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REPORT No. 205/20
PETITION 1015-09
REPORT ON INADMISSIBILITY

GERMÁN EDUARDO ROLDÁN SALAMEA
COLOMBIA

Approved electronically by the Commission on August 5, 2020.

Cite as: IACHR, Report No. 205/20, Petition 1015-09. Inadmissibility. Germán Eduardo Roldán Salamea. Colombia. August 5, 2020..

I. INFORMATION ABOUT THE PETITION

Petitioner	Jesús Alberto Roldán Alfonso, Marcela Ortiz Roldán
Alleged victim	Germán Eduardo Roldán Salamea
Respondent State	Colombia
Rights invoked	Articles 7 (personal liberty), 8 (fair trial), 9 (freedom from ex post facto laws), and 25 (judicial protection) of the American Convention on Human Rights, ¹ regarding Article 1 (obligation to respect rights) thereof

II. PROCEEDINGS BEFORE THE IACHR²

Date of filing	August 13, 2009
Notification of the petition	March 19, 2013
State's first response	April 7, 2015
Additional observations from the petitioner	August 12, 2014; March 3, 2015; November 20, 2018
Additional observations from the State	December 1, 2017
Notification of the possible archiving of the petition	September 25, 2018
Petitioner's response to the notification on the possible archiving of the petition	November 20, 2018

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (accepted on July 31, 1973)

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	None
Exhaustion or exception to the exhaustion of remedies	Yes, under the terms of section VI
Timeliness of the petition	Yes

V. SUMMARY OF FACTS ALLEGED

1. The petitioners hold the State of Colombia accountable for the illegal detention of Germán Eduardo Roldán Salamea (hereinafter "the alleged victim"), the legal representative of Asociación Mutual de Salud (Admusalud), a company in liquidation. They claim that the State did not ensure his right to appeal nor observe the non-retroactivity principle in the criminal proceeding against him.

2. The petitioners allege that being Admusalud's legal representative, the alleged victim applied for a checking account for the company he managed, with Banco Sudameris bank in Bogotá in October 2002 and that two days after the account was open, employees of the bank called him saying that his client had debt at the Bogotá branch. Thus, on October 25, 2002, the alleged victim traveled to Bogotá and, at the bank, asked for the checkbook. Allegedly, that day the bank's security guards illegally arrested and turned him to the police, who arrested him in flagrante for allegedly withdrawing cash from Admusalud's bank account. According to the petitioners, employees of the bank had illegally transferred money from the account of Gas Natural S.A. company to Admusalud's account; still, he faced criminal prosecution without any incriminatory evidence.

¹ Hereinafter "American Convention" or "Convention."

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

3. The petitioners hold that on October 14, 2003, the Circuit First Magistrate's Court acquitted the alleged victim of the charges of fraud and multiple counts of counterfeiting a private document. Gas Natural S.A. challenged the acquittal, and on February 24, 2004, the Criminal Division of Bogotá's Superior Court sentenced the alleged victim to 38 months' imprisonment with a fine equal to 35 legal minimum monthly wages, the additional penalty of disqualification from holding public office for a period equal to his term in prison, and the payment of a sum equal to 12 legal minimum monthly wages to Gas Natural S.A. in court costs. This decision considered the fact that there had been one money transfer from Gas Natural S.A.'s checking account at Banco Sudameris de Colombia to Admusalud's account and another transfer from Gas Natural S.A.'s account to the checking account of Rank Internacional de Colombia Ltda. company that had been made by fax by counterfeiting the signatures of Gas Natural S.A.'s representatives. The alleged victim challenged his conviction by filing an extraordinary appeal on June 30, 2004. On October 17, 2007, the Criminal Appellate Division of the Supreme Court of Justice decided to overturn the sentence but did not review the court files or the exculpatory evidence. On January 16, 2008, the alleged victim applied for a writ of protection (*tutela*) of his right to due process, claiming that his sentence contravened the existing laws, that he had not had the opportunity to appeal his conviction, and that there was nothing that incriminated him. On February 1, 2008, the Supreme Court rejected his application, arguing that such remedy was inadmissible regarding the Supreme Court's resolutions. On February 7, 2008, he appealed this decision on the grounds of procedural errors but was unsuccessful. On August 4, 2008, he filed a new application for a writ of protection of his constitutional rights, but the Sectional Council of the Judiciary declared this unfounded on August 26, 2008. On October 9, 2008, the Superior Judiciary Council entertained his application for a writ of protection but decided not to grant the protection of his violated rights.

4. For its part, the State submits that the petition should be declared inadmissible as the petitioners expect that the IACHR will work as a court of fourth instance. Moreover, it alleges that the alleged victim was able to appeal the criminal proceeding and file an extraordinary appeal and an application for a writ of protection of his constitutional rights. It asserts that there was an investigation against the alleged victim because Banco Sudameris reported that he had used counterfeited documents to withdraw, from Admusalud's account, money sent from Gas Natural S.A.'s account. As a result, a criminal proceeding was held on the charges of attempted banking fraud and multiple counts of counterfeiting private information. Thus, the alleged victim's imprisonment was owing to causes and prerequisites set forth in the Criminal Code of Colombia. Furthermore, it holds that the alleged victim's criminal prosecution concluded with a decision by the Criminal Appellate Division of the Supreme Court of Justice and the denial of his application for a writ of protection by the Division on Judicial Discipline of the Superior Judiciary Council. It says that the proceeding began at a magistrate's court, which acquitted the alleged victim on October 14, 2003. Then an appeal was filed with the Superior Court of Bogotá, which on February 24, 2004, revoked the lower court's decision and sentenced the alleged victim to 38 months' imprisonment for attempted fraud and multiple counts of counterfeiting a private document. Consequently, the alleged victim presented an extraordinary appeal with the Supreme Court of Justice. However, on October 17, 2007, the latter confirmed the Superior Court's judgment after considering all the available evidence and finding all the judgments well-founded. The alleged victim applied for a writ of protection; but this was dismissed on February 1, 2008. On October 9, 2008, Cundinamarca's Sectional Council of the Judiciary dismissed his application.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. The Inter-American Commission notices that as for the exhaustion of domestic remedies, the parties agree that the remedies became exhausted when the Supreme Court of Justice decided, on October 9, 2008, not to review the court files regarding the alleged victim's application for a writ of protection. In this regard, the Commission notes that the constitutional court could have considered and reviewed the case as, in principle, this was an appropriate judicial forum to protect a judicial situation violated within the domestic legal system. Further, as the Commission received the petition on August 13, 2009, within the six months following the judgment mentioned above and its notification on February 13, 2009, the petition meets the admissibility requirements set forth in Article 46.1 (a) and (b) of the American Convention.³

³ IACHR, Report No. 48/17, Petition 338-07. Admissibility. Luis Fernando Leyva Micolta. Colombia. May 25, 2017, par. 10.

VII. COLORABLE CLAIM

6. The Commission observes that this petition involves allegations regarding the alleged victim's deprivation of liberty and his being convicted despite the lack of incriminating evidence, in violation of the presumption of innocence and the *in dubio pro reo* principles, meaning that the alleged victim was allegedly sentenced for non-criminalized and non-unlawful actions. It also involves allegations of a violation of due process, given the lack of a trial on appeal in favor of the alleged victim.

7. In this regard, the State contends that the facts alleged here do not establish violations of human rights due to the following: (i) the alleged victim was able to appeal the criminal proceeding, file an extraordinary appeal for annulment, and apply for a writ of protection; (ii) the petitioner expects that the Commission will adjudicate as a court of fourth instance; (iii) the alleged victim was deprived of his liberty according to grounds and prerequisites in the Criminal Code of Colombia; (iv) the Supreme Court of Justice examined the complaints the alleged victim filed concerning his conviction by the court of appeals.

8. In this regard, the Commission reiterates that for the purpose of admissibility, it must decide whether the facts alleged could characterize a violation of rights under the provisions of Article 47.b of the American Convention or whether the petition is "manifestly groundless" or "obviously out of order," pursuant to subparagraph (c) of the said article. The evaluation criterion for these requirements differs from that used for ruling on the merits of a petition. Moreover, within its mandate, the Commission is competent to declare a petition admissible when this concerns domestic legal proceedings that may be in violation of the rights protected by the American Convention. That is, under the conventional rules mentioned above, in line with Article 34 of the IACHR Rules of Procedure, the admissibility study centers on the verification of those requirements, which refer to the existence of elements that may *prima facie* constitute violations of the American Convention if proven to be true. Therefore, that the alleged victim claims to be innocent or requests the IACHR to examine the evidence submitted in the domestic criminal proceedings alone does not mean that the petition is inadmissible or that the Commission is not competent to adjudicate on this.

9. Nevertheless, it is not for the IACHR to adjudicate on the verdict of guilt or innocence about a defendant or accused in a criminal case. However, it is competent to analyze whether the guarantees of due process protected by the Convention have been undermined and—in order to rule on the admissibility of a claim—whether domestic remedies have been exhausted or whether their exhaustion may be waived on account of the circumstances of the claim.⁴

10. In the instant case, the alleged victim's detention does not appear to have been arbitrary as it was in accordance with prerequisites previously established by Colombian law. Further, the Commission notes that the criminal process was based on a charge of multiple counts of counterfeiting a private document, and a count of attempted fraud (Article 246 of the Criminal Code of Colombia), with *a priori* respect for the freedom from *ex post facto* laws principle. Also, the petition does not include legal or factual elements that show the actual violation of the guarantees of due process and judicial protection established in the Convention. Although the petitioners hold that the alleged victim was unable to appeal his prosecution, his claims were entertained by the Colombian Supreme Court of Justice, which in turn reviewed the lower courts' decisions under the applicable rules.

11. In view of the foregoing, the information submitted by both parties to this petition, and the inter-American standards on criminal due process, the IACHR declares that it is impossible to conclude that the State has violated Articles 7 (personal liberty), 8 (fair trial), 9 (freedom from *ex post facto* laws), and 25 (judicial protection) of the American Convention, in relation to Article 1 (obligation to respect rights) thereof.

VIII. DECISION

1. To declare the instant petition inadmissible with regard to Articles 7 (personal liberty), 8 (fair trial), 9 (freedom from *ex post facto* laws), and 25 (judicial protection) of the American Convention, in relation to Article 1 (obligation to respect rights) thereof; and

2. To notify the parties of this decision, and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

⁴ IACHR, Report No. 65/12, Petition 1671-02. Admissibility. Alejandro Peñafiel Salgado. Ecuador. March 29, 2012, par. 38.

Approved by the Inter-American Commission on Human Rights on the 5th day of the month of August, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice-President; Flávia Piovesan, Second Vice-President; and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.