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REPORT No. 222/19

PETITION 1498-10

REPORT ON INADMISSIBILITY

MARÍA MEYBER BICHAKDJIAN ALTOUNIAN AND OTHERS

URUGUAY

Electronically approved by the Commission on October 24, 2019.

Cite as: IACtHR, Report No. 222/19, Petition 1498-10. Admissibility. María Meyber Bichakdjian Altounian and others. Uruguay. October 24, 2019.



Organization of
American States

I. INFORMATION ABOUT THE PETITION

Petitioner:	Germán Aller Maisonnave and Berch Rupenian Bichakdjian
Alleged victim:	María Meyber Bichakdjian Altounian and others ¹
Respondent State:	Uruguay
Rights invoked:	Article 5 (humane treatment), Article 7 (personal liberty), and Article 13 (freedom of thought and expression) of the American Convention on Human Rights; ² Article II (equality before the law), Article IV (freedom of investigation, opinion, expression, and dissemination), Article V (protection of honor, personal reputation, and private and family life), Article XIV (work and fair remuneration), Article XXIII (property), Article XXV (protection from arbitrary arrest), and Article XXVI (due process of law) of the American Declaration of the Rights and Duties of Man; ³ and other international instruments. ⁴

II. PROCEEDINGS BEFORE THE IACRH⁵

Filing of the petition:	October 21, 2010
Additional information received at the stage of initial review:	February 13, 2012
Notification of the petition to the State:	July 9, 2014
State's first response:	October 3, 2014
Additional observations from the petitioner:	December 29, 2014
Additional observations from the State:	June 25, 2014

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 on April 19, 1985)

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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, May 19, 2010
Timeliness of the petition:	Yes, October 21, 2010

V. ALLEGED FACTS

¹ Berch Rupenian Bichakdjian and Aram Rupenian Bichakdjian.

² Hereinafter “the American Convention.”

³ Hereinafter “the American Declaration.”

⁴ Articles 7, 17, 19, and 23 of the Universal Declaration of Human Rights.

⁵ The observations submitted by each party were duly transmitted to the opposing party.

1. Germán Aller Maisonnave and Berch Rupenian Bichakdjian (hereinafter “the petitioners”) are reporting alleged violations to the human rights of María Meyber Bichakdjian Altounian and her two sons Berch and Aram Rupenian Bichakdjian⁶ (hereinafter “the alleged victims”), as a result of the alleged unlawful withdrawal of the radio broadcasting permits for four radio frequencies. In addition, they allege that Messrs. Berch and Aram Rupenian Bichakdjian were deprived of their liberty for 148 days in conditions incompatible with their human rights.

2. The petitioners state that the alleged victims held the rights to four radio stations, as indicated by them: (1) María Meyber Bichakdjian was the director and sole proprietor of the legal entity PARASEL S.A., which was, in turn, the sole proprietor of CONCIERTO FM which broadcast over the frequency 94.7 MHz of Montevideo under permit CXD 234; (2) Berch Rupenian Bichakdjian was the sole proprietor of the radio station CONCIERTO PUNTA which broadcast over the frequency 94.3 MHZ of Maldonado under permit CX 232; Aram Rupenian Bichakdjian was the sole proprietor of RADIO UNO, which broadcast over the frequency 105.3 MHz of Maldonado under permit CX 287; and (4) the three alleged victims were the sole proprietors of the limited liability company RADIO INDEPENDENCIA S.R.L, which in turn was the proprietor of RADIO INDEPENDENCIA, which broadcast over the frequency 1.530 KHz pf Montevideo under permit CX 50. They indicate that the programming of the radio stations was diverse, including musical, cultural, journalistic, and political contents.

3. They point out that, on August 11, 2004, the Director of the Tax Administration Department (*Dirección General Impositiva*, hereinafter “the DGI”) issued resolution No. 422/004, ruling that PARASEL S.A. had committed tax fraud for not paying the value-added tax and the income tax for industry and commerce, as a result of which it was fined. They indicate that the company filed the corresponding administrative appeals but the ruling was upheld by the Executive Branch on April 29, 2005. Afterwards, the alleged victims filed an appeal requesting that this ruling be declared null and void with the Administrative Disputes Court (*Tribunal de lo Contencioso Administrativo*, hereinafter “the TCA”), which issued a judgment on August 13, 2009, upholding the ruling that was being challenged. They allege that the TCA’s decision contradicted, without grounds, the report of the State –Attorney on Contentious Administrative Issues, who considered that the partial nullification of the ruling was required. They claim that, since 2005, the Director of the DGI launched, in breach of tax confidentiality, a media campaign against the alleged victims, publicly stating that the Rupenian brothers would be criminally charged, leading to great harm to their image and unlawfully pressuring the justice sector.

4. They indicate that the DGI afterwards filed criminal proceedings against the three alleged victims for the possible crime of tax fraud. The complaint contended that the alleged victims unlawfully transferred more than half of their invoices from the customers of CONCIERTO FM of Montevideo to CONCIERTO PUNTA of Maldonado, for the purpose of defrauding the treasury and benefiting from tax exemptions applicable only to radio broadcasting stations in the country’s inland regions. They indicate that, as a result of this complaint, criminal proceedings were filed against Berch and Aram Rupenian Bichakdjian, but not against María Meyber Bichakdjian. The accused filed an appeal against the bill of indictment, but the bill was upheld by the Criminal Appeals Court of the first instance.

5. They allege that, on March 28, 2007, the Executive Branch issued a resolution in which the President of the Republic resolved to withdraw the authorizations granted to the alleged victims and their companies for the use of four radio frequencies. The resolution referred to the sanctions imposed by the DGI on the alleged victims and launched a criminal proceeding against two of them and pointed out, among other considerations, that “the maneuvers made that establish tax infringements leading as a result to criminal proceedings and the loss of certain personal requirements demanded of radio broadcasters severely undermine the public interest.”

6. The petitioners point out that the alleged victims filed the corresponding administrative appeals, as a result of which administrative remedies were exhausted on June 18, 2007, and the resolution was implemented on July 9, 2007, the day on which the four radio stations were forced to stop broadcasting. Afterwards, the alleged victims filed a claim requesting nullification, contending, among other arguments, that

⁶ On January 31, 2014, the petitioner informed by email that Mr. Aram Rupenian Bichakdjian had died on May 22, 2013.

withdrawal of the authorizations was against the freedom of expression and the presumption of innocence. On April 22, 2010, the TCA issued a decision dismissing the claim. They argue that the court ignored, without grounds, the ruling of the State Attorney on Contentious Administrative Matters, who considered that complete nullification of the case was required and that the freedom of press had been undermined, as well as statements made by the National Association of Uruguayan Broadcasters and the International Association of Broadcasting censuring the withdrawal of the permits.

7. They state that they have no intention of asserting that the permits were withdrawn for ideological reasons. Nevertheless, they claim that their human rights were violated because of the issuance of this resolution, among other reasons, because: 1) the resolution was based on Article 8 of Decree 734/78, which is a law devoid of any legitimacy because it was enacted in 1978 during the Uruguayan dictatorship; 2) one of the requirements set forth in that article is "to submit adequate certification providing evidence of 'good character,' without any regulatory standards that would make it possible to ascertain who has a good character or not, granting authoritarian powers for the state to choose, at its own convenience, those who can hold media operation permits; 3) the article referred to merely sets forth the requirements for granting radio broadcasting permits, and it is unacceptable for those requirements to be applied by analogy to justify the withdrawal of permits; 4) the presumption of innocence was violated when the permits were withdrawn without any criminal conviction and when ruling on the action calling for nullification of the DGI resolution when still pending; 5) the DGI sanctions were aimed solely at PARASEL S.A. and its broadcasting station CONCIERTO FM, but without any grounds the permits of the four stations were withdrawn; 6) the resolution gave priority to the state's tax revenue collection over a legal principle of a higher orders such as freedom of expression; 7) the measure was disproportionate because four radio broadcasting permits were withdrawn on the basis of a tax liability issue that could be remedied, although other measures such as granting the permit-holders time to pay the debt or intervening the financial assets of some of the media was feasible; 8) the President of the Communication Services Regulation Unit stated that the withdrawal was a "political decision independent of the judicial ruling"; 9) the state itself was the one that created the debt and the criminal proceedings, which it subsequently used as a justification to withdraw the permits; and 10) the actions taken by the government denote disparity of criteria, because one company with ties to the government and that operates various media also has debts owed to the state but this company is not having its permits withdrawn, but rather part of its debt has been reduced and it has been granted many easy terms to make its payments.

8. Furthermore, they point out that, from 1957 up to the shutdown of the station, RADIO INDEPENDENCIA had been broadcasting the "Radio Armenia" service from 13:00 to 15:00. This program was founded by Antonio Rupenian, Armenian immigrant and deceased husband of María Meyber Bichakdjian and father of Berch and Aram Rupenian Bichakdjian. They allege this was a cultural service of the utmost importance for Uruguay's Armenian community, which had 20,000 members at the time the service was withdrawn. They point out that "Radio Armenia" had slots for journalism and music that pertained to the Armenian identity and served as a social medium for the community to announce events such as weddings, births, and deaths. They add that, although there were protests from the Armenian community and churches, none of them led to any result and there is no evidence that the state has taken any measures to reestablish this means of communication for the Armenian community. They therefore contend that, regardless of whether or not it was the state's intention to do so, the shutdown of RADIO INDEPENDENCIA concretely led to ethnic discrimination against the Armenian community.

9. They add that the withdrawal of the permits also impacted 37 persons who worked for the radio stations and lost their jobs. They allege that the alleged victims have sustained steep economic losses because they had to make severance payments although they became undercapitalized when their radios and personal assets were taken, indicating that the total amount that they have to pay for the dismissals that they were forced to make was US\$340,000.00, of which they had already paid out US\$195,000.00 when they submitted their petition. They argue that the state must shoulder the financial burden of the dismissals because it was the one that eliminated the source of these jobs. They also claim that the state has become an obstacle to the search for solutions for their former employees.

10. On May 18, 2010, the criminal court of first instance, issued a judgment convicting Berch Rupenian Bichakdjian as the perpetrator of the crime of tax fraud and Aram Rupenian Bichakdjian as co-

perpetrator of the same crime. A “penitenciaría” sentence of 2 years and 4 months was given to the former and a 24-month prison sentence was given to the latter. They indicate that, although the criminal judgment was final, afterwards the judge of the first instance issued a ruling ordering that “the judgment not be implemented and that the crime charged be expunged.” They alleged that, as a result of the criminal proceedings against them, the brothers Rupenian Bichakdjian were housed for 30 days in the disciplinary cell of the Santiago Vásquez Penitentiary Complex, without ever being informed of the reason for this decision. Afterwards, they stayed for 118 days in the confinement center of “La Tablada” which, they contend, had been censured by international observers because of its poor conditions. They indicate that they requested a transfer to another penitentiary unit, which was ordered by the acting judge after she became aware of the poor conditions in which the brothers were living.

11. As for the state, it voices its concern over the long period of time that elapsed between the submittal of the petition and its notification, which it believes exceeds any reasonable delay and undermines the principle of legal security governing the inter-American system and that is enshrined, among other provisions, in the statute of limitations set forth in Article 32.1 of the Rules of Procedure of the Inter-American Commission. It also believes that the petitioners intend to have the Inter-American Commission act unlawfully as a fourth instance to review decisions taken under domestic law with which they disagree, without providing evidence substantiating their claim about supposed violations of due process. It requests that the case be declared inadmissible, pointing out that the case submitted by the petitioners does not show any actions, deeds, or omissions that might establish a violation of the American Convention.

12. It indicates that the administrative and criminal proceedings filed against the alleged victims, members of a well-known family, were carried out in observance of the principle of equality and in a historical context in which the state gave priority to investigating tax crimes to combat poverty, promote fiscal equity, and mitigate the impacts of the economic crisis sustained by the country in 2001. It alleges that, in all the proceedings, the right of the alleged victims to a defense and to the guarantees of due process was respected. It stresses that the petitioners have recognized the State Attorney on Contentious Administrative Matters’ rulings in favor of the alleged victims, which it believes constitutes evidence of the independence and impartiality with which the proceedings were conducted.

13. It points out that the alleged victims were holders of permits issued by the state, which were withdrawn as a consequence of their own conduct with respect to business taxation and their decline in terms of the solvency requirements set for the use of these permits. It alleges that the withdrawal was made on the basis of a non-judicial administrative mechanism, which was carried out under the legal standards in force at the time, and highlights that the decision was then subjected to monitoring for legality and validated by the TCA. It indicates that freedom of expression is a core principle of Uruguay’s democracy, as a result of which the state respects all forms of expression, whether or not they agree with the government’s stance. It argues that it is false to contend that the alleged victims were subject to political discrimination, because their radio stations were broadcasting music programs and not journalism. Specifically, it indicates that RADIO INDEPENDENCIA was a disco that broadcast music and did not have any news, editorial, or debate programs.

14. It believes that the petitioners could be held liable for potentially fraudulent conduct when they claim that they represent the voice of the Armenian people and that the state is impeding the freedom of expression of a national community because it withdrew their permits. It argues that there is no evidence supporting the allegation that the state has adopted measures to harm this community, highlighting that Uruguay was the first country to officially recognize the existence of the Armenian genocide and that the Armenian community has prospered in Uruguay.

15. It also alleges that there is no evidence indicating that the alleged victims have been subjected to inhumane treatment and the argument that being held in prison under the common conditions of Uruguay’s penitentiary system is in itself alone a sign of mistreatment is not acceptable. It adds that the Parliamentary Committee for the Penitentiary System was apprised of the case of the alleged victims and took the necessary precautions so that due guarantees would be respected during the time they were deprived of their liberty.

16. The state recognizes that the alleged victims exhausted the administrative remedies but indicates that there is no evidence that the alleged victims submitted any complaint about the inhumane treatment, they were allegedly subjected to. It indicates that domestic law envisages effective remedies for reporting actions or facts that might entail torture or mistreatment, including institutions with a specific mandate such as the Parliamentary Committee for the Penitentiary System. Therefore, it believes that they should have submitted, under domestic law, the evidence to support the claimed violation of their personal integrity.

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

17. The Commission notes that the state has voiced its concern about the time that has elapsed between receiving the petition and its notification, which it believes is unreasonable and undermines the principle of legal security. Regarding this, the Commission recalls, according to its sustained opinion, that neither the American Convention nor the Commission's Rules of Procedure set a time-limit for forwarding a petition to the state after it has been received and that the time-limits set in the Rules of Procedure and in the Convention for other stages of the proceeding are not applicable by analogy.

18. Regarding the withdrawal of the permits for the use of the radio frequencies that had been granted to the alleged victims, the Commission observes that the last decision was issued by the TCA on April 22, 2010. The state has not referred to the existence of remedies under domestic law that have not been exhausted and that could be suitable to challenge this withdrawal. Therefore, the Commission believes that the part of the petition referring to this withdrawal and its consequences meets the requirements of Article 46.1(a) of the American Convention. Because this decision was notified to the alleged victims on May 19, 2010 and the petition was submitted on October 21, 2010, this part of the petition also meets the requirements of Article 46.2(b) of the American Convention.

19. Regarding the measures adopted against the petitioners by the DGI, the Commission observes that the last decision was issued by the TCA on August 13, 2009. The state has not mentioned any domestic remedies that have not been exhausted and that might be suitable to challenge these measures. Therefore, the Commission considers that the part of the petition referring to these measures meets the requirements of Article 46.1(a) of the American Convention. Nevertheless, because the petition was submitted more than six months after the final decision was issued, the Commission deems that this part of the petition does not meet the requirements of Article 46.2(b) of the American Convention.

20. As for the claimed violations of the rights of the alleged victims because of the conditions they were subjected to while they were deprived of liberty, the Commission takes note that the petitioners indicated that they requested a transfer to a different penitentiary unit, which was granted to them, and the state has pointed out that the Parliamentary Commission for the Penitentiary System monitored the situation of the alleged victims. Nevertheless, the Commission does not have enough information regarding the steps taken by the alleged victims to inform state authorities about the concrete situations that might have violated their human rights. Nor does it appear in the case file that the alleged victims have filed complaints under domestic law regarding the "media campaign" that they allege was carried out against them by the Director of the DGI. Therefore, it cannot conclude that remedies under domestic law have been exhausted regarding these allegations pursuant to the requirements of Article 46.1(a) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

21. The Commission takes note that the petitioners have not asserted or alleged that the withdrawal of the permits granted to the alleged victims and their companies for the use of radio frequencies was motivated by the intent to engage in retaliations for the editorial stance of the station, nor that it was the result of direct discrimination. However, they have maintained that the revocation was not in accordance with the legality standards set by the American Convention and have denounced a number of deficiencies that, according to their view, exist in domestic legal framework in which the measure was based. They have also cited several reasons why they consider that the measure was disproportional highlighting that, in addition to

the alleged victims, the measure also caused harms to the stations' workers and the Armenian community of Uruguay. The State, on its part, has argued that the petitioners' intent is for the Commission to act inappropriately as a fourth instance to review the decisions of the domestic courts.

22. The Commission recalls that the international protection afforded by the American Convention's supervision bodies is of a subsidiary nature and that in democratic societies, in which the courts operate under the rule of law, it falls on the competent courts to analyze and decide on the matters that are brought to them. Nevertheless, in any case in which a possible violation of rights protected by American Convention is *prima facie* identified, it falls on the Commission to examine the merits of the issue. If when reviewing a petition the Commission identifies a possible violation to freedom of expression because of a breach of the requirements of legality and proportionality, the Commission can admit that petition for an exam on the merits; independently of any determinations made by domestic courts on the matter. However, the Commission considers that, despite of the petitioner's arguments, there are not sufficient elements in the instant case's file for it to conclude, *prima facie*, that the American Convention may have been violated.

23. The petitioning party has also denounced an alleged violation of presumption of innocence in relation to the fact that the resolution which revoked their permits made reference to criminal proceedings that had been initiated against them, even though no first instance conviction had been issued against them. In this respect, the Commission observes that the petitioners have not contributed sufficient elements indicating that the pending criminal proceedings against were a determinant factor in the decision to revoke the permits, nor that the reference made to these proceedings in the executive power's resolution had an influence over their resolution. In attention to these circumstances and considering the particular characteristics of the instant case, the Commission concludes that this claim does not provide elements that indicate, *prima facie*, a possible violation of rights protected by the American Convention.

24. As for the alleged violations of the rights to humane treatment, personal liberty, protection of dignity, personal reputation, private and family life, property, and protection against arbitrary detention, the Commission observes that, regarding the parts of this petition that meet the requirements of Article 46 of the American Convention pursuant to Section VI of the present report, the petitioners have not offered allegations or enough evidence that would make it possible to consider *prima facie* their possible violation.

25. Regarding the claimed violations of the American Declaration, the Inter-American Commission has previously established that, once the American Convention enters into force with respect to a state, the latter and not the Declaration becomes the primary source of applicable law for the Commission, as long as the petition refers to the alleged violation of rights that are identical in both instruments and does not deal with a situation of continued violation. In the present case, the Commission considers that the alleged violations of the American Declaration are not outside the reach of the protection provided by Articles 5, 7, 8, 11, 13, 21, 24, 25, and 26 of the American Convention. Therefore, the Commission shall examine these allegations in light of the American Convention. As to the alleged violations to the Universal Declaration of Human Rights, The IAC^{HR} lacks competence *ratione materiae* to decide on violations of rights embodied in instruments outside the Inter-American System, notwithstanding that it may resort to the standards established in other instruments in order to interpret the Convention by virtue of Article 29 of the said treaty.⁷

26. The Commission shall not make any statement about the characterization of those aspects of the petition that do not meet the requirements of Article 46 of the American Convention in line with its determinations as specified in Section VI.

VIII. DECISION

1. To declare the present petition inadmissible

⁷ IAC^{HR}, Report No. 26/17, Petition 1208-08. Admissibility. William Olaya Moreno and family. Colombia. March 18, 2017, para. 9.

2. To notify the parties of the present decision; 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 24th day of the month of October, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.