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REPORT No. 82/17
PETITION 1067-07
REPORT ON ADMISSIBILITY

ROSA ÁNGELA MARTINO AND MARÍA CRISTINA GONZÁLEZ
ARGENTINA

Approved by the Commission at its session No. 2093 held on July 7, 2017.
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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Maria Cristina González
Presuntas víctimas	Rosa Ángela Martino and María Cristina González
State denounced:	Argentina
Rights invoked:	Articles 1 (Obligation to Respect Rights), 4 (Right to Life), 5 (Right to Humane Treatment), 11 (Right to Privacy) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Date on which the petition was received:	August 17, 2007
Additional information received at the initial study stage:	January 22 and June 30, 2009; April 7, 2010; and August 17, 2011
Date on which the petition was transmitted to the State:	May 4, 2012
Date of the State's first response:	December 18, 2013
Additional observations from the petitioning party:	February 25, 2014; May 15 and 18 and August 12, 2015; October 10 and November 17, 2016; and May 16, 2017
Additional observations from the State:	February 13, 2015 and January 23, 2017

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 May 9, 1984)

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

Rights declared admissible:	Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 11 (Right to Privacy), 25 (Right to Judicial Protection) and 26 (Progressive Development) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights)
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¹ Hereinafter "the Convention" or "the American Convention."

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

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; August 27, 2009
Timeliness of the petition:	Yes; August 17, 2007

V. ALLEGED FACTS

1. The petitioner states that her mother, Ms. Rosa Angela Martino ("the alleged victim" or "Ms. Martino"), an Alzheimer patient aged 72, was admitted to the geriatric institution called "Ayelen." The services at this institution were provided by the Comprehensive Medical Care Program ("PAMI"), which belongs to the National Institute of Social Services for Retirees and Pensioners ("INSSJP") and of which the alleged victim was a member. She asserts that the alleged victim stayed at this nursing home for four and a half months, since November 26, 2005 to April 11, 2006, in conditions contrary to human dignity.

2. The petitioner claims that the alleged victim, during her stay at the Ayelen rest home, lost ten kilograms of weight, was unclean and with traces of human waste on her body, wore messy clothes and sometimes was even without any clothes on. The alleged victim continuously lost her belongings, such as clothes, towels and prescription eyeglasses. The petitioner also indicates that there was only one nursing assistant for forty-four people, and that the nurse who assisted the alleged victim belonged to the Federal Police and was rough in her care, mistreating the alleged victim. The petitioner allegedly informed the authorities of the institution about these issues; but apparently, they did not do anything about it.

3. In view of this situation, the petitioner took her mother to another nursing home. On April 11, 2006, the mother was admitted to the San Micael rest home. After her admission, she underwent a series of medical examinations that revealed that Ms. Martino was in a state of malnourishment, anemia and dehydration, and suffered from urinary-tract infection and constipation. Thanks to the services of this new nursing institution, the alleged victim's health began to improve.

4. In view of the facts that took place at the Ayelen nursing home, on November 9, 2006, the petitioner filed a criminal complaint before the Investigation Functional Unit No. 4 for neglect of person. That same year, on November 14, she modified her complaint as she included in the case file Ms. Martino's medical history prior to her admission to the Ayelen nursing home. In these proceedings, on March 20, 2007, the medical experts appointed by the General Attorney's Office of the Judicial Department of San Martín presented their first report. The petitioner submits that this report was based only on the medical history requested to Ayelen. Consequently, on May 21, 2007, the Judicial Branch of Buenos Aires province proceeded to archive the complaint on the grounds that no reliable proof of the denounced facts had been produced by these medical examinations. Subsequently, on August 24, 2007, the petitioner lodged an appeal for review with the Acting Federal Attorney of the Judicial Branch of Buenos Aires, to request that the criminal investigation continued. In said appeal, she submitted that during the proceedings she had not had access to the case file; but the Acting Federal Attorney dismissed the appeal on the grounds that there had not been any violation of due process.

5. Therefore, on September 19, 2007, the petitioner requested the General Attorney's Office of the Judicial Department of San Martín to extend the medical examination that led to the closure of the case. As a result, on October 8, 2007, said Office claimed that the General Attorney's review of the decision confirming the closure of the proceedings was not applicable; however, it ruled to reopen the case files as it considered that not all of the corresponding proofs had been taken into account and that there had not been a specific answer to each one of them. Consequently, on October 28, 2007, the General Attorney transmitted the proceedings to the General Directorate of the Expert Advisory Office of the Judicial Branch so that a physician other than the one that conducted the previous examinations would make a new report based on the evidence then available in the case file. In this case, the petitioner had the opportunity to submit evidence concerning the alleged victim's medical history. However, the new experts indicated that the documents filed by the petitioner were illegible; as a result, they dismissed them without issuing an opinion on the denounced facts that occurred at the Ayelen nursing home. Consequently, on July 25, 2008, the General Attorney's Office

ruled to archive the proceedings. The petitioner claims that she was never asked to file again or rectify the illegible documents.

6. In addition, she asserts that when she requested PAMI to pay for the new nursing home, the institution refused to pay for it, arguing that Ms. Martino's petitioner number did not exist. As a result, the petitioner filed an appeal for legal protection in 2009, and on August 27, 2009, the National Court 5/10 urged PAMI to provide a comprehensive coverage for the alleged victim's admission to the San Micael nursing home, including the necessary medication. The petitioner firmly asserts that PAMI never provided the comprehensive coverage for the alleged victim's medical care established in the legal resolution. In this regard, she submits that: a) the payments by this institution to the nursing home where Ms. Rosa Angela Martino stayed were partial and belated (payments were made every six months though the resolution established monthly payments); b) the medication costs were not fully covered even when the medication was prescribed by physicians of PAMI itself; c) the number of diapers provided was much smaller than that her mother needed; and d) at a certain point, when her mother was no longer able to walk, PAMI refused to give her a wheelchair, which she had to buy. In general, she denounces that all the claims that she filed to PAMI were systematically dismissed.

7. In response to the State's observations, the petitioner indicates that she did not file a civil action because it is not about a monetary issue but about her mother's life. Subsequently, the petitioner informed the IACHR that her mother died on August 17, 2016 without her having obtained justice.

8. The State of Argentina, for its part, alleges the lack of exhaustion of domestic remedies as it believes that the petitioner should have requested the review of the archiving of the criminal case file, and brought a civil lawsuit for damages against those she deems responsible for the treatment given to the alleged victim at the Ayelen nursing home. It also considers that the petitioner seeks a fourth instance, because the investigation ordered in view of the complaint filed was completed, and even reopened later at the request of the petitioner, and that she was always heard and given the opportunity to present evidence. In this regard, it claims that the Commission cannot work as a court of appeals to review the judgments by the domestic courts. In view of these considerations, the State believes that this petition is manifestly groundless and must be declared inadmissible.

9. Likewise, it indicates that by the resolution of January 30, 2012, the Executive Director of the executive governing body of the INSSJP ruled to grant, as an exception, the subsidy judicially ordered in favor of the alleged victim in order to cover all the nursing home costs; however, the petitioner never appeared to receive the corresponding check.

10. Moreover, the Argentine State requests the Commission to divide the petition since the petitioner's communications from May 15, 2015 onwards, concerning the violation of the appeal for legal protection by which PAMI was urged to pay for the admission to the San Micael nursing home, are not in any way connected with the facts initially presented in the petition, under the IACHR's Rules. Finally, the State alleges the untimely processing of the petition since the IACHR transmitted it to the State five years after it was lodged.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. Before analyzing the exhaustion of domestic remedies and the timeliness of the petition, the Commission deems it necessary to comment on the State's request to divide the petition. In this regard, the Commission has established that, under Article 29.4 of its Rules, for a petition to be processed as one single case, the facts, the victims and the violations set forth in it do not need to strictly coincide in time and place.³ The Commission has processed individual cases concerning numerous alleged victims who claim violations taking place in different times and places but which allegedly have the same cause, such as the application of legal rules or the existence of a same pattern of conduct. Therefore, the Commission has decided to join

³ IACHR, Report No. 5/97, Admissibility, Petition 11,227, National Patriotic Union, Colombia, March 12, 1997, paras. 39-42.

petitions and cases that respond to the same normative, institutional or factual context; or where there are similarities between the facts alleged. The instant petition is about the purported State responsibility for the purported neglect and mistreatment that the alleged victim suffered at a state institution and the subsequent lack of coverage for her admission to another institution. As a result, the Commission concludes that, based on the information submitted, the petition does not describe different facts or concerns alleged violations that are not related in time and space; consequently, Article 29.4 of the IACHR's Rules are not applicable.

12. The State alleges lack of exhaustion of domestic remedies as the petitioner did not file an appeal for review against the decision of July 25, 2008 ruling the closure of the criminal complaint, and that she did not file a civil lawsuit to request compensation. As to the first aspect, the Commission notes that on November 9, 2006 the petitioner filed a criminal complaint that was archived on May 21, 2007. To challenge that judgment, she lodged an appeal for review on August 24, 2007, but the complaint was archived again on July 25, 2008. The Commission recalls that the requirement of prior exhaustion of domestic remedies is intended to allow domestic authorities to hear the alleged violation of a protected right and, if applicable, settle the issue before it is brought before an international body. In that regard, the Commission believes that the appeal for review filed against the closure decision of May 21, 2007 was the appropriate remedy and that, as a result, pursuant to Article 46.1.a, the domestic remedies were exhausted by the judgment of July 25, 2008, through which the remedy was rejected and the criminal complaint was archived again. As regards to the argument concerning the civil action, the Commission notes that the main subject of this petition is the purported lack of criminal investigation and punishment of those responsible for the alleged mistreatment committed against the alleged victim at the Ayelen rest home; therefore, the appropriate remedy is a criminal lawsuit, not a civil action.

13. Likewise, the Commission notes that the appeal for legal protection that was lodged to obtain PAMI's comprehensive coverage payment in favor of the alleged victim had a favorable decision by the National Court 5/10 on August 27, 2009. The Commission believes that the parties do not controvert this aspect; therefore, it finds that this requirement is met under the terms of Article 46.1.a of the American Convention.

14. As to the requirement of timeliness, the Commission notes that the petition was filed on August 17, 2007; that the criminal proceedings filed by the alleged victim ended on July 25, 2008 when the General Attorney's Office of the Judicial Department of San Martín decided to close the file; and that her claim against PAMI had a final resolution when legal protection was granted on August 27, 2009. In this regard, the IACHR recalls that the analysis of the requirements foreseen in Articles 46 and 47 of the American Convention must be made in the light of the situation existing at the time when it decides on the admissibility or inadmissibility of the claim. Consequently, it finds that this petition meets the requirement established in Article 46.1.b of the Convention.

15. The Commission takes note of the State's observation on the untimely notification of the petition. In this regard, the IACHR explains that once a petition has been received, there is no deadline for it to be transmitted to the State, neither under the American Convention nor under the Commission's Rules of Procedure. It also recalls that the periods that the Rules and the Convention establish for other processing stages do not apply by analogy.⁴

VII. COLORABLE CLAIM

16. In view of the previous considerations and the information available from petition's file, the IACHR believes that, if proved, the alleged acts to the detriment of Ms. Martino's physical integrity and health in a state institution; and the lack of an effective investigation into these and the lack of access to justice could establish possible violations of the rights enshrined in Articles 5 (Humane Treatment), 8 (Fair Trial), 11

⁴See, for example: IACHR, Report No. 56/16. Petition 666-03. Admissibility; Luis Alberto Leiva. Argentina. December 6, 2016; par. 29; and I/A Court H.R., *Case of Mémoli v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2013. Series C No. 295. paras. 30-33.

(Privacy), 25 (Judicial Protection) and 26 (Progressive Development) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights), to the detriment of Rosa Angela Martino. These could also establish violations of the rights embodied in Articles 8 and 25 of the American Convention, in relation to its Article 1.1, to the detriment of her daughter, Ms. Maria Cristina González, in view that she allegedly took care of and assisted the alleged victim and furthered the domestic legal proceedings.

17. As far as the claim about the alleged violation of Article 4 (Right to Life) of the Convention is concerned, the IACHR notes that the petitioner did not submit sufficient proof or arguments to *prima facie* consider its alleged violation. In this regard, the petitioner does not show the existence of a causal relationship between the alleged victim's being mistreated in 2005-2006 and subsequent death in 2016.

18. Concerning PAMI's alleged non-compliance with the judgment issued by the National Court 5/10 in favor of the alleged victim, since this is a possible violation of the alleged victims' right to judicial protection, the Commission believes that those arguments must be assessed in the merits stage of this case. The IACHR also takes into account that such complaint meets the admissibility requirements of this report.

19. As regards the State's argument about a fourth instance, the Commission notes that, by declaring this petition admissible, it does not seek to replace the domestic authorities' competence to reverse a judgment unfavorable to an alleged victim or assess possible interpretation mistakes made by the domestic courts, which in principle correspond to the domestic courts. In the merits stage, the Commission will determine if the domestic legal proceedings complied with the right of due process and legal protection and, thus, ensured the victims' right of access to justice.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 5, 8, 11, 25 and 26 of the American Convention, in relation to Article 1.1 of the same treaty;
2. To find the instant petition inadmissible in relation to Article 4 of the American 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.

Approved by the Inter-American Commission on Human Rights in the city of Lima, Peru, on the 7th day of the month of July, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, and Luis Ernesto Vargas Silva, Commissioners.