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**REPORT No. 153/20**  
**PETITION 1256-10**  
REPORT ON ADMISSIBILITY

EDGAR EDUARDO ACERO ACOSTA  
COLOMBIA

Approved electronically by the Commission on June 17, 2020.

**Cite as:** IACHR, Report No. 153/20, Petition 1256-10. Admissibility. Edgar Eduardo Acero Acosta. Colombia. June 17, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Edgar Eduardo Acero Acosta and Andrea Acero Guevara
<b>Alleged victim:</b>	Edgar Eduardo Acero Acosta
<b>Respondent State:</b>	Colombia
<b>Rights invoked:</b>	Article 8 (right to a fair trial) of the American Convention on Human Rights <sup>1</sup> and other international treaties. <sup>2</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	September 3, 2010
<b>Additional information received at the stage of initial review:</b>	April 4, 2012, June 6, 2014, and July 28, 2014
<b>Notification of the petition to the State:</b>	November 17, 2015
<b>State's first response:</b>	May 27, 2016
<b>Additional observations from the petitioner:</b>	November 9, 2016, September 6, 2017, and October 27, 2019
<b>Additional observations from the State:</b>	June 15, 2018

**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 (instrument of ratification deposited on July 31, 1973)

**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>	Articles 8 (right to a fair trial) and 25 (judicial protection) of the American Convention, in conjunction with Article 1.1 (obligation to respect rights) thereof
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, September 2, 2010
<b>Timeliness of the petition:</b>	Yes

<sup>1</sup> Hereinafter "the American Convention" or "the Convention".

<sup>2</sup> International Covenant on Civil and Political Rights, Article 14.

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. The petitioner and alleged victim, Edgar Eduardo Acero Acosta, requests the Commission to declare the Colombian State internationally responsible for violations of the judicial guarantees due to the alleged irregularities that occurred in the framework of a criminal proceeding against him.

2. The petitioner states that he was detained on March 29, 2005 by order issued by the Espinal Tolima Prosecutor's Office 30, which considered him to be an alleged co-author of the crime of aggravated homicide in conjunction with qualified and aggravated theft, and illegal carrying of weapons, for events that occurred on October 31, 2003. The petitioner alleges that his right of defense was violated during the investigation phase, because after the resignation of his defense attorney, during an custodial interrogation procedure, the prosecution arbitrarily replaced his new defense attorney with another public defender, who showed up in the middle of said proceeding. The petitioner further indicates that the Public Defender's Office did not authorize this public defender, since the prosecution had not previously requested the Municipal Ombudsman to appoint a public defender. Therefore, he argues that this replacement was an arbitrary act of the prosecution.

3. The petitioner further alleges that this and other ex-officio attorneys who succeeded him in his defense did not conduct a real and adequate technical defense during the investigation, abandoning it without requesting evidence or closing arguments and, consequently, making it impossible to overcome the accusation. Mr. Acero indicates that his right of defense was also violated because during the investigation he did not have access to copies of the summary file in order to prepare a material defense.

4. The petitioner argues that the prosecution did not collect any of the evidence requested by him to exercise his right of defense, violating the principle of comprehensive investigation; and that his right to the presumption of innocence was violated due to the insufficient collection of evidence that would prove his innocence, as well as other arbitrary acts committed by the prosecution. In particular, Mr. Acero refers to the custodial interrogation of another accused in the course of the criminal investigation, which contained a statement that would exonerate him.

5. In light of the alleged irregularities in the criminal process, the petitioner filed various actions, of reinstatement, of nullity, and actions for constitutional relief throughout the process; however, the judicial authorities denied all. The alleged victim states that he was convicted in the first instance on September 7, 2005, by the Second Criminal Court of the Espinal Circuit; and in second instance by the Superior Court of Ibagué, on May 13, 2008. Mr. Acero Acosta filed an extraordinary cassation appeal, which the Criminal Cassation Chamber of the Supreme Court of Justice resolved negatively on March 3, 2010, being notified on March 9, 2010. Additionally, against this decision, he filed an action for constitutional relief before the Civil Chamber of the Supreme Court of Justice, which was declared inadmissible on August 17, 2010, and was notified on September 2, 2010.

6. For its part, the State alleges the configuration of the "fourth instance" formula as grounds for inadmissibility, alleging that the petitioner intends to dispute the decisions made by the judges at the domestic level, resorting to the IACHR to act as a court of appeal to review these decisions, which were adopted with full respect for due process.

7. Regarding the alleged violations of due process brought by the petitioner, the State argues that, both the lack of an adequate technical defense and the aforementioned arbitrariness of the prosecution, as well as the alleged absence of the evidence requested by the petitioner and erroneous assessment of these, were arguments brought to the attention of the domestic judicial authorities and were analyzed at the different procedural stages, in compliance with the guarantees of due process.

8. The State affirms that the petitioner alleged on four occasions before the judicial authorities the same claims that he presents in his petition, this brief coinciding with the action for constitutional relief presented by Mr. Acero Acosta before the Supreme Court of Justice. The judicial authority in the first instance judgment analyzed the alleged irregularities to due process alleged by the petitioner. In reference to the lack

of technical defense and the violation of the principle of the integral investigation, the Judge considered that there was no violation, since the petitioner had a defense attorney at all times, being the defense's performance or strategy irrelevant. The Judge does not find a serious irregularity since the prosecution and the court made their best effort to define the facts with evidence. Regarding these allegations, the State maintains that the Supreme Court of Justice, in its resolution of March 3, 2010, warned that it could not affirm the absence of technical defense, since throughout the process there were sufficient actions in favor of Mr. Acero Acosta.

9. In conclusion, the State maintains that the internal decisions were made by competent, independent and impartial bodies that gave an adequate and effective response to the petitioner's claims, in accordance with the State's international obligations; therefore, it is not proven that the decisions are in violation of due process. To that extent, the State considers that the petition does not characterize possible violations of the Inter-American instruments, in accordance with Article 47 (b) and (c) of the Convention.

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

10. In the present case, it is observed that the criminal proceedings against the petitioner began in 2005, that same year he was convicted in the first instance. This sentence was later confirmed in the second instance, and from there he exercised as extraordinary remedies, the cassation appeal and the action for constitutional relief, which were rejected, being notified of the latter's decision on September 2, 2010. In this sense, it is observed that the State does not dispute the exhaustion of domestic remedies, and in light of the information provided by the parties this is not a point of controversy in the present case. Furthermore, it is observed that because the petition was presented on September 3, 2010, it complies with the six-month filing period, counted from the notification to the petitioner of the last decision that ends the process.

11. In conclusion, the Commission considers that the present petition meets the admissibility requirements established in Articles 46.1.a and 46.1.b of the American Convention.

## **VII. ANALYSIS OF COLORABLE CLAIM**

12. The Commission observes that the present petition fundamentally contains allegations regarding the violation of the judicial guarantees that occurred in the framework of the criminal proceeding against Mr. Edgar Eduardo Acero Acosta, in particular, the lack of an adequate technical defense for the alleged victim and the alleged arbitrariness of the prosecution in charge of the criminal investigation, as well as the alleged absence of evidence requested by Mr. Acero Acosta.

13. With respect to the State's allegations regarding the so-called "fourth instance" formula, the Commission reiterates that, for the purposes of admissibility, it must decide whether the alleged facts may characterize a violation of rights, as stipulated in Article 47 (b) of the American Convention, or if the petition is "manifestly unfounded" or "its total inadmissibility is evident", pursuant to subsection (c) of said article. The criteria for evaluating these requirements differs from that used to rule on the merits of a petition. Likewise, within the framework of its mandate, it is competent to declare a petition admissible when it refers to internal processes that could violate rights guaranteed by the American Convention. In other words, in light of the aforementioned conventional standards, in accordance with Article 34 of its Rules of Procedure, the admissibility analysis focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute *prima facie* violation of the American Convention.<sup>4</sup>

14. In this sense, the Commission observes that the petitioner's allegations are not manifestly unfounded and that they are expressed in terms that, if true, could in effect constitute, above all, violations of the judicial guarantees contained in the American Convention. The Commission does not ignore the fact that Mr. Acero Acosta's claims were also brought before the domestic courts, but this circumstance does not make them inadmissible, rather, it is required by the Commission that there be consistency between the claims made before the domestic courts and those raised in the petition. In this regard, the Commission observes *prima facie*

<sup>4</sup> IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Peru. December 4, 2018, para. 12.

that, although the judicial authority ruled on these allegations, it limited itself to verifying whether the alleged victim was formally given a technical defense, but would not analyze the quality of the exercise of this defense. The Commission emphasizes that the State must adopt all the appropriate measures so that the defense provided is effective, for which it is necessary for the defender to act diligently. The appointment of a public defender for the sole purpose of complying with a procedural formality would be equivalent to not having a technical defense<sup>5</sup>. In light of these standards, and the factual elements provided by the parties, the Commission considers that the present matter deserves to be examined with a higher level of scrutiny at the merits stage, without this implying a prejudgment of the object of the petition, which is alien to the object of this report.

15. In light of these considerations, the Inter-American Commission concludes that if the alleged facts are determined to be true, they could tend to establish violations of Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in relation to their Article 1.1 (obligation to respect rights), to the detriment of Mr. Edgar Eduardo Acero Acosta.

16. On the other hand, in relation to the International Covenant on Civil and Political Rights, the Commission lacks jurisdiction to establish violations of the norms of said treaty, without prejudice to which it may take it into account as part of its interpretative exercise of the norms of the American Convention in the merits stage of the present case, under the terms of Article 29 of the Convention.

### **VIII. DECISION**

1. To declare the present petition admissible in relation to Articles 8 and 25 of the American Convention on Human Rights, in relation to its Article 1.1; and

2. Notify the parties of this decision; to proceed to the analysis of the merits of the matter and include this decision 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 17<sup>th</sup> day of the month of June, 2020. (Signed): Joel Hernández (dissenting opinion), President; Antonia Urrejola, First Vice President; Flávia Piovesan (dissenting opinion), Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.

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<sup>5</sup> I / A Court H.R. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Exception, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 155.