

OEA/Ser.L/V/II  
Doc. 360  
24 November 2021  
Original: Spanish

**REPORT No. 350/21**  
**PETITION 1105-09**  
REPORT ON ADMISSIBILITY

GERARDO SÁNCHEZ MARTÍNEZ  
MEXICO

Approved electronically by the Commission on November 24, 2021

**Cite as:** IACHR, Report No. 350/21. Petition 1105-09 Admissibility. Gerardo Sánchez Martínez. Mexico. November 24, 2021.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Gerardo Sánchez Martínez
<b>Alleged victim:</b>	Gerardo Sánchez Martínez
<b>State denounced:</b>	Mexico <sup>1</sup>
<b>Rights invoked:</b>	Articles 5 (right to humane treatment), 8 (right to a fair trial), 10 (right to compensation), 11 (right to privacy), 13 (freedom of thought and expression), 14 (right of reply), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention on Human Rights <sup>2</sup> in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

**II. PROCEDURE BEFORE THE IACHR**

<b>Reception of petition:</b>	September 4, 2009
<b>Additional information received during initial review</b>	November 9, 2012
<b>Notification of the petition to the State:</b>	October 25, 2016
<b>State's first response:</b>	March 6, 2017
<b>Additional observations from the petitioner</b>	30 de mayo de 2017

**III. COMPETENCE**

<b>Competence Ratione personae:</b>	Yes
<b>Competence Ratione loci:</b>	Yes
<b>Competence Ratione temporis:</b>	Yes
<b>Competence Ratione materiae:</b>	Yes, American Convention (ratification instrument deposited on March 24, 1981)

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

<b>Duplication of procedures and International res judicata:</b>	No
<b>Rights declared admissible</b>	Articles 8 (right to a fair trial), 13 (freedom of thought and expression), and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in the terms of section VI
<b>Timeliness of the petition:</b>	Yes, in the terms of section VI

**V. SUMMARY OF ALLEGED FACTS**

1. Gerardo Sánchez Martínez, who served as general director and editor of the publication called "El Periódico de Puebla, Expresión Ciudadana!" -Media with cultural and political-social content-, argues to have been the object of a series of reprisals, such as threats, verbal attacks, and non-payment of advertising bills, due to a publication made in his newspaper where two public servants were criticized. He claims that, due to non-payment, he had to remove his newspaper from circulation.

<sup>1</sup> In accordance with the provisions of Article 17.2.a of the Commission's Regulations, Commissioner Joel Hernández García, a Mexican national, did not participate in the debate or in the decision of this matter.

<sup>2</sup> Hereinafter "the American Convention" or "the Convention".

2. Regarding the alleged facts of this petition, Mr. Sánchez Martínez reports that on June 13, 2006, he published in "El Periódico de Puebla, Expresión Ciudadana!" an article in which he criticized the comments that two public servants had made in a television interview, as well as their alleged bias for being directors of Information, and of Image and Public Opinion, respectively, of the Directorate of Social Communication of the State of Puebla.

3. The alleged victim argues that, as an act of censorship and retaliation by the state authorities, he was denied payment of his advertising bills, based on advertising agreements entered into between his newspaper and the Government of the State of Puebla. He details that when he contacted the then Director of Information by telephone on July 5, 2006, he refused to pay him. He states that on the same day he went to the offices of the General Director of Social Communication and Public Relations of the Government of the State of Puebla in order to report what happened, and that on this occasion the Director of Information was also present, and threatened to attack his personal integrity, in addition to verbally assaulting him, using insults. When leaving, the Director General told the petitioner: "You'd better come back another day, spirits are heating up and you, Gerardo, wrote against [the two public officials], how do you want to be treated?"

4. Regarding the complaints that he has filed, the alleged victim reports that on July 5, 2006, he filed a complaint with the Puebla State Attorney General's Office (PGJ) for the alleged threats against him. He affirms that even with the report of July 6, 2006 by the PGJ psychology experts who indicated that he presented emotional distress with indicators of fear and anxiety as a result of the attacks and threats to which he had been subjected, the PGJ it decided not to prosecute the public official and determined that the file be archived, noting that not all the typical elements of the crime of threats were formed. The alleged victim argues that this resolution issued on June 15, 2007, which was considered as notification, would violate criminal due process as it is a procedural agreement and not a warning document in which the affected party is warned about the non-exercise of the criminal action and the archiving of the file.

5. According to the file, in July 2006 the alleged victim filed an administrative complaint with the Secretary of Development, Evaluation, and Control of the Public Administration of the State of Puebla (SEDECAP) against the Director of Information for the alleged threats, stating that his actions were carried out in the express spirit of intimidating him to prevent the exercise of his professional activities, restricting his freedom of expression; likewise it directly attacked his honor and prestige. Said complaint was accepted on July 18, 2006 and then archived on January 9, 2007.

6. After Mr. Sánchez Martínez filed various judicial remedies against the decisions to archive the complaint, on January 14, 2008, the administrative procedure for determining responsibility was formally initiated. On January 31, 2008, the official's administrative responsibility was declared, and the sanction of a private reprimand was imposed. Dissatisfied, Mr. Sánchez filed an indirect amparo, which was rejected, and then an appeal for review, which was granted. On October 1, 2008, a new resolution was issued, which determined the administrative responsibility of the public official for the threats made against Mr. Sánchez Martínez and imposed the sanction of public reprimand and temporary suspension of employment, position, or commission.

7. Considering the sanction established unfair, the alleged victim filed an indirect amparo lawsuit, which was denied by means of a resolution that, in his opinion, would have been ambiguous, illegal, and unfounded. He later presented an appeal for review, which was rejected following the doctrine of the Second Chamber of the Supreme Court of Justice of the Nation, which establishes that the complainant against a public servant has no legal interest to file an amparo under the resolution that determines that there is dismiss the claim to formally initiate the procedure, and the archive was ordered. On March 10, 2010, the resolution of October 1, 2008 was declared final.

8. Likewise, on July 6, 2007, the alleged victim filed a complaint with the Anti-Corruption Prosecutor of the Government of the State of Puebla, and argues that to date he has not received a response. In addition, on July 31, 2007, he filed a complaint with the Human Rights Commission of the state of Puebla for "disagreement presented for the crime of aggression, mistreatment and threats" against the Director of Information. In this regard, he points out that that Commission ruled that it lacked legal competence, and ordered the file to be archived as a closed matter.

9. On the other hand, in 2012, the alleged victim reported that he filed a complaint with the Special Prosecutor's Office for Crimes against Journalists due to the alleged threats, which decided to send a letter to the Puebla State Attorney General's Office, to follow up on the alleged evidence of indications of abuse of authority and influence peddling by the accused public officials. The alleged victim argues that the PGJ of the state of Puebla omitted this request by refusing to continue integrating the preliminary investigation conducted since 2010. The alleged victim does not provide information on the date of filing of this complaint.

10. On the other hand, the alleged victim reports that on February 15, 2008, he filed a complaint with the Secretary of Development, Evaluation and Control of the Public Administration of the state of Puebla (SEDECAP) against the General Director of Social Communication, but this time for the delay in the payments owed by the advertising agreements. On January 21, 2009, the complaint was dismissed because the administrative responsibility of the public official had not been proven. Against this decision, he had filed on February 20, 2009 an application for indirect protection before the District Courts in the Sixth Circuit, which was rejected by the Fifth District Court on April 21, 2009, on the basis that the complainant of an administrative complaint against a public servant has no legal interest to file an amparo under the resolution that determines that there is dismiss the claim to formally initiate the procedure. Then, the archive of the file had been ordered.

11. At the beginning of 2012, the alleged victim went to the First District Court for Commercial Matters of the Sixth Circuit based in Cholula, Puebla, demanding payment of the advertising bills owed. On May 15, 2012, said court decided that the General Directorate of Social Communication of the Executive of the state of Puebla should pay him a part of the amount demanded, for a total of 206,000 pesos (about 15,000 dollars)<sup>3</sup>. He alleges that they privately told him that as long as he did not desist from the complaint filed before the IACHR, the veto that had been imposed would not be lifted, and the amount of the commercial oral judgment that he won would not be covered. Despite the foregoing, in his observations to the State's report, the alleged victim indicates that only part of the debt was finally paid, which he found it necessary to accept in order to survive. He points out, however, that such bill settlement does not compensate for the damage caused to his economy by having to take his newspaper out of circulation, suspending, after eight uninterrupted years, the activity of his journalistic company.

12. Finally, Mr. Sánchez Martínez maintains that the Mexican State only referred to the criminal proceeding, the administrative procedure, and the commercial oral proceeding initiated by the journalist, omitting to refer to the facts that led to his petition before the IACHR after exhausting domestic remedies, that is, aggressions, threats, and non-payment of advertising bills. He refers that the public official involved in the alleged acts against him would have continued to head the communication office of the ruling political party, through the Puebla state steering committee, and that the alleged administrative sanction against him was never considered in the official reports. Likewise, he alleges that, due to this experience, he abstained from exercising his profession as a communicator in order not to expose his integrity or that of his family.

13. For its part, the Mexican State states that, in light of the events of July 5, 2006, a preliminary inquiry 1190/2006 / CEN was initiated regarding the alleged threats, that on March 21, 2007 the petitioner waived the procedure of mediation and that on May 22 of the same year two witnesses appeared and stated that what the petitioner declared had not happened. It maintains that the present petition is inadmissible because in the criminal proceeding initiated by the alleged victim, domestic remedies were not exhausted, since the latter did not challenge the decision of the Public Ministry that determined the non-exercise of the criminal action due to atypicality and ordered the archiving of the corresponding investigation. It also alleges that the alleged victim did not comply with the deadline requirement for submitting the petition, since the decision that ended the criminal proceeding was issued on June 15, 2007 and was notified to him on July 2, 2007.

14. The State also reports that on July 4, 2007, the petitioner filed a complaint with the Human Rights Commission of the state of Puebla (CEDH) for acts constituting breach of duty, mistreatment, and threats, and that the CEDH assessed the evidence and determined that no violation of the human rights of Mr. Sánchez Martínez was proven.

15. On the other hand, with respect to the administrative process to determine the responsibility of the public official implicated in the alleged acts against the alleged victim and the request for payment, the

<sup>3</sup> According to the Official Gazette of the Federation. Ministry of the Interior. Available for consultation at: [http://dof.gob.mx/indicadores\\_detalle.php?cod\\_tipo\\_indicador=158&dfecha=01/01/2012&hfecha=31/12/2012](http://dof.gob.mx/indicadores_detalle.php?cod_tipo_indicador=158&dfecha=01/01/2012&hfecha=31/12/2012)

State affirms that the petition is also inadmissible, on the basis that domestic remedies were not exhausted, since the latter submitted the petition to the IACHR on September 4, 2009, while the commercial oral proceeding through which he requested payment began on February 17, 2012.

16. Lastly, the State affirms that the petition lacks substance since the administrative responsibility of the official involved has already been declared, and there is already a judgment, derived from the commercial oral proceeding, in which the payment owed to the petitioner was ordered. It indicates that the petitioner initiated a direct amparo lawsuit against that judgment, which was rejected on August 16, 2012, and later promoted the settlement of judgment to quantify the payment that he should receive. Finally, it indicates that on December 17, 2012, the petitioner expressed compliance with the judgment and his entire satisfaction with said compliance.

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

17. The alleged victim argues that he has exhausted domestic remedies with the decision of the Fifth District Court in the State of Puebla dated April 21, 2009, which dismissed his claim for indirect protection against the Delegate of the Secretary of Development, Evaluation and Control of Public Administration in the Ministry of the Interior of the State of Puebla. In turn, the State argues that the alleged victim has not exhausted domestic remedies and that the petition was not presented within the six-month period established by the ACHR.

18. Regarding the claim on the alleged threats and verbal attacks against the alleged victim, the IACHR observes that the latter claims to have filed a complaint with the Puebla State Attorney General's Office (PGJ) on July 5, 2006, but the PGJ decided not to prosecute the public official and determined the file should be archived, noting that not all the typical elements of the crime of threats were configured. The alleged victim also states that he filed a complaint in 2007 with the Anti-Corruption Prosecutor of the Government of the State of Puebla, on which he had not received a response to date, and a complaint in 2012 with the Special Prosecutor's Office for Crimes against Journalists. In addition, the Commission observes that the alleged victim filed an administrative complaint in June 2006 regarding the threats and verbal attacks, which concluded with a decision of October 1, 2008 that establishes the responsibility of the public official involved and imposes a sanction. Faced with this decision, the alleged victim presented an indirect amparo, which was rejected, and an appeal for review, which was rejected.

19. In this regard, the IACHR points out that, in situations that include crimes against life and integrity, the domestic remedies that must be taken into account for the purposes of admissibility of the petitions are those related to the criminal investigation and punishment of the responsible. In the instant case, the IACHR observes that the petitioner did not appeal the decision of the Attorney General's Office (PGJ) not to exercise the criminal action of June 15, 2007, which was notified to him on July 2, 2007. Therefore, without prejudice to the fact that the Commission takes note of the administrative process initiated by the petitioner and the measures taken by the State, it understands that in this regard, the requirement of exhaustion of domestic remedies is not met.

20. The Commission observes that, regarding the allegation of the delay in the payments owed by the advertising agreements, the alleged victim presented an administrative complaint that was dismissed and then an amparo, which was rejected by resolution of the Fifth District Court in the State of Puebla dated April 21, 2009, applying the jurisprudential thesis of the Supreme Court 2<sup>a</sup> / J. 124/2008, which establishes that the complainant of an administrative complaint against a public servant has no legal interest to challenge the resolution that dismisses the claim to formally initiate the procedure. The Commission understands that, on this point, the alleged victim was unable to claim in court the administrative decisions destined to punish the person who was the author of the alleged acts against him.

21. In relation to this same claim, the alleged victim went to the First District Court for Commercial Matters of the Sixth Circuit, demanding payment of the advertising invoices owed, which decided, through a judgment of May 15, 2012, that the Directorate General of Social Communication of the Executive of the state of Puebla had to pay him a part of the amount demanded, for a total of 206 thousand pesos. The petitioner filed a direct amparo lawsuit against that judgment, due to his disagreement with the decision on the amount to be paid for the advertising bills owed, which was rejected on August 16, 2012, and later promoted the settlement

of the judgment to quantify the payment that should be received according to the judgment of the commercial court. The Commission understands that with the rejection of the direct amparo lawsuit, the requirement of exhaustion of domestic remedies is considered to have been fulfilled on this point. Regarding the State's questioning of the fact that the exhaustion occurred after the petition was submitted, the IACHR reiterates its constant position according to which the situation that must be taken into account to establish whether domestic remedies have been exhausted is the one that exists when deciding on admissibility, since the time of the presentation of the complaint and the time of the pronouncement on admissibility are different<sup>4</sup>.

22. In this regard, with respect to the exhaustion of domestic remedies referring to the failure to pay the advertising bills owed, the Commission highlights that the petition was received on September 4, 2009, the alleged facts that were the subject of the claim took place since 2006 and domestic remedies were exhausted on August 16, 2012 with the rejection of the direct amparo filed against the judgment of the First District Court for Commercial Matters of the Sixth Circuit. Therefore, in view of the context and characteristics of the present case, the Commission considers that the petition was presented within a reasonable period of time and that the admissibility requirement regarding the period for submission is considered satisfied.

## VII. COLORABLE CLAIM

23. The petitioning party maintains that the State is responsible for the violation of the alleged victim's human rights, as a result of the series of reprisals that he suffered due to a publication in his newspaper, the failure to pay his bills for publicity, threats and verbal attacks by a public official, the lack of due diligence in the investigation and punishment of the alleged perpetrator of the alleged threats, and the lack of suitable resources to claim his rights<sup>5</sup>.

24. In turn, the Mexican State indicates that the alleged facts do not characterize human rights violations because: i) in the criminal proceeding initiated by the alleged victim with respect to the alleged threats, domestic remedies were not exhausted; ii) the petition did not meet the requirement of the deadline for submission, since the decision that ended the criminal proceeding was issued on June 15, 2007, and it was notified on July 2, 2007; iii) the alleged victim submitted the matter to the IACHR before initiating the commercial oral proceeding through which he requested the payment of advertising agreements entered into between his newspaper and the Government of the State of Puebla; and iv) the petition is void of substance since said payments have already been made and the administrative responsibility of the public official involved in the alleged events has already been declared.

25. Taking into account the previous analysis on domestic remedies, this section will not analyze the allegation regarding the threats and verbal attacks that the petitioner had suffered from a public official.

26. On the other hand, the IACHR observes that, between 2006 and 2012, the petitioner was denied payment of a series of invoices for advertising agreements entered into between his newspaper and the government of the state of Puebla. Faced with this situation, which the petitioner describes as an attempt to silence and retaliate for his journalistic activity, he was forced to remove the "Periódico de Puebla, Expresión Ciudadana!" from circulation. The IACHR observes that it was not until 2012, after the judgment of the commercial court, that Mr. Sánchez Martínez received the payment of a part of the amount owed, which he argues, he had to accept in order to survive.

27. Likewise, the IACHR observes that the remedies for amparo filed by the alleged victim have been rejected applying the jurisprudential thesis of the Supreme Court 2<sup>a</sup> / J. 124/2008, which establishes that the complainant of an administrative complaint against a public servant has no legal interest to challenge the resolution that declares it inadmissible. Therefore, in the merits stage, it will be evaluated whether the alleged victim had the appropriate and effective remedies to claim his rights, especially, given the impossibility of claiming in court the administrative decisions destined to punish whoever was the author of the alleged facts against him.

<sup>4</sup> See, among others, IACHR. Report 4/15, Admissibility, Petition 582/01, Raúl Rolando Romero Feris, Argentina, January 29, 2015, para. 40.

<sup>5</sup> See the rights invoked in section I of this report.



28. Based on the foregoing, after examining the factual and legal elements presented by the parties, the Commission considers that the allegations of the petitioning party are not manifestly unfounded and require a substantive study since the alleged facts, if corroborated as true, could characterize violations of Articles 8 (right to a fair trial), 13 (freedom of thought and expression), and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

29. Regarding the claim on the alleged violation of the rights enshrined in Articles 5 (right to humane treatment), 10 (right to compensation), 11 (right to privacy), 14 (right of reply), and 24 (right to equal protection) of the Convention, the Commission observes that the petitioning party has not offered support that allows it to consider *prima facie* their possible violation.

#### **VIII. DECISION**

1. To declare this petition admissible in relation to Articles 8, 13 and 25 of the American Convention, in relation to its Articles 1.1 and 2;

2. To declare this petition inadmissible in relation to Articles 5, 10, 11, 14 and 24 of the American Convention, in relation to its Articles 1.1 and 2; and

3. To notify the parties of this decision; to continue with the analysis on the merits of the matter; 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 24<sup>th</sup> day of the month of November, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.