REPORT No.106/13
PETITION 951-01
INADMISSIBILITY
FRANCISCO JOSÉ MAGI
ARGENTINA
November 5, 2013

I. SUMMARY

1. On August 3, 2001, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition presented by Francisco José Magi, Miguel Gustavo Morales, and Gilda Mabel Rocha (hereinafter "the petitioners"), in which they allege the liability of the Argentine Republic ("Argentina" or "the State") for the alleged arbitrary detention of Francisco José Magi (hereinafter "the alleged victim") by police officers, for the apparent imposition on Mr. Magi of a punishment stipulated in a law for having called public attention to acts of corruption by judicial officers, and for alleged failures of due process in the processing of pleas lodged in the Province of Tucumán.

2. The petitioners maintain that the State is liable for violations of the rights enshrined in Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 8 (right to a fair trial), Article 10 (right to compensation), Article 11 (right to privacy), Article 13 (freedom of thought and expression), Article 24 (right to equal protection), and Article 25 (right to judicial protection), in relation to the obligation to respect and guarantee the rights set forth in Article 1.1 of the American Convention on Human Rights (hereinafter "the American Convention") and of various provisions of the Inter-American Convention against Corruption and other international treaties. For its part, the State requested that the Commission declare the petition inadmissible, arguing that the alleged victim did not duly exhaust the remedies stipulated under domestic law and that the alleged actions do not constitute any violation of the rights enshrined in the American Convention.

3. After considering the positions of the parties, the Commission concluded that it is competent to hear the complaint, but that the complaint is inadmissible under Article 46.1.a of the American Convention. The Commission decided to issue notice of this Report on Inadmissibility to the parties, to publish it, and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. The petition was received by the IACHR the August 3, 2001, and assigned number P-951-01. On May 15, 2003, the IACHR transmitted the petition to the State. On July 8, 2003, the IACHR granted the State an extension of time to respond to the petition. On December 4, 2003, the Commission received the State's reply, which was duly transmitted to the petitioners.

5. The petitioners presented observations and additional information on July 26, 2004, June 28, 2011, and June 30, 2012, and the State presented observations and additional information on January 28, 2005, and June 17, 2011. The additional information and observations presented were duly transmitted to each of the parties.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

6. The petitioners affirm that Francisco José Magi, who was processing a writ of *amparo* at the permanent committee of the Justice Center of Concepción, decided to witness a public event, in front of the courts in the main public square of the city of Concepción, related to the commemoration of the Argentine Declaration of Independence. They say that, when he saw the examining magistrate beside the bishop, he felt wronged and therefore issued, "out loud, a public denunciation of the acts of corruption of the prosecutor and the examining magistrate." They state that, for saying "*[i]nmoral. Corrupto. Sinvergüenza ¡Qué mierda esperas para renunciar!*" ("Immoral. Corrupt. Shameless. What the hell are you waiting for to resign!"), the alleged victim was detained on July 9, 1999, for 12 hours by police officers and was held incommunicado for eight hours.

7. They indicate that the Municipal Court of Misdemeanors of San Miguel de Tucumán sentenced him, on July 10, 1999, to six days of detention or a fine of $30.00 Argentine pesos, according to Article 15, section 4, of the Police Violations Act of Tucumán, or Act No. 5140[1]. They affirm that notice of this ruling was given on July 19, 1999, and that he lodged an appeal in response, which was rejected on August 10, 1999, by the First Criminal Court of the Judicial Center of Concepción, Province of Tucumán. They affirm that, in that proceeding, he appeared at a hearing in which he reaffirmed his "denunciation of the acts of corruption by the prosecutor and the examining magistrate, offering evidence," and that notice of the ruling that ratified the penalty was given on August 20, 1999.

8. They maintain that the rulings of both courts are arbitrary, because in convicting the alleged victim they considered only an alleged statement made by him to the police authorities, which appeared to have been distorted. They also claim that he was never given notice at his actual place of residence of the summons ordering him to submit evidence within five days. They argue that, when requesting copies of the file on the case that led to the verdict of August 10, 1999, the alleged victim realized that a notation had been added, i.e., "Recognizes the misdeed committed and the police action was appropriate," which, they say, was conveyed to the examining magistrate on August 23, 1999. They affirm that the alleged victim filed a challenge to the document's authenticity[2]. They also argue that the trial in which the alleged victim was convicted was opened for evidence on August 4, 1999, and that he was not personally notified of such opening and therefore was unable to examine the case file and the evidence, which caused him irreparable harm. They state that the documents of the police authorities contain various falsehoods, for example, the incorrect statement of the hour at which he was freed.

9. They also maintain that the examining magistrate who ruled on the appeal did not cite the Inter-American Convention against Corruption, which is of constitutional rank, and, according to that Convention, Article 15, section 4, of the Police Violations Act of Tucumán should not have been applied. In addition, they argue that, when the examining magistrate confirmed the penalty imposed by the Court of Misdemeanors, said Court discouraged efforts to prevent and fight corruption, because the acts of corruption cited constitute offenses under domestic law.

---

[1] According to information submitted by the petitioner, Article 15, section 4, of the Police Violations Act of Tucumán provides that "penalties of up to thirty (30) days of detention or a thirty-(30-)day fine shall be imposed upon:….4) persons who, whether shouting aggressively or in any other manner, disturb the peace and public order in streets or public places…".

[2] According to public information secured by this Commission, Argentine law provides the "proceeding to impugn" as an action to impugn a public instrument. Article 395 of the Argentine Code of Civil and Commercial Procedure establishes that the "action to impugn a public instrument shall be pursued by writ within 10 days from the issuance of the challenge, failing which it shall be deemed to have been abandoned. It shall be inadmissible if facts and evidence intended to demonstrate the falsehood are not provided. Should the action be admitted, the judge shall suspend issuance of the verdict in order to decide upon the matter and upon the verdict. The public official who issued the instrument shall be a party to the proceeding."

10. They state that, in response to the ruling of August 10, 1999, that rejected the appeal, the alleged victim, on August 25, 1999, lodged with the Correctional Judge of the Judicial Center of Concepción, Province of Tucumán, a motion for dismissal in accordance with various provisions of the Code of Criminal Procedure of the Province of Tucumán, in particular Article 184[3]. They state that the motion for dismissal was declared out of order by a ruling of September 22, 1999.

11. They maintain that the ruling of September 22, 1999, on the motion for dismissal is unconstitutional and arbitrary, because what Mr. Magi pursued was the dismissal provided for in Articles 184 and subsequent articles of the Code of Criminal Procedure of the Province of Tucumán, not the dismissal implicit in the appeal against the ruling of August 10, 1999, since "the decision of the examining magistrate is unappealable under the unconstitutional Article 36 of the Code of Criminal Procedure of the Province of Tucumán." They argue that the corrections judge was not competent to issue the ruling of September 22, 1999, under Article 343 of the Argentine Code of Civil and Commercial Procedure, the application of which is supplemental to that of the criminal court. They maintain that, once the ruling of September 22, 1999, was rendered, the police immediately went to arrest him, and he had to pay the fine of $30.00 Argentine pesos to avoid detention.

12. They state that, on October 7, 1999, they lodged an appeal on grounds of unconstitutionality against the ruling of September 22, 1999, because the Corrections Judge of the Judicial Center of Concepción, Province of Tucumán, applied Article 36 of the Code of Criminal Procedure of the Province of Tucumán, amended by Act No. 6.928, which establishes the unappealability of the rulings of examining magistrates under Article 12 of Act No. 6.756, and also against Article 15, section 4, of the Police Violations Act of Tucumán, for contravening the Inter-American Convention against Corruption, which is of constitutional rank, and affirm that such appeal was found inadmissible on November 11, 1999, by the Corrections Judge of the Judicial Center of Concepción, Province of Tucumán.

13. They state that, on November 22, 1999, the alleged victim lodged a complaint on the grounds of unconstitutionality--which was unduly denied--against the ruling of November 11, 1999, of the Corrections Judge of the Judicial Center of Concepción, Province of Tucumán, which was denied on December 28, 1999, by the Supreme Court of Justice of the Province of Tucumán, on the argument that the alleged victim had not sufficiently rebutted the grounds for the decision being challenged.

14. Finally, they indicate that, on February 9, 2000, the alleged victim lodged a special federal appeal against the ruling of December 28, 1999, of the Supreme Court of Justice of the Province of Tucumán. The petitioners state that, on March 14, 2001, the Argentine Supreme Court of Justice notified the alleged victim of the ruling, which concluded that "the special appeal does not meet the requirement of autonomous substantiation," and therefore found it without merit.

15. The petitioners request that the Commission order the State to amend Article 280 of the Argentine Code of Criminal Procedure[4], so that courts must provide due grounds for their rulings,

---

[3] Article 184. Trial actions shall be dismissed only for nonobservance of provisions as expressly prohibited under penalty of dismissal.

[4] Article 280. Under the provisions of this Code, personal liberty may be restricted only to the degree absolutely essential to ensure discovery of the truth and application of the law.

The arrest or detention shall be carried out in the manner least prejudicial to the persons and reputations of the parties involved; a document shall be prepared and the parties involved shall sign it if they are able, which document shall communicate to them the reason for the proceeding, the place to which they will be taken, and the judge who will officiate.

and that it order an investigation of the acts of corruption. They also ask the Commission to order the State to reimburse the $30.00 Argentine pesos he paid as a fine and, further, that the State pay reparations for pain and suffering in the amount of US$1,200,000.00.

16. As for fulfilling the admissibility requirements, the petitioners allege that they exhausted domestic remedies and submitted their petition within the deadline established in the American Convention. However, they maintain that remedies remained pending exhaustion with respect to the motion to impugn his misrepresented statement, and that an action was still under way concerning the "alteration of public instruments." They also indicate that he had lodged a criminal complaint concerning the acts of corruption by the Judiciary of the Province of Tucumán, Argentina. Finally, they maintain that, to date, he has not received the certified copies requested from the courts.

B. Position of the State

17. The State argues that the petition is inadmissible because the alleged victim did not duly exhaust domestic remedies, because the actions alleged by the petitioners do not constitute violations of the American Convention, and because their intent is that the Commission acts as a court of "fourth instance."

18. The State affirms that Mr. Magi takes exception to the decision of the Lower Court Judge on July 10, 1999, which imposed on him a penalty of six days of detention or a fine of $30.00 Argentine pesos for violating Article 15, section 4, of the Police Violations Act. It states that the alleged victim was detained and placed in the custody of the Police Chief, acting as Lower Court Judge. It indicates that the decision of July 10, 1999, was appealed by the alleged victim.

19. With respect to the appeal, the State maintains that the examining magistrate decided not to admit the motion, determining the meaning of the concept of "disorder" according to Article 15, section 4, of the Police Violations Act, "allowing its coexistence with the rights and guarantees enshrined in the national and provincial constitutions and treaties of equal rank, favoring the interpretation that allows those bodies of law to stand in harmony."

20. With respect to the motion for dismissal, the State maintains that the corrections judge rejected the motion on the grounds that, in criminal trials, what governs dismissal has a different focus than in civil law, there is no dismissal without a law that specifically provides such penalty, and, by analogous interpretation, such dismissal could not be ordered.

21. With respect to the motion of unconstitutionality lodged on October 7, 1999, the State affirms that the alleged victim presented it beyond the deadline established in Articles 91 and 92 of Act No. 6944, which contains the Code of Constitutional Procedure of the Province of Tucumán, since it falls to the Supreme Court of Justice of the Province of Tucumán to hear appeals lodged against final rulings issued in last instance, so that he should have lodged that appeal against the ruling of August 10, 1999, which decided upon the appeal. In that connection, it adds that the Corrections Judge of the Judicial Center of Concepción, Province of Tucumán, declared the appeal out of order under provincial law. It also affirms that the alleged victim raised the question of constitutionality until he had lodged the motion for dismissal of the examining magistrate's ruling, but the unconstitutionality of the provisions of law cited was not discussed by the judges of first instance, excluding that question from the lawsuit. It maintains that, according to Argentine law, if the question of constitutionality is not debated by the judges of first instance, the appeal on the grounds of unconstitutionality is inadmissible.

22. With respect to the complaint lodged, the State reports that the Supreme Court of Justice of the Province of Tucumán concluded that it had noted "that the complainant has not sufficiently rebutted the arguments of the action he is challenging [in the motion for dismissal] concerning the failure to lodge within the established timeframe and the tardy introduction of the constitutional question. On the other hand, the particular nature of the motion lodged means that the writ of complaint should be sufficient unto itself--a requirement that, in this case, he did not fulfill either." It affirms that, against that ruling, he lodged a special federal appeal, which was rejected for "clearly lacking the autonomous substantiation that could make it subject to consideration."

23. The State maintains that the petitioners have not submitted a challenge to the IACHR, according to the minimum legal requirements, concerning the failure to file the motion within the established timeframe and the tardy introduction of the constitutional question, and adds that the Inter-American Convention against Corruption is not of constitutional rank in Argentina.

24. With respect to the lack of characterization, the State maintains that the petitioners intend the Commission to act as a court of "fourth instance." It maintains that the alleged victim was guaranteed the opportunity to avail himself of available remedies under domestic law and due process according to international standards, so that this could not constitute a violation if the domestic courts took their decision under their interpretation of the facts, the evidence, and applicable law.

25. With respect to the alleged restrictions of his right to liberty and freedom of expression, the State maintains that the alleged victim did not avail himself of his right to express himself but, rather, abused that right, interfering in the personal realm of the judicial officers by arbitrarily infringing on their right to have their dignity and honor respected. It maintains that, considering the context in which the insults were proffered, the alleged victim disturbed the peace. In that connection, the State concludes that the legal provision that gives grounds to the sentence imposed on the alleged victim was expressly stipulated by law prior to the actions reproached and that the ruling was rendered in conformity with the guarantees of due process and the requirements set forth in Article 13 of the American Convention.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence *ratione personae*, *ratione materiae*, *ratione temporis,* and *ratione loci* of the Commission

26. The petitioners are empowered to submit a petition to the Commission under Article 44 of the American Convention. The petition names as alleged victim an individual with respect to whom the State has undertaken to respect and guarantee the rights recognized by the American Convention. As for the State, the Commission notes that Argentina has been a State party to the American Convention since September 5, 1984, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

27. The Commission is competent *ratione loci* to consider the petition, since it claims violations of rights protected by the American Convention within the territory of a State party to the Convention. The IACHR is competent *ratione temporis* since the obligation to respect and guarantee the rights protected in the American Convention applied to the State on the date on which the petition maintains that alleged violations of rights occurred. In addition, the Commission is competent *ratione materiae* because the petition alleges violations of human rights protected by the American Convention.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

28. The admission of a complaint pertaining to alleged violations of the provisions of the American Convention requires that the petition meet the requirements established in Article 46.1 of that international instrument. Article 46.1.a of the American Convention provides that, in order to determine the admissibility of a petition or communication presented to the IACHR in accordance with Articles 44 or 45 of that treaty, the petitioner must have pursued and exhausted remedies under domestic law, according to generally recognized principles of international law.

29. The parties disagree as to the fulfillment of the requirement that domestic remedies be exhausted. While the petitioners maintain that the alleged victim exhausted domestic remedies, the State maintains that the alleged victim did not duly exhaust such remedies, claiming that, in addition to lodging the complaint of unconstitutionality outside the established timeframes, he also did not raise questions of constitutionality with the judges of first instance, which was necessary under domestic law in order for that remedy to be in order. In that connection, the State maintains that, according to Article 91 of the Code of Constitutional Procedure of the Province of Tucumán, it falls to the Supreme Court of Justice "to consider remedies pursued against final lower-court rulings issued in last instance, or actions that could put an end to the action or make its continuation impossible, in suits in which questions are raised as to the constitutionality or unconstitutionality of laws, decrees, and regulations that govern matters addressed by the Provincial Constitution, as long as that is the principal question at issue among the parties, and the ruling or the action is contrary to the intent of the complainant."

30. The Commission notes that the alleged victim lodged, against the ruling of July 10, 1999, an appeal that was denied on August 10, 1999, by ruling of the Criminal Court of First Instance of the Judicial Center of Concepción, Province of Tucumán. The Commission notes that the court of appeals analyzed the constitutionality of the penalty, given that it determined the meaning of the concept of "disorder," "allowing its coexistence with the rights and guarantees enshrined in the national and provincial constitutions and treaties of equal rank, favoring the interpretation that allows those bodies of law to stand in harmony."[5]

31. In addition, the Commission notes that, subsequently, the alleged victim presented a motion for dismissal that was decided upon by action of September 22, 1999. It observes that, at the time of processing the motion for dismissal, the alleged victim argued the unconstitutionality of the law

[5] Under Articles 87 and 88 of the Code of Constitutional Procedure of the Province of Tucumán, "the courts of the Province, in the exercise of their functions, act by applying the national or provincial constitution and international treaties with constitutional guarantees pertaining to rights and fundamental guarantees, as the highest law with regard to laws and regulatory provisions with the force of law issued by any authority of the Province…" and "the monitoring of constitutionality must be carried out by the Judiciary, even without the request of the interested party, in cases brought to its attention. The magistrates must refrain from applying laws, decrees, or orders that, under the pretext of regulations, undermine the exercise of recognized freedoms and rights or deprive citizens of the guarantees promised by the national and provincial constitutions…When the officiating magistrate believes that the provision he or she is to apply might be constitutionally objectionable, before the decision, he or she provides copies to the parties for a period of 10 business days …". In a manner similar to this case, according to public knowledge obtained by the IACHR, the Commission observes that, under the wherefore clauses of the verdict of October 5, 2010, of the Argentine Supreme Court in the case *"N., J.G. s/infr. Art. 15, inc. 4º, LCP s/incidente de inconstitucionalidad,"* in which a claim was made as to the unconstitutionality of Article 15, section 4, of the Police Violations Act of Tucumán, the examining magistrate: (i) performed a diffuse review of compliance with constitutions and laws, *ex officio,* in deciding upon the appeal; (ii) concluded that Act 5140, its amending Act 6619, and its regulatory decree 3289/14 (SSG) were unconstitutional; and (iii) vacated the criminal action against the appellant. The verdict can be found at the following link.

cited and of the actions by the authorities who applied it, including violation of the Inter-American Convention against Corruption. The Commission also notes that, according to a pleading from the petitioner, the corrections judge declared that motion out of order (time-barred). Lastly, it observes that the motion was found out of order because, according to the ruling, in criminal trials, what governs dismissal has a different focus than in civil law, there is no dismissal without a law that specifically provides such penalty, and, by analogous interpretation, such dismissal could not be ordered.

32. Lastly, the Commission observes that, against the action of September 22, 1999, that rejected the motion for dismissal, the alleged victim lodged an appeal on the basis of unconstitutionality in which he again challenged the constitutionality of his detention, the penalty, and Article 15, section 4, of the Police Violations Act of Tucumán, and that said motion of unconstitutionality was ruled out of order by the Corrections Judge of the Judicial Center of Concepción, Province of Tucumán, on November 11, 1999. It notes that said judge concluded that the action for unconstitutionality was not lodged by the alleged victim against a final ruling that ended a trial but rather against an action that decided on a motion for dismissal. In addition, the IACHR observes that said court found that said motion of unconstitutionality should have been addressed directly to the appeal ruling, "since that is where the supposed constitutional harm he cited afterward had taken place."

33. The IACHR has noted that, in order to give the State the opportunity to correct alleged violation of rights under the American Convention before an international proceeding is brought, judicial remedies pursued by alleged victims must meet reasonable procedural requirements established under domestic law[6]. In addition, both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have noted that the effectiveness of a judicial remedy implies that, potentially, when the formal requirements of admissibility and legality established under domestic law have been met, the judicial body evaluates its merits. Similarly, it has said that the existence and application of reasonable admissibility requirements, prior to examination of the merits of a judicial action, are not incompatible with the right protected in Article 25 of the American Convention[7].

34. In this case, according to what was decided by the domestic courts and alleged by the parties, this Commission finds that the alleged victim did not duly exhaust domestic remedies, since: (i) the avenue set forth by domestic law for continuing to maintain the unconstitutionality of Article 15, section 4, of the Police Violations Act of Tucumán, of the decision that imposed the penalty, and of the ruling on appeal, was the unconstitutionality action within the timeframe established under domestic law[8]; and (ii) the unconstitutionality action should have been lodged against the ruling on appeal of August 10, 1999, not against the action that decided the motion for dismissal of September 22, 1999, since, according to Article 91 of the Code of Constitutional Procedure of the Province of Tucumán, the ruling on appeal is what ended the trial[9].

---

[6] IACHR, Report No. 116/12, Petition 374-97, Inadmissibility, *Workers of the Empresa Nacional de Telecomunicaciones (ENTEL)*, Argentina, November 13, 2012, paragraph 32.

[7] Inter-American Court of Human Rights, Case of Castañeda Gutman v. Mexico. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184, paragraph 94. IACHR, Report No. 116/12, Petition 374-97, Inadmissibility, *Workers of the Empresa Nacional de Telecomunicaciones (ENTEL)*, Argentina, November 13, 2012, paragraph 33.

[8] Article 94 of the Code of Constitutional Procedure of the Province of Tucumán. Procedure. Form. Timeframes. The action for unconstitutionality is instituted in writing, substantiated as provided in the preceding article, to the court that issued the decision from which it arises, within ten (10) days from the notice …

[9] Article 91 of the Code of Constitutional Procedure of the Province of Tucumán. Action for unconstitutionality. Assumptions. It falls to the Supreme Court of Justice to consider remedies pursued against final lower-court rulings issued in

35. Accordingly, the IACHR finds that, by failing to fulfill the requirements of applicable procedural law, the alleged victim did not duly exhaust the remedy of unconstitutionality and the remedies subsequently pursued and, therefore, the requirement set forth in Article 46.1.a of the American Convention was not met.

36. The Commission refrains from examining the other admissibility requirements set forth in the Convention[10] because the matter is now moot.

VI. CONCLUSIONS

37. On the basis of the arguments of fact and of law set forth herein, the Commission finds that the petition is inadmissible for failure to meet the requirements of Article 46.1.a of the American Convention, and, therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition inadmissible for failure to meet the requirements set forth in Article 46.1.a of the American Convention.

2. To notify the parties of this decision.

3. To publish this decision and include it in its Annual Report, to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 5th day of November 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President;, Felipe González, Dinah Shelton, Rodrigo Escobar Gil and Rose-Marie Belle Antoine, Commissioners.

---

last instance, or actions that could put an end to the action, or make its continuation impossible, in suits in which questions are raised as to the constitutionality or unconstitutionality of laws, decrees, and regulations that govern matters addressed by the Provincial Constitution, as long as that is the principal question at issue among the parties, and the ruling or the action is contrary to the intent of the complainant.

[10] IACHR, Report No. 116/12, Petition 374-97, Inadmissibility, *Workers of the Empresa Nacional de Telecomunicaciones (ENTEL)*, Argentina, November 13, 2012, paragraph 40.