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REPORT No. 128/20
PETITION 1697-11
REPORT ON ADMISSIBILITY

ROBERTO SEBASTIÁN DA SILVA RODRÍGUEZ ET AL.
URUGUAY

Approved electronically by the Commission electronically on April 25, 2020.

Cite as: IACHR, Report No. 128/20, Petition 1697-11. Admissibility. Rodrigo Sebastian Da Silva Rodríguez et al. Uruguay. April 25, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Rodrigo Sebastián Da Silva Rodríguez
Alleged victim:	Rodrigo Sebastián Da Silva Rodríguez et al ¹
Respondent State:	Uruguay
Rights invoked:	Articles 23 (right to participate in government), 24 (equal protection of the law), and 25 (judicial protection) of the American Convention on Human Rights ² ; and Articles II (right to equality before law), XVII (right to recognition of juridical personality and civil rights), XX (right to vote and participate in government) and XXXII (duty to vote) of the American Declaration of the Rights and Duties of Man ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	November 29, 2011
Additional information received at the stage of initial review	January 8, 2013
Notification of the petition to the State:	August 7, 2017
State's first response:	December 8, 2017
Additional observations from the petitioner:	April 19 and August 1 and 7, 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 (instrument of ratification deposited 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	Articles 23 (right to participate in government/political rights), 24 (equal protection of the law), and 25 (judicial protection) of the American Convention in conjunction with Article 1.1 and 2 thereof.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, as referred to in Section VI
Timeliness of the petition:	Yes, as referred to in Section VI

¹ Daniel Rowinsky and Jorge Rowinsky² Hereinafter "American Convention" or "Convention."³ Hereinafter "the American Declaration" or "the Declaration".⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. FACTS ALLEGED

1. The petitioner and alleged victim, Rodrigo Sebastián Da Silva Rodríguez, claims the international responsibility of the Uruguayan State for its continued failure to implement procedures to enable Uruguayan citizens residing outside the Republic of Uruguay to vote. In this regard, the petitioner argues that this omission constitutes discrimination against Uruguayan citizens residing abroad as opposed to those residing in Uruguay who can exercise their right to vote and are able to do so in districts close to their place of residence.

2. The petitioner argues that Uruguayans living abroad only have the right to vote if they travel to the national territory and therefore maintains that the absence of a mechanism for voting abroad not only impacts the right of the persons identified as alleged victims but also that of approximately 800,000 citizens, 17% of the total population of Uruguayan citizens. In particular, the petitioner refers to the fact that, together with the other alleged victims, they were unable to participate in the last elections due to lack of economic resources and work leave. He points out that the Uruguayan Constitution recognizes the right to vote for all its citizens, without any limitations in the Constitution itself or in national legislation restricting this right according to residence.

3. The petitioner argues that, with the aim of achieving the presentation and approval of a bill on this matter, he sent a request to all senators and representatives of Congress, as well as to the President of the Republic, on September 27, 2011, without having received a response. In this regard, it should be noted that statements by the then President of the Republic and some senators have politicized the issue and are unaware that a violation of the Constitution, the law, and international treaties ratified by Uruguay is taking place.

4. He points out that in November 2009 a plebiscite was held on the implementation of the territorial vote through a popular proposal to amend the Constitution. He notes, however, that the plebiscite was conducted improperly in an irregular process as, in his view, it is not necessary to reform the Constitution, as the right to vote of citizens abroad is prescribed in Article 77 and what would be needed is the implementation of the right to vote. The petitioner alleges the lack of an adequate and effective domestic judicial remedy to which they can have recourse and further explains that under the constitutional regime of separation of powers, no judicial remedy empowers the Judiciary to order the Legislative and/or Executive Branch to take certain actions that are under their complete control and domination, such as imposing on the Legislative Branch to submit and pass a bill for the implementation of the territorial vote. Accordingly, the petitioner stresses that the exception described in Article 46.2.a of the Convention applies.

5. The State, for its part, argues that the facts alleged do not constitute human rights violations, inasmuch as the implementation of facilities for Uruguayan citizens abroad to exercise their right to vote is a matter of law and its absence cannot constitute a violation of the American Convention, since there is no discrimination or positive obligation under the Convention to provide for type of solutions in conventional law. The State argues that, currently, the exercise of the right to vote is regulated by law on the basis of residence within the national territory without its omission violating the related rights. For that reason, the State stresses that national legislation "does not limit the right to vote according to the residence of its citizens, but neither does it regulate the exercise of the right to vote for citizens who are abroad." Likewise, the State considers that most of the petitioner's arguments are based on the Constitution of the Republic and not on the American Convention or American Declaration, even though Uruguay's domestic legislation should not be subject to the Commission's review.

6. The State maintains that the petition contains serious observations on Law No. 13,882, which provides a number of consequences for those citizens who have not voted in two consecutive national elections. In this regard, it points out that the national legal system provides for a process of declaring laws unconstitutional, that the petitioner has not pursued, as he himself points out in the petition. Finally, the State adds that, as another domestic mechanism pending exhaustion, there is the citizens' initiative in legislative matters provided for in Article 79 of the Constitution.

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

7. The Commission takes note of the State's argument regarding the lack of exhaustion by the alleged victims of the remedy of unconstitutionality of laws, as well as the availability of the citizens' initiative in legislative matters. With respect to the remedy of unconstitutionality, the Commission observes that the State argues that it is necessary to exhaust this remedy in relation to the contextual arguments presented by the petitioner concerning Laws Nos. 13,882 and 16,021, particularly with regard to their effects on the right to vote of Uruguayan citizens in Uruguay.⁵ For admissibility purposes, the IACHR observes that, based on the information provided, the main claim of the alleged victims is related to the State's failure to implement the right to vote of Uruguayan citizens residing abroad and, as a result, the direct effects on their rights.

8. The Commission observes that Article 259 of the Uruguayan Constitution provides that the judgment of the Supreme Court of Justice shall refer exclusively to the specific case at hand and shall have effect only in the proceedings in which it has ruled. In this sense, the Commission considers that the effects of a declaration of unconstitutionality to be only for the specific case, that is, it does not produce *erga omnes* effects. Given the subject matter of this petition, the Commission considers that it is not necessary for the alleged victims to file an action of unconstitutionality. On the other hand, the State has also not submitted information regarding the effectiveness of the remedy of unconstitutionality in other cases of individual petitions, and therefore has not provided any information that would allow it support its suitability and effectiveness in resolving the present case before the domestic jurisdiction. In sum, the action of unconstitutionality was not a domestic remedy that the petitioners had to exhaust in order to bring their case before the Inter-American Commission.⁶

9. With respect to citizens' initiatives in legislative matters, the Commission verifies that Article 79 of the Uruguayan Constitution does establish a mechanism for exercising the right of initiative before the Legislative Branch.⁷ In particular, the Commission considers that the requirements to gather or coordinate twenty-five percent of the total number of registered voters in order to present an initiative before the Legislative Branch as an appropriate and adequate resource to be used in the Inter-American system of protection are excessive. Furthermore, based on the information available, the Commission notes that the procedure and manner of processing an initiative lacks regulation, and therefore does not have a specific procedure or time frame. Therefore, based on that information, the Commission considers that under domestic law there is no due process or suitable remedy for protecting the allegedly violated rights. That being so, it observes that the exception provided for in Article 46.2.a of the Convention applies.

10. On the other hand, the Commission considers that the petition was lodged within a reasonable time and that the admissibility requirement regarding the time limit for presentation based on Article 32.2 of its Rules of Procedure must be considered to have been met. This is so, given that the alleged violations are supposedly of an ongoing nature and the petition was received on November 29, 2011.

VII. ANALYSIS OF COLORABLE CLAIM

11. The Commission observes that the present petition includes allegations regarding the impossibility of voting abroad due to lack of regulations. In view of those considerations and after examining

⁵ The Commission notes that, in briefs submitted during the processing of the petition, the petitioner makes what he calls "contextual" comments criticizing Laws No. 13.882 and No. 16.021, particularly with respect to their effects on the right to vote of Uruguayan citizens in Uruguay and to his intention to file unconstitutionality appeals against those laws, in addition, possibly, to petitions to the Commission.

⁶ IACHR, Report N° 8/07, Petition 1425-04. Admissibility. Hugo Quintana Coello et al (Supreme Court Judges). Ecuador. February 27, 2007, par. 29.

⁷ Article 79 of the Uruguayan Constitution. - The accumulation of votes for any elected office, with the exception of those for President and Vice President of the Republic, shall be effected through use of the lema of the political party [Tr. political party ticket]. The Law, by a vote of two-thirds of the total of the membership of each Chamber, shall regulate this provision. Twenty-five percent of all persons registered and qualified to vote may, within one year following their promulgation, demand a referendum against the laws and exercise the right of initiative before the Legislative Power. These institutions are not applicable with respect to laws establishing taxes. They are likewise not applicable in those cases in which the initiative is exclusive to the Executive Power. Both institutions shall be regulated by law, adopted by absolute majority of the total of the membership of each Chamber.

the matters of fact and law presented by the parties, the Commission considers that the allegations of the petitioning party are not manifestly groundless and need to be studied in depth because, if corroborated, they could constitute violations of Articles 23 (right to participate in government), 24 (equal protection of the law), and 25 (judicial protection) of the American Convention on Human Rights, in conjunction with Article 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof. The Commission considers that the claims put forward by the petitioners raise issues regarding the rights of those named as alleged victims and the State's corresponding obligations that need to be analyzed at the merits stage.

12. With regard to the claim concerning the alleged violation of the articles of the American Declaration of the Rights and Duties of Man, the Commission reiterates that once the American Convention enters into force in a State, the latter, and not the Declaration, becomes the primary source of law applicable by the Commission, provided that the petition alleges violations of substantially identical rights enshrined in the two instruments, as is the case in the present case. The present petition observes that Articles II (right to equality before the law), XVII (right to recognition as a person before the law and civil rights), XX (right to vote and participate in government), and XXXII (duty to vote) of the American Declaration enshrine rights that are substantially identical to those protected in the American Convention. In this sense, the Commission will analyze these allegations in the light of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 23, 24, and 25 of the American Convention; and

2. To notify the parties of this decision; to proceed with the analysis on the merits, and to publish this decision and 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 25th day of the month of April, 2020. (Signed): Joel Hernández (dissenting opinion), President; Antonia Urrejola (dissenting opinion), First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana (dissenting opinion), Commissioners.