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REPORT No. 284/23
PETITION 2068-21
REPORT ON ADMISSIBILITY

MEHUL CHOKSI
DOMINICA

Approved electronically by the Commission on October 31, 2023.

Cite as: IACHR, Report No. 284/23, Petition 2068-21. Admissibility. Mehul Choksi. Dominica.
October 31, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Ludovic Hennebel
Alleged victim:	Mehul Choksi
Respondent State:	Dominica
Rights invoked:	Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to personal liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	November 20, 2021
Additional information received at the stage of initial review:	August 29, 2022
Notification of the petition to the State:	July 18, 2022
State's first response:	September 13, 2022
Additional observations from the petitioner:	December 28, 2022, and March 1, 2023

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 made on June 11, 1993)

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 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes and no in terms of Section VI
Timeliness of the petition:	Yes and no in terms of Section VI

V. ALLEGED FACTS***The petitioners***

1. The petition alleges that the State is internationally responsible for violating multiple rights of Mehul Choksi ("the alleged victim" or "Mr. Choksi"). These claims arise from circumstances in which (a) Mr. Choksi was allegedly (a) subject of an unlawful rendition from Antigua & Barbuda ("AB") to Dominica; (b)

¹ Hereinafter, the "American Convention" or the "Convention".

² The observations submitted by each party were duly transmitted to the opposing party.

subject to physical mistreatment during the rendition to Dominica; and (c) subject to arrest in Dominica and inhumane conditions while in detention; and deprived of access to legal assistance and medical attention.

2. By way of background, the petition indicates that Mr. Choksi, a businessman, was originally a citizen of India. However, he subsequently acquired citizenship of Antigua and Barbuda (“AB”) in 2017 and relocated to AB in 2018. According to the petition, upon acquiring citizenship of AB, Mr. Choksi renounced his citizenship of India because Indian law prohibits dual citizenship. The petition states that shortly after Mr. Choksi’s arrival in AB, the government of India issued an extradition request (in March 2018) to the government of AB seeking the return of Mr. Choksi to India to face criminal charges (in connection with allegations of collusion in a bank fraud case. The petition indicates that the government of AB also initiated steps to revoke the citizenship of Mr. Choksi. Between 2018 and 2020, the petition indicates that Mr. Choksi filed lawsuits against AB to challenge both the proceedings to extradite him and to revoke his citizenship.

3. While these lawsuits were pending, the petition alleges that Mr. Choksi was kidnapped on May 23, 2021, by individuals who pretended to be members of various law enforcement agencies in Antigua and led him by force, by boat, to Dominica, where he was arrested by the police and where he was detained from May 24, 2021, until July 12, 2021. The petition contends that both AB and Dominica conspired to carry out the abduction and subsequent rendition of the alleged victim.³ According to the petitioner, this conspiracy was aimed at having Dominica deport Mr. Choksi to India, which would effectively circumventing the extradition proceedings pending in AB.

4. The petition indicates that during the transfer to Dominica, Mr. Choksi was subjected to physical assaults (which caused bruising) as well as electric shocks from a taser. The petition also states that Mr. Choksi was gagged and had problems breathing. The petition generally states that Mr. Choksi suffers from various ailments, including chronic cardiac and neurological medical conditions.

5. The petition asserts that upon arrival in Dominica (on 24 May 2021), the alleged victim was initially handed over to the Dominican Coast Guard (by the alleged kidnappers); and then subsequently handed over to the Dominica police. According to the petition, Mr. Choksi was then arrested and taken to the police station in Roseau. The petition alleges that Mr. Choksi was not initially given the reason for his arrest. However, the petition asserts that as soon as Mr. Choksi was handed over by his captors to the coast guard, he immediately informed the Dominican authorities that he had been kidnapped in Antigua, that he had suffered severe violence as evidenced by his numerous injuries, and that he had been taken against his will to Dominica. The petition alleges that despite Mr. Choksi’s report of being abducted and assaulted no criminal investigation was ever initiated by the authorities of Dominica.

6. According to the petition, on arrival at the police station, Mr. Choksi was placed in a cell of six square meters, without mattresses or any other equipment. The petition also alleges that Mr. Choksi was not allowed to see a doctor, although his face and body were swollen, covered with wounds and bruises, because of the torture he suffered during his abduction. The petition further claims that Mr. Choksi made repeated requests to be allowed to inform his family or to speak with a lawyer, but that these requests were ignored. According to the petition, Mr. Choksi remained in a cell for three days, incommunicado.

7. According to the petition, by chance, Mr. Choksi’s family came to discover that Mr. Choksi had been arrested and detained in Dominica. Subsequently, lawyers retained on Mr. Choksi’s behalf attempted to see Mr. Choksi on May 26 and May 27, 2021. However, the petition claims that on both occasions, the lawyers were not permitted to see Mr. Choksi.

8. The petition states that on May 27, 2021, a habeas corpus application was presented to the High Court of Dominica. According to the petition, on May 27, 2021, the High Court ordered that the police allow Mr. Choksi to meet with his lawyers. The petition indicates that on May 28, 2021, the High Court, further ordered that Mr. Choksi be transferred to the Dominica China Friendship Hospital for medical attention and for the administration of a covid test. According to the petition, Mr. Choksi was subsequently transferred to the

³ The petitioner has filed a similar petition against AB regarding these claims.

hospital on May 30, 2021. Further, the petition also states that the High Court ordered that the State be restrained from removing Mr. Choksi from Dominica pending further hearing of the application for habeas corpus.

9. The petition alleges that while Mr. Choksi was in hospital in Dominica, the authorities denied him access to appropriate health care for his various medical conditions, including denying him access to an independent medical specialist.⁴ The petition claims that as a result, Mr. Choksi suffered (further) deterioration in his health.

10. The petition indicates that in or around May 25, 2021, the Dominican authorities claimed that Mr. Choksi had been arrested as a “prohibited immigrant”, but that Mr. Choksi was not formally notified about this until June 10, 2021. Based on the record, Mr. Choksi remained in the hospital until July 12, 2021, when the High Court granted him bail to return to AB to pursue further specialized medical treatment in AB (that was not available in Dominica). In particular, the High Court ordered that Mr. Choksi be allowed to travel to AB to consult with a neurologist. Following the ruling of the High Court, the petition indicates that Mr. Choksi was allowed to return to AB.

11. Regarding exhaustion of domestic remedies, the petitioner claims that all available remedies were invoked before the petition was presented to the IACHR. In addition (or in the alternative), the petitioner also argues that there are no effective or efficient remedies available to the alleged victim regarding the alleged violations of his rights.

12. The petitioner acknowledges that on May 27, 2021, a habeas corpus application was presented before the High Court of Dominica. However, the petitioner alleges that regarding the complaint about abduction and physical mistreatment of Mr. Choksi, that the no criminal investigation was undertaken by the Dominican authorities.

13. The petitioner submits that the petition is timely, given that the fact that gave rise to the claims against the State occurred in 2021 (from May 2021 onwards).

The State

14. The State considers that the petition is inadmissible primarily for failure to exhaust domestic remedies. The State further considers that the petition is inadmissible for failure to state any facts that tend to establish a violation of the American Convention.

15. As a preliminary observation, the State rejects the petition’s claim that it acted jointly with AB to forcibly kidnap /physically mistreat Mr. Choksi and transfer him to Dominica. The State submits that there is no mention or allegation by the petitioner that Dominican personnel were part of this alleged kidnapping or assault of Mr. Choksi.

Lack of Exhaustion

16. The State submits that alleged victim has failed to pursue or exhaust remedies available in Dominica to redress his complaints.

17. The State emphasizes that at all times, the alleged victim has been granted unfettered access to the judicial process. The State notes, firstly, that the alleged victim successfully filed an application for habeas corpus (in May 2021). The State notes that this application arose from complaints by the alleged victim about (a) detention conditions; (b) lack of medical attention; and (c) lack of access to lawyers). The State submits that this situation was remedied on May 27, 2021, when the High Court of Dominica ruled, *inter alia*, that the alleged

⁴ Based on the annexes to the petition, it appears that Mr. Choksi had requested a consultation with a neurosurgeon; however, there are medical documents indicating that he was the subject of various treatments for other medical conditions, including cardiac issues.

victim be granted access to his attorneys, and to medical treatment. The State indicates that the alleged victim was subsequently admitted to a local hospital for treatment.

18. The State also submits that on June 6, 2021, the alleged victim also filed an application for Judicial Review in which he sought multiple declarations and orders challenging the criminal complaint filed against him, including declarations that his constitutional rights, namely, the right to the protection of the law; the right to personal liberty; and the right to freedom of movement, had been violated by the State. According to the State, on September 5, 2022, the alleged victim applied to discontinue this application. The State indicates that since then, the alleged victim has not filed any additional any additional claim for relief under either the common law or Constitution of Dominica. In this regard, the State submits that it was open to the alleged victim to invoke the Constitution of Dominica to pursue redress regarding his complaints (such as the circumstances his detention and alleged inhumane treatment -including the complaint regarding lack of medical attention) but that he failed to do so. The State further indicates that Constitution of Dominica provides protection of the rights invoked by the petitioner. In this regard, the State indicates that section 3(1) the Constitution expressly provides for the protection of the right to personal freedom, with exceptions, and compensation under section 3 (6) for any alleged violation of that right. The State further submits that Section 5 of the Constitution protects any person from inhumane treatment by the State. The State also submits that section 16 of the Constitution provides a direct right of access to the High Court for remedies including coercive and compensatory remedies, for any threatened or continued violation of the human rights, and provisions for an appeal as of right to the Court of Appeal, and the final Court of Appeal, namely the Caribbean Court of Justice. The State reiterates that the petitioner did not avail himself of any of these constitutional remedies.

19. Given the discontinuation of the application for judicial review together with the absence of any further claims for relief by the alleged victim, the State contends that that the alleged victim has effectively failed to pursue and exhaust available domestic remedies. The State submits that the alleged victim ought not to be allowed to pursue a petition before the IACHR before invoking and exhausting remedies available to him under the common law and Constitution of Dominica.

20. The State also observes that the alleged victim was granted bail by the High Court of Dominica and allowed to return to AB (in July 2021). Since then, the State indicates that on May 17, 2022, the Director of Public Prosecutions discontinued the criminal proceedings against the alleged victim.

21. The State asserts that the petition does not qualify for any of the exceptions to the requirement of exhaustion of domestic remedies. In this regard, the State submits that (a) the domestic legislation of Dominica and the Constitution, does afford due process of law for protection of the rights that have been allegedly violated; (b) Further, the alleged victim has not been denied access to the remedies under domestic law nor has he been prevented from exhausting them; and (c) and there has been no unwarranted delay in rendering a final judgment under the remedies for protection of rights as the alleged victim has not pursued those remedies.

Failure to state colorable claim

22. The State of Dominica submits that the petition fails to state facts that tend to establish a violation of any of the rights guaranteed by the American Convention. In this regard, the State submits firstly, that there is no evidence to substantiate any alleged involvement of Dominican state agents in the alleged forcible removal of Mr. Choksi from AB to Dominica, or in the alleged physical mistreatment of the alleged victim during his transfer from AB to Dominica.

23. Regarding the detention of Mr. Choksi and the alleged inhumane treatment (while in detention), the State submits firstly that these claims were effectively remedied by the courts. In this regard, the State notes that the alleged victim successfully invoked the remedy of habeas corpus, which resulted in his transfer to a hospital for medical treatment. The State also indicates that in subsequent proceedings, the alleged victim was granted bail by the courts and allowed to return to AB. The State further notes that the alleged victim did file suit for judicial review (seeking, *inter alia*, declarations that various constitutional rights had been violated including the right to the protection of the law), but that the alleged victim voluntary discontinued this

suit (in September 2022). The State notes that prior to this discontinuation, the criminal proceedings against the alleged victim were terminated in May 2022 by the Director of Public Prosecutions. The State also indicates that it was open to alleged victim to seek further redress under the Constitution of Dominica (regarding his claims about his detention and inhumane treatment) but that the alleged victim failed to do so.

24. Having regard for the foregoing, the State the submits that the petition's claims fail to establish any violation of the American Convention, and that they are otherwise manifestly groundless.

Further observations of petitioner

25. The petitioner rejects the State's position that the petition is inadmissible (for failure to exhaust domestic remedies or to state facts that establish a colorable claim).

26. Regarding the issue of exhaustion, the petitioner asserts that the victim has exhausted the limited remedies that were available and effective, including the remedy of habeas corpus. The petitioner further argues that the State has not specified any effective remedies that have not been exhausted; or demonstrated how these remedies might be effective (in redressing the claims of the petition).

27. Further the petitioner reaffirms that the State failed to conduct an effective *ex officio* investigation into the complaints of forcible abduction and ill-treatment of Mr. Choksi, in breach of its international obligations. The petitioner further rejects the State's contention that it was not complicit in the abduction of Mr. Choksi from AB (and the subsequent ill-treatment). In any event, the petitioner argues regardless of whether the State was involved in abduction/ill-treatment, the obligation to investigate arose as soon as the authorities become aware of the allegations of the abduction/ill-treatment.

28. The petitioner contends that all of Mr. Choksi's allegations, including the acts of ill-treatments and the incommunicado detention/lack of access to medical care, are based on concrete evidence; and that accordingly, these allegations demonstrate colorable claims under the American Convention.

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

29. Article 31 (1) of the Commission's Rules of Procedure provides that for a petition to be admissible the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law. This requirement ensures the State the opportunity to hear the alleged violation of a protected right and, if applicable, settle the issue before it is brought before an international body settle human rights complaints within its own system of justice before being addressed by an international body.⁵

30. The Commission notes that the petitioner's complaints arise mainly from the alleged abduction of Mr. Choksi from AB to Dominica, during which time he complains of being subjected to physical mistreatment. The petition contends that this abduction arose from a conspiracy between AB and Dominica. The petition alleges that the State took no steps to investigate the abduction of Mr. Choksi victim, or the physical mistreatment suffered by Mr. Choksi. According to the petition, Mr. Choksi was arrested for being a "prohibited immigrant." The petition also claims that upon arrest in Dominica (on May 24, 2021), he was (a) subject to substandard conditions of detention; (b) denied access to medical attention; (c) denied access to his lawyers or to his family for a period of three days. The petition also submits that Mr. Choksi suffers from various chronic medical conditions that were never adequately treated while Mr. Choksi was in Dominica (prior to his return to AB in July 2021).

⁵ See IACHR, Report No. 82/17, Petition 1067-07. Admissibility. Rosa Ángela Martino and María Cristina González. Argentina. July 7, 2017, para. 12

31. The State contends that the alleged victim has failed to exhaust domestic remedies or that in the alternative, the claims of the alleged victim have already been redressed by the courts of Dominica. On the other hand, while the petitioner argues that all available remedies were invoked before the courts of Dominica. In addition (or in the alternative), the petitioner also argues that there were no effective or efficient remedies available to alleged victim regarding the alleged violations of his rights.

32. With regard to the alleged abduction and mistreatment of the alleged victim, the Commission has long established that under international standards applicable to cases like this one, where serious human rights violations such as physical abuse are alleged, the appropriate and effective remedy is the filing and the undertaking of an effective criminal investigation aimed at the clarification of the facts and, if necessary, individualize and prosecute the persons responsible.⁶ As a rule, the Commission has established that a criminal investigation shall be conducted promptly to protect the interests of the victims and to preserve evidence.⁷ In the instant case, the Commission notes that the State has not disputed the petitioner's claim that the alleged abduction and mistreatment was brought to the attention of the Dominican authorities when the alleged victim arrived in Dominica.

33. According to the information available, it does not appear that the authorities having knowledge of the allegations of abuse of the alleged victim undertook the corresponding investigations. Consequently, the IACHR concludes that in accordance with the provisions of Article 31.2 (b) of its Rules of Procedure the exception to the exhaustion of domestic remedies applies. Having regard for the foregoing, the IACHR considers that the filing of the petition on November 20, 2021, was done within a reasonable time, pursuant to Article 32.2 of the Commission's Rules of Procedure.

34. Concerning the other complaints of the petitioner, the Commission notes firstly, that the alleged victim successfully applied for habeas corpus relief on May 27, 2021, which resulted in the High Court of Dominica ordering: (a) that the police allow Mr. Choksi to meet with his lawyers, and (b) that Mr. Choksi be transferred to the Dominica China Friendship Hospital for medical attention. Based on the record, Mr. Choksi received medical treatment while in hospital.

35. The record also indicates that in July 2021, the High Court granted bail to Mr. Choksi and permitted him to return to AB to obtain further medical treatment. According to the State, in June 2021, the alleged victim filed an application for judicial review to challenge the criminal complaint filed against him; and to seek declarations that the State had violated certain constitutional rights, including the right to the protection of the law; the right to personal liberty; and the right to freedom of movement. The State indicates that criminal proceedings were discontinued against the alleged victim in May 2022, following which the alleged victim discontinued his application for judicial review in September 2022. The petitioner has not disputed these claims by the State.

36. The State also submits that it was open to Mr. Choksi to apply for constitutional relief (under the Constitution of Dominica) the Constitution for any alleged violations of his rights redress, but that he failed to do so. In response, the petitioner contends that these constitutional remedies are ineffective, and need not be exhausted.

37. Regarding this issue, in accordance with the jurisprudence of the Commission and with that of other international human rights organs, ineffective remedies do not need to be exhausted. In the IACHR's view, for the purposes of the petition's admissibility, remedies are ineffective when it is shown that none of the means to vindicate a remedy before the domestic legal system appears to have prospects of success. In order to satisfy this point, the Commission must have before it evidence allowing it to evaluate effectively the probable outcome of the petitioners' proceedings. The mere doubt about the prospects of filing a case is insufficient to exonerate the petitioners from exhausting domestic remedies.

⁶ See IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, para. 10.

⁷ See IACHR, Report No. 44/18, Petition 840-07. Admissibility. Pijiguay Massacre. Colombia. May 4, 2018, para. 11.

38. Whenever a State alleges that a petitioner has not exhausted domestic remedies, it has the burden of identifying the remedies to be exhausted and demonstrating that the remedies that have not been exhausted are “appropriate” for redressing the alleged violation—in other words, that the function of those remedies within the national legal system is suitable for protecting the legal right infringed. In the instant petition, the Commission notes that the State has identified constitutional remedies that might have been pursued to effectively redress the complaints of the petitioner. The Commission further notes that the petitioner did invoke some domestic remedies (habeas corpus and judicial review) but did not pursue any of the constitutional remedies cited by the State (claiming that they are ineffective). On the face of it, the Commission considers that the constitutional remedies identified by the State could provide effective redress for the violations claimed by the petitioner.⁸ The Commission can find no compelling justification to conclude that these remedies are ineffective as claimed by the petitioner; or that the petitioner was not required to exhaust these remedies.

39. Based on the foregoing, the Commission considers that the complaints of the alleged victim regarding the circumstance of his detention (including lack of medical attention) were either addressed by the courts of Dominica, or in the alternative, that the alleged victim failed to exhaust available and effective remedies. In this regard, the Commission notes that (a) Mr. Choksi successfully pursued the remedy of habeas corpus which resulted in his transfer to a medical facility and access to his lawyers; (b) Mr. Choksi was subsequently admitted to bail and permitted to return to AB for the purpose of obtaining further medical treatment; and (c) the State ultimately discontinued the criminal proceedings against Mr. Choksi. Further the Commission notes that Mr. Choksi voluntarily opted to discontinue his application for judicial review, and otherwise did not pursue or exhaust any other remedies available to him under the Constitution of Dominica. As mentioned above, there is no evidence before the Commission to indicate that these remedies are ineffective; and that further, there is no basis upon which to invoke an exception to requirement to exhaust these domestic remedies.

40. Accordingly, the Commission considers that the complaints of the alleged victim (regarding his detention and subsequent treatment by the State) were redressed domestically, and, in the circumstances, the Commission considers that the issue of exhaustion of domestic remedies has now been rendered moot. In the alternative, the Commission considers that the alleged victim has not satisfied the requirement of exhaustion of domestic remedies, nor has he demonstrated that an exception to this requirement is warranted. The Commission therefore concludes that the foregoing complaints are inadmissible.

VII. ANALYSIS OF COLORABLE CLAIM

41. The Commission notes that the petition claims that in May 2021, Mr. Choksi was allegedly abducted from AB to Dominica, during which he was subjected to physical mistreatment. Upon arrival in Dominica, the petition complains that Mr. Choksi was subjected to substandard detention conditions, and was initially denied access to lawyers, his family or to medical attention. The petition also claims that the State failed to conduct a criminal investigation into the abduction and physical mistreatment of Mr. Choksi.

42. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the IACHR considers that the lack of investigation into the circumstances of the alleged abduction and physical mistreatment of the alleged victim are not manifestly groundless and, if proved, may represent violations of the rights enshrined in Articles 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) in relation to Articles 1.1 (obligation to respect rights) and 2 of the American Convention.

43. However, regarding the allegations relating to the circumstances of Mr. Choksi’s detention and alleged lack of medical attention, the Commission has already concluded that they are inadmissible for failure

⁸ In this regard, the State further indicated that: (a) the Constitution of Dominica provides protection of the rights invoked by the petitioner; (b) section 3(1) the Constitution expressly provides for the protection of the right to personal freedom, with exceptions, and compensation under section 3 (6) for any alleged violation of that right; (c) section 5 of the Constitution protects any person from inhumane treatment by the State; (d) section 16 of the Constitution provides a direct right of access to the High Court for remedies including coercive and compensatory remedies, for any threatened or continued violation of the human rights, and provisions for an appeal as of right to the Court of Appeal, and the final Court of Appeal, namely the Caribbean Court of Justice.

to exhaust domestic remedies. Consequently, in keeping with Article 34 (a) of the IACHR's Rules of Procedure, the Commission further considers that these allegations do not state facts that tend to establish a violation of any rights under the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) in relation to Articles 1.1 (obligation to respect rights) and 2 of the American Convention with respect to the alleged failure to conduct an investigation into the alleged abduction and mistreatment.

2. To find the instant petition inadmissible in relation to the claims regarding the circumstances of the detention and alleged lack of medical treatment.

3. To notify the parties of this decision; to continue 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 31st day of the month of October, 2023. (Signed:) Margarete May Macaulay, President; Julissa Mantilla Falcón, Carlos Bernal Pulido and José Luis Caballero Ochoa, Commissioners.