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REPORT No. 46/14
PETITION 714-00
REPORT ON ADMISSIBILITY

CARLOS JORGE CACACE
ARGENTINA

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Argentina. July 18, 2014.



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ADMISSIBILITY
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I. SUMMARY

1. On July 12, 2000, Judge Carlos Jorge Cacace of the First Civil, Commercial, Mines, and Labor Court of San Luis (hereinafter, “the petitioner” and “the alleged victim”) lodged a petition with the Inter-American Commission on Human Rights (hereinafter, “the Commission” or “the IACHR”) that alleges the international responsibility of the Republic of Argentina (hereinafter, “the State” or “Argentina”) for delays in the legal case brought for the unconstitutional reduction in his pay in 1995, which infringed his right to the inviolability of his salary and his independence as a judge.

2. The petitioner alleges the potential violation of his rights to moral integrity, judicial independence, a fair trial, freedom of expression, private property, participation in government, equal protection, and judicial protection enshrined in Articles 5, 8, 13, 21, 23, 24, and 25 of the American Convention on Human Rights (hereinafter, “the American Convention”), as well as of the obligation to respect and guarantee such rights set forth under Article 1(1) thereof. The State alleges that the claims are inadmissible given that there are domestic remedies still pending.

3. After having analyzed the parties’ positions and compliance with the requirements set forth under Articles 46 and 47 of the American Convention, the Commission rules that the petition is admissible for purposes of examining the alleged violation of Articles 8, 21, and 25 of the American Convention, and inadmissible with regard to Articles 5, 13, 23, and 24 thereof. The Commission further decided to notify the parties of this decision and publish and include it in its Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

4. The petition was registered under number 714-00. On October 26, 2005, the relevant portions [of the petition] were forwarded to the State for its observations. The State sent its response on June 29, 2007, and in it proposed the opening of a dialogue between the parties aimed at exploring the possibility of a friendly settlement. The State’s response was forwarded to the petitioner for his comments.

5. The petitioner responded on September 20, 2007. On November 2, 2007, the Commission made itself available to the parties for purposes of beginning the pursuit of a friendly settlement. On November 29, 2007, the petitioner communicated his expectations as far as reparations were concerned; these were forwarded to the State for its observations. On September 18, 2008, the petitioner reported that an internal work meeting had apparently been unsuccessful; such message was forwarded to the State for its observations.

6. The State submitted its observations on April 27, 2009 and September 13, 2010, and these were forwarded to the petitioner for his comments. The petitioner submitted responses on July 22, 2009 and March 26, 2011, which were sent on to the State for its comments. On June 27, 2012 and November 1, 2013, the Commission repeated its request to the State for information. At the time this report was adopted, the State had reportedly not yet provided a response.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

7. The petitioner indicates that he has been a judge with the First Civil, Commercial, Mines, and Labor Court of the province of San Luis since 1984. He asserts that, as such, he has been victim of a denial of justice. From the information provided, it appears that, as part of an agreement reached between San Luis government authorities and a majority of judicial officials, the latter reportedly agreed to a pay cut in an effort to assist with reductions in national spending. He alleges that in 1995, Law No. 5.062 was passed; under this law, judges' salaries were cut by 30% as part of a policy to reduce government spending. The petitioner and other judges had reportedly decided to not sign on to the aforementioned agreement and as a result, did not believe themselves bound by the provisions of Law No. 5.062.

8. The petitioner alleges that both the Constitution and provincial legislation guarantee the inviolability of judges' salaries for purposes of ensuring the independence of government powers.¹ To that regard, in an *amparo* action he filed before the judicial authorities, he averred that in the San Luis Province "they have always resorted to the economic crisis generating the violation of the guarantee of inviolability of salaries forgetting that the legislators, have instituted it, precisely for those emergency hypothesis".

9. He claims that on December 27, 1995, before publication of the above-mentioned Law, he filed, in his position as judge, this *amparo* action and request to stay the decision to cut his salary by 30%; consideration thereof fell to the San Luis Criminal Court (hereinafter, "the Court") and the purpose was to ensure that the inviolability of his salary be respected, alleging that the Law was unconstitutional. In his appeal, the petitioner reportedly indicated that he had filed an *amparo* action against the province of San Luis:

...that currently –with regard to the month of January 1996–and imminently –with regard to the subsequent months–arbitrarily, illegally, and fundamentally threatens, harms, and restricts, with manifest unconstitutionality, the principle of the separation of government powers, [...] guaranteed by [...] the National Constitution, as well as the irremovability conferred to me as a judge [...] by the local Constitution. [...] Requests that the law passed by Deputies and Senators be declared totally and unconditionally unconstitutional and that, [...] it is in a position to be confirmed by the executive branch [...]. The purpose of the law is to reduce judicial salaries; it must therefore be declared unconstitutional and not be allowed to be enforced [or] payments to be stopped, and, moving forward, salaries should be paid based on the constitution in force, with all costs covered.

10. The petitioner notes that on December 29, 1995, Law No. 5.062 was published in the official bulletin of the province of San Luis.

11. The petitioner indicates that, as all judges were affected by the law, it was not possible for them to intervene in the resolution of legal questions tied to the salary cut and therefore registered attorneys had to be used to discharge judicial duties for specific cases. In this regard he notes that, pursuant to the provisions of Law No. 4.929, each year the Provincial High Court assigned registered attorneys by lotto the required categories of temporary replacements. This was subsequently changed and that function was transferred to the executive branch. In light of this, the petitioner indicates that "...associate judges were appointed who were devotees and who fully identified with the political plan and strategy that forced me to challenge and bring recusal proceedings against them."

12. He alleges that the province engaged in "shenanigans" in the process and that whenever a potential associate judge was uncertain or not a "devotee," the province would disqualify him for "a thousand reasons," among them, being in the red with the province, and would demand that its numerous tax offices provide reports on the judge in question's tax situation. The petitioner indicates that there were judges who recused themselves for being friends with him.

¹To support his argument, the petitioner cites Article 192 of the Constitution of the Province of San Luis, which provides that: "judges receive monthly remuneration, and that cannot be reduced –except for pension contribution deductions– as long as they remain in their positions [...]," as well as Article 110 of the National Constitution, which provides that: "the Nation's Supreme Court justices and lower court judges shall hold their jobs as long as they observe good conduct, and shall receive in exchange for their services compensation as determined by law, and that such compensation may not be reduced in any way while they remain in their positions."

13. The petitioner alleges that they went to the National Supreme Court of Justice (hereinafter, the “NSCJ”) in 1999 to request an expedited judgment. He asked [the NSCJ] “[...] to rule the dispute insoluble and the remedies and procedures under domestic law, exhausted [...]” On December 28, 1999, the NSCJ dismissed the request, ruling that “[t]he filing [...] does not constitute any action or case whatsoever that, pursuant to [...] the National Constitution.”

14. The petitioner alleges that the NSCJ validated “with its silence, the actions of the province by refusing to assign a judge to the case in question.” He holds the State responsible for preventing there from being independent presiding or acting judges who could hear his case. He alleges that it was impossible to petition domestic courts with minimum guarantees of due process.

15. The petitioner indicates that on August 3, 2001, he asked the recused associate judge to adopt a measure to move the process forward. On August 8, 2001, the Court allegedly forwarded the case to the High Court of the province of San Luis, indicating that:

[having] exhausted the list of associate judges designated by the executive branch of the province [...] inform the parties of the absolute impossibility of this Court’s involvement in ruling on the challenges put forward by the Office of the National Attorney General against the Court’s members as no legal norm whatsoever exists in the province of San Luis that makes it possible to determine the objective denial of justice in this case.

16. The petitioner notes that on September 9, 2001, he asked the High Court to issue a ruling. On May 13, 2002, the High Court is said to have ordered the case be sent back to the Court given that the Court’s benches had reportedly been reassigned new judges; in the opinion of the High Court, that made resolution of the *amparo* action possible.

17. He likewise alleges that, in 2002, he challenged the judges for having an interest in the case and that the vast majority of his colleagues who had filed *amparo* actions had made arrangements with the government, through a donation, for the future of what they were owed, accepting the new reduced payment. That is to say that they would have allegedly withdrawn their claim.

18. In 2003, the petitioner reported that two cases –“Bianchi” and “Sartor”– besides his own remained and that several judges had apparently joined those cases, but such cases were also not final nor could they be executed because the province of San Luis was purportedly instigating countless incidents and recusals. He alleges that in other cases, agreements were signed with the province and that in five or six cases, the Court had reportedly upheld the acceptance of the claim in 1996, but that no decisive ruling had yet been issued.

19. In 2007, the petitioner reported that the status of his case remained the same: “without a judge from any level of court and without the case having been transferred.”

20. The petitioner alleges the violation of: Article 1 of the American Convention since he suffered ideological discrimination when his knowledge about the role of justice and the independence of the branches was not respected; Article 8 of the Convention due to the creation of special judges who lack jurisdiction, independence, and impartiality, subsequent to the applicable law; Article 25 because he lacked access to a speedy and effective straightforward remedy; Article 5 because his mental and moral integrity were not respected; Article 13 and his right to the freedom of thought and expression; Articles 23 and 24 for access, in equal conditions, to the public service; and Article 21 for the property kept from him.

B. Position of the State

21. The State alleges that the *amparo* action filed by the petitioner remains pending in the First Judicial District’s Criminal, Correctional, and Misdemeanor Court of Appeals.

22. The State reports that on September 7, 2004, the terms of the case were suspended “until the party bringing the action meets the requirement of the notification” to “provide the single case form” required by Law 5.379. From the information provided by the State, it appears that on August 13, 2008, the petitioner filed a request to move the case forward and that proceedings had allegedly resumed on September 12, 2008. It likewise appears that both the Chief Judge of the High Court of Justice of San Luis and the prosecutor in the case reported, in 2008 and 2009, that it was up to the party bringing the action to advance the case before Criminal Court No. 1 of the First Judicial District. The State alleges that there are judicial remedies that still need to be pursued by the petitioner.

23. The State has presented no further arguments regarding the admissibility of this petition.

IV. ANALYSIS

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

24. The petitioners are entitled, under Article 44 of the American Convention and Article 23 of the IACHR’s Rules of Procedure, to file complaints with the Commission. The petition names as alleged victim an individual on whose behalf the State undertook to respect and ensure the rights enshrined in the American Convention starting on September 5, 1984, when Argentina deposited the respective instrument of ratification. The Commission, therefore, has *ratione personae* to examine the petition.

25. The Commission likewise has *ratione loci* to examine the petition inasmuch as it alleges acts that are said to have taken place within the territory of a state party to the American Convention. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention was already in force for the State when the facts alleged in the petition are said to have occurred. Lastly, the Commission is competent *ratione materiae* because the petition alleges possible violations of human rights protected by the American Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

26. Article 46(1)(a) of the American Convention provides that for a petition filed with the Inter-American Commission to be admitted, the remedies under domestic law are required to have been pursued and exhausted in accordance with generally recognized principles of international law. For its part, Article 46(2) of the Convention provides that the rule of prior exhaustion of domestic remedies does not apply when: (i) The domestic legislation of the state concerned does not afford due process of law for the protection of the right or group of rights that have allegedly been violated; (ii) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

27. Pursuant to the Commission’s Rules of Procedure and pronouncements by the Inter-American Court, whenever a State alleges a petitioner’s failure to exhaust domestic remedies, the burden lies with that State to identify which remedies would have to have been exhausted and to demonstrate that remedies not yet exhausted are “adequate” for rectifying the alleged violation, that is to say, that the function of those remedies within the domestic legal system is suitable for protecting the legal right infringed.²

28. In this regard, the State alleges that actions must be taken by the petitioner to advance the case. For his part, the petitioner claims that the case remains pending because the NSCJ has allegedly refused

²Article 31(3) of the IACHR’s Rules of Procedure. See also Inter-American Court of Human Rights. *Case of Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C, No. 4, paragraph 64.

to provide a judge, and hence, it is impossible to pursue [the case] in domestic courts with minimum guarantees of due process.

29. The Commission observes that the subject of this petition, which falls under its jurisdiction, has to do with delays in rendering a decision in a legal case brought because the petitioner's pay was cut, which allegedly infringed his right to the inviolability of his salary and his independence as a judge, and would constitute a violation of his rights to a fair trial, judicial protection, freedom of expression, and private property.

30. Based on the information furnished by the parties, the Commission notes that regarding the reduction in salary, on December 27, 1995, the alleged victim reportedly filed an *amparo* appeal and request for a stay with the Criminal Court of San Luis against the Law in question that had already been passed, but not yet published, alleging it was unconstitutional. Absent a response, in 1999, the petitioner went to the NSCJ to request an expedited ruling. The NSCJ is said to have dismissed the request since submission thereof did not constitute any action or appeal whatsoever pursuant to the Constitution. Following a series of recusals filed by both parties, the case was allegedly put on hold in September 2004 because the petitioner had reportedly failed to turn in a form. In August 2008, the petitioner apparently asked to move forward with the case, which was reportedly resumed in September 2008. The case is said to be pending a ruling in Criminal Court No. 1 of the First Judicial District.

31. In this regard, the Commission observes that, without prejudice to the recusals filed by both parties and the alleged failure to comply with a notification, or the alleged failure by the party bringing the case to advance it, the case in question, brought in 1995, and apparently suspended in 2004 and resumed in 2008 –due to action taken by the petitioner– is reportedly awaiting a ruling in the trial court. Hence, given this petition's characteristics, the Commission considers that it meets the requirement established under Article 46(2)(c) of the American Convention regarding unwarranted delays in rendering a decision on the *amparo* action.

32. Invocation of the exceptions to the rule of prior exhaustion of domestic remedies provided for under Article 46(2) of the Convention is closely linked to the determination of potential violations of certain rights enshrined there in such as judicial protection and the right to a fair trial. Never the less, Article 46(2), by its nature and purpose, is a provision with autonomous content vis-à-vis the substantive provisions of the American Convention. As a result, the determination as to whether the exceptions to the rule of prior exhaustion of domestic remedies apply to the case at hand must be made prior to and separately from the analysis of the merits of the case since it relies on a standard of appreciation different from that used to determine the potential violation of Articles 8 and 25 of the American Convention. It is important to clarify that the causes and effects that prevented exhaustion of domestic remedies shall be analyzed in the report adopted by the Commission regarding the merits of the dispute in order to determine whether the American Convention has been violated.

2. Timeliness of the petition

33. Article 46(1)(b) of the American Convention provides that for petitions to be deemed admissible by the Commission, they must be filed within a period of six months following notification of the final judgment that exhausts domestic remedies to the alleged victim. In the case at hand, the IACHR has established the applicability of one of the exceptions to the exhaustion of internal remedies pursuant to Article 46(2)(c) of the American Convention and Article 31(2)(c) of the Commission's Rules of Procedure. In this regard, Article 32(2) of the IACHR's Rules of Procedure provides that in cases in which the exceptions to prior exhaustion of domestic remedies apply, the petition is to be submitted within a reasonable period of time, as determined by the Commission. To that end, the Commission should consider the date on which the alleged violation of the rights is said to have occurred as well as the specific circumstances of each case.

34. This petition was received on July 12, 2000; the facts being alleged in the claim reportedly began in December 1995 and the effects thereof, in terms of an alleged lack of administration of justice, with the case still pending, continue to the present day. Therefore, in light of the context and characteristics of this

petition, the Commission believes it was filed within a reasonable period and thus the admissibility requirement related to the timeliness of the petition is considered to have been met.

3. International duplication of proceedings

35. The case file does not indicate that the substance of the petition is pending in any other international settlement proceeding or that it is substantially the same as another petition already examined by this Commission or any other international body. Hence, the IACHR concludes that the exceptions set forth in Articles 46(1)(d) and 47(d) of the American Convention do not apply.

4. Characterization of the alleged facts

36. This petition sets out a series of arguments regarding the alleged violation of the rights to moral integrity, a fair trial, freedom of expression, private property, participation in government, equal protection, and judicial protection enshrined in Articles 5, 8, 13, 21, 23, 24, and 25 of the American Convention.

37. In view of the elements of fact and law presented by the parties, as well as the nature of the matter brought to its attention, the IACHR considers that the allegations put forward by the petitioner could constitute potential violations of the rights to a fair trial, private property, and judicial protection provided for in Articles 8, 21, and 25 of the American Convention, pursuant to Article 1(1) thereof, given the alleged delay in the rendering of a judgment in the *amparo* case.

38. Regarding the alleged violations of the rights to moral integrity, the freedom of expression, and equal protection, the Commission considers that it lacks sufficient elements to determine a potential violation of the American Convention ascribable to the State. It therefore considers inadmissible this portion of the petition under Article 47(b) of the American Convention.

V. CONCLUSIONS

39. The Commission concludes that it is competent to examine the claims put forward by the petitioner regarding the alleged violation of Articles 8, 21, and 25, pursuant to Article 1(1) of the American Convention, and that such claims are admissible pursuant to the requirements established under Articles 46 and 47 of the American Convention. The Commission further concludes that the claims put forward regarding Articles 5, 13, 23, and 24 are inadmissible.

Based on the foregoing arguments of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To rule this petition admissible as regards Articles 8, 21, and 25, pursuant to Article 1(1) of the American Convention.
2. To rule the petition inadmissible as regards Articles 5, 13, 23, and 24 of the American Convention.
3. To notify the State and the petitioner of this decision.
4. To continue its analysis of the merits of the case.
5. To publish this decision and include it in its Annual Report to the OAS General Assembly.