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**REPORT No. 215/24**  
**PETITION 1800-14**  
REPORT ON ADMISSIBILITY

DANIEL SOSA GARCÍA  
MEXICO

Approved electronically by the Commission electronically on November 28, 2024.

**Cite as:** Report No. 215/24. Petition 1800-14. Admissibility. Daniel Sosa García. Mexico.  
November 28, 2024.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Daniel Sosa García y José Rubén Romero y Romero
<b>Alleged victim:</b>	Daniel Sosa Garcia
<b>Respondent State:</b>	Mexico <sup>1</sup>
<b>Rights invoked:</b>	Articles 7 (personal liberty), 8 (right to a fair trial), 9 (legality and retroactivity), 10 (compensation), 11 (protection of honor and dignity), and 25 (judicial protection) of the American Convention on Human Rights <sup>2</sup> , in relation to Article 1(1) (obligation to respect rights); and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture <sup>3</sup> ; and other international instruments <sup>4</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>5</sup>**

<b>Filing of the petition:</b>	December 23, 2014
<b>Additional information received at the stage of initial review:</b>	January 8, 2019 <sup>6</sup>
<b>Notification of the petition to the State:</b>	November 30, 2022
<b>State's first response:</b>	January 29, 2024 <sup>7</sup>
<b>Additional observations from the petitioner:</b>	July 31, 2023
<b>Notification of the possible archiving of the petition:</b>	October 28, 2022
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	November 16, 2022

**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, the American Convention (deposit of the instrument of accession on March 24, 1981) and the Inter-American Convention to Prevent and Punish Torture (deposit of the instrument of ratification on June 22, 1987)

<sup>1</sup> Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner José Luis Caballero Ochoa, a Mexican national, did not participate in the debate or decision in this case.

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

<sup>3</sup> Although the petitioner, who is not a lawyer and has personal recourse to the IACHR, does not expressly invoke these articles of the American Convention on Human Rights and the Inter-American Convention to Prevent and Punish Torture in formulating his claims, it is clear from a careful reading of the petition and the additional observations that it is these rights that are alleged to have been violated by the Mexican State.

<sup>4</sup> The petitioner invokes the Universal Declaration of Human Rights.

<sup>5</sup> The observations submitted by each party were duly transmitted to the opposing party.

<sup>6</sup> On June 12, 2015, the IACHR asked the petitioner additional questions. In the absence of a response, the request for information was reiterated on October 24, 2017.

<sup>7</sup> The Commission reiterated the request for information from the State in a letter dated June 21, 2023.

#### 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 (humane treatment), 7 (personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention, in relation to Article 1(1) (obligation to respect rights); and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture
Exhaustion of domestic remedies or applicability of an exception to the rule:	Partially, under the terms of section VI
Timeliness of the petition:	Partially, under the terms of section VI

#### V. FACTS ALLEGED

##### The petitioner

1. The petitioner requests that the Mexican State be declared internationally responsible for the violation of the human rights of Mr. Daniel Sosa García (hereinafter also "the alleged victim" or "Mr. Sosa"), for having deprived him of his liberty for 14 months, as a result of an arrest warrant that he considers unlawful, in a proceeding in which he was finally released. In addition, he denounces the physical and psychological abuse that he received at the time of his capture by police agents.

2. The petitioner states that the company Concomsa Ramo S.A. (hereinafter "Concomsa" or "the company") had a contract with the City Council of Zacatelco, state of Tlaxcala, to carry out the public work "*Construction, Expansion, Remodeling and Conditioning of Logistics Facilities of the General Ignacio Bonilla V Municipal Market*". To that end, on October 25, 2013, they subcontracted Mr. Daniel Sosa García as an industrial mechanical engineer, so that he could provide his services from October 23 to December 30 of that year, in specific tasks.

3. However, on December 21, 2013, the company filed a complaint with the Investigative Public Prosecutor's Office attached to the Directorate of Preliminary Investigations of the Attorney General's Office of the state of Tlaxcala, accusing him of fraud<sup>8</sup>. Concomsa claimed a 30% delay in the agreed work and a deficit of 1,135,746.50 Mexican pesos<sup>9</sup>, stating that Mr. Sosa abandoned the work without just cause.

4. Thus, the Public Prosecutor's Office initiated preliminary investigation 44/2014/ZAC.2; and on April 7, 2014, it issued a letter requesting the Third Criminal Judge of the Judicial District of Guridi and Alcocer de Tlaxcala (hereinafter "Third Criminal Judge") to issue an arrest warrant against Mr. Sosa. In that document, it stated that the alleged victim acted with malice and had made the company believe that he would complete the work when in reality he was seeking to obtain "*an undue profit by framing his conduct in the crime of specific fraud.*" In addition, he maintained that "*the body of the crime was fully proven*" in accordance with the requirements of the Code of Criminal Procedure in force in Tlaxcala<sup>10</sup>. Consequently, on April 15, 2014, the Third Criminal Judge issued an arrest warrant for the probable crime of specific fraud.

<sup>8</sup> Found in the circumstantial report 979/2013/ZAC-1.

<sup>9</sup> According to the website of the Ministry of the Interior, the Official Gazette of the Federation, on December 17, 2013, would represent 87,743.76 USD. Reviewed on October 1, 2024 at the link: [https://dof.gob.mx/indicadores\\_detalle.php?cod\\_tipo\\_indicador=158&dfecha=01/01/2013&hfecha=31/12/2013#gsc.tab=0](https://dof.gob.mx/indicadores_detalle.php?cod_tipo_indicador=158&dfecha=01/01/2013&hfecha=31/12/2013#gsc.tab=0)

<sup>10</sup> Referring to Articles 62, 71 (sections III and IV), and 73. Namely: Article 62.- The body of the crime shall be considered proven when the existence of the material elements that constitute the criminal act is justified. These material elements shall be proved with any of the means of proof established by law. Article 71.- In cases of theft, the body of the crime may be proven in one of the following ways:

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5. On June 9, 2014, Mr. Sosa was arrested in the state of Puebla, he says that two people dressed as civilians aggressively approached him, handcuffed him and ordered him to remain silent while they tried to put him in a vehicle. He screamed for help, exclaiming that he was being kidnapped, but in response the two people who were arresting him began to beat him in the stomach. Some witnesses tried to help him and called the police, then a police officer approached asking what was happening, to which the two people who forced him identified themselves as members of the ministerial police, pointing out that they had an arrest warrant against Mr. Sosa, and that he "*was a very dangerous criminal.*" The law enforcement official requested that they show her the arrest warrant, but they refused and complained that she "*was interfering with their work.*" At that moment, the captors increased the violence against the alleged victim, offending him, threatening him and dragging him through a square; warning him that if he continued with the "*scandal*" he would be killed. When they arrived at the vehicle where they would transport him, the policewoman returned with reinforcements and again demanded that the ministerial agents identify themselves. One of them did so and asked them not to obstruct the process, after which they started the car and left the place.

6. The alleged victim denounces that in the vehicle "*they took him for a ride*", tortured him, stripped him of his money, bank cards and official identification. In addition, they demanded information about his wife and children. He claims to have heard that they would take him to the building of the Secretariat of Communications and Transportation of Puebla to deliver him to the commander of the Ministerial Police. When they got him out of the car, they were already in the state of Tlaxcala, in the center of the capital. There he was put in a van with other police officers who removed his handcuffs but continued with the death threats. On the way, they allowed him to make a call to inform his family about his whereabouts. Mr. Sosa was finally transported to the Tlaxcala Attorney General's Office building, where he was examined by a doctor and gave a statement – however, the petitioner does not provide details about the examination he underwent or about the ministerial statement.

7. The petitioner alleges that during the arrest the authorities did not act impartially or fairly, and that at the time of arresting the alleged victim, the agents of the Tlaxcala Judicial Police did not have any written authorization that was valid in the territorial jurisdiction where he was detained, that is, issued by the Office of the Attorney General of the State of Puebla.

8. Subsequently, on June 15, 2014, the Third Criminal Judge, in case no. 137/2014, issued a formal arrest warrant against Mr. Sosa for the crime of specific fraud, to the detriment of Concomsa. The judge established bail in the amount of one million Mexican pesos<sup>11</sup>, a sum that the alleged victim could not pay, so he was transferred to the Apizaco Social Reintegration Center.

#### *Appeals and complaints filed after the arrest warrant*

##### *a) Indirect amparo 806/2014 before the Second District Court in the state of Tlaxcala*

9. On June 23, 2014, against the order of arrest warrant, the alleged victim filed the indirect amparo proceeding No. 806/2014 before the Second District Court of Tlaxcala. In the amparo it argued that: i) the alleged victim was detained in Puebla by police officers who did not identify themselves, nor did they inform him of the reason for his detention; and (ii) there was a violation of the principle of legality and material incompetence of the criminal judge when issuing the arrest warrant, since fraud can only be constituted between the complainant and the municipality that contracted the work, without involving the alleged victim, who was a subcontractor.

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III.- With proof of the pre-existence, ownership, and subsequent lack of the stolen thing. IV.- In the case of the previous section, if the verification of the circumstances listed therein, as well as the moral, social and pecuniary background of the victim, results in sufficient indications, in the opinion of the judge, to consider the existence of the theft proven, this will be sufficient to consider the body of the crime proven.

Article 73.- The corpus of the crimes of embezzlement, breach of trust, and fraud may be considered proven in the manner established in section I of Article 71.

<sup>11</sup> According to the website of the Ministry of the Interior, the Official Gazette of the Federation, by that date, would represent USD\$. 76,826.16. Revised on October 7, 2024 at the link: [https://dof.gob.mx/indicadores\\_detalle.php?cod\\_tipo\\_indicador=158&dfecha=01/01/2014&hfecha=31/12/2014#gsc.tab=0](https://dof.gob.mx/indicadores_detalle.php?cod_tipo_indicador=158&dfecha=01/01/2014&hfecha=31/12/2014#gsc.tab=0)

10. The petitioner, in the presentation of direct amparo 806/2014, narrated the following about the arrest on June 9, 2014:

[It happened] without identifying the police and without informing me of the cause of the arrest, they did not show me the written order of the competent judge, so I screamed for help because I thought it was a kidnapping, so some police officers arrived [...] who are from the Auxiliary Police Corporation of Citizen Protection, to whom one of the policemen who arrested me told them that he was a ministerial policeman<sup>12</sup>.

11. After filing indirect amparo No. 806/2014, the Second District Court of Tlaxcala issued an order of June 24, 2014, asking the petitioner to clarify the act complained of in the amparo, with the warning that if the prevention was not carried out in a timely manner, the amparo application would be admitted only for the arrest warrant. In response, on July 4, 2014, the petitioner stated: "*I come to specify that the act complained of is only the order of formal imprisonment.*"

12. On March 23, 2015, the Second Court issued a judgment and granted the amparo to the alleged victim, pointing out that the procedural requirement required by Article 8 bis, section XIV, of the Code of Criminal Procedure of Tlaxcala<sup>13</sup>, which requires that there be a complaint for the investigation of the crime of fraud, had not been met. Because the market to be built was a public work financed with public resources, the damage fell on the State's patrimony, which was the only one entitled to file such a complaint. Thus, concluding that the order of formal imprisonment lacked legal basis and violated the guarantee of legality, for which reason the court issued the order of release for the alleged victim.

13. Dissatisfied with this amparo decision, on June 23, 2015, the company filed an appeal for review, no. 195/2015, before the First Collegiate Court of the Twenty-Eighth Circuit; however, on August 13, 2015, this instance confirmed the appealed decision.

*b) Request for a report from the Auxiliary Police Corporation for Citizen Protection of the state of Puebla*

14. This Commission notes that on June 27, 2014, the petitioner requested a report from the Auxiliary Corporation of the Citizen Protection Police of the state of Puebla, requesting a report on the day on which the alleged victim was arrested. He requested the name of the police officers involved and a narrative of the actions that were carried out in the arrest. The petitioner points out that the request was never answered.

*c) Complaint to the Council of the Judiciary of the government of the state of Tlaxcala*

15. On August 28, 2015, Mr. Sosa filed a brief to the Council of the Judiciary of Tlaxcala denouncing the Third Criminal Judge for his actions in process no. 137/2014. It argued that he should not have issued the arrest warrant considering that the complaint required in the crime was not complied with; and that once the process was opened, it failed to notice that the requirements of the crime were not specified, despite the fact that it had evidence and arguments that indicated it. Therefore, Mr. Sosa continues, the judge committed a fault in his service, generating psychological and economic consequences. However, the Council of the Judiciary ruled that there was no wrongdoing by the Third Criminal Judge – none of the parties contributes this decision of the Council of the Judiciary to the present proceedings.

*d) Human Rights Commissions*

16. On May 25, 2018, Mr. Sosa filed a complaint with the State Human Rights Commission of Tlaxcala about the actions of the Third Criminal Judge; however, on July 4, 2018, this entity informed the alleged

<sup>12</sup> Found in the petition file, in a copy of a document dated June 27, 2014, when the petitioner requested a report from the Auxiliary Police Corporation for Citizen Protection of the state of Puebla.

<sup>13</sup> Article 8 bis. The crimes that require the investigation of the complaint are the following: [...] XIV. Fraud [...]

victim that it was not competent to hear the complaint, since it was pending a judicial resolution – the parties do not provide a copy of this decision.

17. Against this resolution, the alleged victim went to the National Human Rights Commission on October 1 of that year, arguing that the refusal of the state commission caused him grievances. On January 29, 2019, the federal entity informed the alleged victim that they would request a report from the state commission. However, what happened subsequently is unknown, since neither the petitioner nor the State narrates what happened, nor do they submit documentation in this regard.

*Specific arguments of the petitioner*

18. Mr. Sosa complains that the Third Criminal Judge violated his rights to personal liberty, protection and judicial guarantees because he did not properly analyze the preliminary investigation and incompetently issued a formal arrest warrant without there being a complaint from the affected party and only with the company's complaint. Consequently, Mr. Sosa was deprived of liberty for 14 months, with a possibility of bail that was impossible for him to assume. It also points out that what happened, from the beginning, was not a criminal matter but a civil dispute between the parties, as it was regulated by a private contract. He also denounces his detention through torture and threats (against him and his family) by judicial agents who apprehended him in a state other than that of their jurisdiction.

19. Thus, Mr. Sosa concludes, the State must grant him compensation for what happened, both for the criminal proceedings that he considers unlawful, and for the unjust deprivation of his liberty for 14 months.

**The Mexican State**

20. The State presents a brief summary of the process that the alleged victim followed in the domestic jurisdiction and maintains that the IACHR should declare the petition inadmissible because, in its opinion, the doctrine of the "fourth instance" is configured, and because it considers that domestic remedies have not been exhausted.

21. With regard to the lack of characterization, Mexico considers that the alleged violation of the failure to observe the elements of the crime was addressed in the domestic courts, when indirect amparo No. 806/2014 before the Second District Court in the State of Tlaxcala, on June 23, 2014. The State considers that Mr. Sosa did exhaust the domestic remedies available to complain but asserts that there is no longer any violation of his procedural rights.

22. Mexico also maintains that the alleged victim never informed the appropriate authorities of the alleged violations resulting from: (a) the damage to liberty and humane treatment, as well as to due process, after his imprisonment for more than 14 months; b) the psychological and emotional damage caused by being prosecuted for unproven facts; and (c) the right to compensation for the alleged damage resulting from these transgressions. Thus, the State argues that it did not have the opportunity to rule on the matter, so domestic remedies were not exhausted.

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

23. The IACHR recalls that according to its practice, in order to identify the appropriate remedies that should have been exhausted by a petitioner before resorting to the Inter-American System, the first methodological step in the analysis consists of distinguishing the various claims formulated in the corresponding petition in order to proceed to their individualized<sup>14</sup> examination. In the instant case, the

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<sup>14</sup> By way of illustration, see the following IACHR reports: Report No. 117/19, Petition 833-11, Admissibility, Released Workers of the Boa-Fé Caru Farm, Brazil, June 7, 2019, paras. 11 and 12; Report No. 4/19, Petition 673-11, Admissibility, Fernando Alcântara de Figueiredo and Laci Marinho de Araújo, Brazil, January 3, 2019, paras. 19 et seq.; Report No. 164/17, Admissibility, Santiago Adolfo Villegas Delgado, Venezuela, November 30, 2017, para. 12; Report No. 57/17, Petition 406-04, Admissibility, Washington David Espino Muñoz,

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petitioner alleges: (i) that an arrest warrant was issued against Mr. Sosa without perfecting the elements of the crime of which he was accused. This led to his violent and arbitrary detention by ministerial police officers who acted outside his territorial jurisdiction, as well as the deprivation of his liberty in preventive detention for a period of 14 months; and (ii) the lack of compensation by the State after incurring in such acts.

*Regarding point (i):*

24. As decided in previous pronouncements<sup>15</sup>, the IACHR considers that the appropriate remedies to exhaust in cases where violations of procedural guarantees and other human rights are alleged during judicial proceedings are, as a general rule, those remedies provided by national procedural legislation that allow challenges, during the questioned process itself, to the actions and decisions taken in its development, particularly the ordinary judicial remedies available or the extraordinary ones if these were pursued by the alleged victims of the violations of procedural guarantees to assert their rights. Similarly, the Commission has stated that, to protect the right to personal liberty in cases of alleged violation, habeas corpus or tutela actions are also appropriate remedies<sup>16</sup>.

25. Both the petitioner and the State provided consistent information regarding the domestic criminal proceedings conducted against Mr. Sosa. Both parties indicate that the alleged victim filed an amparo proceeding (No. 806/2014), whose ruling was issued on June 23, 2014, by the Second District Court of Tlaxcala. This ruling was favorable to the alleged victim, ordering his release. Subsequently, they report that Concomsa filed a review appeal, which was upheld on August 13, 2015, by the First Collegiate Court of the Twenty-Eighth Circuit. In this regard, through the means provided by the procedural criminal legislation in force, it is noted that Mr. Sosa indeed exhausted the appropriate remedies to seek the protection of his right to personal liberty.

26. In the present petition, it is noted that the petitioner specifically denounces the deprivation of liberty of Mr. Sosa in a criminal proceeding that he considers flawed and unjust. The petitioner has not alleged at any time that the amparo ruling was not resolved in Mr. Sosa's favor; on the contrary, it is evidenced that the amparo was addressed and decided on its merits in a timely manner by the judge, and that following the favorable ruling, the alleged victim was released after 14 months of imprisonment. However, despite the positive outcome of the ruling, there is no indication that the issue raised in point (i) of the petition was addressed, that is, the time during which the alleged victim was deprived of his liberty as a result of an arrest warrant issued without fulfilling the elements of the crime.

27. Consequently, the Commission concludes that the domestic remedies were exhausted on August 13, 2015, with the decision on the review appeal, which confirmed the indirect amparo. Therefore, the petition complies with Article 46(1)(a) of the American Convention. In addition, considering that the petition was submitted to this Commission on December 23, 2014, and that the decision on this matter was finalized while the petition was under admissibility study, it also meets the requirement set forth in Article 46(1)(b) of the Convention.

28. On the other hand, with respect to the alleged torture and threats of June 9, 2014 by police officers against the alleged victim, which began in the state of Puebla and ended in the city of Tlaxcala, this Commission notes that the alleged victim reported the acts of violence against him in the brief filing of amparo appeal 806/2014 before the Second District Court of the state of Tlaxcala; and when he requested a report on the activities of the police officers from the Auxiliary Police Corporation for Citizen Protection of the state of

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Dominican Republic, June 5, 2017, paras. 26, 27; Report No. 168/17. Admissibility, Miguel Ángel Morales Morales, Peru, December 1, 2017, paras. 15-16; Report No. 122/17, Petition 156-08, Admissibility, Williams Mariano Paría Tapia, Peru, September 7, 2017, paras. 12 et seq.; Report No. 167/17, Admissibility, Alberto Patishtán Gómez, Mexico, December 1, 2017, paras. 13 et seq.; o Report No. 114/19, Petition 1403-09, Admissibility, Carlos Pizarro Leongómez, María José Pizarro Rodríguez and their relatives, Colombia, June 7, 2019, paras. 20 et seq.

<sup>15</sup> By way of illustration, see the following IACHR reports: Report No. 92/14, Petition P-1196-03, Admissibility, Daniel Omar Camusso and Son, Argentina, November 4, 2014, paras. 68 et seq.; Report No. 104/13, Petition 643-00, Admissibility, Hebe Sánchez de Améndola and Daughters, Argentina, November 5, 2013, paras. 24 et seq.; Report No. 85/12, Petition 381-03, Admissibility, S. and Others, Ecuador, November 8, 2012, paras. 23 et seq.

<sup>16</sup> IACHR Report No. 16/08, Petition 12.359, Admissibility, Cristina Aguayo Ortiz and Others, Paraguay, March 6, 2008, para. 79.

Puebla. For its part, the Mexican State asserts that domestic remedies were not exhausted since the appropriate authorities were not informed of these alleged violations, so it did not have the opportunity to study them.

29. On this occasion, it is recalled that the Inter-American Court has highlighted the duty of the State to investigate possible acts of torture or other cruel, inhuman, or degrading treatment<sup>17</sup>. It has also been clarified that there are two cases that trigger the State's duty to investigate: on the one hand, when a complaint is filed, and, on the other, when there is a well-founded reason to believe that an act of torture has been committed within the scope of the State's jurisdiction. In these situations, the decision to initiate and carry out an investigation does not fall on the State, that is, it is not a discretionary power, but rather the duty to investigate constitutes an imperative State obligation that derives from international law and cannot be rejected or conditioned by domestic acts or normative provisions of any kind<sup>18</sup>.

30. In the present petition, given that Mr. Sosa informed the Second District Court in the state of Tlaxcala about the violent events in the arrest and also the Auxiliary Police Corporation for Citizen Protection of the state of Puebla, the IACHR reasons that the State was brought to the attention of the facts and that this would represent a sufficient basis for the State's obligation to investigate them promptly and impartially. In addition, as the Inter-American Court has pointed out, even when the acts of torture or cruel, inhuman, or degrading treatment have not been reported to the competent authorities by the victim himself, in any case in which there are indications of their occurrence, the State must immediately initiate an impartial, independent, and thorough investigation to determine the nature and origin of the injuries observed. identify those responsible and initiate their processing<sup>19</sup>.

31. Considering the foregoing, the Commission observes that the State did not report whether it began an investigation into the alleged acts of torture, threats, ill-treatment, and arbitrary detention to which Mr. Sosa was allegedly subjected. In view of the foregoing, and in line with the precedents of the inter-American system, the Commission considers that the exception to the rule of prior exhaustion provided for in Article 46(2)(c) of the Convention is applicable. With respect to the requirement of the deadline for filing, the Commission observes that the facts denounced occurred in June 2014 when Mr. Sosa was arrested and threatened; and that the consequences of such events, such as the lack of investigation and punishment of those responsible, would continue to the present. Thus, taking into account that this petition was filed on December 23, 2014, the Inter-American Commission considers that the petition was filed within a reasonable period of time, under the terms of Article 32(2) of the IACHR's Rules of Procedure.

*Regarding point (ii):*

32. Finally, with respect to point relating to compensation for the arrest and criminal prosecution of Mr. Sosa, neither the petitioner nor the State adequately reports on the remedies filed or administrative proceedings initiated in this regard. Although both parties report that on August 28, 2015, the alleged victim filed an administrative complaint with the Council of the Judiciary of the government of the State of Tlaxcala, pointing to the Third Criminal Judge for his actions within process no. 137/2014, none of the parties sent relevant information on the final decision of the Council of the Judiciary. The petitioner only mentions that the

<sup>17</sup> I/A Court H.R., Case of Vélez Looor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2010, Series C No. 218, paragraph 240, which states: "*In accordance with Article 1(1) of the American Convention, the obligation to guarantee the rights recognized in Articles 5(1) and 5(2) of the American Convention implies the duty of the State to investigate possible acts of torture or other cruel treatment, inhuman or degrading. This obligation to investigate is reinforced by the provisions of Articles 1, 6 and 8 of the Convention against Torture, which oblige the State to take effective measures to prevent and punish torture within its jurisdiction, as well as to prevent and punish other cruel, inhuman or degrading treatment or punishment.*"

<sup>18</sup> Inter-American Court H.R., Case of Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 347; Inter-American Court H.R., Case of Escué Zapata v. Colombia, Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 165, para. 75; Inter-American Court H.R., Case of Bueno Alves v. Argentina, Merits, Reparations, and Costs, Judgment of May 11, 2007, Series C No. 164, para. 90; and Inter-American Court H.R., Case of Vélez Looor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2010, Series C No. 218, paragraph 240.

<sup>19</sup> Inter-American Court H.R., Case of Vélez Looor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2010, Series C No. 218, paragraph 240; I/A Court H.R., Case of Gutiérrez Soler v. Colombia, Merits, Reparations, and Costs, Judgment of September 12, 2005, Series C No. 132, paragraph 54; Inter-American Court H.R., Case of Bayarri v. Argentina, Preliminary Objection, Merits, Reparations, and Costs, Judgment of October 30, 2008, Series C No. 187, paragraph 92; and Inter-American Court H.R., Case of Bueno Alves v. Argentina, Merits, Reparations, and Costs, Judgment of May 11, 2007, Series C No. 164, para. 88.

council did not find any wrongdoing by the judge, but without specifying the date of the decision or explaining the meaning of the decision. Considering that the petitioner has not presented any judicial remedy as such relating to reparations, the Commission concludes that none of the parties provides information that would allow it to verify compliance with the requirement of exhaustion of domestic remedies established in Article 46(1)(a) of the American Convention or the requirement of the deadline for submission established in Article 46(1)(b) of the same international instrument. in relation to this point.

## VII. ANALYSIS OF COLORABLE CLAIM

33. First, the Commission reiterates that the criterion for assessing the admissibility phase differs from that used to rule on the merits of a petition; At this stage, the IACHR must carry out a *prima facie* evaluation to determine whether the petition establishes the basis for the possible or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination on the characterization of violations of the American Convention constitutes a primary analysis, which does not imply prejudging the merits of the case. For purposes of admissibility, the Commission must decide whether the alleged facts can establish a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or "manifestly out of order," in accordance with Article 47(c) of the American Convention.

34. In the present case, the alleged victim states that there was a clear atypicality of the criminal conduct with which he was accused, as was later demonstrated in the domestic courts – with the indirect amparo judgment No. 806/2014, issued on June 23, 2014 by the Second District Court in the State of Tlaxcala. This resulted in the alleged victim being detained in irregular conditions, with cruel and inhuman treatment and disproportionate use of force, by police officers who were acting outside their jurisdiction; and that he remained in preventive detention for 14 months.

35. The State, for its part, alleges a lack of characterization, since the amparo was resolved in favor of the alleged victim on March 23, 2015, when the Second District Court of Tlaxcala granted him freedom, recognizing that the requirements of the crime were not met. Thus, Mexico concludes that the facts denounced have already been addressed in the domestic court and were favorable to the petitioner, so that, in its opinion, there is no violation of this petition.

36. The Inter-American Commission has adopted a uniform and consistent stance, asserting its competence to declare a petition admissible and decide on its merits in cases related to domestic proceedings that may violate the rights protected by the American Convention. Conversely, when a petition challenges the content, evidentiary evaluation, or judicial reasoning contained in a final ruling, adopted in compliance with due process and the other guarantees established in the Convention, the IACHR is not called to reexamine what was resolved domestically by national judges<sup>20</sup>. In the case under review, the Commission observes that the petition does not dispute that the indirect amparo (No. 806/2014) ultimately favored Mr. Sosa, granting him release. Instead, it clearly alleges possible violations of the American Convention committed during the criminal proceedings against him and specifically points out violations of his personal integrity and liberty arising from certain decisions issued by domestic courts.

37. In this sense, and without prejudging the merits of the case, the allegations raised by the petitioner warrant further examination on the merits for the following reasons:

- (i) It is unclear whether due process guarantees were respected, as neither in preliminary investigation 44/2014/ZAC.2 nor in the issuance of the arrest warrant by the Third Criminal Judge is there evidence of a diligent analysis confirming the establishment of all elements of

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<sup>20</sup> IACHR Report No. 122/19, Petition 1442-09, Admissibility, Luis Fernando Hernández Carvajal and Others, Colombia, July 14, 2019; IACHR Report No. 116/19, Petition 1780-10, Admissibility, Carlos Fernando Ballivián Jiménez, Argentina, July 3, 2019, para. 16; and IACHR Report No. 111/19, Petition 335-08, Admissibility, Marcelo Gerardo Pereyra, Argentina, June 7, 2019, para. 13.

the crime for which Mr. Sosa was accused. As a result, the alleged victim was deprived of liberty in pretrial detention for more than a year.

- (ii) Mr. Sosa reported to state authorities the inhumane treatment he suffered at the hands of police officers during his detention. However, there is no indication that these allegations were examined in accordance with applicable Inter-American legal standards, which warrants a substantive analysis beyond the *prima facie* evaluation stage typical of the admissibility phase.

38. By virtue of the foregoing, the IACHR considers that, if the alleged responsibility of the State for these acts is proven, it could be characterized as violations of the rights protected in Articles 5 (right to humane treatment), 7 (personal liberty), 8 (right to a fair trial), and 25 (judicial protection) of the American Convention, in conjunction with Article 1(1) (obligation to respect rights); and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Daniel Sosa García, which merits an in-depth study.

39. Finally, with respect to the alleged violation of Articles 9 (legality and retroactivity), 10 (right to compensation), and 11 (protection of honor and dignity), the Commission considers that no evidence has been provided to demonstrate a *prima facie* violation.

### **VIII. DECISION**

1. To declare this petition admissible in relation to Articles 5, 7, 8, and 25 of the American Convention, in conjunction with Article 1(1) thereof; and in relation to articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To declare this petition inadmissible in relation to Articles 9, 10, and 11 of the American Convention.

3. To notify the parties of this decision; to proceed to the analysis of merits; and 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 28<sup>th</sup> day of the month of November, 2024. (Signed:) Roberta Clarke, President; Arif Bulkan, Andrea Pochak, and Gloria Monique de Mees, Commissioners.