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**REPORT No. 172/20**  
**PETITION 1619-10**  
REPORT ON INADMISSIBILITY

EDUARDO GUSTAVO SEGURA ROJAS  
PERU

Approved electronically by the Commission on July 2, 2020.

**Cite as:** IACHR, Report No. 172/20, Petition 1619-10. Inadmissibility. Eduardo Gustavo Rojas Segura. Peru. July 2, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Carlos Miguel Segura Cabel
<b>Alleged victim:</b>	Eduardo Gustavo Segura Rojas
<b>Respondent State:</b>	Peru <sup>1</sup>
<b>Rights invoked:</b>	Articles 5 (personal integrity), 7 (personal liberty), 8 (fair trial), 9 (freedom from ex post facto laws), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights <sup>2</sup> in relation to its Article 1.1 (obligation to respect rights); and articles I, II, XVIII, XXIV, and XXVI of the American Declaration of the Rights and Duties of Man <sup>3</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	February 18, 2010
<b>Additional information received at the stage of initial review:</b>	December 9, 2010, April 13 2011, June 2, 2011, June 14, 2011, September 20, 2011, April 26, 2013, August 20, 2013, January 10, 2014, January 31, 2014, March 25, 2014, May 30, 2014, June 28, 2014, July 25, 2014, 2014, August 27, 2014, October 22, 2014, and November 20, 2014
<b>Notification of the petition to the State:</b>	February 18, 2016
<b>State's first response:</b>	May 20, 2016
<b>Additional observations from the petitioner:</b>	September 19, 2016, October 19, 2016, November 2, 2016, January 6, 2017, February 2, 2017, May 15, 2017, November 1, 2017, March 19, 2018, September 7, 2018, September 26, 2018, October 3, 2018, October 28, 2018, March 25, 2019, May 17, 2019, August 8, 2019, October 1, 2019, November 20, 2019, January 2, 2020, January 31, 2020, February 19, 2020, and March 5, 2020.
<b>Additional observations from the State:</b>	March 9, 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 28, 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>	Yes, on November 21, 2017
<b>Timeliness of the petition:</b>	Yes

<sup>1</sup> Pursuant to Article 17.2.a of the Commission's Regulations, Commissioner Julissa Mantilla Falcón, a Peruvian national, did not participate in the debate or decision on this matter.

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

<sup>3</sup> Hereinafter "the American Declaration" or "the Declaration".

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. The requesting party claims that Mr. Eduardo Gustavo Rojas Segura (hereinafter “the alleged victim” or “Mr. Rojas Segura”) was convicted for specific passive bribery for his action as Deputy Province Prosecutor of Pacasmayo through a criminal process that would have violated his right to presumption of innocence and defense.

2. It indicates that on August 5, 2008, Mr. Rojas Segura, while executing the aforementioned position, detained an alleged seller of basic cocaine paste. It indicates that on the next day, the sister-in-law of said detainee reported to a Police Commander that the alleged victim illegally requested a sum of money to free the arrested person, handing in an audio cassette that supposedly proved that fact. Consequently, on August 7, 2008, the alleged victim was arrested in an operation done between the National Police and the Public Ministry by the allegedly commission of the crimes of specific passive bribery and illegal possession of firearms.

3. It indicates that on August 10, 2008, the Judge of Preparatory Investigation, as requested by the District Attorney’s Office, ordered preventive prison for up to nine months against the alleged victim. After some time, the defense of Mr. Rojas Segura requested the cessation of such preventive measure, alleging the presence of new elements of conviction that accredited his innocence. However, on October 30, 2008, the Judge of Preparatory Investigation declared said petition as groundless; this decision was confirmed on November 11, 2008 by the Court of Appeals.

4. Concerning this denial, on November 20, 2008, the representation of the alleged victim filed a petition for a writ of habeas corpus. However, on November 21, 2008, the First Court of Preparatory Investigation of Trujillo declared the claim groundless considering that the resolution that denied the request of cessation of preventive prison adequately weighed all the evidence presented, according to the applicable legislation. On December 5, 2008, the Criminal Court of Appeals of the Superior Court of Justice of Liberty confirmed the inadmissibility of the claim. On December 19, 2008, the defense of Mr. Rojas Segura filed a constitutional appeal against said decision. The petitioner states that while that appeal was being resolved, on May 7, 2009, the Special Criminal Court of the Superior Court of Justice of Liberty ordered the immediate release of the alleged victim after verifying that the deadline for preventive prison had been met. Without prejudice of that, on June 9, 2010, the Constitutional Court rejected the aforementioned constitutional appeal, reaffirming that the decisions that rejected the request for cessation of such preventive measure had an appropriate motivation.

5. The petitioner alleges that on September 7, 2009, the Superior Court of Preparatory Investigation convicted the alleged victim for the crime of specific passive bribery to eight years of jail and five years of disqualification for the exercise of public duties, what implied his dismissal as Deputy Province Prosecutor. The aforementioned court considered in its sentence that the evidence presented by the District Attorney’s Office was sufficient to demonstrate the alleged crime. The petitioner indicates that the defense of Mr. Rojas Segura appealed said decision; however, on July 23, 2010, the Permanent Criminal Court of the Supreme Court partially confirmed the sentence, reducing the disqualification for the exercise of public duties to three years. Such decision integrally revised the plea of fact and law. Then, the representation of the alleged victim filed an appeal for annulment against the aforementioned verdict, but on October 5, 2010, the Supreme Court denied it.

6. Subsequently, on August 23, 2011, the attorney of the alleged victim filed a petition for a writ of habeas corpus questioning the aforementioned condemnatory verdict. However, on January 13, 2012, the First Criminal Court of Preparatory Investigation of Trujillo declared the claim groundless after considering that in both, the investigation period and the judgment, all the rights to a fair trial were respected. The defense of Mr. Segura Rojas appealed this decision, but on May 30, 2012, the Second Criminal Room of Appeals of the Superior Court of Justice of Liberty confirmed the decision of refusal. Before this, the representation of the alleged victim filed a constitutional appeal; which was rejected by the Constitutional Court on April 16, 2013 and that reaffirmed that the criminal process had an appropriate motivation and that any procedural guarantees were affected to detriment the alleged victim.

7. The petitioner denounces before the IACHR that both, the investigation and the criminal judgment violated the right to a fair trial of the alleged victim. It alleges that the Police did not establish a chain of custody to safeguard the evidence, so the audio that was used as evidence to convict him could have been manipulated. It alleges that, at the moment of his detention, some procedures were done without the presence of an attorney freely chosen by Mr. Segura Rojas and that the certificate of declaration of rights was not issued properly. It alleges that the detention of the alleged victim and the search of his domicile were irregular. And, it alleges that the delay of the Constitutional Court in resolving the first constructional appeal against the rejection of the cessation of preventive prison affected the right to obtain a decision within reasonable time.

8. In addition, the petitioner alleges that the evidence used to support the measure of preventive prison and his criminal conviction did not demonstrate the guilt of Mr. Rojas Segura, for which his right of presumption of innocence was violated. And that the evidence used to motivate the sentence was obtained illegally and that during the procedure, several contradictions in the declarations of the complainant were confirmed. Finally, the petitioner alleges that the criminal type of bribery was not applied properly, and that the Permanent Criminal Court of the Supreme Court did not apply the norms of the New Procedural Penal Code when the appeal was resolved, causing the limitation of his oral intervention during the hearing.

9. The State, for its part, holds that the petition is inadmissible because the domestic remedies of jurisdiction have not been exhausted. It states that the defense of the alleged victim filed a new petition for a writ of habeas corpus in 2015 to question the sentence of the Supreme Court and that said petition is on the outlook for resolution. Additionally, it points out that, during the preliminary investigation, the representation of Mr. Rojas Segura did not file a petition for a writ of habeas corpus to question his detention or the procedures done by the District Attorney's Office. Finally, it indicates that the alleged victim did not question the imposition of preventive prison against him, but only the refusal to his request of cessation of such preventive measure, for that reason it would also exist a lack of exhaustion of domestic remedies on that point.

10. On the other hand, Peru argues that the criminal procedure followed against Mr. Rojas Segura was done according to the applicable legal and constitutional frame and totally respecting the right to fair trial and the due process. Consequently, it requests that the petition is declared inadmissible pursuant to article 47(b) of the American Convention due to the fact that it is considered that the pretension of the petitioner is that the Commission acts like a higher court in contradiction of its complementary nature.

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

11. The petitioner indicates that the domestic remedies were exhausted on October 5, 2010 with the decision of the Supreme Court to deny the appeal for annulment filed with the sentence of second instance that confirmed the conviction against Mr. Rojas Segura. The State, for its part, considers that the national jurisdiction has not been exhausted because in 2015 the alleged victim initiated a new process for a writ of habeas corpus that is still on the outlook for resolution.

12. The IACHR remarks that, in principle, the exhaustion of extraordinary remedies in all the cases is not necessary. However, if the petitioner considers that these remedies can have a favorable result in the remedy of the juridical situation allegedly violated and decides to take this action, he has to exhaust them according to the current procedural rules, provided that the conditions of access to these remedies are reasonable. Therefore, the Commission observes that after the refusal of the appeal for annulment, the defense of the alleged victim initiated a writ of habeas corpus procedure in 2011 and it ended on April 16, 2013 with a negative resolution from the Constitutional Court. Furthermore, according to the information given by the State, it is confirmed that the representation of Mr. Rojas Segura filed a new petition for a writ of habeas corpus in 2015 to question the aforementioned condemnatory verdict. In that regard, the Commission investigated

that this second procedure of writ of habeas corpus ended on November 21, 2017 through a new sentence from the Constitutional Court that denied the petition after analyzing the main issues of the controversy<sup>5</sup>.

13. Based on said information, The IACHR confirms that the domestic remedies were exhausted while the petition was being studied for admissibility through two extraordinary processes of habeas that had been mentioned before. Consequently, the Commission finds formally accredited the established requirement in article 46.1.a of the Convention. Furthermore, considering that the petition was received by the IACHR on February 18, 2010.

## VII. ANALYSIS OF COLORABLE CLAIM

14. The Commission has established that once the American Convention comes into force in relation to a State, this and not the Declaration becomes the primary source of applicable law by the Commission, provided that the petition refers to the alleged violation of identical rights in both instruments and is not about a situation of continuous violation. In this case, it only corresponds to analyze the alleged facts based on the American Convention.

15. In the present case, the petitioner claims that various irregularities were committed during the development of the criminal process against the alleged victim. The state claims that the situation was duly examined by the domestic judicial authorities who concluded that no rights were infringed and that the authorities acted according to the applicable constitutional and legal frame.

16. Thus, after examining the position of the parties and all the available information in the file of the petition, the IACHR confirms that the issued sentences in the criminal process motivated its decision based on the various evidence offered by the District Attorney's Office without a reversion on the burden of the proof that would affect the right to presumption of innocence of the alleged victim. Besides, it finds that said decisions determined that Mr. Rojas Segura authorized the entrance to his domicile and had a court-appointed attorney during the procedure. Finally, it observes that the alleged victim had the opportunity to defend himself through two judicial instances that analyzed both, the plea of fact and the plea of law presented, and that the development of the procedures of habeas corpus respected the right to fair trial. Judicial grounded decisions were made at all times, on which *prima facie* do not show vices or irregularities that may imply allegedly violations to the established rights in the American Convention.

17. Therefore, the Commission concludes that the petition is inadmissible pursuant to article 47(b) of the American Convention due to the fact that the presented facts do not show, not even *prima facie*, possible violations to the American Convention.

## VIII. DECISION

1. To declare this petition inadmissible; and
2. To notify the parties of this decision; 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 2<sup>nd</sup> day of the month of July, 2020.  
(Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

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<sup>5</sup> Sentence of the Constitutional Court of Peru registered on file 04929-2015-PHC. Available at: <https://tc.gob.pe/jurisprudencia/2018/04929-2015-HC.pdf>