

OEA/Ser.L/V/II
Doc. 111
3 junio 2021
Original: English

REPORT No. 104/21
PETITION 1331-08
REPORT ON ADMISSIBILITY

ALEJANDRO MARCOS CERVIÑO
ARGENTINA

Approved electronically by the Commission on June 3, 2021.

Cite as: IACHR, Report No. 104/21, Petition 1331-08. Admissibility. Alejandro Marcos Cerviño.
Argentina. June 3, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Alejandro Marcos Cerviño
Alleged victim:	Alejandro Marcos Cerviño
Respondent State:	Argentina
Rights invoked:	Article 8 (Right to Fair Trial), 11 (Right to Privacy), 21 (Right to Property), 24 (Right to Equal Protection), 25 (Right to Judicial Protection), 26 (Progressive Development), 28 (Federal Clause), and 29 (Restrictions Regarding Interpretation) of the American Convention in relation to its Articles 1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention on Human Rights ¹ ; Articles II (Right to Equality Before the Law); XVII (Right to Recognition of Juridical Personality and Civil Rights); XVIII (Right to Fair Trial); XXIII (Right to Property); XXIV (Right to petition) of the American Declaration of the Rights and Duties of Man ² ; together with other rights invoked under an international instrument. ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	November 12, 2008
Additional information received at the stage of initial review:	October 31, 2012
Notification of the petition to the State:	May 28, 2014
State's first response:	March 5, 2015
Additional observations from the petitioner:	January 19, 2016
Additional observations from the State:	October 11, 2016, December 6, 2016

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes and no (see Section VI)
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes; American Convention (deposit of ratification instrument on September 5, 1984)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 5 (Right to Personal Integrity), 7 (Right to Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection), of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

¹ Hereinafter "the Convention" or the "the American Convention".

² Hereinafter "the American Declaration".

³ Articles 6, 7, 8, 10, 17, 28, and 30 of the Universal Declaration of Human Rights.

⁴ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioner and alleged victim essentially raises two separate but related complaints, the first of which centers on his attempt to obtain full legal title to property that he acquired in or about 1999 in Pinchas, Department of Castro Barros, Province of La Rioja. The second complaint is about an alleged campaign of harassment conducted between 2002 and 2006 by persons who opposed the petitioner's ownership of said property, supposedly with the support and complicity of the police and certain politicians.

Issue of title to property

2. According to the petitioner, the property was acquired through a corporate entity that he founded called ASCHA S.A. from a vendor who held a possessory title to it, after being in uninterrupted possession for more than 20 years. The petitioner alleges that he bought the property for the development of an ecological tourist attraction.

3. He further asserts that in or about 2002 he initiated legal proceedings (*juicio de usucapión*) before the Chamber of Civil, Commercial and Mining of the Superior Court of Justice of La Rioja (*Superior Tribunal de Justicia de la Rioja*), with a view to perfecting the title to the property. According to the petitioner, the proceedings were opposed by a group of persons together with two corporate entities called *El Consorcio de Usuarios de Agua de Pinchas* and *La Union Vecinal de Pinchas*. The petitioner alleges that these opposing parties presented fraudulent documentation with respect to the property; and that they claimed that granting full title to ASCHA would affect their right to access to potable water and to irrigation. Additionally, the petitioner asserts that he made a preliminary objection to the Chamber to the effect that the opposing parties had no legal standing to participate in the matter; the preliminary objection was dismissed in or around November 2003. The petitioner also contends that during the proceedings the three Chamber judges recused themselves; but that the judicial organ was subsequently reconstituted with two of them, plus a new judge. According to the petitioner, the recusal and subsequent reconstitution of the Chamber resulted in, or contributed to an arbitrary decision against him and ASCHA S.A.

4. Following the Chamber's decision, the petitioner appealed through the ASCHA S.A. to the Superior Court of Justice of La Rioja. The appeal was initially decided in his favor in 2004, but in 2006, the Court reversed itself with a contrary decision. The petitioner considers that this reversal is evidence of lack of independence and impartiality on the part of the tribunal.

5. In 2006, again through ASCHA S.A. the petitioner applied to Superior Court of Justice of La Rioja by means of a special federal remedy (*recurso extraordinario federal*) to send the matter to the Supreme Court (*Corte Suprema de Justicia de la Nación*) for consideration and decision; this application was denied in 2006. The petitioner subsequently filed complaints to various State authorities, including the Ministry of Government and Human Rights of La Rioja; the national Human Rights Department (*Secretaría de Derechos Humanos de La Nación*); and to the La Rioja office of the national Ombudsperson (*Defensoría del Pueblo de La Nación - Provincia de La Rioja*). The petitioner states that none of these complaints materialized in any relief; ultimately, he contends that the state and judicial authorities have impeded him from perfecting title to the property.

Issue of harassment and intimidation

6. The petitioner also alleges that his attempt to regularize the title to his property coincided with a campaign of harassment and intimidation by a group of persons opposed to him gaining full title thereto, which started in or around 2002 and went on until 2006. He further contends that he and his staff were subjected to various types of criminal behavior, including destruction of organic crops and irrigation systems, robbery of tools, and death threats; he submits that in January 2004, his dog and some poultry were poisoned and killed.

7. According to the petitioner, he was also subjected to harassment by the police, who arrested him at his house on either January 16, 2004 or February 14, 2004 and took him to a station some 15 kilometers away. He was allegedly detained for 48 hours without charge or a court order; and prevented from communicating with his lawyer. Upon release, the petitioner went home to find that it had been ransacked and robbed. These criminal activities allegedly took place with the acquiescence of the police, and with the support of some political authorities. The petitioner complained to various authorities, including the Criminal and Correctional Court of Aimogasta; the Secretary of Security for the La Rioja and the Province Prosecutor (*Fiscal de Estado de la Provincia de La Rioja*); however, all these initiatives were unsuccessful. According to the petitioner, in or about October 2005 the Prosecutor opened a case⁵, which was subsequently archived without any decision rendered. The petitioner asserts that none of these authorities took any concrete steps to investigate this alleged campaign of harassment and intimidation.

8. The petitioner alleges that he decided to leave the property in 2006 in the interest of his own personal security, and that it was ultimately sold in 2014. He considers that the of harassment and intimidation campaign --together with the absence of intervention by the authorities-- not only put him in fear for his life, but also caused or contributed to financial and economic loss.

9. The State contends that the petition is inadmissible on the following grounds: lack of competence *ratione personae* in relation to the issue of acquisition of land title; failure to exhaust domestic remedies; and failure to state facts that *prima facie* establish a violation of the American Convention. Argentina also contends that any consideration of the petition by the IACHR would be a violation of the so-called "fourth instance formula".

10. On the issue of competence *ratione personae*, the State contends that the acquisition of the property and the subsequent judicial proceedings were conducted in the name of ASCHA, S.A., a juridical entity. In this respect, the State argues that the American Convention protects persons, and not artificial legal entities; and that, accordingly, the Commission has no competence to deal with this petition.

11. As to exhaustion of domestic remedies in relation to the property, the State reaffirms that the judicial proceedings were initiated by ASCHA S.A. for the protection of rights that are not recognized by the American Convention. The State further argues that even if these proceedings were attributed to the petitioner, it was his own actions that delayed the resolution of the application to perfect the land title. In this regard, the State refers to the decision of March 10, 2011 by the Superior Court of Justice of La Rioja that ordered the continuation of the judicial process before the Court of Appeals for Civil, Commercial and Mining Matters. The State alleges that for three years, there was no further action taken by ASCHA S.A. or the petitioner to advance this proceeding before the Court of Appeals; and this led to an application by two of the opposing parties to apply for dismissal of the matter because of a lapse of time (*recurso de caducidad*). This application was upheld by the Court of Appeals with the consent of ASCHA S.A. The State also contends that following the dismissal of the petitioner's application for a *recurso extraordinario federal*, the way was open to him or ASCHA S.A. to appeal directly to the national Supreme Court, but that this step was never taken.

12. In relation to the alleged campaign of harassment and intimidation, including the arrest and detention of the petitioner, the State broadly contends that he has provided no evidence to support his claim that he complained to various authorities. As regards the alleged arrest and detention of the petitioner, the State contends that he has provided no record of his complaint to Criminal and Correctional Court of Aimogasta nor any information about the status of the investigations. As to the complaint to the Prosecutor, the State contends that the file contains no corroborating documentation nor evidence that the petitioner exhausted any domestic remedy. Further, in relation to the alleged arrest and detention of the petitioner, the State argues that he neither invoked nor exhausted the remedy of *habeas corpus*.

⁵ Registered as File 2485 C (*Expediente No. 2485, Letra C*).

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

13. In analyzing the issue of domestic remedies, the Commission proposes to deal separately with the petitioner's claims. It will first address the alleged failure of the State to issue full title to the property and more generally to accord due process to the petitioner; and secondly, the alleged failure of the State to intervene or investigate the alleged campaign of harassment and intimidation against him.

14. In relation to the first claim, the IACHR must initially consider the contention of the State that this organ lacks competence *ratione personae*. The petitioner does not deny that the acquisition of the property and the subsequent judicial proceedings were conducted in the name of ASCHA S.A., a juridical entity. However, the petitioner argues that this company was merely a vehicle for pursuing and protecting rights; and that while the alleged violation of these rights were committed against ASCHA, S.A., it ultimately affected the rights of the petitioner personally and directly.

15. The Commission has previously emphasized that the Preamble to the American Convention and Article 1.2 thereof establish that "for the purposes of this Convention, 'person' means every human being" and that the protection provided by the inter-American system of human rights is limited only to natural persons⁶. In this respect, the IACHR has also consistently held as inadmissible petitions filed by business entities or cases in which domestic remedies were exhausted by such entities and not by the person appearing as petitioner before the Commission⁷. Such is the situation in the instant matter, where the petitioner contends that domestic remedies were pursued and exhausted in the name of a juridical entity of which he was the proprietor. The IACHR considers that the rights to property and due process at issue here relate to a business entity and not to the petitioner. Accordingly, the Commission considers that the petitioner has failed to pursue or exhaust domestic remedies in his individual capacity; and that it lacks the competence *ratione personae* to deal with this element of the petition.

16. With respect to the alleged campaign of harassment and intimidation against the petitioner -- including his arrest and detention-- the IACHR considers that this falls within its competence *ratione personae*, given that it was supposedly directed at him in his personal capacity. The petitioner contends that he made several complaints to various authorities but that no investigations were undertaken. For its part, the State submits that the petitioner has offered no record or evidence of his complaints; and that in relation to the alleged arrest and detention, the petitioner failed to invoke the remedy of *habeas corpus*. Based on the record, the Commission notes that the petitioner submitted a certificate issued by the Prosecutor confirming that a complaint was made on October 25, 2005 and that a case had been opened. Secondly, the IACHR observes that in annexes to the State's first response, there are number of letters by the Department of Human Rights of La Rioja in 2014 addressed to various authorities requesting information on complaints made by the petitioner about the campaign of harassment and intimidation. These included the Secretary of Security for La Rioja and the Minister of Government, Justice, Security and Human Rights for the province. Based on the foregoing, the Commission infers that the petitioner did indeed complain to the authorities, and that the authorities were aware of his complaint.

17. Regarding the alleged arrest and detention of the petitioner and the campaign of harassment and intimidation against him, the State is obliged to conduct investigations with a view to identifying, prosecuting, and punishing those responsible. Based on the positions of the parties, it appears that no such investigations have taken place. Given the time passed since the facts of the complaint allegedly occurred, the IACHR considers that the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the American Convention is applicable. Likewise, the Commission considers that the petition was filed within a reasonable time and that the requirement of timeliness has been met.

⁶ See IACHR, Report N° 122/10 (Admissibility), Petition 475-00, Carlos Arturo Betancourt Estrada and others, Colombia, October 23, 2010, para. 29.

⁷ See IACHR, Report N° 40/05 (Inadmissibility), Petition 12.139, José Luis Forzanni Ballardo, Perú, March 9, 2005, para. 35.

VII. ANALYSIS OF COLORABLE CLAIM

18. Having regard to the preceding analysis on domestic remedies, the only colorable claim that can possibly arise is the complaint about the alleged campaign of harassment and intimidation against the petitioner.

19. The petitioner has invoked provisions not only of the American Convention, but also of the American Declaration and the Universal Declaration on Human Rights. The Commission has previously established that, once the American Convention enters into force in relation to a State, this and not the American Declaration becomes the primary source of law applicable, provided that the petition refers to an alleged violation of rights that are identical in both instruments and does not deal with a situation of continuous violation⁸. In the instant petition, there is similarity in the subject matter as between the provisions of both instruments invoked by the petitioner; therefore, as regards those alleged violations of the American Declaration, the IACHR shall refer only to the provisions of the American Convention.

20. With respect to the reference to the Universal Declaration on Human Rights, the Commission lacks competence *ratione materiae* to decide on violations of rights recognized in treaties or instruments outside the inter-American system, notwithstanding that it may resort to their standards in order to interpret the American Convention by virtue of Article 29 thereof⁹.

21. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, the IACHR considers that the alleged campaign of harassment and intimidation of the petitioner, together with the lack of investigation and punishment of those responsible, could characterize violations of the rights protected in Articles 8 (right to judicial guarantees) and 25 (right to judicial protection) of the American Convention in relation to Article 1.1 (obligation to respect rights) thereof. While the petitioner has not invoked Article 5 (right to personal integrity) or Article 7 (right to liberty) of the American Convention, the Commission considers that alleged campaign of harassment and intimidation of the alleged victim could characterize violations of both provisions. In this regard, the IACHR notes that there is no specific requirement in its procedures that obliges petitioners to identify the specific rights that have allegedly been violated by the State. Ultimately, it is the IACHR's duty to determine which provisions in the relevant inter-American instruments are applicable where there might be *prima facie* evidence of violations based upon acts or situations denounced by a petitioner¹⁰.

22. Based on its analysis in Sections VI and VII above, the Commission considers that the petitioner has not sufficiently substantiated allegations to allow, for purposes of admissibility, a determination that the facts tend to establish *prima facie* violations of Articles 2 (Domestic Legal Effects), 11 (Right to Privacy), 21 (Right to Property), 24 (Right to Equal Protection) 26 (Progressive Development), 28 (Federal Clause), and 29 (Restrictions Regarding Interpretation) of the American Convention.

23. As for the State's allegations that this petition is contrary to the "fourth instance formula", the IACHR recognizes that it is not entitled to review judgments issued by domestic courts acting within their jurisdiction and in accordance with due process of law and judicial safeguards. However, the Commission reiterates that, under its mandate, it is competent to declare a petition admissible and rule on the merits of the case when the matter concerns domestic proceedings where any of the rights protected by the American Convention might have been violated.

⁸ See IACHR Report N° 125/01, Case 12.388, YATAMA, Nicaragua, December 3, 2001, para. 15.

⁹ See IACHR Report No 26/17, Petition 1208-08 (Admissibility), William Olaya Moreno and family; Colombia, March 18, 2017, para. 9.

¹⁰ See IACHR Report N° 71/17, Petition 271-07, (Admissibility). Jorge Luis de la Rosa Mejía and others, Colombia, June 29, 2017, para. 56; See also IACHR Report N° 33/06 (Admissibility) Petition 12.261, Philip Workman, United States, March 14, 2006, para. 87.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8 and 25 of the American Convention in relation to in connection with Article 1.1 thereof.

2. To find the instant petition inadmissible in relation to Articles 2, 11, 21, 24, 26, 28, and 29 of the American Convention.

3. To notify the parties of this decision; to continue with the analysis on the merits; 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 3rd day of the month of June, 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 (dissenting opinion), and Stuardo Ralón Orellana, Commissioners.