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**REPORT No. 153/24**  
**PETITION 542-13**  
REPORT ON ADMISSIBILITY

AUGUSTO CÉSAR SERNA MERCHAN  
COLOMBIA

Adopted electronically by the Commission on September 20, 2024.

**Cite as:** IACHR, Report No. 153/24, Petition 542-13, Admissibility,  
Augusto César Serna Merchan, Colombia, September 20, 2024.

**I. INFORMATION ABOUT THE PETITION**

Petitioner(s)	Augusto César Serna Merchan
Alleged victim(s)	Augusto César Serna Merchan
Respondent State	Colombia <sup>1</sup>
Rights invoked	Articles 5 (humane treatment), 7 (personal liberty), 10 (right to compensation), 17 (rights of the family), and 22 (freedom of movement and residence) of the American Convention on Human Rights <sup>2</sup>

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

Filing of the petition	April 3, 2013
Additional information received at the stage of initial review	February 21, 2014; March 2, 2015; May 5, 2015; June 6, 2015; July 29, 2016; July 21, 2017; and November 8, 2017
Notification of the petition to the State	August 13, 2018
State's first response	June 13, 2019
Additional observations from the petitioner(s)	August 19, 2019
Additional observations from the State	June 28, 2021
Warning of possible archiving	January 23, 2024
Response of the petitioner to the warning of possible archiving	January 29, 2024

**III. COMPETENCE**

Competence <i>ratione personae</i>	Yes
Competence <i>ratione loci</i>	Yes
Competence <i>ratione temporis</i>	Yes
Competence <i>ratione materiae</i>	Yes, American Convention (instrument of ratification deposited on July 31, 1973)

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

Duplication of proceedings and international <i>res judicata</i>	No
Rights declared admissible	Articles 5 (humane treatment), 8 (fair trial), 22 (freedom of movement and residence), and 25 (judicial protection) of the American Convention, taken in conjunction with Article 1(1) thereof (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule	Yes, as referred to in Section VI
Timeliness of the petition	Yes, as referred to in Section VI

<sup>1</sup> Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Carlos Bernal Pulido, a Colombian national, did not participate in the discussion or decision in this matter.

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

<sup>3</sup> The observations of either party were duly forwarded to the opposing party.

## V. POSITIONS OF THE PARTIES

### *Petitioner*

1. Mr. Serna, as the alleged victim and petitioner, claims that the National Liberation Army (ELN) kidnapped him for two years due to his collaboration with the Administrative Department of Security (DAS). He says that, to date, the authorities have not identified and punished those responsible, nor have they compensated him for the work he performed or granted his requests to recover his real estate.

2. Mr. Serna says that in 1994 he agreed with DAS Central Intelligence officials to head an intelligence and covert support network in the department of Arauca. As a result, he began to get involved with local, regional, and national politicians and provided the aforementioned entity with large volumes of information.

3. As a result of this work, in 2000, the ELN threatened him, so he decided to move with his family to the city of Cúcuta, in the department of Norte de Santander. However, in 2002 he traveled to Arauca to sell his properties and was kidnapped by members of the FARC on the way. He says that he was released on July 4, 2002, thanks to the efforts of family members and the International Committee of the Red Cross.

4. After these events he filed a criminal complaint for the crime of kidnapping and moved with his family to the city of Bogotá, in order to keep them safe. However, he was again threatened, so he moved back to Arauca. Once settled in that city, the DAS asked him to collaborate with investigations they were conducting into the possible infiltration by the ELN of public entities in the department of Arauca, in exchange for protection abroad and a financial reward.

5. Mr. Serna agreed to cooperate and, as a result, Colombian authorities provided him and his family with protection inside the installations of the 18th Brigade in Arauca. Subsequently, in January 2004, they were transferred to Bogotá, where they were given accommodation in a house belonging to the Office of the Attorney General's Victim and Witness Protection Office. Finally, in September that year, he was permanently relocated in Houston, Texas, as a refugee, thanks to the support of the International Organization for Migration. He says that a nongovernmental organization provided him with financial support.

6. Once settled abroad, he made multiple efforts to secure payment of the reward he had been promised. However, the Colombian authorities did not keep their side of the agreement and did not provide any money. He also petitioned the Land Restitution Unit to recover three properties he owned in the department of Arauca, but was unsuccessful in those efforts too. Finally, he says that he requested his registration in the Consolidated Register of Victims and that, as a result, in 2016 he received administrative reparation as a victim of the internal armed conflict.

7. In short, Mr. Serna claims that because of his collaboration with the DAS he was threatened, kidnapped, and forcibly displaced. He says that, to date, those responsible have yet to be identified or punished. In addition, he considers that Colombia has not provided him with due reparation, and that the authorities did not recompense him for the information he supplied. He estimates that the amount he should receive is US\$1 million, since similar sums were paid to others who collaborated as witnesses in the investigations conducted by the Office of the Attorney General. Finally, he says that the Land Restitution Unit has not yet responded to the requests he filed to recover his real estate.

### *The Colombian State*

8. The State, for its part, replies that the petition is inadmissible due to a failure to exhaust domestic remedies. It says that the Office of the Attorney General is still investigating the kidnapping of Mr. Serna and that in 2012 and 2013 it took various procedural steps to that end. However, it notes that the complex public order situation in the area where the events occurred and the active membership of the alleged perpetrators of the crime in the FARC have prevented them from being properly identified. In its last

communication, it specifies that on March 8, 2019, the Office of the Attorney General sent the Special Jurisdiction for Peace all the information it had on individuals registered as kidnapping victims and that Mr. Serna's file was among the cases reported.

9. Colombia argues that it cannot be said that there has been an unwarranted delay, since the investigation is highly complex and the crime was committed by members of an armed group operating clandestinely in a remote area. It also states that the Office of the Attorney General has acted with due diligence, since it has prepared investigative reports on several occasions. Finally, it argues that the passage of time has no significant impact on the legal situation of Mr. Serna and his family members due to the protection and reparation measures they received.

10. It also says that the alleged victim did not institute direct reparation proceedings, which were adequate and effective to establish the responsibility of the State—whether by act or omission of its agents—and to obtain reparation. Therefore, the State considers that it was incumbent upon Mr. Serna to utilize that mechanism before lodging his petition.

11. Similarly, with respect to the alleged harm arising from the actions of the Land Restitution Unit, it says that the alleged victim did not file a *tutela* (relief) action, which allows for the immediate protection of fundamental rights. In the opinion of the State, it was necessary for Mr. Serna to exhaust that remedy, particularly since no grounds for granting an exception to the rule contained in the Convention requiring prior exhaustion of domestic remedies had been found. For the foregoing reasons, Colombia requests that the IACHR declare this petition inadmissible for failure to meet the requirement set forth in Article 46(1)(a) of the Convention.

12. The above notwithstanding, the State says that even if the Commission considers that the petition satisfies the requirement of prior exhaustion of domestic remedies, the petition is inadmissible since the allegations on which it is based are manifestly unfounded. It says that the kidnapping and forced displacement of the alleged victim were the result of actions of members of armed groups, not of State agents. In addition, the authorities did not fail in their duty of prevention, since they did not know that there was a real and immediate risk of violation of Mr. Serna's rights, as it was first made aware of his situation after he had moved to the city of Cúcuta. It adds that the alleged victim went to the municipality of Arauquita without informing it or requesting protection, and therefore, it is not reasonable to attribute responsibility for the consequences of that act.

13. At the same time, the State specifies that although Mr. Serna provided support to the Office of the Attorney General in the development of its criminal investigations, the authorities never forced him to do so, and they also adopted protection measures in his favor, which guaranteed his life and well-being. Thus, it details that in an agreement of March 19, 2004, the Office of the Attorney General incorporated the alleged victim and his immediate family into that entity's Protection and Assistance Program, in light of his collaboration in the investigations that were carried out, and arranged for his relocation to the United States of America. The State also says that the aforementioned document clarified that the protection measures could only be applied within Colombian territory, and therefore, would cease once the alleged victim and his family moved abroad. It emphasizes that the aforesaid protection program does not envisage the granting of rewards or compensation to beneficiaries, so it is false that the Office of the Attorney General had promised the alleged victim a financial reward in exchange for his collaboration.

14. In addition, the State explains that the Land Restitution Unit had not managed to complete its examination of the petitions presented by the alleged victim due to the fact that microtargeting (*microfocalización*) had not been possible in the municipality of Arauca because the conditions making it safe to do so were not yet in place. It says that the aforementioned entity advised Mr. Serna as much in several official letters in 2017. In the opinion of the State, the above-described situation shows that the delay in responding to the alleged victim's requests was not the result of negligence on the part of the authorities.

15. Finally, Colombia reports that both the alleged victim and his family members were included in the Consolidated Register of Victims of forced displacement. Furthermore, Mr. Serna was also included on grounds of kidnapping. For that reason, the Victim Assistance and Comprehensive Reparation Unit awarded him COP21,424,000.00 (approximately US\$7,185.00) in individual reparations. Based on the foregoing, the State considers that the petition does not establish any fact that might engage its international responsibility.

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

16. The Commission notes that the petitioner's main claims are essentially a failure to identify and punish those responsible for threatening him, kidnapping him, and causing his forced displacement, as well as a lack of compensation for his work for the DAS and the lack of response to his requests to recover his real estate. On the first point, the Commission recalls that, in situations involving possible violations of the rights to life and humane treatment, that is, prosecutable *ex officio*, the domestic remedies that must be taken into account for the purpose of admissibility of a petition are those related to the criminal proceedings, as that is the suitable way to clarify the facts and establish appropriate criminal penalties, in addition to enabling other forms of financial reparation.<sup>4</sup>

17. In this case, the petitioner states that he filed a criminal complaint for the wrongs done to him in 2002. The State confirms that the Office of the Attorney General is still investigating the kidnapping of Mr. Serna. In view of the foregoing, the Commission must determine if the exception provided in Article 46(2)(c) of the American Convention is applicable.

18. In that regard, the Commission recalls that Article 46(2) of the Convention, by its nature and purpose, is a self-contained provision *vis á vis* the substantive provisions contained in the American Convention. Therefore, the determination as to whether the exceptions to the rule of prior exhaustion of domestic remedies are applicable to the case in question must be made prior to and separately from the analysis of the merits of the case, in that it depends on a standard of assessment different from that used to determine the possible violation of Articles 8 and 25 of the Convention. The IACHR has also emphasized that there are no treaty-based or regulatory provisions specifically governing what period of time constitutes an unwarranted delay, which is why the Commission evaluates each case individually to establish whether such delay has occurred.<sup>5</sup> Along these lines, the Inter-American Court has established as a guiding principle for the analysis of possible unwarranted delay as an exception to the rule on exhaustion of domestic remedies that “[t]he rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.”<sup>6</sup> In other words, in the opinion of the Commission, the complementary nature of the international protection provided in the American Convention also implies that the intervention of the organs of the Inter-American System must be timely so that it might have some kind of useful effect in protecting the rights of alleged victims.

19. In view of the foregoing, the Commission finds that the information provided by the State does not justify, at this stage of analysis, that 20 years should have passed since the alleged victim filed the complaint for his kidnapping and that, to date, those responsible have yet to be identified. Therefore, the IACHR concludes that the exception provided for in Article 46(2)(c) of the American Convention is applicable. Furthermore, given that the petitioner filed this petition in 2013, when the first procedural steps recognized by the State were just being carried out, the Commission also considers that it was presented within a reasonable time, in accordance with Article 32(2) of its Rules of Procedure.

<sup>4</sup> IACHR, Report No. 159/17, Petition 712-08, Admissibility, Sebastián Larroza Velázquez and Family, Paraguay, November 30, 2017, para. 14; IACHR, Report No. 108/19, Petition 81-09, Admissibility, Anael Fidel Sanjuanelo Polo and Family, Colombia, July 28, 2019, paras. 17–19.

<sup>5</sup> IACHR, Report No. 14/08, Petition 652-04, Admissibility, Hugo Humberto Ruíz Fuentes, Guatemala, March 5, 2008, para. 68.

<sup>6</sup> I/A Court H.R., Velásquez Rodríguez Case v. Honduras, Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, para.

20. Lastly, regarding the alleged lack of payment of a reward by the DAS and the lack of a response to the petitioner's requests to recover his property, the Commission does not find that the alleged victim has used any judicial means to channel those claims to the authorities, nor does it have any information that would allow it to apply any exception to the requirement to exhaust domestic jurisdiction. Therefore, it considers that, with respect to these allegations, the petition does not meet with the requirement set forth in Article 46(1)(a) of the Convention, and therefore, this aspect of the petition is excluded from the factual framework in this present case.

## VII. ANALYSIS OF COLORABLE CLAIM

21. First, the Commission reiterates that the standard by which these requirements are assessed at the admissibility stage is different from that needed to decide the merits of a petition. At this stage, the Commission must perform a *prima facie* evaluation and determine whether the petition provides grounds for an apparent or potential violation of a right guaranteed by the Convention, although not whether the violation has in fact occurred. This examination of the colorability of an alleged violation of the American Convention is a summary analysis that does not imply a prejudgment or preliminary opinion on the merits. For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged, if proven, could characterize a violation of rights, or whether, pursuant to paragraph (c) of the same article, the petition is "manifestly groundless" or "obviously out of order."

22. In this case, the Commission notes that the information presented by Mr. Serna does not suggest, *prima facie*, that the authorities could have foreseen his kidnapping, or that they participated in or allowed its execution. In that sense, the international responsibility of the State in this case could only be engaged by a failure in its duty to investigate a violation committed by a private actor, while the Office of the Attorney General has yet to identify and punish those who committed the crimes against the alleged victim. In that regard, although the State offers some details on the steps taken by the prosecutor assigned to the case, it does not provide information that would make it possible to know precisely what steps have been taken to elucidate the facts and, above all, identify those responsible. In the opinion of the Commission, if it is corroborated that there has been negligence in the investigations, that could amount to a breach of the obligations set forth in Articles 8 and 25 of the Convention, and also a violation of the right to humane treatment and freedom of movement and residence, since the failure to punish those who kidnapped Mr. Serna limits his ability to reside or move about in his country due to a lack of guarantees and safety.

23. In the light of these considerations, and having examined the factual and legal elements put forward by the parties, the Commission considers that the petitioner's submissions are not manifestly unfounded and require a substantive examination, since the facts alleged, if confirmed, could characterize violations of Articles 5 (right to humane treatment), 8 (right to a fair trial), 22 (freedom of movement and residence), and 25 (right to judicial protection) of the American Convention, in connection with Article 1(1) (obligation to respect rights) thereof to the detriment of the alleged victim.

24. Lastly, with respect to the alleged violations of the rights recognized in Articles 7 (right to personal liberty), 10 (right to compensation), and 17 (rights of the family) of the American Convention, the Commission considers that the petitioner has not submitted any arguments or information that would allow it, *prima facie*, to find that they are internationally attributable to the Colombian State.

## VIII. DECISION

1. To declare the petition admissible with respect to Articles 5, 8, 22, and 25 of the American Convention.

2. To declare the petition inadmissible with respect to Articles 7, 10, and 17 of the Convention.

3. To notify the parties of this decision, to continue with the analysis of 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 20<sup>th</sup> day of the month of September, 2024. (Signed:) Roberta Clarke, President; José Luis Caballero Ochoa, Second Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.