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**REPORT No. 231/21**  
**PETITION 245- 10**  
REPORT ON ADMISSIBILITY

GASTÓN RAMÓN PESCE ECHEVERZ  
URUGUAY

Approved electronically by the Commission on September 9, 2021.

**Cite as:** IACHR, Report No231/21. Petition 245- 10. Admissibility. Gastón Ramón Pesce Echeverz. Uruguay. September 9, 2021.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Gastón Ramón Pesce Echeverz
<b>Alleged victim:</b>	Gastón Ramón Pesce Echeverz
<b>Respondent State:</b>	Uruguay
<b>Rights invoked:</b>	Articles 5 (personal integrity), 7 (personal liberty), 8 (right to a fair trial), 11 (honor and dignity), 13 (freedom of expression), 14 (rectification and reply) 17 (protection of the family), 21 (private property), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights <sup>1</sup> in relation to Article 2 (duty to adopt provisions of domestic law) thereof; it also invokes the American Declaration of the Rights and Duties of Man without specifying any articles.

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	February 23, 2010
<b>Additional information received at the stage of initial review:</b>	June 25, August 28, December 14 and 16, 2011; August 6, 2012; April 29, June 1 and 22, 2013; and August 16, 2013
<b>Notification of the petition to the State:</b>	October 27, 2014
<b>State's first response:</b>	March 9, 2015
<b>Additional observations from the petitioner:</b>	January 23, March 6 and April 29, 2013; June 17, 2015; January 22, 2016; March 31, June 1, September 7, 8 and 13, 2017; May 3 and 4, August 9, 2018; February 26 and 28, July 26, August 1 and November 11, 2019; and July 12, 2021
<b>Additional observations from the State:</b>	May 26, 2016, and November 6, 2019

**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 (deposit of the instrument of ratification developed on March 26, 1985)

**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>	Articles 5 (personal integrity), 7 (personal liberty), 8 (right to a fair trial), 17 (family protection), 24 (equality before the law), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention in relation to Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law) thereof.

<sup>1</sup> Hereinafter "the American Convention" or "the Convention."

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under the terms of Section VI.
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI.

## V. FACTS ALLEGED

1. Gastón Ramón Pesce Echeverz (hereinafter “the petitioner”) alleges that he has been subjected to pretrial detention for over 10 years and to a preventive suspension of his right to practice the profession of lawyer, without a first instance ruling in the criminal proceedings initiated against him for aggravated homicide. Although he acknowledges being responsible for the fact for which he is accused, he argues that his right to defense has not been respected; that the relevant mitigating factors have not been weighed; that the prison authorities have arbitrarily denied him access to health services, and opportunities to work and study; and that they have applied sanctions and have confiscated his property without due process. He also claims that he has not been allowed to exercise his own defense in the criminal proceedings against him; that he has suffered reprisals after having denounced the abuses that occur in Uruguayan prisons; that he has received discriminatory treatment in several proceedings to which he is a party; and that he has been deprived of the use of his property by means of an illegal precautionary measure.

2. The petitioner reports that since 1984 he has been a lawyer, has acted as a political activist and has held several public and party leadership positions. He notes that, because of his work as a lawyer and political activist, he had conflicts with the media, with the Bar Association and with the judicial and prosecution authorities of Paysandú. He states that in 1999 “he gave in to a relationship with a colleague 14 years younger than him, who had been harassing him, and ended his 22-year marriage to the mother of his three children.” He claims that two months after his separation from his former wife, the colleague with whom he had started a relationship abruptly rejected him without reason and began to file complaints against him systematically for non-existent attacks. After five months of deterioration, and following a failed attempt to get back together, he took a gun that he always carried with him and killed his partner with three shots.

3. He indicates that a trial for aggravated homicide was initiated against him, in which he was ordered to be held in custody on October 20, 2005. In his communication sent to the Commission on November 1, 2019, he indicates that he remains in pretrial detention without a conviction 14 years after the beginning of the trial.<sup>3</sup> He argues that his prolonged pretrial detention constitutes an early and indefinite conviction, contrary to the standards of the inter-American system, since it exceeds the two thirds of the minimum sentence applicable to the offense charged to him. He also alleges that the principle of separation between detainees and convicts has not been respected and that his conditions of detention have been identical to those of convicted persons. He notes that in 2009 he twice requested for his pretrial detention to be lifted, which was denied. He also states that he has filed at least two habeas corpus and several requests for release unsuccessfully, although he did not provide the specific dates of said remedies. He argues that the remedies established by law that he has filed in the criminal proceedings against him cannot be used to justify his prolonged pretrial detention.

4. In addition, the petitioner points out that, once in prison, he continued to work as a lawyer and to pay social security taxes until March 15, 2006, when the Supreme Court of Justice issued an administrative order to preventively suspend him from practicing his profession. He indicates that such a suspension prevented him from continuing to act as a lawyer in around 500 proceedings; he was a party to 200 of them. He claims that the suspension has prevented him from exercising his legal representation in the proceedings to which he was a party<sup>4</sup> and forced him to invest money to grant powers and appoint new representatives. Similarly, he claims that the suspension has prevented him from paying the social security

<sup>3</sup> He also provides a copy of a note addressed to the Director of Legal Services of the Supreme Court of Justice dated October 20, 2019, stating that on May 8, 2019, he was granted the benefit of house arrest, but that the court and the prosecution succeeded in convincing the Supreme Court of Justice to “remove” that benefit.

<sup>4</sup> He points out that he was even fined for unlawfully practicing his profession when he sent a brief to advocate for his own interests in a proceeding in which he was involved.

taxes required for him to access the retirement benefit at the age of 60. On June 17, 2014, he applied for the lifting of the suspension, which he was denied on October 13, 2014; he then filed an application for nullity with the Administrative Court in 2015. On March 15, 2018, the Administrative Court dismissed his application for nullity since it considered that the law granted the Supreme Court the power to suspend legal professionals who were prosecuted for criminal offenses that were incompatible with the dignity and decency of the profession; and that the law did not determine the duration of the suspension, nor did it make the duration rely on the particular aspects of the criminal proceedings, but it enabled the Court to lift the suspension when it deemed it appropriate.

5. It also indicates that in 2005 the relatives of his late former partner filed a claim for damages against him. As a result, all his present and future property was garnished. Said measure remained in force for over a decade, until its expiration in late 2015. He considers that the garnishment was unlawful since the *periculum in mora* requirement established by law was not met. He argues that the garnishment prevented him from fulfilling his obligations as a debtor, a feeder and a taxpayer; and that he lost business opportunities.

6. He also states that the due process and reasonable time were not respected in the criminal proceedings on aggravated homicide. He claims that the judge in charge of the proceeding denied him the opportunity to be heard and that he was not allowed to be present during the questioning of all witnesses and was therefore not able to ask questions and to request the confrontation of witnesses. He considers that the authorities in charge of the proceeding have shown bias against him by establishing a penalty comparable to that applied for the most aberrant crimes committed during the dictatorship, on the basis of unproven aggravations and without considering “the numerous mitigating factors of a typical crime of passion.” He emphasizes that he does not deny his responsibility in the facts, but he considers that his right to raise and prove mitigating circumstances was not respected. In addition, he claims that he has been denied the right to exercise his own defense, in contravention of Article 8.2(d) and (e) of the American Convention, imposing an *ex officio* counsel against his will. He notes that he unsuccessfully requested the nullity of the criminal proceedings due to these issues, and that he also filed complaints and requests for recusal against the judge in charge. He complains that the judge continued to be in charge of the proceedings, despite the existing conflict between them after the petitioner lodged allegations against her. He also indicates that he filed an exception of unconstitutionality against the denial of his request to exercise his own defense in the trial. His claim was dismissed on November 9, 2017, by the Supreme Court of Justice. The Supreme Court considered that the law prohibiting a person charged in a criminal proceeding from exercising their own defense sought the legitimate purpose of protecting the interests of the defendant, by guaranteeing the advice of a person who had no connection with the facts. He emphasizes that the prolonged duration of the criminal proceedings against him has undermined his political rights, since Article 80.2 of the Uruguayan Constitution suspends a person’s right to vote and to be elected on the sole condition of being “legally prosecuted” in a criminal case, which is against the right of presumption of innocence.

7. The petitioner indicates that on October 6, 2006, he was transferred to a maximum-security prison, without prior notice and without a sanction justifying said decision. He alleges that this transfer caused him serious harm, as it prevented him from having access to the dental care he needed; to the work and study opportunities he had been given and which could have helped him to reduce his sentence; to opportunities for communicating with his family; and from participating in the hearings of the case on damages brought by the relatives of his former partner. He alleges that the authorities subsequently attempted to justify his transfer on alleged security grounds and because he had reportedly provided legal advice to other prisoners. He argues that the transfer was a maneuver to discourage him from participating in the damages proceedings, so he filed various administrative and amparo writs, all of which proved unsuccessful. After the administrative proceedings had been exhausted, in 2007 he filed an application for nullity before the Administrative Court, which declared the transfer null on October 4, 2011, since it considered that there had not been grounds for said measure.

8. He indicates that he has denounced to judicial authorities and the media several acts of corruption and abuses by the prison authorities; and he claims that he has been illegally repressed for this. He states that he was illegally sanctioned with one month of confinement without access to outdoor recreation areas; that he was deprived of a modem that he was authorized to use to work and communicate with his

family; and that he was removed from his role as a delegate of the inmates. He also reports that as of 2016 he was granted temporary releases and was allowed to practice critical journalism of the judicial and prison systems in the press. He was also interviewed on radio programs. He argues that in retaliation for the above, the prison authorities of the Ministry of the Interior unjustifiably arranged for his transfer to a prison with an unknown destination. He alleges that, although the transfer has been suspended due to the writ of amparo he filed, the threat of his imminent transfer to a prison with unknown destination is a mechanism aimed at silencing him.

9. The petitioner further argues that, after he had deprived his former partner of her life, the press, the judicial authorities and his fellow lawyers, who grudged him for his militant history, collaborated with the family of the victim to stigmatize him socially and present him to the public as a typical aggressor in the field of domestic violence. He considers that the media have taken advantage of his inability to exercise the right to reply to publish inaccurate and offending articles against his honor and dignity, and to create free spaces for anyone to insult him; and to present what he describes as crime of passion as an abominable gender crime.

10. He argues that, because of the above, he has been punished by prison authorities who have subjected him to several acts that he considers to be in violation of his rights, such as the fact that he was not granted permission to visit his mother on her deathbed; he was arbitrarily denied access to study and work opportunities that would have benefited him to reduce his sentence; he was denied home hospitalization (as recommended by his doctors) after undergoing a colon cancer surgery; he was subject to sanctions, forced labor and arbitrary transfers in violation of the applicable regulations; he was the victim of an illegal secret investigation and the arbitrary theft of property which he had been authorized to use, such as his computer, cell phones and air conditioning. He adds that he was always handcuffed during transfers in spite of his good conduct, and that he was not allowed to be at the hearings of the proceedings to which he was a party, which affected his right to due process. He also argues that prosecution and judicial authorities have acted with bias and discrimination against him by unjustifiably dismissing the multiple complaints he filed against public officials for abuses of power or acts of corruption. The petitioner contends that the complaints he filed against the father of his former partner for threatening him with death and for illegally retaining documents and money belonging to him (by taking advantage of the fact that he was his trusted notary public) were also dismissed. Similarly, he claims that, out of fear of comments, judges have acted with bias against him in the various proceedings to which he is a party, such as the proceedings on the fees owed to him at the time of his arrest and on misappropriation of the property of his legal office.

11. The petitioner filed a claim for damages against the State for his illegal transfer to a maximum-security prison and for the consequences said transfer had on him, for his prolonged pretrial detention and for the degrading, persecuting and vindictive treatment he received from the prison authorities. On October 18, 2019, the First Instance Administrative Court admitted his claim partially and established a reparation of 7,000 US dollars for the moral harm the petitioner suffered due to his illegal transfer. However, the First Instance Administrative Court did not recognize material damages as it considered that they had not been specified in the claim. With regard to the other aspects of the claim, the Administrative Court rejected a request for compensation since it considered that there was not enough evidence for the acts denounced.

12. On July 12, 2021, the petitioner sent to the Commission a copy of the first instance judgment of March 15, 2021, in which he was found guilty of homicide especially aggravated by premeditation and the use of a firearm, and in which he was sentenced to 21 years and 4 months in prison. The petitioner indicated that this sentence had been "appealed."

13. The State, for its part, considers that the petition must be declared inadmissible because it does not reveal acts, facts or omissions that represent a violation of the American Convention; and because domestic remedies have not been exhausted, since the criminal proceedings against the petitioner are still ongoing. It points out that these proceedings have followed their normal course and that their prolonged duration is attributable to the numerous actions filed by the petitioner which have delayed the proceedings, such as the multiple removals and changes in his defense; the several remedies presented against the decisions of the court in terms of evidence, recusals, writ of unconstitutionality due to the denial of his request to exercise

his own defense; the fact that the petitioner has challenged the credibility of several witnesses, and incidents of defenselessness. It considers that the exception to exhaustion of domestic remedies under Article 46.2(c) of the American Convention cannot be invoked by the petitioner, since the delay is attributable to his own conduct. It notes that the proceedings are ongoing and cites as an example the hearings held on July 23, 2018, and August 1, 2019, in which witnesses were heard.

14. It indicates that the petitioner filed an appeal for reversal against the decision of the Supreme Court of Justice that dismissed the exception of unconstitutionality he had filed against the denial of his request to exercise his own defense. It explains that this appeal was declared inadmissible by the Supreme Court on December 20, 2017, due to it not being covered by domestic legislation. It also indicates that on February 21, 2018, the petitioner requested his conditional release, which was denied by the Supreme Court of Justice on February 28 of the same year. It further states that the petitioner filed a writ of amparo against a sanction imposed by the prison authorities, which prohibited him from going to the outdoor recreation areas for 90 days. Said amparo writ was denied on January 4, 2016, in a final judgment issued by a second instance court, since he did not submit the relevant administrative remedies before bringing the writ of amparo. The petitioner filed an application for nullity against the same sanction and against the withdrawal of his computer and cell phones, which was rejected on June 29, 2017, by the Administrative Court, who considered that the action was not valid against the referred administrative measures. The State indicates that he filed an appeal for review against that decision, which was sent to the Administrative Court on December 5, 2017.

15. With regard to the denial of the permit requested by the petitioner to visit his mother before her death, the State indicates that those permits must be authorized by the judge in charge of the case and are not a prescriptive right; their approval must be weighed against security issues. It emphasizes that the work that the petitioner describes as “forced labor” in his petition is the same that is referred to as voluntary labor in other instances of the petition, which shows the petitioner’s contradictory sayings. The State also alleges that the petitioner was not able to continue his work as a delegate within his prison unit due to health issues, and that the denial of study and work opportunities was not due to repressive or discriminatory reasons, but to the reality that work and study vacancies are limited for budgetary reasons and, therefore, the authorities must rotate them so as to guarantee equal opportunities for all persons deprived of their liberty. With regard to the denials of medical and dental services, the State indicates that the detention center had medical services and was able to coordinate specialized care; and that the center staff could not provide the requested services because of the petitioner’s misconduct when they tried to provide him with assistance. It further emphasizes that the Parliamentary Commissioner has indicated that the petitioner has received a treatment compliant with the current regulations, and that the Supreme Court has determined that the laws, the Constitution or the American Convention have not been violated to his detriment.

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

16. With respect to the pretrial detention of the petitioner along with convicted persons and the alleged affectations that this fact has had on him, the IACHR has previously determined that “in the context of Article 46.1.a of the Convention, claims related to possible human rights violations arising from the imposition of pretrial detention have their own dynamics for the exhaustion of domestic remedies that are independent from those that apply to the criminal proceeding as a whole”<sup>5</sup>; and that “in the context of pre-trial detention, the presentation of the request for conditional release followed by the denial thereof suffices to substantiate the exhaustion of remedies.”<sup>6</sup> The petitioner indicates that he requested his release on various occasions, a fact that has not been contested by the State. The Commission further notes that the State has not referred to the domestic remedies that have not been exhausted and that may be suitable for his complaints on pretrial detention to be addressed in the domestic sphere. Therefore, the IACHR concludes that the petition meets the requirements of Article 46.1(a) of the American Convention with respect to pretrial detention. Given the fact that the petition was filed on February 23, 2010, and that the information provided by the State indicates that

<sup>5</sup> IACHR, Report on the Use of Pretrial Detention in the Americas, OAS/Ser.L/V/ II.1Doc.46. 2013, para. 201.

<sup>6</sup> IACHR. Report No. 12/96, Case 11,245, Merits, Jorge A. Giménez, Argentina, March 1, 1996, para. 57.

a request for release was decided on February 28, 2018, the petition also meets the requirements of Article 46.1(b) of the American Convention.

17. With regard to the suspension of the political rights of the alleged victim due to his criminal prosecution, the Commission notes that the provision ordering such suspension is constitutional, and that the State and the case file make no reference to possible domestic remedies that might be suitable for the alleged victim to challenge that domestic rule. Therefore, the Commission considers that the exception to the requirement of exhaustion of domestic remedies provided for in Article 46.2(a) of the American Convention applies to this element of the petition. Given that the petition was presented when this grievance was actual, the Commission concludes that this complain was presented within reasonable time under article 32.2 of its rules of procedure.

18. With regard to the suspension imposed on the petitioner for practicing the profession of lawyer and the affectations to his right to social security, the IACHR observes that the Administrative Court rejected the application for nullity he had filed. The State has made no reference to other domestic remedies that have not been exhausted and that may be suitable for addressing these aspects of the petition at the domestic level. Therefore, the IACHR concludes that these elements of the petition meet the requirements of Article 46.1(a) of the American Convention. Since the decision of the Administrative Court was issued on March 15, 2018, these elements of the petition also comply with the requirements of Article 46.1(b) of the same instrument.

19. With regard to the alleged violations of due process and reasonable time in the context of the criminal proceedings to the detriment of the petitioner, the Inter-American Commission notes that the proceedings began in 2005 and, according to the documentation provided by the petitioner, the first instance judgment was reportedly issued on March 15, 2021. The petitioner has indicated that the first instance judgment was appealed, although he did not provide further information. Since the proceedings leading to the claims appear not to have been completed and based on the duration of these proceedings, the Commission must determine whether the exception to the requirement of exhaustion of domestic remedies provided for in Article 46.2(c) is applicable to this element of the petition. In this regard, the Inter-American Commission recalls that the decision on the applicability of exceptions to the exhaustion of domestic remedies to the matter in question must be made before and should be separated from the analysis of the merits of the case, since it is based on a standard of assessment different from the standard used to determine the violation of Articles 8 and 25 of the American Convention. In the instant case, the Commission considers that the State has adequately explained that the delay in the resolution of the proceedings was due to the conduct of the alleged victim. Therefore, the Commission considers that the exception provided for in Article 46.2(c) of the American Convention is not applicable and that these elements of the petition are inadmissible since they do not comply with the requirements of Article 46.1(a) of the American Convention.

20. With respect to the garnishment imposed on the petitioner's property in the context of the proceedings for damages initiated against him, the IACHR notes that he has indicated that the expiration of the garnishment was confirmed in late 2015. Although he claims that the duration of such measure for over 10 years caused damage to him, the petitioner does not report that he has exhausted domestic remedies to claim such damages. Therefore, the IACHR concludes that these elements of the petition do not meet the requirements of Article 46.1(a) of the American Convention.

21. With regard to the transfer of the petitioner to a maximum-security prison and the damages that this allegedly caused to him, the Inter-American Commission notes that the Administrative Court decided that the transfer should be null on October 4, 2011; and that the petitioner filed a claim for damages, which was resolved by a lower court on October 18, 2019. The petitioner has not indicated that he brought remedies to challenge that first instance decision, nor did he raise any exception to that requirement. As a result, the IACHR concludes that these elements of the petition do not meet the requirements of Article 46.1(a) of the American Convention.

22. As regards the alleged unlawful affectations to the honor and dignity of the petitioner caused by the media, the Commission notes that the petitioner argues that he has been unable to exercise his right of reply. However, he does not indicate the reasons that prevented him from taking action to claim his right of reply or to establish the liabilities that might arise from the communications that he considers to be in violation of his rights. The case file reveals that, despite being deprived of his liberty, the petitioner has been able to submit judicial actions of several kinds. Therefore, the IACHR concludes that these elements of the petition do not meet the requirements of Article 46.1(a) of the American Convention.

23. With respect to other allegations in the petition, such as the attempted transfer as a measure in retaliation for the petitioner's allegations to the media, his removal from the position of delegate of his prison unit, the application of an illegal investigation, the application of arbitrary sanctions by the prison authorities, the lack of due process in several criminal and administrative complaints, and the alleged lack of impartiality of the judges who resolved in the proceedings on the legal fees and the misappropriation of the petitioner's property, the Inter-American Commission considers that the petitioner has not provided sufficient information so as to assess whether he has exhausted domestic remedies.<sup>7</sup> In this regard, the Commission recalls that Article 28 of its Rules of Procedure establishes as a requirement for the evaluation of petitions that the petitioner reports on any steps taken to exhaust domestic remedies or the impossibility of doing so. Therefore, the IACHR concludes that these elements of the petition do not meet the requirements of Article 46.1(a) of the American Convention.

## VII. ANALYSIS OF COLORABLE CLAIM

24. The petitioner alleges the excessive duration of his pretrial detention for over 14 years, with affectations on his health and family life, as well as on his ability to defend his interests in several proceedings; his detention prior to him being convicted along with persons already convicted; and the indefinite suspensions of his political rights and of the exercise of the profession of lawyer solely on the basis of his status as someone under criminal prosecution.

25. The Inter-American Commission has previously determined that "the right to the presumption of innocence is the point of departure for any analysis of the rights and treatment of persons in pretrial detention"<sup>8</sup> and that "pretrial detention cannot constitute an anticipated punishment or a way to prevent other crimes from being committed."<sup>9</sup> Similarly, the IACHR "has considered it essential that convicts and pretrial detainees be held separately"<sup>10</sup> and has concluded that "the procedural activities of the accused and his defense cannot be used to justify the reasonable period of detention."<sup>11</sup> It has also quoted the European Court by indicating that the right to the presumption of innocence "is impaired if, prior to being found guilty in a court of law, any judicial resolution involving the accused reflects an indication of his guilt."<sup>12</sup> The Inter-American Commission has also stated in relation to the right to vote that "with respect to persons deprived of liberty in pretrial detention, the exercise of this right is effectively guaranteed under Articles 23 and 8.2 of the

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<sup>7</sup> On November 12, 2020, the Commission sent a communication to the petitioner in which it requested him to report on the domestic remedies he had exhausted to claim for his alleged removal of the position of delegate of his prison unit, and his attempted transfer in retaliation for his public statements; the petitioner had not replied to the date of this report.

<sup>8</sup> IACHR, Report on the Use of Pretrial Detention in the Americas, OAS/Ser.L/V/ II.1Doc.46. 2013, para. 132.

<sup>9</sup> IACHR, Measures to Reduce Pretrial Detention, OAS/Ser.L/V/II,163 Doc,105, 2017, para. 87.

<sup>10</sup> IACHR, Report on the Use of Pretrial Detention in the Americas, OAS/Ser.L/V/ II.1Doc.46. 2013, para. 45.

<sup>11</sup> IACHR. Report No. 86/09, Case 12,553, Merits, Jorge A. Giménez, Uruguay, August 6, 2009, para. 130.

<sup>12</sup> IACHR, Report on the Use of Pretrial Detention in the Americas, OAS/Ser.L/V/ II.1Doc.46. 2013, para. 139, citing ECHR, Case of *Allenet de Ribemont v. France* (Application No. 15175/89), Judgment of February 10, 1995 (Second Section of the Court), para. 33; ECHR, Case of *Barberá, Messegué and Jabardo v. Spain* (Application No. 10590/83), Judgment of December 6, 1988 (Plenary of the Court), para. 91.



American Convention,”<sup>13</sup> and that “there is no valid legal basis under the American Convention to support any restriction on this right for persons held in State custody as a precautionary measure.”<sup>14</sup>

26. After examining the elements of fact and law set forth by the parties, the IACHR considers that the claims of the petitioner are not manifestly unfounded and need to be studied on the merits since the alleged facts, if corroborated, could imply violations of the rights enshrined in Articles 5 (personal integrity), 7 (personal liberty), 8 (right to a fair trial), 17 (protection of the family), 23 (political rights), 24 (equality before the law), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention in relation to its Articles 1.1. (obligation to respect rights) and 2 (duty to adopt provisions of domestic law) thereof.

27. With regard to the alleged violations of Articles 11 (honor and dignity), 13 (freedom of expression), 14 (rectification and reply) and 21 (private property), the Commission considers that, in what concerns the parts of the petition that were not declared inadmissible on Section VI of this report, the petitioner has not provided elements of fact or law that allow the Commission to identify *prima facie* the possible violation of these articles.

28. The Commission shall not perform an analysis of colorable claim in respect of the elements of the petition that were considered inadmissible under Section VI of this report.

### **VIII. DECISION**

1. To declare this petition admissible in relation to Articles 5, 7, 8, 17, 23, 24, 25 and 26 of the American Convention in accordance with Articles 1.1 and 2 of the same instrument.

2. To declare this petition inadmissible in relation to Articles 11, 13, 14, and 21 of the American Convention and to the elements of the petition that do not comply with the requirements of Article 46.1(a) of the American Convention as detailed in Section VI of this report.

3. To notify the parties of this decision; to proceed with the merits of the case; 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 9<sup>th</sup> day of the month of September 2021. (Signed): Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice-President; Flavia Piovesan, Second Vice-President; Margarette May Macaulay; Esmeralda E. Arosemena Bernal de Troitiño; Joel Hernández García and Edgar Stuardo Ralón Orellana, Members of the Commission.

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<sup>13</sup> IACHR, Report on the Use of Pretrial Detention in the Americas, OAS/Ser.L/V/ II.1Doc.46. 2013, para. 273.

<sup>14</sup> IACHR, Report on the Use of Pretrial Detention in the Americas, OAS/Ser.L/V/ II.1Doc.46. 2013, para. 273.