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## **REPORT No. 23/14**

### **PETITION 78-00**

REPORT ON ARCHIVE

ANTONIO FRANCISCO CANO ET AL  
ARGENTINA

Approved by the Commission at its session No. 1980 held on April 4, 2014  
150 Regular Period of Sessions

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Argentina. April 4, 2014.

**REPORT No. 23/14**

**PETITION 78-00**

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April 4, 2014

**Alleged victims and petitioner:** Antonio Francisco Cano and Marta Graciela Benítez Ríos

**Alleged violations:** Articles 5, 7, 8, 11, 24 and 25 of the American Convention on Human Rights

**Date processing began:** February 4, 2002

**I. POSITION OF THE PARTIES**

**A. Position of the petitioner**

1. On February 28, 2000, the Inter-American Commission on Human Rights (hereinafter, “the Commission” or “the IACHR”) received a petition that claimed the responsibility of the Republic of Argentina (hereinafter “Argentina” or “the State”) in the alleged arbitrary detention of Antonio Francisco Cano and his wife, Marta Graciela Benítez Ríos, (hereinafter, “the alleged victims”) by police agents in 1994 for purportedly committing the crime of falsifying public documents with regard to their automobile. The petition further claimed the responsibility of the State in allegedly depriving Ms. Antonio Francisco Cano of his liberty in an arbitrary fashion and for a prolonged period of time during his pre-trial detention in the city of Resistencia, in the Province of Chaco.

2. The petitioner contended that on May 3, 1994, the alleged victims were riding in their vehicle and were detained “without an arrest warrant” “[pedido de detención]” by police agents in the city of Resistencia, Province of Chaco. The petitioner alleged that they were taken to a detention center where they were held incommunicado for several hours. He further alleged that his wife was deprived of liberty for three days and then released, and that he was held until June 4, 1994. The petitioner purported that by law the judge should have afforded them “the benefit of being released” once the first 24 hours had gone by.

3. The petitioner contended that on May 17, 1994 an indictment and pre-trial detention order were issued for the alleged commission of the crime “falsifying a photocopy,” which is not provided for under criminal law. The petitioner further contended that he should have been released and compelled to submit the title to the automobile.

4. The petitioner held that he was “released” because he fasted for 31 days, which forced authorities to admit him to a local hospital and grant him a kind of house arrest, compelling him to remain in the city of Resistencia, where he did not live or have any friends, and prohibiting him from frequenting locales open at night or drinking alcoholic beverages in public.

5. The petitioner alleged that his vehicle was “seized” by authorities, that said vehicle provided for his sole livelihood and he had purchased it in good faith. The petitioner contended that at some point, before or after the detention, the “green [registration] card” of his car must have been replaced with a photocopy that was the same color as the card. The petitioner asserted that he had the bad luck of buying a car that had irregularities, specifically, “the sale [thereof] by a cheating insuree who falsely reported the theft of his automobile to collect on the insurance.” The petitioner alleged that he did not participate in the acts for which he was charged.

6. The petitioner contended that the federal judge in Resistencia ordered a search of his business premises on the grounds that the “property title” of the automobile would be found there. He alleged that the authorities detained him, seized his automobile, and searched his premises in order to find something to discredit him because he had filed proceedings against the Municipality of Montes Caseros, where he had been denied the opportunity to open a “whiskeria” [cocktail lounge], based on the argument that the locale could possibly be used for criminal purposes. The petitioner contended that when authorities searched his premises they claimed to have found “counterfeit documents for motor vehicles, films and videos with pornographic content, and narcotics,” which had been “planted” by the authorities.

7. The petitioner argued that during his detention and throughout the proceedings, authorities violated the principle of [presumption of] innocence, his right to personally defend himself and to a speedy trial, as well as the guarantee of an impartial judge, as the federal judge of Resistencia that ordered his premises searched was from the court that was to decide whether the facts could constitute a crime.

8. With regard to exhaustion of domestic remedies, the petitioner held that his public defender had filed an appeal for reversal [recurso de casación] with the court that sentenced him to a three-year suspended sentence on June 11, 2002. Additionally, he had filed an extraordinary federal appeal [recurso extraordinario federal] regarding that judgment and subsequently a motion of complaint or ‘de facto’ appeal [recurso de queja o de hecho] with the Supreme Court of Justice of the Nation [Corte Suprema de Justicia de la Nación—CSJN], all of which were dismissed. The petitioner further held that once the official defense attorney was appointed and the proceedings moved ahead, the competent court issued a second judgment in February 2003, in the same terms as the prior judgment, regarding which his court-appointed defense attorney filed an appeal for reversal that same year.

## **B. The Position of the State**

9. The State contended that the alleged victims were detained on May 3, 1994, with Marta Graciela Benítez Ríos being released 3 days later, and the petitioner regaining his liberty on June 4, 1994. The State indicated that the criminal case was brought in the Federal Criminal Oral Court for Resistencia.

10. The State asserted that on May 17, 1994, an indictment and pre-trial detention order were handed down against Antonio Francisco Cano for allegedly committing the crime of falsifying public documents necessary to show eligibility to drive motor vehicles in concurrence with illegally changing the license plate that identify the motor vehicle, as per legislation. The State further asserted that expert handwriting analysis showed that the automotive vehicle’s registration card was false and the signature found on the back was Mr. Cano’s.

11. The State argued that the alleged victim, by wishing to defend himself, delayed proceedings with multiple briefs he submitted and with objections to the sitting judges and the public defenders appointed. For this reason, the CSJN was compelled to issue an order on February 12, 2002, having ruled on the conflict between the Office of the General Defender of the Nation and the Federal Criminal Oral Court of Resistencia, that the petitioner be appointed a public defender. The State contended that when the public defender was appointed, the case went to trial and on February 6, 2003, the Federal Criminal Oral Court of Resistencia handed down a conviction.

12. The State alleged that domestic remedies had not been exhausted nor had violations of the American Convention been committed. As concerns the failure to exhaust domestic remedies, the State contended that the official defense attorney that had been appointed filed an appeal for reversal with the First Courtroom of the National Criminal Cassation Court [Sala I de la Cámara Nacional de Casación Penal] that had yet to be decided, such that the conviction handed down by the Federal Criminal Oral Court of Resistencia on February 6, 2003 was still not final.

13. Regarding the failure to show violations of the American Convention, the State alleged that the prosecution’s case was based on testimonies, expert analyses and the preliminary investigation of the defendant who had not been truthful, in that he asserted his domicile to be in a place which had been closed

for a long time and where the title to the motor vehicle could not be found. What was found was a sales receipt and a bill from an insurance company, which were not evidence that could exculpate him as regards the acts of which he was accused. The State also contended that the delay in proceedings was essentially due to the petitioner filing defenses in the criminal case until he was compelled to appoint a defense attorney, noteworthy among which was his objection to the judges of the Federal Criminal Oral Court of Resistencia.

14. Finally, the State alleged that the petitioner had the opportunity to argue his position to the sitting judges and submit all the challenges, remedies and objections that he considered relevant, regardless of whether the results thereof were favorable or not. The State further alleged that in keeping with the provisions of the doctrine of the “fourth instance,” the petitioner’s arguments do not constitute a matter for review by the Commission.

## **II. PROCESSING BY THE COMMISSION**

15. The IACHR forwarded the petition to the State on February 4, 2002. The State presented its response on April 4, 2002, which was then sent to the petitioner. The petitioner submitted observations and additional information on July 2, 2001, June 4, 2002, October 21, 2002, and August 5, 2003. The State presented its observations and additional information on March 21, 2003 and June 1, 2005. The observations and additional information submitted were forwarded to the parties. On March 3, 2006, observations were requested from the petitioner, and on September 5, 2013 updated information was requested from both parties. In said communication, the IACHR requested information from the petitioner regarding whether the grounds that gave rise to the petition subsist, informing him that until this information was received it was impossible to continue reviewing his petition. On October 16, 2013 and January 17, 2014, one-month extensions requested by the State were granted for submission of its observations. On January 23, 2014, information was requested from the petitioner regarding whether the grounds that gave rise to the petition subsist, informing him that in the event his response was not received his petition might be archived. As of the date of approval of this report, no response had been received.

## **III. BASIS FOR DECISION TO ARCHIVE**

16. Both Article 48(1)(b) of the American Convention on Human Rights, as well as Article 42 of the Rules of Procedure of the Inter-American Commission on Human Rights provide that, as part of the process of handling petitions, once information has been received or the deadline has been set for receiving such information has lapsed, the IACHR shall verify whether the grounds for the petition or communication exist or subsist, and in the event they do not, shall order the file to be archived.

17. The petitioner’s last communication to the IACHR dates from August 3, 2003. Furthermore, the petitioner has not responded to the IACHR’s requests for information of March 3, 2006, September 5, 2013, and January 23, 2014. Having undertaken the pertinent analysis, the Commission considers it does not have the necessary information to make a decision about the petition, despite its efforts to obtain such information. The Commission further considers that the unjustified procedural activity on the part of the petitioner constitutes strong evidence of a lack of interest in going forward with the petition, such that in keeping with Article 48(b) of the Convention, as well as Article 42 of the IACHR Rules of Procedure, the Commission hereby decides to archive this petition.