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REPORT No. 76/19
PETITION 1495-08
REPORT ON ADMISSIBILITY

HUGO EDUARDO IBARBUDEN
ARGENTINA

Approved electronically by the Commission on May 21, 2019.

Cite as: IACHR, Report No. 76/19, Petition 1495-08. Admissibility. Hugo Eduardo Ibarbuden. Argentina. May 21, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Ezequiel Alfredo Teston, Hugo Eduardo Ibarduren
Alleged victim:	Hugo Eduardo Ibarbuden
Respondent State:	Argentina
Rights invoked:	Articles 5 (humane treatment), 11 (privacy), 21 (property), 24 (equal protection) of the American Convention on Human Rights ¹ , in relation to Article 1.1 (obligation to respect rights) thereof; Article 18 of the Additional Protocol to the American Convention on Economic, Social, and Cultural Rights ² ; and Articles I, II, IV of the Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disability

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	December 23, 2008
Notification of the petition to the State:	May 29, 2014
State's first response:	October 6, 2015
Additional observations from the petitioner:	May 9, 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)

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), 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; October 23, 2008
Timeliness of the petition:	Yes; December 23, 2008

V. ALLEGED FACTS

1. This petition centers on a complaint by the alleged victim that the State denied compensation to him after he was shot and injured in May 1998 by a group of criminal suspects during a confrontation in Martinez, province of Buenos Aires. According to the petition, the alleged victim was injured while on duty as a member of the Federal Police of Argentina (*Policía Federal Argentina*). The alleged victim was initially placed on sick leave, before being medically certified as 100% incapacitated for the purpose of working as a policeman. The petition further states that as result of this incapacitation, the alleged victim was obliged to retire from the Federal Police of Argentina, as of July 7, 1999.

¹ Hereinafter "Convention" or "American Convention."

² Hereinafter "Protocol of San Salvador."

³ The observations submitted by each party were duly transmitted to the opposing party.

2. The petition states that the alleged victim brought an action (against the Federal Police of Argentina) before the First National Federal Trial Court for Civil and Economic Matters (*El Juzgado Nacional de Primera Instancia en lo Civil y Comercial Federal*) to obtain compensation. According to the petition, this Court ruled in favour of the alleged victim, applying the principles of *el derecho común* (ordinary law). Subsequently, however, this ruling was overturned by the National Federal Court of Appeals for Civil and Economic Matters (*La Cámara Nacional de Apelaciones en lo Civil y Comercial Federal*). According to the petitioner, the Court of Appeals ruled against the alleged victim primarily on the basis of a precedent case known as “Azzetti”, which had previously been decided by the Supreme Court of Justice. According to the petitioner, this case established that the ordinary law is not applicable when an injury comes about as result of, or during the discharge of policing function or functions associated with armed forces. The petitioner further affirms that this precedent arose with regard to legal claim made by a soldier who had been injured during the Malvinas War. The soldier’s claims had been denied on the ground that given the large numbers of soldiers wounded in an international armed conflict, any possible compensation would have to be decided by the legislature. The petition states that the alleged victim appealed to the Supreme Court of Justice, but that his appeal was dismissed on October 7, 2008 and notified to the alleged victim on October 23, 2008.

3. The petitioner contends before the IACHR as he did domestically, inter alia, that (a) the precedent of Azzetti is at variance with prior cases in which the right to compensation has been upheld with regard to police officers injured as result of, or during the performance of their functions (on the basis of *el derecho común*); (b) the case of Azzetti deals with a situation of war and is not applicable to domestic policing; (c) the domestic law that governs the Federal Police of Argentina, (Organic Law of the Federal Police No. 21.965) does not provide for compensation to police officers who have been injured during the course of discharging their duties; (d) the law provides only for compensation where the police officer has been injured in an accident (for example, slipping and falling on the ground); (e) Argentine law provides for compensation for other categories of workers in the public and private sectors where their injuries occur in the course of performing their duties; and (f) police officers are expressly excluded from the provisions of the law on employment.⁴ The petitioner contends that this status quo results in arbitrariness and discrimination against the alleged victim.

4. The petitioner argues that the State has recognized the need to provide compensation to police officers who have been injured in the line of duty (and merely by accident). In this respect, the petitioner refers to action taken by the Ministry of the Interior/Federal Police in 2007 to bid for the services of a labor risk insurer (*Aseguradora de Riesgos del Trabajo*), pursuant to law 24.557 on occupational risks (*Ley Sobre Riesgos del Trabajo*). This insurance would cover injuries suffered by police officers in the line of duty. The petitioner argues that this recognition by the State is at variance with judicial decisions that bar the alleged victim from obtaining compensation.

5. The State contends that the essence of the petition is disagreement with judicial decisions that were unfavourable to the alleged victim. For the State, this disagreement does not, prima facie, constitute or lead to any violations of the American Convention. The State further argues that were the Commission to adjudicate this petition that it would be violating the “fourth instance” doctrine.

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

6. As between the parties, it is undisputed that the alleged victim litigated his claim for compensation initially before the First National Federal Trial Court for Civil and Economic Matters where he obtained a favorable ruling. Subsequently, however, this ruling was overturned by the National Federal Court of Appeals for Civil and Economic Matters. A further appeal by the alleged victim to the Superior Court of Justice was dismissed. The State, for its part, did not submit any allegations concerning the exhaustion of domestic remedies or the timeliness of the petition.

⁴ Law 20.744 (*Ley de Contrato de Trabajo*).

7. In this case, the Commission notes, for the purpose of the analysis of admissibility, that the alleged victim exhausted all the remedies available in the domestic legal framework, and that, consequently, the petition meets the requirement established in Article 46.1.a of the Convention.⁵ As to the timeliness requirement, the Commission notes that the petition was filed within the six months period following the date of notification of the final decision by which the domestic remedies were exhausted. The date of notification was October 23, 2008, and the petition was received on December 23, 2008. Thus, the requirement set forth in Article 46.1.b of the Convention is declared met.

VII. ANALYSIS OF COLORABLE CLAIM

8. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the IACHR believes that the allegations concerning the purported discrimination sustained by the alleged victim as a member of the Federal Police and the violation of his right to fair trial and due process resulting from their alleged deprivation of compensation benefits under the ordinary law, if proved, all could establish violations of the rights enshrined in Articles 5 (humane treatment), and 24 (equal protection) in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

9. While the petitioner has not invoked Articles 8 (fair trial), and 25 (judicial protection) of the American Convention, the Commission considers that the allegations presented by the petitioner could also characterize violations of these Articles of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects). In this regard, the Commission notes that there is no specific requirement in its procedures that obliges petitioners to identify the specific rights that have allegedly been violated by the State. Ultimately, it is the Commission's duty to determine what provisions in the relevant Inter-American instruments are applicable where there might be *prima facie* evidence of violations based upon acts or situations denounced by petitioners.⁶

10. About the alleged violation of Article 21 (property) of the Convention, the IACHR notes that the alleged victim's complaint refers to the alleged denial of compensation for work-related injury on the basis of equal conditions vis-à-vis other state and non-state employees; and not to an alleged violation of an acquired right to property. Accordingly, the Commission considers that the petition does not contain any elements that might substantiate a *prima facie* violation of Article 21 of the Convention.

11. As to the alleged complaint about the violation of Article 11 (privacy) of the American Convention, the Commission notes that the petitioner did not submit allegations or elements sufficient to identify or determine a *prima facie* violation of this provision of the American Convention.

12. Regarding the allegations of violations of Article 18 of the Protocol of San Salvador, the IACHR notes that the jurisdiction conferred on the Commission under the terms of Article 19.6 of this treaty is confined to adjudicating individual complaints that arise in relation to articles 8 and 13. With respect to the other articles, in accordance with Article 29 of the American Convention, the Commission may take this treaty into account at the merits stage of this case in interpreting and applying the American Convention and other applicable instruments.

13. In respect of the alleged violations of Articles I, II, IV of the Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disability, the Commission lacks the competence to entertain individual complaints of violations of this treaty. Nevertheless, the Commission may take this treaty into account at the merits stage of this case in interpreting and applying the American Convention under the terms of Article 29 of the American Convention.

⁵ See IACHR Report No. 32/18, Petition 355-08, (Admissibility). Alberto Miguel Andrada and Jorge Osvaldo Álvarez, Argentina, May 4, 2018, para. 8.

⁶ See IACHR Report N° 71/17, Petition 271-07, (Admissibility). Jorge Luis de la Rosa Mejía and others, Colombia, June 29, 2017, para. 56.

14. Regarding the State's allegation about a fourth-instance body, the Commission recognizes that the IACHR is not entitled to review judgments issued by domestic courts acting within their jurisdiction and in accordance with due process of law and the right to a fair trial. However, the Commission reiterates that, under its mandate, it is competent to declare a petition admissible and, if applicable, decide on the merits of the case when the matter concerns domestic proceedings that may have been contrary to the rights protected by the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 24, and 25 of the American Convention in relation to its Articles 1.1 and 2;

2. To find the instant petition inadmissible in relation to Articles 11 and 21 of the American Convention; and;

3. To notify the parties of this decision; to continue with the analysis on 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 21st day of the month of May, 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.