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REPORT No. 55/24
CASE 13.983
REPORT ON INADMISSIBILITY

DANIEL EDUARDO JOFFE
ARGENTINA

Approved electronically by the Commission on May 10, 2024.

Cite as: IACHR, Report No. 55/24, Caso 13.983. Inadmissibility.
Daniel Eduardo Joffe. Argentina. May 10, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	N.E. ¹ and Daniel Eduardo Joffe
Alleged victim:	Daniel Eduardo Joffe
Respondent State:	Argentina ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 21 (property), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	November 12, 2006
Notification of the petition to the State:	April 24, 2019
State's first response:	December 12, 2019

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 (deposit of instrument of ratification submitted 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	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	No, according to the considerations laid in Section VI
Timeliness of the petition:	No, according to the considerations laid in Section VI

V. FACTS ALLEGED*Petitioner*

1. The petitioner states that Mr. Daniel Eduardo Joffe was one of the victims of the July 18, 1994 terrorist attack at the headquarters of the Israelite-Argentine Mutual Association (hereinafter "AMIA" for its signs in Spanish).

2. The petitioner reports that Mr. Daniel Eduardo Joffe had been assigned to perform repair work in AMIA's building, located at Pasteur Street 633, and was in front of the entrance door to the building when the blast went off. He claims that, as a result of the injuries caused by the explosion, the alleged victim would

¹ The petitioner requested confidentiality of identity. On December 19, 2013, the petitioner informed that, for health reasons, he transferred the representation of the case to the alleged victim, Daniel Eduardo Joffe, who has since served as a petitioner in the present case.

² Commissioner Andrea Pochak, of Argentinian nationality, did not participate in the deliberations nor in the decision in this matter, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

³ Hereinafter the "American Convention" or "the Convention".

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

have been visually, hearing and motor impaired. In fact, he contends that the shrapnel which hit the alleged victim is still in his body. Despite this, the petitioner claims that the State neglected Mr. Joffe by refusing to grant him compensation, denying his right to a pension on grounds of loss of capacity for work, and not offering him psychological counseling.

3. With regard to the exhaustion of domestic remedies, the petitioner notes that the criminal case known as 'AMIA', number 1156, was filed on September 2, 2002, after the 10-year statute of limitations had run out. He claims that Mr. Joffe has actively participated in the criminal proceeding by making depositions and urging further investigation, to the point of requesting an interview with the judge in the case, and with the Secretary of the Ministry of Home Affairs, the latter being granted. The petitioner emphasizes that during his interview with the Secretary of the Ministry of Home Affairs, he argued that he felt neglected by the State and that he had not been granted any social assistance or invalidity pension or healthcare. As regards the lawsuit for damages, the petitioner indicates that the alleged victim did not file such an action, since no guilty party was found in criminal proceedings and dismissal was issued in favor of the suspects. He explains that there is a legal void that prevents him from bringing a civil action.

4. In addition, the petitioner alleges that Mr. Joffe has received death threats in response to his depositions in the criminal proceeding. Mr. Joffe said that he had complained about the threats before the Office of the Prosecutor, but the criminal liability had already been extinguished.

5. Referring to the State's allegations, the petitioner clarifies that he benefited from a financial remediation program created in September 2015 for the victims of the July 18, 1994 attack. He claims that the compensation was granted by means of bonuses in April 2017, payable in 2022. However, he argues that such a mechanism does not constitute a comprehensive remedy, since the bonuses are only one third of the compensation offered, and in 2022, they would have been devalued and would constitute a much lower sum than the amount of compensation granted at the time of the events. Therefore, he states that on November 24, 2017, he requested that the form of payment be reconsidered based on his needs, receiving no response.

6. With respect to the exception of non-exhaustion of domestic remedies contended by the State, the petitioner argues that one of the requirements of the Act 27.139 on the extraordinary compensation benefits for the victims of the AMIA attack was to discontinue any legal actions, and to renounce the exercise of his rights in other proceedings and desist from bringing any legal actions for the same cause. As for any possible requests before the National Agency for Disability and the Centre for Assistance to Victims of Human Rights Violations, he argues that he could not exhaust remedies in institutions that did not exist at the time of the attack. On the other hand, he claims that he never received the invalidity pension for which he applied at the AMIA Social Service and contends that the files in state aid agencies would disappear, which he reported to the federal judge in charge of the AMIA attack case.

7. Finally, the petitioner states that he considers that his right to life has been violated, because of the loss of one of his eyes, of his ear, of part of his motor skills, of his work and means of life, as well as his self-confidence. He also considers that the State violated his right to physical integrity because of the disabilities he was left with after the attack, and the subsequent State's failure to protect him, especially, because at the time of renewing his disability certification, it acknowledged his motor disability, but not his visual or the hearing impairment. He also alleges the violation of his right to a fair trial and judicial protection since he made several depositions in the criminal proceeding about the attack but did not obtain protection despite the risks involved; in addition, due to his physical and mental state, he could not follow up on the progress of the cause. Finally, he raises the violation of his right to private property because the money he would get in 2022 from the compensation granted to him by means of bonuses would be much less than the cash compensation he was awarded in April 2017.

State

8. The State, for its part, contends that the petition is inadmissible insofar as the petitioner failed to exhaust domestic remedies, and due the fact that he does not state facts that establish a violation of the rights protected by the American Convention. It also argues that there is a duplication between this and the case of

AMIA v. Argentina, number 12.204. As to the merits of the case, the State merely reiterated the arguments concerning the inadmissibility of the present petition.

9. Regarding the facts, the State clarifies that, in September 2015, Argentina created a compensation mechanism for the victims of the attack in the AMIA building. Thus, it states that Mr. Joffe benefited from the reparation granted in the framework of those administrative proceedings in 2018.

10. With regard to the non-exhaustion of domestic remedies, the State argues that the present petition is limited exclusively to the question of Mr. Joffe's right to compensation and rehabilitation, and to the invalidity pension he claims was rejected by the State. Thereof, it says that neither the National Agency for Disability nor the Directorate of the Centre for Assistance to Victims of Human Rights Violations have received any request from Mr. Joffe for compensation or pension. In turn, the State concludes that, since the petitioner did not submit any administrative proceedings, he could not resort to any judicial review if his requests had been rejected, thus failing to exhaust domestic remedies, in breach of the requirement established in Article 46(1)(a) of the American Convention.

11. In this regard, the State reports that the National Disability Agency (hereinafter "ANDIS" for its signs in Spanish) assumed the functions that the National Social Security Administration performed since its creation in December 1991 related to the processing, granting, settlement and payment of non-contributory disability benefits. The procedure to apply for a non-contributory invalidity pension is completely free and can be conducted online. ANDIS also has a system of basic benefits for persons with disabilities, aimed at ensuring their healthcare, education and safety, as well as granting them waivers and incentives aimed at their full social integration. However, the State emphasizes that Mr. Joffe did not exhaust any of these avenues of social protection and it verifies that there is no record of a criminal complaint filed by Mr. Joffe for the loss of any social security files.

12. On the other hand, with regard to the action for damages seeking to obtain compensation, Argentina argues that the petitioner cannot be aggrieved if he is prevented from taking legal action to obtain compensation, since he decided to take advantage of the benefits of the Act 27,193 voluntarily, knowing that this implied a waiver of the exercise of legal actions involving the same facts of the petition. In addition, the State points out that the petitioner did not pursue any legal action against the State for the violation of his rights, as did other victims of the attack, even before Act 27,193 was enacted in 2015.

13. With regard to the investigation of the allegations of death threats referred to by the petitioner, the State reports that it initiated case number 5722/1995, following the alleged victim's complaint, according to which, on August 21, 1994, a person in the hospital told him that "*it made no difference whether one died in the rubble after an explosion or one were shot in the head.*" He said that this same phrase had been repeated to him over the phone and that he felt he was being chased by two vehicles whose license plate he identified. On September 12, 1996, the petitioner declared before the court handling the investigation that he had not received this type of calls for six months, nor had he detected any cars following him. Therefore, the court considered that the facts narrated did not fulfill the elements of a specific criminal offense and no sufficient evidence was obtained to prove the offense, for which the investigation was suspended and subsequently closed on February 19, 1999.

14. The State also claims that, in light of Article 47(b) of the Convention, this petition is inadmissible, since the petitioner does not allege a violation of specific rights enshrined in that instrument. It also argues that, since the petitioner received the financial compensation he sought, the reasons that gave rise to the present petition no longer exist. In addition, it assures that the petitioner did not exhaust the direct remedy before the National Court of Appeals in Federal Administrative Disputes (hereinafter, "the chamber"), contemplated in Article 4 of Law 27.139, nor to question the amount received, nor to obtain exclusion from the debt consolidation regime.

15. On the other hand, the State argues that the petition must be found inadmissible on the basis of Article 47(d) of the Convention on account of the duplication with Case 12,204 concerning the terrorist attack on the headquarters of AMIA, currently pending before the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, “the Inter-American Court” or “the Court”).

16. Finally, the State alleges that the petition was forwarded by the IACHR extemporaneously, since the transfer to the State took place twelve years after its submission.

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

17. Firstly, in regard to the alleged duplication of processes in this petition with case AMIA, the IACHR recalls that on April 18, 2019, the present case was broken down from that file at the request of the petitioner, therefore, Mr. Daniel Eduardo Joffe was not registered as a victim in the Case 12.204. Consequently, the Commission dismisses the allegation of the duplicity of the present petition with Case 12.204, AMIA v. Argentina.

18. The Commission observes that the Argentine State raised the exception of the petitioner’s failure to exhaust domestic remedies, since the alleged victim had not filed any application before ANDIS, an entity that had existed since 1991, to be granted an invalidity pension or a State medical assistance. The petitioner, for his part, replies that he went to the Social Service of the AMIA, which allegedly lost his file and therefore he submitted the corresponding complaints. However, the State found no record of a complaint in this regard.

19. To determine the adequacy of the remedies available in the domestic jurisdiction, the Commission usually identifies the specific claims that have been made in the petition and then establishes the judicial remedies provided by the national legal system that were available and adequate to address those particular claims. This is, precisely, the evaluation of suitability and effectiveness of each particular remedy, in whether it provides a real opportunity for the alleged human rights violation to be compensated and resolved by the national authorities previous to their submission before Inter-American Human Rights System.⁵

20. Thus, the IACHR notes that the main claim raised by the petitioner is the absence of an invalidity or disability pension, as well as adequate compensation and medical and psychological assistance. Although the petitioner referred to the filing of the criminal case for the AMIA attack and to his statements in that process in the initial petition, he did not mention how this process continued in subsequent communications, nor did he send any documentation related to the criminal case. Therefore, the Commission will refrain from ruling on the matter, on the understanding that the purpose of the petition lies in the failure to grant adequate pension and compensation, and not on the criminal proceedings.

21. In this regard, the Commission considers that, in fact, the petitioner did not exhaust the remedies available under domestic law to raise his claim before the Argentine authorities and entities. Although the petitioner indicated that he made several requests to the Social Security of AMIA, the state entity in charge of processing the application for disability pensions is ANDIS, and despite the alleged victim's contention that such an entity did not exist at the time of the events, the State affirms that it was created in 1991, three years before the attack. Hence the IACHR cannot consider this requirement fulfilled, nor apply an exception to the exhaustion of domestic remedies, since the petitioner himself indicates that he did not approach the entity responsible for resolving his claim.

22. The same analysis applies to the granting of compensation and medical and psychological assistance. To that extent, the petitioner failed to file a claim for damages before the enactment of Act 27,193 in September 2015, and thereafter, he accepted the conditions of this scheme and thus renounced voluntarily to exhaust other domestic remedies. And, in any event, he did not challenge the decision to be granted

⁵ IACHR, Report No. 279/ 21. Petition 2106-12. Admissibility. Huitosachi, Mogotavo and Bacajipare communities of the Raramuri indigenous people. Mexico. October 29, 2021, para. 29.

compensation by means of bonuses before the contentious-administrative jurisdiction. Similarly, the alleged victim also did not request his inclusion in the social work programs of ANDIS relating to the medical and psychological rehabilitation he required.

23. Consequently, the Commission considers that the petitioner did not exhaust domestic remedies, in breach of the requirement established in Article 46(1)(a) of the American Convention. The IACHR recalls that this provision establishes that, for a petition to be admitted, it is necessary “that the remedies under domestic law have been pursued and exhausted, in accordance with generally recognized principles of international law.” Since his first jurisprudence, in the Case of *Velasquez Rodriguez vs. Honduras*, The Inter-American Court established the fundamental criteria of this norm in the following terms:

Generally recognized principles of international law indicate, first, that this is a rule that may be waived, either expressly or by implication, by the State having the right to invoke it [...] Second, the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed. Third, the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective.⁶

24. Therefore, it is for the Commission to declare this petition inadmissible.

25. Finally, the Commission takes note of the State’s claim regarding the alleged timelessness in the transfer of the petition. The IACHR notes in this regard that neither the American Convention nor the Commission’s Rules of Procedure establish a time limit for the transfer of a petition to the State upon receipt of the petition, and that the time limits established in the Rules of Procedure and in the Convention for other stages of processing are not applicable by analogy.⁷

VII. DECISION

1. To find the instant petition inadmissible.

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 10th day of the month of May, 2024. (Signed:) Roberta Clarke, President; Carlos Bernal Pulido, Vice President; Edgar Stuardo Ralón Orellana, Arif Bulkan, and Gloria Monique de Mees, Commissioners.

⁶ Inter-American Court of Human Rights. Case of *Velasquez Rodriguez vs. Honduras*. Preliminary objections. Judgment of June 26, 1987. Series C No. 1, para. 88; and Case of *Hernandez v. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2019. Series C No. 395, para. 15.

⁷ IACHR, Report No. 56/16. Petition 666-03. Admissibility. Luis Alberto Leiva. Argentina. December 06, 2016, para. 25.