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**REPORT No. 57/21**  
**PETITION 2185-12**  
REPORT ON ADMISSIBILITY

CELIA DE LOS ANGELES MARTINEZ CHAO AND  
PRISCILA DE LAS NIEVES GUIDO MARTINEZ  
ARGENTINA

Approved electronically by the Commission on March 17, 2021.

**Cite as:** IACHR, Report No. 57/21, Petition 2185-12. Admissibility. Celia de los Angeles Martinez Chao and Priscila de las Nieves Guido Martinez. Argentina. March 17, 2021.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner</b>	Celia de los Angeles Martinez Chao and Priscila de las Nieves Guido Martinez
<b>Alleged victim</b>	Celia de los Angeles Martinez Chao
<b>Respondent State</b>	Argentina
<b>Rights invoked</b>	Articles 9 (freedom from <i>ex post facto</i> laws), 10 (compensation), 11 (privacy), 13 (freedom of thought and expression), 17 (rights of the family), 21 (property), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights, <sup>1</sup> in relation to Article 1.1 thereof (obligation to respect rights); Articles I (life, liberty, and personal security), II (equality before the law), III (right to religious freedom and worship), IV (freedom of investigation, opinion, expression, and dissemination), V (protection of honor, personal reputation, and private and family life), XIV (work), XXIV (petition) and XVIII (fair trial) of the American Declaration of the Rights and Duties of Man; and other international treaties <sup>2</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Date of filing</b>	November 29, 2012
<b>Additional information received during initial review</b>	December 19, 2012, February 16, 2013, and December 8, 2014
<b>Notification of the petition</b>	June 22, 2016
<b>State's first response</b>	April 23, 2018
<b>Additional observations from the petitioner</b>	One communication in 2016, nine communications in 2017, ten communications in 2018, two communications in 2019, and one hundred eleven communications in 2020
<b>Additional observations from the State</b>	July 23, 2020

**III. COMPETENCE**

<b><i>Ratione personae</i></b>	Yes
<b><i>Ratione loci</i></b>	Yes
<b><i>Ratione temporis</i></b>	Yes
<b><i>Ratione materiae</i></b>	Yes, American Convention (deposit of instrument of ratification 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>Rights declared admissible</b>	Articles 3 (juridical personality), 8 (fair trial), 11 (privacy), 21 (property), 24 (equal protection), and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof
<b>Exhaustion or exception to the exhaustion of remedies</b>	Yes, in accordance with Section VI
<b>Timeliness of the petition</b>	Yes, in accordance with Section VI

<sup>1</sup> Hereinafter "the Convention" or "the American Convention."

<sup>2</sup> Articles 1, 18.1, 19(1) and (2), 26 and 47 of the International Covenant on Civil and Political Civil Rights, and articles 1, 2, 3, 4, 5, 14, 18 and 24 of the Universal Declaration of Human Rights.

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. The petitioning party claims that the State violated the alleged victim's rights in that it did not nullify a purchase and sale agreement which, having been deceived, she signed in favor of a third party that took advantage of her mental condition. Moreover, it says that, later, the judicial authorities wrongfully restrained the alleged victim's legal capacity because of her disability.

2. The petitioner explains that on September 27, 2001, Ms. Martinez Chao sold, as part of a fraud she fell victim to, a plot of land that comprised a house, two sheds, and woods, in the city of Junin, to Mr. Carlos Oscar Afflitto, who at that time was the head of the Directorate of Judicial Investigations. It claims that the said public officer took advantage of his job and the alleged victim's mental condition, to deceive her and establish all the conditions of the transaction, even by fixing an amount lower than the fiscal and real value of her plot of land.<sup>4</sup> The petitioner explains that although negotiations had been conducted with Carlos Oscar Afflitto, the person who appeared before the notary public as the buyer, on Bill of sale N° 134, Record N° 23, was the father, Oscar Rodolfo Afflitto.

3. On September 24, 2003, the alleged victim's husband filed a petition for interdiction, in which he applied to serve as her curator and included health certificates according to which Ms. Martinez Chao suffered from a mental disorder that caused her 80 percent disability. The petition says that taking this into account, on October 19, 2005, the Fourth Court for Civil and Economic Matters concluded that the alleged victim suffered from a mental disorder that put her at risk of doing legal acts to the prejudice of herself or her estate, and by virtue of article N° 152(a) of the Civil Code in force then, it interdicted her, appointing her husband as her curator.

4. On February 14, 2011, Junin's Fourth Court for Civil and Economic Matters granted the alleged victim and her husband the opportunity to litigate free of charge against Mr. Oscar Rodolfo Afflitto and his heirs. However, the petitioner claims that since Ms. Martinez Chao suffered domestic violence on the part of her husband, on August 2, 2011, a complaint seeking protection was filed with the same court. It says that, therefore, the Fourth Court for Civil and Economic Matters invalidated its appointment of the husband as her curator, and that on September 29, 2011, by a resolution, it appointed the alleged victim's oldest daughter as her curator.

5. Later, the alleged victim's mental health improved, and her psychiatrist issued a certificate attesting to such a situation. The petitioner claims that, with that document at hand, Ms. Martinez Chao repeatedly asked the Fourth Court for Civil and Economic Matters to check her "rehabilitation." Nevertheless, the official experts from this judicial body turned down her request several times by using purportedly erroneous and fraudulent expert opinion reports. The petitioner says that in those requests, the alleged victim, with the help of her oldest daughter, requested the Court to lift the restraint on her legal capacity, but this tribunal denied her request once more and ratified her interdiction. It points out that, consequently, the alleged victim appealed that ruling on June 9, 2020; but, on September 1, 2020, the Federal Court of Appeals for Civil and Economic Matters rejected the appeal and ratified the trial court's ruling. The petitioner explains that the said Federal Court contended, based on article N° 32 of Argentina's National Civil and Commercial Code,<sup>5</sup> that the alleged victim's legal situation conformed with the Convention on the Rights of Persons with Disabilities, as she was recognized a framework of autonomy that, nevertheless, included reasonable restraints on specific actions that, given their significance, required the implementation of a support system. The petitioner says that,

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<sup>4</sup> It says that Mr. Carlos Oscar Afflitto valued the sale at USD 17,000.00 and decided that the amount of USD 5,000.00 be paid in cash and that the rest be paid in kind with a used utility van, Fiat Fiorino, model 2000, valued at USD 12,000.00.

<sup>5</sup> Article 32 of the Civil and Commercial Code. - Person with limited capacity and with incapacity. A judge may restrain certain acts of persons aged 13 or more who suffer from an addiction or a permanent or prolonged mental disorder of such severity that exercise of their full capacity is deemed a potential risk of prejudice to their person or their property. As for such acts, the judge shall appoint the necessary helper or helpers under article N° 43 and specify their responsibilities along with the reasonable adjustments to the person's needs and circumstances. The appointed helper or helpers shall promote autonomy and favor those decisions that best serve the preferences of the protected person. Exceptionally, when a person is completely unable to interact with their environment and express their will through any way or means, and the support system proves ineffective, a judge may declare that person incapable and appoint a curator.

because of this decision, the alleged victim filed an extraordinary appeal seeking a judgment of inapplicability, with the Supreme Court of Justice of Buenos Aires Province, which has not been decided yet.

6. At the same time, on August 25, 2006, the alleged victim and her husband filed, with Junin's Fourth Court for Civil and Economic Matters itself, a petition for the nullity of the abovementioned purchase and sale agreement purportedly entered by deceit. The petitioner says that on March 8, 2010, the said Court issued a resolution ruling the nullity of the purchase and sale agreement and the restitution of the estate. The Court considered, among other aspects, that the alleged victim's disability did not allow her to fully understand the consequences of her acts. The petitioner argues that Mr. Carlos Oscar Afflitto presented an appeal against that resolution and that on October 5, 2010, the Federal Court of Appeals for Civil and Economic Matters revoked that ruling and rejected the petition. This body considered that the amount of the agreement was appropriate for the value of the estate and that the alleged victim's interdiction had been ordered four years after that transaction. The petitioner says that the alleged victim presented an extraordinary appeal seeking a judgment ruling the inapplicability of that decision and that on October 5, 2011, the Supreme Court of Justice of Buenos Aires rejected it on formal grounds. The petitioner reports that such an error in the presentation of the appeal was due to negligence on the part of Ms. Martinez Chao's private lawyer, whose subsequent withdrawal made it impossible to appeal to the Supreme Court of Justice.

7. Considering these facts, the petitioning party claims that Mr. Carlos Oscar Afflitto took advantage of the alleged victim's mental condition, as the price that he paid her for the sale of her real estate was less than a third of its market value. It argues that the expert opinion report carried out in the nullity proceedings was fraudulent as well as reports that the Federal Court of Appeals for Civil and Economic Matters did not allow Ms. Martinez Chao to access the record, make copies of it, nor present evidence and that the Court did not appoint a public defense counsel despite her having so requested several times. Furthermore, regarding the legal process of rehabilitation, the petitioner emphasizes that the Federal Court of Appeals that ratified her interdiction is the same Court that determined the validity of the juridical act of purchase and sale at issue. The petitioner argues that the court rulings are unfair because they are based on a fraudulent expert opinion report; thus, it is unfair that the alleged victim continues to have her legal capacity unnecessarily interdicted.

8. It moreover says that throughout these years, even though she resorted to all the tiers of the legal system, domestic remedies have proven to be ineffective given the authorities' permissive attitude toward the reported irregularities and their discriminatory attitude toward her being a woman with disabilities. The petitioner further asserts that this petition must be exempted from the requirement of timeliness because in 2012, the resolution issued by the Supreme Court of Justice of Buenos Aires was not notified and the alleged victim learned about the resolution by a note slipped under the door of her house.

9. The State, for its part, contends that the facts reported do not constitute a human rights violation attributable to it. It argues that in all the remedies that she filed, the alleged victim was able to present evidence, attend hearings, and receive notifications and reasoned judgments. It also says that she was able to challenge every decision because she used domestic remedies to raise her claims, which in due course were decided by impartial and independent tribunals that addressed her claims within the scope of their competence and following the rules of due process. Therefore, the State requests that the instant petition be declared inadmissible under Article 47(b) of the American Convention as it considers that the petitioner intends to have the Commission intervene as a court of appeals, which contradicts its subsidiary nature.

10. Moreover, it claims that the instant petition is inadmissible because domestic remedies have not been exhausted; that the rehabilitation process has not been decided yet because the alleged victim continues to have her health periodically examined; and that the nullity proceedings have been at a standstill since January 6, 2016, due to the parties' lack of procedural activity. Furthermore, it argues that the alleged victim has not provided accurate and coherent information to substantiate the exhaustion of domestic remedies under Article 28 of the Rules of Procedure of the IACHR. Lastly, it alleges what it considers an "overdue filing of a petition," because of the time elapsed between the initial filing and its notification to the State.

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

11. The alleged victim considers that the requirements for filing a petition to the IACHR have been met. The State, for its part, contends that no information has been provided that demonstrates the exhaustion of domestic remedies.

12. As for the interdiction process, the Commission observes that the alleged victim requested several times the lift of the restraints on her legal capacity, but that the authorities rejected those requests since according to the expert opinion reports, she had not recovered yet. Because of this, the IACHR considers that Ms. Martinez Chao did not have access to adequate and effective remedies that, based on the principle of equal recognition of juridical personality, could have addressed her claims. Therefore, the IACHR concludes that the case at hand warrants the application of the exception to the exhaustion of domestic remedies, established in Article 46.2(a) of the American Convention. Regarding the date of filing, the Commission believes that the petition was filed within reasonable time according to Article 32.2 of the Rules of Procedure of the IACHR.

13. Concerning the nullity of the juridical act of purchase and sale, the IACHR observes that at the beginning of that legal process, the alleged victim was interdicted and, later, under a regime of limited legal capacity. Consequently, while the State argues that such proceedings have been at a standstill since January 6, 2016, the IACHR considers that the restraints on Ms. Martinez Chao's legal capacity have limited her ability to take any legal steps. Therefore, considering the characteristics of the instant case, the Commission believes that the situation reported by the petitioner falls within the exception to the exhaustion of domestic remedies, established in Article 46.2(b) of the ACHR. As for this aspect, the Commission also considers that the petition meets the requirement of timeliness as per the provisions of Article 32.2 of the Rules of Procedure of the IACHR.

## **VII. ANALYSIS OF COLORABLE CLAIM**

14. Because of these considerations and having examined the elements of fact and law presented by the parties, the Commission finds that the petitioner's claims, regarding the restraints on the alleged victim's right to legal capacity, the damage on her estate, the lack of judicial protection against fraud, and the consequences that her being a woman with disabilities has had in her personal life, all are not manifestly groundless and require a substantial analysis. For if proven to be true, these claims may constitute violations of Articles 3 (right to juridical personality), 8 (fair trial), 11 (privacy), 21 (property), 24 (equal protection), and 25 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof.

15. As for the purported violation of Articles 9 (freedom from *ex post facto* laws), 10 (compensation), 13 (freedom of expression and thought), and 17 (rights of the family) of the Convention, the Commission believes that the petitioner has not submitted claims or evidence such that it may determine, *prima facie*, such possible violations.

16. The IACHR reiterates that once the American Convention becomes effective in relation to a State, it is this and not the Declaration that becomes the primary source of law applicable by the Commission as long as a petition concerns an alleged violation of similar rights enshrined in both instruments and that it is not an ongoing situation. Moreover, as for the other international instruments invoked in the petition, the Commission reiterates that it is not competent to determine violations of the norms of those treaties, although it may consider them to interpret the rules of the American Convention, according to Article 29 of the said Convention.

## **VIII. DECISION**

1. To declare the instant petition admissible with regard to Articles 3, 8, 11, 21, 24, and 25 of the American Convention, in accordance with Articles 1.1 and 2 thereof;

2. To declare this petition inadmissible with regard to Articles 9, 10, 13, and 17 of the American Convention; and

3. To notify the parties of this decision 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 17<sup>th</sup> day of the month of March, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández, and Stuardo Ralón Orellana, Commissioners.