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REPORT No. 25/16
PETITION 895-04
REPORT ON ADMISSIBILITY

ÁNGEL GILBERTO LOCKWARD MELLA
DOMINICAN REPUBLIC

Approved by the Commission at its session No. 2065 held on April 15, 2016.
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I. SUMMARY

1. On September 16, 2004, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "Commission," or "IACHR") received a petition filed by Mr. Ángel Gilberto Lockward Mella (hereinafter, the "petitioner" or "alleged victim"), representing himself, against the Dominican Republic (hereinafter the "State" or "Dominican Republic"). The petition essentially argues that the State bears international responsibility for the unlawful detention of Mr. Lockward and for violation of his fair trial guarantees in the context of a criminal proceeding instituted against him.

2. The petitioner holds that in 2003 he was unlawfully detained at the Palace of Justice Remand Prison (*Cárcel Preventiva del Palacio de Justicia*) in Ciudad Nueva on the orders of the then-Attorney General of the Republic (*Procurador General de la República*) as part of an alleged political persecution orchestrated by the government with the aim of eliminating the opposition. The petitioner also claims that his rights to a fair trial and personal liberty were violated because he was detained without a court order or legitimate cause and by the fact that he was not brought before a competent judge during the first part of the process. For its part, the State argues that Mr. Ángel Lockward's human rights were not violated because the criminal proceeding against him was conducted in observance of his fair trial guarantees. It also says that the petitioner failed to exhaust all domestic remedies since the appropriate recourse against any decisions of the Supreme Court of Justice or of its President was a motion to review, for which reason the petition should be declared inadmissible under Article 46(1) of the Convention.

3. Having examined the positions of the parties and compliance with the requirements set forth in Articles 46 and 47 of the American Convention, without prejudging the merits of the complaint, the Commission has decided to declare the petition admissible for the purposes of examination of alleged violations of rights recognized in Articles 7 (right to personal liberty), 8 (right to a fair trial), 23 (right to participate in government), and 25 (judicial protection) of the American Convention (hereinafter, the "American Convention" or "Convention"), taken in conjunction with Articles 1(1) and 2 of said treaty. The Commission has further decided to notify the parties of this decision, and to publish it and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE IACHR

4. The IACHR received the petition on September 16, 2004, and forwarded a copy of the pertinent parts to the State on April 1, 2009, giving it two months in which to submit observations, in accordance with Article 30(3) of its Rules of Procedure as then in force. On September 15, 2009, the State presented its response, which was duly transmitted to the petitioner on October 19, 2009.

5. The petitioner presented additional documents and information on October 1, 8, 13, and 25, 2004; November 10, 15, and 19, 2004; January 5, June 28, and October 11, 2005; November 6 and 30, and December 16, 2009; and February 3, 2010. The State, for its part, requested a one-month extension on January 14, 2010, which the IACHR granted on February 3, 2010. Those communications were duly forwarded to the opposing parties.

6. On February 10, 2016, the State wrote to the IACHR requesting that it evaluate the possibility of setting the petition aside based on the grounds of inaction on the part of the petitioner, given that, according to the State, there had been no activity in connection with the petition since 2010. In that

regard, it is worth noting that the petitioner sent a communication on May 30, 2014, in which he requested information on the procedural status of his petition and requested that a decision be adopted on its admissibility. That communication was not relayed to the State as it contained no arguments or substantive information. Therefore, in accordance with Article Articles 48(1)(b) of the Convention and 42(2) of the Rules of Procedure, the request of the State is inadmissible.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

7. The petitioner claims that following a systematic smear campaign in the run-up to the primary elections of the Christian Social Reformist Party, in which he held a senior leadership position, the government launched a political persecution plan against that party's leaders. He said that in early March 2003, the then-Attorney General of the Republic (hereinafter the "Attorney General"), began a campaign of accusations against members of that party. In that context, he claims that he was deprived of his liberty on March 11, 2003, without an arrest warrant or being informed of the charges against him, of which he learned later from the media. He says that he was accused of fraud against the State owing to acts allegedly committed during his tenure as Secretary for Industry and Trade in 2001.

8. He says that on that same day the Attorney General presented an indictment to the Supreme Court of Justice in connection with almost 100 individuals, against whom no clear charges were made either. He said that the unlawful imprisonment of the accused was so blatant that it was covered and repudiated by the media, as well as civil society.

9. The supposed unlawfulness of those detentions notwithstanding, on March 12, 2003, the President of the Supreme Court of Justice appointed as special examining judge Judge Dulce María Rodríguez, who was designated President of the Division of Appeals (*Cámara de Calificación*) for that proceeding, because purportedly one of the accused was a member of the National Congress, who enjoyed special jurisdiction privileges. The petitioner says that, in light of this situation, he requested Judge Rodríguez on five occasions to recuse herself with respect to the other accused, so that they might be referred to the regular jurisdiction and be heard by a competent court. However, no reply to that request was ever forthcoming. That same day, the alleged victim filed a petition for a writ of habeas corpus for unlawful imprisonment. The Court of Appeals set the date for its examination at April 7, 2003, which, in the petitioner's opinion, violated the Convention and Article 381 of the Code of Criminal Procedure, which provides that a habeas corpus petition must be examined by a judge or tribunal without delay.

10. The petitioner says that on a number of occasions he requested the judicial authorities to furnish the arrest warrant and notify him of the charges against him, to which he was informed that no arrest warrant existed, that the order came from the Attorney General, and that they did not know what the charges were. He says that in light of the nonexistence of specific charges, his lawyers went to the remand prison on March 14, 2003, to determine what the charges were, but were denied access to the prison. In response to that situation, the petitioner filed a criminal complaint for unlawful imprisonment against the Attorney General, the District Prosecutor, and the Chief of the National Police with the Supreme Court of Justice on March 14, 2003, and in the regular jurisdiction on September 6, 2004; however, those complaints were never processed.

11. The petitioner asserts that on March 17, 2003, he filed a formal petition for constitutional relief (*recurso de amparo*) before the President of the First Division of the Commercial Chamber of the Court of First Instance for the National District, which set the date for its hearing at March 27, 2003, so that the National District Prosecutor might show the order by virtue of which Mr. Lockward was detained at the Remand Prison of the Palace of Justice. However, the National District Prosecutor did not appear at the hearing and, therefore, the putative order of arrest was not obtained.

12. The petitioner says that, under Articles 8.2.b, 8.2.c, and 8.2.e of the Constitution then in force, in the absence of an order of arrest he should have been released *ex officio* within 48 hours after that situation became known. However, he alleges that Judge Rodriguez did not do so, even after that violation was brought to her attention, both in the physical record and in the alleged victim's statement. Accordingly, Mr. Lockward requested the cancellation, revocation, or annulment of the verbal order for his arrest arbitrarily issued by the Attorney General, which was also denied.

13. The petitioner claims that owing to the delay in a decision under the other remedies, he was forced to invoke the last recourse available to him, which was a motion for his release on his own recognizance on March 21, 2003, which was granted on April 1, 2003, by Judge Rodriguez, after signing a detention order that was necessary to "legalize" the detention and proceed to his provisional release on bail. He claims that that procedural act violated his right to be presumed innocent because a pretrial detention order may only be issued for cause or if there is a risk that the accused might evade the authorities or abscond, which circumstances, in his opinion, were not present in the instant case.

14. The petitioner says that various irregularities were committed during the criminal proceeding, such as, for example: (a) The government report that provided the basis to accuse him was not prepared by a competent authority, since the only authority with oversight powers is the Court of Appeals, which reportedly had already determined that there were no irregularities during the alleged victim's term; (b) the only three individuals who admitted to accepting money would allegedly not face prosecution and had even testified as witnesses to the acts of which he stood accused; and (c) the State certified two experts in the investigation who were not on the judiciary's roster of approved experts.

15. Furthermore, the petitioner claims that on February 2, 2004, the prosecutor desisted from pursuing the indictments against the accused. However, the Court of Appeals did not take into account that desistance in its decision of August 30, 2004, or the evidence that reportedly demonstrated what had happened to the funds that were the subject of the indictment. According to the petitioner, the decision found that nobody knew where the funds were. The alleged victim says that the decision also recognized that he had been detained without an order of arrest and that the charges had been vague.

16. The petitioner says that because the decision was a single-instance ruling, he was unable to appeal against it. However, he filed two criminal complaints against Judge Rodriguez on September 27, 2004, for unlawful detention and making false statements, which were rejected on November 4 and November 9, respectively.

17. The petitioner says that the case was sent to the Criminal Division of the Court of First Instance for the National District, where it was randomly assigned by lottery to the Third Collegiate Tribunal of the Criminal Division of the Court of First Instance on June 1, 2007. At the same time, he said that the Office of the Comptroller General of the Republic decided to conduct a review and ordered an inquiry and forensic audit in view of the multiple errors contained in the 2001 audit report that provided the basis for the criminal accusation of October 6, 2004. The petitioner says that that report concluded on November 7, 2007, that the 2001 report should be declared void owing to the multiple errors it contained and that it was the Court of Appeals, not that agency that had auditing authority. The report was forwarded that same day to the Third Collegiate Tribunal and the Public Prosecution Service (*Ministerio Público*).

18. The petitioner also says that the Office of the Attorney General issued a withdrawal of the accusation against the alleged victim on May 28, 2008, which was accepted at the hearing of June 19, 2008, whereupon the Third Collegiate Tribunal for the National District acquitted Mr. Lockward and ordered the cessation of all coercive measures imposed on him. Finally, the petitioner says that on August 12, 2009, a second public hearing was held in relation to the other accused at which the State's witnesses reportedly admitted that the whole thing had been a farce, that the reports had been knowingly and intentionally false,

and that the Public Prosecution Service had dismissed the first criminal complaint more than five years earlier.

19. In conclusion, the petitioner charges that his detention for 22 days without an order of arrest, along with the violations of his fair trial guarantees in the criminal proceeding instituted against him so far had yet to be redressed. He also says that as a result of his criminal trial he had been unable to take part in the primaries of the Christian Social Reformist Party in 2003 to appoint the party leadership and candidates for congressional and municipal office. According to the petitioner, that meant that the majority of the participants in the following year's elections were members of the ruling party. He considers, therefore, that the State violated the rights recognized in Articles 7, 8, and 23 of the American Convention, taken in conjunction with Article 1 (1) thereof, to his detriment.

B. Position of the State

20. The State holds that the allegations made to the Commission do not constitute violations of Mr. Lockward's human rights since the judicial proceeding instituted against him was conducted in observance of fair trial guarantees and because Mr. Lockward was released on April 1, 2003, by order of examining judge Rodriguez de Goris.

21. The State argues that the petitioner's fair trial guarantees were observed, given that on March 11, 2003, the Attorney General submitted a case to the Supreme Court of Justice that involved Mr. Angel Lockward and that due to the fact that a Congressional deputy, who enjoyed jurisdictional privileges, was also implicated, the case was heard by the State's highest court. It also says that the special jurisdiction privileges enjoyed by the aforesaid deputy also covered the other persons involved. According to the State, therefore, the appointment of Judge Dulce Rodríguez de Goris as special examining judge on March 12, 2003, had not violated the alleged victim's rights to a competent court.

22. However, when the Court of Appeals for the special jurisdiction issued an order of acquittal in favor of the aforesaid deputy, and a declination of jurisdiction with respect to the other accused, including, Mr. Angel Lockward, it was determined that they should be tried in the regular courts. Thus, on September 14, 2006, the acting judge of the Second Lower Court (*Segundo Juzgado Liquidador de Instrucción*) issued a ruling of no grounds for proceeding and a procedural interlocutory order, referring several accused persons, including Mr. Lockward, to the regular criminal jurisdiction.

23. The State mentions that the case was sent to the Criminal Division of the Court of First Instance in and for the National District, where it was randomly assigned by lottery to the Third Collegiate Tribunal of the Criminal Division of the Court of First Instance on June 1, 2007. It also says that the Office of the Attorney General issued a withdrawal of the accusation against the alleged victim on May 28, 2008, which was accepted at the hearing of June 19, 2008, whereupon Mr. Lockward was acquitted and the cessation ordered of all coercive measures imposed on him.

24. In conclusion, the State requests that the petition be declared inadmissible on the grounds that Mr. Lockward's human rights were not infringed. Furthermore, it holds that the petitioner failed to exhaust all domestic remedies, since the appropriate recourse against the decisions of the Supreme Court of Justice and its President which the alleged victim considers to have harmed him, was a motion to review, for which reason the petition should be declared inadmissible under Article 46(1)(a) of the Convention.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

25. The petitioner is entitled under Article 44 of the American Convention to lodge petitions with the Commission. The petition identifies as alleged victim an individual on whose behalf the Dominican State undertook to observe and ensure the rights enshrined in the American Convention. As regards the State,

the Commission notes that the Dominican Republic has been a party to the American Convention since April 19, 1978, when it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to hear the petition, in that it alleges violations of rights protected in the American Convention that would have occurred within the territory of the Dominican Republic, a State Party to that convention.

26. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date the events alleged in the petition would have occurred. Finally, the Commission is competent *ratione materiae*, given that the petition alleges possible violations of rights protected under the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

27. Article 46(1)(a) of the American Convention provides that in order for a petition to be admitted by the Commission, it will be required that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve the situation before it is taken up in an international proceeding.

28. The petitioner argues that he exhausted all domestic remedies, both for the deprivation of his liberty and for the violation of his fair trial guarantees in the criminal proceedings brought against him. The State says that the petitioner failed to exhaust domestic remedies, since the appropriate recourse against the decisions of the Supreme Court of Justice and that Court's President was a motion to review.

29. In keeping with the doctrine of the IACHR, whenever a State alleges the petitioners' failure to exhaust the domestic remedies, it has the burden of identifying which remedies should be exhausted and demonstrating that the remedies that have not been exhausted are "adequate" for remedying the alleged violation, which means that the function of those remedies within the domestic legal system is suitable for protecting the legal right that has been infringed.

30. Bearing in mind the positions of the parties and the information contained in the record, the IACHR finds that the petitioner invoked a series of remedies against the alleged arbitrary and unlawful deprivation of his liberty, including: a petition of habeas corpus on March 12, 2003; a petition for constitutional relief (*amparo*) with the President of the First Division of the Commercial Chamber of the Court of First Instance in and for the National District on March 17, 2003; and a motion for cancellation or revocation of the order of arrest to Judge Rodriguez. Therefore, in the opinion of the Commission, the petitioner exhausted the remedies under domestic law with respect to the above submission.

31. As to the alleged violation of fair trial guarantees, the IACHR notes that, contrary to the State's arguments, there was no possibility of appeal against the decision issued by the Court of Appeals on August 30, 2004. That is because the motion for review of the decisions of the Supreme Court of Justice and its President was included in the Code of Criminal Procedure that went into force in September 2006, by which time the case had already been referred to the regular courts. Moreover, according to the Code, that remedy is only admissible against conviction decisions. In that regard, the Commission observes that the criminal proceeding against the alleged victim ended with the acquittal issued on June 19, 2008.

32. Consequently, the IACHR concludes that in this case, the remedies under the domestic jurisdiction were interposed and exhausted in accordance with Article 46(1)(a) of the American Convention.

2. Timeliness of the petition

33. Article 46(1)(b) of the American Convention provides that for a petition to be admissible, it must be presented within six months of the date on which the party alleging violation of rights was notified of the final judgment.

34. The petition was lodged with the IACHR on September 16, 2004; the remedies against the alleged victim's detention were invoked and exhausted in March and April 2003; and the criminal proceeding against the alleged victim concluded on June 19, 2008. In other words, the exhaustion of domestic remedies occurred while the case was under preliminary examination. Therefore, the grounds for inadmissibility set forth in Articles 46(1)(c) and 47(d) of the Convention are not applicable.

3. Duplication of proceedings and international *res judicata*

35. There is nothing in the record to suggest that the subject matter of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by this or any other international organization. Therefore, the grounds for inadmissibility set forth in Articles 46(1)(c) and 47(d) of the Convention are not applicable.

4. Colorable claim

36. 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, pursuant to paragraph (c) of the same article, whether the petition is "manifestly groundless" or "obviously out of order." The standard by which admissibility is assessed is different from the one needed to decide the merits of a petition since the Commission must perform a *prima facie* evaluation to determine whether the petition provides grounds for an apparent or potential violation of a right guaranteed by the American Convention. This examination is a summary analysis that does not imply a prejudgment or preliminary opinion on the merits of the matter.

37. Furthermore, neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

38. The petitioner claims that the Dominican State violated his right to personal liberty because he was arbitrarily and unlawfully detained for 22 days without an order of arrest or cause. He also says that the State violated his right to a fair trial because he was not brought before a competent court, he was not given access to the case file until five years after the proceeding began, his right to be presumed innocent was infringed, and he was prevented him from mounting a defense on account of being ignorant of the charges. The petitioner also argues that the State violated his right to participate in government because the criminal proceeding brought against him was part of a campaign of political persecution of members of the Christian Social Reformist Party that prevented him from taking part in the party's primary elections in 2003. Finally, he says that he did not have effective remedies to challenge the actions of the judicial authorities.

39. For its part, the State says that the subject matter of the petition no longer exists because Mr. Lockward was released on April 1, 2003, and his criminal proceeding observed fair trial guarantees at all times.

40. In light of the factual and legal arguments presented by the petitioner and the nature of the matter before it, the IACHR finds that, if proven, the petitioner's submissions could characterize possible violations of rights protected in Articles 7 (right to personal liberty), 8 (right to a fair trial), 23 (right to participate in government), and 25 (right to judicial protection) of the American Convention on Human

Rights, taking in conjunction with Articles 1(1) and 2 thereof, to the detriment of Ángel Gilberto Lockward Mella.

V. CONCLUSIONS

41. Based on the arguments of fact and law set forth above, the Commission concludes that the petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention and, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with respect to the alleged violations of Articles 7, 8, 23, and 25 of the American Convention, in conjunction with the obligations contained in Articles 1(1) and 2, thereof, to the detriment of Ángel Gilberto Lockward Mella;
2. To notify the parties of this decision;
3. To proceed with its analysis of merits in the matter; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 15th day of the month of April, 2016. (Signed): Francisco José Eguiguren, First Vice President; José de Jesús Orozco Henríquez, and Esmeralda E. Arosemena Bernal de Troitño, Commissioners.