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Title/Style of Cause: Maria Merciadri de Morini v. Argentina
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Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated: 27 September 1999
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I. SUMMARY

1. On June 15, 1994, Mrs. María Merciadri de Morini (hereinafter “the petitioner”) submitted a petition to the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “the IACHR”) alleging that her rights to due process (Article 8), to participation in government (Article 23), to equality before the law (Article 24), and to effective recourse (Article 25), as set forth in the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), had been violated by the Argentine Republic (hereinafter “the State,” “the Argentine State,” or “Argentina”).

2. The petitioner claimed that on the six-candidate electoral list drawn up by the Radical Civic Union (UCR) political party for the election of national deputies in Córdoba province, one woman was placed in the fourth position and another in the sixth. This constituted a breach of Law 24.012 and its regulatory decree, N° 379/93, according to which two women had to be placed in the first five positions. The petitioner filed the available domestic remedies with the judicial authorities, which not only rejected her petition but also denied her locus standi in the matter. Finally, the Supreme Court of Justice of the Nation dismissed an appeal filed after the election had taken place and after the political party in question had won four of the six positions it contended. In its dismissal it stated that, “in the elections of October 3, 1993, the Radical Civic Union obtained enough votes for it to return four national deputies, whereas the suit was disputing who should have run as the fifth candidate.” The State reported that domestic remedies had been exhausted in the case and asked the Commission to declare the petition inadmissible because the allegations did not constitute a violation of any of the rights protected by the Convention.

3. In examining the petition's admissibility, the Commission concluded that it is competent to hear this case and that the case is admissible, in accordance with Articles 46 and 47 of the American Convention.

II. PROCESSING BY THE COMMISSION

4. The petitioner submitted her petition to the Commission on June 15, 1994, and it was sent to the State on June 16, 1994. The Commission received a reply from the State on January 9, 1995, which was transmitted to the petitioner on January 18, 1995. The petitioner submitted her comments on February 27, 1995, and these were forwarded to the State on March 1, 1995. The State requested an extension and replied on May 4, 1995. The petitioner presented her comments on June 5, 1995. The State replied on August 10, 1995. On October 11, 1995, the petitioner sent a new communication, repeating the position she had stated earlier. On November 17, 1997, the petitioner sent a letter repeating her complaint and asked the Commission to resolve the matter promptly; she also attached judgments in other cases on which it could base its decision. The Commission incorporated this additional information into the case at hand because their allegations were similar. On December 3, 1997, the letter was forwarded to the State. The State's reply was received on February 18, 1998, and sent to the petitioner on February 24, 1998. The petitioner's comments were received on March 31, 1998, and transmitted to the State on May 26, 1998.

III. POSITIONS OF THE PARTIES

A. The petitioner

5. The petitioner alleged that the Radical Civic Union political party in Córdoba province had finalized, by the common accord of its leaders, a list of six candidates for the lower house of Congress, to be used in the October 3, 1993, election, and that it had placed women in the third and sixth positions, without considering that the party would return only five national deputies. This constituted a violation of Law 24.012 (known as "the Quota Law"), which guarantees that a minimum of thirty percent of the elected offices filled through party lists must be covered by women, "in proportions allowing them the possibility of being elected." In turn, Article 2 of Decree N° 379/93, the regulations to the law, states that "the thirty percent of positions to be covered by women, stipulated in Law 24.012, must be understood as a minimum amount. In cases where the mathematical application of this percentage would yield a fractions smaller than one, the concept of the minimum number shall be governed by the table attached to this decree as Annex A." This annex reads as follows: "positions to be replaced, five; minimum number, two."

6. These rules stipulate that political parties must draw up their candidate lists in accordance with the law, and that failure to do so will cause them to be invalid.[FN1] They also establish, as a correlation, the right of constitutionally enfranchised citizens[FN2] to vote for lists of candidates that include women in the proportions stipulated in the law.

[FN1] The petitioner cites Article 60 (end of second paragraph) of Law 24.012.

[FN2] The petitioner cites Article 37 of the Constitution of the Nation, which guarantees “full enjoyment of political rights.”

7. The petitioner claimed that if the Radical Civic Union’s list did not comply with the law, it was restricting and undermining the consequent right of voters to ensure men and women true equality of opportunities for holding elected office. The harm was that citizens were prevented from voting for a legally composed list representing the party of their choice forced to vote for a list that did not obey the law, thus violating the full enjoyment of voters’ political rights. The petitioner believes that for this reason, the voting citizen cannot be refused authority to demand that the aforesaid right be respected.

8. The petitioner reported that, in her capacity as a member of the political party in question, she challenged the list before the Electoral Committee; this challenge was dismissed on May 20, 1993, with the ruling that “the list of candidates arose from the consensus of all the party groups, which agreed upon a single list.” She appealed against that decision, after which, on June 22, 1993, the federal judicial system rejected her application, upholding the defendant’s objection that she lacked locus standi in the matter. The petitioner then filed an appeal against this second decision, which was dismissed by the Federal Electoral Court on August 13, 1993. On August 26, 1993, she filed an extraordinary remedy, which was rejected on October 7, 1993, on the grounds that the election had taken place on October 3, 1993, and that the matter was academic. On October 18, 1993, the petitioner filed a complaint with the Supreme Court of Justice of the Nation; this was dismissed on December 2, 1993, because “in the elections of October 3, 1993, the Radical Civic Union obtained enough votes for it to return four national deputies and the suit was disputing who should have run as its fifth candidate.”

9. The petitioner held that Argentina’s justice system should have ruled in accordance with the law and that the matter “was not academic.” In this regard, she stated that attention should be paid to the very “concrete” “right of expectation” of being appointed to serve as a national deputy in the event of a vacancy among those elected. If a vacancy arose, a man would take office—the one who was in fifth place—and not, as should be the case, a woman. Consequently, she maintained, a woman should have been placed fifth, with a man in the sixth position. Moreover, she held, even when four deputies were returned, two women should be elected, because a single woman would represent 25 percent, less than the legal quota. Consequently, women cannot be placed in any position on the list without taking into consideration the number of offices that are to be filled.

10. The petitioner also alleged that in rejecting her locus standi in the matter, the Federal Electoral Court demanded that she have an unspecified particular interest—whether economic, social, political, etc.—without considering the importance of the matter, which is of common interest to all. With this her rights were violated, and she claimed that all persons have the right to file a challenge without necessarily being the person affected by the position he or she occupies on an electoral list.

11. Similarly, the petitioner maintained that the classic demand for a violated subjective right or for an unknown concrete interest was incomprehensible, particularly in light of the decision of

Argentina's highest court of law in the case of Ekmekdjian vs. Sofovich.[FN3] She also said that attention had to be paid to Article 57 of the Organic Law of Political Parties, N° 23.298, which specifically recognizes the locus standi of members of recognized parties "when they have been denied rights granted by the Constitution and the party's remedies have been exhausted."

[FN3] This decision ruled on matters including the hierarchical position of international human rights treaties in Argentina.

12. The petitioner alleged that the State violated Articles 8 and 25 of the American Convention because the first-instance court ruled that she had no locus standi in the matter. She also held that by dismissing her suit, the Supreme Court violated the principle of equality enshrined in Article 24, which in turn implied a breach of the political rights protected by Article 23 of the American Convention.

13. In later submissions, the petitioner included another similar case that occurred after the one described in her original petition. Specifically, for illustrative purposes, she included a comparable case in which the National Electoral Court, on May 30, 1995, ruled in accordance with her claims and ordered that the woman be raised to the fifth position and the man moved down to the sixth.[FN4] The petitioner reported that this case was upheld in her favor when the Supreme Court rejected the appeals filed by the respondent.

[FN4] File N° 1836/95.

14. In addition, the petitioner also sent the Commission the proceedings initiated by María Florentina Gómez Miranda,[FN5] in order to "show that the reasons which motivated the petition are still in place." [FN6] She also cited another case in which the Electoral Court authorized the same political party in Córdoba province a list on which the women likely to be elected accounted for 25 percent, for use during the elections that took place on October 26, 1997. The petitioner reported that domestic remedies had not been exhausted in this case.

[FN5] File N° 2779/96.

[FN6] Communication received on April 2, 1998.

B. The State

15. The State noted that domestic remedies had been exhausted in this case but that the petition was inadmissible in that it did not describe actions that violated the Convention. As regards its substance, the State maintained first of all that the lists of candidates used in elections, in addition to being validated by the electoral judiciary prior to the vote, have their composition

validated by the electorate. It could therefore offer no alternative that did not in some way undermine the people's will as expressed at the polls.

16. In order to show that women's rights on electoral lists were indeed respected, the State attached other decisions in cases brought by the petitioner, in which the court ruled that the Radical Civic Union had to modify its lists to include two women among the first five places before submitting them to the electoral judiciary. Specifically, it attached the National Electoral Court's ruling of March 30, 1995, overturning the December 21, 1994, decision by the federal judge responsible for electoral matters in the city of Córdoba in the case of *Merciadri de Morini, María Teresa re. Representation*. The court's decision in this case stated that, "the 30% quota should be in proportions that are likely to be elected, which is to be understood as meaning a real or actual possibility thereof." In addition, the petitioner's locus standi was acknowledged and the electoral courts were informed that pursuant to Article 60, first paragraph, of the National Electoral Code, two women must appear among the first five places.

17. Secondly, the State claimed that it did not fall to the Commission to examine the composition of electoral lists. It also stated that their composition could not be seen as violating any of the rights enshrined in the Convention. The State also cited the fourth instance doctrine, according to which the Commission cannot serve as an appeals court for examining alleged factual or legal errors committed by domestic courts acting within the confines of their competence.

18. In later submissions, the State included cases showing that women's rights were respected by the electoral justice system. The State also reported that during the Commission's processing of the original petition, the petitioner had introduced issues unrelated to it, such as the action brought by *María Florentina Gómez Miranda*; the comparable incident during the 1997 elections, in which domestic remedies had not been exhausted; and the third case she submitted, in which the judiciary had ruled in the petitioner's favor, thus satisfying her claim before the domestic courts.

19. The State reported that amendments to the Constitution were introduced on August 24, 1994, under which the new Article 37, final part, orders true equality of opportunities among men and women aspiring to party and elected office, to be guaranteed through positive actions in the regulation of political parties and in the electoral system.

IV. ANALYSIS OF ADMISSIBILITY

A. The Commission's competence *ratione temporis*, *ratione materiae*, and *ratione personae*

20. The Commission is competent *ratione temporis* [by reason of time] to hear this case since, firstly, the petitioner maintains that the Argentine State incurred in international responsibility through the decision handed down by its Supreme Court of Justice on December 2, 1993, and that this took place after the State had presented its instrument of ratification of the American Convention to the General Secretariat of the Organization of American States on September 5, 1984.

21. Secondly, as regards its *ratione materiae* competence [by reason of subject], the original petition alleges violations of rights enshrined in Articles 8, 23, 24, and 25 of the American Convention.

22. Regarding its passive *ratione personae* competence [by reason of the person], the petitioner claims that the violations were committed by Argentina, a member state. Regarding its active *ratione personae* competence [by reason of the person], the petitioner claims that said violations were committed to her own detriment and she described herself as the direct victim thereof.

B. Other requirements for the admissibility of the petition

a. Exhaustion of domestic remedies

23. The rule contained in Article 46(1)(a) of the Convention, requiring that the remedies offered by domestic law first be pursued and exhausted, stipulates that the substance of all petitions brought before the Commission must have first been heard by the domestic courts. This rule allows states to resolve disputes under their own legal systems before facing international proceedings.

24. In the case at hand, the Commission notes that the petitioner invoked domestic remedies by presenting a complaint regarding the omission of a position for women on the list of candidates put forward by the Radical Civic Union for the October 3, 1993, elections. After the petitioner had filed ordinary and extraordinary appeals before the national judicial authorities, the suit was dismissed by the Argentine Supreme Court. The State holds that in this case the remedies offered by domestic law have been pursued and exhausted in accordance with Article 46(1)(a) of the American Convention. For the reasons given above, the Commission concludes that this requirement has been met.

b. Filing period

25. Article 46 (1) (b) of the Convention stipulates that for a petition to be admissible, it must be submitted to the Commission within six months of the date on which the petitioner was notified of the final ruling. The Commission notes that the final ruling was handed down by the Supreme Court on December 2, 1993. The petition was placed before the Commission on June 15, 1994, within the six-month period. The Commission concludes that this requirement has been met.

c. Duplication of proceedings and *res judicata*

26. With regard to the requirement in Article 46(1)(c) of the Convention, stating that the petition must not be pending settlement in any other international proceeding, the Commission has received no information indicating that any such situation exists. The Commission therefore holds that this requirement has been met. In addition, the Commission also concludes that the requirement set forth in Article 47(d) has been met, in that this petition is not substantially the

same as any petition already studied by the Commission or ruled on by another international organization.

d. Nature of the violations

27. Article 47(b) of the Convention rules that the Commission shall consider inadmissible any petition or communication that “does not state facts that tend to establish a violation of the rights guaranteed by this Convention.” The petitioner claimed that as a result of decisions handed down by the Argentine courts, the State violated the rights of due process (Article 8), of participation in government (Article 23), of equality before the law (Article 24), and of effective recourse (Article 25), as set forth in the Convention. The Commission believes that the facts alleged by the petitioner, if proven true, could constitute violations of rights protected by the American Convention. The Commission therefore concludes that this requirement has been met.

V. CONCLUSIONS

28. The Commission concludes that it is competent to hear this case and that the petition is admissible, pursuant to Articles 46 and 47 of the American Convention.

29. Based on the factual and legal arguments given above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible as regards the alleged violations of Articles 8, 23, 24, and 25 of the American Convention;
2. To notify the parties of this decision;
3. To continue with its analysis of the merits of the case;
4. To make itself available to the parties with a view toward reaching a friendly settlement based on respect for the rights enshrined in the American Convention, and to invite the parties to make a statement regarding the possibility thereof; and,
5. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on September 27, 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; and Commissioners Carlos Ayala Corao, Alvaro Tirado Mejía, and Jean Joseph Exumé.