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REPORT No. 128/24
PETITION 606-14
REPORT ON INADMISSIBILITY

LUCAS MAURO BANEGAS
ARGENTINA

Approved electronically by the Commission on September 3, 2024.

Cite as: IACHR, Report No. 128/24, Petition 606-14. Inadmissibility.
Lucas Mauro Banegas, Argentina. September 3, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Lucas Mauro Banegas
Alleged victims:	Lucas Mauro Banegas
Respondent State:	Argentina ¹
Rights invoked:	Articles 5 (humane treatment) 8 (judicial guarantees), and 25 (judicial protection) of the American Convention on Human Rights, ² in relation to its Articles 1 (obligation to respect rights) and 2 (obligation to adopt provisions of domestic law); and Articles XI (preservation of health and well-being), XIV (work and fair remuneration), XVI (social security), XVII (recognition of juridical personality) and XVIII (fair trial) of the American Declaration of the Rights and Duties of Man ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	April 23, 2014
Additional information received at the stage of initial review:	May 1 and 7, 2015; April 9 and November 6, 2015; and November 30, 2016
Notification of the petition to the State:	September 29, 2021
State's first response:	September 20, 2022
Additional observations from the petitioner:	April 15, 2024
Warning of possible archiving:	July 28, 2020
Petitioner's response to warning of possible archiving:	August 27, 2020
Additional information from the State	August 7, 2024

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 instrument of ratification done 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	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, partially, in the terms of Section VI
Timeliness of the petition:	Yes, partially, in the terms of Section VI

¹ In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Andrea Pochak, of Argentine nationality, did not participate in the decision in the instant matter.

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

³ Hereinafter "the American Declaration."

⁴ Each party's observations were duly forwarded to the other party. In communications of February 23 and August 13, 2015, the petitioner expressed his interest in the petition being processed.

V. POSITIONS OF THE PARTIES

The Petitioner

1. Mr. Lucas Mauro Banegas (hereinafter “Mr. Banegas” or the “petitioner”) alleges the international responsibility of the Argentine State for violation of his rights to health, judicial guarantees, and judicial protection, for failure to provide adequate medical-psychiatric care and free legal assistance.

2. Due to the inconsistencies in the communications sent by the petitioner to the IACHR, including his initial petition (such as the lack of a chronological order to the facts and the lack of specific information on the steps taken by the domestic authorities), for procedural transparency, and to establish with precision the facts that are the basis for of claim, the IACHR considers it useful to transcribe the full text of his communication of August 26, 2020, as it is the most consistent of his memorials:

[...]

As of mid-2012 I began to experience brusque and sudden changes in my health, the main symptoms being fatigue and depression. Since then it became difficult and on occasions impossible to perform tasks that required physical and/or mental effort.

As it was impossible for me to work, in 2013 I began to take a number of steps vis-à-vis the government of the province of Cordoba to obtain food assistance and some help to be able to go to hospitals in search of an adequate diagnosis and treatment.

Given the repeated refusal and mistreatment by government personnel, I then turned to the provincial offices that provide legal services, hoping to obtain the necessary legal counsel to file an *amparo* action and seek injunctive relief. Nonetheless, there too the mistreatment was repeated, I was literally treated as a vagabond and accused of wanting to live at the cost of the State. But the most serious aspect is that as of that moment they began to threaten me explicitly, saying they would commit me by force if I continued claiming aid from the State. In each and every one of the law offices to which I turned, three in all, I received exactly the same threats.

Desperate and scared by the threats, I began to draft an *amparo* action and request for injunctive relief, copying models published on the Internet. As the purpose I asked for temporary food assistance and that “I urgently undergo the minimum medical checkups necessary to detect any imminent risk to my life, and to immediately neutralize them, until such time as the issue posed here is resolved.”

In August 2013, on my own account, I filed the brief with Judge of First Instance No. 1 (former Civil and Commercial No. 21) of the judicial branch of the province of Cordoba, which that day was handling *amparo* actions.

When the matter had gone for almost one year without any resolution, in mid-2014 I filed a request for prompt dispatch with the same court; on that occasion the Clerk personally received me and told me that she would not proceed with the matter because having legal counsel was an essential requirement. I explained that when I approached the law offices not only did they deny me such representation, but they also threatened to deprive me of liberty if I continued to press the claim. Nonetheless, despite my warning, she decided to send them an internal memo to have them receive me.

As a result of that communication, in October 2014 a team from the provincial judicial branch came to my home to ask me some questions.

More or less one week after the interview police personnel showed up at my home and, by judicial order, took me to the Provincial Neuropsychiatric Hospital, where they kept me deprived of liberty for approximately one month.

During this period of forced commitment I was not seen by any clinical physician, nor did I undergo any sort of analysis. To the contrary, for at least one week I had no medical care whatsoever, and was permanently sedated with psychopharmaceuticals.

During the time I was committed I have been a protagonist in and a witness to numerous aberrant episodes that terrified me and continue to terrify me today: nurses hurting and hitting defenseless patients, some of them very old; seniors who couldn't even walk locked in solitary confinement, lying on the floor in their own urine and feces, shouting and crying; persons who told me that they have been locked up for years for the mere fact of not having resources to live on; frequent robberies, with violence,

among the persons held there (a knife was put to my throat to steal a pair of slippers); a primary school teacher, a woman, chained by the ankle to a bed for having insulted the Minister of Education, etc.

If the message was to intimidate me so as to not continue to press the claim, they succeeded. I am paralyzed by the fear I still feel today, I fear returning to that insane asylum and that they might treat me and expose in the same way. I am truly terrified of both the judicial branch of the province of Cordoba and that insane asylum.

In this state of affairs, once they allowed me to leave, I had no option but to suspend my claim and be left to my own devices, without food assistance, without medical care.

Finally, in October 2015, my body could bear it no longer. Family members found me decompensated at home and took me to the emergency room at the New Hospital San Roque, a general hospital of my province. There the physicians diagnosed me with diabetic ketoacidosis, a potentially lethal illness that affects people with diabetes. I have a blood glucose level over 500, a serious potassium deficit, and dehydration. I was hospitalized for more than a week. The physicians told me that if a few more hours had gone by I almost certainly would have died. And since then I've had daily injections of insulin.

So, what had been happening to me since 2012 was that I had diabetes and I didn't know it. In the "interdisciplinary report" that they had drawn up to institutionalize me at the insane asylum, they hadn't even considered it a possibility. And while I was locked up in the insane asylum, in addition to giving me inadequate food for the type of disease, they didn't bother to do blood work on me.

Once I had the precise diagnosis of what was happening to me, I went once again to the Provincial Neuropsychiatric Hospital to ask for explanations. In an interview with Dr. Pablo Cortés, chief of the interdisciplinary team, he apologized to me for the error (which I don't accept), he blamed a woman physician on his team, arguing that she was covering for him while he was on vacation and didn't have much experience, and he maintained that although I did not pose any risk whatsoever to society nor were there genuine motives to justify my commitment, she had merely carried out the court order.

Up to here I have just provided a brief summary of the calvary I experienced with the state institutions of the province. Nonetheless, I turn to the IACHR for another reason which, though directly related to all that I have recounted, is distinct.

When the first explicit threats began to come from the judicial branch of Cordoba, afraid, I began to seek help and protection in the federal judicial branch.

On several occasions I went to the Office of the Human Rights Ombudsperson (Ministerio Público de la Defensa), where I was received by Ms. María Mercedes Crespi and her staff, but in this case not to ask for food assistance and resources, but to try to keep those threats from being carried out.

I also communicated by phone with the Federal Agency for Review of Mental Health, which was established by the National Mental Health Act, Law No. 26,657, whose mission is to protect the human rights of the users of mental health services so that if the threats were to materialize, they should supervise the conditions of my confinement.

In addition, I lodged a criminal complaint, filing a memorial with the First Federal Prosecutor of Cordoba, notifying the prosecutor and judge of my conditions and the danger to which I was exposed.

Nonetheless, the response from both was the same: the federal judiciary could not interfere in matters pertaining to the judicial branch of the province of Cordoba, even when the latter was committing human rights violations.

Accordingly, I did not obtain the necessary defense, the complaint was dismissed, and the conditions of my confinement were not supervised, with the consequences that I have recounted.

3. Taking the transcribed text as the basis, and also based on other information that could be extracted from the other communications sent in by the petitioner, the IACHR identifies the following two central arguments: (i) lack of medical-psychiatric care and of free legal counsel; and (ii) forced psychiatric hospitalization, as well as negative health impacts due to malpractice during his confinement.

(i) Lack of medical-psychiatric care

4. The petitioner argues that in 2012 his physical and mental health began to deteriorate, as he suffered constant episodes of fatigue and depression that incapacitated him to the point of being unable to

work. Consequently, he asked the government of the province of Cordoba for assistance in the form of food assistance and medical-psychiatric care, which were repeatedly denied. Accordingly, on August 17, 2013 he filed four claims with the Center for Comprehensive Care for Citizens (Centro de Atención Integral al Ciudadano) of the province of Cordoba to secure access to a physician who could diagnose his physical and mental symptoms, registered as files WS13-272959, WS13-272960, WS13-272961, and WS13-272962. Nonetheless, that provincial office apparently did not respond to any of his claims.

5. He indicates that as a result of the foregoing, he went before the Attorney General's office of Cordoba to request legal counsel for the purpose of filing an *amparo* action, but it was denied. Subsequently, he went before the public defense office of the judicial branch of Cordoba; nonetheless, he was also denied representation, and was said to have been threatened with being committed in a psychiatric hospital if he continued making the requests.

6. On August 27, 2013, he filed an *amparo* action, on his own account, before Court of Criminal Enforcement No. 1, claiming violation of his constitutional rights due to the refusal to provide him food assistance and medical care. Then, given the lack of a response, in mid-2014 he filed a request for prompt dispatch with the same court to expedite the processing of that *amparo* action. Nonetheless, the clerk of the court told him that it was not possible to continue the procedure due to the lack of a registered lawyer, whose signature necessarily had to appear in the complaint memorial.⁵

(ii) Forced psychiatric hospitalization and negative health impacts due to medical malpractice

7. He indicates that in October 2014 he was forcibly committed at the Neuropsychiatric Hospital of Cordoba, where he remained one month. He says that during his commitment he did not undergo any clinical analysis, he went one week without any medical care, and he was sedated with psychopharmaceuticals throughout his stay, during which he witnessed cruel acts directed against other patients.

8. Subsequently, in October 2015, he was diagnosed with diabetic ketoacidosis and was hospitalized for a week. He states that he did not know he was diabetic and that during his confinement at the Neuropsychiatric Hospital of Cordoba he did not undergo any clinical analysis and was administered medicines not apt for diabetics, which aggravated this disease.

The Argentine State

9. The State, in its response, supplements the facts narrated by the petitioner. Accordingly, in connection with the alleged lack of free legal counsel, it adds that: "... *the judicial public servants involved asked him to fill out a sworn statement that included, among other things, his personal information, the existence of assets, source and amount of his income, attaching the corresponding certifications. Nonetheless, Mr. Banegas refused to do so, and withdrew his request for counsel....*" Moreover, regarding the criminal complaint brought January 14, 2014, for denial and delay of justice, it indicates that the office of the prosecutor took various steps together with the Ministry of Social Development of Cordoba. For example, on February 4, 2014, it was ordered that an expert psychiatric examination of the petitioner be performed; he was diagnosed with depression.

10. The State indicates that in August 2013 Mr. Banegas requested legal assistance from the Office of the Ombudsperson (Ministerio Público de la Defensa), and although it informed him that it wasn't competent to provide him legal counsel for filing the *amparo* action, it did request that the Ministry of Social Development of Cordoba obtain the economic assistance – the State does not explain the nature of this assistance – requested,

⁵ On January 14, 2014, the petitioner filed a criminal complaint for the crime of denial of justice and delay of justice against the Court of Enforcement No.1 and the Corps of Civil Attorneys-at-Law (Cuerpo de Asesores Letrados Civiles) of Courts I. On April 11, 2014, the Court of Control and Misdemeanors No. 7 archived the complaint due to the non-existence of the crime. In addition, on August 27, 2014, he filed a complaint with the Office of the Federal Prosecutor of Instruction No. 1 against the judge of First Instance No. 1 for the offenses of breach of public duty (*prevaricato*) and denial of justice, for failure to allow the *amparo* action filed to go forward. Nonetheless, on September 9, 2014, that prosecutorial office dismissed the complaint for failure to include the signature of a lawyer, as well as for lack of jurisdiction and non-existence of the offense.

and asked the *Hospital de Clínicas of Cordoba* to study his case. Nonetheless, the support did not materialize because Mr. Banegas ceased communicating with the representative of the Office of the Ombudsperson.

11. In addition, Argentina transcribes the following information issued by the office of Human Rights and Justice of the Judicial Branch, which entered an appearance in the *amparo* action brought by the petitioner:

... On October 2, 2014, the head of the Office of Human Rights and Justice of the Judicial Branch made an appearance in the *amparo* case, providing a report on his involvement in the case after learning of his possible situation of vulnerability.

This official said that he had gone to Banegas's home on April 7, 2014, on which occasion he conducted interviews to gather information about his situation. Accordingly, that office communicated with the Provincial Psychiatric Hospital, making an appointment for Mr. Banegas and communicating this to him and to Mr. Héctor Banegas (Lucas's father) in order to ensure he would be in agreement.

In addition, this office interviewed Héctor Banegas and proposed to him to look into the possibility of including Lucas Banegas in his health plan, and reevaluating the family dynamic for his other children to assist in caring for their brother. The Office of Human Rights also committed to articulating with the Dispensary and the Neuropsychiatric Hospital regarding the possibility of providing services to Lucas.

12. Second, with respect to the alleged lack of medical-psychiatric care and the involuntary commitment of Mr. Banegas, Argentina indicates that on October 21, 2014 the Court of Criminal Enforcement No. 1 of Cordoba requested the petitioner's transfer to the Neuropsychiatric Hospital, where the health personnel evaluated his medical situation and determined he should be committed involuntarily due to the risk of harm to third persons in light of his mental state. On May 28, 2015, he was discharged, and on June 4, 2015, he left under medical treatment. In addition, the State indicates that since December 2018 Mr. Banegas has been receiving a disability pension in keeping with Article 9 of Law No. 13,478.

13. In summary, the State argues that the authorities took the following actions in favor of Mr. Banegas: (i) on October 6, 2014, the court (before *amparo* which the action was filed) ordered that the Forensic Psychiatric Service be officially notified so as to attend to Mr. Banegas; (ii) on October 14, 2014 his counsel urgently requested that Mr. Banegas be examined; (iii) on October 21, 2014, the Office of Human Rights asked the Neuropsychiatric Hospital to perform an evaluation, which resulted in being committed until June 4, 2015; (iv) that agency interviewed Héctor Banegas and proposed that Lucas Banegas be incorporated into his health plan; (v) on October 21, 2014, the judge ordered petitioner's transfer to the Neuropsychiatric Hospital; (vi) on October 27, the court ruled to keep the measure in place; (vii) on May 28, 2015, it was reported that the patient was stabilized and discharged; and (viii) since December 2018 the petitioner has been receiving a disability pension from the federal government.

14. Next, the Argentine State asks the IACHR to find the instant petition inadmissible on grounds of: (a) failure to exhaust domestic remedies; and (b) failure to state facts that tend to establish a violation of the rights protected by the Convention.

15. Regarding (a), related to the alleged medical malpractice during Mr. Banegas's hospitalization, the State adduces that he could have brought an action for damages to sue the health personnel who attended to him for medical malpractice; nonetheless, he failed to exhaust this judicial remedy before turning to the inter-American system of protection.

16. As for (b), the State argues that the public servants at the Office of the Human Rights Ombudsperson gave impetus to several measures to respond to the petitioner's requests for economic and medical support, culminating in his hospitalization in October 2014 and in granting the disability pension in December 2018. It also notes that while public defender services of the judicial branch of the province of Cordoba were unable to take on the free legal representation of Mr. Banegas because he did not produce a set of basic data to show his economic need, as stipulated by Law No. 7,982 on Free Legal Assistance, in the decision ordering the psychiatric diagnosis the court involved ordered that Mr. Banegas be assigned counsel, who participated on a permanent basis during the judicial oversight of his commitment.

17. Along those lines, the State argues that it did not violate the petitioner's rights to judicial protection and judicial guarantees, since the circumstances that resulted in the *amparo* action not being processed are due to "*procedural law provisions that are to be applied by judges, consistent with methodological criteria geared to ordering the use of the actions and making the judicial work more important.*" Therefore, it concludes that the facts alleged by the petitioner do not tend to establish violations of human rights.

18. Finally, Argentina claims that the petition was forwarded to it seven years after it was filed, which it considers untimely and incompatible with the State's right to mount a defense.

The petitioner's reply

19. On April 15, 2024, the petitioner indicated that he did not receive support from the agencies of the State to obtain free legal assistance, asserting as follows: "*... I say and I maintain that this statement is absolutely false and a lie. At no time was I asked to fill out any sworn statement. On three occasions I went to the offices that provide public defense services and all three times I received almost the same denigrating treatment....*"

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

20. In order to analyze the exhaustion of domestic remedies the IACHR recalls that according to its consolidated and reiterated practice, the first methodological step is to identify the adequate remedies that the petitioner should have exhausted before having recourse to the inter-American system. This analysis implies breaking down the different claims presented in the petition to proceed to exam each of them one by one.⁶ In this case, two main claims are identified: (a) the refusal to provide access to public health services and the lack of free legal representation; and (b) negative impacts on his integrity due to medical malpractice.

21. As regards claim (a), on August 17, 2013, the petitioner filed four claims against the Center for Comprehensive Care for Citizens of Cordoba to obtain access to a physician. Given the lack of a response, on August 27, 2013, he filed an *amparo* action, not processed due to the lack of a lawyer's signature.

22. In this regard, the Commission recalls that Article 46(2)(b) of the Convention is applicable when one is able to identify that, despite the existence of an adequate legal remedy, it would not be effective due to the presence of factual or legal obstacles. Accordingly, the Commission has applied that exception in situations in which it considered that the conduct of an authority did not enable the alleged victim to access or exhaust the judicial remedy suitable for addressing his or her situation;⁷ also, in situations in which it identified that the presence of a given legal provision or institution rendered that remedy ineffective;⁸ and even in matters in which both situations were present, to the extent that there were factual as well as legal obstacles.⁹

23. In the instant matter, the Commission observes that the State, in its defense, maintains that the petitioner was offered to begin the process for requesting free legal assistance, and that he did not do so. The petitioner, for his part, squarely denies that this was the case, as transcribed in paragraph 18 of the previous section. In any event, as it is a positive act of the State, it must produce some evidence that supports

⁶ For example, see the following admissibility reports of the IACHR: Report No. 117/19. Petition 833-11. Admissibility. Freed workers of the Boa-Fé Caru Plantation. Brazil. June 7, 2019, paras. 11, 12; Report No. 4/19. Petition 673-11. Admissibility. Fernando Alcântara de Figueiredo and Laci Marinho de Araújo. Brazil. January 3, 2019, paras. 19 ff.; Report No. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017, para. 12; Report No. 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, paras. 26, 27; Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, paras. 15-16; Report No. 122/17. Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, paras. 12 ff.; Report No. 167/17. Admissibility. Alberto Patishtán Gómez. Mexico. December 1, 2017, paras. 13 ff.; and Report No. 114/19. Petition 1403-09. Admissibility. Carlos Pizarro Leongómez, María José Pizarro Rodríguez and family members. Colombia. June 7, 2019, paras. 20 ff.

⁷ IACHR, Report No. 214/22, Admissibility, Petition 867-09, Aberlardo Árevalo Choque et al., Bolivia, August 13, 2022; Report No. 303/22, Admissibility, Petition 958-15, John Sotomayor Pinuer, Chile, November 8, 2022; and Report No. 378/21, Admissibility, Petition 1835-14, Juan Antonio Miralles Fernández and E.L.M.F., Ecuador, December 1, 2021.

⁸ IACHR, Report No. 403/20, Admissibility, Petition 1295-12, Family members of Domingo Bartolomé Tarrés, Chile, December 10, 2020; and Report No. 57/21, Admissibility, Petition 2185-12, Celia de los Ángeles Martínez Chao and Priscila de las Nieves Guido Martínez, Argentina, March 17, 2021.

⁹ IACHR, Report No. 420/21, Admissibility, Petition 1564-14, J.Z and S.Z, Brazil, December 31, 2021; and Report No. 46/22, Admissibility, Petition 1009-13, Silvestre González Pedrotti, Mexico, March 9, 2022.

that indeed Mr. Banegas was informed that he had a right to request legal assistance, which does not appear in the record of this petition. In addition, the Commission considers that in the particular context of the petitioner, who as he alleges was going through a complex moment of depression and economic limitations, the impossibility of having a lawyer to file his amparo action was indeed an obstacle to his ability to access that remedy, which was never processed.

24. Mindful of these considerations, the Commission deems it appropriate to apply the exception set out at Article 46(2)(b) of the American Convention.

25. Regarding the timeliness of the petition, the Commission notes that the *amparo* action was filed by the petitioner on August 27, 2013. Considering that the instant petition was received on April 23, 2014 by its Executive Secretariat, the IACHR considers that it was filed within a reasonable time in the terms of Article 32(2) of the Commission's Rules of Procedure.

26. On this point it is important to recall that invoking the exceptions to the prior exhaustion rule provided for at Article 46(2) of the American Convention is closely tied to the determination of possible violations of certain rights enshrined in it, such as the guarantees of access to justice and the right to effective judicial protection.¹⁰ Nonetheless, Article 46(2), by its nature and object, is a provision with autonomous content vis-à-vis the substantive provisions of the American Convention. Therefore, the determination as to whether the exceptions to the prior exhaustion rule are applicable to the case in question should be made prior to and separate from the analysis on the merits, for it depends on a different standard of appreciation from that used to determine the possible violation of Articles 8 and 25 of the Convention. This determination is a preliminary analysis that does not entail prejudging the merits issues.¹¹

27. As regards claim (b), the Commission recalls that as has been established by the organs of the inter-American system, the suitable remedies that should be exhausted pursuant to Article 46(1)(a) of the American Convention are those measures that may provide a solution to the legal situation violated in each case.¹² In situations of alleged medical malpractice or negligence harmful to human rights (the rights to life, to integrity, and to health, among others) the Commission has considered that a criminal remedy is suitable, in many precedents.¹³ Nonetheless, the petitioner has not indicated or produced information that shows that he exhausted any remedy or legal action, criminal or otherwise, in this respect.

28. Accordingly, given the lack of information provided by the petitioner, the Commission considers that he cannot show compliance with Article 46(1)(a) of the Convention and, accordingly, this specific claim is found inadmissible.

VII. ANALYSIS OF COLORABLE CLAIM

29. The Inter-American Commission reiterates that for purposes of admissibility it must decide whether the facts alleged tend to establish a violation of the rights guaranteed, as stipulated in Article 47(b) of the American Convention; or whether the petition is manifestly groundless or obviously out of order, as per Article 47(c). The criteria for evaluating those requirements differs from that used to rule on the merits of a

¹⁰ For example, one can consult the following reports of the IACHR: IACHR, Report No. 47/21. Petition 1260-11. Admissibility. Luis María Rojas Jara and family members. Colombia. March 9, 2021, para. 10; IACHR, Report No. 260/20. Petition 796-10. Admissibility. Guillermo Monroy Molano and family members. Colombia. September 28, 2020, para. 11; IACHR, Report No. 36/19. Petition 1214-09. Admissibility. Franklin Bustamante Restrepo and family members. Colombia. April 13, 2019, para. 10; IACHR, Report No. 30/17. Petition 1118-11. Admissibility. Maya Q'eqchi' Community of Agua Caliente. Guatemala. March 18, 2017, para. 45; IACHR, Report No. 68/15. Petition 882-03. Admissibility. Victims of the military dictatorship. Panama. October 27, 2015, para. 46.

¹¹ IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, para. 48.

¹² IACHR, Report No. 154/10. Petition 1462-07. Admissibility. Linda Loaiza López Soto and family members. Venezuela. November 1, 2010, para. 69; I/A Court HR, Case of Velásquez Rodríguez. Judgment of July 29, 1988. Serie C No. 4. para. 63.

¹³ See, by way of illustration, the following reports: IACHR, Report on Admissibility No. 20/12, Petition 1119-02, Aura de las Mercedes Pacheco Briceño and Balbina Francisca Rodríguez Pacheco, Venezuela, March 20, 2012, para. 27; Report on Admissibility No. 86/12, Petition 1201-07, César Lorenzo Cedeño Muñoz et al., Ecuador, November 8, 2012, para. 30; Report on Admissibility No. 79/12, Petition 342-07, Ivete Jordani Demeneck et al., Brazil, November 8, 2012, para. 23; Report on Admissibility No. 14/12, Petition 670-06, Carlos Andrés Rodríguez Cárdenas and family, Ecuador, March 20, 2012, para. 33; Report on Admissibility No. 13/09, Petition 339-02, Vinicio Poblete Vilches, Chile, March 19, 2009, paras. 44 ff.

petition. In addition, in the context of its mandate the Inter-American Commission is competent to find a petition admissible when it refers to domestic proceedings that may be violative of rights guaranteed by the American Convention. In other words, according to the above-cited provisions of the Convention, in keeping with Article 34 of the Commission's Rules of Procedure,¹⁴ the admissibility analysis is focused on verifying those requirements, which refer to elements which, if true, could constitute *prima facie* violations of the American Convention.

30. As has been established in the preceding sections, whose arguments complied with the prior exhaustion requirement, the subject matter of this petition is the lack of free medical care and legal assistance for Lucas Mauro Banegas.

31. On this point, the State has indicated that the Office of Human Rights and Justice of the Judicial Branch and Court of Criminal Enforcement No. 1 de Cordoba took various steps with the aim of providing medical, legal, and economic assistance to Mr. Banegas, which consisted of the following:

(i) On October 6, 2014, mindful that the moving party still lacked a diagnosis, the judge hearing the *amparo* action ruled: "... *notify the Forensic Psychiatry Service to go to the home of Mr. BANEGAS LUCAS MAURO ... to attend to the possible pathology of the person appearing, and even the possible need to commit him, with an indication of the appropriate hospital for that purpose. Considering that he lacks an attorney, and his presumed situation of vulnerability, it is ordered that the corresponding public defender on duty appear on his behalf.*"

(ii) On October 14, 2014, the public defender for the fourth shift appeared; she requested on a "very urgent" basis that the interdisciplinary team examine Mr. Banegas and draw up the respective report.

(iii) Stemming from the foregoing, by official note of October 21, 2014, the Office of Human Rights and Justice of the Judicial Branch asked the Neuropsychiatric Hospital to perform a medical evaluation of Mr. Banegas, which led to his commitment because of mental health issues; he was given a medical discharge on June 4, 2015, considering that he had already stabilized, and that the risk that he might do harm to himself or third persons had ceased.

(iv) In addition, that agency interviewed Mr. Banegas and proposed to him to look into the possibility of incorporating Lucas Banegas to his health plan, and of reassessing the family dynamic so that his other children might assist in the care of their brother. The Office of Human Rights also committed to coordinating with the Dispensary and the Neuropsychiatric Hospital about the possibility of serving Lucas.

(v) On October 21, 2014, in keeping with the interdisciplinary report, the judge ordered, as a precautionary measure, the petitioner's transfer to the Neuropsychiatric Hospital, where a health team validated the criterion for involuntary commitment in light of the "high risk of harm to third persons."

(vi) On October 27, the court ruled to maintain the measure in light of the interdisciplinary report and ordered the director of the Provincial Neuropsychiatric Hospital to take all measures required to ensure that the period of commitment not be prolonged beyond what would be indispensable.

(vii) On May 28, 2015, a new report was included in the record from the Provincial Neuropsychiatric Hospital in which it communicated to the court that the patient was stabilized in his psychopathological picture and he was discharged. For this reason, his medical discharge followed on June 4, 2015, and subsequently it concluded that Mr. Banegas was suffering a "persistent delirium disorder and an acute polymorphic psychotic episode."

¹⁴ Article 34 of the IACHR's Rules of Procedure provides: "The Commission shall declare any petition or case inadmissible when: a. it does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure; b. the statements of the petitioner or of the State indicate that it is manifestly groundless or out of order; or c. supervening information or evidence presented to the Commission reveals that a matter is inadmissible or out of order."

(viii) Since December 2018 the petitioner has been receiving a disability pension pursuant to Article 9 of Law No. 13,478, which provides: “*The Executive Branch is hereby authorized to grant, in the conditions set by regulation, a non-attachable pension to all persons without sufficient resources of their own, not covered by a social security regime, age seventy (70) years or more, or for whom it is impossible to work.*”

32. The petitioner did not specifically controvert these measures effectively provided by the State to benefit him. Mindful of these considerations, the IACHR considers that the petition is moot as there is no longer an actual controversy since the Argentine State in effect has responded reasonably to the demand for medical health care put forward by the petitioner, and produced specific information in this regard during this procedure. In addition, it should be reiterated that as part of these considerations, Mr. Banegas’s claim for medical malpractice was inadmissible for not showing that any judicial remedy was exhausted in this connection, therefore it is excluded from this analysis of colorable claim.

33. Therefore, the Commission concludes that the instant petition is inadmissible in the terms of Article 47(b) of the American Convention.

VIII. DECISION

1. To find the instant petition inadmissible.
2. To notify the parties of the instant decision; 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 3rd day of the month of September, 2024. (Signed:) Roberta Clarke, President; Edgar Stuardo Ralón Orellana, Arif Bulkan, and Gloria Monique de Mees, Commissioners.