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REPORT No. 69/20
PETITION 36-09
REPORT ON ADMISSIBILITY

MAURICIO MATIAS MORAN ET AL
ARGENTINA

Electronically approved by the Commission on April 24, 2020

Cite as: IACHR, Report No. 69/20, Petition 36-09. Admissibility. Mauricio Matías Morán et al.
Argentina. April 24, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Asociación para la Promoción y Protección de los Derechos Humanos XUMEK
Alleged victim	Mauricio Matías Morán et al. ¹
Respondent State	Argentina
Rights invoked	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 19 (rights of the child), 24 (equality before the law), and 25 (judicial protection) of the American Convention on Human Rights ² , in relation to its Article 1(1) (obligation to respect the rights)

II. PROCEEDINGS BEFORE THE IACHR³

Date of filing	January 14, 2009
Information received during the initial study phase	May 3, 2010
Notification of the petition	September 2, 2014
State's first response	February 19, 2015
Additional observations from the State	March 26, 2015
Possible archival notification	December 20, 2017
Response from the petitioner to the possible archival notification	February 12, 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 (instrument of ratification deposited 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 4 (life), 5 (human treatment), 8 (fair trial), 19 (rights of the child), and 25 (judicial protection) of the American Convention, in relation of its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion or exception to the exhaustion of remedies	Yes, having applied the exception at Article 46(2)(c) of the American Convention
Timeliness of the petition	Yes, in the terms of section VI

V. SUMMARY OF FACTS ALLEGED

1. The petitioner alleges the responsibility of the State in the death of Mauricio Morán and the injuries sustained by the Maximiliano Ángel Sosa and Raúl Alexander Frías Morán, all children at the time⁴, as the result of the abusive use of force by the police. In addition, they allege irregularities in the criminal investigation which resulted in the failure to identify or convict the persons responsible.

2. The petitioners indicate that on May 5, 2006, the M-24 train, of the company América Latina Logística, was travelling south to north in the locality of Pedriel. It was being guarded by two officers of the police of Mendoza. The petitioners indicates that the inhabitants of the Cuadro Estación neighborhood stopped the train, shutting down the hoses through which the steam that moved it flowed, and, once it came to a

¹ And Ángel Maximiliano Sosa and Raúl Alexander Frías; as well as Cesar Ramón Morán and Miriam Elsa Rosales, the parents of Mauricio Matías Morán.

² Hereinafter the "American Convention" or the "Convention."

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

⁴ Respectively 14 years old, 13 years old, and 1 year old.

complete stop, began stealing the coal in the coal hoppers and throwing stones at the police who were guarding it. In response, one of the police officers called the Radioelectric Command of the police, requesting reinforcement. After the call two other police officers arrived immediately. One of them got out of his vehicle and shot twice into the air, getting the people to get away from the coal hoppers. Subsequently another police car with two agents arrived on the scene. One of them fired two intimidating shots into the air. The petitioners adduce that when the train started moving again, this last police officer fired a lead shot in the direction of the Cuadro Estación neighborhood where part of the population was standing outside (who had not participated in the robbery), causing the death of the child Mauricio Morán and lesions to the children Maximiliano Ángel Sosa and Raúl Alexander Frías Morán. The petitioner indicates that its petition is submitted in the context of an increase in police violence and the abusive use of firearms by the security forces.

3. The petitioner indicates that on August 11, 2006, the Prosecutor for Complex Crimes, Luis Correa Llanos, asked the judge of guarantees to issue an arrest warrant for pretrial detention against Cristian Gustavo Bressant, for the crimes of aggravated homicide, moderate lesions, and aggravated serious lesions by a member of the police forces, abusing his function or position, with the use of firearms. The prosecutor indicated that while at first the action of the police personnel had been lawful, the same could not be said of the subsequent action of agent Cristian Gustavo Bressant Barrera, when he fired a lead shot towards where the people were, causing the death and/or lesions of the alleged victims. On July 1st, 2008, the Criminal Court of the first judicial district handed down Judgment N 2,562, acquitting the accused, Bressant, in a final judgment. The decision was based on the fact that the prosecutor, as well as the representative of the private accuser, asked for the absolution of the accused. The court indicated that in that situation it shall acquit, in keeping with the legal doctrine developed by the Supreme Court of Justice of Argentina and the Provincial Supreme Court of Justice, based on considerations of celerity, procedural economy, and the need to avoid unnecessarily burdening the judiciary.

4. The petitioners indicate that no other remedy was pursued after this resolution, for they considered that no other procedural initiative at the domestic level would have any prospect of success, and that one of the exceptions provided for at Article 46.2 of the American Convention should be applied. They argue that the competent judicial authority did not undertake an effective investigation and therefore when the moment came to hand down the judgment it was not possible to determine with certainty which of the police officers fired the fatal shot. They argue that it was clear that in the investigation and in the criminal trial the police personnel involved erased or distorted the evidence that could have served to clarify the events of May 5, 2006. Therefore, the motion for cassation and the federal extraordinary appeal were doomed to fail. In addition, they indicate that the crime in question is one that must be prosecuted at the initiative of the authorities, and therefore the State is under an obligation to promote and give impetus to the criminal prosecution to its final steps, which is the appropriate way to clarify the facts, prosecute the persons responsible, and establish the corresponding criminal sanctions.

5. The State, for its part, alleges that domestic remedies were not exhausted, that no information that would imply violations of the human rights enshrined in the American Convention was provided and, finally, that the petition was brought to its attention more than five years after it was initially submitted to the Commission.

6. The State indicates that on July 1, 2008, the court handed down a judgment acquitting the accused on the basis that the prosecutor had sought an acquittal and the private accusers had refrained from accusing him. Accordingly, it emphasizes that the very representatives of the alleged victims' relatives⁵ failed to lodge the complaint in the criminal proceeding, which determined the shutting down of the investigation and the acquittal of the accused. The State alleges that the petitioner could still go before the Superior Court of Justice of the province of Mendoza by filing a motion for cassation (Articles 42 and 474 of the Code of Criminal Procedure of the Province of Mendoza), and eventually before the Supreme Court of Justice of the Nation, by means of the federal extraordinary remedy (*recurso extraordinario federal*) (Article 14 of Law 48) and the complaint remedy (*recurso de queja*) (Article 282 ff.). Similarly, by filing a private accusation (*querrela*) (Article 10 of the Code of Criminal Procedure) the petitioners would have been able to request the opening of an investigation into other police officers who were involved in the incident. Accordingly, the State was not

⁵ In a copy of the decision it appears that while the three victims are mentioned, only the parents of Mauricio Matías Morán are referenced as parties; their legal representative is also noted.

afforded the possibility of making reparation for the purported violation of the Convention domestically. Additionally, the State indicates that in one of the news articles that the petitioners attached as documentary proof it appears that days before the trial of Bressant that same court had convicted a police officer for the crime of homicide. Thus, domestic remedies cannot be considered ineffective. Therefore, the petition should be found to be inadmissible.

7. Finally, the State alleges that there are no elements for asserting that the petition states facts that could entail violations of the human rights enshrined in the Convention; rather, the petitioners merely set forth their disagreement with the outcome of the judicial proceedings. As regards the right to life, and in relation to Articles 8 and 25, the State indicates that the obligation to investigate incumbent on it is an obligation of means, and not of results. In the instant case, the State undertook an investigation at its own initiative as soon as it came to learn of the facts, in the context of which pretrial detention was ordered, as well as the subsequent arrest of one of the police agents. The process lasted two years, which is compatible with the standard of a reasonable time. The fact that the investigation has not produced an outcome favorable to the alleged victims does not automatically imply a violation of the Convention – one cannot demand of the State that it obtain a particular result.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The petitioners indicate that the prosecution filed a criminal complaint against the accused Bressant and that on July 1, 2008, the Criminal Court of the first judicial district handed down a judgment acquitting him, based on the prosecutor having requested his acquittal and the failure of the petitioner to lodge an accusation against him. The petitioner indicates not having pursue any other remedy because it would have been doomed to fail since the competent judicial authority did not undertake an effective investigation that would have made it possible to clarify the circumstances of the alleged facts. It adduces that therefore one of the exceptions set out at Article 46.2 of the American Convention applies. The State, for its part, alleges that the petitioner could have filed a motion for cassation and eventually a federal extraordinary appeal (*recurso extraordinario federal*) and a complaint remedy (*recurso de queja*), as well as pointing to the possibility of filing a private accusation. In addition, it adduces that there is nothing to assure that the trial was held before a court tending towards protecting the unlawful actions of the police forces. Therefore, the State alleges that it was not afforded the possibility of making reparation domestically for the alleged violation of the Convention and that the petition should be found inadmissible for failure to exhaust domestic remedies.

9. The precedents established by the IACHR indicate that whenever a crime is alleged that should be prosecuted at the initiative of the authorities, the State is under the obligation to promote and give impetus to the criminal prosecution, and that this is the appropriate way to clarify the facts, hold a trial of those deemed responsible, and determine the corresponding criminal sanctions, in addition to making possible other forms of monetary reparation. Therefore, the domestic procedure that must be exhausted in this case is the criminal investigation, which should be taken on and given impetus by the State *motu proprio*. In addition, it is observed that according to the jurisprudence applicable in Argentina, the courts must acquit the accused when the prosecution does not file any charges. In this respect, the Commission reiterates that even in those procedural regimes in which the victims or their family members could have standing to participate in the criminal proceedings, availing themselves of it is not obligatory but rather optional, and in no way takes the place of the State activity, since whenever a crime is committed that is subject to prosecution at the initiative of the authorities, such as homicide, it is the State that has the obligation to promote and give impetus to the criminal prosecution.⁶ In the present case, the petitioner alleges that due to irregularities in the investigation it was not possible to clarify the circumstances of the events of May 5, 2006 and to determine with sufficient certainty the respective responsibility of the police officers involved. Finally, the Commission observes that to date the persons responsible for the death of Mauricio Morán and the lesions inflicted on Maximiliano Ángel Sosa and Raúl Alexander Frías Morán have not been punished. Therefore, the Commission concludes that the exception to the exhaustion of domestic remedies requirement provided for at Article 46.2.c of the American Convention applies.

10. As for timeliness, the petition was filed on January 14, 2009, the alleged facts took place on May 5 2006, the criminal investigations were opened in 2006, the decision to acquit the officer was made on

⁶ IACHR, Report No. 33/18, Petition 377-08. Admissibility. Amanda Graciela Encaje and family. Argentina. May 4, 2018, para. 12.

July 1, 2008, and the effects of the alleged violations regarding the purported denial of justice continue to this day. Therefore, the IACHR considers that the petition was filed in a reasonable time and that the admissibility requirement referring to the timeliness of the petition has been satisfied.

11. The Inter-American Commission takes note of the State's argument regarding what it characterizes as the late forwarding of the petition to the State. The IACHR notes that neither the American Convention nor the Commission's Rules of Procedure establish a deadline for forwarding a petition to the State after it is received, and that the time periods established in the Rules of Procedure and the Convention are for other stages of the process are not applicable by analogy.

VII. COLORABLE CLAIM AND COMPETENCE

12. The Commission observes that this petition includes allegations with respect to the abusive use of force by the police that would have resulted in the death of Mauricio Morán and the lesions to Maximiliano Ángel Sosa and Raúl Alexander Frías Morán, and to irregularities in the criminal investigation. In view of these considerations and after examining the factual and legal remedies presented by the parties, the Commission considers that the claims of the petitioner are not manifestly unfounded and require a substantive study on the merits since the alleged facts, if corroborated as true, could characterize violations of Articles 4 (life), 5 (humane treatment), 8 (fair trial), 19 (rights of the child), and 25 (judicial protection) of the Convention in relation to Articles 1(1) (obligation to respect rights) and 2 (domestic legal effects) of the same instrument with respect to the alleged victims and their next-of-kin.

13. As for the claim alleging the violation of Article 24 (equality before the law) of the American Convention, the Commission observes that the petitioner has not offered arguments or a sufficient foundation to be able to consider, *prima facie*, its possible violation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 19 and 25 of the American Convention;
2. To find the instant petition inadmissible in relation to Article 24 of the Convention; and
3. To notify the parties of this decision; to proceed 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 24th day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Edgar Stuardo Ralón Orellana, Commissioners.