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REPORT No. 55/16

PETITION 4949-02

REPORT ON ADMISSIBILITY

GUILLERMO ANTONIO ÁLVAREZ
ARGENTINA

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PETITION 4949-02
ADMISSIBILITY REPORT
GUILLERMO ANTONIO ÁLVAREZ
ARGENTINA
DECEMBER 6, 2016

I. SUMMARY

1. On April 15, 2002 the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition filed by Guillermo Antonio Álvarez (hereinafter, “the alleged victim” or “Mr. Álvarez”) against Argentina (hereinafter, “Argentina” or “the State”). Later, the Public Defender’s Office before the National Supreme Court of Justice of Argentina appeared as the petitioner (hereinafter, “the petitioner”).

2. The petitioner argues that the State violated the rights to legal representation and due process, in detriment of the alleged victim, as it did not give him adequate time to appoint a defense counsel of his own choosing but appointed a public defender on the same date that the hearing in the criminal proceedings against him began. As a result, she says, it was impossible to adequately prepare both the accused’s preliminary examination statement and the cross-examination of witnesses and expert witnesses during the hearing. She affirms that the competent authorities did not assess the merits of the judicial remedies lodged and that the accused was handcuffed throughout the hearing, which violated the right to dignity and was a prejudgment of his case.

3. In turn, the State argues that it decided not to extend the deadline for the accused to name a defense counsel of his own choosing but instead appointed a public defender on the date of the hearing – whose complexity did not allow for a postponement– in order to protect the accused’s right to adequate legal representation. The State says that the accused was handcuffed on reasonable grounds, as he had previously tried to run away. Finally, the State affirms that the merits of all judicial remedies were duly examined by the competent authorities.

4. Without prejudging the merits of the complaint, after examining the position of the parties and pursuant to the requirements established in Articles 31 to 34 of the IACHR’s Rules of Procedure (hereinafter, “the Rules”) and in Articles 46 and 47 of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”), the Commission decides to declare the petition admissible in order to assess the allegations regarding the alleged violation of the rights set forth in Articles 8 (Right to a Fair Trial), 11 (Right to have his honor respected and his dignity recognized) and 25 (Right to Judicial Protection) of the American Convention. The Commission moreover decides to notify the parties of its decision, to publish this report and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE IACHR

5. The IACHR received the petition filed by the alleged victim on April 15, 2002, which was supplemented by the petitioner on April 26 of the same year. At first, this petition was attached to petition number 270-02, as it included allegations concerning the life-imprisonment of teenagers. On June 30, 2004 the State requested that the case of Guillermo Antonio Álvarez was separated from petition 270-02, since he was not a teenager at the time when he committed the offenses for which he was sentenced to life imprisonment. On March 14, 2008 the Commission passed the Admissibility Report 26/08 in which Mr. Álvarez’s petition was separated from petition no. 270-02, registered under petition number 4949-02.

6. On May 26, 2009 the Commission transmitted to the State the pertinent parts of the complaint, and granted it a two-month period to submit its observations, in accordance with Article 30.3 of its

Rules then in force. On January 6, 2012, the Commission received the reply from the State, which was transmitted to the petitioner on July 2, 2012. The petitioner submitted additional observations on August 1, 2012. In turn, the State sent its additional observations on May 21, 2013. These observations were duly transmitted to the other party.

III. POSITION OF THE PARTIES

A. Position of the petitioners

7. By a resolution dated October 28, 1999, the Oral Juvenile Court No. 1 of Buenos Aires sentenced Mr. Álvarez to life imprisonment for two aggravated murders, four armed robberies and the theft of three vehicles in the City of Buenos Aires. In the petition it is argued that the proceedings did not abide by the right to due process, and that the alleged victim's defender filed several remedies to challenge the violations of due process, which the judicial authorities rejected due to strictly formal aspects.

8. More specifically, the petitioner argues that on September 22, 1999 it was decided that the hearing would be held at the Oral Juvenile Court No. 1, which had heard the alleged victim's criminal case. The petitioner says that due to the complexity of the matter, the preliminary hearing was to take place on October 12, 13, 15, 18, 19, 20, 22, 25, 26, 27 and 29 of that same year. She argues that on October 8 Mr. Álvarez revoked the power of attorney previously granted to his counsels, and requested enough time to name a new counsel. The petitioner alleges that the court dismissed the request and that, on the same date that the hearing began, it appointed the Deputy Public Defender to legally represent the alleged victim. She says that the public defender requested a postponement of the trial until October 19, 1999 to be able to prepare an adequate defense strategy, but that the request was rejected. The petitioner alleges that consequently, Mr. Álvarez's rights to legal representation in trial and to due process were violated.

9. According to the petitioner, the facts tend to establish a violation of the right set forth in Article 8.2 (c) of the American Convention, since she argues that the appointment of a defender who ignored the criminal case against the alleged victim, on the date that the proceedings began -which by then was of 'sixteen volumes, each of which with 200 pages, and numerous accumulated files'- did not allow the accused to have adequate time and means for the preparation of his defense.

10. In addition, she alleges violations of the right set forth in Article 8.2 (d) of the American Convention, as the Oral Juvenile Court No. 1 denied Mr. Álvarez the right to name a defense counsel of his own choosing but assigned him a public defender instead. On top of this, the public defender had her first communication with the accused "after the hearing had begun, and at her request to postpone the hearing so that the accused could communicate freely and privately with her, the Court rejected her request, in violation of the conventional right invoked."

11. Moreover, she alleges violations of the rights set forth in Articles 8.1 and 8.2 (g) and (f) of the American Convention, since the way in which the defender was appointed legal representative did not allow her to prepare a proper examination of the witnesses and expert witnesses summoned, in accordance with the interests of the alleged victim. She argues that the accused's right to be heard and to provide material defense were violated, since the accused lacked adequate time to prepare his preliminary examination statement with the assistance of his counsel, and since the request to postpone the hearing was rejected. The petitioner argues that the official defender was made to legally represent Mr. Álvarez when she ignored the accused's account of facts but knew the account given by the co-accused in the same proceedings, as she had been counsel for the latter. Consequently, when it was time for her to examine the witnesses and expert witnesses, there was the risk of asking questions that could have been detrimental to Mr. Álvarez.

12. The petitioner also alleges the violation of the right set forth in Article 11.1 of the American Convention, since the alleged victim was handcuffed throughout the hearing, which she says violates the principle of presumption of innocence and Mr. Álvarez's personal dignity. Likewise, it is argued that with the handcuffs on, the accused could not take down notes of the events in the proceedings. In the framework of the

appeal and the complaint appeal filed, the defense said that any attempt to run away was impossible; for it was not a public trial and there were special police forces.

13. Furthermore, she alleges the violation of the right set forth in Article 8.2 (h) of the American Convention, since in the assessment of the appeal filed on November 19, 1999, the Second Chamber of the Chamber of Criminal Appeals did not analyze the merits of the matter, after which the accused was left in a state of defenselessness. Lastly, the petitioner alleges the violation of the right set forth in Article 8.2 (e) of the American Convention, on the grounds that the official defender appointed before the National Chamber of Criminal Appeals did not use the necessary and adequate procedures to comply with the accused's intent of appealing the judgement by the Second Chamber confirming the verdict against him.

14. Based on the foregoing, the petitioner argues that to the detriment of the alleged victim, the State violated the rights set forth in Articles 8.1, 8.2 (c), (d), (e), (f), (g) and (h), and 11.1, all of which are in agreement with Article 1.1 of the American Convention on Human Rights.

B. Position of the State

15. According to the State, the petition must be dismissed, as it was referred to the State seven years after it was lodged with the Commission.

16. The State alleges that the decision of keeping Mr. Álvarez handcuffed was based on the information provided by the special security forces that guard accused persons and who deemed the measure necessary due to his several runaway attempts in co-occurrence with criminal assault. The State alleges that said decision was made through a completely independent procedure and that it cannot be seen as a prejudgment about the presumption of innocence. It also argues that the decision made at the hearing was objected via a complaint appeal filed by the alleged victim's defense and subjected to the court's decision.

17. It alleges that the appointment of a public defender by the Oral Juvenile Court No. 1 sought to safeguard the rights to legal representation and a fair trial in favor of Mr. Álvarez. It states that such appointment was made only when the alleged victim had rescinded the power granted to counsels of his own choosing on a date very close to the one set for the beginning of the hearing; so, the State ensured that the accused had an adequate defense throughout the hearing.

18. The State informs that the appointment of a public defender was a subsidiary and emergency measure to ensure that the hearing was held under normal conditions and in conformity with legal safeguards. It says that Mr. Álvarez used his right to rescind the powers of attorney more than once, before and after the hearing; therefore, the State did not violate this right.

19. It argues that the public defender, who is alleged not to have had enough time to prepare the defense for the alleged victim, had previously been acquainted with the criminal case in which the criminal facts were investigated; and that consequently, she did not fully ignore Mr. Álvarez's situation. It affirms that under the Argentine Criminal Code of Procedure, the situation alleged by the petitioner is not a reason for the postponement of the hearing.

20. The State alleges that the complexity of the hearing must be taken into account, as it was a procedural stage involving numerous individuals, "such as accused persons, witnesses, prosecutors, expert witnesses, etc." and was decided to be held throughout 11 days, "along with the delays that the change of any of those dates could have caused." Concerning the petitioner's allegations about the inability to use the necessary judicial remedies, it says that "all the remedies filed by Álvarez's representatives were duly assessed and processed," and that if the petition is admitted, there would be "another stage of review about matters that are out of the Commission's competence".

21. To conclude, the State argues that given that the facts alleged do not tend to establish a violation of the rights protected by the American Convention on Human Rights, the petition is inadmissible and requests the IACHR to follow suit.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

22. Under Article 23 of the IACHR's Rules and Article 44 of the American Convention, the petitioner is entitled to lodge complaints with the Commission. In the petition, the alleged victim is an individual person whose rights are protected under the American Convention, which the State of Argentina is bound to abide by. As to the State, the Commission declares that Argentina is a State Party to the Convention since September 5, 1984, when it deposited its instrument of ratification of the treaty. As a result, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to assess the petition, in so far as it alleges violations that seemingly occurred within the territory of Argentina.

23. The Commission is competent *ratione temporis*, since by the time that the facts in the petition are said to have taken place, the State was already bound to respect and ensure the rights protected by the American Convention on Human Rights. Finally, the Commission is competent *ratione materiae* regarding the alleged violations of human rights protected by the American Convention on Human Rights.

24. The Inter-American Commission takes note of the State's claim about the failure to refer the petition within the stipulated period. In this regard, the IACHR says that after receipt there is no deadline for the referral of petitions to the State, under the American Convention and the Commission's Rules. Moreover, in none of them is it set forth that the time in between the receipt of a petition and its transmission to the State makes the petition inadmissible.

B. Admissibility requirements

1. Exhaustion of domestic remedies

25. Under Articles 31.1 of the Rules and 46.1.a) of the American Convention, for a petition to be admissible, domestic remedies must have been pursued and exhausted, in accordance with generally recognized principles of international law. This requirement is aimed at enabling national authorities to take cognizance of the alleged violation of a protected right and, if applicable, reverse the situation before it is heard by an international body.

26. The petitioner affirms that in objection to the condemnatory sentence dated October 28, 1999, she lodged an appeal, a complaint appeal for denial of appeal, an extraordinary appeal and a complaint appeal for denial of extraordinary appeal, with the Argentine Supreme Court of Justice, whose resolution was notified on October 30, 2001. In turn, the State affirms that the requirement of prior exhaustion of domestic remedies has been met and has no objections in this regard.

27. As a result, the Commission concludes that in this case, domestic remedies have been pursued and exhausted in conformity with Articles 46.1 of the American Convention and 31.1 of the Rules.

2. Timeliness of the petition

28. Under Articles 46.1.b of the American Convention and 32.1 of the Rules, for a petition to be declared admissible by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment. According to the present complaint, the resolution of the Argentine Supreme Court of Justice was notified on October 30, 2001 and the petition to the IACHR was filed on April 26, 2002. In view of this, the Commission finds that the requirement set forth in Articles 46.1 (b) of the Convention and 32.1 of the IACHR's Rules has been met.

3. Duplication of proceedings and International *res judicata*

29. From the case file, there is nothing to indicate that the subject matter of the petition is pending in another international proceeding for settlement or that it duplicates a petition already examined by this or by another international body. Therefore, inadmissibility requirements set forth in Articles 46.1 (c) and 47 (d) of the Convention and Articles 33.1.a and 33.1.b of the Rules do not apply.

4. Colorable claim

30. The Commission must decide if the facts alleged tend to establish a violation of protected rights, under Articles 47 (b) of the American Convention and 34 (a) of the Rules of Procedure, or if the petition is 'manifestly groundless' or 'obviously out of order,' under Articles 47 (c) of the American Convention and 34 (b) of the Rules. The assessment criteria for admissibility differs from that used for the assessment of the merits of the petition, since the Commission only undertakes a *prima facie* assessment to determine whether the petitioners have established the apparent or possible violation of a right protected by the American Convention on Human Rights. It is a general analysis not involving a prejudgment of, or issuance of a preliminary opinion on the merits of the matter.

31. Moreover, the corresponding legal instruments do not require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

32. The petitioner argues that the State's arbitrary appointment of a public defender in order to hold the hearing in the criminal proceedings, on the date these began; the consequent lack of time for her to prepare, along with the consequences brought by the fact that the public defender ignored the case against Mr. Álvarez at the moment of assisting the alleged victim concerning his preliminary examination statement and examining the witness and expert witness, resulted in violations to the rights set forth in Articles 8.1 and 8.2 (c), (d), (f) and (g) of the American Convention. She also alleges that Mr. Álvarez's official defense committed a series of mistakes during the preliminary proceedings, which violated the right set forth in 8.2 (e) of the above instrument. Moreover, she argues that the legal remedies lodged were dismissed without prior examination of the merits of the matter, due to formal issues contrary to the essence of the right to appeal a judgment to a judge or a higher court as set forth in Articles 8.2 (h) and 25 of the Convention. She also argues that the alleged victim was handcuffed throughout the hearing, which violated the right to the recognition of dignity under Article 11.1 of said instrument.

33. In turn, the State says that the appointment of an official public defender on the same date that the hearing began was precisely done to safeguard the accused's rights to adequate legal representation and a fair trial as established by the Convention. Concerning the remedies lodged by the alleged victim, the State argues that all of them were duly assessed and processed by the judicial authorities. As to the fact that the alleged victim was handcuffed throughout the hearing, the State alleges that said measure was necessary due to his previous runaway attempts, and that this decision was made after a completely independent procedure and that, as a result, it cannot be seen as a prejudgment about the alleged victim's situation.

34. In view of the elements of fact and law filed by the petitioners, along with the nature of the matter brought to its attention, the IACHR believes that, if proved, the facts alleged may tend to establish possible violations of the human rights protected by Articles 8, 11 and 25 of the American Convention in agreement with Article 1.1 of said legal instrument. The Commission will analyze in the merits report the alleged violations of due process as well as the necessity and proportionality of the measure of keeping Mr. Álvarez handcuffed during the hearing, according to Article 11 of the Convention.

V. CONCLUSIONS

35. Based on the above elements of fact and law, the Inter-American Commission concludes that this petition meets the admissibility requirements set forth in Articles 31 to 34 of the Rules and Articles 46 and 47 of the American Convention, and without prejudgment of the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with regard to Articles 8, 11 and 25 of the American Convention in accordance with Article 1.1 of said treaty.
2. To notify the parties of this decision;
3. To proceed to the analysis of the merits of the matter; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Panama, on the 6th day of the month of December, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners