

OEA/Ser.L/V/II.  
Doc. 258  
20 September 2021  
Original: spanish

**REPORT No. 250/21**  
**PETITION 1873-14**  
REPORT ON INADMISSIBILITY

MARÍA EVA SAGASTUME  
EL SALVADOR

Approved electronically by the Commission on September 20, 2021.

**Cite as:** IACHR, Report No. 250/21. Petition 1873-14. Inadmissibility. María Eva Sagastume. El Salvador. September 20, 2021.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Jaime José Castillo, René Sánchez Sagastume and José Sánchez Sagastume
<b>Alleged victim:</b>	María Eva Sagastume and sons <sup>1</sup>
<b>Respondent State:</b>	El Salvador
<b>Rights invoked:</b>	Articles 4 (life) and 25 (judicial protection) of the American Convention on Human Rights <sup>2</sup> , in relation to its article 1.1 (obligation to respect right)

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

<b>Filing of the petition:</b>	December 30, 2014
<b>Additional information received during the stage of initial review:</b>	April 12, 2015 and March 2, 2016
<b>Notification of the petition to the State:</b>	November 26, 2019
<b>State's first response:</b>	September 21, 2020
<b>Additional observations from the petitioner:</b>	January 18, 2021
<b>Additional observations from the State:</b>	June 15, 2021

**III. COMPETENCE**

<b><i>Ratione personae:</i></b>	Yes
<b><i>Ratione loci:</i></b>	Yes
<b><i>Ratione temporis:</i></b>	Yes
<b><i>Ratione materiae:</i></b>	Yes, American Convention (deposit of instrument of ratification on June 23, 1978)

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

<b>Duplication of procedures and international <i>res judicata</i>:</b>	No
<b>Rights declared admissible:</b>	None
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	No, in the terms of Section VI
<b>Timeliness of the petition:</b>	No, in the terms of Section VI

**V. ALLEGED FACTS**

1. The petitioners allege that the failure to provide an adequate health service in favor of Mrs. María Eva Sagastume (hereinafter the “alleged victim”), coupled with a series of instances of medical negligence

<sup>1</sup> The petition identifies the children of the alleged victim as (1) René Sánchez Sagastume and (2) José Sánchez Sagastume, who also act as petitioners.

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

<sup>3</sup> The observations from each party were duly notified to the other party. On July 6, 2016, on October 23, 2017, on June 18, 2018 and on June 3, 2019, the petitioner expressed its interest in the progress of the proceedings.

against she, have caused her death. In addition, they allege that the State failed to provide reparation for these events.

2. The petitioners express that on June 6, 2009, the alleged victim, aged eighty-five, was admitted by his son René Sánchez Sagastume (hereinafter "Mr. Sánchez") to the Emergency Unit of the General Hospital of the Salvadoran Social Security Institute (hereinafter the "SSSI") for presenting low oxygen levels. Chronologically, they report that she was transferred to the Maximum Emergency Unit of said hospital, where she was given oxygen and where an intravenous cannula was inserted into here to perform clinical analyzes; at 3:30 p.m. she had a brain tomography; At 6:30 p.m., she was transferred to the women's medicine unit, considering that her health situation was stable.

3. In this regard, the petitioners report that the two doctors in charge of that area of the hospital notified Mr. Sánchez that their shift had ended, with Dr. Rafael Quezada (hereinafter "Dr. Quezada") remaining as the physician in charge, who was a medical intern. They allege that during the night of June 6, Dr. Quezada was not supervised by any other physician in the critically ill patient ward. They continue to report that at 8:30 p.m., Mr. Sánchez requested food for the alleged victim, which she never received. At 11:30 p.m., Mr. Sánchez noticed that the alleged victim's monitor began to emit warning lights and sounds, alerting Dr. Quezada to this; however, they state that he did not come to observe the alleged victim at any time. They point out that at 00:30 hours on June 7, 2009, Mr. Sánchez allegedly saw Dr. Quezada walk with a blanket over his shoulder to a room, so he did not treat any other patient in that area of the hospital during the night.

4. The petitioners state that at dawn on June 7, Mr. Sánchez noticed that the body temperature of the alleged victim dropped drastically, and that she went into a state of shock. At 06:30 hours that same day, Dr. Quezada left the room in which he had been sleeping, falsely noting in the file of the alleged victim that at 02:00 and 04:00 hours he monitored her vital signs and her blood pressure. They point out that at 07:00 hours Dr. Romeo Bonilla (hereinafter "Dr. Bonilla") entered the new shift. Mr. Sánchez complained to this doctor for the alleged victim's lack of medical attention since she was admitted to the hospital. The petitioners state that, because of this, Dr. Bonilla requested their authorization to install assisted mechanical ventilation to the alleged victim. They claim that mechanical ventilation was not carried out at any time, leaving the alleged victim once again in total abandonment. They state that the alleged victim died on June 7, 2009, at approximately 1:30 p.m., due to the medical negligence of Doctors Quezada and Bonilla and the deficiency of the public health system provided by the SSSI.

5. They point out that, after the death of the alleged victim, Dr. Bonilla falsely established in the file of the alleged victim that she suffered from DILD (diffuse interstitial lung disease) and COPD (chronic obstructive pulmonary disease), without any clinical grounds, alleging that the alleged victim never underwent a chest tomography, considering that she was admitted to the hospital due to a respiratory problem. They argue that in one of the expert reports carried out during the criminal proceedings, it was concluded that there was no chronic or radiological evidence of a chronic bronchopulmonary history or of DILD in the alleged victim. The petitioners initiated both a criminal and a civil proceeding concerning the negligent medical care afforded to the alleged victim, as follows:

*Criminal proceeding: complaints for medical negligence and manslaughter*

6. The petitioners point out that a complaint for medical negligence was filed with the Office of the Attorney General for the Defense of Human Rights ("AGDHR"), which gave rise to file SS-0479-09. They indicate that by means of a letter dated May 12, 2010, the AGDHR determined, among other things, "*To consider proven the infringement of the right to health, due to medical negligence, to the detriment of Mrs. María Eva Sagastume, widow of Sánchez, by the General Hospital for of the SSSI*". In addition, in said report, the AGDHR made the following recommendations: i) to investigate the events included in the complaint and, if applicable, punish those who turn out to be responsible, respecting the guarantees of due process; ii) to adopt the appropriate measures, in order to prevent cases such as the one under investigation from occurring, prioritizing the due care owed to patients; and iii) to develop permanent training programs for the preparation of professionals in the different areas of specialization, in order to provide an excellent medical service,

especially to older adults who require it, and that their companions are treated with appropriate respect and that they be informed clearly and simply about the health and treatment provided to the rightsholder.

7. In addition, they point out that the sons of the alleged victim filed a complaint with the prosecutor's office for the crime of manslaughter against the SSSI and the medical team that was in charge of the alleged victim's hospital care. They detail that on April 20, 2010, the Thirteenth Court of Peace in San Salvador held an initial hearing against twelve people, who were part of the hospital care and treatment of the alleged victim, all of them SSSI workers. On September 22, 2010, the Second Investigative Court of San Salvador issued a definitive dismissal in favor of ten of the defendants, and also issued a provisional dismissal in favor of Dr. Bonilla and Dr. Quezada, considering that it was not possible to determine whether their actions were or not adequate in favor or to the detriment of the alleged victim, granting a new term to continue the investigation of the facts.

8. In this regard, on October 14, 2011, the Second Investigative Court of San Salvador held a special hearing to reopen the proceedings, ordering the definitive dismissal in favor of Doctors Bonilla and Quezada, because the responsibility of both was not proven in the death of the alleged victim since the two had followed the protocol established in the SSSI regulations to provide medical care to the alleged victim. Not satisfied with this, on October 21, 2011, the sons of the alleged victim appealed said resolution before the Second Criminal Chamber of the First Section of the Center; however, by resolution dated February 3, 2012, the definitive dismissal was confirmed in favor of Doctors Bonilla and Quezada. On February 14, 2012, an appeal was filed to revoke this decision, but it was declared inadmissible on February 19, 2012.

*Civil proceedings: action for damages*

9. On December 2, 2013, the sons of the alleged victim filed an action for damages against Doctors Monterrosa and Quezada, as well as the SSSI before the Fourth Civil and Commercial Court of San Salvador. However, in a resolution dated July 1, 2014, the action was rejected by said court for supervening lack of merit, due to operation of the statute of limitations given that, according to Salvadoran legislation, the term to exercise the action is three years from the perpetration of the facts, that is, of the death of the alleged victim, which occurred on June 7, 2009. The statute of limitations had therefore elapsed on July 7, 2012 and the action was filed on December 2, 2013.

10. On the other hand, the petitioners state that an investigation was initiated by the Head of the Department of Internal Medicine and the Head of Teaching of said department. As a result, on February 17, 2010, it was concluded that the care provided to the alleged victim was carried out diligently by the medical team. They allege that said investigation was of an informal nature, notifying the result of the investigation with a memorandum, thus evidencing the State's unwillingness to investigate the alleged medical negligence committed to the detriment of the alleged victim through administrative channels.

11. In summary, the petitioners allege that El Salvador violated the alleged victim's rights to life and health, because the public health system provided by the SSSI presents systematic deficiencies and medical negligence that, as in the case of the alleged victim, lead to irreparable damages such as the death of the rightsholders. Specifically, the petitioners argue that the care provided to the alleged victim was carried out negligently by the SSSI doctors because, even though she was hospitalized for respiratory failure, the corresponding studies were not carried out nor was she provided with adequate medical care.

12. The State, for its part, considers that the petition should be inadmissible because it is untimely in relation to the criminal complaint filed by the petitioners. It also alleges that the facts presented by the petitioners do not characterize violations of the alleged victim's human rights. The State indicates that the final decision regarding the criminal proceeding was the one issued on February 3, 2012, through which the definitive dismissal in favor of the two accused doctors of the SSSI was confirmed. It underscores that the petitioners did not present the petition to the Inter-American Commission until December 30, 2014, that is, about three years after the final decision in the criminal court. For this reason, the State considers that, with regard to criminal proceedings, the petition does not meet the requirements of Article 46.1.b) of the American Convention and Article 32 of its Rules of Procedure.

13. Regarding the civil proceeding, the State notes that the statute of limitations applicable to the action for damages initiated by the sons of the alleged victim had elapsed three years after the death of the alleged victim. It notes that the period for filing the action began on June 7, 2009, that is, the day the alleged victim died, and ended on June 7, 2012, three years later, in accordance with the provisions of Article 2803 of the Civil Code. It observes that this matter was previously established in a resolution of July 1, 2014 issued by the Fourth Civil and Commercial Court of San Salvador.

14. Finally, with respect to the administrative proceedings, the State explains that an internal audit was carried out in which it was concluded that the hospital care provided to the alleged victim was carried out in accordance with the internal guidelines that regulate the emergency care provided to the rightsholders of the SSSI and that, in addition, the recommendations made by the AGDHR were heeded.

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

15. The petitioners argue that domestic remedies were exhausted with the decision of the Fourth Civil and Commercial Court of San Salvador declaring the action for damages inadmissible. They also maintain that the deadline for filing the action for damages should be counted from the date on which the decision declaring the definitive dismissal in favor of the two doctors accused of the alleged victim's death was notified. For its part, the State has argued that the petition is not timely because the deadline for submission began with the death of the alleged victim; and that the petitioners' claim for damages was rejected because it was submitted in an untimely manner.

16. Faced with cases such as the present one, the Commission has determined that the petitioner must exhaust domestic remedies in accordance with domestic procedural legislation, as long as they are not incompatible with the State's obligations under the American Convention. For this reason, the Commission cannot consider that the petitioners have duly complied with said requirement if the domestic remedies have been rejected on reasonable and non-arbitrary procedural grounds, such as that the fact that the civil action for damages was not filed within the deadlines established in domestic legislation<sup>4</sup>.

17. On this basis, the Commission observes that the civil action for damages filed by the petitioners was rejected because it was not filed within the filing period established by domestic procedural laws. It is not observed in this regard that the rejection of this action was arbitrary or in any way contrary per se to any provision of the American Convention. Neither is it clear from the file nor has it been alleged by the petitioners that they have been prevented from filing the action for damages in a timely manner.

18. For these reasons, the Commission concludes that the present petition is inadmissible because it does not comply with the requirements of Article 46.1.a) of the American Convention, in relation to this point.

19. On the other hand, with respect to the criminal proceeding, the Commission observes that against the alleged medical negligence that led to the death of the alleged victim: first, the petitioners filed a complaint for medical negligence with the AGDHR, which established on May 12, 2010 that the General Hospital of the SSSI infringed the right to health of the alleged victim due to medical negligence; subsequently, they filed a complaint at the prosecutor's office for the crime of manslaughter against the medical team in charge of the care of the alleged victim over which, in a resolution dated September 22, 2010, the Second Investigative Court of San Salvador issued a definitive dismissal in favor of ten of the accused and provisional dismissal in favor of two more doctors. In this vein, on October 14, 2011, the Second Investigating Court of San Salvador issued the final dismissal in favor of the two remaining doctors. The petitioners appealed the final dismissal before the Second Criminal Chamber of the First Section of the Center; however, in a resolution dated February 3, 2012, the Chamber confirmed the definitive dismissal. Finally, on February 14, 2012, the petitioners filed an appeal for revocation; however, it was declared inadmissible on February 19, 2012.

<sup>4</sup> IACHR, Report N° 90/03 (Inadmissibility), Petition 0581/1999, Gustavo Trujillo González, Peru, October 22, 2003, para. 32.

20. In this regard, the IACHR notes that the petition was filed on December 30, 2014, that is, more than six months after the appeal for revocation had been denied; therefore, the Commission concludes that this point of the petition also does not meet the requirement of Article 46.1.b) of the American Convention. Likewise, the Commission observes that the petitioners did not raise any exception to the requirement of exhaustion of domestic remedies set forth in Article 46.2.c) of the American Convention.

## **VII. DECISION**

1. To declare the present petition inadmissible on the basis of Articles 46.1.a) and 47.a) of the American Convention; and

2. To notify the parties of this decision; and to publish this decision and to 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, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.