

OEA/Ser.L/V/II.155
Doc. 26
28 July 2015
Original: Spanish

REPORT No. 46/15
PETITION 315-01
REPORT ON ADMISSIBILITY

CRISTINA BRITZ ARCE
ARGENTINA

Approved by the Commission at its Session No. 2044 held on July 28, 2015 at its 155th Period of Session.

Cite as: IACHR, Report No. 46/15, Petition 315-01. Admissibility. Cristina Britz Arce. Argentina. July 28, 2015.



REPORT No. 46/15
PETITION 315-01
 REPORT ON ADMISSIBILITY
 CRISTINA BRITZ ARCE
 ARGENTINA
 JULY 28, 2015

I. SUMMARY

1. On April 20, 2001, Ezequiel Martín Avaro and Vanina Verónica Avaro (hereinafter, “the petitioners”) lodged a petition at the Office of the Secretary General of the Organization of American States (hereinafter “OAS”) in Buenos Aires, Argentina, which was received by the Inter-American Commission on Human Rights (hereinafter also the “Commission” or “IACHR”) on May 10, 2001. The petitioners claimed that the Republic of Argentina (hereinafter “the State”) bore responsibility for alleged violations of the rights enshrined in articles 8 and 25 of the American Convention on Human Rights (hereinafter also the “Convention” or “American Convention”) said to have occurred in the context of judicial proceedings conducted in the domestic courts as a result of the death of their mother, Cristina Britz Arce (hereinafter also “the alleged victim”), who was then pregnant at the “Ramón Sarde” Public Maternity Hospital in the city of Buenos Aires.

2. The State argues that the petition should be declared inadmissible as it did not present a colorable claim of violation under the American Convention. It also argued that domestic remedies had not been exhausted and that the petitioners sought to use the IACHR as a “court of appeal”. The basis for the foregoing was that the judgments in the domestic proceedings were issued by tribunals that acted within their authority and in observance of fair-trial guarantees.

3. Having examined the positions of the parties and the petition’s compliance with the requirements set forth in articles 46 and 47 of the American Convention, the Commission has decided to declare this petition admissible for the purposes of an examination of alleged violations of articles 4, 8, and 25 of the American Convention in connection with article 1.1 of said treaty. It has further decided to notify the parties of this decision, and to publish it and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE IACHR

4. On April 20, 2001, the petitioners lodged a petition at the Office of the Secretary General of the OAS in Buenos Aires, Argentina, which was received by the IACHR on May 10, 2001, and registered as number 315-01. On August 11, 2003, the petitioners submitted additional information to the IACHR. On January 3, 2005, the pertinent portions of the petition were relayed to the State for its comments.

5. The State presented its reply on July 19, 2005, and it was transmitted to the petitioners for comment. Those comments were, in turn, sent to the IACHR on March 30, 2009. On September 22, 2009, the State presented additional observations and requested that processing of the petition be taken as concluded and that it be set aside. That communication was forwarded to the petitioners for their information on December 3, 2009.

III. POSITIONS OF THE PARTIES

A. The petitioners

6. The petitioners state that on June 1, 1992, medical malpractice on the part of medical staff at Ramón Sarde Public Maternity Hospital in Buenos Aires caused the death of Cristina Britz Arce, who was pregnant at the time. The alleged victim reportedly died from preeclampsia-eclampsia which also led to the loss of the fetus due to intrauterine hypoxia. The petitioners explained that as a result of that incident a series

of interrelated criminal proceedings were instituted in which they claim not to have had access to an independent and impartial tribunal or to a duly reasoned decision, as detailed below.

a. *Criminal proceeding for manslaughter (Case No. 2.391)*¹

7. The petitioners say that as a result of the alleged victim's death, a charge of manslaughter was filed against the physicians who attended Cristina Britez Arce at the "Ramón Sarda" Public Maternity Hospital, namely Patricia Carmen Anido and Eduardo Mario Negri. The petitioners reportedly appeared as plaintiffs in the criminal proceeding.

8. An expert medical opinion was ordered on June 13, 1992, and introduced into the file a year later, on June 24, 1993, by forensic experts Florencio Casavilla and Carlos Fernando Leoncio Poggi. According to the petitioners, the experts had prepared a "false" opinion with the precise intention of covering up the homicide under investigation. The presiding judge allegedly declared the opinion void and, acting ex officio, filed a complaint charging falsification of public documents. That complaint gave rise to the proceeding registered as Case No. 21.375/96, outlined hereinbelow.

9. Subsequently, a new expert opinion was requested and presented by the experts Héctor Papagani and Horacio Schiavo on April 25, 1995, one day before the statute of limitations on criminal action ran. That expert opinion apparently refuted the findings of the first expert opinion and corroborated that the alleged victim had been a "high-risk patient" who had received the wrong treatment, had had to be admitted as a result, and had later died. It was decided, based on the new expert opinion, to charge the physicians with homicide. The petitioners also provided copies of a presentation in which they claimed that the clinical history of the alleged victim had been tampered with during the investigation and that various parts of it had disappeared, including the original of an electrocardiography that reputedly proved that the alleged victim had a heart defect.

10. On December 16, 1998, the prosecutor reportedly indicted the accused physicians and sought penalties of three years' imprisonment and nine years' disqualification from the practice of medicine. However, on July 18, 2003, the court issued a judgment acquitting Patricia Carmen Anido and Eduardo Mario Negri of all blame and charges. That decision was upheld on appeal. Next, the petitioners say that on December 23, 2003, the date on which they presented an extraordinary federal appeal (locally referred to as "recurso extraordinario federal"), a "maneuver" by the court personnel upon taking receipt of the brief resulted in their being denied timely access to the appeal, which was eventually rejected as "time-barred" on March 15, 2004.

b. *Criminal proceeding for falsification of a public instrument (Case No. 21.375/96)*²

11. The ex officio complaint lodged by the judge presiding over the investigation for manslaughter resulted in this case being brought on October 4, 1993. The petitioners reportedly appeared as plaintiffs in this case too.

12. According to the petitioners, the preliminary inquiry stage of this proceeding lasted more than four years, during which time the presiding judge apparently acquitted the accused experts on five different occasions, with the Fourth Chamber of the Criminal Court of Appeals overturning those acquittals each time. After the fourth acquittal was overturned, the judge hearing the case decided, on February 26, 1997, to request an expert opinion from the plenary of the Forensic Medical Corps of the Supreme Court of Justice of the Nation (hereinafter also the "Forensic Medical Corps"). On May 21, 1997, the plenary, comprising 31 professionals, issued its opinion, which found, by a majority of 22 votes in favor and 9 against

¹ Magistrate's Court No. 8 (Secretariat 63), "BRITZ ARCE, Cristina - Manslaughter." Case No. 2.391. The petitioners also refer to this case as "BRITZ ARCE, Cristina - Homicide Art. 43. Criminal Code."

² Criminal Court of First Instance No. 3 (Secretariat 110), "CASAVILLA, Florencio et al. - Falsification of a public document." Case No. 21.375/96 (during processing at second instance by the Criminal Court of Appeals, this case was numbered 18.668).

that the expert opinion prepared by experts Florencio Casavilla and Carlos Fernando Leoncio Poggi “had been correct;” it also ruled out that medical malpractice had been committed. The dissenting votes determined that the expert opinion under study was false. That plenary opinion led to the fifth acquittal of the accused, which, likewise, was subsequently overturned.

13. According to the petitioners, in the preparation of that plenary opinion a serious act of institutional corruption had occurred that called the Forensic Medical Corps into question—they termed it a “most serious act with unimagined institutional ramifications”; they alleged that a false plenary opinion had been prepared with the aim of concealing the responsibilities of the professionals implicated in the homicide and in the preparation of the previous false expert opinions. Indeed, according to the petitioners, on September 23, 1997, the Fourth Chamber of the Criminal Court of Appeals invalidated the plenary opinion of the 31 members of the Forensic Medical Corps. The petitioners point out the serious institutional implications of that decision, given that the Argentine judiciary had decided to dispense with the services of the entire Forensic Medical Corps, a body that reported to the Supreme Court of Justice, owing to the “corrupt” and “corporative” behavior of its members intended to aid and abet their colleagues.

14. On November 10, 1997, the judge ordered a new expert opinion, this time entrusting it to the Catholic University of the Province of Córdoba. That institution issued its expert opinion in March 1998, attesting that the alleged victim had died of preeclampsia-eclampsia. This opinion, which was introduced into the record as expert evidence, found, *inter alia*, that the preeclampsia had not been properly diagnosed, that no treatment had been instituted, that the alleged victim had not been offered minimum recommendations, that she had not been correctly evaluated during her antenatal checkups, and that she had not been correctly medicated. The petitioners said that it was “astounding,” therefore, that the “incisive report” submitted by the Catholic University of Córdoba should have been used as grounds to acquit forensic experts Florencio Casavilla and Carlos Fernando Leoncio Poggi. Petitioners indicate that the decision was upheld by the Criminal Court of Appeals on October 21, 2002.

15. The petitioners pointed out that, contrary to what the State claimed in one of its additional comments to the IACHR, the presiding judge in the case had been recused. That recusal had been interposed on April 13, 1998, owing to “unwarranted delays” that could have resulted in the case being time-barred. They further noted that the judge had failed over the course of 41 months to direct the preliminary inquiry to its conclusion because of “the judge’s vested interest in the proceeding” and because of his “prejudgment.” They said that said recusal was rejected on June 18, 1998.

16. In that regard, they alleged that there was corporate machinery in place in Argentina that involved the Forensic Medical Corps, which ensured impunity for medical personnel when any of their members were involved in cases such as this. That corrupt machinery had denied the petitioners access to justice in the form of an impartial and duly founded decision. In that same regard, the petitioners add that the foregoing constituted proof that there was indeed external pressure on the judges and a lack of impartiality. Similarly, they said that the unique particularities of this case directly involved the Supreme Court itself, given that in the framework of the aforesaid investigation there had occurred the “historic act” in which, for the first time in Argentine judicial history, an expert opinion prepared by the plenary of the forensic corps of the country’s highest tribunal had been invalidated.

17. Finally, the petitioners say that although the expert opinion offered by the plenary of the Forensic Medical Corps was declared void due to the corruption of its members, a number of proceedings and decisions were based on that evidence—and on other pieces of evidence that had also been challenged—, which constituted use of unlawfully obtained proof. They also say that influence was brought to bear on all of the judicial decisions connected with that plenary opinion in related cases in order to obtain dismissals and acquittals for the members of the Forensic Medical Corps.

c. *Criminal proceeding for aiding and abetting after the fact (Case No. 43.321/97)*

18. The petitioners say that their lawyers had received an anonymous tip off that was brought to the attention of the judicial authorities, as a result of which, on May 23, 1997, an investigation was initiated

for aiding and abetting after the fact. The petitioners say that in the context of that investigation testimony was received from one of the dissenting medical doctors in the plenary opinion in case 21.375/96, who allegedly declared that there had been no deliberation whatsoever in drawing up the aforementioned plenary expert opinion, that it had been prepared with the answers already written, and that pressure had been put on other forensic experts to sign the concealing answers.

19. According to the petitioners, the investigation had been dismissed for lack of a prosecutor's summons, as was confirmed by the First Chamber of the Criminal Court of Appeals on September 17, 1997.

d. *Criminal proceeding for perjury (Case No. 27.985/98)*³

20. The petitioners say that on April 1, 1998, they filed a criminal complaint⁴ for perjury against all 31 members of the Medical Corps. In that case, the alleged corrupt and corporative behavior of the Forensic Medical Corps in falsifying the plenary's opinion and aiding and abetting their colleagues was purportedly investigated. The petitioners informed that on April 12, 1999, the presiding judge decided to acquit all 31 doctors implicated in the case.

21. Upon appealing that decision, the petitioners said that they were denied consideration of evidence and that the facts that were the subject of the case had been distorted. They also mentioned serious flaws in the supporting arguments and reasoning in the ruling adopted, which, they allege, deprived them of a duly founded decision. The First Chamber of the Criminal Court of Appeals reportedly upheld the decision of the court of first instance on August 6, 1999.

22. The petitioners filed a cassation appeal against that decision which was refused on October 20, 1999. They then filed a motion for reconsideration of dismissal of appeal, which was rejected on March 30, 2000. In that regard, the petitioners argued that they had been denied access to a comprehensive review of the judgment under the terms of article 8.2.h of the Convention.

23. They said that subsequently they filed an extraordinary federal appeal for arbitrariness and serious misconduct by a government institution with the Supreme Court of Justice of the Nation on May 8, 2000. In that filing, they claimed that the procedural platform had been substituted, decisive evidence had been disregarded, and that said evidence had even been tampered with. They said that that appeal was also rejected and that they were notified as much on October 19, 2000.

B. The State

24. The State holds that the petition is inadmissible, given that in none of the cases were the remedies available under domestic law exhausted in the requisite manner. It also argues that the petition does not present a colorable claim of violation of rights ensured by the American Convention and that the petitioners' intention is to use the IACHR as a "fourth instance" to review the judgments as to fact and law made by the domestic judges and tribunals.

25. The State argues that the alleged criminal responsibility of the medical personnel who treated the alleged victim was investigated in the proceeding for manslaughter.⁵ The State mentions that on July 18, 2003, the magistrate's court decided to acquit Patricia Carmen Anido and Eduardo Mario Negri, the accused in the case, of all blame and charges. That judgment was appealed by the office of the prosecutor assigned to the case and upheld at second instance by the Criminal Court of Appeals on November 27, 2003.

³ Criminal Court of First Instance No. 4 (Secretariat 113), "FORENSIC MEDICAL CORPS - Perjury." Case No. 27.985/98. The petitioners also referred to this case as "FORENSIC MEDICAL CORPS - False expert opinion."

⁴ In their initial petition, the petitioners informed the IACHR that the complaint was filed by their father (who was also the former spouse of the alleged victim), Miguel Ángel Avaro, in their representation, given that they were minors in accordance with Argentine legislation in force at that time.

⁵ Magistrate's Court No. 8 (Secretariat 63), "BRITIZ ARCE, Cristina - Manslaughter." Case No. 2.391.

The State also says that the petitioners filed an extraordinary federal appeal, which was rejected as “time-barred” by the Criminal Court of Appeals on March 15, 2004.

26. The State also indicates that in the case brought ex officio for falsification of a public instrument,⁶ the court that was assigned the case investigated the suspected criminal responsibility of forensic experts Florencio Casavilla and Carlos Fernando Leoncio Poggi for alleged falsification of an expert opinion with the intention of concealing the criminal responsibility of Patricia Carmen Anido and Eduardo Mario Negri for the death of Cristina Britez Arce. In that regard, a plenary was convened of the Forensic Medical Corps, which issued its opinion on May 21 1997. According to the State, that plenary opinion “was invalidated” by the Fourth Chamber of the Criminal Court of Appeals, for which reason another expert opinion was ordered, which was prepared by the Catholic University of the Province of Córdoba. The State holds that the lower court acquitted both forensic experts, a decision that was upheld by the Court of Appeals on October 21, 2002.

27. The State also said that, in response to the complaint filed by the father of the petitioners, the alleged responsibility of 31 doctors belonging to the Forensic Medical Corps alleged to have falsified the plenary expert opinion drawn up in the proceeding for falsification of a public instrument (Case No. 21.375/96), was duly investigated.⁷ The State explains that on April 12, 1999, the lower court decided to acquit all 31 accused doctors. That decision was appealed by the petitioners and upheld by the Criminal Court of Appeals on August 6, 1999. The petitioners filed a cassation appeal against that decision, which was refused on October 20, 1999. Subsequently, on March 30, 2000, the National Court of Cassation rejected a motion for reconsideration of dismissal of appeal. The petitioners reportedly filed an extraordinary federal appeal against that decision, which was ruled inadmissible on October 17, 2000, a fact of which the petitioners were notified on October 19 that year.

28. As a subsidiary matter, the State argues that a careful analysis of the domestic proceedings reveals clearly that the actions pursued against the accused doctors were conducted in accordance with the guarantees of legal due process, in keeping with the standards required by international human rights law and article 8.1 of the American Convention. In that regard, it said that there is nothing in the records to support the claim of a lack of independence and impartiality on the part of the judges or tribunals that acquitted the accused doctors. The State says that the petitioners, as plaintiffs, never recused the presiding judges, invariably enjoyed in full the possibility of making such submissions as they deemed pertinent by proposing measures intended to establish the alleged responsibility of the accused doctors, and presented all such challenges as they deemed appropriate by means of the procedural remedies provided by domestic law.

29. The State also argues that the petitioners did not provide evidence that demonstrated the existence of external pressures on the judges and tribunals involved such as to cast serious doubts on their independence; nor did they offer compelling evidence to show any bias, either subjective or objective, on their part. The State argues that the petitioners refer in general terms to “a lack of independence”, but do not specify or concretely demonstrate the existence of any actual external pressures that impaired the independence of the judges and tribunals involved in the domestic jurisdiction. Therefore, according to the State, it is fair to conclude that the judgments in the domestic proceedings were issued by domestic tribunals that acted within their authority and in observance of fair-trial guarantees.

30. The State adds that the allegations of the petitioners regarding violation of their right to a hearing, the lack of basic procedural guarantees and of independent and impartial tribunals, and the absence of reasoned decisions, are general in nature and they lack evidence to support their submissions. According to the State, the petitioners merely mention that the rulings issued by the various judicial organs were “incorrect in their reasoning” and that they failed to take into account essential facts and proof to

⁶ Criminal Court of First Instance No. 3 (Secretariat 110), “CASAVILLA, Florencio et al. - Falsification of a public document.” Case No. 21.375/96.

⁷ Criminal Court of First Instance No. 4 (Secretariat 113), “FORENSIC MEDICAL CORPS - Perjury.” Case 27.985/98.

demonstrate the criminal responsibility of the accused. In light of the foregoing, the State considers that if the IACHR were to admit this petition, it would be acting as a fourth instance.

31. By way of “final considerations,” the State says that the series of expert opinions, which the petitioners argue were falsified in order to aid and abet medical personnel, were invalidated in the domestic jurisdiction. The last of those expert opinions—the one prepared by the Forensic Medical Corps—was disqualified by the Criminal Court of Appeals, after which a new expert opinion was ordered. This new expert opinion had not been challenged by the petitioners, at least not in the record of the proceedings. Finally, it added that the mere fact that the medical personnel who were the subject of the petitioners’ complaint were not convicted of the offenses with which they were charged, did not of itself mean that there were violations of fair-trial guarantees, insofar and inasmuch as the judges involved “have concluded that there was insufficient evidence to submit the aforementioned forensic experts for trial.”

IV. ANALYSIS

A. Competence

32. The petitioners have standing to lodge petitions with the Commission under article 44 of the American Convention and article 23 of the Commission’s Rules of Procedure. The petition names as alleged victim an individual in respect of whom the State undertook to observe and ensure the rights recognized in the American Convention on September 5, 1984, the date on which Argentina deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

33. The Commission has competence *ratione loci* to examine petitions concerning facts alleged to have occurred within the jurisdiction of a state party to the American Convention. The Commission is also competent *ratione temporis* to examine this petition under the American Convention because the alleged facts occurred after the ratification of the American Convention. Finally, the Commission has competence *ratione materiae* because the facts alleged suggest possible violations of rights protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

34. Article 46.1.a of the American Convention provides that in order for a petition to be admitted by the Commission, it will be required that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.

35. To begin with, therefore, the Commission must clarify which domestic remedies need to be exhausted in the instant case for the petition to be admitted. The Commission notes that the subject matter of this petition concerns the suspected negligence by medical staff at the “Ramón Sarđa” Public Maternity Hospital in the city of Buenos Aires, reported to have caused the death of Cristina Britez Arce, as well as alleged violations of the rights to a fair trial and judicial protection, said to have occurred in the course of the judicial proceedings conducted to elucidate the reasons for her death. In that regard, the precedents established by the Commission indicate that when a publicly actionable offense is alleged to have been committed, the State has the obligation to institute criminal proceedings and pursue them to their conclusion,⁸ and that those proceedings are the suitable means to clarify the facts, to try those responsible,

⁸ IACHR, Report No. 14/08, Petition 652-04, Admissibility, Hugo Humberto Ruiz Fuentes, Guatemala, March 5, 2008, para. 64; IACHR, Report No. 14/04, Petition 11.568, Admissibility, Luis Antonio Galindo Cárdenas, Peru, February 27, 2004, para. 39; IACHR, Report No. 83/03, Petition 12.358, Admissibility, Octavio Rubén González Acosta, Paraguay, October 22, 2003, para. 23; IACHR, Report No. 05/03, Petition 519-01, Admissibility, Jesús María Valle Jaramillo, Colombia, February 20, 2003, para. 28; IACHR, Report No. 42/02, Admissibility, Petition 11.995, Mariela Morales Caro et al. (La Rochela Massacre), Colombia, October 9, 2002, para. 32.

and to establish appropriate criminal penalties, in addition to enabling other forms of financial reparation.⁹ In view of the fact that the petitioners alleged the commission of an offense that is classified in the domestic system of laws as manslaughter, which is a criminal offense pursuable *ex officio*, the procedure under domestic law to be exhausted in this case was a criminal investigation, which the State itself was required to initiate and move forward.

36. To begin with, it is worth noting that by the time the petition was filed with the Inter-American Commission on April 20, 2001, almost 9 years had already elapsed without there being a first instance judgment in the proceeding for manslaughter, a case that began to be processed on June 15, 1992. The Commission finds that the fact that a ruling at first instance was still pending in the investigation at that time constitutes, *prima facie*, an unwarranted delay under the terms of article 46.2.c of the Convention, and is, therefore, grounds for an exception to the rule of prior exhaustion of domestic remedies. However, the Commission notes that after the petition was lodged the proceeding continued, as it is described below.

37. Based on information presented by the parties, the Commission finds that the complaint filed by the petitioners on June 1, 1992, prompted a criminal proceeding for manslaughter to be opened.¹⁰ Eleven years later, on July 18, 2003, the court of first instance reportedly acquitted the accused in the case of all blame and charges. That judgment was appealed by the prosecutor assigned to the case and later upheld by the Criminal Court of Appeals on November 27, 2003. The petitioners are said to have filed an extraordinary federal appeal against that decision, which was rejected on March 15, 2004, by the Court of Appeals under the argument that it was “time-barred.”

38. The State, for its part, argued that the petitioners had failed properly to exhaust domestic remedies because the fact that the extraordinary federal appeal that they filed was time-barred impeded the case from being examined by the Supreme Court of Justice of the Nation. Therefore, it said that “that circumstance makes applicable the decision of the IACHR in case 10.382,” in which it said that:

[I]f the highest court of the land has stated that an apparent lack of procedural expertise on the part of the petitioner made it impossible for him to secure a review of the penalty imposed on him, it is not for the Commission to try to determine or assess whether the Court was mistaken. The rules that govern procedural law reflect methodological criteria intended to ensure the orderly use of judicial actions and to make the work of the courts more efficient and effective.¹¹

39. The petitioners offered two different arguments on that point. On one hand, they pointed to the existence of a “maneuver” that prevented them from lodging the remedy in time. They say that the deadline for filing the appeal expired on December 23, 2003, at 9:30 a.m.¹² and that at the time that it was filed, instead of indicating the actual time at which it was filed (9:29 a.m.) with the official date stamp device, personnel of the Fifth Chamber of the Court wrote “9:32” by hand and with that “maneuver” access to the Supreme Court was prevented “by two minutes.” The petitioners also presented a submission claiming the futility of the extraordinary federal appeal in the instant case, arguing that a complaint to the Supreme Court

⁹ IACHR, Report No. 99/14, Petition 446-09. Admissibility, Luis Alberto Rojas Marín. Peru, November 6, 2014, para. 44; IACHR, Report No. 48/14, Petition 11.641. Admissibility, Pedro Julio Movilla Galarcio. Colombia. July 21, 2014, para. 31; IACHR, Report No. 21/14. Petition 525-07. Admissibility, Baptiste Willer and Frédo Guirant. Haiti. April 4, 2014, para. 20; IACHR, Report No. 38/13; 38/13, Petition 65-04, Admissibility, Jorge Adolfo Freytter Romero et al., Colombia, July 11, 2013, para. 32; IACHR, Report No. 144/10, Petition 1579-07, Admissibility, Report No. 144/10, Guatemala, Residents of the Village of Chichupac and the Hamlet of Xeabaj, Municipality of Rabinal, Guatemala, November 1, 2010, para. 50; IACHR, Report No. 140/09, Petition 1470-05, Admissibility, Members of the Union of State Workers of Antioquia (SINTRAOFAN), Colombia, December 30, 2009, para. 60.

¹⁰ Magistrate’s Court No. 8 (Secretariat 63), “BRITIZ ARCE, Cristina - Manslaughter.” Case No. 2.391.

¹¹ IACHR, Report No. 6/98, Case 10.382, Ernesto Máximo Rodríguez, Argentina, February 21, 1998, para. 62.

¹² Under article 124 of the Code of Criminal Procedure of the Nation, the petitioners had until the first two hours of the day after the deadline expired to file the appeal. Inasmuch as the regulation judicial business day begins at 7:30 a.m., that time limit ran until 9:30 a.m. on the day after the deadline expires. Cf. Code of Criminal Procedure of the Nation, article 164. “Should the deadline expire after office hours, the act to be fulfilled within same deadline may be done during the first two hours of the following business day.”

of Justice that involved the body of expert witnesses that reported to it, as well as with senior officers of the judiciary, would never have succeeded, hence “the reasonableness of resorting to the Inter-American Commission on Human Rights.”

40. The Commission offers the following observations with respect to this point. In first place, regarding the State’s argument concerning the application of the precedent set in case 10.382, the Commission points out that the facts and nature of the proceeding at the domestic level in that case differ from the case under examination here. Specifically, case 10.382 concerned alleged violations of the American Convention by reason of a decision by a judicial body to order payment of a sum of money that was not a sanction but a complementary indemnification to the opposing party in a mortgage foreclosure procedure,¹³ a process governed by the principle under which the private interests of the parties delimit the scope and extent of the proceedings (a principle locally referred to as “principio dispositivo”). The petition in this instance, by contrast, involves a criminal proceeding originated by a complaint filed in connection with a publicly actionable offense, the responsibility for the investigation of which fell, as stated above, to the State.

41. It is worth noting, therefore, the different standard of appreciation in assessing exhaustion of domestic remedies that, in keeping with the precedents set by this Commission, applies in cases where the specific duty to advance the proceedings belongs to the State, as well as the degree of responsibility that individuals have in the progress of criminal investigations. Indeed, the IACHR has also held that in procedural regimes where the victim or their relatives have standing to take part in a criminal suit, its exercise is not compulsory, but optional and in no way is a substitute for the State’s actions.¹⁴ In other words, as the Commission has concluded, neither victims nor their relatives can be required to assume the task of exhausting domestic remedies where that obligation pertains to the State.¹⁵ The foregoing notwithstanding, the IACHR notes the persistence of the relatives of Cristina Brites Arce in seeking full clarification of the facts to the extent of their possibilities by participating and filing of appeals in the criminal proceeding for manslaughter as well as in the various criminal proceedings that were instituted thereafter.

42. Secondly, it should be borne in mind that the Commission has already held that the extraordinary federal appeal available in the Argentine legal system—the remedy to which the State refers—is an extraordinary remedy and its exercise is exceptional and discretionary.¹⁶ As such, it is not a procedural level that is added on to every trial, but rather it operates as a new but reduced and partial procedural level that exists to ensure constitutional supremacy and whose propriety is interpreted within a restricted scope.¹⁷ Therefore, the Commission does not necessarily require its exhaustion;¹⁸ indeed, depending on the circumstances in each instance, a large number of petitions have been declared admissible in the past without that remedy having been filed.¹⁹ In this case, that appeal was filed but the alleged circumstances that supposedly prevented its exhaustion are part of the supporting arguments of the petition.

¹³ IACHR, Report No. 6/98, Case 10.382, Ernesto Máximo Rodríguez, Argentina, February 21, 1998, para. 48.

¹⁴ IACHR, Report No. 52/97, Case 11.218, Merits, Arges Sequeira Mangas, Nicaragua, Annual Report of the IACHR 1997, para. 97. *In the same connection*, see: IACHR, Report No. 99/14, Petition 446-09, Admissibility, Luis Alberto Rojas Marín, Peru, November 6, 2014, para. 44; IACHR, Report No. 43/13, Petition 171-06, Admissibility, YGSA, Ecuador, July 11, 2013, para. 30; IACHR, Report No. 1/11, Admissibility, Saúl Filormo Cañar Pauta, Ecuador, January 4, 2011, para. 30; IACHR, Report No. 2/10, Petition 1011-03, Admissibility, Fredy Marcelo Núñez Naranjo et al., Ecuador, March 15, 2010, para. 31.

¹⁵ IACHR, Report No. 42/02, Admissibility, Petition 11.995, Mariela Morales Caro et al. (“La Rochela” Massacre), Colombia, October 9, 2002, para. 32; IACHR, Report No. 62/00, Case 11.727, Hernando Osorio Correa, Colombia, October 3, 2000, para. 24; IACHR, Report No. 63/99, Case 11.427 Víctor Rosario Congo, Ecuador, April 13, 1999, para. 93.

¹⁶ IACHR, Report No. 17/06, Petition 531-01, Admissibility, Sebastián Claus Furlan and Family, Argentina, March 2, 2006, para. 39; IACHR, Report No. 69/08, Petition 681-00, Admissibility, Guillermo Patricio Lynn, Argentina, October 16, 2008, para. 41.

¹⁷ IACHR, Report No. 55/97, Case 11.137, Juan Carlos Abella, Argentina, November 18, 1997, pars. 264 and 265.

¹⁸ IACHR, Report No. 26/08, Petition 270-02, Admissibility, César Alberto Mendoza et al., Argentina, March 14, 2008, para. 72; IACHR, Report No. 83/09, Case 11.732, Merits, Horacio Anibal Schillizzi Moreno, Argentina, August 6, 2009, para. 62.

¹⁹ IACHR, Report No. 12/106, Admissibility, Case 12.106, Enrique Hermann Pfister Frías and Lucrecia Pfister Frías, Argentina, March 16, 2010, para. 39; IACHR, Report No. 117/06, Petition 1070-04, Admissibility, Milagros Fornerón and Leonardo Aníbal Javier Fornerón, Argentina, October 26, 2006, para. 42; IACHR, Report No. 17/06, Petition 531-01, Admissibility, Sebastián Claus Furlan and

[continued...]

43. The Commission recalls a previous case in which, upon deciding on the admissibility of petition 920-03—also against Argentina—the IACHR had to examine a very similar situation concerning exhaustion of domestic remedies. Specifically, in that petition, the extraordinary federal appeal lodged by the petitioners had been declared “time-barred” because it was filed 10 minutes after the established deadline, as results of which the petitioners argued that the authorities were “excessively formal” in declaring that the remedy was presented late.²⁰ In light of the fact that the petitioners argued that that excessive insistence on formality had violated their right to a fair trial, the Commission took the view that the examination of that circumstance belonged in the merits stage and, therefore, took as exhausted the remedies under domestic law.²¹

44. Under that same logic, the Commission finds that the allegations regarding the “maneuver” by which the petitioners were prevented from filing the extraordinary federal appeal could be examined by the Commission in the merits stage. The reason for the foregoing is that said circumstance is part of the concrete submissions advanced by the petitioners in this case in relation to the alleged violation of article 8 of the Convention. To undertake such an examination in the admissibility stage would be improper.

45. Based on the foregoing, the IACHR considers that domestic remedies have been sufficiently exhausted by the petitioners for the purposes of the admissibility stage and, therefore, the provisions of article 46.1.a of the Convention have been met.

2. Timeliness of the petition

46. Article 46.1.b of the American Convention provides that for a petition to be admissible, it must be presented within six months of the date on which the party alleging violation of rights was notified of the final judgment.

47. The facts in this case thus show that exhaustion of domestic remedies occurred while the case was being examined for admissibility. Under those circumstances, the Commission has consistently taken the view that fulfillment of the requirement regarding the time period for lodging the petition is intrinsically linked to the exhaustion of domestic remedies and should therefore be regarded as complied with.²²

48. Therefore, in light of the context and characteristics of this petition, the Commission considers that the petition was lodged within a reasonable time and that the admissibility requirement regarding the timeliness of its presentation must be deemed met.

3. Duplication of international proceedings

49. There is nothing in the record to suggest that the subject matter of the petition is pending in another international proceeding for settlement or that it has been previously studied by the Inter-American Commission. Therefore, the IACHR concludes that the exceptions provided at articles 46.1.d and 47.d of the American Convention are not applicable.

[... continues]

Family, Argentina, March 2, 2006, para. 40; IACHR, Report No. 104/99, Case 11.400, Eolo Margaroli and Josefina Ghiringhelli de Margaroli, Argentina, October 27, 1999.

²⁰ IACHR, Report No. 66/09, Petition 920-03, Admissibility, Marcos Gilberto Chaves and Sandra Beatriz Chaves, Argentina, August 4, 2009, para. 8.

²¹ IACHR, Report No. 66/09, Petition 920-03, Admissibility, Marcos Gilberto Chaves and Sandra Beatriz Chaves, Argentina, August 4, 2009, para. 21.

²² See, *inter alia*: IACHR, Report No. 92/14, Petition P-1196-03, Admissibility, Daniel Omar Camusso and son, Argentina, November 4, 2014, para. 80; IACHR, Report 8/10, Case 12,374, Admissibility, Jorge Enrique Patiño Palacios et al., Paraguay, March 16, 2010, para. 31; IACHR, Report 20/05, Petition 716/00, Admissibility, Rafael Correa Díaz, Peru, February 25, 2005, para. 34.

4. Colorable claim

50. For admissibility purposes, the Commission must decide whether the petition states facts that tend to establish a violation, as stipulated in Article 47(b) of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” in accordance with paragraph (c) of the same article. The standard for assessing these points is different from that required to rule on the merits of a complaint. The Commission must perform a *prima facie* evaluation to examine whether the complaint provides the basis for the apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. Such examination is a summary analysis and does not imply a prejudgment or advance opinion on the merits.

51. Neither the American Convention nor the Rules of Procedure of the IACHR require that the petition identify the specific rights allegedly violated by the State in a matter submitted to the Commission, though the petitioners may do so. It is up to the Commission, based on the case-law of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable or could be established as having been violated, if the facts alleged are sufficiently proven.

52. In light of the arguments of fact and of law presented by the parties and the nature of the matter before it, the IACHR finds that the petitioners’ submissions regarding the alleged duration of the proceedings; the alleged tampering, removal and/or elimination of key evidence in the file; the alleged use of false and unlawful evidence; the alleged lack of independence and impartiality of the judges in charge of domestic proceedings; the alleged violation of the right to have a duly reasoned judicial decision; as well as the alleged inexistence of a comprehensive review by the Court of Cassation, could tend to establish violations of the rights to a fair trial and judicial protection respectively set forth in Articles 8 and 25 of the American Convention, taken in conjunction with article 1.1 thereof, to the detriment of the relatives of Cristina Britez Arce. In addition, if the allegations regarding the medical treatment afforded in a public hospital which are part of the factual framework of this petition are corroborated, a violation could exist of Article 4 of the Convention, likewise in connection with article 1.1 of that instrument, to the detriment of Cristina Britez Arce.

V. CONCLUSIONS

53. Based on the above legal and factual considerations and without prejudging the merits of the matter, the Commission concludes that this case meets the admissibility requirements set forth in articles 46 and 47 of the American Convention and, therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible in relation to articles 4, 8, and 25 of the American Convention taken in conjunction with article 1.1 thereof.
2. To notify the State and the petitioners of this decision.
3. To proceed with its analysis of merits in the matter.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 28th 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 and Tracy Robinson Commissioners.