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REPORT No. 189/21
PETITION 1359- 10
REPORT ON ADMISSIBILITY

ANTONIO FERNANDO FERREYRA PEREYRA
ARGENTINA

Approved electronically by the Commission on September 3, 2021

Cite as: IACHR, Report No. 189/21. Petition P-1359-10. Admissibility. Antonio Fernando Ferreyra Pereyra. Argentina. September 3, 2021.

I. INFORMATION ABOUT THE PETITION

Position of the petitioner	Mario Luis Coriolano and Antonio Fernando Ferreyra Pereyra
Alleged victim	Antonio Fernando Ferreyra Pereyra
Respondent State	Argentina
Rights invoked	Articles 7.2, 7.3, 7.5 (personal freedom) and 8.2 (judicial protection) of the American Convention on Human Rights, in relation to Articles 1.1 (obligation to respect rights) and 2 (obligation to adopt provisions of domestic law) thereof

II. PROCEEDINGS BEFORE THE IACHR

Filing of the petition	October 12, 2010
Notification of the petition	December 3, 2015
State's first response	December 4, 2014
Additional observations from the State	December 8, 2017
Additional observations from the petitioner	June 15, 2018; February 6, 2020

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (deposit of the instrument of ratification on September 5, 1984)

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

Duplication and international <i>res judicata</i>	No
Rights declared admissible	Articles 7.2, 7.3, 7.5 (personal freedom) and 8.2 (judicial protection) of the American Convention on Human Rights, in relation to Articles 1.1 (obligation to respect rights) and 2 (obligation to adopt provisions of domestic law) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule	Yes, exception of Article 46.2(c) of the American Convention
Timeliness of the petition	Yes, the petition was filed within a reasonable time, in accordance with Article 32.2 of the IACHR's Rules of Procedure, in relation to Article 46.2 of the American Convention

V. SUMMARY OF THE FACTS ALLEGED

1. The petitioners allege the violation of the reasonable period of preventive detention of Antonio Fernando Ferreyra Pereyra (hereinafter “the alleged victim”) who was charged with murder aggravated by kinship. They claim that this situation violates the rights to personal liberty and presumption of innocence, protected by Articles 7 and 8 of the American Convention, in connection with the obligations to respect rights and to adopt provisions of domestic law set forth in Articles 1.1 and 2 of the same instrument.

2. The alleged victim was arrested on May 11, 2001, and sentenced to life imprisonment on August 24, 2004, by the Oral Criminal Court No. 3 of the Judicial Department of Lomas de Zamora of the Province of Buenos Aires (hereinafter “TOC3”). A cassation appeal was filed against that judgment, which was dismissed on December 9, 2008, by Division II of the TOC3. An extraordinary remedy of inapplicability of the law was then filed with the Supreme Court of the Province of Buenos Aires (hereinafter the “Supreme Provincial Court”), whose resolution was still pending on the date the petition was filed with the IACHR.

3. The alleged victim was prosecuted and subject to preventive detention since the date of his detention; his legal counsel understood that such a precautionary measure had exceeded the limit imposed by law and had become disproportionate, and so they repeatedly requested his release. On April 29, 2008, the TOC3 rejected a request for release; on 17 June 2008, Division I of the Chamber of Criminal Appeals of Lomas de Zamora (hereinafter the “Departmental Chamber”) confirmed the denial of the release request; and on February 2, 2009, the TOC3 decided to dismiss the requested release.

4. The petitioners also report that they filed other remedies who were dismissed. On February 12, 2009, Division II of the Court of Cassation Appeals dismissed a habeas corpus filed by the accused (proceeding no. 36,548) and forwarded copies to the intervening court; on February 19, 2009, the Court of Cassation Appeals declared the habeas corpus unfounded (proceeding 36,585); on June 2, 2009, the TOC3 decided not to admit a request for release; on November 4, 2009, the TOC3 rejected *in limine* a habeas corpus and did not admit a request for release; on December 9, 2009, the TOC3 rejected a request to end preventive detention due to the expiration of the statute of limitations, considering that it was not provided for in the law; on December 29, 2009, Division I of the Departmental Chamber confirmed the rejection of the request for release; on April 23, 2010, the TOC3 again declared a habeas corpus inadmissible and rejected the request for release; on June 1, 2010, the Departmental Chamber rejected the habeas corpus and declared the request for release and attenuation measures inadmissible; on June 23, 2010, the Defense Office of Cassation of the Province of Buenos Aires filed a habeas corpus before Division II of the Court of Cassation Appeals, which was dismissed on June 29, 2010, since said court could not resolve the request because it was not the court of origin.

5. The petitioners also point out that on August 24, 2004, an extraordinary remedy of inapplicability of the law was filed with the Supreme Court of Justice of the Province of Buenos Aires to challenge the conviction decision of the TOC3, after the cassation appeal had been dismissed. That proceeding had not been resolved by the time the petition was filed with the IACHR.

6. The petitioners note that the alleged victim had been in preventive detention for over nine years by the date on which they filed the petition with the Inter-American Commission. They allege that, as established by Law 24,390, after the first two years of preventive detention, each day of preventive detention will be counted as two days of imprisonment. As a result, the alleged victim reportedly accumulated the equivalent of more than sixteen years of imprisonment in preventive detention. They also argue that this period of detention was based on domestic provisions contrary to the American Convention, such as Article 169, Item 11, of the Code of Criminal Procedure of the Province of Buenos Aires, that reportedly subordinates the release from prison due to the exhaustion of the reasonable period of duration of the preventive prison to circumstances such as the seriousness of the offense and the probable penalty.

7. The State reports that on May 11, 2001, the wife of the alleged victim was seriously shot to her left lung and that he took her to a hospital, where she died a week later as a result of traumatic cardiac arrest. It adds that the alleged victim was detained on the same day of the attack and was charged with the crime of attempted murder, which was aggravated on May 18, 2001, by the death of his wife, with whom he

had married ten months earlier. On June 10, 2001, the judge of Supervisory Court No. 3 ordered the alleged victim's preventive detention for the crime of murder aggravated by kinship.¹ With the assistance of a public defender, the alleged victim filed an appeal against said ruling. However, the Departmental Chamber of Lomas de Zamora confirmed the preventive detention on July 11, 2001, by saying that "the danger of escape inferred from the pending sentence of the crime charged made it essential for the perpetrator to remain deprived of his liberty."

8. The State adds that on September 11, 2001, the TOC3 was convened for the oral public trial; the defense did not oppose such decision. During the oral trial, the defense did not contradict the facts, but requested that the problematic use of psychoactive substances presented by the accused was evaluated, and that his low cultural level and his alleged psychological and psychiatric condition (on which no evidence was provided) were taken into consideration. On August 24, 2004, the TOC3 declared the alleged victim criminally responsible for the crime with which he had been charged. On August 31, 2004, a public defender filed a cassation appeal to challenge such decision. The alleged victim requested his release before the TOC3, who denied it to him on April 29, 2008. This decision was appealed before Division I of the Departmental Chamber, which confirmed the decision to deny his release on June 17 of the same year. On December 9, 2008, the Criminal Court of Cassation Appeals of the Province of Buenos Aires (hereinafter "Court of Cassation") dismissed the appeal against the conviction issued by the TOC 3. This ruling was challenged by the defense of the alleged victim through an extraordinary remedy of inapplicability of the law before the Supreme Court of Justice of the Province of Buenos Aires. In addition, the defense of the alleged victim filed a habeas corpus on February 11, 2009, in which they stated that the reasonable period of preventive detention had been exhausted and thus requested the alleged victim's immediate release from prison. On February 12, 2009, the above-mentioned action was declared inadmissible because it had been incorrectly brought before the Court of Cassation.

9. In addition, the State says that the public defender filed an extraordinary remedy of inapplicability of the law to challenge the decision of the Court of Cassation rejecting the habeas corpus. Said remedy was dismissed on December 2, 2009, by the Supreme Court of Justice of the Province of Buenos Aires, since it did not contest a final judgment or did result in a grievance that would be difficult to repair in the future.

10. The defense of the alleged victim filed a federal extraordinary remedy because of the rejection of the habeas corpus, which was denied by the Supreme Court of Justice of the Province of Buenos Aires, since it did not meet the formal requirements of admissibility. On July 27, 2011, the Division of the Court of Cassation in charge of the case during the judicial recess rejected a new habeas corpus filed by the alleged victim because it was brought directly, but referred the proceedings to the Departmental Chamber. On January 27, 2012, the Court of Cassation declared the habeas corpus inadmissible since it failed to warn about situations of emergency or institutional gravity that would authorize its intervention. On September 26, 2012, the Departmental Chamber revoked the resolution by which the TOC3 had denied the alleged victim his freedom, and granted him his conditional release under a promissory oath and under various conditions.² On March 26, 2014, the Supreme Court of Justice of the Province of Buenos Aires rejected the appeal of inapplicability of the law brought by the defense against the conviction.

11. The State reports that on February 3, 2016, the Supreme Court of Justice of the Province of Buenos Aires decided to dismiss the federal extraordinary appeal filed by the legal representation of the alleged victim against the judgment that had rejected the appeal of inapplicability of the law against the conviction imposed by the Court of Cassation. The defense of the alleged victim filed a complaint with Argentina's Supreme Court of Justice, which was dismissed. An appeal for review was filed then, which was also dismissed on February 7, 2017.

¹ Article 80, Item 1, of the Argentine Criminal Code punishes anyone who causes the death of his ancestors, descendants, or spouse with life imprisonment.

² The conditions imposed were as follows: to establish legal domicile in the Province of Buenos Aires and not to be absent without judicial authorization for over twenty-four hours; to be under the attention of a pre-trial services organization (Patronato de Liberados); to find a job and to inform their place of work and schedule within a month; to refrain from alcohol and drug use; to refrain from committing new offenses or visiting places or persons that could have a negative effect on their proper resocialization; and to perform a psychological treatment to mitigate impulsiveness.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

12. The petitioners argue that the procedural delay of the domestic courts in the decision of this case is addressed by Article 46.2(c) of the American Convention and that the federal extraordinary remedy filed is not an appropriate and effective way to denounce the violation of rights protected under that treaty. Consequently, there was no obligation to exhaust those remedies.

13. The State argues that the petitioners expect the IACHR to “act as a fourth judicial instance and review the assessments of fact and law made by the domestic instances” and that “there are no facts that characterize a violation of the rights guaranteed by the Convention.” The State specifically asserts that the alleged victim was released thanks to the remedies he filed with the judicial authorities of the province of Buenos Aires; that the Departmental Chamber ordered his release on September 26, 2012, so he did not need to file extraordinary remedies; and that his detention, although not based on a final judgment, was in accordance with all the legal requirements and the rights of the alleged victim. It states that the detention lasted from May 11, 2001, to September 26, 2012, and that he was therefore deprived of his liberty for eleven years, four months and fifteen days. The State says that his deprivation of liberty was based on criminal law and was ordered by competent authorities and through reasoned decisions, fully respecting his right to a fair trial; that the alleged victim was finally released as requested by the public defender; and that even though the judgement was not final, he had been found guilty by the judicial authorities. In conclusion, the State requests the Inter-American Commission to dismiss this petition.

14. For purposes of admissibility, the Commission must decide whether the facts alleged could characterize a violation of rights, according to the provisions of Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” pursuant to subparagraph c of that article. The criterion for evaluating these requirements is different from that used to pronounce on the merits of the petition. The Commission must conduct a *prima facie* evaluation to determine whether the petition establishes the legal grounds for a possible or potential violation of a right enshrined by the Convention, but not to establish the actual existence of a violation of rights. This determination constitutes a preliminary analysis that does not imply a prejudgment of the merits of the matter.³ The IACHR has established that it is competent to declare a petition admissible and rule on the basis for it when the petition refers to a judgment by a domestic court handed down without regard to due process or which apparently violates any other right guaranteed by the Convention. The Commission recalls that it has admitted petitions when it transpires from the arguments of the parties *prima facie* that the court judgments or procedures followed could have been arbitrary or might have involved arbitrary unequal treatment or possible discrimination.⁴

15. In light of these preliminary considerations, the IACHR notes that the facts set forth in this petition may constitute violations of rights guaranteed under the American Convention and that, therefore, there is no reason to close this case.

16. In addition, the IACHR notes with concern that the extensive detention of the alleged victim was not based on a final judgment, according to the contributions of the petitioners and the State itself.⁵ In addition, the facts indicate that over the years there were multiple unsuccessful attempts to reverse such detention. In this regard, the Commission recalls its jurisprudence, at the stage of admissibility,⁶ which points out that extensive detentions that are not based on a final judgment may result in an unwarranted delay.

³ See, *v. g.*, IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008; para. 48.

⁴ See, *v. g.*, IACHR, Report No. 64/14, Petition 806-06. Admissibility. Laureano Brizuela Wilde. Mexico. July 25, 2014; para. 43.

⁵ According to the State itself: In the present case, Mr. FERREYRA PEREYRA was no longer subjected to a “*future judgement*”, but to a judgment actually issued by the Oral Court that tried him; and even though that decision was not final, he had been found guilty by the judicial bodies of the State, which granted him freedom as set forth in Law 24,390 and under a promissory oath, in accordance with Article 169, Item 10, of the Code of Criminal Procedure of the Province of Buenos Aires, which provides for a person’s release when “*the non-final judgement imposes a penalty that enables the granting of conditional release or parole, and the other conditions necessary to grant it are met*”. See Brief of the State of December 8, 2017, p. 17.

⁶ See IACHR. [Admissibility Report No. 02/01.Case 11.280](#). Juan Carlos Bayarri. Argentina. January 19, 2001, paras. 2, 32 (2). The petitioners allege that the victim was arbitrarily detained without a court order on November 18, 1991, and subjected to torture, under which he confessed to the police that he had participated in the kidnapping of several persons. [...] The petitioners also allege that he was

17. However, in the present case, the Inter-American Commission considers that the State had the opportunity to resolve the proceedings domestically, and that domestic remedies were exhausted as of the decision of February 7, 2017. The exhaustion of domestic remedies took place after the petition had been filed with the IACHR. On this subject, the Commission reiterates its continuing position that what should be taken into account in determining whether domestic remedies have been exhausted is the situation at the ruling on admissibility, because the time of presentation of the complaint differs from the time of the ruling on admissibility.⁷ Therefore, considering the context and characteristics of this petition, the Commission finds that it was submitted within a reasonable period of time and that it meets the admissibility requirement concerning the presentation deadline.

VII. ANALYSIS OF COLORABLE CLAIM

18. The Inter-American Commission notes that this petition alleges the preventive detention of the alleged victim for an unreasonable period of time, according to domestic provisions that are reportedly incompatible with the American Convention. In view of these considerations and after examining the elements of fact and law set forth by the parties, the Commission considers that the claims of the petitioners are not unfounded and need to be studied on the merits since the alleged facts, if corroborated, could imply violations of Articles 7 (personal liberty), 8 (right to a fair trial) and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law), in accordance with other similar cases on which the Commission pronounced in the past.

19. With regard to the State's allegations that the Commission might be acting as a "fourth instance", it should be reiterated that the Inter-American Commission is not competent to review decisions taken by domestic judicial authorities that act within their competence and apply the due process rules under the American Convention. However, the IACHR has repeatedly established that it does have jurisdiction to declare a petition admissible, as well as to refer to the merits of the case, when the case concerns domestic proceedings that might violate the rights guaranteed under the American Convention.

VIII. DECISION

20. To declare this petition admissible in relation to Articles 7, 8 and 25 of the American Convention in accordance with Articles 1.1 and 2 of the same instrument.

21. To notify the parties of this decision; to proceed with the merits of the case; 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 September, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández (dissenting opinion), and Stuardo Ralón Orellana, Commissioners.

in preventive detention for over 8 years, despite having repeatedly requested his release, which was arbitrarily denied by the courts. [...] 32. [...] With regard to the criminal cases opened for the crimes of cruel treatment and unlawful deprivation of liberty in order to resolve the alleged violations of Articles 5 and 7 of the Convention, the petitioners said that there was an unwarranted delay and no final decision had been issued so far. In this regard, the State noted that domestic remedies had not been exhausted because such cases were still pending. The Commission considers that the period of over nine years elapsed between the beginning of the proceedings in 1991 and the present date constitutes *prima facie* an unjustified delay in the aforementioned criminal proceedings. Consequently, when considering the exception provided for in Article 46(2)(c) of the Convention, the rule of exhaustion of domestic remedies set forth in Article 46(1)(a) of the Convention does not apply.

⁷ IACHR. Report No. 4/15. Petition 582-01. Admissibility. Raúl Rolando Romero Feris. Argentina. January 29, 2015; para. 40.