

OEA/Ser.L/V/II.155  
Doc. 17  
24 July 2015  
Original: Spanish

**REPORT No. 37/15**  
**PETITION 425-97**  
REPORT ON INADMISSIBILITY

DIANA CONNIE ALISIO  
ARGENTINA

Approved by the Commission at its session No. 2040 held on July 24, 2015  
155<sup>th</sup> Regular Period of Session.

**Cite as:** IACHR, Report No. 37/15, Petition 425-97. Inadmissibility. Diana Connie Alisio.  
Argentina. July 24, 2015.



**REPORT No. 37/15**  
**PETITION 425-97**  
INADMISSIBILITY  
DIANA CONNIE ALISIO  
ARGENTINA  
JULY 24, 2015

**I. SUMMARY**

1. On November 24, 1997, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “the IACHR”) received a petition filed by Diana Connie Alisio (hereinafter “the petitioner” or “the alleged victim”), alleging the international responsibility of the Argentine Republic (hereinafter “Argentina” or the “State”) for alleged violations of judicial guarantees and judicial protection to the detriment of the alleged victim in the case against a judge for sexual harassment, and subsequent arbitrariness of the conviction of the alleged victim for slander and defamation (*calumnias e injurias*).

2. The State asks that the petition in question be found inadmissible, arguing that: (i) the petition did not fulfill the requirement established at Article 46(1)(b) of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”), and (ii) the petitioner did not exhaust domestic remedies, since she should have turned to the civil and criminal courts before turning to an international forum. In addition, it argues that the petitioner seeks to have the Commission sit as a court of fourth instance.

3. After examining the parties’ positions, the Commission concludes that it is competent to take cognizance of the petition, and that the petition is inadmissible in light of Articles 46 and 47 of the American Convention since it was not filed within six months of the date that the petitioner was notified of the final decision, as required by Article 46(1)(b) of the Convention. The Commission decides to give notice of this report to the State and the petitioner, and to publish this decision and include it in its Annual Report to the General Assembly of the OAS.

**II. PROCEDURE BEFORE THE COMMISSION**

4. On November 24, 1997, the Commission received the petition, and on December 10, 1998, January 25, 2000, and April 17, 2002, it received additional parts of the initial petition. The petition was recorded as number 425-97, and on October 8, 2002 the pertinent parts were forwarded to the State for its observations. The State filed its briefs with observations on January 15 and July 21, 2003, February 3, 2010, January 21 and March 22, 2011, and July 30, 2013; the notes were forwarded to the petitioner.

5. The petitioner sent additional information on June 11, and November 18, 2003; March 4 and 19, 2004; March 31 and April 11, 2008; April 6 and 23, 2009; August 27 and November 9, 2009; March 30, June 8, August 19, and December 6, 2010; June 8 and May 16, 2011; and May 12, 2013. The notes were forwarded to the State.

**III. POSITION OF THE PARTIES**

**A. Position of the petitioner**

6. The petitioner and alleged victim indicates that in late 1989 she began a divorce proceeding in which a decision was required on separation of marital assets and custody of the three minor children, and that the matter was heard by Ricardo Dutto, a judge in the 5<sup>th</sup> Family Court of Rosario, province of Santa Fe. She alleges that on an undetermined date Judge Dutto went to the private home of Ms. Alisio, which is also her dental office, supposedly to discuss the proceeding. Once in the room he embraced her and tried to kiss her

forcibly, in response to which she rejected him. She indicates that at that moment one of the clients of Diana Connie Alisio arrived at her dental office, thus the judge rushed out, warning the petitioner that for the good of the divorce proceeding she should not say anything.

7. She argues that after the improper conduct by the judge, on March 16, 1992, the alleged victim filed a complaint with the Office of the Prosecutor of the Courts of Appeal No. 2, which was included in an investigation into Judge Dutto by the General Prosecutor (Procurador General) of the Supreme Court of Justice at the initiative of the Association of Employees of the Judicial Branch. She indicates that an administrative proceeding was begun, known as Jury de Enjuiciamiento, in order to evaluate attitudes exhibited by Mr. Dutto such as dishonorable abuse (*abuso deshonesto*), mistreatment, psychological harassment and abuse of authority towards the staff and litigants in the court. Ms. Alisio appeared as a witness before the panel, where 12 women gave testimony as victims and witnesses; Mr. Dutto was suspended preventively from his duties until the proceeding culminated.

8. She alleges that the process was subject to “political pressures” that led to “grave procedural irregularities” with “manifest nullities and grave arbitrary acts,” as a result of which they dismissed evidence and witness testimony. She says that for this reason, on August 11, 1993, the panel (Tribunal de Enjuiciamiento) absolved the Judge, finding that there was not sufficient evidence to remove Ricardo Dutto for sexual harassment. Nonetheless, it found sufficient merit to apply an administrative sanction in relation to his “arbitrary, inconsiderate, and disrespectful” attitudes. For this reason the Provincial Supreme Court of Justice ratified Dutto’s suspension and on October 5, 1993, it imposed on Judge Dutto a sanction consisting of 15 days unpaid leave for the above-noted attitudes.

9. She argues that the case was publicized in national and local newspapers and Ms. Alisio made statements in the course of two reports published in the daily newspaper Clarín and in the magazine Gente, in March 1992, in which she told of the alleged sexual harassment of which she says she was victim, accusing the judge as her assailant. She indicates that as a result of these publications, in September 1992 Judge Dutto brought a criminal action for slander and defamation (*calumnias e injurias*) against Ms. Alisio. She states that on November 1, 1993 the alleged victim was convicted and sentenced to three months of prison, suspended sentence, for defamation (*injurias*) and subsequently the payment of compensation for damages in the amount of 30,000 pesos. She indicates that she appealed the decision, and that the matter went to the Court of Criminal Appeals of Rosario, a court that upheld the ruling on November 22, 1994. She argues that she filed a constitutional motion (*recurso de inconstitucionalidad*) before the Supreme Court of Justice of the province of Santa Fe, however she was never given notice of the final ruling.

10. The petitioner states that it was not until April 8, 1996, that she came to learn that the judgment was handed down, when presented with an order from Criminal Court No. 7, accusing her of the crime of slander and defamation (*calumnias e injurias*). She indicates that for that reason on August 8, 1996, she sent a letter to her lawyers in which she asked that they communicate to her the content of the judgment. She states that her lawyers demanded of her the sum of 15,000 pesos, which she could not pay, in order to give her a copy of that ruling.

11. The petitioner states that given the fear of being detained, she filed a writ of *habeas corpus* on March 25, 1996, which was rejected by Investigative Court No. 8 on April 16, 1996, under the argument that the alleged victim was not detained.

12. The petitioner argues that her right to be heard by an independent and impartial court has been violated and also her right to judicial protection in the face of human rights violations. With respect to admissibility requirements, the petitioner argues that she has exhausted domestic remedies since sexual harassment was not covered by any criminal statute, and that the IACHR should consider the petition to have been filed within the time provided for in the American Convention.

## B. Position of the State

13. The State argues that the petition was filed after the time required by Article 46(1)(b) of the American Convention on Human Rights, since the judgment of the Provincial Supreme Court of Justice denying the constitutional motion filed by the petitioner in the criminal complaint for defamation dates from December 13, 1995, and the notice in the record is from December 18, 1995. Nonetheless, the complaint was filed with the IACHR on November 24, 1997, i.e. one year and nine months after notice of the final decision.

14. The State argues that notice at the procedural domicile made to one who acts in the capacity of legal representative in a judicial proceeding is actual notice according to Argentine procedural law, thus December 18, 1995, should be the date taken into account for the purposes of calculating the six-months period provided for in Article 46(1)(b) of the Convention.

15. It adds that from the text of the note sent by the petitioner to her attorneys requesting a copy of the decision, one can see that at least as of the date it was sent, Ms. Alisio had already learned of the adverse outcome of the constitutional motion. Nonetheless, even if one were to consider the date set forth in that letter – August 8, 1996 – for the purposes of calculating the time the complaint was filed, the six-months requirement would still not have been satisfied by Ms. Alisio.

16. The State also indicates that the petitioner did not exhaust domestic remedies in keeping with Articles 46(1)(a) and 46(2) of the Convention, since she did not bring any criminal or civil complaint for reparation for the supposed damages suffered. It indicates that the activity of the alleged victim was essentially to make statements to various journalists. In addition to her statements to the press, she made a witness statement to a notary public that was part of the preliminary investigation by the provincial courts to investigate the judge's conduct.

17. As regards the proceeding before the panel constituted to judge the conduct of Judge Dutto, the State notes that he was suspended from his duties until the resolution that absolved him. It indicates that in the course of the proceeding it was determined that the evidence gathered lacks probative efficacy and the lack of veracity of the statements accusing him of misconduct was corroborated. It adds that despite the repeated invocation of similar conduct, except for the alleged victims at no time was it possible to offer more than hearsay witnesses as regards the conduct referred to. As regards the witness statement by Ms. Alisio, the court stated that "it is given by the same person who in the course of her statements says that she was subject to indecorous and dishonorable conduct that has not been corroborated. To the contrary, it is not accurate that the respondent has served as judge in the main case and its joined matters [the divorce case], as the witness [Diana Connie Alisio] affirms, which is clearly shown by a mere reading of the accompanying papers, with which the credibility that can be attached to her remaining statements vanishes."

18. The State clarifies that the panel known as the Tribunal de Enjuiciamiento is not a collegial body judicial in nature. That Tribunal acted based on a complaint from the Association of Tribunals of Rosario, which was the foundation for the General Prosecutor (Procurador General) to begin the procedure, which is political-administrative and not judicial in nature, and which is conducted to safeguard the physical, intellectual, and moral suitability of the members of the different branches of government. It alleges that for this reason there was no procedural obstacle whatsoever keeping the petitioner from initiating a criminal proceeding in response to the alleged acts of harassment suffered at the hands of Judge Dutto, and it notes that the law has provided for the offense of dishonorable abuse (*abuso deshonesto*) at Article 127 of the Criminal Code, which approximates harassment when the conduct of the alleged victimizer is as described by Ms. Alisio. The State notes that the petitioner did not file any action for compensation before the courts for civil code matters for the moral harm she alleges she suffered.

19. As regards the writ of *habeas corpus*, the State notes that the remedy was rejected as no restriction or threat whatsoever was found to exist against the liberty of Ms. Alisio. It adds that nor did the petitioner appeal the ruling of the judge denying the writ.

20. As regards the criminal complaint for defamation (*injurias*) brought by Ricardo Dutto against the petitioner, the State notes that Diana Connie Alisio merely stated her disagreement with the judgment, which was adverse to her, in which she was convicted at trial and on appeal, and this does not justify her attempt to use the Commission as a court of appeals from the local jurisdiction for it to review judgments adopted by the domestic courts with respect to due process and judicial guarantees.

21. It indicates that at every procedural stage the crime of defamation (*injurias*) was proven, since the media outlets to which the petitioner turned showed that they had been asked by her to reproduce her statements on the alleged harassment suffered, which turned out to be objectively defamatory, as it attributed to Judge Dutto “serious personality problems” and “attitudes of total cowardice,” among others, “with a grave negative impact on [his] credit and reputation.” It adds that in the considering paragraphs of the judgment the acting judge placed emphasis on the fact that the petitioner turned to the press while the investigation into the acts was ongoing through the panel (Jury de Enjuiciamiento), “with the obvious purpose of discrediting the complainant in the criminal complaint.”

#### **IV. LEGAL ANALYSIS**

##### **A. Competence**

22. The petitioner has standing to bring a petition before the Commission as provided for in Article 44 of the American Convention and Article 23 of its Rules of Procedure. The petition states as the alleged victim an individual with respect to whom the State has undertaken to respect and ensure the rights recognized by the American Convention as of September 5, 1984, the date that Argentina deposited the instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

23. The Commission is competent *ratione loci* to consider the petition for acts alleged to have occurred in the territory of a state party to the American Convention. The Commission is also competent *ratione temporis* to examine this petition under the American Convention for the facts alleged to have occurred after ratification of the American Convention. Finally, the Commission is competent *ratione materiae* because the petition adduces violations of the rights protected by the American Convention.

##### **B. Admissibility Requirements**

###### **1. Deadline for filing a petition**

24. Under Article 46(1)(b) of the American Convention, the petition must be “lodged within a period of six months from the date on which the party alleged violation of his rights was notified of the final judgment.”

25. In the documents produced by the parties in the instant case, it appears that in 1993 the panel (Tribunal del Jury de Enjuiciamiento) that considered the matter against Ricardo Dutto, in which the petitioner alleged having been sexually harassed by him, absolved him. The Commission observes that the petitioner has not questioned the suitability of that procedure for deciding on a case of alleged sexual harassment, simply alleging violations of due process. The petitioner indicates that Mr. Dutto brought a criminal complaint against Ms. Alisio for slander and defamation due to statements – related to the alleged harassment – made by her in two interviews. Ms. Alisio was convicted and sentenced to three months suspended sentence and the payment of 30,000 pesos. The judgment finding the petitioner liable was upheld on appeal, and the petitioner filed a constitutional motion that was declared inadmissible by the Supreme Court of Justice of the province of Santa Fe on December 13, 1995.

26. The State argues that from the certificate of notice of the final resolution of the Supreme Court it appears that the attorneys for Diana Connie Alisio were notified on December 18, 1995; and that therefore the petition, received by the Commission on November 24, 1997, was filed long after the six-month deadline had lapsed. In addition, the petitioner argues that she did not learn of the Supreme Court decision until April 8, 1996, and that she said so in the letter dated August 8, 1996, signed by her.

27. In the instant case, “the six-month time period must be counted from the date of notification of the judgment that exhausted domestic remedies; in other words, the data on which the petitioners learned of it.”<sup>1</sup> In this respect, the Inter-American Commission cannot fail to observe that notice of the final judgment was given on December 18, 1995, and that even under the interpretation most favorable to the petitioner, which is to assume that she did not learn of that decision until August 8, 1996, the petition is time-barred, as it was filed one year and three months after that date.

28. In view of the foregoing, and aware that this petition was received by the Inter-American Commission on November 24, 1997, the IACHR concludes that the six-month period counted from the date when the petitioner learned of the final judgment of the domestic courts had already lapsed. Therefore, the petition does not meet the requirement stipulated at Article 46(1)(b) of the American Convention.

## **V. CONCLUSIONS**

29. The Commission has established that the petition does not meet the requirement set forth in Article 46(1)(b) of the American Convention. Accordingly, the Commission concludes that the petition is inadmissible, in keeping with Article 47(a) of the American Convention.

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

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

#### **DECIDES:**

1. To declare the instant petition inadmissible.
2. To notify the petitioner and the State of this decision.
3. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 24<sup>th</sup> day of the month of July, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; José de Jesús Orozco Henríquez, Second Vice President; Felipe González, Rosa María Ortiz, Tracy Robinson and Paulo Vannuchi, Commissioners.

---

<sup>1</sup> IACHR, Report No. 17/03, Petition 11,823, Inadmissibility, María Estela Acosta Hernández *et al.* (*Explosions in the Reforma sector of Guadalajara*), Mexico, February 20, 2003, para. 33.