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REPORT No. 116/21
PETITION 2382- 12
REPORT ON INADMISSIBILITY

CARLOS GUILLERMO SUÁREZ MASON
ARGENTINA

Approved electronically by the Commission on June 13, 2021.

Cite as: IACHR, Report No. 116/21. Petition 2382- 12. Inadmissibility. Carlos Guillermo Suárez Mason. Argentina. June 13, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Carlos Guillermo Suarez Mason
Alleged victim:	Carlos Guillermo Suarez Mason
Respondent State:	Argentina
Rights invoked:	Articles 1 to 9, 13 to 18, 21, 24, 25, 28 and 29 of the American Convention on Human Rights ¹ ; and Articles II, IV, V, IX to XII, XVI, XVII, XX, and XXIII to XXVIII of the American Declaration of the Rights and Duties of Man ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	December 26, 2012
Notification of the petition to the State:	February 26, 2016
State's first response:	Wednesday, October 5, 2016.
Additional observations from the petitioner:	Thursday, May 25, 2017.
Additional observations from the State:	Tuesday, February 2, 2021.

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (instrument of ratification deposited 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:	Article 7 (personal liberty) of the American Convention, in relation to Article 1.1 (obligation to respect rights) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	No

V. ALLEGED FACTS

1. The petitioner, who was arrested, tried and recently convicted by the Argentine criminal justice system for his active participation in arbitrary arrests, torture, killings, inhuman interrogations, cruel treatments and other crimes against humanity perpetrated inside the School of Mechanics of the Navy (*Escuela de Mecánica de la Armada* - ESMA) during the military dictatorship, submits a petition to the IACHR alleging the State's responsibility for the violation of his human rights due to his detention, trial and prolonged preventive detention.

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

² Hereinafter "the American Declaration".

³ The observations submitted by each party were duly transmitted to the opposing party.

2. Mr. Suárez Mason states that he was an Argentine Navy officer and retired with the rank of Navy captain in 2004. On November 7, 2006, he was ordered to present himself before the General Staff of the Navy where he was informed that he was detained under a court order for the crimes committed at ESMA. He was moved to the Rio Santiago Naval Academy, where he was deprived of his liberty. He claims the following: *"I have not been subjected to military law or military justice for the facts for which I was charged which took place in September/October 1977. I have not had a judicial proceeding before my natural judges, nor have I been guaranteed the enforcement of the military law of the years 77 (sic)."* He also states that neither the national legislation nor the Constitution have been respected (in general terms), that criminal legislation has been applied retroactively, and that *"over the years, my detention conditions have worsened, with me being transferred from Rio Santiago Naval Academy to Military Prison Campo de Mayo, then to Marcos Paz Federal Prison II and finally to Ezeiza Federal Prison I due to medical reasons."* He says that he and his family have been "ill-treated" in a progressive manner, every time his place of detention has been changed. In his additional remarks, Mr. Suárez challenges the reliability and veracity of the statements collected against him during the criminal investigation.

3. Mr. Suárez alleges that he has requested being released due to the expiration of the time-terms of the statute applicable to preventive detention. His petition was initially granted to him by the examining magistrate on May 3, 2010, under the payment of a bail bond. However, after an appeal submitted by Argentina's Attorney General, his release was eventually denied. *"[He] submitted a formal complaint against this decision, which reached Argentina's Supreme Court of Justice, who denied the petition."* At the same time, he indicates that his preventive detention has been automatically renewed every year since 2006, *"which also violates the time limits set for it."* He claims that the examining magistrate and the prosecutor in charge of the case have inadequately managed the criminal case due to the long duration of the proceeding, among other reasons. By the date on which the petition was submitted to the IACHR, he had been in preventive detention for six years, and in his opinion, the applicable law had not been enforced. In his additional observations before the Commission, Mr. Suárez says that by that date (May 2017), he had been in preventive detention for 10 years and 6 months without conviction, with a trial that had elapsed for 4 years and 6 months. He adds that *"the conceptual contents of the denial of my release and of the order to hold oral proceedings by Argentina's judiciary lack objectivity and veracity, and show a marked tendency to defend the facts committed by subversive groups in this country."*

4. Mr. Suárez also reports that prison authorities have *"indirectly exercised psychological torture on the undersigned and on the other detainees. They visited the inmates, took pictures of the places of detention and edited these photos on weekly magazines. They have always ill-treated the inmates and have not had any consideration or respect for them as human beings."* He claims that health care services provided to him are deficient with regard to professional quality, administrative commitment, the quality of the medicines given and the existing medical resources. He also states that *"we live under 'permanent stress', which will affect us physically at some point in time, over the years. This in turn will affect the psyche of the inmates."* He claims that his surname, Suárez Mason, has also worsened his situation, since his namesake father was a commander of the Corps I of the Argentine Army in the 1970s and led operations against the guerrilla groups in the Buenos Aires area. He died in prison after being convicted (after the fall of the dictatorship) for several crimes.

5. In its reply, the State presents an accurate description of the facts concerning Mr. Suárez's arrest and criminal prosecution. It indicates that he was charged in several proceedings for crimes against humanity committed between 1976 and 1983 at the School of Mechanics of the Navy, and prosecuted under the casefile titled "Unified ESMA." By the time of the reply (October 2016), Mr. Suárez was undergoing trial before Oral Federal Criminal Court No. 5 of Buenos Aires. Given the complexity and the number of facts, defendants, victims and procedural subjects involved, the case covered different lines of investigation with different degrees of progress. According to the State of Argentina, Mr. Suárez Mason, son of a former general of the same name, served in that School, participated in the abuses committed therein, and was identified and accused by numerous survivors of said crimes. He was arrested on November 6, 2006 for allegedly committing such crimes; and by an order dated on December 28, 2006, Federal Criminal and Correctional Court No. 12 of Buenos Aires ordered his prosecution with preventive detention, requiring him to be detained at Marcos Paz Federal Prison II. He was still detained there as of October 2016 awaiting the resolution of the cases for which he had been accused.

6. The State indicates that, in the context of the aforementioned criminal case, a “health-related incidental proceeding” was initiated, and therefore a series of measures to preserve the health of Mr. Suárez Mason had been taken since October 4, 2008. This case resulted in Mr. Suárez’s filing a habeas corpus before the Federal Court of Morón; it initially admitted his claim in a judgment dated June 20, 2013, but subsequently, in a decision of July 23, the motion was declared void. Mr. Suárez also filed a criminal complaint for abandonment and other crimes against the penitentiary and judicial authorities involved, which was dismissed by the representative of the Office of the Attorney General in September 2013.

7. On November 5, 2008, Mr. Suárez Mason’s counsel requested his release, which was denied. Against this decision, the petitioner filed four different remedies; his cassation appeal was admitted on May 28, 2009, but then revoked on July 28, 2009. On September 16, 2009, the Court in charge confirmed the criminal prosecution with preventive detention of Mr. Suárez as part of one of the cases related to the crimes committed at ESMA. In addition, on November 9, 2009, Federal Criminal Court No. 5 extended his preventive detention for one year. Against this decision, the petitioner filed a cassation appeal and obtained a favorable judgment on March 2, 2010, which ordered his immediate release under the payment of a bail bond. As a result, Federal Criminal Court No. 5 filed an incidental proceeding to enforce the termination of the preventive detention and to establish the amount of the bail bond to be paid by Mr. Suárez. However, the prosecutor filed an extraordinary appeal against the termination of Mr. Suárez’s preventive detention before the Federal Court of Criminal Cassation Appeals, which decided to suspend the decision. As a result, Oral Criminal Court No. 5 rejected the defendant’s release. Mr. Suárez’s counsel filed then a new cassation appeal, which was dismissed by the Court. After this dismissal, an extraordinary appeal was filed, which was rejected on June 30, 2010. In a final decision dated on September 4, 2012, the Supreme Court of Justice resolved the motion submitted by the Office of the Attorney General opposing the termination of the defendant’s preventive detention ordered on March 2, 2010. The Supreme Court decided to revoke said motion and ordered forwarding the proceedings’ records to the court of origin to issue a new judgment.

8. On December 28, 2009, the petitioner requested again his release from prison, which was denied. This decision was challenged. Finally, Argentina’s National Federal Court of Appeals in Criminal and Correctional Matters confirmed this decision on February 16, 2010. Mr. Sánchez filed a cassation appeal to reverse this decision. His motion was granted on April 9, 2010, but it was then revoked by the Supreme Court of Justice on November 6, 2012.

9. On July 8, 2014, the competent court decided to extend Mr. Suárez’s preventive detention until the end of the oral and public debate, which was being held near the date on which the State submitted its reply to the IACHR. At that time, according to the State, the criminal charges brought by the Office of the Attorney General against Mr. Suárez Mason were the following:

In that instance, the Office of the Attorney General requested Mr. Carlos Guillermo Suárez Mason to be sentenced to life imprisonment and to be absolutely and perpetually disqualified, in addition to paying the legal costs and expenses, for considering him as a co-perpetrator of the crime of unlawful deprivation of liberty aggravated by violence or threats, committed repeatedly (33 facts). This crime is treated jointly with the crime of unlawful deprivation of liberty, aggravated by violence or threats for over a month, committed repeatedly (202 facts). In turn, this crime is treated jointly with the crime of imposing psychological torture, aggravated by the fact of the defendant having committed the crime repeatedly (235 facts) to the detriment of political persecuted people. This crime is also treated jointly with the crime of imposing psychological torture, aggravated by death and committed repeatedly (2 facts). This crime is also treated jointly with the crime of murder, doubly aggravated by malice and by the premeditated participation of two or more persons, and committed repeatedly (44 facts). This crime is also treated jointly with the crime of attempted murder, doubly aggravated by malice and the premeditated participation of two or more persons (1 fact). This crime is treated jointly with the crime of abduction, retention and hiding of a 10-year-old child, committed repeatedly (18 facts). This crime is treated jointly with the crime of dishonest abuse, aggravated by the participation of two or more persons, and committed repeatedly (2 facts). This crime is treated jointly with the crime of rape, aggravated by the participation of

two or more persons, and committed repeatedly (2 facts). This crime is treated jointly with the crime of aggravated armed robbery in a populated area (1 fact).

10. After the above-mentioned presentation, the State complains for what it considers “*an undue delay in the transmission of the petition by the IACHR*”, since said transmission took place more than three years after its reception by the Executive Secretariat. The State then requests the IACHR to declare the petition inadmissible for lack of exhaustion of domestic remedies, and additionally for lack of a colorable claim of human rights violations. The latter request was made on the basis of a series of substantive allegations and reasons, relevant to the merits of the case, which were set out in full detail.

11. As to the inadmissibility of the petition, the State alleges that the petitioner has not exhausted the domestic remedies available for his claims concerning: (i) the lack of application of the military criminal justice system to his case, whose jurisdiction could have been challenged by Mr. Suárez before the court in charge of the case; (ii) the retroactive application of criminal law, which the defendant could have challenged through a motion to declare the proceedings void or through an appeal against the judicial resolution filed against him; or (iii) the lack of respect for the guarantees of due process, since the defendant did not file the various remedies available in the course of the case, such as appeals, cassation appeals, unconstitutionality appeals or recusal of judges, “*to challenge the criteria under which the prosecution and judicial authorities conducted the investigation of the case, which is currently consented by the defendant.*”

12. With regard to (iv) the alleged poor conditions of Mr. Suarez’s detention, the State recalls that he filed a habeas corpus in June 2013 regarding his health condition. The court admitted his petition and ordered him to be sent to the Prison Hospital of Ezeiza Federal Prison I. However, on July 23, 2013, the Federal Court who admitted the habeas corpus declared the motion void since Oral Criminal Court No. 5 had ordered Mr. Suárez to be kept in a ward of Ezeiza Federal Prison provided that he had no order of hospitalization, or to be temporarily accommodated in Marcos Paz Federal Prison I “*under the inescapable condition of remedying the deficiencies that have been identified.*” After this ruling which found his habeas corpus void, Mr. Suárez did not file any further remedies, although he could have done so since the ordinary challenge procedure was valid.

13. With regard to item (iv), the State indicates that after Mr. Suárez’s complaint against the Director of Argentina’s Federal Prison Service, against the members of Oral Criminal Court No. 5 and against the prosecutors intervening in the case for alleged abandonment, the competent prosecutor dismissed the petition due to the absence of a crime. The petitioner did not contest this decision, even though he could have filed a regular appeal. In this regard, the State argues that “*having failed to appeal the decisions made so far in the case in a timely manner, the petitioner cannot claim to be aggrieved for the adverse outcome resulting from his own procedural conduct, and to charge the State with the responsibility for it.*”

14. The State alleges that the petition does not characterize acts that violate the rights enshrined in the American Convention. In this regard, it presents several substantive reasons in relation to the following topics applied to Mr. Suárez Mason’s case: (a) the right to be tried within a reasonable period of time or to be released, (b) the right to a natural judge and its alleged violation due to the non-application of the military criminal justice system to Mr. Suárez’s case, (c) the judicial guarantees and the quality of the criminal investigation of the facts charged, (d) the non-retroactivity of criminal law in cases on crimes against humanity, (e) the right to personal integrity vis-à-vis the conditions of detention in this case. In this regard, the State considers that the petitioner has shown mere disagreements with the national judgments that were adopted in relation to his multiple complaints and remedies. With regard to those judgments, the IACHR must not be called to act as an international court of appeals or a “fourth instance”.

15. In its additional observations of February 2021, the State reports that on March 5, 2018, Mr. Suárez Mason was sentenced to life imprisonment, after Federal Criminal Court No. 5 of Buenos Aires declared him criminally responsible for committing the offences to the detriment of over 200 victims. The judgment was appealed by various procedural parties. Since August 6, 2018, the judgment has been pending in the Second Division of the Federal Court of Criminal Cassation Appeals. This is an overly complex and extensive criminal proceeding.

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

16. Preliminarily, the Inter-American Commission takes note of the State's claim on what it describes as, or considers, an untimely communication of the petition. However, the Commission has consistently held that neither the Convention nor the Commission's Rules of Procedure establish a time limit for communicating a petition to a State upon its reception, and that the time limits set forth in the Rules of Procedure and in the Convention for other processing stages are not applicable.

17. To assess the exhaustion of domestic remedies in this case, the IACHR recalls that, according to its consolidated and repeated practice, in order to identify the appropriate remedies that should have been exhausted by a petitioner before resorting to the inter-American system, the first methodological step is to separate the different claims set forth in a petition for its individualized assessment. In this line, in the present proceeding, the IACHR observes that the claims made by the petitioner are five: (1) prolonged preventive detention; (2) conditions of detention contrary to the protection of human rights; (3) violation of judicial guarantees due to an inadequate investigation of the crimes charged; (4) failure to submit the claim to a natural judge, which is considered to be Argentina's military criminal justice system by the defendant; and (5) the retroactive application of criminal law to the case.

18. With regard to item (1), the Commission has established that if there is an incorrect use of, or an excessive duration of, preventive detention, requesting the release from prison in the course of the relevant criminal proceedings is an appropriate remedy. Said request is assessed independently from the development of the main criminal proceedings.⁴ In this regard, Mr. Suárez Mason repeatedly requested his release prior to the submission of the petition to the IACHR, and obtained negative final decisions on all occasions. As indicated by the State, such a request for release was filed and denied on the following occasions: (i) on November 5, 2008; the dismissal was challenged by means of 4 different remedies, until his release was granted by the Federal Court of Criminal Cassation Appeals on May 28, 2009; however, that decision was revoked on July 28, 2009; (ii) on November 9, 2009; a cassation appeal was filed against the decision to extend detention; such cassation appeal was admitted on March 2, 2010, but was definitively revoked on September 4, 2012; and (iii) on December 28, 2009; a petition was denied, later confirmed in second instance on February 16, 2010, then granted at the level of cassation on April 9, 2010, but then revoked on November 6, 2012. The IACHR considers that, with regard to Mr. Suárez Mason's preventive deprivation of liberty, the adequate domestic remedies were effectively pursued and exhausted, in accordance with Article 46.1(a) of the Convention. The exhaustion of domestic remedies took place on November 6, 2012. Since the petition was received by the IACHR's Executive Secretariat on December 26, 2012, the petitioner complied with the requirement of timeliness of petitions set forth in Article 46.1(b) of the Convention.

19. With regard to complaint (2), the Inter-American Commission has established that, in cases of alleged penitentiary ill-treatment and/or lack of access to adequate health services by persons deprived of their liberty, the suitable remedies to be exhausted are those aimed at bringing the situation of the affected persons to the attention of penitentiary or judicial authorities, including the filing of requests to the officials in charge of the relevant prison, the communication of the matter to the competent judicial authorities, the remedy of habeas corpus, among others.⁵ The State has reported Mr. Suárez Mason filed two domestic remedies with this aim: a remedy of habeas corpus based on health reasons to request his transfer to another prison, and a criminal complaint for the crime of abandonment against the officials in charge of processing his case and supervising his detention. With regard to the habeas corpus, on July 23, 2013, the competent federal court declared the petitioner's complaints void, after having considered that they had already been resolved by the

⁴ IACHR, Report No. 49/18, Petition 1542-07. Admissibility. Juan Espinosa Romero. Ecuador. May 5, 2018; para. 13; Report No. 61/15 Petition 1241-04. Admissibility. Gabriel Alejandro Benitez. Argentina. October 26, 2015; para. 22; Report No. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017; para. 12; Report No. 122/17. Petition 156- 08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017; para. 17.

⁵ IACHR, Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017; para. 17; Report No. 167/17. Admissibility. Alberto Patishtán Gómez. Mexico. December 1, 2017, para. 16.

judge responsible for the criminal proceedings and the relevant penitentiary authorities. Although Mr. Suárez Mason could have filed a regular appeal to challenge this ruling, he refrained from doing so. With regard to the criminal complaint, the competent prosecutor dismissed it due to the absence of a crime. Although in light of Article 195 of Argentina's Code of Criminal Procedure, Mr. Suárez could have filed a regular appeal against the prosecutor's decision, he did not do so. Bearing in mind that in both cases the petitioner had at his disposal regular remedies provided by the Argentine legal system and did not use them, the IACHR cannot consider that domestic remedies have been exhausted in these areas. Therefore, it concludes that the duty of Article 46.1(a) of the Convention, in relation to the detention conditions of the alleged victim, has not been met.

20. With regard to items (3), (4) and (5), the petition does not indicate, nor has the State informed, whether Mr. Suárez Mason filed any domestic remedies. Therefore, the duty to exhaust domestic remedies established in the American Convention has not been satisfied in relation to any of these claims.

VII. ANALYSIS OF COLORABLE CLAIM

21. The petitioner considers that his right to personal liberty was violated since he was held in preventive detention for over ten years until a criminal sentence was issued against him, and since the various requests for release he filed with the competent judicial authorities were denied.

22. In this regard, the Inter-American Commission, as it established in its recently published Report No. 2/21 concerning a similar case against Argentina, considers that it cannot separate the facts denounced in the present case from their context.⁶ In this regard, it is clear that the characteristics of the present case are certainly unique among the wide range of situations that the IACHR has examined in the exercise of its contentious mandate. The Commission has established that a three-step analysis should be carried out to determine the compatibility of the deprivation of liberty with the prohibition of illegal and arbitrary detention.

The first consists of determining the legality of the detention from a material and formal standpoint. To do so, it must be determined whether the action is compatible with the domestic legislation of the State in question. The second step involves the analysis of these domestic provisions within the context of the guarantees established by inter-American human rights instruments, in order to determine whether they are arbitrary. Finally, even if the detention meets the requirements of a domestic legal provision that is compatible with said instruments, it should be determined whether the application of the law in the specific case was arbitrary.⁷

23. In its *Report on the Use of Pretrial Detention in the Americas*, the IACHR states that preventive detention is legitimate to prevent accused individuals from evading justice. The severity of the charges and the foreseen sentence can be taken into consideration when deciding whether to use it or not. In addition, the complexity of the case should be analyzed based on the facts and the difficulty entailed in proving them.⁸ The fact that the petitioner is indeed a person tried and convicted for crimes against humanity is particularly exceptional; and it is clear that thirty-four criminal cases have been brought against him for different acts. In this case, the argument put forward by the State that the type of crimes attributed to the petitioner demanded a more complex investigative exercise and more intense judicial activity is also plausible.⁹ It is also noted that (i) the detention was legitimate from the material and formal point of view in Argentina; (ii) the domestic provisions of Argentina were not arbitrary with regard to the guarantees established in the instruments of the inter-American system; and (iii) the application of the law in this specific case was not arbitrary.

⁶IACHR, Report No. 2/21. Petition 1549- 10. Inadmissibility. Carlos Alfredo Yanicelli. Argentina. January 10, 2021; paras. 20-22.

⁷IACHR, Report No. 211/20. Case 13,570. Admissibility and merits (published). Lezmond C. Mitchell. United States of America. August 24, 2020, para.79; IACHR, Application to the Inter-American Court of Human Rights in the case of Juan Carlos Chaparro and Freddy Hernán Lapo. Case 12,091. Ecuador. June 23, 2006; para. 72.

⁸IACHR. *Report on the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II. Doc. 46/13, adopted on December 30, 2013 (hereinafter "*Report on the Use of Pretrial Detention in the Americas*"), Chap. III, paras. 169 and 319.

⁹*Report on the Use of Pretrial Detention in the Americas*, Chap. III, paras. 143-144. See also: IACHR. *Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II,163. Doc. 105, adopted on July 3, 2017, Chap. II, para. 75.

24. From this perspective, and taking into account the constant position of the IACHR that the assessment of the application of preventive detention to a person is an exercise that must be carried out on a case-by-case basis, the IACHR concludes that the right to personal liberty of Mr. Carlos Suárez Mason has not been violated *prima facie* in relation to Article 47 of the American Convention.

VIII. DECISION

1. To find the instant petition inadmissible ; and
2. To notify the parties of this decision; 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 13th 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, and Stuardo Ralón Orellana, Commissioners.