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REPORT No. 164/17
PETITION 222-07
REPORT ON ADMISSIBILITY

SANTIAGO ADOLFO VILLEGAS DELGADO
VENEZUELA

Approved by the Commission at its session No. 2110 held on November 30, 2017.
166th Special Period of Sessions.

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 NOVEMBER 30, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	German Eduardo Gomez Remolina ¹
Alleged victim:	Santiago Adolfo Villegas Delgado
State denounced:	Venezuela
Rights invoked:	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights ² , in relation with its Articles 1.1 and 2; and Articles 3 (obligation of nondiscrimination), 4 (inadmissibility of restrictions) and 7 (work) of the San Salvador Protocol

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	February 28, 2007
Additional information received at the stage of initial review:	March 5 and May 31, 2007
Date on which the petition was transmitted to the State:	July 10, 2007
Date of the State's first response:	March 3, 2008
Additional observations from the petitioner:	November 9 and 15, 2007; April 8, 2008; December 10, 2010; January 3, 2011; September 13, 2012 and January 12, 2017
Additional observations from the State:	September 5, 2012 and March 31, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes, American Convention (from August 9, 1977, when the instrument of ratification was deposited, until September 10, 2013, when denunciation entered into force)
Competence <i>Ratione materiae</i>:	Yes

¹The petition was originally presented by Alfonso Daza González, who on July 24, 2013, resigned to the power of attorney granted by the alleged victim and was substituted by .

² Hereinafter "Convention" or "American Convention".

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

IV. ANALYSIS OF 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 (personal integrity), 7 (personal liberty), 8 (Right to a Fair Trial), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention, in connection with Articles 1.1 and 2 thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of section VI
Timeliness of the petition:	Yes, under the terms of section VI

V. ALLEGED FACTS

1. The petitioner argues that in the context of an investigation related to drug trafficking, the Public Ministry of Venezuela took possession of the farm called "El Palmichal", property in which 102 packages of 50 kg each of urea were seized, a substance also used for the production of cocaine hydrochloride. He states that based on the foregoing, the Public Ministry requested the immediate arrest of Santiago Adolfo Villegas (hereinafter "the alleged victim") in his capacity of administrator of the farm, for the crimes of concealment of chemical products susceptible to being diverted to the production of narcotics and the legitimization of capital. He alleges that Mr. Villegas was arrested on September 23, 2005 and was arbitrarily, disproportionately and illegally held on pretrial detention for more than five years.

2. The petitioner notes that on September 23, 2005, the alleged victim was brought before the 8th Court of Control of the Táchira State Criminal Circuit, which proceeded to draw up the record of the arrest. He alleges that the record indicated that the alleged victim was in good physical condition despite having stated that at the time of his arrest a black hood was placed on his head in order to take a photograph, which the petitioner describes as inhuman and degrading treatment. He indicates that, the following day, the Public Ministry requested the proceedings to be "totally reserved" for a period of fifteen days due to the seriousness of the facts investigated. The petitioner points out that this significantly affected the alleged victim's right to defense because he did not have the necessary elements to prepare his defense strategy. He states that on September 25, 2005, the 8th Court confirmed the preventive detention of the alleged victim, who filed an appeal that was denied on November 30, 2005, by the Court of Appeals of the Judicial Circuit of Táchira.

3. He indicates that on January 25, 2006, the alleged victim filed an request for cognizance (*recurso de avocamiento*) before the Criminal Cassation Chamber of the Supreme Court of Justice alleging irregularities in the process and in the arrest warrant because it was arbitrary, abusive and disproportionate, and for the violation of the right of defense and due process, due to the confidentiality requested made by the Public Ministry. On July 25, 2006, the Supreme Court of Justice granted the request, annulled the hearing to present and the preliminary hearing and ordered the case to be reinstated to the time when the formal accusation was made.

4. The petitioner notes that on August 28, 2006, the hearing on the confirmation of charges was held before the Control Court of the State of Lara, an authority that confirmed the preventive detention and ordered the alleged victim's detention in the Uribana prison. On September 11, 2006, the alleged victim filed a constitutional protection (*amparo*) action before the Court of Appeals, which was not admitted on September 15, 2006. The decision was appealed and on December 18, 2006, the Constitutional Chamber of the Supreme Court of Justice denied the appeal, stating that the alleged violations had been corrected with the hearing of August 28, 2006.

5. According to the petitioner, on September 24, 2007, the judge granted an extension of one additional year to the 2-year term established as the limit for the application of preventive detention. After that time, the alleged victim filed a first application for the cancellation of the measure which was denied on December 17, 2008. He then submitted a new application that was rejected on January 15, 2009. The appeal filed against this rejection was also denied on March 5, 2009 on the grounds that substitute precautionary measures cannot be granted in cases of crimes against humanity (drug trafficking). Finally, the petitioner filed a constitutional protection (amparo) action that was declared inadmissible on July 31, 2009 by the Supreme Court.

6. He further notes that on March 25, 2010 - that is, 4 years and 6 months after Mr. Villegas' arrest - Court No. 4 handed down a sentence condemning him to a prison sentence of 14 years and 6 months for the crimes of concealment of chemical products susceptible to being diverted for the production of psychotropic narcotic substances and legitimization of capital. The alleged victim filed an appeal that was dismissed, and on August 27, 2010, filed a cassation appeal.

7. The petitioner alleges the violation of the right to personal liberty as a consequence of the arbitrary imposition of a measure of preventive detention, which exceeded the limits of reasonableness and proportionality. He highlights that in 2008 the Constitutional Chamber of the Supreme Court of Justice issued a precautionary measure suspending the effects of the Organic Law against illicit trafficking and consumption of narcotic substances, stating that "no measure of personal coercion may exceed the minimum penalty provided for each crime, nor exceed two years." He notes, however, that the appeals lodged to request the lifting of the measure were not effective.

8. On the other hand, the petitioner states that, in the framework of the criminal proceedings, the alleged victim's rights to defense and due process were violated, as well as the principles of presumption of innocence and legality. He says that testimonies provided by the defense were not considered, that nonexistent testimonies were given value and that in the condemnatory sentence, evidentiary elements that had not been incorporated into the process were taken into account. He also alleges that the legal qualification of the crime of "legitimation of capital" was erroneously applied because it would not have been possible to prove the illicit origin of the assets. The petitioner also alleges that, erroneously and in contravention of the principle of presumption of innocence, it was assumed that urea was a chemical with which cocaine hydrochloride was manufactured for the subsequent manufacture of narcotic drugs, immediately ruling out that it was a legal product for agricultural use. In this regard, he states that the evidence showing that the chemical was used for productive agricultural purposes - specifically to treat the farm's land and other nearby properties- was not considered. He states that a soil test determined that these fields were constantly treated with urea without any relation to psychotropic substances. Finally, he alleges violations of the rights to honor and dignity for having been called drug trafficker by the authorities in interviews broadcasted through different media outlets, and indicates that his Colombian origin was used to presume his guilt.

9. The State maintains that the petition is inadmissible because the remedies under domestic jurisdiction have not been exhausted, at first because the trial or judgment of the first instance was pending and later, on the grounds that the cassation appeal was pending. Additionally, it refers that the petitioner has not filed an appeal for review, which is another mechanism to challenge a final judgment. In this regard, the State argues that if the Commission admits the petition, it would be violating the principle of complementarity of the inter-American human rights system.

10. On the other hand, the State alleges that the rights to personal integrity, honor and dignity of the alleged victim during the course of the judicial process have been respected and guaranteed. It indicates that preventive detention was ordered based on the principles of effective judicial protection, judicial guarantees and equality before the law. Similarly, it refers that the alleged victim has effectively and fully exercised the right of defense through his legal representatives, having the power to file appeals and participate in all stages of the investigation and the process. It also requests that the bad faith and unreasonableness by the representation of the alleged victim against the Venezuelan State - for claiming

exception to the principle of exhaustion of domestic remedies - be noted. Finally, in its observations received on March 31, 2017, the State requests that the petition be archived due to the petitioner's inactivity.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. According to the information available, on September 25, 2005, the alleged victim lodged an appeal against the preventive detention, which was rejected on November 30, 2005. Upon the granting of an extension of the preventive detention on the 24 on September 2007, the alleged victim filed a request for the measure to be dropped, which was denied in the first and second instances. Faced with a new request, also denied in both instances, the alleged victim filed a constitutional protection (amparo) action that was declared inadmissible on July 31, 2009. Regarding the criminal proceeding, according to the information provided, the appeal filed by the alleged victim against the first instance conviction was declared inadmissible, which is why he filed an appeal on August 27, 2010. The State alleges failure to exhaust domestic remedies because the remedy of cassation or review had not been exhausted.

12. In cases of alleged excessive prolongation of pretrial detention, the Commission has established that, for the purpose of exhaustion of domestic remedies, the request for release and its rejection is sufficient. Therefore, the Commission concludes that the requirement of exhaustion of domestic remedies has been met with respect to the allegations relating to preventive detention. Regarding the criminal proceeding, the IACHR observes that the parties do not indicate the outcome of the cassation appeal filed on August 27, 2010. However, from the documentation provided it appears that the alleged victim was released in 2014 as a result of the fulfillment of his sentence, reason why it is deduced that the appeal of cassation was rejected. Regarding the State's argument about the need to exhaust the remedy of review, the Commission recalls that if the alleged victim raised the issue by any of the valid and adequate alternatives according to the domestic legal system and the State had the opportunity to remedy the issue in its jurisdiction, the purpose of the requirement of prior exhaustion of domestic remedies is met. In light of these considerations, the Commission concludes that in relation to the criminal proceeding, domestic remedies have also been filed and exhausted in accordance with Article 46.1.a of the American Convention.

13. Regarding the deadline for submission, the Commission observes that the last judicial decision regarding the preventive detention was issued on July 31, 2009 and the appeal was decided after 2012. In this regard, the Commission notes that the analysis of the requirements set forth in Article 46.1.b of the Convention must be made in the light of the situation in force at the time when it makes a decision on admissibility. Therefore, in view of the fact that the present petition was filed on February 28, 2007, the IACHR considers that the requirement regarding the filing period must be considered satisfied.

VII. COLORABLE CLAIM

14. In view of the factual and legal elements exposed by the parties and the nature of the matter brought to its attention, the Commission considers that, if the alleged prolonged preventive detention is proven, the alleged violations of the guarantees of due process and the alleged discrimination of Mr. Villegas due to his Colombian origin, could characterize possible violations of the rights recognized in articles 5 (personal integrity), 7 (personal liberty), 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the Convention, in connection with its articles 1.1 and 2. Likewise, regarding the claim about the alleged violation of Article 11 (right to privacy) of the Convention, the Commission observes that the petitioner has not offered allegations or sufficient support to allow a *prima facie* consideration of its possible violation.

15. With regard to the allegations of violations of articles 3, 4 and 7 of the Protocol of San Salvador, the IACHR notes that the competence provided for in the terms of article 19.6 of said treaty to rule in the context of an individual case is limited to articles 8 and 13. Regarding the other articles, in accordance with article 29 of the American Convention, the Commission may take them into account when interpreting and applying the American Convention and other applicable instruments.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 5, 7, 8, 24 and 25 of the American Convention on Human Rights, in relation to Articles 1.1 and 2 thereof;
2. Declare the instant petition inadmissible in relation to Article 11 of the Convention;
3. To notify the parties of this decision;
4. To continue with the analysis on the merits; and
5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 30th day of the month of November, 2017.
(Signed): Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.