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**REPORT No. 31/18**  
**PETITION 163-08**  
REPORT ON ADMISSIBILITY

JOSÉ LUIS GONZÁLEZ AND JOSÉ ALBERTO RAMÍREZ  
ARGENTINA

Approved by the Commission at its session No. 2125 held on May 4, 2018.  
168<sup>th</sup> Special Period of Sessions.

**Cite as:** IACHR, Report No. 31/18, Petition 163-08. Admissibility. José Luis González and José Alberto Ramírez. Argentina. May 4, 2018.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	General Defense Attorney's Office of the Argentine Nation
<b>Alleged victim:</b>	José Luis González and José Alberto Ramírez
<b>Respondent State:</b>	Argentina
<b>Rights invoked:</b>	Articles 1 (obligation to respect rights), 2 (domestic legal effects), 7 (personal liberty), 8 (fair trial), and 9 (freedom from ex post facto laws) of the American Convention on Human Rights <sup>1</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	February 13, 2008
<b>Additional information received at the stage of initial review:</b>	March 5, 2008
<b>Notification of the petition to the State:</b>	September 11, 2012
<b>State's first response:</b>	November 14, 2013
<b>Additional observations from the petitioner:</b>	November 22, 2013
<b>Additional observations from the State:</b>	April 8, 2014
<b>Notification of the possible archiving of the petition:</b>	May 26, 2017
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	June 22, 2017

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (ratification instrument deposited 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 7 (personal liberty), 8 (fair trial), 9 (freedom from ex post facto laws), and 25 (judicial protection) of the American Convention in connection with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, September 4, 2007 and August 14, 2007
<b>Timeliness of the petition:</b>	Yes, February 13, 2008

**V. FACTS ALLEGED**<sup>1</sup> Hereinafter Convention or American Convention.<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

1. The petitioner files the petition on behalf of José Luis González and José Alberto Ramírez (hereinafter the alleged victims), who were convicted in the province of Entre Ríos and sentenced to prison. She alleges that both cases, which are described in detail below, provide an account of the violation of the principle of legality, the right to personal liberty, and the right to a fair trial in proceedings aimed at granting conditional release to persons in prison. It points out that, according to what is set forth in Articles 13 and 14 of the Criminal Code of the Republic of Argentina, persons who have not been declared repeat offenders can gain access to early release as long as they have partially served their prison sentence and consistently abided by penitentiary regulations.

2. She underscores that, although conditional release is a benefit, this does not turn it into a favor subject to the discretion of the judge and that the stage of criminal implementation is not divorced from the development of judicial guarantees. She argues that, when the formal and material requirements are met, the court has the duty to grant it, and any other interpretation would imply removing this institution from the sphere of judicial action to place it in that of political action. She ultimately alleges that these two cases are paradigmatic of the arbitrariness whereby the administration of justice in Argentina refuses early release from prison.

*Alleged facts regarding José Luis González*

3. The petitioner indicates that, on June 1, 1999, José Luis González was convicted and sentenced to 12 years prison for the crime of aggravated rape by the Second Criminal Court of the First Judicial Circuit of the Province of Entre Ríos. Afterwards, on January 6, 2006, on a pre-printed form and without the support of professional legal defense, he requested his conditional release stating that for the time of imprisonment, on March 16, 2006 he would qualify to obtain this prison benefit. She notes that the alleged victim had exemplary scores for conduct and judgment (10 and 8, respectively), had not received any sanctions and, at the time of filing the request, was working in the kitchen of the prison guards where he carried out janitorial activities. She alleges that, on March 10, 2006, the Deputy Prosecutor of the General Prosecution Service of the Superior Court of Justice of the Province ruled that release of the alleged victim should be granted because he met the time requirements of the applicable law.

4. Nevertheless, on April 10, 2006, the Superior Court of Justice of the Province of Entre Ríos (hereinafter the Superior Court) deemed that the alleged victim fulfilled the requirements set forth in Articles 13 and 14 of the Criminal Code, but refused the request arguing that the denial was based on the supposed dangerousness of Mr. González, because considering his “personal characteristics,” he would not be capable of abiding by the law and that his release could undermine his rehabilitation. In view of this, the petitioner filed a special appeal *in pauperis forma* with the Supreme Court of Justice of the Nation (hereinafter the Supreme Court), and the General Defense Attorney of the Province of Entre Ríos provided the professional legal grounds for this filing. This appeal was rejected on August 14, 2006 by the Superior Court of Justice of the Province, which pointed out that the issue being brought forward did not pertain to the federal jurisdiction, although the Deputy Prosecutor of the General Prosecution Service of the Superior Court had ruled, on June 6, 2006, that it was admissible. The petitioner indicates that the alleged victim filed a remedy of complaint *in forma pauperis* with the Supreme Court, which was ruled inadmissible on September 4, 2007, on the basis of its discretionary authority to review (*certiorari*) (Article 280 of the Civil and Commercial Code of the Nation). The petitioner alleges that, on the basis of this last ruling, remedies under domestic law were exhausted.

5. The petitioner alleges that, even after recognizing that the time requirement had been met, that the alleged victim was not a repeat offender, and that he had complied with prison regulations for being placed on conditional release, the court denied his request arguing that he was a “danger person.” In addition, she points out that the form did not provide for the possibility of giving factual reasons and legal arguments for granting him an early discharge because the alleged victim did not have any real possibilities to submit evidence that would have supported a ruling for discharge, which undermined his right to defense. The petitioner stresses that the legal nature of the matter being presented required the participation of a legal expert who would advise Mr. González and provide existing evidence for his benefit and that, to judge from the results, the exercise of the right to secure early discharge required more than just the individual request filed

by the alleged victim. She also indicates that, because of its importance, the ruling should have been preceded by an oral hearing that would have allowed the person charged to counter the arguments of the prosecution.

6. Finally, the petitioner alleges that the alleged victim was prevented from exercising his right to secure a full review of the ruling that denied his request for conditional release because the rulings of the Superior Court are only eligible for review on the basis of a special federal appeal, a remedy involving an exceptional challenge with a restrictive interpretation.

*Alleged facts regarding José Alberto Ramírez*

7. The petitioner points out that, on December 9, 1997, José Alberto Ramírez was convicted and sentenced to 12 years prison as the co-perpetrator of the crime of robbery qualified for homicide by the First Criminal Court of the First Judicial District of the Province of Entre Ríos. She indicates that, on March 5, 2005, the alleged victim served the time required by law to be eligible for being placed on conditional release, as a result of which he filed his request on May 8, 2006. She stressed that this request was filled out using a pre-printed form without the benefit of professional legal support and therefore, he was unable to satisfactorily present his arguments.

8. She indicates that, on May 10, 2006, the Correctional Council of Penal Unit No. 1 of Paraná, issued a favorable ruling regarding the rehabilitation process of Mr. Ramírez. Nevertheless, on August 18, 2006, the Superior Court denied his request for conditional release, acknowledging that, although he had served the time required, had obtained high scores for his conduct, and was not a repeat offender, the alleged victim had been the target of disciplinary measures between 2000 and 2001. Regarding this, the petitioner points out that Article 13 of the Criminal Code requires the convict to abide by the regulations of the penitentiary, that is, to meet the standards governing the order, discipline, and peaceful coexistence in the institution. She indicates that “regular compliance” with the regulations of the penitentiary does not mean either optimal or exemplary compliance, as a result of which the decision was arbitrary because it lacked reasonableness and because it did not take into account the last five years when the alleged victim obtained excellent scores showing regular compliance with the regulations of the penitentiary.

9. Against this decision, the alleged victim filed a special appeal *in pauperis forma*, legally supported by the General Defense Attorney of the Province of Entre Ríos. Among other arguments, the Defender alleged failure to provide sufficient grounds for turning down the alleged victim’s request for release and challenged this ruling on the basis of proceedings violating the right to a fair trial. Nevertheless, on November 29, 2006, the Superior Court turned it down because it deemed that the appeal did not raise a federal issue. In response to this, the Official Defense Attorney at the Supreme Court filed a remedy of complaint with the Supreme Court, which was ruled inadmissible on August 14, 2007 based on its discretionary authority to review (*certiorari*). The petitioner indicates that this ruling was notified on August 17, 2007.

10. The petitioner, in line with the allegation regarding Mr. González, points out that Mr. Ramírez did not benefit from adequate legal support, did not have the opportunity to refute the evidence provided by the prosecution, was not given the possibility of defending his rights in a public oral hearing, and did not have the possibility of obtaining a full review of the ruling that had turned down his request for conditional release.

11. Regarding the State’s claim about the failure to filing, on a timely basis, under domestic law the allegations of violation of the right to professional legal support and to appeal the ruling in a higher court, the petitioner points out that the State did not fulfill its duty to identify the alleged remedies under domestic law which should have been exhausted and if they were available and were adequate, suitable, and effective. Regarding the alleged violation of Article 8.2(h), she indicates as well that it was filed on time in the argument provided for filing the special remedies, that is, prior to the filing of the complaint.

12. In connection with the State’s argument that professional legal help was always available, the petitioner points out that there is no element making it possible to state that the alleged victims opted to defend themselves personally or that the State had expressly granted them this right. It alleges that, according to the Convention, they had the “irrevocable” right to be helped by a court-appointed defense attorney.

13. As for the State, it contends that the remedies under domestic law have not been exhausted with respect to the alleged violation of the right to secure legal help. It points out that this grievance filed with the IACHR was not brought before any court under domestic law. Furthermore, regarding the alleged violation of Article 8.2(h) of the Convention, it indicates that, although the remedies had been exhausted, this grievance was introduced too late at the time the remedy of complaint was filed and not in the framework of the request for conditional release or at the time of filing the special federal appeal.

14. In addition, it notes that the petition is inadmissible because it fails to establish sufficient elements or grounds of proof to determine the State's responsibility for the violation of any of the rights enshrined in the Convention. It also states that professional legal defense was always available for the alleged victims and that the fact they had processed their requests for conditional release on the basis of pre-printed forms does not mean that they were prevented from benefiting from the services of an attorney. Regarding this, it underscores that the assistance of the Official Defense Attorney in filing remedies unequivocally shows that, when professional legal help was requested, it was indeed secured.

15. It stresses that, in the case of Mr. González, the reasons for refusing the prisoner's conditional release was justified because of his failure to meet the requirements expressly provided for in the legislation such as the prescription of therapy and changing basic aspects of the alleged victim's social skills. Regarding the request made by Mr. Ramírez, it contends that it was turned down because of the low scores he had been given in 2000 and 2001, and the failure to demonstrate the exceptional facts or circumstances that would make him worthy of being granted this prisoner benefit.

16. The State points out that the claims for reparations filed by the petitioner are groundless because, after having served their sentences, the alleged victims had been discharged. In addition, it contends that, because of the decease of Mr. Ramírez, the request to restore his liberty has become an abstract claim. Furthermore, it indicates that one of the amendments to the National Constitution eliminated the jurisdiction of the Superior Court regarding requests for conditional release. The State also questions the untimeliness of the transfer of the petition by the Commission, as it was notified more than four years after its filing. Finally, it deems that the petition is inadmissible because the petitioner claims that the Commission should review rulings made by national jurisdictional bodies that acted in the framework of their jurisdiction, which would make establish the Commission as a "fourth instance."

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

17. The petitioner contends that remedies under domestic law were exhausted as a result of the Supreme Court rulings on the remedies of complaint issued on September 4, 2007 for Mr. González and on August 14, 2007 for Mr. Ramírez. As for the State, it alleges that remedies under domestic law have not been exhausted regarding the alleged violation of the right to be given legal assistance and that the supposed violation of Article 8.2(h) of the Convention was claimed outside time-limits in the remedy of complaint.

18. The rule of exhaustion of remedies as provided for in Article 46.1.a of the American Convention establishes that the remedies normally available and suitable in the legal system under domestic law should be activated first. The Commission has also established that the requirement for exhaustion of remedies under domestic law does not mean that the alleged victims have the obligation to exhaust all the remedies they have available. As a result, if the alleged victim raised the question through any of the valid and adequate alternatives according to the domestic legal system and the State had the opportunity to remedy the matter under its jurisdiction, the purpose of the international norm has been fulfilled.<sup>3</sup>

19. The Commission observes that, in the two cases that are the subject of the present petition, the petitioner filed a special federal appeal to challenge the rulings issued by the Superior Court, and in response to its rejection, the respective remedies of complaint with the Supreme Court. The Commission notes that the present case involves two principal issues: the scope of the guarantees of due process of law in the

<sup>3</sup> IACHR, Report No. 69/08. Admissibility. Petition 681-00. Guillermo Patricio Lynn. Argentina. October 16, 2008, para. 40.

procedures aimed at placing the alleged victims on conditional release, and in this framework the matter of accessibility to professional legal defense *ex officio* in this case. In that regard, for the purpose of reviewing the admissibility, the Commission understands that the two alleged victims requested the conditional release in accordance with what was the practice in the province of Entre Ríos, using a pre-printed form that the authorities had drawn up for this purpose, and they filled it out without benefiting from any professional defense. It was afterwards, in the special appeals, that the alleged victims benefited from the support of a court-appointed defense attorney.

20. In that respect, the Commission considers that the authorities were aware of the practice of filling out the form for this purpose, in the initial instance, and that the fact of not benefiting from professional legal defense in the initial stage could be related to access to due process of law in the subsequent stages. The fact that the support of a court-appointed defense attorney was available in the special remedies stage is something that the Commission also takes into account to examine when and how they filed their claims and if they would have been able to file, on a timely basis, what they allege to be constraints on their access to an adequate professional legal defense. Regarding exhaustion of remedies, the Commission concludes that the alleged victims filed their claims regarding their request for conditional release, that the authorities were aware of the context in which they did so, and that the matter of accessibility to adequate professional legal defense requires a review of the merits stage of the proceedings. Therefore, the Commission deems that the remedies under domestic law have been sufficiently exhausted for the purpose of this initial stage of admissibility, thus fulfilling the provisions set forth in Article 46.1.a of the Convention.

21. Furthermore, the petition to the IACHR was filed on February 13, 2008 and the Supreme Court rulings on the remedies of complaint were notified on September 14, 2007 in the case of Mr. Gonzalez and on August 17, 2007 in the case of Mr. Ramírez. Therefore, the Commission concludes that the present petition meets the requirement set forth in Article 46.1.b of the American Convention.

22. The Inter-American Commission takes note of the claim made by the State about how it describes or qualifies as untimeliness in the transfer of the petition. The IACHR points out, regarding this, that neither the American Convention nor the Commission's Rules of Procedure set a time-limit for transferring the petition to the State after it has been received and that the time-limits set in the Rules of Procedure and Convention for other stages of the proceedings are not applicable by analogy.<sup>4</sup>

## VII. ANALYSIS OF COLORABLE CLAIM

23. In view of the elements of fact and law described by the parties and the nature of the case submitted to its review, the Commission considers that, if proven, the alleged violations of due process of law in the framework of the requests for a prisoner's benefit to conditional release, filed by Mr. José Luis González and Mr. José Alberto Ramírez, could tend to establish violations of the rights set forth in Articles 7 (personal liberty), 8 (fair trial), 9 (freedom from *ex post facto* laws), and 25 (judicial protection) of the American Convention, in connection with the general obligations set forth in Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), to the detriment of the alleged victims.

24. Finally, regarding the State's allegations about the argument of a fourth instance jurisdiction, the Commission recognizes that it is not competent to review the judgments issued by national courts that are acting in the sphere of their jurisdiction and applying due process of law and judicial guarantees. Nevertheless, it reiterates that, in the framework of its mandates, it is indeed competent to rule that a petition is admissible and to rule on its merits when it refers to proceedings under domestic law that might have violated the rights guaranteed under the American Convention.

## VIII. DECISION

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<sup>4</sup> IACHR, Report No. 56/16. Admissibility. Petition 666-03. Luis Alberto Leiva. Argentina. December 6, 2016; I/A Court H.R., Case of *Mémoli v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2013. Series C No. 295, paras. 30-33.

1. To declare the instant petition admissible in connection with Articles 7, 8, 9, and 25 of the American Convention in connection with the obligations contained in Articles 1.1 and 2 of said instrument; and
2. To notify the parties of the instant decision; to continue review the merits of the case; 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 in the city of Santo Domingo, Dominican Republic, on the 4<sup>th</sup> day of the month of May, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva (dissenting opinion), Second Vice President; Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.