OEA/Ser.L/V/II.151
Doc. 10
18 July 2014
Original: Spanish

REPORT No. 45/14
PETITION 325-00

REPORT ON ADMISSIBILITY

RUFINO JORGE ALMEIDA
ARGENTINA

Approved by the Commission at its session No. 1988 held on July 18, 2014
151 Regular Period of Sessions

Cite as: IACHR, Report No. 45/14, Petition 325-00. Admissibility. Rufino Jorge Almeida. Argentina. July 18, 2014.

www.cidh.org

REPORT No. 45/14
PETITION 325-00
ADMISSIBILITY
RUFINO JORGE ALMEIDA
ARGENTINA
JULY 18, 2014

I. SUMMARY

1. On July 3, 2000, Rufino Jorge Almeida, Myriam Carsen, and Octavio Carsen (hereinafter "the petitioners") submitted to the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") a communication in which they allege the international responsibility of the Argentine Republic (hereinafter "the State" or "Argentina") for the alleged discrimination in the reparations proceeding under Law No. 24,043,on not making reparation for the alleged illegal imposition of the "release-under-surveillance" regime (*régimen de "libertadvigilada"*), to which Rufino Jorge Almeida (hereinafter "the alleged victim") was alleged to have been unlawfully subjected from July 28, 1978 to April 30, 1983, during the dictatorship.

2. The petitioners allege the violation of the rights to judicial guarantees, equality before the law, and judicial protection, enshrined in Articles 8, 24, and 25 of the American Convention on Human Rights (hereinafter "the American Convention") as well as the obligation to respect and ensure the rights, provided for at Article 1(1). The State alleges that the petition is inadmissible because it fails to make out a violation of the American Convention and seeks to use the IACHR as a court of appeals, it is time-barred, and it duplicates another case decided by the IACHR;and because petitioners have failed to exhaust domestic remedies.

3. After examining the parties' positions in light of the admissibility requirements set out at Articles 46 and 47 of the American Convention, the Commission concludes that it is competent to take cognizance of the claims and that these are admissible for the alleged violation of the rights enshrined in Articles 2, 8, 24, and 25 of the American Convention in relation to its Article 1(1). Accordingly, it orders that the parties be notified, that it be published, and that it be included in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BY THE COMMISSION

4. The petition was registered and assigned number 325-00. On July 23, 2003, the pertinent parts were forwarded to the State for its observations. The State answered on March 23, 2004, in a response that was forwarded to the petitioners for their observations. The petitioners answered on September 15, 2004 and sent additional information on April 17, 2007, which was forwarded to the State.

5. On May 4, 2009, the petitioners asked that a dialogue be established to seek a friendly settlement, a request that was sent to the State for observations. On June 29,2009, the State requested an extension for filing its response, which was granted by the IACHR. On September 1, 2009, the Commission reiterated its request for information to the State. On September 17,2009, the State responded that it was evaluating the petitioners' request.

6. The petitioners asked the Commission to continue processing the matter in view of the State's failure to respond, on June 28, 2010, and again on July 15,2013; those communications were forwarded to the State for observations. In its communication of July 23, 2013, the Commission reiterated to the State its commitment to respond to the request to establish a dialogue between the parties. On September 3,2013, the IACHR forwarded the petitioners' note to the State.

III. THE PARTIES' POSITIONS

A. The petitioners' position

7. The petitioners allege that Rufino Jorge Almeida and his wife were illegally detained on June 5, 1978, by members of the security forces loyal to the military dictatorship established in 1976, who transferred them to the detention camp known as "El Banco," where they were detained and tortured for 54 days.

8. They allege that upon their release by the Armed Forces, Rufino Almeida was delivered to the custody of his father as "guarantor" that his son would carry out the conditions imposed by the kidnappers. They argue that the alleged victim remained under a regime of control similar to the release-under-surveillance regime that required that he receive unexpected visits from military or police personnel at his home; tolerate insults and threats if he engaged in interactions with politicians or human rights defenders; report periodically to telephone numbers of the federal police; deliver photographs; answer interrogations; etc., a situation that is said to have continued until April 30, 1983. They argue that the measure was not justified in any judicial order.

9. They argue that in 1995 the alleged victim filed a lawsuit against the State to pay compensation for the time he was detained and for the time he was under the release-under-surveillance regime, in keeping with Law 24,043. They argue that in response in 1996 the Secretariat for Human Rights of the Ministry of Interior issued its administrative resolution recognizing compensation for the 54 days of detention. They argue that he was denied the compensation corresponding to the 4 years and 10 months in which they were subject to the release-under-surveillance regime.

10. In 1996 Mr. Almeida is said to have filed an appeal before the National Court of Appeals for Federal Administrative Matters (hereinafter "CNACAF"), which in 1999 was said to have ratified the earlier decision, on considering that the alleged victim was not included under the conditions that must be shown in order to be recognized the right to compensation, during the period of release-under surveillance, which would have required a declaration of attenuation of the actual arrest by Presidential Decree of the Nation. In that decision, it is said, it was established that

> In the terms of law 24,043 the act that ordered the release of the plaintiff should be understood as the "act that is private in nature" to which Article 4 refers, and it should be noted that it is not possible by interpretation to extend the compensation assessed established in the regime of that law under conditions other than those established therein.

11. He indicates that on July 7, 1999, Mr. Almeida filed a complaint appeal (*recurso de queja*)before the Supreme Court of Justice of the Nation (hereinafter "Supreme Court") which was rejected *in limine*on December 2, 1999, and notified on December 28, 1999; with which domestic remedies were exhausted.

12. In response to the State's argument on failure to exhaust the action for damages (see *infra* III B),they indicate that with the return to democracy in 1983, the State did not immediately adopt any provision aimed at securing reparation for the crimes that occurred during the military dictatorship. They allege that Rufino Almeida availed himself, in good faith, of the procedure of Law No. 24,043, in force as from January 2, 1992, with the aspiration of receiving reparation. In so doing, he waived any other type of claim against the State, as established in that law.

13. The petitioners allege that the application of Law No. 24,043 and its subsequent reforms are in violation, in their particular case, on not providing for reparation for persons who were subject to the release-under-surveillance regime, without a declaration of the attenuation of their arrest effective by Presidential Decree. They allege that this deprived them of compensation for the 1,795 days of police and military control.

14. They argue that the provisions on reparation, in some cases, are insufficient, incomplete, arbitrary, and, therefore, that they violate the right to equality. They note that the IACHR is not being asked to rule on the constitutionality of the provisions of Argentine domestic law, but rather that the claim has to do with their right to receive fair and correct reparation, like the other victims of "State terrorism."

15. In response to the State's argument regarding duplication of the Hanríquezcase (see *infra* III B) they argue that unlike this petition, in that matter the claim was for a violation of the right to equality, as Law No. 24,043 does not provide any reparation for the detentions of citizens by order of the Judicial branch. They argue that the instant petition addresses the violation of the right to equalitydue to the failure to make reparation to the victim, who was subjected to the release-under-surveillance regime after an unlawful detention. In the Hanríquez case, no claim was made referring to the release-under-surveillance regime. They argue that there is no duplicity since the facts giving rise to the allegation are different.

16. They argue that the unlawful restriction of personal liberty on the basis of the death threat to the victim and his direct family members was not repaired in timely fashion by the State and is a violation of the right to equality set forth in Article 24 of the American Convention. They argue that the violation of the right to equality invoked is based on two aspects: (i) that in the legislation the State does not expressly recognize the modality of "release under surveillance" without judicial order, for the purposes of making reparation for it; and (ii) in the judicial antecedents it was ordered that reparation be made for "release under surveillance."

17. They argue that Law No. 24,043 recognizes situations of "release under surveillance" for the purposes of making reparation for it only when the act that ordered it emanated from the National Executive Branch (hereinafter "the Executive"), which excludes those who were in the same situation by order of the Armed Forces or its task forces. They argue that actions stemming from written decisions of the Executive can be distinguished from those arising from unwritten decisions, emanating from the same authority, which constituted a systematic practice under the military regime. That practice entailed unequal treatment, in violation of Article 24 of the American Convention.

18. As support for the alleged unequal treatment, the petitioners cite judicial precedents in which reparation was made for different situations of deprivation of liberty on orders of the Executive[1], in which the CNACAFhad considered that

> the aim of Law 24,043 was to grant economic compensation to persons deprived of the constitutional right to liberty, not by virtue of an order of a competent authority, but rather pursuant to acts – whatever their formal expression – that are unlawful, which emanated in certain circumstances from military tribunals and from those who exercised the Executive authority of the Nation during the last *de facto* government.[2]

19. They also argue that in the *Robasto*case the CNACAFhas recognized reparations from the State for "release under surveillance" even when that measure did not emanate from the Executive.[3] They argue that the CNACAFhas established that

> for reasons of equity and justice, it is appropriate to include under the concept of "release-under surveillance" both those cases that occurred pursuant to the regulation of the *de facto* government and

[1] The petitioners cite the judgments in "NORO, Horacio José" (1997), "ARRASTIA MENDOZA"(1998), "BUFANO, Alfredo" (1998), "QUIROGA, Rosario Evangelina" (2000), and the "YOFRE" case.

[2] CNACAF Judgment, "BUFANO, Alfredo,"February 18, 1998.

[3] They indicate that the CNACAF ruled that the Supreme Court "… has established, with referral for the opinion of the Solicitor General of the Nation, that the aim of Law 24,043 was to grant economic compensation to persons deprived of the constitutional right to liberty due to illegitimate acts – whatever their formal expression – emanating in certain circumstances from military tribunals or from those who were running the federal Executive branch during the last *de facto* government …." The petitioners cite CNACAF judgment of the 3rd Chamber of November 28, 2003, in File No. 143,625/2002 captioned "ROBASTO Jorge Enrique re: Ministry of Justice and Human Rights. – Article 3 of Law No. 24,043 (Resolution No. 257/02)."

> those others in which the person was subjected to a state of control and dependence without guarantees – or without the full enjoyment of guarantees – that can be shown in the facts, which represented a comparable impairment to their liberty.

20. In view of this, they argue that the alleged victim was in a situation of limitations being imposed on his personal liberty that was considered by the legislator in drafting Law No. 24,043, insofar as that law establishes that "house arrest or release under surveillance shall not be considered as a cessation of the measure."[4] They argue that the State, through its legislation and through its judicial organs, does not protect all persons equally, as it adopts different criteriawhen dealing with like cases.

21. They argue that since the judgment in the *Robasto* case the Secretariat for Human Rights modified its criterion for interpreting the scope of Law No. 24,043, including as compensable those cases of "release under surveillance" ordered by a competent authority, apparently in keeping with the law. They argue that in two similar cases[5]favorable orders have been issued by the Ministry of Justice and Human Rights (hereinafter "Ministry of Justice").

22. They argue that as of this change, Mr. Almeida made several petitions to the Ministry of Justice, December 27, 2004, amended March 28, 2006; and before the Special Representative for Human Rights in the International Area of the Ministry of Foreign Affairs (hereinafter "Representative of Foreign Affairs"), on October 31, 2006, to amend the order of the administration so as to adapt it to the new criteria bring applied to identical situations. He alleges that the Minister of Justice issued Resolution No. 1243/2006 rejecting the request, considering that a modification of the judicial decision was being sought.

23. They indicated that the Representative of Foreign Affairs, for his part, answered that he did not have instructions that enable him to settle the matter in the international arena, whereas in the domestic sphere jurisdiction lies with the Ministry of Justice.

B. The State's position

24. By way of background the State argues that in 1980 a group of persons who were detained upon orders of the Executive and their judicial claims were not satisfied as the action prescribed. Having exhausted domestic remedies, they filed a petition with the IACHR. In the context of these petitions a friendly settlement was achieved that was reflected in decree No. 70/91, which enshrined an equitable solution for the petitioners and for all those who were in the same legal situation. The State makes reference to the group of cases contained in Report No. 1/93, which reports on a friendly settlement.[6]

25. It argues that the benefit provided for in that decree covered all those who were detained upon orders of the Executive, up until December 10, 1983, who had begun an action for damages before December 10, 1985,and in respect of whom the action was declared prescribed by firm judgment, and for those whose proceedings were already under way.

26. The State notes that this was the first friendly settlement in the Inter-American human rights system (Report No. 1/93). It provided that one-thirtieth of the monthly remuneration of Level A civil servants be paid (SINAPA Decree No. 993/91) for each day that the measure causing the deprivation of liberty lasted.

27. It indicates that Law No. 24,043 expanded the spectrum of beneficiaries by taking in those who had been subjected to limitations of their liberty under the Executive up until December 10, 1983 and those who had suffered detention, by virtue of the acts that emanated from military tribunals, whether or not

[4] The petitioners cite the third paragraph of Article 4 of the Law.

[5] The petitioners cite the cases of Eruli de Guillén, Gilberto Rengel Ponce (File No. 377068195) and Juan AgustínGuillén (FileNo. 377031195).

[6] IACHR, Report No. 1/93 with respect to cases 10,288, 10,310, 10,436, 10,496 10,631, and 10,771, Friendly Settlement, Argentina, March 3, 1993.

they had initiated an action for damages, so long as they had not received any compensation whatsoever pursuant to the judicial judgment for the same case.

28. The State argues that it is not within the competence of the IACHR to take cognizance of positions related to the constitutionality of the domestic law, and that it cannot sit as a court of appeals to examine alleged errors of law or of fact that may have been made by the domestic courts acting within their jurisdiction. It states, however, that the IACHR has the authority to examine whether the effects of a measure violate the human rights recognized in the American Convention.

29. It argues that the judgment that rejected the extraordinary remedy brought against the resolution of the CNACAFis dated June 30, 1999, and that the petition was filed with the IACHR on June 27, 2000, accordingly the petition should be considered time-barred. In response to the petitioner's allegation about having filed a complaint appeal before the Court, the State responds that this does not appear in the record, which means it must be set aside in the analysis.

30. The State further alleges that the instant petition is a duplication of the petition in the case of MarcelinoHanríquezet al., decided by the Commission in its Report No. 73/00, which discarded the positions put forth by the same petitioners Carsen. It considers that there is identity with the instant petition in subject matter and petitioners.

31. It alleges that while that case included nuances related to the alleged arbitrary nature of Mr. Hanríquez's detention and the capacity of the judges who were involved in the events in respect of independence, impartiality, and judge acting properly within his jurisdiction, its object revolved around the supposed incompatibility of Law No. 24,043 with the right to equality enshrined in the National Constitution and the American Convention.

32. The alleges that the IACHR decided once and for all the dispute raised by the petitioners, accordingly it should not be repeated, as per the grounds of inadmissibility set forth at Article 47(d) of the American Convention and Article 33(b) of the IACHR's Rules of Procedure.

33. It argues that just as in the case cited, the petitioners do not deny that the situation alleged by Mr. Almeida does not fit within the provisions of Law No. 24,043, but that they call into question that the benefit provided for by the provision for the days of informal "release under surveillance" was not considered to reach him, with which, and in substance, this petition is a nuanced duplication of the line of argument already rejected by the IACHR.

34. It argues that one cannot infer a violation of the right to equality before the law, particularly if one considers that Mr. Almeida was effectively compensated for the days that could be accredited as compatible with the criteria set forth by the provision. In this respect, it alleges that the criteria of Law No. 24,043 identify beneficiaries of a specific reparation regime that was of general application to all cases in which there were similar detentions. It further argues that a regime of administrative reparations, not compulsory but voluntary, does not entail a violation of the right to equality before the law. It notes that this mechanism evaluates whether the situation of the individual fits within the terms of the provision and whether the reparation set forth therein was enforceable, generally, by any person upon a showing that he or she has suffered those circumstances.

35. It argues that Article 24 of the American Convention entails the obligation to ensure equal treatment under the law to those who are in reasonably like circumstances, accordingly that guarantee does not keep the legislator from considering differently situations he or she considers to be different, so long as such distinctions are not formulated using arbitrary criteria.

36. The State further argues that it has not been proven, before the competent authorities, that Mr. Almeida had in effect suffered such "release under surveillance," claiming that his mere witness statement, taken in another case, was suitable and sufficient to validate payment of the compensation sought.

37. Mr. Almeida argues that with the return to the rule of law in 1983, he could have attempted to bring an action for damages in pursuit of compensation, an action that was not exhausted, which is another reason the petition is inadmissible.

38. The State argues that the domestic provisions provide for suitable and effective judicial remedies for pursuing and eventually obtaining reparation for damages stemming from unlawful activity attributable to state agents. It argues that the claimant has had access to the domestic jurisdiction, has enjoyed adequate legal counsel, has been able to argue in defense of his rights, and his claim has been subject to a final pronouncement within a reasonable time, all in the context of the most absolute and unrestricted respect for due process.

39. It argues that the petitioners are unhappy with the final result of the judicial dispute, and that the purpose of the petition is tied to the criteria for interpreting Law No. 24,043, without the circumstance of Mr. Almeida's situation not falling under that provision being disputed. What is questioned is the supposed injustice of not including situations such as that which the alleged victim states he has suffered. It argues that the petition is inadmissible given that an effort is being made to use the IACHR as a court of appeals.

IV. ANALYSIS

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

40. The petitioners have standing to file a petition with the Commission as provided for in Article 44 of the American Convention. The petition notes as the alleged victim an individual with respect to whom the State has assumed the commitment to respect and ensure the rights recognized by the American Convention. As for the State, the Commission takes note 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 for the events that have occurred since that date. In this respect, it should be noted that this petition raises an alleged denial of justice and reparation, which is said to persist to this day, in relation to the legal action filed in 1995 and the subsequent proceedings.

41. The Commission is competent *ratione loci*to consider the petition, since it alleges violations of rights protected by the American Convention in the territory of a state party. The IACHR is competent *rationetemporis*in relation to the events that occurred after its entry into force for the State. Finally the Commission is competent *rationemateriae*because the petition adduces violations of human rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

42. Article 46(1)(a) of the American Convention requires the prior exhaustion of domestic remedies in keeping with generally recognized principles of international law, as a requirement for admitting claims alleging violations of the American Convention.

43. As established in the Commission's Rules of Procedure and stated by the Inter-American Court has said, whenever a state alleges that petitioners have failed to exhaust domestic remedies, it has the burden of identifying which remedies must be exhausted, and must show that the remedies that have not

been exhausted are "adequate" to address the violation alleged, that is, that the purpose of those remedies in the system of domestic law is suitable for protecting the legal situation infringed.[7]

44. In this respect, the State alleges that domestic remedies were not duly exhausted since the action for damages had not been exhausted. For their part, the petitioners argue that domestic remedies were exhausted with the decision on the complaint appeal (*recurso de queja*) issued by the Supreme Court and that Rufino Almeida availed himself of the procedure under Law No. 24,043, with which he waived any type of claim against the State, as established by the law.[8]

45. The Commission observes that the subject matter of the instant petition, which falls within its competence, has to do with the alleged discrimination due to the lack of reparations in the context of Law No. 24,043 for the unlawful imposition of the regime of "release-under surveillance" to the detriment of Rufino Almeida and his wife.

46. The Commission notes that in 1995 the alleged victim brought an action against the State for the payment of compensation in the context of under Law No. 24,043. In response, an administrative resolution of 1996 acknowledged compensation was in order only for the 54 days of detention, and denied them compensation corresponding to the alleged "release under surveillance." In response, Mr. Almeida filed an appeal with the CNACAF,which ratified the earlier decision in 1999. On July 7,1999, Mr. Almeida filed a complaint appeal with the Supreme Court, which was rejected *in limine* on December 2, 1999.

47. There are many remedies in each system. In this respect, the IACHR recalls that the requirement to exhaust domestic remedies does not mean that the alleged victims have the obligation to exhaust all remedies available to them.[9]Both the Inter-American Court of Human Rights and the IACHR have held repeatedly that "…the rule that requires the prior exhaustion of domestic remedies is conceived in the interest of the State, since it seeks to absolve it of the need to respond to an international organ for acts imputed to it before having had an opportunity to remedy them using its own means."[10] Consequently, if the alleged victim pursued the matter by means of one of the alternatives that was valid and adequate under the domestic legal order, and the state had the opportunity to remedy it in its jurisdiction, the purpose of the international norm is fulfilled. In the instant case, Mr. Almeida presented the claims that are the subject of his petition to the IACHR through a sequence of remedies, reviewed by the judicial branch in multiple forums, and accordingly the requirement has been met.

48. Therefore, given the characteristics of the instant petition, the Commission considers that domestic remedies were exhausted by the judicial resolution of December 2, 1999that dismissed the complaint appeal (*recurso de queja*).

2. Time for filing the petition

49. The American Convention establishes that for a petition to be admissible by the Commission it must be filed within six months of the date on which the alleged victim was notified of the final decision.

[7]Article 31(3) of the Commission's Rules of Procedure. See also I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 64.

[8] Article 9 — The payment of the benefit entails the waiver of any right to compensation for damages due to deprivation of liberty, arrest, being placed at the disposal of the Executive, death or injuries, and shall be grounds for excluding any other benefit or compensation for the same. Law No. 24,043 Granting benefits to persons who were placed at the disposal of the Executive during the state of siege, or who, being civilians, suffered detention pursuant to acts emanating from military tribunals. Requirements.Passed: November 1991.Partially Promulgated: December 23, 1991.

[9]IACHR, Report No. 76/09, Petition 1473-06, Admissibility, Community of la Oroya, Peru, August 5,2009, para.64; IACHR, Report No. 40/08, Petition 270/07.Admissibility, I.V., Bolivia, July 23,2008, para. 70.

[10]IACHR, Report No. 70/04, Petition 667-01, Admissibility, Jesús Manuel Naranjo Cárdenas et al. – Pensioners of EmpresaVenezolana de Aviación VIASA; October 13,2004, para. 52.

50. In this respect, the State argues the petition is time-barred because it was submitted after the six-month period, counted from the decision on the appeal issued by the CNACAF on June 30, 1999. The petitioner has indicated that the notice of the Supreme Court ruling by which the Commission has already established that domestic remedies were exhausted was given on December 28, 1999. The petition was filed on June 27, 2000. The State, for its part, has not called into question the date of notification given. Therefore, the Commission considers that the petition was submitted within the period cited, with which the requirement set out at Article 46(1)(b) of the American Convention has been met.

3. Duplication of procedure and international *res judicata*

51. The State alleges that the instant petition reproduces the petition in Case 11,784 MarcelinoHanríquezet al., which was decided in Report No. 73/00, considering that the subject matter and petitioners are identical.The petitioners argue that in that case the claim was over a violation of the right to equality, as Law No. 24,043 does not contemplate reparations for the detentions ordered by the judicial branch, and that this petition is a claim for said violation for the failure to make reparation for the "release-under-surveillance" regime under unwritten orders of the Executive. They argue that there is no duplication because the facts giving rise to the violation are distinct.

52. In this regard, and to determine the existence of duplication in the matters before it, the IACHR has indicated "that a prohibited instance of duplication involves, in principle, the same person, the same legal claims and guarantees, and the same facts adduced in support thereof."[11]

53. In this respect, the Commission notes that the alleged victim of the instant petition is not the same as those in case 11,784, which was brought on behalf of the Hanríquez siblings. In addition, it notes that said case has to do with the alleged discrimination due to lack of reparation for the detention under the orders of the Judiciary branch. The instant case raises the right to reparation for "release-under surveillance" and threats under the authority of the security forces, and in that sense there are distinctions as between the factual and legal claims.

54. In view of this, the Commission considers that this petition is different from Case 11,784 in the subject matter and in the alleged victims. Accordingly, it concludes that it is not appropriate to declare duplication of the procedure in relation to Case 11,784 and that the petition has not been previously decided by the IACHR. Therefore, the Commission concludes that the exceptions provided for in Article 46(1)(d) and Article 47(d) of the American Convention do not apply.

4. Characterization of the facts alleged

55. In the instant petition, several arguments have been presented on the alleged violation of the rights to judicial guarantees, equality before the law, and judicial protection, enshrined in Articles 8, 24, and 25 of the American Convention. In particular, the petitioners argue that the administrative decision of the Secretariat for Human Rights of the Ministry of Interior, of 1996, in the context of Law 24,043,and the judicial proceeding to challenge it, which culminated in June 2000, were unfair and discriminatory, as reparations were recognized for other similar cases. In support of their argument, the petitioners cite domestic case-law by which reparation was made for the situation of "release-under surveillance" emanating from illegal detention. For its part, the State alleges that the situation of the alleged victim is not covered in Law No. 24,043; that due process guarantees were not violated in the judicial proceeding; and that the petition seeks to assign the Commission the function of a court of appeals.

56. It should be indicated that neither the American Convention nor the IACHR's Rules of Procedure require the petitioner to identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, although petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports what provision or provisions of the relevant

[11]IACHR, Report No. 96/98, Case 11,827, Inadmissibility, Peter Blaine, Jamaica, December 17, 1998.

inter-American instruments apply and whose violation could be established if the facts alleged are proven by sufficient evidence.

57. The Commission, without getting into issues of domestic law, takes into account that as regards the scope of Law 24,043, over time the Argentine courts have developed approaches in the case law to the broad interpretation of that statute so as to make reparation for other types of restrictions on liberty, imposed with either a written or unwritten order from the Executive. Given that this petition relates to the objective application of Law 24.043, the Commission considers that the arguments presented need to be examined in the merits phase.

58. Moreover, the Commission is of the view that the right to reparation for human rights violations, specifically with respect to the right to liberty, is an autonomous right, thus it exists independent of the domestic law and is part of the international responsibility of the State with respect to the violative conduct of its agents. The Commission observes that in the instant petition it is alleged that the domestic system does not provide for the possibility of reparation for the victims of "release under surveillance" in those cases in which there is no written order emanating from the Executive. Therefore, the Commission considers that it should analyze, in the merits phase, whether the domestic system offered adequate remedies for seeking reparation in the instant petition.

59. In light of the foregoing considerations, the Commission observes that the arguments put forth tend to establish violations of the right to judicial guarantees and to judicial protection, protected at Articles 8, 24, and 25 of the American Convention in relation to its Article 1(1).

60. In addition, the Commission observes that the arguments set forth tend to establish violations of the duty to adopt provisions of domestic law, and, therefore, the IACHR will consider the possible violation of Article 2 of the American Convention in the merits phase.

V. CONCLUSIONS

61. The Commission concludes that it is competent to examine the claims presented by the petitioners on the alleged violation of Articles 2, 8, 24, and 25, in conjunction with Article 1(1) of the American Convention, and that they are admissible, in keeping with the requirements established at Articles 46 and 47 of the American Convention.

62. Based on the foregoing arguments of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible in relation to Articles 2, 8, 24, and 25 in connection with Article 1(1) of the American Convention.

2. To notify the Argentine State and the petitioners of this decision.

3. To continue to analyze the matter on the merits.

4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.