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**REPORT No. 186/19**

**PETITION 216-08**

REPORT ON INADMISSIBILITY

JOSÉ NELSON URREGO CÁRDENAS

PANAMA

Approved by the Commission on December 5, 2019.

**Cite as:** IACHR, Report No. 186/19. Petition 216-08. Admissibility. José Nelson Urrego Cárdenas. Panama. December 5, 2019.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	José Nelson Urrego Cárdenas and Alejandra Orjuela Moreno <sup>1</sup>
<b>Alleged victim:</b>	José Nelson Urrego Cárdenas
<b>Respondent State:</b>	Panama <sup>2</sup>
<b>Rights invoked:</b>	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 21 (property), 22 (movement and residence), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights, <sup>3</sup> in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

**II. PROCEDURE BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	February 25, 2008
<b>Additional information received at the stage of initial review:</b>	June 2, July 15 and September 8, 2008; April 15, October 13, and December 24, 2009; March 22, and November 14, 2010; January 31, and February 2 and 6, 2011; March 10, 2013; July 8, and September 5 and 16, 2014
<b>Notification of the petition to the State:</b>	November 24, 2015
<b>State's first response:</b>	February 23, 2016
<b>Additional observations from the petitioner:</b>	March 8, 2016

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of ratification instrument on June 22, 1978)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	None under the terms of section VII
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	None under the terms of section VII
<b>Timeliness of the petition:</b>	None under the terms of section VII

**V. ALLEGED FACTS**

1. The petitioning party claims the international responsibility of the State of Panama to the detriment of José Nelson Urrego Cárdenas ("Mr. Urrego" or "the alleged victim"), Colombian, in the context of criminal proceedings against him for crimes related to drug-trafficking and money laundering in Panama. The alleged victim reportedly faced discriminatory treatment, inadequate detention conditions, physical abuse, lack of access to his legal counsel and legal safeguards, and the loss of his assets, during an excessively long term in pretrial detention in the framework of proceedings open since 2007.

<sup>1</sup> José Nelson Urrego Cárdenas' legal representation has changed along the procedure before the Commission. In chronological order, the petition was brought by Fernando Echeverry and Diego Fernando Forero González; Karina Tristán Serracín represented him on November 24, 2009 and again on November 30, 2016; Armando Chauz Hernández on January 11, 2016 and Alejandra Orjuela Moreno on August 3, 2018.

<sup>2</sup> In accordance with Article 17, paragraph 2.a of the IACHR Rules of Procedure, Commissioner Esmeralda Arosemena de Troitiño, a Panamanian national, did not partake in the discussion or the decision on this matter. Likewise, in accordance with Article 17.3, of the IACHR Rules of Procedure, Commissioner Luis Ernesto Vargas Silva did not partake in the discussion or the decision on this matter

<sup>3</sup> Hereinafter "Convention" or "American Convention."

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

2. The petitioners indicate that on March 11, 2004, an investigation was filed against Mr. Urrego in Panama for the alleged use of an island of his property, "Chapera Island," for smuggling drugs and weapons. The alleged victim claims that it was the then vice-president and foreign ministry who filed charges against him because of the alleged victim's refusal to sell the island to him. Mr. Urrego was arrested on September 15, 2007, and held at the National Police station, in Panama City. They claim that authorities treated him as if he were a high-ranking member of the Medellin cartel based on fabricated evidence.<sup>5</sup> They argue that the alleged victim was held incommunicado until September 19, 2007, and that for two months he was held at the police station, isolated, with 15 minutes to see his private attorney daily.

3. The petitioners submit that the alleged victim was taken to El Renacer Prison and on December 13, 2007, Mr. Urrego complained to the warden that officers maltreated him, that he had only one hour in the open air daily, and that his right to privacy was not respected. Early in 2008, the alleged victim's attorney filed several petitions to the Director General of the Prison System seeking equal treatment for Mr. Urrego and authorization for a special visit from his attorney for interviews. The petitioners claim that, according to the State, his case was "special"; therefore, it found it necessary to curtail his legal safeguards.

4. They also indicate that, apart from the alleged victim's pretrial detention, all his property was seized, including goods for personal use. The defense counsel many times requested for an inventory of all the seized items in order to control their condition. However, they assert that the defense has been unable to participate in the inspection procedures. Therefore, it was impossible to determine the state of preservation of Mr. Urrego's property. They allege that the seizure of his property violated the principle of necessity and proportionality because the defendant did not know the amount of damages derived from the crime attributed to him.

5. On March 24, 2008, the alleged victim filed a habeas corpus petition to the Supreme Court of Justice ("CSJ"). They assert that on August 20, 2008, in a regular visit to the court, the alleged victim's counsel learned that the CSJ had dismissed the habeas corpus petition on June 13, 2008. Reportedly, the CSJ maintained that the Panamanian laws establish a specific appeal for that type of dispute and it deemed that the duration of pretrial detention could be the same as the minimum prison term applicable to the charge in question. The petitioners argue that their habeas corpus petition was not to challenge the delay in the investigation but to question the illegal deprivation of liberty of Mr. Urrego derived from the said delay. They also submit that they presented an appeal on February 18, 2008, and that a trial court dismissed it on May 12, 2008, and an appellate court on March 3, 2009.

6. The petitioners claim that on April 7, 2008, they presented an Amparo action to the CSJ seeking to obtain access to all the information contained in the criminal case file. However, they were unable to access the records because, according to the secretariat of CSJ, the court could not afford a copy of the full case file. On May 6, 2009, the CSJ found the matter of the Amparo action moot, on considering that the alleged victim's counsel had accessed the information in the case file. On July 25, 2008, the defense counsel requested that a bail amount was set, but on July 31, 2008, a trial court overturned the petition, and an appellate court followed suit on September 3, 2008.

7. The petitioners indicate that, on June 24, 2009, when the alleged victim had spent over three years in pretrial detention, a preliminary hearing was held for charges of money laundering. They claim that the judge failed to observe the legal deadlines for the correction of procedural errors, which delayed the prosecution of Mr. Urrego. Moreover, regarding his imprisonment, they allege that, in 2009, Mr. Urrego's counsel submitted a prison transfer request for the alleged victim, as Mr. Urrego suffered harassment, threats, and physical abuse. On April 23, 2009, a criminal complaint was filed against the inmates responsible. However, this was sent to an

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<sup>5</sup> The petitioners indicate that in Colombia between 1994 and 2004, Mr. Urrego was charged with drug-trafficking, conspiracy of drug-trafficking and unjust enrichment. They submit that a trial court acquitted him of the first two charges and sentenced him for the third; however, later it ordered the stay of proceedings because of the lapse of the statutes on the criminal action for unjust enrichment. They add that on May 24, 2007, the Attorney General's Office submitted a mutual assistance request to Colombia, regarding the laundering of proceeds from drug-trafficking activities, based on Article 3 of the Inter-American Convention in Criminal Matters. In response to that, Colombia sent a copy of the judgments that domestic courts issued on the cases filed against the alleged victim.

administrative court. The alleged victim challenged that decision on September 24, 2009, so that the matter was returned to the criminal jurisdiction.<sup>6</sup>

8. On June 11, 2010, Mr. Urrego was transferred to La Joyita Prison (“La Joyita”), where he lived among highly dangerous inmates. The petitioning party submits that, in that prison, the alleged victim faced inadequate living conditions, had no access to health care services, and the time given to meet with his counsels was insufficient. They claim that they reported all these situations to the prison authorities, but these did not take any effective measures in that regard.

9. Both parties indicate that Mr. Urrego was accused of money laundering on October 6, 2009, and sentenced by a trial court on August 26, 2011, to seven years in prison, a decision appealed on October 24, 2011.

10. For its part, the State claims that the alleged victim challenged the decision of June 13, 2013, by which the Second Superior Court of Justice raised his conviction to a 10-year term in prison, and that this appeal is still awaiting judgment. It also claims that the Second Superior Court of Justice issued an injunction measure other than Mr. Urrego’s detention and that he was released on October 9, 2014. It reports that, because of his nationality, the alleged victim was brought before the National Migration Service and, on October 14, 2014, the resolution granting him Permanent Residency in Panama was revoked.

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

11. The petitioning party alleges the violation of Mr. Urrego’s rights in the context of a criminal proceeding against him in Panama and regarding the living conditions while in prison and the term he served.<sup>7</sup> They assert that they presented all the available remedies to correct every error along the proceedings. The State argues that the term in pretrial detention fitted the case of the alleged victim and that he did not exhaust domestic remedies because an appeal is still awaiting judgment.

12. The requirement of prior exhaustion of domestic remedies is intended to allow domestic authorities to hear the alleged violation of a protected right and, if applicable, settle the issue before it is brought before an international body.<sup>8</sup> In the present case, the IACHR observes that the appeal filed before the Second Chamber for Criminal Matters of the Supreme Court against the decision of June 13, 2013, was not exhausted by the petitioner, and that it does provide the possibility of solving the violations alleged by the presumed victim.<sup>9</sup> This shows that due process in was available in Panama to protect Mr. Urrego’s rights, and that even though he had access to such recourse he failed to exhaust it.

13. Likewise, the Commission also notes in this regard that the Inter-American Court of Human Rights has held that the prior exhaustion rule must never “lead to a halt or delay that would render international action in support of the defenseless victim ineffective.”<sup>10</sup> In the case at hand, the alleged victim has been processed for crimes related to drug trafficking and money laundering in Panama. According to the available information, the process initiated in 2007 was expeditious since, although it was a complex case, all appeals were resolved within a reasonable time. Therefore, the IACHR concludes that the exception to the exhaustion of domestic remedies does not apply, in accordance with the Article 46, paragraph 2.c of the Convention, and that domestic remedies were not exhausted.

<sup>6</sup> Based on the case file, in making that decision, authorities considered that those injuries were not serious and did not cause him any impairment. The petitioners have not provided further information on that complaint or its results, if any.

<sup>7</sup> As to the excessively long term in pretrial detention, the alleged victim unsuccessfully lodged a habeas corpus petition, an appeal and a request for bail. Regarding the claims about physical abuse, he presented a criminal complaint and an appeal against the decision to send it to an administrative court of law. With respect to his health and the living conditions in prison, the alleged victim’s counsel submitted several petitions in writing to the prison staff and the authorities of the prison system of Panama. They also allege their presentation of an amparo action to have his right to defense and appeal protected in the framework of the criminal proceedings.

<sup>8</sup> IACHR, Report No. 82/17, Petition 1067-07. Admissibility. Rosa Ángela Martino and María Cristina González. Argentina. July 7, 2017, para. 12.

<sup>9</sup> Articles 180 and 181 of the Code of Penal Procedure of Panama.

<sup>10</sup> IACHR, Report No. 71/12, Petition 1073-05. Admissibility. Inhabitants of The “Barão De Mauá” Residential Complex. Brazil. July 17, 2012, para. 22.

**VII. DECISION**

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; to continue with the analysis on the merits, and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 5<sup>th</sup> day of the month of December, 2019. (Signed): Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.