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**REPORT No. 167/24**  
**PETITION 2207-12**  
INADMISSIBILITY REPORT

PEDRO CÉSAR GUERRERO  
ARGENTINA

Adopted electronically by the Commission on October 24, 2024.

**Cite as:** IACHR, Report No. 167/24. Petition 2207-12. Inadmissibility. Pedro César Guerrero. Argentina. October 24, 2024.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioning party:</b>	Silvia Guerrero
<b>Alleged victim:</b>	Pedro César Guerrero
<b>Respondent State:</b>	Argentina <sup>1</sup>
<b>Rights invoked:</b>	Articles 5 (right to humane treatment), 11 (right to have honor respected and dignity recognized), and 17 (rights of the family) of the American Convention on Human Rights <sup>2</sup>

**II. PROCESSING BY THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	November 30, 2012
<b>Additional information received during the review stage:</b>	June 19, 2013 and May 19, 2015
<b>Notification of the petition to the State:</b>	January 29, 2016
<b>State's first response:</b>	May 2, 2017 and May 9, 2017
<b>Additional observations from the petitioning party:</b>	August 15, 2017 and July 12, 2021
<b>Additional observations by the State:</b>	July 19, 2019 and May 27, 2022
<b>Warning about possible archiving:</b>	May 12, 2021
<b>The petitioning party's response to a warning of possible archiving:</b>	July 6, 2021

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	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**

<b>Duplication of procedures and international <i>res judicata</i>:</b>	No
<b><i>Rights declared admissible</i>:</b>	None
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, partial, as referred to in Section VI
<b>Timeliness of the petition:</b>	Yes, partial, as referred to in Section VI

<sup>1</sup> Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Andrea Pochak, an Argentinian national, did not participate in the discussion or decision in this matter.

<sup>2</sup> Hereinafter "the American Convention" or "the Convention."

<sup>3</sup> Each party's observations were duly forwarded to the opposing party.

## V. POSITIONS OF THE PARTIES

### **Petitioning party**

1. The petitioning party alleges that the State prosecuted Mr. Guerrero for crimes for which the statute of limitations had already expired and that, therefore, the decisions issued in the criminal case are not properly substantiated. In addition, it claims that the conditions of his detention do not meet international standards.

2. The petitioning party states that on May 2, 2006, the Prosecutor's Office ordered the arrest of Mr. Guerrero, on the grounds that between 1976 and 1978 he exacerbated the suffering inflicted on a group of persons detained in Prison Unit No. 9 of the city of La Plata, when acting as an official of the Buenos Aires Penitentiary Service. As a result, on November 4, 2008, Mr. Guerrero voluntarily presented himself before Federal Court No. 1 of the city of La Plata, and that same day he was transferred to Federal Complex II of Marcos Paz, where he remained for six years.

3. On November 18, 2011, the Oral Federal Criminal Court No. 1 of La Plata sentenced Mr. Guerrero to nine years in prison, considering him the perpetrator of a crime against humanity, namely aggravated torture. However, the court only sanctioned him with respect to one group of the victims, and acquitted him with respect to the rest, after concluding that there was no evidence to prove his participation in the crimes committed against them.

4. Both the alleged victim and the National Public Defender's Office appealed that ruling. On December 23, 2014, Chamber II of the Federal Chamber of Criminal Cassation rejected the appeal filed by the defendant's defense and partially granted the opposing party's arguments. Thus, it annulled part of the judgment and required the court to reanalyze the facts for which it acquitted Mr. Guerrero of the crime of torturing one group of victims. The petitioning party maintains that, to date, it is still awaiting the issuance of a final ruling.

5. Based on these factual considerations, the petitioning party alleges that the judicial authorities did not take into consideration that the statute of limitations had already expired and that Mr. Guerrero was punished for alleged crimes against humanity, despite the fact that such types of crimes were not in force at the time he committed the alleged criminal acts, since they were only incorporated through the ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity in 1995. It indicates that although it presented such arguments before the different judicial instances, they incorrectly dismissed them.

6. The petitioning party also notes that the domestic courts used reports issued by the International Committee of the Red Cross as evidence to support the conviction of the alleged victim, even though, in accordance with international law, such reports are confidential and cannot be used in judicial proceedings. It indicates that, although it questioned this situation, the authorities did not respond to its claims.

7. Finally, the petitioning party argues that the proceedings against Mr. Guerrero are not being conducted within a reasonable period of time, given the date of the facts for which he is being tried and the moment in which he surrendered to the Police. It also claims that his conditions of detention do not meet minimum international standards, as he was not guaranteed adequate contact with his family, among other aspects.

### **The Argentine State**

8. For its part, the State provides updated information on the procedural situation of the alleged victim and indicates that, after Chamber II of the Federal Criminal Cassation Chamber requested a re-examination of the facts for which he was partially acquitted, on December 1, 2017, the Oral Federal Criminal Court No. 1 of La Plata sentenced him to 12 years in prison, after finding him

guilty of being a co-perpetrator of the crime of torturing (*imposición de tormentos agravados*) other victims. Mr. Guerrero appealed this decision and, at the time of writing this report, this appeal is still pending resolution.

9. Notwithstanding the foregoing, the State indicates that, currently, Mr. Guerrero is at liberty, since on October 9, 2016 the Oral Federal Criminal Court No. 1 of La Plata ordered his release, subject to bail. It adds that, since he was granted this benefit, his lawyers have made multiple requests for him to travel to the interior of the country and all of them have been granted.

10. Thus, it argues that the petition is inadmissible for failure to exhaust domestic jurisdiction. It notes that the appeal filed by the alleged victim against the aforementioned judgment of December 1, 2017 is still pending. Therefore, it considers that the present case does not meet the requirement set forth in Article 46(1)(a) of the Convention, given that the criminal proceedings have not yet concluded.

11. Without prejudice to the foregoing, it adds that the petitioning party does not state facts that could constitute a violation of human rights. On the contrary, it considers that the petitioning party's intention is for the Commission to act as a fourth judicial instance and revise the factual and legal assessments made by the domestic judges and courts that acted within their sphere of competence, without demonstrating that they have violated any right recognized in the Convention.

12. It maintains that the authorities prosecuted and convicted Mr. Guerrero, respecting all judicial guarantees, through a process in which the allegations of fact and law presented by the alleged victim were evaluated and answered. In addition, it mentions that the principle of reasonable time was also respected, since only three years and fourteen days elapsed from his arrest on November 4, 2008 until his first instance conviction.

13. On the other hand, Argentina notes that, although the petitioning party contends that the conditions of detention of the alleged victim in the Federal Penitentiary Complex No. II of Marcos Paz do not comply with international standards, it does not substantiate or describe what the violations of his rights consist of. In addition, it notes that no evidence has been presented that complaints have been filed before the competent court in relation to this aspect of the petition, nor that the alleged victim has filed a habeas corpus action to improve his conditions of detention. Therefore, the State argues that it was not given the opportunity to remedy these alleged damages.

14. Finally, the State raises the issue of what it calls "the extemporaneous forwarding of the petition." It states that, although the Executive Secretariat of the IACHR received the petition on November 30, 2012, the document was only forwarded on January 29, 2016. In the State's opinion, the more than three years it took the IACHR to process the petition generates a serious problem that affects the proper exercise of the State's right to defense.

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

15. According to the petitioning party's allegations, the Commission finds that the purpose of this petition is to question both the criminal proceedings and conviction of the alleged victim, as well as his conditions of detention. On the first point, both parties agree that, to date, Mr. Guerrero still does not have a conviction with *res judicata* status. Consequently, it is up to the IACHR to determine whether the exception provided for in Article 46(2)(c) of the Convention applies.

16. In the instant case, the Commission notes that, according to the information provided by both parties, although the criminal proceeding pursued against the alleged victim has gone through different stages, since 2017 the Federal Chamber of Criminal Cassation has yet to resolve the appeal filed by Mr. Guerrero against his conviction. In this regard, given the time that has elapsed and the complexity of the proceedings against the alleged victim, the Commission considers that, for the

purposes of this procedural analysis, the exception provided in Article 46(2)(c) should be applied, in order to analyze this situation in greater detail in the characterization section. Furthermore, given that the aforementioned appeal was filed while the present petition was under admissibility review, the IACHR also concludes that this claim was filed within a reasonable period of time.

17. With respect to the second point, referring to the conditions of detention of the alleged victim, the Commission notes that it has no information that would make it possible to prove, at least *prima facie*, the use of any jurisdictional remedy to file such a claim with the pertinent authorities. Consequently, it considers that this part of the petition does not meet the requirement of Article 46(1)(a) of the Convention.

18. Finally, the Commission takes note of the State's claim regarding the allegedly extemporaneous transfer of the petition. The IACHR points out that neither the American Convention nor the Rules of Procedure of the Commission establish a deadline for forwarding a petition to the State from the time of 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.<sup>4</sup> In addition, in its Report on Admissibility No. 79/08,<sup>5</sup> the IACHR clarified that:

[...] the time elapsed from the time the Commission receives a complaint until it transfers it to the State, in accordance with the norms of the inter-American human rights system, is not, in and of itself, a reason for a decision to archive the petition. In this regard, the Commission reiterates that "in the processing of individual petitions before IACHR, there is no statute of limitations *ipso iure* based on the passage of time."<sup>6</sup>

19. Likewise, reinforcing the above, the Inter-American Court of Human Rights has established precisely with respect to this point that:

This Court considers that the criterion of reasonableness, on the basis of which procedural rules must be applied, implies that a time limit such as the one proposed by the State should be clearly provided for in the rules governing the procedure. This is especially true given the danger of jeopardizing the right of petition of alleged victims, established in Article 44 of the Convention, due to acts or omissions of the Inter-American Commission over which the alleged victims have no control of any [...] sort.<sup>7</sup>

20. In this regard, the Inter-American Commission reiterates its commitment to the victims, based on which it makes constant efforts to guarantee at all times the reasonableness of the time periods in the processing of their cases; and an appropriate balance between justice and legal security.

## VII. ANALYSIS OF COLORABLE CLAIM

21. First, the Commission reiterates that the criterion used to assess admissibility differs from the one needed to decide the merits of a petition. At the admissibility stage, the Commission must perform a *prima facie evaluation* and determine whether the petition provides grounds for an apparent or potential violation of a right guaranteed by the American Convention, not whether the violation has in fact occurred. This determination regarding violations of the American Convention constitutes an initial analysis that does not imply a prejudgment on the merits. For the purposes of admissibility, the IACHR must decide, pursuant to Article 47(b) of the American Convention, whether the facts alleged,

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<sup>4</sup> See, for example, IACHR, Report No. 56/16. Petition 666-03. Admissibility. Luis Alberto Leiva, Argentina. December 6, 2016, par. 25.

<sup>5</sup> IACHR, Report No. 79/08, Petition 95-01. Admissibility. Marcos Alejandro Martin. Argentina. October 17, 2008, par. 27.

<sup>6</sup> IACHR, Report 33/98, Case 10.545, Clemente Ayala Torres et al. (Mexico), May 15, 1998, par. 28.

<sup>7</sup> 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 par. 32.

if proven, could characterize a violation of rights, or whether, pursuant to paragraph (c) of the same article, the petition is “manifestly groundless” or “obviously out of order.”

22. With regard to the sentence imposed on Mr. Guerrero, the Commission notes that the petitioning party questions three central points: i) the reasoning of the sentences that convicted the alleged victim; ii) the failure to comply with the principle of retroactivity and the statute of limitations; and iii) the violation of the reasonable time principle.

23. Regarding the first argument, the Commission notes that the petitioning party only questions that the judicial authorities used confidential documents to support Mr. Guerrero's conviction. However, it appreciates that the instance that heard this claim analyzed it and provided a reasoned response, indicating that such reports did not play a significant part as evidence to corroborate his criminal liability and, therefore, their use did not impair any judicial guarantee. Given that the petitioning party does not provide further arguments to question this determination, the Commission does not find *prima facie* elements to identify a possible violation of rights.

24. Regarding the alleged non-compliance with the principle of non-retroactivity and the statute of limitations, the Commission recalls that, according to the jurisprudence of the Inter-American Court, States cannot avoid the duty to investigate, determine, and punish those responsible for crimes against humanity by applying amnesty laws or other types of domestic legislation aimed at avoiding prosecution.<sup>8</sup> Consequently, crimes against humanity are crimes in which the application of legal concepts such as the statute of limitations does not apply. Likewise, the court has also specified that the prohibition of crimes against humanity is a customary rule, which existed prior to its recognition in the Convention. Therefore, while the treaties only have a declaratory function with respect to these crimes, States have the obligation to prosecute and punish those responsible for such crimes, even if they were committed prior to the entry into force of the American Convention or to the criminalization of the offense at the domestic level.<sup>9</sup> Based on the foregoing, the Commission considers that Mr. Guerrero's allegations are unsubstantiated and, *prima facie*, do not constitute a possible violation of rights.

25. Finally, in relation to the alleged violation of the reasonable time principle, the Commission considers it relevant to point out that the criminal proceeding in question has gone through different stages of appeal, both by the State and by Mr. Guerrero. In this regard, it notes that, to date, there has already been a conviction in the first instance, which suggests that the process is not at a standstill or lacking in progress towards a final decision. In addition, the Commission emphasizes that the criminal case is particularly complex due to the gravity and magnitude of the crimes under investigation, which justifies the need for a longer investigation time. Finally, the Commission considers that, given that Mr. Guerrero is currently at liberty, the delay of the Federal Chamber of Criminal Cassation in resolving his appeal does not have a significant impact on his rights. For the foregoing reasons, the Commission concludes that there are no elements that, *prima facie*, characterize violations of rights that should be addressed in the merits stage.

26. For the aforementioned reasons, the Commission considers that the facts presented by the petitioner do not show, *prima facie*, a possible violation of rights and, consequently, based on Article 47(b) of the Convention, it is appropriate to declare this case inadmissible.

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<sup>8</sup> I/A Court H.R. Barrios Altos Case v. Peru. Merits. Judgment of March 14, 2001. Series C No. 75 par. 41.

<sup>9</sup> I/A Court H.R. Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of March 15, 2018. Series C No. 353 paras. 214 and 215.

**VIII. DECISION**

1. To declare the instant petition inadmissible.
2. To notify the parties of this decision, publish it, 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 24<sup>th</sup> day of the month of October, 2024. (Signed:) Roberta Clarke, President; Edgar Stuardo Ralón Orellana, Arif Bulkan, and Gloria Monique de Mees, Commissioners.