2015. Therefore, it alleges that the petition presents facts that have already been analyzed by various judicial instances where the allegations of the alleged victim were heard without violation of due process or the obligations established in the Convention. It

⁴ The State does not make any reference to any investigations on this issue.

maintains that the alleged victim now brings his claim before the IACHR as a court of fourth instance and that the petition must be declared inadmissible.

13. In relation to the alleged public exposure of Mr. Sanjuanelo, it states that the alleged victim filed a complaint against the General of the Police. It alleges that this complaint was filed because it was considered that the conduct attributed was not typified. Furthermore, it maintains that the alleged victim filed an action for direct reparation against the State for the alleged unfair deprivation of liberty and alleged public exposure. On July 13, 2011, a judgment rejecting the first instance ruling was issued, declaring *ex officio* the statute of limitations of the action and denying the claim. This decision was appealed by the alleged victim and the process is pending the issuance of a second instance decision. In view of the foregoing, it maintains that in this regard, the appropriate domestic remedies for requesting reparations for these alleged facts have not been exhausted

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

14. In relation to the alleged illegality of the detention and deprivation of liberty of the alleged victim, the IACHR recalls that the requirement of exhaustion of domestic remedies does not mean that the alleged victims necessarily have an obligation to exhaust all available resources. Consequently, if the alleged victim raised the issue by one of the valid and adequate alternatives according to the domestic legal system and the State had the opportunity to remedy the matter in its jurisdiction, the purpose of the international standard is fulfilled.⁵ In this regard, the IACHR considers that the alleged victim does not have to exhaust the direct reparation action to claim the alleged illegality of his detention before presenting his case to the IACHR when, as reported by the State itself, the alleged victim has already questioned the legality of his detention, of the deprivation of his liberty and of the raids in the protective action that was resolved on November 11, 2008, together with the fact that he filed the reparation action and is awaiting resolution. Therefore, in this respect, the petition complies with the requirement set forth in Article 46.1.a of the American Convention and, taking into account that the petition was filed in January 2009, also with the requirement of Article 46.1.b of the same instrument.

15. In relation to the alleged violations of due process that occurred during the criminal proceedings, the IACHR considers that the domestic remedies were exhausted on January 21, 2015, when the Supreme Court of Justice decided the statute of limitations for the criminal action. Therefore, taking into account that the exhaustion of local remedies occurred while the petition was already pending before the IACHR, it meets the requirements of Articles 46.1.a and 46.1.b of the American Convention.

16. In relation to the alleged public exposure of the alleged victim and the alleged damage to his honor and good name, the IACHR observes that, according to information provided by the State, the alleged victim filed an action for direct reparation in the contentious-administrative jurisdiction to obtain a reparation for these alleged facts. In its first response to the petition in April 2015, the State informed the IACHR that said action was pending a second instance decision. Subsequently, in October 2017, the State reported that said action was still pending a second instance decision. Since then, the IACHR has not received information on the conclusion of this process and must assume that it is still pending. Given the foregoing, and considering that the State does not allege and does not show that the lack of a decision is due to the procedural action of the alleged victim or to a supposed complexity of the matter, the IACHR considers that *prima facie* there is a delay in resolving this process and that the exception to the requirement of exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention applies to this case. Furthermore, taking into account that the alleged exposure would have occurred in December 2007, that the alleged victim would have questioned his exposure during the criminal proceedings and subsequently through the reparation action for direct reparation and that, after several years, the process still pending a conclusion, the IACHR considers that, in this regard, the petition was presented within a reasonable period of time in accordance with Article 32.2 of the Rules of Procedure of the IACHR.

⁵ IACHR, Report No. 16/18, Case 884-07. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Perú. February 24, 2018, par. 12.

17. Finally, in relation to the acts of violence and threats allegedly suffered by the next of kin of the alleged victim, as well as the theft of his property and the displacement of his wife, the IACHR considers that these allegations were not presented solely as context information but as part of the claims of the alleged victim, who has also provided documentation on the complaints filed on these facts with the competent authorities. Therefore, contrary to what the State suggests, the IACHR considers that it is competent to analyze possible violations related to these issues.

18. With respect to the exhaustion of remedies in relation to these events, the IACHR observes that preliminary investigations were initiated to expedite the deaths of the father-in-law and the brother-in-law of the alleged victim, as well as the kidnapping and extortion of the alleged victim's mother-in-law. In cases such as the present, which involve possible human rights violations due to kidnappings and homicides, that is, crimes that can be prosecuted *ex officio*, the State has the obligation to investigate them. This burden must be assumed by the State as its own legal duty, and not as a management of the interests of private individuals or that it depends on the initiative of the latter or the provision of evidence by them.⁶

19. According to the file, preliminary inquiries initiated by the kidnapping and extortion of the mother-in-law and the kidnapping and death of the alleged victim's father-in-law were archived in December 2004 and October 2005, respectively. Therefore, the IACHR considers that the exception to the requirement of exhaustion of local remedies provided for in Article 46.2.b of the Convention in relation to these facts applies. On the other hand, in relation to the investigation carried out on the death of the brother-in-law of the alleged victim, according to a certification of the Prosecutor's Office of February 27, 2008, at that time the alleged perpetrator had been captured, the accusation had been presented against him and the alleged accused were awaiting trial. Given that to date the IACHR has not been informed about the conclusion of this process, the Commission considers that the exception to the exhaustion of local remedies requirement set forth in Article 46.2.c of the American Convention applies. Taking into account the filing date of the first two inquiries, the alleged failure to conclude the criminal proceedings brought against the alleged perpetrator of the death of Mr. Sanjuanelo's brother-in-law, the date of filing of the petition and the fact that the wife of Mr. Sanjuanelo returned to inform the Prosecutor's Office of these in 2013, the IACHR considers that the petition, in relation to these alleged facts, was presented within a reasonable period of time in accordance with Article 32.2 of the IACHR's Rules of Procedure.

20. On the other hand, in relation to the loss of their lands and livestock to the FARC with the alleged consent or omission of the army authorities, the IACHR observes that the petitioner provides documentation suggesting that his family engaged in commercial activities with livestock, which as of December 2007 had requested the protection of their farm and in January 2008 filed a complaint with the General Prosecutor's Office for these events. Likewise, the petition contains documentation that would indicate that in 2013 they re-told these facts to the Ombudsman's Office and to the General Prosecutor's Office in a sub-process of justice and peace. Given the above, and given that to date there is no information on the status of the investigation of these events and/or the criminal proceedings initiated or carried out for these events, the IACHR considers that the exception to the exhaustion of local remedies requirement provided for in Article 46.2.c of the American Convention in relation to these facts applies. Given that the events occurred during 2007, that the petition was presented to the IACHR in January 2009 and that the alleged victim's next of kin continued to report these events to the authorities in subsequent years, the Commission considers that the petition also complies with the requirement of Article 32.2 of the Rules of Procedure of the IACHR in relation to these alleged facts.

VII. ANALYSIS OF COLORABLE CLAIM

21. The IACHR considers the alleged illegality of the detention and deprivation of liberty of the alleged victim, as well as the alleged violations of due process, such as, *inter alia*, the alleged impossibility of having a legal representative from the beginning of the process and the alleged impossibility of exercising their right of defense, if proven, could constitute a violation of articles 7 (personal liberty), 8 (judicial

⁶ IACHR, Report No. 159/17, Case 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, par. 14.

guarantees) and 25 (judicial protection) of the American Convention in accordance with article 1.1 of the same instrument in prejudice of Mr. Sanjuanelo. In addition, in the merits stage, the IACHR will analyze whether the alleged victim's arrest and the criminal proceeding brought against him, allegedly based solely on medical care provided to the FARC, if proven, would constitute a violation of the right enshrined in Article 9 (freedom from Ex Post Facto Laws) of the American Convention in accordance with Article 1.1 of the same instrument to the detriment of Mr. Sanjuanelo.⁷ In the merits stage, the IACHR will also analyze whether the alleged victim's exposure to the media as a member of the FARC that allegedly planned to kidnap the children of the then president of Colombia and whether the supposed psychological damages suffered as a result of the this exposure, if proven, could constitute a violation of articles 5 (personal integrity) and 11 (honor and dignity) of the American Convention in accordance with article 1.1 of the same instrument to the detriment of Mr. Sanjuanelo.

22. The IACHR also considers that the alleged failure to investigate the acts of violence committed against Mr. Sanjuanelo's family members, or the lack of investigation into the loss of his property to the FARC, if proven, could constitute a violation of the rights enshrined in articles 8 (judicial guarantees), 21 (property) and 25 (judicial protection) in accordance with article 1.1 of the same instrument to the detriment of Mr. Sanjuanelo and his next of kin.

23. In addition, during the merits stage, the IACHR will analyze the circumstances in which the alleged victim and her next of kin have allegedly displaced internally to determine if said circumstances could constitute a violation of the right enshrined in Article 22 (movement and residence) of the American Convention in relation to article 1.1 of the same instrument to the detriment of the alleged victim and his next of kin.

24. On the other hand, the IACHR lacks competence *ratione materiae* to rule on violations of rights contained in treaties outside the Inter-American system but being able to recur to the standards established in other treaties in order to interpret the provisions of the Convention in virtue of article 29 of said Convention.⁸

VIII. DECISION

1. To find the instant petition admissible in relation to articles 5, 7, 8, 9, 11, 21, 22 and 25 of the American Convention, in accordance with articles 1.1 of the same instrument; and

2. To notify the parties of the decision; to continue with the analysis on the merits and to publish this decision and to 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 28th day of the month of July, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli and Flávia Piovesan, Commissioners.

⁷ See, Inter-American Court on Human Rights. Case Pollo Rivera and othes vs. Peru. Merits, reparations and costs. October 21, 2016, pars. 211 to 257.

⁸ IACHR, Report No. 26/17, Case 1208-08. Admissibility. William Olaya Moreno and family. Colombia. March 18, 2017, par. 9.