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REPORT No. 133/18
PETITION 953-08
REPORT ON INADMISSIBILITY

JAIME LIGATOR FELDMAN
COSTA RICA

Approved electronically by the Commission on November 20, 2018.

Cite as: IACHR, Report No. 133/18. Petition 953-08. Inadmissibility. Jaime Ligator Feldman.
Costa Rica. November 20, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Jaime Ligator Feldman ¹
Alleged victim:	Jaime Ligator Feldman
Respondent State:	Costa Rica
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 22 (movement and residence), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	August 15, 2008
Additional information received at the stage of initial review:	December 1, 2008; July 1, 2009; January 26, 2010; February 4, and July 27, 2011
Notification of the petition to the State:	October 27, 2014
State's first response:	January 16 and 30, 2015
Additional observations from the petitioner:	June 26 and December 10, 2015
Additional observations from the State:	September 16, 2016

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 (deposit of instrument of ratification on April 8, 1970)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

V. FACTS ALLEGED

1. Mr. Jaime Ligator Feldman (hereinafter "the petitioner" or "the alleged victim") alleges that the State of Costa Rica is internationally responsible for various violations of his rights in the framework of the extradition request based on false accusations made against him by the District Court of North Carolina, United States of America⁴, for the crimes of conspiracy and wire fraud (electronic), from Costa Rican territory against

¹ Petitioners Carlos Vargas Pizarro and Martín Mainieri Jiménez filed their withdrawals on June 10, 2010, while the alleged victim revoked the mandate of Carlos Rodríguez Mora on October 1, 2012.

² Hereinafter "the Convention" or "the American Convention".

³ The observations submitted by each party were duly transmitted to the opposing party.

⁴ Hereinafter the "US" or "United States".

individuals domiciled in North America. He argues that as a consequence of the corresponding extradition process, his right to a fair process, freedom and personal integrity were violated. He states that he was never notified of the opening of a criminal investigation against him, that his provisional detention in the framework of the extradition proceedings was extended beyond the 60-day period required by the extradition treaty without the formal request being received, and that there is no appeal against interlocutory decisions within the extradition proceedings, a situation that has endangered his health, limited his possibility of defense and that has led to his bankruptcy.

2. The petitioner explains that on May 17, 2007, on the basis of an arrest warrant issued against him by the District Court of North Carolina, proceedings for his extradition were begun before the Criminal Court of the First Circuit of San José and his provisional detention was ordered even though the North American authorities failed to demonstrate the urgency required by a request for provisional detention. He indicates that on May 18, 2007, while in his office in San Pedro de Montes de Oca, in the city of San José, he was detained by agents of INTERPOL and of the Judicial Investigation Agency (O.I.J.) of the Judicial Branch of the Republic of Costa Rica. He adds that the media reported he was a fugitive from the US justice system and that he would be extradited for trial in that country, which affected both his honor and dignity and that of his family.

3. The petitioner indicates that he was transferred to the cells of the O.I.J. in the main building of the Second Judicial Circuit of San José, where he was detained and held incommunicado between May 18 and 21, 2007. He reports that on May 21 he was brought before the First Judicial Circuit Court judge and was notified of the resolution to initiate proceedings and his provisional detention for a period of 60 days. The petitioner indicates that in response to this decision, he filed an appeal for reversal and a motion to alter the precautionary measure for failure to prove the urgency of his detention, which were dismissed, and subsequently filed an appeal that was declared inadmissible on June 19, 2007.

4. The petitioner maintains that the US-Costa Rica Extradition Treaty establishes that the provisional detention of the requested individual shall end after the expiration of 60 days from arrest without the requested State receiving a formal request and extradition order. In this regard, he alleges that his detention was extended beyond that period, despite the fact that the requesting State did not submit the appropriate documentation, and therefore filed several writs of habeas corpus with the Constitutional Chamber, all of which were dismissed. He points out that on July 20, 2007, the court extended his detention until September 20, 2007, and that on August 24, 2007, the court ordered the indefinite extension of his detention. He filed an annulment appeal against this decision, but it was rejected on the grounds that the resolution was un-appealable. On September 14, 2007, the alleged victim filed an unconstitutionality appeal with the Costa Rican Constitutional Chamber against the decisions of the Court of Criminal Cassation dismissing appeals against decisions referring to detentions in the extradition proceedings. He points out that said action was dismissed on May 14, 2008, by means of a decision in which the Chamber held that the extradition proceedings were governed by procedural rules other than those governing the criminal proceedings.

5. Regarding the request for extradition, he indicates that on September 7, 2007, before the expiration of the extension, the Second Judicial Circuit Criminal Court granted extradition in its resolution No. 941-2007, erroneously describing his extradition as "voluntary" in order to comply with a "conviction". The petitioner alleges that, based on these errors, he appealed to the Court of Criminal Cassation. On July 22, 2008, the court allowed his appeal, declaring the decision null and void. On March 11, 2009, the Trial Court of the First Judicial Circuit in No. 237-2009 issued a new judgment granting the request for extradition, a decision appealed by the petitioner but which was upheld by the Court of Cassation on March 21, 2009. He indicates that the extradition became final on August 5, 2009, after a motion for clarification filed by his defense was rejected. On August 28, 2009, he was transferred over to the US authorities. He adds that in the requesting country he reached a plea bargain with the prosecution, declaring himself guilty, and was sentenced to 5 years in prison.

6. On the other hand, the petitioner alleges that his deprivation of liberty affected his delicate state of health. In the first place, he states that he was deprived of his liberty in the judicial cells of the second judicial circuit of San José, and then transferred to the San José institutional center (San Sebastián Detention Center), and later had to undergo an operation on his knee which allowed him to serve his provisional detention

at home. After his recovery, however, he was transferred to the institutional center for the elderly, where he remained until his extradition. He indicates that once in the United States, he remained deprived of liberty in three prison facilities (Mecklenburg Correctional Center, Irwin County Detention Center in Ocilla and the Robert A Deyton Detention Facility), since his situation was "in transit", which made it difficult to communicate with his family.

7. The State, for its part, maintains there have been no violations of human rights on the basis of the facts alleged by the petitioner, and that all the procedural aspects governed by the corresponding extradition treaty were respected. It indicates that provisional detention is not subject to the rules of the criminal procedure code, and that its extension is authorized on fulfillment of the formal requirements for the surrender of the extraditable person in the context of proceedings in which the national judge must limit himself to an analysis of compliance with the extradition requirements contained in the treaty. The State argues that in this case, the United States formalized the request for extradition on July 12, 2007, on submission to the Costa Rican Ministry of Foreign Affairs and Culture of the documents required by the bilateral treaty, that is, within the 60 days required by the treaty, which enabled the extension of the provisional detention. It indicates that, subsequently, the extradition was extended until the final resolution of the case undertaken by the Prosecutor's Office of the Public Ministry. It adds that Article 12 of the Extradition Treaty expressly provides that the person who has been detained according to the treaty will not be released until the request for extradition has been definitively resolved.

8. In addition, it argues that the petition must be rejected because Costa Rica made available to the petitioner various judicial remedies to hear his allegations, effectively and without limitation on his right of defense, which were resolved on reasonable grounds and within a reasonable time. It adds that the private defense attorney of the alleged victim participated in the corresponding extradition and cassation hearings that were the basis of various proceedings and claims, all of which were resolved and analyzed thoroughly by the various adjudicating courts at the domestic level. It adds that despite not having jurisdiction over the extradition proceedings, the Constitutional Chamber heard more than eight constitutional proceedings including *amparo* and habeas corpus petitions filed by the defense counsel of the alleged victim, demonstrating the prompt and frequent access that the petitioner had to the domestic jurisdiction. Therefore, the State requests that the Inter-American Commission declares the petition to be inadmissible since the petitioner intends that the IACHR review the decisions of jurisdictional bodies acting within the limits of their competence, which would constitute a fourth instance.

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

9. The petitioner alleges that he appealed the judgment ordering his extradition before the Court of Cassation and subsequently filed an appeal for clarification, which were dismissed, and that his extradition was signed on August 5, 2009. The State, for its part, does not present allegations regarding this aspect of the petition. In the present case, the Commission observes, for the purposes of the admissibility analysis, that the alleged victim exhausted all available domestic judicial instances, and therefore, the petition meets the requirement established in Article 46.1.a of the Convention.

10. However, the Commission notes that the information provided does not suggest that the alleged violations of humane treatment, dignity and honor, movement and residence, and equality before the law were raised by the alleged victim at the domestic level. Therefore, the Commission concludes that, with respect to the rights protected by Articles 5 (humane treatment), 11 (privacy), 22 (movement and residence), and 24 (equal protection) of the American Convention, the petition does not meet the requirement established in Article 46.1.a of the Convention.

11. With respect to the requirement concerning the timeliness of the petition, it was filed with the IACHR on August 15, 2008, and the remedies were exhausted on August 5, 2009, with the rejection of the action to clarify the judgment of the Court of Cassation while the petition was under consideration for admissibility. According to the doctrine of the IACHR, the analysis of the requirements set forth in Article 46.1.b of the Convention and Article 32.1 of the Rules of Procedure must be made in the light of the situation in force at the

moment when it rules on the admissibility or inadmissibility of a complaint. Given the above, it is appropriate to consider this requirement fulfilled.

VII. ANALYSIS OF COLORABLE CLAIM

12. In this regard, the IACHR observes that the present petition is essentially based on the alleged violation by the State of Costa Rica of the petitioner's right to due process and judicial guarantees in extending provisional detention without the requesting State having formalized the request for extradition which would have affected his integrity, his freedom, and his right of movement. However, the Commission notes that the information provided by the parties shows that the formal request for extradition arrived in a timely manner, which enabled the State of Costa Rica to extend the provisional detention. Thus, the specific issue before the Commission consists essentially in the discrepancy between the petitioner's and the judicial authorities' interpretation placed on the rules governing extradition between Costa Rica and the United States.

13. In response to the considerations made in this section, the IACHR confirms its doctrine that its function is not to replace the judicial authorities in interpreting the scope of domestic legal provisions. Thus, by virtue of the supplementary character of the international protection offered by the Inter-American System, "the Commission cannot take upon itself the functions of an appeals court in order to examine alleged errors of fact or law that local courts may have committed while acting within their jurisdiction, unless there is unmistakable evidence of violation of the guarantees of due process enshrined in the American Convention." Consequently, in the absence of elements indicating that the decisions of the respective courts have been adopted on the basis of arbitrary criteria or contrary to rights enshrined in the American Convention, the facts raised by the petitioner do not tend to characterize a violation of this international instrument.

14. In the present case, having analyzed the position of the parties and the facts that arise from the petition's case file, the Commission concludes that it lacks elements allowing it to *prima facie* identify that human rights protected by the American Convention on Human Rights have been violated in the terms established in said instrument. Consequently, the IACHR concludes that the petition does not satisfy the requirement set forth in Article 47.b) of the American Convention.

VIII. DECISION

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; 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 20th day of the month of November, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.