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REPORT No. 201/20
PETITION 1375-08
REPORT ON ADMISSIBILITY

RITA MARÍA ADELIA PÉREZ AND CHILDREN
ARGENTINA

Electronically approved by the Commission on August 5, 2020.

Cite as: IACHR, Report No. 201/20. Petition 1375-08. Admissibility. Rita María Adelia Pérez and sons. Argentina. August 5, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	XUMEK, Rita María Pérez ¹
Alleged victim	Rita María Pérez and children ²
Respondent State	Argentina
Rights invoked	Articles 2 (domestic legal effects), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ³ in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects); Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ⁴ and other international treaties. ⁵

II. PROCEEDINGS BEFORE THE IACHR⁶

Filing of the petition	December 1, 2008
Notification of the petition	February 19, 2014 ⁷ ;
State's first response	January 11, 2018
Additional observations of the petitioner	October 31, 2012; June 26, 2017; and December 13, 2018
Additional observations of the State	December 28, 2016; July 20, 2017; January 11, 2019
Warning on closing of proceedings	December 28, 2017
Answer to warning on closing of proceedings	March 4, 2018

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (deposit of instrument of ratification on September 5, 1984) and Belém do Pará Convention (deposit of instrument of ratification on July 5, 1996)

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), 19 (rights of the child) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects); and Article 7 of the Belém do Pará Convention.
Exhaustion or exception to the exhaustion of domestic remedies	Yes, as detailed in Section VI
Timeliness of the petition	Yes, as detailed in Section VI

¹ The petitioner at the date that the petition was filed was CPA (Citizen Protection Association).

² The identity of the children F.R.P., 17 years, R.M.P., 15 years and the daughter P.S.P., 12 years, at the date that the petition was filed is kept confidential.

³ Hereinafter, "the American Convention".

⁴ Hereinafter, the "Belém do Pará Convention".

⁵ Articles 3, 4, 5, 19, 27 and 41 of the International Convention on the Rights of the Child.

⁶ The observations of each party were duly notified to the other party.

⁷ The petition was notified again on April 19, 2017, after the State noted that it had not records of the Letter dated January 31, 2014, through which the petition was originally notified to it.

V. SUMMARY OF ALLEGED FACTS

1. The petitioners allege human rights violations to the detriment of Rita María Pérez, her two sons⁸ and her daughter⁹ (hereinafter, “the alleged victims”). They claim that the State failed to comply with its obligations with regard to the protection of women who are victims of domestic violence and the rights of the child during a mediation procedure after a de facto separation and during judicial proceedings for qualified minor battery, divorce and child support.

2. The petitioners explain that Ms. Pérez lived with her former husband, who beat her, until April 27, 2003, when she filed a complaint over the situation of domestic violence, de facto separated and changed her residence, together with her three children¹⁰. The petitioners point out that she begun mediation proceedings, during which a mediation hearing was held on June 4, 2003; an agreement on communication and visitation was reached during the hearing¹¹. The petitioners claim that, due to the intransigence of the former husband, no agreement or deal was reached with regard to his child support obligation. The petitioners hold that the State, by allowing the mediation and homologating the agreement, did not fulfill his obligations under the Belém do Pará Convention, as mediation is improper in cases where domestic violence is present as the parties are not in an equal footing. In addition, they consider that the State did not fulfill its obligation toward the children, as they were not afforded legal representation to look after their interests in the mediation proceeding in which the access and visitation regime was established.

3. The petitioners add that on June 17, 2003, Ms. Pérez was assaulted by her then husband in the presence of a neighbor¹². The petitioners point out that on this same date Ms. Pérez filed a complaint at the police station, which led to the start of an investigation for the crime of minor qualified battery against her then husband¹³. Her husband, however, was acquitted for “state of doubt” by the Fourth Correctional Court of First Instance of the Supreme Court of Mendoza, without the prosecutor filing any appeal. The petitioners claim that the Court did not question the children nor the mother of Ms. Pérez, and did not request her for information on the neighbor that witnessed the incident; the petitioner adds that the court did not take into account the medical certificates produced by the police and did not undertake any investigation. As she considered that an illicit act had taken place, Ms. Pérez had resorted to the Department of Family, Childs and Adolescents and solicited assistance to request that proceedings be initiated against the Judge and Prosecutor involved in the proceedings against her former husband. The petitioners point out that the Department denied the request, arguing that it lacked competence¹⁴, and told Ms. Pérez that she would be called to be referred to a different state organ. The petitioners allege that Ms. Pérez was not contacted again and, as a result, the statute of limitations of the crime elapsed due to the passage of time. The petitioners allege that these events show a lack of due diligence on the part of the State to prevent and investigate gender violence cases.

4. The petitioners also point out that, on 2003, Ms. Pérez hired a private lawyer to file divorce and child support lawsuits and that, as a result, two proceedings were started¹⁵. However, Ms. Pérez faced economic problems that did not allow her to continue paying her private lawyer and, for this reason, she had resorted to the Public Defendant of the Judicial Power of Mendoza, which denied her request for assistance for considering that she had enough resources to afford private legal representation¹⁶. On August 15, 2007, the

⁸ It is noted that they were 17 and 15 years of age at the time that the petition was filed.

⁹ It is noted that she was 12 years of age at the time that the petition was filed.

¹⁰ She points out that, in addition to domestic violence, she was able to establish that her former husband incurred in marital infidelity.

¹¹ Ms. Pérez would have custody of the 3 children and her then husband a free and flexible visitation regime.

¹² According to her, her then husband took her by the wrists and bent her arms backwards, which caused her different injuries.

¹³ Case file number 27,112 “Prosecutor v. Paturzo on minor qualified battery”.

¹⁴ The petitioners consider that this is incorrect because, according to them, the role of the Department is to assist women in the face of any kind of violence, whether private or public.

¹⁵ Case file No. 36.530 “Pérez María Adelia v. Paturzo, Raúl Humberto on divorce” and case file number 36.541 “Rita Pérez v. Paturzo, Raúl on child support”

¹⁶ The institution took into account that she owned a car and that she was employed as a substitute teacher.

alleged victim requested a police report in which she detailed the failure of her then husband¹⁷ to fulfill his child support obligation and custody responsibilities. The alleged victim also detailed her financial difficulties as a substitute teacher, her husband's violent acts, and her recent inability to establish communications with him, as he had blocked her on his phone.

5. After, acting on a recommendation of a Representative at the Legislature, Ms. Pérez had resorted to the 3rd Public Defender for the Poor and the Missing (hereinafter, the "Public Defender"), where she was told that the office could only provide her with legal representation in the divorce proceedings and that, with regard to the child support lawsuit, she had to resort to the Family Court to be appointed another lawyer. The petitioners consider that the fact that the proceedings required different lawyers aggravated the victimization of Ms. Pérez as it forced her to recount her story twice and to invest, in her difficult situation, twice the time meeting with lawyers¹⁸.

6. With regard to the divorce proceedings. Ms. Pérez was received on September 19, 2007, by a lawyer from the Public Defender who was unable to locate her divorce file in the system. This lawyer explained that she could not proceed until Ms. Pérez presented documentation such as the professional conformity document and the decision to reopen the proceedings, for which Ms. Pérez had to contact her former lawyer. The petitioners add that the lawyer from the Public Defender refused to place a telephone call to the lawyer that started the divorce proceedings and said that it was up to Ms. Pérez to provide her with a report of all developments in the divorce case. The petitioners consider that this involved a situation of institutional revictimization as the provision of assistance by the State to Ms. Pérez in her divorce should not depend on her being able to understand legal matters or to contact her former lawyer. The petitioners add that Ms. Pérez was informed that, while the proceedings were initiated as a contested divorce, the Public Defender could only provide her legal representation in a mutual consent divorce proceeding. The petitioners allege that these circumstances, together with pressure from her then husband, forced Ms. Pérez to request on September 12, 2008, that her contested divorce proceeding be converted to a mutual consent divorce proceeding. The request was approved by the 7th Family Court of Mendoza on October 22, 2010. According to the petitioners, Ms. Pérez has several grounds on which she could prevail in a contested divorce proceeding, but the system harmed her by forcing her to accept a "mutual consent", which also failed to establish an agreement on child support.

7. With regard to the child support proceeding, Ms. Pérez appeared before the Family Court of Mendoza to request assistance; a lawyer was assigned to her, to whom she delivered on September 25, 2007, the original marriage certificate and birth certificate of her three children. The petitioners claim that the lawyer did not take any actions and unduly kept the original documents. On February 6, 2008, Ms. Pérez requested the return of the documents and the appointment of a new ad-hoc lawyer before the Supreme Court of Justice of Mendoza. On that same date, a lawyer from the Jurisdictional Department of the Supreme Court of Justice of Mendoza took care of her case and a Provincial Coordinator of the Interdisciplinary Auxiliary Body (IAB) returned her the original documents and provided her with an appointment with a new lawyer on March 3, 2008. The petitioners allege that the new lawyer did not take any actions because, according to the Family Court, her case file was missing and nothing could be done until it was found¹⁹. The petitioners also claim that the State did not guarantee that the children had legal representation to look after their interests in this proceeding.

8. Later, the Citizen Protection Association (hereinafter, "CPA") sent a note to the Supreme Court of Justice of Mendoza (hereinafter, "SCJ") on April 11, 2008, informing it about the situation of Ms. Pérez and her children. The note also requested that the possible malfeasance in office of the Judge and Prosecutor that took part in the qualified battery proceeding be investigated and that CPA be informed about the situation of the child support case file. As a result of this, the SCJ started proceedings²⁰ which it decided to close on July 11,

¹⁷ She claims that, as a lawyer, her former husband had the financial ability to meet fluidly and regularly the child support obligations toward his children.

¹⁸ The petitioners claim, generally, that it was very difficult for Ms. Pérez to request an appointment to be assigned a lawyer and to meet with them because she was asked to appear in the morning, when she was usually performing as a substitute teacher on which she financially depends on.

¹⁹ The petitioners claim that CPA was never notified of this administrative decision.

²⁰ Case file number 71.761 "Citizen Protection Association CPA explains situation".

2008 because it considered that the petitioner was adequately assisted by the assigned ad-hoc lawyers. Mr. Pérez filed a writ to have the decision overturned (*recurso de revocatoria*) on August 14, 2008, arguing that the decision had been arbitrary since the lawyer appointed for the child support case did not deliver the original documents nor took any action. On July 6, 2009, the SCJ dismissed the writ.

9. For its part, the State claims that the alleged facts do not constitute human rights violations and the petitioners want the Commission to act as a fourth instance. With regard to the mediation proceeding and the homologation of the agreement reached in it, it points that Ms. Pérez was legally represented by a private lawyer of her own choosing and alleges that the State may not be held responsible for what Ms. Pérez agreed to freely. The State highlights that Ms. Pérez was free to not sign the agreement and begin the appropriate judicial proceedings with private legal representation or the assistance of the Official Public Defense.

10. With regard to the criminal proceedings for qualified battery, it alleges that the petitioners have not submitted any evidence to back up their claims with regard to the existence of irregularities. In addition, it points out that the Direction of Family, Children and Adolescents did not have competence to request the initiation of proceedings against the Judge and Prosecutor who took part in the battery case. The State notes that it was Ms. Pérez who had direct legitimation to file the complaints that she deemed appropriate to prompt those proceedings.

11. The State highlights that a Register of Ad-Hoc Family Justice Attorneys of Record operates in the Province of Mendoza, for the purposes of guaranteeing the right of access to justice to all persons, particularly those in a vulnerable situation. It explains that, for the purposes of ensuring that free legal representation is adequate, lawyers lose their right to collect payment if their actions are incomplete or deficient. The State notes that, despite some inconvenience relating to the times in which service was offered, the free legal representation of the alleged victims was guaranteed. It highlights that immediately after Ms. Pérez made her claims known to the Suprema Court of Justice of Mendoza about the attention that she had received, appropriate correction action was taken, the documents were returned, and she was assigned legal representation through the Co-Defenders Body of the Family Law Courts. The State points out that on October 29, 2007, Ms. Pérez expressed her lack of interest in continuing to enjoy the services of her public co-defender and, thus, the legal representation afforded by the State ended by her own free will²¹.

12. With regard to the judicial proceeding over child support, the State points out that while the case file was momentarily missing, it was later found and the Family Court notified this to the alleged victim on November 21, 2008. The State claims that the proceeding did not advance because Ms. Pérez did not appear to sign the necessary written submissions and, after she dismissed the public defense, because her private lawyers did not take procedural actions with regard to the case. The State explains that, on June 1, 2010, Ms. Pérez filed a new child support lawsuit against her former husband, which was decided in her favor on August 19, 2011, accepting her child support claim retroactively to the date of the lawsuit and granting provisional child support. The State also explains that this decision was appealed by the defendant on September 9, 2011 and that, in August of 2014, with the proceedings paralyzed for over two years, it was ordered that they be sent back to the original court and that later they were returned due to a motion to dismiss for failure to prosecute the case brought by the appellee. The State adds that on June 26, 2017, “the Chamber issued an order with regard to the evidence submitted in the motion and decided to request the original court to submit the case file”.

13. Last, the State considers that domestic remedies have not been exhausted and that the period for submitting a petition has also not been respected, because at the time that the petition was filed the writ to have the decision overturned (*recurso de revocatoria*) had not yet been decided and, on the other hand, because the petitioners had not judicially filed an administrative procedural action before the Supreme Court of Justice against the decision of July 6, 2009, which closed the administrative procedure. In addition, the State points out

²¹ On August 9, 2009, the alleged victim submitted a letter (that did not constitute a petition) before the Supreme Court of Justice to express her lack of trust in the free legal assistance afforded by the State.

that the petition was extemporaneously notified to the State and highlights that, at the time of notification, all three of Ms. Pérez children had come of age.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

14. With regard to the allegations of the petitioner claiming that the State did not duly protect the rights of the children of Ms. Pérez to receive child support from their father during the mediation proceedings, the mutual consent divorce proceedings and lastly the judicial child support proceedings, the Commission notes that the State has pointed out that on August 19, 2011, a judicial decision was adopted recognizing, for the first time, the child support obligation, with retroactive effects and establishing provisional child support. However, according to the information submitted by the State, this decision was appealed by the defendant and, as of June 26, 2017, the judicial proceedings have not yet definitely concluded. In these circumstance, the Commission believes, without prejudging on the merits, that the exception to the exhaustion of domestic remedies enshrined in Article 46.2(c) of the American convention is applicable to this aspect of the petition and that the petition was filed within a reasonable period of time under Article 32.2 of the Rules of Procedure of the Commission. The Commission notes that the State has claimed that the delay in the child support proceeding is, at least in part, attributable to the conduct of Ms. Pérez and will examine these claims in the merits stage.

15. With regard to the alleged violation of the rights of Ms. Pérez in the context of the mediation proceeding and the criminal proceeding for qualified battery, as well as for not providing her free legal assistance for a contested divorce proceeding, the Commission considers that the possible application of the exceptions to the exhaustion of domestic remedies established in Article 46.2(a) and (b) of the American Convention is inextricably linked to the allegations of the petitioners claiming that the State would have failed to comply with its obligations to guarantee access to justice in a condition of equality to a woman allegedly victim of domestic violence. Thus, the Commission will undertake its analysis about exhaustion of domestic remedies and timeliness of the petition concerning this aspect of the petition together with its analysis of the merits of the case²².

16. On a different matter, the Commission notes that the petitioners have pointed out that Ms. Pérez had allegedly filed a claim on April 27, 2003, concerning an alleged situation of domestic violence that she had been suffering and that the parties have not submitted information concerning the actions taken by the State to investigate the claim and protect the claimant. On this matter, the Commission deems it necessary to recall that it has already established that States have the obligation to investigate cases involving alleged violations of human rights and that “this burden must be assumed by the State as its own legal duty, and not as a management of private interests or that depends on the initiative of the latter or the provision of evidence by them”²³. Likewise, it recalls that Article 7(b) of the Belém do Pará Convention establishes that States have the obligation to “apply due diligence to prevent, investigate and impose penalties for violence against women”. For these reasons, the Commission considers, *prima facie* and without prejudging on the merits, that more than 16 years elapsed since the claim was filed and the absence of information concerning the actions taken by the State in response or about their results, justifies the application of the exception to the exhaustion of domestic remedies established in Article 46.2(c) of the American Convention to this aspect of the petition. As the petition was filed even as the grievance continues, the Commission considers that it was filed within a reasonable period under Article 32.2. of its Rules of Procedure.

17. The Commission notes that the State has pointed out that domestic remedies were not exhausted because the petitioners have not filed a judicial challenge to the resolution adopted by the SCJ on July 11, 2008, deciding to close the proceedings that were initiated after CPA conveyed to the SCJ the situation of Ms. Pérez and requested that information about the child support case file be provided as well as that a possible malfeasance in office on the part of the Judge and Prosecutor involved in the qualified battery case be studied. The Commission considers that this request by CPA is tangential to the subject of the instant petition;

²² IACHR, Report No. 121/06, Petition 554-04. Admissibility. John Doe and others. Canada. October, 27, 2006, para. 63.

²³ IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, para. 14.

thus, analyzing whether challenges to the resolution passed on this administrative proceeding were available or not is not relevant for the purposes of studying the admissibility of the instant petition.

18. The Inter-American Commission also takes note of the claim of the State concerning what it describes or qualifies as the extemporaneous notification of the petition. In that regard, neither the American Convention nor the Rules of Procedure of the Commission establish a time limit for the notification of a petition to the State since its filing; the time limits established in the Rules of Procedure and in the Convention of other stages of the proceedings are not analogically applicable.

VII. COLORABLE CLAIM

19. The Commission notes that the claims of the petitioners include allegations concerning: lack of due investigation of the situation of violence about which Ms. Pérez filed a complaint; negligence on the part of the authorities in charge of the proceeding in a situation in which the alleged victim did not have legal representation; irregularities, undue delay and deficient performance of duties by the legal representation afforded by the State in the child support proceedings; lack of due protection for a victim of domestic violence by allowing her to be involved in a mediation proceeding with her alleged aggressor and for homologating the mediation agreement and for not providing her legal assistance for a contested divorce proceeding, lack of protection of the rights of the children of Ms. Pérez by not guaranteeing legal representation of their interests in the different proceedings that were relevant to them.

20. Considering the nature of the allegations included in the petition, the Commission considers it necessary to recall that it has already warned that “State inaction towards cases of violence against women fosters an environment of impunity and promotes the repetition of violence”²⁴ and that “international bodies have consistently established that a State may incur international responsibility for failing to act with due diligence to prevent, investigate, sanction and offer reparations for acts of violence against women; a duty which may apply to actions committed by private actors in certain circumstances”²⁵. Likewise, it has expressed its concern in its thematic reports concerning the use of mediation or conciliation in cases involving alleged situations of violence because “conciliation is premised on the notion that the parties at the table are operating from equal bargaining positions, which is generally not true in cases of intrafamily violence”²⁶. In addition, the Commission has expressed its concern about procedural requirements that cause revictimization to an alleged victim of domestic violence by forcing her to providing a statement on the acts of violence on multiple occasions.²⁷ The IACHR has also recognized that its investigations “have revealed that one of the greatest needs expressed by women living in violent relationships is assistance with matters related to the divorce, property and custody of the children”²⁸. The Commission has also noted that “in certain proceedings, based on their objective, the position of the mother and/or father may not necessarily represent the child’s interests so the State must guarantee that the child’s interests are represented by someone outside said conflict”²⁹.

21. In light of these considerations and having analyzed the factual and legal elements brought forth by the parties, the Commission considers that the allegations of the petitioners are not manifestly groundless and require a study of the merits as the alleged facts, if corroborated as true, could constitute violations of Articles 5 (humane treatment), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) and of Article 7 of the Belém do Pará Convention.

²⁴ IACHR, Report No. 80/11, Case 12.626. Merits. Jessica Lenahan (Gonzalez) and others. United States of America. July 21, 2011 (“IACHR Merits *Jessica Lenahan*”), para. 168.

²⁵ IACHR, Merits *Jessica Lenahan*, para. 126.

²⁶ IACHR, Access to justice for women victims of violence in the Americas, OEA/Ser.L/V/II. Doc. 68. January 20, 2007 (“IACHR, Access to justice for women victims of violence in the Americas”), Para. 161.

²⁷ IACHR, Access to justice for women victims of sexual violence in Mesoamerica, OEA/Ser.L/V/II. Doc. 63, 2015 (“IACHR, Access to justice for women victims of sexual violence in Mesoamerica”), para. 212.

²⁸ IACHR, Access to justice for women victims of violence in the America. Para. 262.

²⁹ IACHR, The right of boys and girls to a family, OEA/Ser.L/V/II. Doc.54, 2013, Para. 266.

22. The Commission recalls that it does not have competence to decide on violation of rights enshrined in the Convention on the Rights of the Child, but that it is empowered to have resort to its standards for the purposes of interpreting the norms of the American Convention in light of its Article 29³⁰.

23. With regard to the allegations of the State concerning the so-called “fourth instance” formula, the Commission reiterates that, for the purposes of admissibility, it is called upon to decide if the alleged facts can constitute a violation of rights, as established by Article 47(b) of the American Convention, or if the petition is “manifestly groundless” or “obviously out of order”, in accordance with section (c) of said article. The criteria to assess these requirements is different from the one used to decide on the merits of a petition. Also, within the framework of its mandate, the Commission has competence to declare a petition admissible when it relates to domestic proceedings that may violate rights guaranteed by the American Convention. That is to say that, in accordance with the treaty norms mentioned, and with Article 34 of its Rules of Procedure, the admissibility analysis is centered on the verification of said requirements which are related to the existence of elements which, if true, could involve prima facie violations to the American Convention³¹.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8 18 and 25 of the American Convention, in relation to its Articles 1 and 2; as well as Article 7 of the Belém do Pará Convention.

2. 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 4th day of the month of August, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

³⁰ IACHR, Report No. 83/17, Petition 151-08. Admissibility. José Francisco Cid. Argentina. July 7, 2017, para. 23.

³¹ IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Peru. December 4, 2018, para. 12.