

OEA/Ser.L/V/II.
Doc. 32
16 March 2019
Original: Spanish

REPORT No. 27/19
PETITION 1229-08
REPORT ON ADMISSIBILITY

MIGUEL ÁNGEL CÓRDOBA
ARGENTINA

Adopted electronically by the Commission on March 16, 2019

Cite as: IACHR, Report No. 27/19. Admissibility. Petition 1229-08. Admissibility. Miguel Ángel Córdoba. Argentina. March 16, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Miguel Ángel Córdoba
Alleged victim:	Miguel Ángel Córdoba
Respondent State:	Argentina
Rights invoked:	Articles 7 (right to personal liberty), 8 (right to a fair trial), 10 (right to compensation), 11 (right to privacy), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention on Human Rights ¹ ; Articles I (right to life, liberty and personal security), V (right to protection of honor, personal reputation, and private and family life), XXV (right of protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man ² and other international treaties ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	October 21, 2008
Additional information received at the stage of initial review:	November 21, 2008; March 12, 2013; September 16, 2016
Notification of the petition to the State:	June 8, 2017
State's first response:	October 3, 2017
Additional observations from the petitioner:	January 16, 2018
Additional observations from the State:	September 25, 2018

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 (instrument of ratification deposited on September 5, 1984)

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	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy), and 25 (judicial protection) of the American Convention, in connection with Articles 1(1) and 2 of the same instrument
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, April 28, 2008
Timeliness of the petition:	Yes, October 21, 2008

¹ Hereinafter the "the American Convention" or "Convention."

² Hereinafter the "the American Declaration."

³ Articles 9 and 14 of the International Covenant on Civil and Political Rights.

⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioner, a political activist from the province of Buenos Aires, says that the Argentine State bears international responsibility for the violation of his human rights on account of: (i) his arbitrary detention and the unwarranted length thereof; (ii) his unequal treatment under the law governing appeals; (iii) the harm to his honor and dignity as a result of a defamation campaign and his criminal prosecution; and (iv) his failure to be provided reparation for the injuries suffered during that proceeding.

2. In this regard, the petitioner says that on December 3, 1987, Mr. Walter Pereyra (hereinafter "Mr. Pereyra"), the son of his political adversary, was found dead, exhibiting various wounds and a gunshot to the head, and that an investigation was opened to elucidate the facts. He says that the death was initially investigated as a suicide but a year later it began to be investigated as a homicide. He says that the case sent shockwaves through the media and the public in the city where the alleged victim had lived and that there was pressure from public opinion and the authorities to hold someone accountable for Mr. Pereyra's death. He says that in 1990 the investigators were changed and a number of public officials who were involved in the investigation were prosecuted and made the subject of a preliminary inquiry for the cover-up, including police personnel, a medical examiner, and even the then-Chief of Police of Buenos Aires. The petitioner says that at the time there was much talk of police and judicial corruption and the incompetence of the authorities, and the search began for a scapegoat.

3. He says that in 1991, after more than four years of investigation without identifying the person or persons responsible for the killing and after the chief suspect was acquitted, the family of Mr. Pereyra began a public campaign in which they started accusing the alleged victim of being the mastermind of the homicide. So it was that in 1991 a witness suddenly appeared who directly implicated him in Mr. Pereyra's killing. He says that as a result of that witness's testimony and the testimony of others supporting her testimony, on March 23, 1992, he was arrested and charged with secondary participation in the homicide.

4. He says that he was initially detained at a police station and that on March 26 he was taken to Penal Unit 6 in Dolores in an excessive display of police manpower, with officers cordoning off the area and even preventing access to journalists, while he was taken in handcuffs with personal guards and treated as if he were a dangerous terrorist. He says that in addition, on arriving at the prison, he was placed in a punishment cell where he remained incommunicado for two days without anything to eat or drink. On April 4, 1992, the First Lower Criminal Court in and for Dolores (hereinafter the "Lower Court"), based on a summary of the accumulated evidence in the case file, but without analyzing the procedural risks, ordered him remanded in pretrial detention.

5. The petitioner said that he initiated various proceedings to end his detention. In this regard, with the argument that his detention was arbitrary because it was based on perjury, he filed a petition of habeas corpus in which he sought to have the veracity of the witness discredited. On April 15, 1992, the Lower Court rejected the habeas corpus petition on the ground that there was no arbitrary restriction of liberty in the case and, on July 2 of that year, on the grounds that the detention was lawful and the evidence collected warranted the restriction of liberty, it rejected the motion for dismissal. The petitioner did not appeal against that decision.

6. The petitioner also filed an interlocutory motion for the witness to be declared ineligible. However, the judge overseeing the investigation ruled that the witness was eligible to give evidence, and therefore dismissed the interlocutory motion. That decision was appealed and upheld at second instance. In similar fashion, the petitioner filed a motion for dismissal, which was denied, and on September 3, 1992, the

Dolores Court of Appeals confirmed the denial of dismissal for the reason that the procedural situation of the petitioner had not changed since the order of pretrial detention was issued, and therefore it was appropriate that he remain a defendant in the proceeding, for which reason his liberty should be restricted.

7. The petitioner says that the pretrial detention was kept in place while the case was being heard and lasted until July 7, 1993, when the Lower Court accepted a motion for special release from custody based on the challenge alleging the falsehood of the only testimony that identified him as a participant in the crime under investigation. However, in spite of the fact that the only direct evidence against him had been disproved and the witness convicted of perjury in October 1996, he said that he had to endure the criminal proceeding until August 14, 1998, when he was finally acquitted for lack of evidence against him.

8. Having been acquitted, on August 9, 2000, the petitioner filed a claim for compensatory damages in which he sought an indemnity for the arbitrary detention, the unwarranted length of it, and the injuries suffered as a result of the criminal proceeding that he was made to endure. On September 3, 2003, the Civil Court rejected the suit, finding that the State can only be held responsible for a judicial error if the adjudicatory act that originated the injury is declared unlawful and voided, which did not occur in this case. It also found that the acquittal judgment did not disqualify the precautionary measure of restriction of liberty in respect of the petitioner based on elements of prima facie evidence, that there was nothing blameworthy in the way that the State had acted, and that ordering the precautionary measure did not grant the right to claim compensation. In response, an appeal was filed on September 10, 2003, in spite of which, the Court of Appeals issued its ruling on August 26, 2004, upholding the decision at first instance in all respects.

9. On September 15, 2004, a special appeal alleging inapplicability of law was filed against the decision of the Court of Appeals on the grounds that the decision applied the law and doctrine mistakenly, violated the rules of evaluation of evidence, and failed to weigh the evidence appropriately. The Supreme Court of Justice of the Province of Buenos Aires (hereinafter the "Supreme Court") refused the appeal, arguing that compensation for deprivation of liberty during trial should not be recognized automatically, but only when the pretrial detention order is found to be unquestionably arbitrary, except where objective elements may have led the adjudicator to relative conviction, given the stage of the proceeding at which such detention is ordered. Disagreeing with that decision, the petitioner filed a special federal appeal with the same organ and, after finding that matters concerning the application and interpretation of common law are the exclusive purview of local courts and, as a rule, outside federal jurisdiction, the Supreme Court turned down the appeal. In light of the foregoing, an appeal was lodged with the Supreme Court of Justice of the Nation, which on April 28, 2008, found, on the basis of lack of sufficient federal injury, that the appeal was inadmissible.

10. The State, for its part, argues that the petition does not meet the requirements contained in Articles 46(1)(a) and 46(1)(b) of the Convention. As regards the deprivation of his liberty, the State said that instead of appealing against the pretrial detention order, the petitioner filed a petition of habeas corpus to challenge the detention when there were no reasons to consider the measure arbitrary. As it was not appealed in a timely manner, the order restricting his liberty became final. The State also says that the petition was lodged with the IACHR 16 years after the habeas corpus was rejected and 10 years after notice was served of the criminal acquittal. As regards the alleged harm to his honor and dignity, the State says that the petitioner had access to means to claim reparation for the alleged injuries. In that regard, he could have filed a criminal suit for libel and slander or brought an action for reparation in civil proceedings, which he did not do. The State adds that a criminal proceeding serves to resolve the subject of a dispute and does not per se constitute an unlawful attack on a person's honor. Finally, the State said that the IACHR forwarded the petition to the state extemporaneously.

11. At the same time, the State disputed the admissibility of the petition based on the nonexistence of facts that would amount to a violation of rights enshrined in the Convention. Its argument for the above is that the petitioner's detention was based on evidence contained in the record considered "compelling circumstantial evidence" of a crime. Finally, the State notes that the petition is inadmissible in respect of a possible violation of Article 10 of the Convention, since the petitioner was never convicted and all the previous civil proceedings rejected the claim because there was no law supporting such a request. In conclusion, it said that if the Commission were to admit the petition, it would be acting like a court of fourth instance.

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

12. To begin with, the commission takes note of the state's claim regarding what it terms the extemporaneous notification of the petition and recalls that neither the American Convention nor the Rules of Procedure of the Commission establish a deadline for notifying a State of a petition following its receipt and that the times allowed in the Rules of Procedure and in the Convention for other processing stages are not applicable by analogy.⁵

13. With respect to exhaustion of domestic remedies, the Commission recalls that the exhaustion rule does not mean that alleged victims necessarily have the obligation to exhaust all available remedies. Therefore, if the alleged victim raised the issue by any of the valid and appropriate alternative means under the domestic system of laws and the State had the opportunity to remedy the matter within its jurisdiction, then the purpose of the international rule has been met.⁶

14. In that connection, the IACHR notes that, in spite of the fact that, as the State mentions, the alleged victim did not lodge an appeal against the pretrial detention order, the information provided by the parties indicates that the petitioner requested the dismissal of the case, filed a petition of habeas corpus, and requested his release from custody, all with the aim of ending his detention. Those requests were denied on the grounds that the measure restricting his liberty had been adopted in accordance to law and that there was nothing arbitrary in the way that it was ordered, and he was set at free when the Lower Court ruled on his motion for release from custody after the witness who accused him was being prosecuted for perjury. In addition, having regained his freedom, the alleged victim invoked other remedies in civil proceedings so that the arbitrariness of his detention might be recognized and he be awarded compensation for same. That proceeding concluded on April 28, 2008, when the Supreme Court of Justice of the Nation declared the appeal filed by the petitioner inadmissible.

15. Therefore, the IACHR finds that domestic remedies were exhausted on April 28, 2008, the date on which the petitioner was notified of the decision that declared the appeal presented to the Supreme Court of Justice of the Nation to be inadmissible. In light of the foregoing, and bearing in mind that the petition was received by the IACHR on October 21, 2008, the Commission considers that the petition meets the requirements contained in Articles 46(1)(a) and 46(1)(b) of the Convention.

⁵ See, for example, IACHR, Report No. 56/16, Petition 666-03, Admissibility, Luis Alberto Leiva, Argentina, December 6, 2016. See also 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, pars. 30-33.

⁶ IACHR, Report No. 16/18, Admissibility, Victoria Piedad Palacios Tejada de Saavedra, Peru, February 24, 2018, par. 12.

VII. ANALYSIS OF COLORABLE CLAIM

16. The Commission considers that the submissions concerning the alleged victim's pretrial detention based on the probability of his guilt of the crime of homicide, without consideration given to the elements of procedural risk, as well as the alleged harm caused by the conditions of his detention to his physical integrity, could, if proven, constitute violations of the rights recognized at Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention, taken in conjunction with Articles 1 (1) and 2 of that instrument, to the detriment of the alleged victim. Furthermore, in the merits stage the IACHR will analyze if the way in which the detention and criminal prosecution of the alleged victim were disseminated in the press, as well as the participation and actions of the authorities in that dissemination, could amount to a violation of Article 11 (right to privacy) of the Convention.

17. On the other hand, the IACHR notes that the petitioner was not convicted and the allegations in the petition would not amount to a violation of Article 10 (right to compensation) of the Convention. In addition, the petitioner has not presented any arguments or sufficient grounds to suggest *prima facie* a possible violation of Article 24 (right to equal protection) of the Convention.

18. Additionally, the Inter-American Commission has previously established that once the Convention has entered into force in a State, it and not the Declaration becomes the principal source of law to be applied by the Commission as long as the petition alleges violation of substantially identical rights set forth in both instruments and a continuing situation is not involved.

19. Finally, with regard to the International Covenant on Civil and Political Rights, the Commission lacks competence to establish violations of that treaty's provisions; however, it may take that instrument into account in its interpretation of the provisions of the American Convention in the merits stage of this case, under the terms of Article 29 of said Convention.

VIII. DECISION

1. To declare the petition admissible as regards of Articles 5, 7, 8, 11, and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof;

2. To declare the petition inadmissible with respect to Articles 10 and 24 of the American Convention; and

3. To notify the parties of this decision, to continue with the analysis of the merits, 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 16th day of the month of March, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.