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REPORT No. 4/15
PETITION 582-01
REPORT ON ADMISSIBILITY

RAUL ROLANDO ROMERO FERIS
ARGENTINA

Approved by the Commission on August 15, 2014 at its
152 Extraordinary Period of Sessions

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JANUARY 29, 2015

I. SUMMARY

1. On August 24, 2001, attorneys Mariano Cuneo Libarona, Cristian Cuneo Libarona, José María Arrieta, and Jorge Eduardo Alcántara--later replaced by attorney Luis Alberto Feris (hereinafter "the petitioner")--submitted a petition to the Inter-American Commission on Human Rights (hereinafter "the IACHR"), concerning the alleged international liability of the Republic of Argentina (hereinafter "the State") for the alleged excessive preventive detention, lack of judicial independence and impartiality, and lack of access to judicial recourse in the criminal trial of Raúl Rolando Romero Feris, (hereinafter "the alleged victim"), initiated in 1999, in the Province of Corrientes.

2. The petitioner claims violations of the rights to personal liberty, a fair trial, and judicial protection enshrined in Articles 7, 8, and 25 of the American Convention on Human Rights (hereinafter "the American Convention"), and of the duty to respect and guarantee the rights set forth in Article 1.1 thereon. The State argues that the petition is inadmissible in that it does not describe a possible violation of the American Convention and is intended to use the IACHR as a court of appeals.

3. After studying the positions of the parties and whether the petition meets the requirements set forth in Articles 46 and 47 of the American Convention, the Commission has decided to declare the petition admissible for examination of the alleged violation of Articles 7, 8, and 25 of the American Convention, in keeping with Article 1.1 thereof. The Commission has also decided to advise the parties of this decision, to publish it, and to include it in the Commission's Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

4. The petition was registered under number 582-01. On July 27, 2009, the IACHR transmitted the pertinent sections of the petition to the State. The State presented its observations on January 14, 2011, and these were conveyed to the petitioner on January 19, 2011.

5. On February 10 and 26, 2011, the petitioner presented his observations to the IACHR. On March 21 and July 1, 2011, the State presented its observations to the IACHR. On July 18, 2011, the petitioner presented his observations, which were conveyed to the State.

6. On March 27, 2013, the petitioner submitted additional information and requested that the Commission rule the petition admissible. This pleading was transmitted to the State for its information. On August 20, 2013, the petitioner again requested that the petition be found admissible.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

7. As background, the petitioner states that the alleged victim is an entrepreneur who was continuously active in politics and government. He states that the alleged victim was elected Intendant of the Province of Corrientes (hereinafter "the Province") in 1997, through 1999, when he was deprived of liberty because of lawsuits against him concerning alleged acts of corruption.

8. He says that, in 1999, the Justice Workers Union of Corrientes and the former city mayor lodged a criminal accusation against the alleged victim, among other persons, for offenses against the public

administration when he was serving as Mayor of the City of Corrientes. He maintains that the alleged victim did not commit the offenses of which he was accused.

9. He states that, on March 4, 1999, the Judge of First Instance ordered formal proceedings in the case. In addition, on August 2, 1999, the Province lodged, against the alleged victim, a criminal complaint and a civil suit for damages.

10. The petitioner states that, on August 3, 1999, an arrest warrant was issued for the alleged victim. He says the alleged victim was arbitrarily and unlawfully deprived of his liberty. He states that, on October 5, 1999, an indictment was issued against the alleged victim and the other defendants for offenses of graft, abuse of authority, and failure to perform the duties of public servants; misuse of public funds; and fraud against the public administration. The same document allegedly ordered the preventive detention of the alleged victim.

11. He alleges that the Court of the First Examining Magistrate of Corrientes prematurely imprisoned the alleged victim without a trial. He affirms that Mr. Raúl Romero Feris was deprived of his liberty because of pressure on the magistrates from the coalition government.

12. With respect to the First Examining Magistrate, the petitioner claims that he was designated in an irregular, wrongful, and politicized manner by the Interim Governor of the Province, who, because he was also Senator of the Province, approved the appointment. He states that the designated judge placed ninth in the competition for the post but was still invested, passing over the eight better-qualified candidates. He alleges therefore that the right to one's natural judge was violated. He argues that the appointment of that judge was carried out by his political adversaries in the coalition government and concludes therefore that judicial impartiality was lacking.

13. Once the investigations phase was completed, the case was placed before the Second Criminal Chamber of the First Judicial District of the Province (hereinafter "Second Chamber"). He states that the alleged victim was judged by chamber members designated by the Federal Auditor "by special appointment," not as provided in Article 142 of the Provincial Constitution, under which "they are appointed by the Executive with Senate approval." He says the defense challenged the composition of this tribunal, rejecting the designated judges and calling it invalid. He says that this motion was rejected '*in limine*' by the same Chamber.

14. He states that, on February 19, 2001, he lodged a motion for dismissal with a subsidiary appeal, which was rejected on May 31, 2001, by the Second Chamber. He states that, on June 14, 2001, he lodged an appeal in cassation, requesting that the actions be voided, on the grounds that the grievances described constituted a non-actionable political matter. He states that this motion was denied in Ruling No. 22, on June 15, 2001, by the same Chamber.

15. The petitioner questions the independence and impartiality of these judges and does not consider them his natural judges. He alleges that the magistrates were biased and prejudiced. He states that one of the magistrates of the Second Chamber, after condemning the alleged victim, sent an electronic message to various addressees--including the Argentine Senate--in which he referred to the ruling issued and to the alleged victim in offensive and discrediting terms, calling him a "sinister figure" and claiming he was responsible for "plunging this Province into poverty and indigence."

16. He alleges that the State violated the term of two years of preventive detention provided for in Act 24.390, which is, in turn, a violation of Article 7 of the American Convention. He states that, in that light, the petitioner submitted a motion for release on behalf of the alleged victim.

17. Information submitted by the petitioner indicates that, on August 1, 2001, the Court of the First Examining Magistrate extended the alleged victim's preventive detention in view of the case's particular circumstances, deeming it a reasonable period of detention when taking into account the 52 cases in which the alleged victim was indicted.

18. He states that, in 2001, the Intervention Government called elections for the posts of governor and vice governor of the Province and that the alleged victim, from his place of detention, ran as a New Party candidate for governor, receiving enough votes to advance to the second round of balloting; he was running against the governing party candidate.

19. He alleges that, on April 18, 2002, the presentation of essential evidence was rejected, to which he responded with a motion for reconsideration, which was denied.

20. He states that, seven days before the final voting round, and after two and a half years in preventive detention, the alleged victim was tried in oral proceedings, on May 8, 2002. He states that the alleged victim was convicted of unlawful administration and sentenced to seven years in prison, and, under a successful civil suit brought by the Municipality, the alleged victim was sentenced to a fine of 8,790,000 Argentine pesos, to be paid to the Municipality. As an additional penalty, he was allegedly disqualified in perpetuity from holding public office.

21. He states that, in 2002, while he was deprived of liberty, the alleged victim ran for the National Senate and won, but had to resign from his post.

22. He states that, on September 11, 2002, after three years and one month of detention, the alleged victim was freed by order of the Superior Court of Justice of the Province (hereinafter "STJ"), considering how long he had spent in preventive detention.

23. He states that he lodged a motion for review, on the grounds of lack of independence and violations of due process, which was denied by the STJ. He then lodged a complaint against the refusal to review, which was rejected by the STJ on April 7, 2004.

24. He states that, on April 24, 2004, he lodged a special federal appeal with the STJ, which in turn referred it to the Supreme Court of Justice of the Nation (hereinafter "CSJN"); the latter ruled it inadmissible, on February 13, 2007, stating that no sufficient federal grievance existed. He states that, with this decision, of which he was notified on February 16, 2007, all domestic remedies were now exhausted.

25. The petitioner questions the actions of the CSJN in finding his motions inadmissible under the provisions of Article 280 of the Argentine Code of Civil and Commercial Procedure. He argues that the alleged victim's right to appeal and judicial review of the suit brought against him was not respected as stipulated in Article 8.2 of the American Convention.

26. He argues that the alleged victim was judged arbitrarily by the Judge of First Instance, by the members of the Second Chamber, and by the STJ. He questions the composition of the STJ at the time of its ruling on this case, when five judges should have voted, as opposed to the only three who did. He argues that the State violated his right to his natural judge and not to be tried by special tribunals. He maintains in that regard that the STJ is a "covert special tribunal."

27. He also argues that the judicial authorities took a stand by repeatedly and groundlessly rejecting the series of appeals lodged, by constantly delaying the investigation, and by failing to carry out the various appropriate and useful procedures suggested by the defense.

B. Position of the State

28. The State argues that the petition is inadmissible because the criminal trial was conducted in keeping with the guarantees of due judicial process, the required standards of international human rights law, and the American Convention. It argues that the petitioner should not seek to have the IACHR act as a fourth court of review according to the provisions of the American Convention.

29. It states that, on December 16, 1999, the Argentine State ordered a federal intervention in the Province of Corrientes by way of Act No. 25236, which terminated the terms in office of the governor, vice governor, members of the Legislature. That law also declared the members of the Judiciary to be in office “by special appointment.”

30. It states that, in May 2002, the alleged victim was convicted by the Second Chamber to seven years in prison, and to special permanent disqualification, for the offense of unlawful administration. It adds that he was sentenced to pay the Municipality the sum of 8,790,000 Argentine pesos.

31. It states that the appeal and challenges lodged with respect to the actions of the judges of the Second Chamber and the First Examining Magistrate were rejected by the STJ. It states that the special federal appeal was ruled inadmissible by the CSJN, after a ruling by the Attorney General of the Nation, who studied and ruled on the case after analyzing each of the grievances described by the petitioner.

32. It says that the petitioner disagrees with the rulings of the domestic courts. It says that the petition was submitted as a reiteration of the arguments put forth before the domestic courts, reflecting his disagreement with their decisions, and that those courts acted within their spheres of competence and in accordance with the guarantees of legal due process. It maintains that, accordingly, there is no violation of the rights recognized in the American Convention.

IV. ANALYSIS OF ADMISSIBILITY AND COMPETENCE

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

33. The petitioner is entitled to petition the Commission under the provisions of Article 44 of the American Convention and Article 23 of the Commission's Rules of Procedure. The petition names as the alleged victim an individual in respect of whom the State has pledged to respect and guarantee the rights recognized by the American Convention as of September 5, 1984, the date of deposit of Argentina's instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

34. The Commission is competent *ratione loci* to consider the petition by virtue of events that allegedly took place within the territory of a state party to the American Convention. The Commission also is competent *ratione temporis* to examine this petition under the American Convention by virtue of alleged events that took place after the ratification of the American Convention. Finally, the Commission is competent *ratione materiae* because the petition alleges violations of rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

35. Article 46.1.a of the American Convention requires the prior exhaustion of remedies available under domestic jurisdiction, according to generally recognized principles of international law, as a requirement for the admission of complaints alleging violations of the American Convention.

36. In that respect, the petitioner alleges that such remedies were exhausted by way of the CSJN ruling of February 13, 2007, which declared inadmissible the special federal appeal.

37. The Commission notes that the matter of this petition, which falls under its purview, concerns alleged violations of judicial independence and impartiality, excessive preventive detention, and violations of due criminal process against the alleged victim, which would constitute violations of his rights to personal liberty, a fair trial, and judicial protection.

38. From the information presented by the parties, the Commission notes that the indictment was answered with a motion for dismissal with a subsidiary appeal, which was allegedly rejected. The alleged victim appears to have been convicted on May 8, 2002. Subsequently, an appeal for review was allegedly denied by the STJ, followed by a complaint of refusal to review, which was allegedly rejected. Lastly, a special federal appeal was allegedly attempted and found inadmissible by the CSJN, on February 13, 2007.

39. As for the duration of preventive detention, a motion for release from preventive imprisonment was allegedly submitted and, on August 1, 2001, the Court of the First Examining Magistrate allegedly extended such imprisonment. On September 11, 2002, the alleged victim was apparently released.

40. According to reports from both parties, the Commission therefore notes that the petitioner appears to have exhausted domestic remedies with the ruling of February 13, 2007, that ruled the special federal appeal inadmissible. Therefore, considering the characteristics of this petition, the Commission finds that it meets the requirement established in Article 46.1.a of the American Convention.

2. Deadline for presentation of the petition

41. Article 46.1.b of the American Convention stipulates that, in order to be admissible by the Commission, a petition must be presented within the six months following the date on which the allegedly injured party has been notified of the final decision.

42. The criminal trial to which this complaint pertains was conducted between 1999 and February 2007 and this petition was received on August 24, 2001, after which the alleged prolonged imprisonment was extended. The Commission has already stated that domestic remedies were exhausted on February 13, 2007.

43. The Commission also reaffirms that what should be taken into account in determining whether domestic remedies have been exhausted is the situation at the time of the ruling on admissibility¹, because the time of presentation of the complaint differs from the time of the ruling on admissibility.

44. Therefore, considering the context and characteristics of this petition, the Commission finds that it was submitted within a reasonable period of time and that it meets the admissibility requirement concerning the presentation deadline.

3. Duplication of international proceedings

45. The case file contains nothing to indicate either that this matter is pending consideration under any other international proceeding or that it has already been decided by the Inter-American Commission. Therefore, the IACHR concludes that the exceptions provided in Article 46.1.d and Article 47.d of the American Convention do not apply.

4. Nature of the alleged events

46. Neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to identify the specific rights that are alleged to have been violated by the State in the matter placed before the Commission, although petitioners may do so. It falls to the Commission, on the basis of the system's jurisprudence, to determine, in its reports on admissibility, which provision of the pertinent inter-American instruments is applicable; and the violation thereof may be established if the alleged events are demonstrated with sufficient evidence.

¹ IACHR. Report No. 52/00 Cases 11.830 and 12.038 Dismissed Congressional Employees. Peru. June 15, 2000, para. 1 and Report No. 94/14, Petition 623-03. Admissibility. Jaime Humberto Uscátegui Ramírez and family members. Colombia. November 6, 2014, para. 39.

47. In light of the elements of fact and of law set forth by the parties and the nature of the matter placed before it, the IACHR finds that the allegations of the petitioner concerning the alleged arbitrary and unlawful detention of the alleged victim, his allegedly excessive preventive imprisonment, the alleged lack of judicial independence and impartiality, and the violation of the principles of the natural judge and due process could constitute possible violations of the rights enshrined in Articles 7, 8, and 25 of the American Convention with respect to Article 1.1 thereof.

V. CONCLUSIONS

48. The Commission concludes that it is competent to examine the claims presented by the petitioner concerning the alleged violations of Articles 7, 8, and 25, in keeping with Article 1.1 of the American Convention, and that these are admissible under the requirements established in Articles 46 and 47 of the American Convention.

49. On the basis of the arguments of fact and of law presented above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find this petition admissible with respect to Articles 7, 8, and 25, in connection with Article 1.1, of the American Convention.
2. To convey this decision to the State and to the petitioner.
3. To continue to examine the matter on its merits.
4. To publish this decision and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 29th day of the month of January, 2015.
(Signed): Tracy Robinson, President; Felipe González, Second Vice President; José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.