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REPORT No. 188/19
PETITION 1201-11
ADMISSIBILITY REPORT

RUBÉN WEISZMAN GLUCKMAN
URUGUAY

Approved by the Commission on December 5, 2019 in San Salvador, El Salvador.

Cite as: IACHR, Report No. 188/19. Petition 1201-11. Admissibility. Rubén Weizman Gluckman. Uruguay. December 5, 2019].

I. INFORMATION ABOUT THE PETITION

Petitioner:	Rubén Weiszman Gluckman
Alleged victim:	Rubén Weiszman Gluckman
Respondent State:	Uruguay
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights ¹ in relation to Article 1.1 (obligation to respect rights) of the same instrument.

II. PROCEDURE BEFORE THE IACHR²

Filing of the petition:	September 7, 2011
Additional information received at the stage of initial review:	September 13, 2011
Notification of the petition to the State:	January 11, 2016
State's first response:	April 29, 2016
Additional observations from the petitioner:	September 1, 2016; April 7, 2017
Additional information presented by the State	July 26, 2017

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 (deposit of instrument of ratification on April 19, 1985)

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	Article 7 (personal liberty) of the American Convention on Human Rights in relation to Article 1.1 (obligation to respect rights) of the same instrument.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, June 29, 2011
Timeliness of the petition:	Yes

V. ALLEGED FACTS

1. The petitioner party claims that his human rights were violated in the context of a money laundering criminal case carried out against him. On the one hand, he states that his prosecution took place on June 11, 2008 and that he could only access the evidence in which the indictment was founded two and a half years later and after repeated requests. He adds that once he could get ahold of the documentation, he noticed it was dated after the date of his indictment and was not signed. He states that, despite the fact that an investigation of these facts was initiated based on a complaint he had filed, the judicial authorities did not make a decision on his allegations and did not conduct a diligent investigation of the matter, merely accepting explanations from the judge who issued the order of prosecution even when a simple analysis of the file showed that his version was not credible. The alleged victim indicates that he sentenced to ten years in prison on November 4, 2011 and that the sentence was confirmed in second instance on December 19, 2012. According to the petitioner, when convicting him, the judicial authorities did not rule on the exculpatory evidence presented by him, neither to dismiss it nor to address it. Therefore, he considers that during the

¹ Hereinafter, the "American Convention" or the "Convention".

² The observations submitted by each party were duly transmitted to the opposing party.

process his right to defense was not respected, and neither were his rights of confrontation and the presumption of innocence.

2. On the other hand, the petitioner also alleges that the State has violated his right to personal liberty, since he was unreasonably detained for an excessive period of time. In that regard, he indicates that despite having appeared on several occasions to testify before being prosecuted, voluntarily or at the request of the authorities, the preventive detention was ordered in the order of indictment based on the characteristics of the event and the nature of the complaint, without considering the existence of a procedural risk and without taking into account his collaboration throughout the investigation. He adds that he spent a total of four years and six months in pretrial detention, of which approximately 15 months were a prison and the remaining in house arrest for health reasons. He reports that he obtained his freedom on May 20, 2015 after serving two thirds of his sentence and argues that the period of deprivation of liberty has affected his health.

3. The State, on the other hand, also reports that the petitioner was sentenced to ten years in prison and that he served almost half of his sentence in pretrial detention, but indicates that during most of this time he was in house arrest in attention to his health conditions.

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

4. Both parties agree that the alleged victim was convicted in November 2011 and that the sentence was confirmed in second instance on December 19, 2012. The State, for its part, alleges that this petition must be declared inadmissible, as the petitioner had not exhausted domestic remedies when he presented his petition to the IACHR. In turn, the petitioner indicates that, having submitted the petition based on his preventive detention, it was not necessary to conclude the criminal process to bring a case before the IACHR and, upon being notified on July 7, 2011 that a Court of Second instance had rejected his request for provisional release, he filed his petition within the six-month period required by the Convention. In addition, in relation to the alleged violations of due process, he adds that he challenged the second instance judgment that had confirmed his conviction through an appeal, and that in December 2013 he was notified that his appeal was dismissed.

5. First, the Commission recalls its doctrine that the analysis of the requirements set forth in Articles 46 and 47 of the Convention must be made in the light of the situation in force at the time it is asked to decide on the admissibility or inadmissibility of the claim.³

6. In view of the foregoing, the Commission, on the one hand, considers that domestic remedies regarding the alleged illegality of pretrial detention were exhausted on July 7, 2011 and that the petition was filed within six months, in accordance with the requirements of Articles 46.1.a and 46.1.b of the American Convention. On the other hand, in relation to the alleged violations of due process, the Commission considers that the remedies were exhausted in December 2013 when the alleged victim was notified of the dismissal of his appeal and, taking into account that the exhaustion occurred while the petition was already under the analysis of the IACHR, it considers that the petition also meets the requirements of Articles 46.1.a and 46.1.b of the Convention.

VII. COLORABLE CLAIM

7. The petitioner maintains that the State is responsible for the violation of the alleged victim's human rights.⁴ In turn, the State affirms that the petition is unfounded and that the alleged facts do not amount to human rights violations since, regardless of the time spent in preventive detention and the structural defects that this may entail, it argues that the time of preventive detention was fully absorbed by the final penalty that fell on the alleged victim.

³ IACHR, Repott N. 15/15, Petition 374-05. Admissibility. Workers of the Union of Workers of the National Federation of Coffee Producers of Colombia. Colombia. March 24, 2015, par. 39.

⁴ See rights invoked in section I of the present report.

8. In this regard, the Commission reiterates that, for the purposes of admissibility, it must decide whether the alleged facts may amount to violation of rights, as stipulated in Article 47 (b) of the American Convention, or if the petition is “manifestly unfounded” or “its complete inadmissibility” is evident, in accordance with 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. That is to say that, in accordance with the aforementioned conventional norms, in accordance with Article 34 of the Commission’s Rules, the admissibility analysis focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute prima facie violations of the American Convention. Therefore, the fact that the alleged victim claims to be innocent or requests the IACHR to review the evidence presented in the domestic judicial proceedings does not imply per se that the petition is inadmissible or that the Commission is not competent to rule on it.

9. Nonetheless, it is not for the Commission to rule on the determination of guilt or innocence of a defendant in a criminal proceeding determine whether the indicted in the criminal process is guilty or innocent. However, it is incumbent upon it to analyze whether the guarantees of due process protected under the Convention were respected -for the purpose of determining the admissibility of the claim- if domestic remedies were exhausted or if it is appropriate to exempt the petitioner from exhausting them considering the characteristics of the claim.⁵ Finally, the Commission observes that the alleged violations of due process have been resolved in domestic courts, as in the 2013 appeal the court has reevaluated the second instance judgment. Thus, once the alleged victim has had access to justice, assessing the alleged violations of the American Convention would represent turning the Commission into a court of appeal. Based on these considerations, the IACHR considers that the petitioner has not provided information that demonstrates prima facie a possible violation of Articles 5 (humane treatment), 8 (judicial guarantees), 24 (equality before the law) and 25 (judicial protection) of the American Convention in accordance with Articles 8 (judicial guarantees), 24 (equality before the law) and 25 (judicial protection) of the American Convention in accordance with Articles 1.1 (obligation to respect rights) and 2 (obligation to adopt provisions of domestic law) of said instrument.

10. On the other hand, based on the pleadings presented by the petitioner in relation to the three years the alleged victim was under house arrest as a restriction to personal freedom, the IACHR considers that if true, this could amount to violations of the Article 7 (personal freedom) of the American Convention in accordance with Articles 1.1 (obligation to respect rights).⁶ However, on this issue and as it has done in similar cases⁷ where a restrictions to the rights of persons deprived of liberty were claimed, the IACHR would evaluate the necessity, proportionality and reasonableness of the measure during the merits stage.

VIII. DECISION

1. To find the instant petition admissible in relation to Article 7 (personal liberty) of the American Convention, in accordance with Articles 1.1. (obligation to respect rights) of the same instrument;

2. To find the instant petition inadmissible in relation to Articles 5 (humane treatment), 8 (fair trial), 24 (equality before the law) and 25 (judicial protection) of the Convention in accordance to Article 2 (domestic legal effects) of the same instrument; and

3. To notify the parties of the decision; to continue with the analysis on the merits and to publish this decision and to include it in its Annual Report to the General Assembly of the Organization of American States.

⁵ IACHR, Report N. 65/12, Petition 1671-02. Admissibility. Alejandro Peñafiel Salgado. Ecuador. March 29, 2012, par. 38.

⁶ IACHR, Report on the use of preventive detention in the Americas, 2013, par. 158 and 237.

⁷ IACHR, Report N. 34/14, Petition 495/07. Admissibility. Ovidio Guiltrichs Vangeas and others. Costa Rica. April 4, 2014, par. 38.

Approved by the Inter-American Commission on Human Rights on the 5th day of the month of December, 2019. Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola Noguera (dissenting opinion), Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli (dissenting opinion), Luis Ernesto Vargas Silva (dissenting opinion) and Flávia Piovesan, Commissioners.