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REPORT No. 102/17
PETITION 383-08
REPORT ON ADMISSIBILITY

HEBE ALICIA LÓPEZ OSUNA
ARGENTINA

Approved by the Commission at its session No. 2098 held on September 7, 2017.
164th Special Period of Sessions.

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Argentina. September 7, 2017.

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PETITION 383-08
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 SEPTEMBER 7, 2017

I. PETITION INFORMATION

Petitioner(s):	Hebe Alicia López Osuna, Noemi Marta Berros, Alberto Bovino, Juan Pablo Chorinos, and Raúl Enrique Barrandeguy
Alleged victim:	Hebe Alicia López Osuna
State:	Argentina
Rights invoked:	Articles 7 (personal liberty), 8 (fair trial), and 24 (equal protection) of the American Convention on Human Rights, ¹ in conjunction with Article 1(1) (obligation to respect rights)

II. PROCESSING BY THE IACHR²

Deadline for submitting the petition:	April 2, 2008
Additional information received during the study phase:	August 11, 2008, January 13, 2009, and January 22, 2009
Date on which the State was notified of the petition:	January 17, 2013
Date of State's initial response:	June 25, 2013
Additional observations of the petitioner:	October 7, 2013, August 22, 2014, October 28, 2015, and October 3, 2016
Additional observations of the State:	February 12, 2015 and July 28, 2017

III. COMPETENCE

<i>Ratione personae</i> competence:	Yes
<i>Ratione loci</i> competence:	Yes
<i>Ratione temporis</i> competence:	Yes
<i>Ratione materiae</i> competence:	Yes, American Convention on Human Rights (ratification instrument deposited on September 5, 1984)

IV. ANALYSIS OF DUPLICATION OF PROCEEDINGS AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF LOCAL REMEDIES, AND TIMELINESS

Duplication of proceedings and international <i>res judicata</i>:	No
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¹ Hereinafter "the American Convention" or "the ACHR."

² The comments of each party were duly forwarded to the counter-party.

Rights declared admissible:	Articles 7 (right to personal liberty), 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the ACHR, in conjunction with Article 1(1) (obligation to respect rights) and 2 (domestic legal effects) of the Convention.
Exhaustion of domestic remedies or admissibility of an objection:	Yes, October 4, 2007
Timely submission:	Yes, April 2, 2008

V. ALLEGED FACTS

1. The petitioners fundamentally allege that the Argentine State has violated the rights of Ms. Hebe Alicia López Ozuna (hereinafter also "the alleged victim") on failing to provide reparations for the damages caused by her illegal and arbitrary imprisonment as part of a criminal process in which her right to due process was also violated. They allege that the alleged victim was held in pretrial detention for more than a year and a half based on false testimony, which was obtained with the complicity of government authorities, and in consideration only of the type of crime of which she was accused.

2. The petitioners stated that toward the beginning of 1997, a criminal process for murder was launched before the Third Trial Court of Paraná, Entre Ríos province. During the course of the investigations, Ms. Ángela González incriminated herself and several other people, including the alleged victim. Ms. González was the only witness for the prosecution, and her testimony was decisive in the arrest of the alleged victim on April 17, 1997. The alleged victim was formally ordered held in pretrial detention on June 2, 1997. The petitioners allege that the judge based his decision exclusively on the nature of the crime for which she was accused and the severity of the corresponding punishments. They also indicate that aside from the testimony implementing the alleged victim, no other routes of investigation were explored.

3. The order of pretrial detention was appealed on June 10, 1997, and upheld by the Second Court of the Criminal Chamber of Paraná on June 26, 1997. On July 17, 1997, based on new evidence, the defense of Ms. Hebe López asked that her legal status be changed and that she be released immediately. Despite this, on July 20, the preliminary investigation judge rejected the request and kept her in pretrial detention. Ms. Hebe López's defense appealed this ruling on July 25; however, the Second Court of the Criminal Chamber of Paraná upheld the decision *a quo* on August 19, 1997. On December 16, 1997, the preliminary investigation judge concluded the investigation and forwarded it to the First Court of the Criminal Chamber of Paraná, which acquitted the alleged victim on November 3, 1998, declaring her innocent and ordering her immediate release. Subsequently, on November 4, 2002, the First Court of the Criminal Chamber of Paraná convicted Ms. González—the lead witness in the case against the alleged victim—of perjury. On August 9, 2004, the court also convicted the police officers who participated in the investigations of the crime.

4. Based on these facts, on August 19, 1999, the representatives of the alleged victim filed a civil lawsuit for damages against the province of Entre Ríos before the First Court of the First Civil and Commercial Circuit of the city of Paraná, alleging that the courts had committed a "judicial error" on ordering Ms. Hebe López be held in pretrial detention. The court rejected this suit on July 3, 2001, finding that no "miscarriage of justice" had taken place, as this was only the case when the measure is unquestionably baseless and arbitrary, something that had not occurred with the alleged victim. This ruling was appealed, and on September 25, 2003, the Second Court of the Third Appeals Chamber of Paraná overturned the lower court's ruling, finding against the province of Entre Ríos and ordering it to pay compensation of 372,250 Argentine pesos (equivalent to US\$128,583 at the time³), plus interest accrued from April 17, 1997, until payment was made. In its ruling, the court found "that although pretrial detention was formally and legally ordered, its content was the result of an unreasonable and arbitrary judicial assessment of the facts and

³ Calculation based on data from the official webpage of the Central Bank of the Argentine Republic (http://www.bcra.gov.ar/PublicacionesEstadisticas/Cotizaciones_por_fecha_2.asp)

evidence at the time, making the judicial error of the preliminary investigation judge both unlawful and flagrant.”

5. This judgment was appealed by the province of Entre Ríos, and on August 17, 2004, the Civil Chamber of the Superior Court of Justice of Entre Ríos overturned it, reinstating the lower court ruling as the final judgment. It found that the pretrial detention was not objectively incompatible with the evidence in the case, nor was it manifestly groundless or arbitrary, and that the State cannot be held responsible based on subjective factors. The alleged victim filed an extraordinary federal appeal against this decision on September 6, 2004. This appeal was declared inadmissible by the Civil Chamber of the High Court of Justice of Entre Ríos on June 22, 2005, after finding it confusing, repetitive, and inadequate for overturning the judgment. In response to this decision rejecting the appeal, on July 28, 2005 the alleged victim filed a direct complaint appeal with the Supreme Court of Justice of the Nation, which denied it on September 25, 2007, without ruling on the merits of the matter. The alleged victim was notified of this final decision on October 4, 2007.

6. The petitioners also indicate that on October 3, 2008, the Constitution of the province of Entre Ríos was amended to allow for compensation in cases like that of the alleged victim,⁴ and that the case of Ms. Hebe López was highlighted during debate of the amendment as a paradigmatic example of the issue it sought to correct. Other individuals who were also accused during the same criminal proceeding as the alleged victim—also as a result of the testimony of Ms. Ángela González—were indeed granted compensation by the same Superior Civil Chamber of Justice of Entre Ríos. For example, on October 4, 2010, that court found—based on criteria established in treaties and constitutional law—that in the case of Carlos Enrique, there had been a failure to administer justice. Likewise, on April 27, 2011, it acknowledged a judicial error during the preliminary investigation phase with regard to Claudia Vinzón, granting her compensation on the same basis. In this regard, the petitioners argue that the State’s judicial bodies have clearly recognized the judicial error committed, even though they have refused to do so in the case of the alleged victim.

7. For its part, the State asks for the file to be closed on this petition, arguing that it was received by the IACHR in 2008 and not forwarded to the State until 2013. It also asks that the petition be declared inadmissible because the facts in question do not constitute a violation of the human rights of the alleged victim, as domestic courts did address the facts that are the subject of the petition and issued the corresponding decisions with full respect for the alleged victim’s right to due process. Consequently, the Commission, as a subsidiary body, cannot review decisions of domestic courts that act within their competence and with all due judicial guarantees. Thus, the IACHR cannot review the grounds and assessment of evidence as deployed by the domestic judicial authorities.

8. The State argues that the indictment and pretrial detention ordered for Hebe López in the criminal proceeding against her were based on the evidence available at the time, consisting of a suspicion based on the testimony of one of the witnesses. This is also supported by the fact that the pretrial detention order was upheld twice by appeals courts. The State also argues that compensation is not applicable for deprivation of liberty in pretrial detention, rather than after a guilty verdict. It also claims that the petitioner was able to exercise her right to defense and a hearing by the court in the case, and that her due process guarantees were respected to the point that she was acquitted and ordered immediately released, while Ms. Ángela González and the police officers involved were convicted of perjury.

9. The State adds in its final communication that this petition was submitted late to the IACHR, as in its opinion, internal judicial remedies were exhausted on November 3, 1998, with the ruling to acquit the alleged victim, which stands as *res judicata*. Meanwhile, the alleged petition was filed in April 2008, therefore exceeding the six-month deadline established in Article 46(1)(b) of the American Convention.

⁴ According to information provided by the petitioners, following the amendment, Article 64 of the Constitution of Entre Ríos establishes “[...] Every person declared innocent of charges for which they had been deprived of liberty baselessly or in a way that has turned out to be unreasonable over the course of the proceeding will have the right, in accordance with the law, for the State to provide compensation for the damage suffered as a result of this deprivation of liberty.”

VI. EXHAUSTION OF DOMESTIC REMEDIES AND SUBMISSION DEADLINE

10. The Inter-American Commission first observes that the parties are not in conflict with regard to exhaustion of domestic judicial remedies by the alleged victim. Thus, based on the positions of the parties and the information available in the case file, the Commission observes that, although they are closely related, the facts asserted in the petition address two clearly distinct judicial proceedings. The first is a criminal process that began toward the start of April 1997 with the arrest of the alleged victim and concluded on 3 November 1998 with her acquittal, which took on the status of *res judicata*. Later, a civil suit for damages was filed against the province of Entre Ríos. It began on August 19, 1999, and the alleged victim was notified of the final ruling, issued by the Supreme Court of Justice of the Nation, on October 4, 2007. Based on this, the Commission concludes that this petition complies with the requirement of exhaustion of domestic remedies established in Article 46(1)(a) of the American Convention.

11. Thus, based on these considerations, the Commission finds that the pleadings submitted by the petitioners on the facts that took place during the criminal process pursued against Ms. Hebe López are time-barred, pursuant to the terms of Article 46(1)(b) of the American Convention, as that proceeding concluded almost 10 years before this petition was submitted to the Commission. Nevertheless, all the facts related to the alleged failure to provide compensation to the alleged victim for the aforementioned violations of her right to personal liberty are admissible under Article 46(1)(b) of the American Convention. The alleged victim was notified of the final decision handed down in the civil proceeding for damages on October 4, 2007, and the petition was presented to the IACHR on April 2, 2008, before the six-month deadline stipulated in the Convention.

12. Finally, the Inter-American Commission takes note of the State's allegation that the petition was forwarded to it late. The IACHR notes that neither the American Convention nor the Rules of Procedure of the Commission establish a deadline for forwarding a petition to a State after it is received, and that the deadlines established in the Rules of Procedure in the Convention for other stages of the process are not applicable by analogy.⁵

VII. COLORABLE CLAIM

13. In light of the elements of fact and law alleged by the petitioners, the Commission finds that the facts submitted by the petitioners on the failure to provide reparations to the alleged victim as a result of damage caused by the alleged illegitimate application of pretrial detention to her detriment for more than one and a half years could represent violations of the rights established in articles 7 (right to personal liberty), 8 (fair trial), and 25 (judicial protection), in conjunction with the general obligations to respect and guarantee established in Article 1(1) and the duty to adopt domestic legal effects established in Article 2 of the Convention.⁶ In this regard, and in line with the conclusions reached with regard to analysis of the deadline for submitting the petition, the Inter-American Commission will analyze the facts related to the criminal proceeding carried out against the alleged victim as relevant background that is necessary for correctly understanding and assessing the facts that took place subsequently.

14. Finally, with regard to the State's "fourth instance" pleading, the Commission notes that admitting this petition is not an attempt to supersede the competence of domestic judicial authorities. The question of whether domestic judicial proceedings complied with provision of due process guarantees and

⁵ See IACHR Report No. 56/16. Petition 666-03. Admissibility. Luis Alberto Leiva. Argentina. December 6, 2016. Also see Inter-American Court, *Case of Mémoli v. Argentina*. Preliminary Objections, Merits, Reparations, and Costs. Judgment dated August 22, 2013. Series C No. 295, paras. 30-33.

⁶ In its report on the Use of Pretrial Detention in the Americas, the IACHR notes that "States are required to make amends for violations within their jurisdictions of the right to personal liberty under Article 7, which of course includes those related to the imposition of pretrial detention." It adds that "Consequently, States should institute, in their domestic legal systems, appropriate legal mechanisms to ensure effective access to this type of reparation" (para. 218).

judicial protection and ensured access to justice for the alleged victim in keeping with the American Convention will be analyzed during the merits stage of this petition

VIII. THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES

1. To declare this petition admissible regarding articles 7, 8, 24 and 25 of the American Convention on Human Rights, in conjunction with articles 1(1) and 2 of the Convention;
2. To notify the parties of this decision;
3. To continue with the analysis of the merits of this matter; and
4. To publish this ruling 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 México, on the 7th day of the month of September, 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.