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REPORT No. 61/15
PETITION 1241-04
REPORT ON ADMISSIBILITY

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ARGENTINA

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I. SUMMARY

1. On November 26, 2004, the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission,” “Commission,” or “IACHR”) received a petition lodged by Gabriel Alejandro Benítez (hereinafter “petitioner” or “alleged victim”) in which it is claimed that the State of Argentina (hereinafter “State” or “Argentina”) bears international responsibility for alleged violations of the rights enshrined in Articles 5 and 7 of the American Convention on Human Rights (hereinafter “American Convention” or “Convention”) owing to the supposedly arbitrary and unreasonably prolonged use of pretrial detention and that during said detention the alleged victim was subjected to various forms of mistreatment by prison officers.

2. The petitioner alleges that from March 28, 2002, to May 28, 2010, he was held in pretrial detention in different penitentiaries in the province of Buenos Aires, with no final judgment issued against him. He says that neither the prosecutor nor the judges involved in his case provided sufficient grounds for his pretrial detention, and that his repeated requests for release were systematically denied, with no proper reasoning offered concerning the actual need to continue the measure. He also contends that the Bonaerense Penitentiary Service officers took a number of arbitrary measures against him during his detention, such as constant transfers to penitentiary units located far away from one another, which resulted specifically in its being extremely difficult materially for him to have contact with his family and which impeded his access to opportunities for work and study in the prison setting.

3. For its part, the State maintains that the petitioner’s arguments are general in nature and do not constitute violations of the American Convention. It also comments that, under domestic law, the pretrial detention had been in effect only 2 years and 11 months when the court of first instance returned its conviction. It also reports that the alleged victim had recourse to various judicial remedies and that all of them were decided on without delay and with respect for procedural guarantees.

4. After analyzing the positions of the parties and in keeping with the requirements set out in Articles 46 and 47 of the American Convention, the IACHR decided to find the case admissible for purposes of examining the alleged violation of the rights embodied in Articles 5 (humane treatment), 7 (personal liberty), 8 (a fair trial), 17 (protection of the family), and 25 (judicial protection) of the American Convention, in conjunction with Articles 1(1) and 2 thereof. The Commission also decided to notify the parties of the report and to order its publication.

II. PROCESSING BY THE COMMISSION

5. On November 16, 2004, the IACHR received the petition and registered it as number P-1241-04. On October 30, 2009, it transmitted the pertinent parts of the petition to the State and asked it to reply within a period of two months, in accordance with Article 30(3) of the Rules of Procedure of the IACHR then in force. Following a one-month extension granted by the IACHR, Argentina submitted its considerations on the petition on April 22, 2010.

6. The IACHR received additional information from the State on December 28, 2011, and from the petitioner on August 1, 2006; April 17, 2009; September 1, 2009; and August 18, 2010. All of these communications were duly transmitted to the opposing party.

III. POSITION OF THE PARTIES

A. Position of the petitioner

7. The petitioner reports that, on March 28, 2002, he was deprived of liberty pending trial in a criminal case against him and that this measure went on for eight years and two months, at which time —still without a final conviction— he was granted conditional release as he had served two thirds of the sentence imposed by the court of first instance. This possibility is provided for in Article 13 of the Criminal Code of Argentina, which reads: “[...] anyone sentenced to prison for over three (3) years who has served two thirds [of the sentence] [...] regularly complying with prison regulations, may be released by court order, subject to a report from prison management and a report from other specialists [...].”

8. He comments that from the outset of his detention he filed numerous court appeals (appeal against pretrial detention, habeas corpus, requests for release or an end to pretrial detention, appeals against the denials of habeas corpus and of release, etc.) challenging in the various courts (Court of First Instance, Court of Appeals, Criminal Appellate Chamber, and Supreme Court of Justice of the Province of Buenos Aires) not only the unjustified and excessive duration of his pretrial detention but also the grounds on which it was imposed. However, all appeals were consistently denied.

9. The first request for release or for a precautionary measure other than pretrial detention was allegedly submitted on June 19, 2002. In that submission the petitioner presented a number of circumstances intended to challenge the existence of a danger of flight or of obstruction of the criminal investigation. In that regard, emphasis was placed on the fact that he had a fixed domicile, a family to maintain, and various witnesses who could attest to his good conduct. It was also mentioned that other matters should be taken into account, such as the fact that, following the act with which he was charged, he had voluntarily turned himself in to the authorities and the fact that he had never before been found guilty of criminal charges. The judge dismissed the appeal without referring to any of the points made by the petitioner, but simply claimed that the danger of flight and of obstruction of the criminal investigation necessarily resulted from the amount of the sentence that would be handed down if the accused was to be found guilty. The judge also supposedly based his ruling on the fact that, in his view, the crime with which the petitioner was charged, murder, showed his “contempt for human life.”

10. The petitioner also reports that the prosecutor’s request for pretrial detention consisted of a simple accounting of the evidence collected initially during the first stages of investigation and that, along similar lines, the Court of Appeals, which upheld the imposition of pretrial detention, focused its analysis on the quality of such evidence, but not on the determination of a possible danger of flight or of obstruction of the ongoing investigation.

11. Moreover, the petitioner contends that, once in the prison system, he was the victim of constant, sudden transfers to different penitentiary units in the vast territory of the province of Buenos Aires. Said transfers, he alleged, not only restricted his access to educational and employment activities they also seriously hindered his contact with family and friends given that he was moved to prisons very far from where his loved ones lived.

12. He also says that those transfers were a form of intimidation and punishment by the Penitentiary Service officials, whom he claimed were criminally responsible for supposed acts of extortion, corruption, and unlawful pressure.

13. Likewise, the petitioner reported that in many of the places in which he was held he was intentionally placed in an aggravated situation of risk since, as he was a former member of the police force of the Province of Buenos Aires. He claims that he was often housed in general cellblocks where he was exposed to inmates who were vengeful and felt strong animosity toward members of police forces.

14. He also claims that he was regularly a victim of solitary confinement, both in a disciplinary cell and in his own cell, because of punishments imposed on the basis of allegedly falsified facts. This confinement meant that he was unable to engage in employment or educational activities, communicate with his family, or even have access to minimum standards of hygiene.

15. In addition, he alleges that another form of arbitrary punishment was used against him, namely, the manipulation and falsification of the results of various evaluations (“criminology reports”) conducted by Penitentiary Service psychologists, which were to be transmitted to the judge concerned as a basis for deciding whether to grant him possible temporary release authorizations.

16. In his communication of August 18, 2010, the petitioner states that he still does not have a final conviction.

B. Position of the State

17. The State denies any violation of the petitioner’s rights. It indicates that the points denounced are generic allegations linked to requests for justice and to the supposed worsening of the petitioner’s detention conditions in the penitentiary system and that those grievances were raised in numerous instances and in habeas corpus petitions, which had been ruled on without delay and without any violations of procedural guarantees. For example, the State cites an order issued by Oral Criminal Court No. 4 of Lomas de Zamora in February 2006, for the petitioner to be housed in a section of the prison intended for security force members. It cites as a second example the processing of a habeas corpus request presented on October 8, 2007, in which the judge granted the petitioner a transfer to a lower-security prison.

18. Furthermore, Argentina points out that on February 21, 2005, the petitioner was convicted by the court of first instance and that, for that reason, pursuant to national law 25.430, from that moment on his deprivation of liberty was no longer calculated as pretrial detention, which meant that the period of pretrial detention had lasted only 2 years and 11 months, in accordance with applicable law.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

19. Pursuant to Article 44 of the American Convention, the petitioner is entitled to file petitions with the IACHR. The petition identifies as the alleged victim an individual in respect of whom the State of Argentina committed to respect and guarantee the rights enshrined in the American Convention, to which it has been party since September 5, 1984. The Commission is therefore competent *ratione personae* to examine the petition. Likewise, the Commission is competent *ratione loci* to hear the petition inasmuch as it alleges violations of rights protected by the American Convention said to have taken place within Argentine territory.

20. The IACHR is competent *ratione temporis* since the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State on the date when the acts alleged in the petition took place. Finally, the IACHR is competent *ratione materiae* inasmuch as the petition refers to possible violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

21. Article 46.1.a of the American Convention establishes that for a petition presented to the IACHR to be admitted pursuant to Article 44 thereof, domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to enable national authorities to take cognizance of an alleged violation of a protected right and, where appropriate, to resolve it before it is taken up by an international body. Article 46(2) of the Convention establishes three instances in which the exhaustion of domestic remedies rule does not apply: (a)

when the domestic legislation of the State does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) when the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and (c) when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. These instances do not only refer to the formal existence of such remedies, but also to such remedies being adequate and effective.

22. Furthermore, in the case of petitions in which it is alleged that pretrial detention was misused or excessively long, the Commission has established that these claims “in the context of Article 46(1)(a) of the Convention [...] have their own dynamics for the exhaustion of domestic remedies that are independent from those that apply to the criminal proceeding as a whole,”¹ and that “the presentation of the request for conditional release followed by the denial thereof suffices to substantiate the exhaustion of remedies.”²

23. In this regard, as it is clear from the documentation submitted, the petitioner repeatedly challenged his pretrial detention and requested his release. However, every application was systematically denied. Among these appeals were the habeas corpus petition filed on March 28, 2004, which was denied in first place by the Oral Criminal Court No. 4 of Lomas de Zamora, and then by the Court of Appeals and Safeguards, the Appellate Chamber, and the Supreme Court of the Province of Buenos Aires. Consequently, the Commission considers that the requirement set in Article 46(1)(a) of the American Convention has been met with regard to the alleged use of pretrial detention under parameters or assumptions contrary to the rule established in the American Convention.

24. In addition, it is apparent from the different petitions for habeas corpus (January 25, 2006; June 22, 2006; January 4, 2007; and April 16, 2007, inter alia) that the petitioner had brought to the attentions of executive and judicial branch officials the alleged threats, sudden transfers to prisons in extremely distant locations, alleged unjustified solitary confinement, and other forms of prison harassment that allegedly undermined his ability to establish sufficient ties with his family and at the same time hampered any occupational and/or educational activity he might have engaged in. It is therefore clear that the petitioner filed the appropriate judicial remedies in these cases.³ The IACHR notes that the State has not called into question the exhaustion of remedies on this point, nor has it provided information on possible investigations or corrective measures taken in response to said appeals.

25. With respect to these considerations, the IACHR considers that the petitioner met the requirement for the exhaustion of domestic remedies in relation to the alleged violations of his rights resulting from the detention conditions he was subject to during the time of his pretrial detention and from the conduct of the prison officials. The State, for its part, did not challenge the prisoner’s exhaustion of domestic remedies with regard to the set of allegations regarding prison conditions. Thus, the Commission concludes that on this point as well the petition meets the requirement established in Article 46(1)(a) of the American Convention.

2. Timeliness of the petition

26. Article 46(1)(b) of the American Convention establishes that for a petition to be admissible, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment.

27. In this case, in September 2004 the petitioner was notified that the Criminal Cassation Tribunal of the Province of Buenos Aires had denied his habeas corpus request, which called for an end to his

¹ IACHR, *Report on the Use of Pretrial Detention in the Americas*, approved on December 30, 2013, para. 201.

² IACHR, Report No. 12/96, Case 11.245, Jorge A. Giménez, Argentina, March 1, 1996, para. 57.

³ IACHR, Report on Admissibility No. 8/11, Petition 302-03 - Aníbal Alonso Aguas Actos and Family (Ecuador), March 22, 2011.

pretrial detention. The case documents indicate that, beginning in January 2006, the petitioner lodged various habeas corpus requests with court officials with respect to the alleged violations of his rights resulting from his detention conditions. The IACHR therefore concludes that since the petition was submitted on November 26, 2004, the requirement established in Article 46(1)(b) of the American Convention was met.

3. Duplication of international proceedings and res judicata

28. For a petition to be ruled admissible, Article 46.1.c of the American Convention requires that the subject of the petition not be pending in another international proceeding for settlement, and Article 47.d requires that the petition not be substantially the same as one previously studied by the Commission or by another international organization. In the instant case, the IACHR notes that the parties have not claimed that any of these grounds for inadmissibility exist, nor is it possible to deduce them from the case file. Consequently, the IACHR deems that the requirements set in Articles 46(1) and 47(d) of the American Convention have been met.

4. Characterization of the alleged facts

29. For 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” or “obviously out of order,” as described in Article 47(c). The criterion for evaluating these requirements is different from the one used to decide on the merits of a petition; the Commission must conduct a prima facie evaluation, not to establish the existence of a rights violation but to ascertain whether the petition establishes grounds for the possible or potential violation of a right guaranteed by the Convention. This determination involves a preliminary analysis that does not imply a prejudgment on the substance of the matter.

30. Neither the American Convention nor the Commission’s Rules of Procedure require the petitioner to name the specific rights allegedly violated by the State in the matter put before the Commission, although petitioners may do so. Nonetheless, it is incumbent on the IACHR, pursuant to the jurisprudence of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable and whose violation could be established if the alleged facts are proven on the basis of sufficient evidence and legal arguments.

31. In the instant case, the petitioner alleges that the pretrial detention imposed in his case did not meet the criteria required by the American Convention and the exceptional nature of this restriction to the right of personal liberty. In this regard, he also claims that pretrial detention lasted well beyond a reasonable period and that it took place under conditions that may have affected other rights of the petitioner, such as his right to humane treatment and to family contact. Thus, taking into account the nature of pretrial detention as a precautionary measure prior to a conviction, the alleged mistreatment during detention, and the supposed obstruction of the regular family contact between the petitioner and his family, the IACHR considers, taking its precedents into account, that the alleged facts, if proven true, could constitute violations of the rights enshrined in Articles 5, 7, 8, 17, and 25 of the American Convention, in conjunction with Article 1(1) thereof. Likewise, during the merits stage of the instant case, the Inter-American Commission will assess the possible violation of Article 2 of the Convention in light of an analysis of the compatibility between the norms on pretrial detention applied to this case and the standard of protection under Article 7(5) of the Convention.

V. CONCLUSIONS

32. The IACHR concludes that it is competent to examine the claims submitted by the petitioners in relation to the alleged violation of Articles 2, 5, 7, 8, 17, and 25 of the American Convention, in conjunction with Article 1(1) thereof, and that these are admissible under the requirements established in Article 46 and 47 of the American Convention.

33. Based on the foregoing considerations of fact and law and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible with respect to Articles 2, 5, 7, 8, 17, and 25 in conjunction with Article 1(1) of the American Convention;

2. To notify the State of Argentina and the petitioner of this decision;

3. To continue examining the merits of the case; and

4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

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, Tracy Robinson and Paulo Vannuchi, Commissioners.