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REPORT No. 64/20
PETITION 238-10
ADMISSIBILITY REPORT

ÁNGEL ANTONIO DI MARCO AND FAMILY
ARGENTINA

Approved electronically by the Commission on February 26, 2020.

Cite as: IACHR. Report No. 64/20. Petition 238-10. Admissibility. Ángel Antonio Di Marco and family. Argentina. February 26, 2020..



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I. INFORMATION ABOUT THE PETITION

Petitioner	Fernando Gutiérrez Rellan, Daniel Ángel Di Marco and María Laura Di Marco
Alleged victim	Ángel Antonio Di Marco, María Laura Di Marco, Daniel Ángel Di Marco
Respondent state	Argentina
Rights invoked	Articles I (life, liberty, and personal security), XVIII (fair trial) and XXVI (due process) of the American Declaration of the Rights and Duties of Man ¹ ; Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition	February 22, 2010
Additional information received at the stage of original review	March 8, 2010
Notification of the petition to the State:	April 19, 2010
State's first response:	October 27, 2016
Additional observations from the petitioner	September 3, 2017

III. COMPETENCE

<i>Competence Ratione personae:</i>	Yes
<i>Competence Ratione loci:</i>	Yes
<i>Competence Ratione temporis</i>	Yes
<i>Competence Ratione materiae</i>	Yes, American Declaration (OAS Charter ratification instrument deposited on April 10, 1956) and American Convention (ratification instrument 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 res judicata:	No
Rights declared admissible:	Articles I (life, liberty, and personal security), XVIII (fair trial), XXV (protection from arbitrary arrest) and XXVI (due process of law) of the American Declaration; and Articles 5 (personal integrity), 8 (fair trial), 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, under the terms of section VI
Timeliness of the petition:	Yes, under the terms of section VI

V. ALLEGED FACTS

1. The petitioners allege that Mr. Ángel Antonio Di Marco (or “the alleged victim”) was arrested and died by poisoning in a police cell in Buenos Aires in 1978, in circumstances that until now have not been fully clarified, since those responsible for his death have not been judicially identified. They also hold that Mr. Di Marco's relatives were denied access to the administrative reparation to which they were legally entitled as victims of the violence of the dictatorship, through administrative and judicial decisions that they consider harmed their rights. Therefore, they request that the IACHR declare the State internationally responsible for the violation of the rights to life, fair trial and judicial protection, under the applicable Inter-American instruments.

2. The petitioners report that on March 17, 1978, Mr. Ángel Antonio Di Marco was arrested at Police Station 40 of the Argentine Federal Police, in Buenos Aires, and that a few hours after his arrest he was found dead in his cell; the autopsy revealed the cause of death as poisoning by ingestion of cyanide. They allege that it was a poisoning carried out against his will, in the context of the then Argentine dictatorship, since Mr. Di Marco had allegedly been an active militant of the Justicialist Party.

3. In 2005, and based on Law 24,411 on compensation for enforced disappearance or deaths due to State terrorism activities, the next of kin of Mr. Di Marco filed a request for access to said monetary

¹ Hereinafter, “the American Declaration” or “the Declaration”.

² Hereinafter, “the American Convention” or “the Convention”.

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

compensation. Their request was rejected in the administrative stance by resolution 466/06 of the National Ministry of Justice and Human Rights; they filed an administrative judicial claim against such rejection, which was in turn denied by the National Administrative Federal Appeals Chamber (file 13,881/2006, ruling of February 15, 2007); after which they filed an extraordinary appeal against this decision before the Supreme Court of Justice, which confirmed the denial decision (file 755/2007, ruling of August 4, 2009).

4. The Federal Appeals Chamber denied the appeal considering that from the proven fact of Mr. Di Marco's poisoning during his preventive detention in solitary confinement, it could not be derived that the death had been caused by state agents in order to combat subversion, and that the petitioners had not presented evidence that adequately proved that security personnel had participated in the death because of the political militancy of Mr. Di Marco. Subsequently, the Supreme Court, in a divided ruling with three separate opinions by dissenting judges, denied the appeal because it also considered that it had not been proven that agents of the armed forces had caused the death, and that it had not been proven either that the death was motivated by the political militancy of the victim. The petitioners dispute both arguments, first of all alleging that the death was indeed caused by the illegitimate action or omission of the security forces, given that Mr. Di Marco was in the custody of the Police at the time, and both the hypothesis of a murder and that of a suicide would constitute legal grounds of responsibility of the security forces, by action or by omission. In this regard they invoke the legal presumption established by Law 24,411 (art. 3), in the sense that it is presumed that a death was caused by the actions of the armed or security forces when it occurred in places or establishments belonging to them. Regarding the issue of the motivation for death being the political militancy of the victim, the petition emphasizes that Mr. Di Marco was an active member of the Justicialist Party, and recalls that the murders committed by the Argentine dictatorship were often covered up, as could have happened in the present case, in which the mortal victim was initially deprived of his liberty on account of a criminal complaint for fraud, which could have been a simple formal cover-up for other types of motivations.

5. In support of their arguments, the petitioners endorse the joint dissenting opinion of the three justices of the Supreme Court who departed from the majority decision, who argued that due to various reasons they did not consider that it was proven that Mr. Di Marco's death had been a voluntary suicide, that there were strong indications that raised "a serious state of doubt about the possibility of a homicide from poisoning," and that consequently, given the circumstances "so extremely suspicious" that surrounded the death, this should have resulted in the granting of the benefit under Law 24,411. The ruling of the Supreme Court was notified to the petitioners on August 25, 2009.

6. For the petitioner, the administrative decision and subsequent judicial decisions were based on erroneous factual grounds; they ignored that the requirements of the law to access compensation were met; and they failed to apply several legal provisions, including the aforementioned *in dubio pro victim* rule contained in the special legislation. The petitioners contend that Argentina, in addition to having violated the alleged victim's right to life, has inflicted moral damages on their relatives, and deprived them of the pecuniary reparation they were entitled to by law.

7. The State, for its part, states that Mr. Di Marco was arrested by personnel of Police Station No. 40, which is part of the Federal Police of Argentina, when he voluntarily went to declare after having been criminally denounced by two private individuals for an allegedly fraudulent car sales operation. The State also confirms that Mr. Di Marco was found dead in his dungeon on the same day he was apprehended; and that his death gave rise to a criminal investigation ("*Di Marco, Ángel Antonio s / Su muerte. File No. 41.8980*") conducted by National Criminal Court No. 7 of the Federal Capital. In the course of this investigation, it was credibly established that Mr. Di Marco's death had been caused by poisoning by oral ingestion of cyanide salts; however, as expressly stated in the memorandum of the Secretariat of Human Rights and Cultural Pluralism of the Ministry of Justice and Human Rights, attached by the State in its response, "[*this event*] was the subject of a judicial investigation that aside from determining that Mr. Di Marco died from poisoning with cyanide salts, did not determine whether it had occurred due to voluntary intake, or rather due to the action of third parties."

8. The State confirms that, based on Law 24,411, Mr. Di Marco's daughter did indeed file an administrative claim to access the financial compensation provided therein, but her request was denied by the Ministry of Justice, through Resolution No. 466/06, in which it is stated - according to a literal quotation made by the State - that "the case at hand does not fit within the provisions of art. 2 of Law 24.411, no matter how much the fact that the death occurred in a police unit leads to the *iuris tantum* presumption that the death was caused by the actions of state agents, since in order for the facts to be subsumed within the legal provisions, the death must have occurred with the alleged purpose of combatting subversion, a condition that is neither proven nor suspected". Argentina asserts that the petitioner had access to the remedies of the domestic jurisdiction, which were decided by impartial and independent courts that responded to their claims within the framework of their jurisdiction and in accordance with the rules of due process.

9. Based on the previous factual scenario, the State alleges in its response, as a preliminary matter, that the petition was transferred to it by the IACHR in an extemporaneous manner. In addition, it interprets that the object of the petition consists specifically of the administrative and judicial processes

developed in relation to the request for compensation promoted by the relatives of the alleged victim, since, in its opinion, the investigation related to the causes of the arrest and death of Mr. Miguel Ángel Di Marco would not be the subject-matter of this petition. In this regard, it argues that there is no record that Ms. Di Marco filed any legal claim related to the alleged damages caused by the death of her father at the time of the events, *"highlighting that she only up until recently promoted her preparatory claim on the basis of Law 24.411, on May 3, 2005, more than 10 years after the enactment of said law on December 28, 1994."* And that, in any case, the IACHR has no competence to hear such facts under the American Convention, as they took place before its entry into force for Argentina.

10. Finally, the State argues that the petitioners have limited themselves to expressing their disagreement with domestic administrative and judicial decisions that were adverse to them, without raising violations of the American Convention, for which reason they are resorting to the IACHR as a fourth instance and asking the Commission to review decisions taken in the course of procedures that had all the administrative and judicial guarantees. Therefore, the State considers that the petition does not pose possible violations of the inter-American instruments, in accordance with Article 47 (b) of the Convention.

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

11. Preliminarily, the Inter-American Commission takes note of the State's claim on what it describes or qualifies as tardiness in the transfer of the petition, but it recalls, as it has consistently done, that neither the Convention nor the Commission's Rules of Procedure establish a term for the transfer of a petition to the State upon receipt, and that the deadlines established in the Rules of Procedure and in the Convention for other stages of the procedure are not applicable by analogy.

12. With regard to the content of the present petition, a purely literal interpretation of the petition indicates that its object includes both the alleged violation of Mr. Ángel Antonio Di Marco's right to life and the failure to identify those responsible for his death, as well as the alleged denial of the compensation provided for in Law 24.411 to his relatives. Indeed, the petition expressly invokes the violation of the right to life, and the uncertainty over the rights of Mr. Di Marco's family members.⁴ The additional observations of the petitioner, duly forwarded to the State, confirm that the possible violation of Mr. Di Marco's right to life by State security forces during the dictatorship is being denounced, among other violations that may derive from what was reported in the petition.

13. Regarding the death of Mr. Di Marco on the same day of his detention, both parties agree that a criminal investigation was initiated which determined cyanide poisoning as the cause of death; but, as expressly recognized by the State in the official memorandum attached to its answer, said criminal investigation never determined who was responsible for the death, whether it was a suicide or a homicide. Consequently, the IACHR recalls that, as regards the protection of the life of the persons under its custody, even in the hypothesis - not yet judicially verified - of a suicide, there could be a breach of the duty of protection and guarantee by the State, which merits an investigation, prosecution and punishment in accordance with the law. To that extent, the criminal procedure as a remedy has not yet been exhausted, and impunity for the death of Mr. Di Marco persists to this day. Consequently, in relation to this aspect of the claim, the Commission considers the exception to the rule of exhaustion of domestic remedies established in Article 46.2.c. of the American Convention to be applicable.

14. With regard to the administrative procedure for claiming compensation under Law 24.411, and to the subsequent judicial proceedings before the National Contentious-Administrative Federal Appeals Chamber and the Supreme Court of Justice, the IACHR agrees with what is expressly recognized by the State, in the sense that domestic remedies were exhausted in due form by the petitioners. This exhaustion concluded with the notification to the petitioners of the final decision by the Supreme Court of Justice on August 25, 2009. Given that the petition was filed on February 22, 2010; that there is a clear connection between the internal judicial processes related to the facts denounced in the petition; and also considering that the State did not dispute the fulfillment of the requirement of timeliness in the submission of the petition, the IACHR concludes that the requirements established in Article 46.1.b of the American Convention, and Article 32.2 of the Rules of the IACHR, have been fulfilled.

VII. ANALYSIS OF COLORABLE CLAIM

15. As already established, the petition under study refers to two different, although related, aspects: (i) the death of Mr. Di Marco in the custody of the State, and the alleged subsequent impunity due to the lack of determination of those responsible for his death; and (ii) the alleged arbitrary denial of compensation under Law 24.411 to the relatives of Mr. Di Marco. Regarding the former, it has been argued that there was responsibility of the security forces of the Argentine State in the death of Mr. Di Marco, who had been a member of the Justicialist Party and therefore was a victim of political persecution, and was deprived of his

⁴ Electronic form for the presentation of the petition of October 22, 2010 transferred to the State as an annex to the initial communication of the petition on April 18, 2016.

liberty, having been found dead by poisoning in circumstances that three dissident magistrates of the Supreme Court of Justice described as highly suspicious. With regard to the latter, the petition describes different factual and legal reasons for which the decisions denying administrative reparation were allegedly adopted by the Argentine judges based on prejudiced conclusions and without grounds in the evidence and allegations of the victims, and without the criminal justice having previously determined that, in effect, there was no intervention of political factors in the death of Mr. Di Marco.

16. In this sense, although some of the facts denounced are prior to the ratification of the American Convention by Argentina, since they occurred in 1978 and the ratification took place in 1984, other facts related in the petition and that support specific claims occurred on 2005, more than twenty years after said ratification. For the events that occurred in 1978, the legal instrument to be applied to determine the international obligations of the State will be the American Declaration.

17. With respect to the State's allegations referring to the so-called "fourth instance formula", the Commission reiterates that within the framework of its mandate it is indeed competent to declare a petition admissible when it refers to internal processes that could violate rights guaranteed in the American Convention. Thus, for the purposes of the admissibility of a petition, the IACHR must decide whether the alleged facts may amount to a violation of these rights, as stipulated in Article 47 (b) of the American Convention, or if the petition is "manifestly groundless" or "obviously out of order", in accordance with subsection (c) of said article. The criteria for evaluating these requirements differ from those used to rule on the merits of a petition. Likewise, within the framework of its mandate, it is competent to declare a petition admissible when it refers to internal processes that could violate rights guaranteed by the American Convention. In other words, in accordance with the aforementioned conventional norms, and with Article 34 of its Rules of Procedure, the admissibility analysis focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute *prima facie* violations of the American Convention.⁵

18. In view of these considerations, and after examining the factual and legal elements set forth by the parties, the Commission considers that the claims of the petitioner are not manifestly unfounded and require a study on the merits since the alleged facts, if corroborated, could characterize *prima facie* violations of Articles I (life, liberty, and personal security), XVIII (fair trial), XXV (protection from arbitrary arrest) and XXVI (due process of law) of the American Declaration; and Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Article 1.1 (obligation to respect rights), under the terms of this report, to the detriment of Mr. Ángel Antonio Di Marco and his individualized relatives.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, XVIII, XXV and XXVI of the American Declaration; and Articles 5, 8 and 25 of the American Convention, in relation to its Article 1.1; and
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 26th day of the month of February, 2020. (Signed): Joel Hernández, President; Antonia Urrrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Margarete May Macaulay, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.

⁵ IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Peru. December 4, 2018, par. 12.