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REPORT No. 62/15
PETITION 1213-07
ADMISSIBILITY REPORT

GRACIELA RAMOS ROCHA
ARGENTINA

Approved by the Commission at meeting No. 2050 held on October 26, 2015
156TH Regular Period of Session.

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I. SUMMARY

1. On September 17, 2007, the Inter-American Commission on Human Rights (hereinafter, “the Commission” or “the IACHR”) received a petition lodged by Mrs. Stella Maris Martínez under the Program for the Application of Human Rights Treaties of the National Public Defender’s Office (hereinafter “the petitioner”), alleging international responsibility on the part of the Republic of Argentina (hereinafter “the State” or “Argentina”) in relation to the procedure whereby Mrs. Graciela Ramos Rocha (hereinafter “the alleged victim”) was convicted of squatting, in violation of the principle of legality.

2. The petitioner claims an alleged violation of the principle of legality and judicial guarantees enshrined in Articles 8 and 9 of the American Convention on Human Rights (hereinafter “the American Convention” or “Convention”) and of the obligation to respect and guarantee rights as provided under Article 1.1 and the obligation to adopt domestic measures as provided under Article 2. The State contends that the petition is inadmissible as it does not describe a potential violation of the American Convention and its intent is to make use of the IACHR as a higher tribunal.

3. Without prejudging the merits of the matter, having examined the positions of the parties and compliance with the requirements of Articles 46 and 47 of the American Convention, the Commission has decided to declare the petition admissible for the purpose of examining the allegations concerning the alleged violation of Articles 8, 9, and 25 of the American Convention, in connection with Articles 1.1 and 2. The Commission has furthermore decided to notify the parties of this decision and publish and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE IACHR

4. The Commission received Petition 1213-07 on September 17, 2007. On November 11, 2011 a copy was forwarded to the pertinent officials of the State, which was given two months to submit its comments. On December 20, 2013 the Commission received the State’s response, which was forwarded to the petitioner. The petitioner submitted additional comments on March 20, 2013, March 20, 2014, June 30, 2015, and July 17, 2015. These communications were duly forwarded to the State.

III. POSITION OF THE PARTIES

A. Position of the Petitioner

5. As background information, the petitioner states that at the time of the events, Graciela Ramos Rocha, who was unemployed, was pregnant and had three minor children under her charge—one of them with severe physical and mental disabilities. She states that to escape the brutal domestic violence to which she had been subjected for years by her husband, she decided to abandon the home owned by her husband’s family and found herself on the streets. For that reason, she, with her children, took up residence in a vacant dwelling without forcing any locks since the door was open. In this regard, the petitioner states that the reasons that drove the alleged victim to occupy the dwelling should be considered in light of her straitened circumstances.

6. The petitioner states that the alleged victim was reported to the police and tried for squatting, a criminal offense under Article 181.1 of Argentina’s Penal Code. She asserts, nevertheless, that the

conduct ascribed did not meet the criteria for the crime of squatting; hence, the conviction violated the principle of legality, as under the Code *“the punishment for an individual who, through violence, threats, deception, abuse of trust, or covert activities fully or partially deprives another individual of the possession or holding of real property or of the exercise of a real right thereover, whether by invasion of the property, residence therein, or the expulsion of its occupants, shall be a prison term of six months to three years.”*

7. She states that on August 5, 2003, the Fourth Correctional Court of the First Judicial District of Mendoza Province found Graciela Ramos Rocha guilty, conditionally sentencing her to one year in prison as criminally liable for the crime of squatting. The judgment of this Court was that “the mere presence on the property of the individual who committed the act in itself constitutes a form of intimidation”.

8. She reports that, in response to the guilty verdict, the official defender of the Fourth Office for the Defense of the Poor and Absent filed an appeal, which was declared admissible on August 28, 2003. On September 22, 2003, the Attorney General of Mendoza Province issued an opinion upholding the arguments of the defense, alleging in the brief submitted that the “deprivation of property attributed to the convicted party does not meet the definition of the crime, since the presence of the means for committing the crime established by law has not been verified” and that the judgment handed down should be overturned and full acquittal granted due to the absence of the established criteria.

9. She alleges that the Supreme Court of Mendoza Province denied the appeal through a resolution dated November 12, 2003, recapitulating the arguments of the first court. The petitioner states that “the magistrates acknowledged that Ramos Rocha had entered the property without using any of the criminal means mentioned in the law, interpreted that the crime of squatting arises from the complaint of the legitimate owner or holder and the refusal of the occupant to turn over the property, and, paradoxically, accepted that the alleged victim [of the crime of squatting] had never gone to the property or spoken with the convicted party”. She notes that “with these contradictory arguments, the Court denied the appeal”.

10. She states that the public defender filed a federal extraordinary appeal with the Supreme Court of Mendoza, which was dismissed on December 22, 2003 without an investigation into the merits of the case, despite the Attorney General’s opinion in favor of granting it. The resolution indicates that the application and interpretation of regulations and acts under common law had been excluded from the normal review of the federal extraordinary appeal, referring expressly to the Penal Code as a type of these regulations; that is, “that matters related to the interpretation, application, and intelligence of legal codes are not appropriate for commencing the procedural remedy process”.

11. With the denial of the federal extraordinary appeal, the alleged victim lodged a complaint *in forma pauperis* and, appearing before the Supreme Court of the Nation (hereinafter “the CSJN”) the Public Defender’s Office took over the legal defense. On March 20, 2007, the CSJN declared the appeal inadmissible, invoking Article 280 of Argentina’s National Code of Civil and Commercial Procedure, which states that the Court, in its sound discretion and by simply invoking this regulation, can deny an extraordinary appeal for lack of sufficient federal tort or when the matters involved prove insubstantial or unimportant. She indicates that with this judgment, whose notification date was March 26, 2007, all domestic remedies were exhausted.

12. The petitioner questions the CSJN’s action in declaring the appeal inadmissible based on Article 280 of the National Code of Civil and Commercial Procedure, arguing that the right to a second hearing and judicial review of the case against the defendant, as provided for in Article 8.2 of the American Convention, had not been respected.

13. She furthermore asserts that the conduct of the presumed victim was criminalized, as she was convicted of squatting, even though she had not employed the criminal means described in the law when, with her minor children, she occupied the property from which she was removed. The State had therefore violated the principle of legality enshrined in Article 9 of the American Convention, deducing the crime by analogy without adhering to the meaning of the legislation applied.

B. Position of the State

14. The State alleges that the petition is inadmissible, because the criminal trial respected the guarantees of due process in keeping with international human rights standards and the American Convention. It claims that the petitioner should not seek to have the IACHR act as a fourth judicial review body under the American Convention.

15. It states that on May 18, 2001, the owner of the dwelling, Mrs. Montana, went to the 11th Police Precinct in Lujan de Cuyo, Mendoza Province, to report that she had visited a property that she owned in the Estación Ugarteche district, identified cadastrally as "M-A-C-08," and found it occupied by persons unknown to her who had entered without her authorization and without notifying her of their entry.

16. It states that it therefore, at the request of Mrs. Montana, initiated an inquiry, authorized by the Fourth Correctional Court of the First Judicial District of Mendoza Province, into the alleged commission of the crime of squatting, defined in Article 181, para. 1 of the national Penal Code. This process culminated in the conditional sentencing of Graciela Ramos Rocha to one year in prison.

17. The State alleges that the petitioner is unhappy with the judgments handed down by the domestic courts. It states that the petition is a reiteration of the arguments made before the domestic courts, reflecting her dissatisfaction with the judgments of those bodies, which acted in their sphere of competence and in a manner consistent with the guarantees of due process. It therefore maintains that there has been no violation of the rights recognized in the American Convention.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

18. The petitioner has the legal authority to lodge a petition with the Commission under Article 44 of the American Convention and 23 of its Rules of Procedure. The petition identifies the alleged victim as a person with whom the State has made a commitment to respect and guarantee the rights recognized by the American Convention as of September 5, 1984, the date that Argentina's ratification instrument was deposited. The Commission therefore has competence *ratione personae* to examine the petition.

19. The Commission has competence *ratione loci* to consider the petition, as it alleges violations of rights protected by the American Convention committed in the territory of a State party to the Convention. The IACHR has competence *ratione temporis*, since the obligation to respect and guarantee the rights protected in the American Convention was applicable to the State on the date that the rights violations alleged in the petition are stated to have occurred. Finally, the Commission has competence *ratione materiae*, because the petition alleges violations of human rights protected by the American Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

20. Article 46(1)(a) of the American Convention requires the exhaustion of all remedies under domestic law, according to the generally accepted principles of international law, as a prerequisite for the admissibility of claims involving alleged violations of the American Convention. The purpose of this requirement is to enable the national authorities to review the alleged violation of a protected right and, if appropriate, remedy the situation before it is taken up by an international body.

21. In this regard, the petitioner alleges that the remedies were exhausted with the March 20, 2007 judgment of the CSJN, which declared the federal extraordinary appeal inadmissible.

22. From the information submitted by the parties, the Commission notes that the alleged victim was sentenced on August 5, 2003. She subsequently filed an appeal, which was denied by the Supreme Court of Mendoza, and then filed a federal extraordinary appeal, which was dismissed by the highest provincial court. Finally, a complaint was lodged against the dismissal of the federal extraordinary appeal, which was declared inadmissible by the CSJN on March 20, 2007.

23. In light of this, as reported by both parties, the Commission notes that the petitioner had exhausted all domestic remedies with the judgment of March 20, 2007, in which the federal extraordinary appeal was declared inadmissible. Therefore, given the characteristics of this petition, the Commission considers that the petition meets the requirement stipulated in Article 46(1)(a) of the American Convention.

2. Timeliness of the petition

24. Under Article 46(1)(b) of the American Convention, for a petition to be admissible by the Commission, it must have been lodged within a period of six months from the date on which the party alleging violations was notified of the final judgment. In the complaint under review, notification of the CSJN's judgment took place on March 26, 2007 and the petition was lodged with the IACHR on September 17, 2007. The Commission therefore concludes that this petition meets the requirement established in Article 46(1)(b) of the American Convention.

3. Duplication of international proceedings

25. The record does not indicate that the matter in the petition is pending settlement in another international proceeding, or that it has already been examined by this or another international body. The Commission therefore concludes that the requirements of Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the alleged facts

26. For the purposes of admissibility, the Commission must decide whether the alleged facts tend to establish a violation of rights, as stipulated in Article 47(b) of the American Convention or whether the petition is "manifestly groundless," according to paragraph (c) of that article. The standard for evaluating admissibility is different from that required to decide the merits of the petition, since the Commission only conducts a *prima facie* evaluation to determine whether the petitioners establish that an apparent or potential violation of a right guaranteed by the American Convention has taken place. This evaluation is a summary analysis that does not imply prejudgment or advance opinion on the merits.

27. Moreover, neither the American Convention nor the IACHR Rules of Procedure require the petitioner to identify the specific rights that were allegedly violated by the State in the matter put before the Commission, although the petitioners may do so. It is the responsibility of the Commission, based on the jurisprudence of the system, to determine in its admissibility reports the specific provision of the relevant inter-American instruments that is applicable and whose violation could be established if the alleged facts are proven on the basis of adequate evidence.

28. The Commission takes note that the object of this petition, which is its competence, refers to the alleged violations of criminal due process for the alleged victim and her sentencing for conduct allegedly not identified as an offense under criminal law, which would violate judicial guarantees and the principle of legality.

29. Based on the aforesaid considerations of fact and of law presented by the parties and the nature of the matter before it, the IACHR concludes that the petitioner's allegations related to the alleged violation of the principle of legality and due process may be considered potential violations of the rights enshrined in Articles 8, 9, and 25 of the American Convention in relation to its Articles 1.1 and 2.

V. CONCLUSIONS

30. Based on the aforesaid considerations of fact and of law, the Inter-American Commission concludes that this petition meets the requirements for admissibility established in Articles 46 and 47 of the American Convention, and without prejudging the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible in relation to Articles 8, 9, and 25 of the American Convention, considered in connection with the obligations established in Articles 1.1 and 2 of that instrument.
2. To notify the parties of this decision;
3. To proceed to the analysis of the merits of the case; and
4. To publish this decision and include it in the Annual Report to be presented to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 26th day of the month of October, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; Felipe González, Rosa María Ortiz (dissenting opinion), Tracy Robinson and Paulo Vannuchi, Commissioners.