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REPORT No. 173/17
PETITION 1111-08
REPORT ON ADMISSIBILITY

MARCELA BRENDA IGLESIAS, NORA ESTER RIBAUDO AND
EDUARDO RUBÉN IGLESIAS
ARGENTINA

Approved by the Commission electronically on December 30, 2017

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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Laura del Cerro, Daniel A. Stragá and María del Carmen Verdú
Alleged victims:	Marcela Brenda Iglesias, Nora Ester Ribaudo and Eduardo Rubén Iglesias
State denounced:	Argentina
Rights invoked:	Articles 1 (Obligation to Respect Rights), 4 (Life), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	September 23, 2008
Additional information received at the initial study stage:	May 18, 2009
Date on which the petition was transmitted to the State:	October 16, 2009
Date of the State's first response:	April 22, 2010
Additional observations from the petitioning party:	July 8, 2010; September 13, 2011; March 30, 2012; August 29, 2013
Additional observations from the State:	June 13, 2011; January 3, 2012; February 25, 2013
Date on which the petitioner was notified of the possible archiving of the petition:	May 26, 2017
Date on which the petitioner responded to the notification regarding the possible archiving of the petition:	June 12, 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 ratification instrument on September 5, 1984)

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

² 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 4 (Life), 5 (Humane Treatment), 8 (Fair Trial), 19 (Child) and 25 (Judicial Protection) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; on March 18, 2008
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners indicate that Marcela Brenda Iglesias, daughter to Nora Ester Ribaldo and Eduardo Rubén Iglesias, died on February 5, 1996, after being crushed by a 250-kilogram iron sculpture. They assert that on that day, Marcela, then aged 6, was in an excursion in the recreation center called “*Paseo de la Infanta*,” (now called “*Paseo Marcela Iglesias*”), in the city of Buenos Aires, which had been organized by the summer camp she attended to. They indicate that the sculpture was part of an exhibition of the art gallery located in that center; that it was placed in a pedestrian area; and that when it fell, it caused Marcela’s immediate death and injured two other girls.

2. The petitioners submit that the Eleventh National Trial Court for Minor Offenses intervened in the investigation of the criminal proceedings, as a result of which the creator of the sculpture that caused Marcela’s death, the manager of the art gallery where said work of art was being exhibited, and four municipal officers were charged with manslaughter, culpable harm and negligence on the part of public officers. They also submit that through the investigation it was proved that the soldering work supporting the sculpture was deficient, that it lacked proper maintenance, that during the public exhibition neither safety nor protection measures had been adopted, and that the authorization to have the art gallery work in that area was contrary to municipal rules.

3. They add that on November 19, 1999 the investigation was closed and the case was taken to an oral trial before the Third National Court for Minor Offenses. They affirm that from this procedural stage, the facts that culminated in a denial of justice and impunity in the case began. They allege that the court hearing the case was tolerant to the numerous petitions for annulment and for postponement, and objections to the judge and to the court’s jurisdiction that the defense counsels filed in order to delay the case and consequently prevent the oral proceedings. They explain that the defense counsels took turns to present inappropriate, free-standing legal remedies, and filed previously overruled claims. They also submit that sometimes the Federal Court for Criminal Appeals took more than 8 months to settle repeated claims although they had been recently denied by itself. They allege that Marcela’s parents, appearing as the plaintiff in the case, and the intervening prosecutor filed the available remedies to prevent the suspension of the case. They claim that because of the aforementioned reasons the date for the oral hearing was twice set and cancelled. As a result, they indicate that on March 15, 2005 the criminal legal action was dismissed as barred by the statute of limitations and all the defendants acquitted.

4. The petitioners assert that the judges failed to use their legal powers to *in limine* reject repeated or *prima facie* inadequate claims, and that in calculating the limitation period, they should not have considered the time wasted in said dilatory tactics. They claim that the plaintiff and the Public Prosecutor’s Office filed an appeal against said dismissal, before the Federal Court for Criminal Appeals, Chamber No. 4, and that it was overruled on December 14, 2005. They argue that, later, they filed a federal special remedy before Argentina’s Supreme Court of Justice, and that the remedy was declared inadmissible on December 11, 2007. They indicate that this decision, of which they were notified on March 18, 2008, meant the exhaustion of domestic remedies.

5. The petitioners claim that the alleged victims were deprived of their right of equal access to justice in view of the fact that the intervening tribunal tolerated the dilatory tactics presented by the defense counsels, leading to the delay of the proceedings and the subsequent dismissal of the case on statute of limitations grounds in favor of all the accused. They allege that the State of Argentina is liable for allowing that Marcela Brenda Iglesia's death remains unpunished. Therefore, they claim violations of the right of life, humane treatment, personal liberty, access to justice, and judicial protection.

6. The State, for its part, manifests its willingness to reach a friendly settlement agreement with the petitioners, stating that this would not mean that the State recognizes the denounced facts or the rights invoked by them. Moreover, it indicates that it reserves the right to submit its observations on the merits of the case in the future.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The petitioners claim that the alleged victims have exhausted domestic remedies, since after the criminal case was dismissed as barred by the statute of limitations, they appealed against this decision and then filed a federal special remedy, which was rejected on December 11, 2007. For its part, the State has not presented any claims on this aspect. In view of the foregoing, the Commission concludes that the alleged victims have exhausted domestic remedies by filing the federal special remedy, pursuant to Article 46.1.a of the Convention.

8. In addition, the Commission notes that the petition, sent by ordinary mail, was received by the IACHR on September 23, 2008, and that the petitioners were notified of the Supreme Court's resolution on March 18, 2008. In this regard, based on the IACHR's practice in the matter, presuming that the number of days elapsed while the petition was in the post office, the Commission believes that the petition was filed in a timely manner. Therefore, it declares that the petition meets the requirement established in Article 46.1.b of the American Convention.³

VII. COLORABLE CLAIM

9. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission considers that, if proved, the claims regarding the alleged victim's death in a public area as a result of the collapse of a sculpture, as well as the delay in the criminal proceedings allegedly leading to the case's being dismissed as barred by the statute of limitations and its purported impunity, all may constitute possible violations of Articles 4, 8, 19 and 25 of the American Convention, to the detriment of Marcela Brenda Iglesias, in accordance with its Article 1.1. Additionally, the facts concerning violations of humane treatment, lack of access to justice and judicial protection may establish violations of Articles 5, 8 and 25 of the American Convention, in relation to its Article 1.1, to the detriment of her mother, Nora Ester Ribaudó, and her father, Eduardo Ruben Iglesias.

10. To conclude, with regard to the purported violation of Articles 7 and 24 of the American Convention, the Commission notes that the petitioners did not submit claims or evidence to prove such violation; therefore, this claim cannot be declared admissible.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 4, 5, 8, 19 and 25 of the American Convention, in connection with the obligations established in its Article 1.1;

2. To declare the instant petition inadmissible in relation to Articles 7 and 24 of the American Convention;

³In this regard: IACHR, Report No. 115/12 Giovanna Janett Vidal Vargas, Chile, Admissibility, November 13, 2012, par. 42. IACHR Report No. 60/14, Petition 1415-04. Admissibility. Alejandro Nissen Pessolani. Paraguay. July 24, 2014, par. 45.

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 on the 30th day of the month of December, 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, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.