

OEA/Ser.L/V/II.159

Doc. 66

6 December 2016

Original: Spanish

REPORT No. 57/16
PETITIONS 589-07, 590-07, and 591-07
ADMISSIBILITY REPORT

JULIO CÉSAR RITO DE LOS SANTOS AND OTHERS
ARGENTINA

Approved by the Commission at its session No. 2070 held on December 6, 2016.
159th Regular Period of Sessions.

Cite as: IACHR, Report No. 57/16. Petitions 589-07, 590-07 and 591-07. Admissibility. Julio César Rito de Los Santos and others. Argentina. December 6, 2016.

REPORT No. 57/16

PETITIONS 589-07 – JULIO CÉSAR RITO DE LOS SANTOS

590-07 – HUGO DANIEL FERREIRA

591-07 – NICASIO WASHINGTON ROMERO UBAL

ADMISSIBILITY REPORT

ARGENTINA

DECEMBER 6, 2016

I. PETITION DATES

Petitioners:	Eugenio M. Spota, Alejandra Irma Vain, and Maria Lucrecia Lambardi
Alleged victims:	Julio César Rito de los Santos, Hugo Daniel Ferreira, and Nicasio Washington Romero Ubal
Respondent state:	Argentina

II. PROCEEDINGS BEFORE THE IACHR

Petition submission date:	May 11, 2007
Date the state was notified of the petition:	589-07: September 8, 2011 590-07: September 14, 2011 591-07: September 6, 2011
Date of first response from the state:	589-07: January 3, 2012 590-07: May 17, 2013 591-07: February 2, 2012
Additional observations from the petitioners:	589-07: March 21, 2012 590-07: August 22, 2013 and January 17, 2014 591-07: March 23, 2012
Additional observations from the state:¹	589-07: September 19, 2013 590-07: April 15, 2014 591-07: December 18, 2013

III. COMPETENCE, DUPLICATION OF PROCEEDINGS, AND INTERNATIONAL RES JUDICATA

Jurisdiction <i>ratione personae</i>:	Yes, in all of the petitions
Jurisdiction <i>ratione loci</i>:	Yes, in all of the petitions
Jurisdiction <i>ratione temporis</i>:	Yes, American Declaration of the Rights and Duties of Man ² (regarding incidents occurring prior to Argentina's ratification of the Convention) and American Convention on Human Rights ³ (regarding incidents subsequent to ratification of this instrument).
Jurisdiction <i>ratione materiae</i>:	Yes, American Declaration and American Convention
Duplication of proceedings and international res judicata	No, in all of the petitions

¹ All the observations that were received were duly forwarded to the opposing party.

² Hereinafter "Declaration" or "American Declaration." According to the provisions of Article 23 of the Commission's Rules of Procedure, it is competent to hear and rule on alleged violations of the American Declaration by the state of Argentina, regarding incidents occurring before the Convention came into force.

³ Hereinafter "Convention" or "American Convention." Instrument deposited on September 5, 1984.

IV. COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES, AND TIMELINESS OF THE PETITIONS

Rights declared admissible:	Yes, Article 8 (right to a fair trial), Article 13 (right to freedom of thought and expression), Article 22 (right to freedom of movement and residence), Article 24 (right to equal protection), and Article 25 (right to judicial protection) of the Convention in connection with Articles 1.1 and 2 of the same instrument; and Article I (life, liberty and personal security) and Article VIII (right to residence and movement) of the Declaration.
Exhaustion of domestic remedies:	Yes, November 13 and 14, 2006
Timeliness of presentation:	Yes, May 11, 2007

V. PRIOR MATTERS

1. On May 11, 2007, three petitions filed by the same petitioners were received; they were registered under numbers 589-07, 590-07, and 591-07. When concluding the admissibility stage, the IACHR decided to bring together the three petitions and process them jointly in the merits stage, because the alleged incidents are similar and their issues are substantially the same according to what is established in Article 29(5) of the Commission's Rules of Procedure.

VI. ALLEGED FACTS

2. The petitioners state that Julio César Rito de los Santos, Hugo Daniel Ferreira, and Nicasio Washington Romero Ubal, Uruguayan nationals, settled in Argentina in 1973 and 1974, in order to flee from Uruguay's Joint Armed Forces after the overthrow of the government that took place in that country in 1973. They allege that, on June 2 and 3, 1974, Julio César Rito de los Santos and Hugo Daniel Ferreira were arrested, along with 100 other persons, by the Superintendence of Federal Security in the city of Buenos Aires, while they were attending a political meeting. They indicate that, after their arrest, they were interrogated and convicted to 30 days detention for breaching the decree forbidding political meetings. They add that, after their release, the alleged victims went into hiding, since on repeated occasions officers dressed as civilians appeared asking for their whereabouts and that of their next of kin. Afterwards, they stayed in one of the shelters of the Office of the United Nations High Commissioner for Refugees (hereinafter UNHCR). They point out that, after their detention, the state of Argentina started proceedings to deport the alleged victims—in connection with the so-called Condor Plan—as a result of which they ran the risk of being deported and handed over to Uruguay's forces of repression. When the deportation order was issued, they indicate that they secured a safe conduct pass thanks to UNHCR's intervention, which made it possible for them to leave the country on July 18 and 19, 1975. They were taken in by Sweden, which granted them political refugee status.

3. As for Nicasio Washington Romero Ubal, they allege that he was arrested on September 13, 1974 in Buenos Aires by persons unknown to him and was held incommunicado for various days along with other Uruguayan nationals. They indicate that the alleged victim and the other people were transferred to various clandestine centers where they were tortured and subjected to various interrogations about Uruguay's political affairs by persons with a Uruguayan accent, in the custody of other individuals who seemed to be Argentinian. On October 16, 1974, the alleged victim was released close to his home. That same day, under UNHCR's protection, he managed to leave the country and secure political refugee status in Sweden.

4. According to the petition, on August 8, 1998, Julio César Rito de los Santos and Hugo Daniel Ferreira filed for reparations with the Ministry of Justice and Human Rights of the Nation (hereinafter MINDH) invoking Law 24.043. The MINDH decided to turn down the claim for compensation, taking into consideration that the arrest of the alleged victims was outside the period of time covered by the Law,

because it was prior to Argentina's declaration of a state of siege and because their detention did not appear in the records of the Ministry of the Interior. In view of the contents of said decisions, the petitioners filed a direct appeal with the National Appeals Chamber of the Federal Administrative Disputes Court (hereinafter CNA). Said court ruled "*that the situation of the complainant—who had been released from detention without being subject to any surveillance system—was outside the scope of the compensation system requested, because it could not be compared to the situation of those who had been forced into exile after their illegal detention,.... to that of those who had to leave the country because of circumstances beyond those provided for in Laws 24.043 and 24.906.*" It also dismissed the subsidiary request for compensation, because it believed it had to be filed in the regular court system, and in any case the statute of limitations had expired. Because of this adverse judgment, the two alleged victims filed a special federal appeal with the Supreme Court of Justice of the Nation (hereinafter CSJN). Nevertheless, on October 31, 2006, the Court upheld the judgment of the first court, indicating that the case was outside the time period covered by the Law, since the detention had taken place before the state of siege had been declared. Hugo Daniel Ferreira was notified of the judgment on November 13, 2006 and Julio César Rito de los Santos was notified on November 14, 2006.

5. Furthermore, it is alleged that, on September 9, 1998, Nicasio Washington Romero Ubal requested the benefits granted by Law 24.043. On September 23, 1999, the MINDH decided to deny the request for compensation, because it considered that the petitioner's situation did not pertain to the claims covered by the Law. In view of this ruling, a direct appeal was filed with the CNA. Finally, on May 9, 2000, the court ruled "*that, in that context, the lawmaker's intention seems clear enough as the text specifies the time-limits involved in the benefit provided, because of which the ruling in the administrative court is in line with the text of Law 24.043, its regulations, and Law 24.906, without which the result of the application of the law would otherwise seem unreasonable....*". In view of this adverse judgment, Nicasio Washington Romero Ubal filed a special federal appeal with the Supreme Court, which was deemed inadmissible because it was understood that the case was not a sufficient federal matter. Because of the above, the alleged victim filed a complaint regarding the appeal that had been dismissed, which was ruled admissible. Nevertheless, on October 31, 2006, the CSJN upheld the judgment of the first court, pointing out that the case was outside the time-limits covered by the Law, because both the detention and the exile were outside the scope of the laws invoked. The decision was notified to him on November 13, 2006.

6. In short, the petitioners point out that, in various proceedings, they provided evidence of their status as political refugees and requested that the relevant authorities provide the documents that would make it possible to substantiate the facts appearing in their complaint. They allege that these documents were never provided, which would entail a violation of their right to defense at a trial. In addition, they allege that, in many cases similar to theirs, the compensation as set forth in Law 24.043 had been granted, as in the case of the wife of Julio César Rito de los Santos, who was in an identical situation as described by the husband and alleged victim. On the basis of the above, the petitioners request the Commission to declare the violation of the rights appearing in Articles 7, 8, 22, 24, and 25 of the Convention.

7. The state points out that the origin of Argentina's reparations laws can be found in various cases processed by the Commission, which led to a friendly settlement as reflected in Decree No. 70/91.⁴ It indicates that, after other statutes had been adopted, especially Law 24.043, which provides for compensation to persons who had been transferred to the custody of the national executive branch of government (hereinafter PEN) in the period of time extending from November 6, 1974 (date the state of siege was declared in Argentina) to December 10, 1983. It adds that, in 2009, Law 26.564 was also enacted, whereby the concept of "victim" was extended to include the benefits of existing laws to those who "had been arrested for political reasons on the order of federal or provincial courts and/or who had been subjected to detention systems provided by any framework of statutes which, in accordance to the provisions of law and international treaties, could be defined as a detention for political reasons." In that regard, the state indicated that there could be, in Argentina's legal framework, a suitable and effective remedy that had not been used by the alleged victims, and that therefore this should be attempted. It alleges that, by broadening the time-limits

⁴ The state is referring to IACHR CIDH, Report No. 1/93, regarding cases 10.288, 10.310, 10.436, 10.496 10.631, and 10.771, Friendly Settlement, Argentina, March 3, 1993.

and material scope of the situations that could potentially benefit from reparations, the state of Argentina has tried to take into consideration cases which, like the present one, had not obtained a satisfactory response. It indicates that the constant efforts made by the Republic of Argentina must be highlighted as they show its willingness to support the development of said claims filed by the various sectors affected by the actions of the last civil-military dictatorship.

8. Because of all of the observations above, the state requests the Commission to declare the case inadmissible because of failure to exhaust remedies and to archive the petitions.

VII. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITIONS

9. The petitioners indicate that the remedies under domestic were exhausted as a result of the ruling on the Special Federal Appeal, which was notified to them on November 13 and 14, 2006. They also contend that the direct appeal provided for in Law 24.043 is the adequate and effective remedy to claim compensation for the incidents that led to the exile of the alleged victims, and they indicate in the papers they submitted that, in cases analogous to theirs, the courts applied said Law. As for the state, it contends that the remedy provided by Law 24.043 does not include the incidents alleged by the petitioners and that remedies under domestic law have not been exhausted because the petitioners did not request the benefits on the basis of Law 26.564, enacted in December 2009, which would have been an effective and suitable remedy.

10. The Commission, without getting into issues of domestic law, takes into account that, as regards the scope of Law 24.043, over time the Argentine courts have developed approaches in the case law to the broad interpretation of that statute so as to make reparation for other types of restrictions on liberty, imposed with either a written or unwritten order from the Executive.⁵ In connection with this, the Commission has confirmed that, in judgments subsequent to the filing of the petition, the Supreme Court of Justice of Argentina pointed out the following regarding the application of Law 24.043:⁶

...in that the conditions in which the applicant had to remain in and subsequently abandon the country—which have not been disputed—indicate that her decision to take refuge, first, under the flag of a friendly nation and, subsequently, to emigrate, far from being considered “voluntary” or freely adopted, was the only, desperate alternative she had for protecting her life from the threat posed by the State itself and by parallel organizations or, at the least, for regaining her liberty, since... upon taking the decision to emigrate, she already faced a breach of that most basic right” in that “...arrest, not only in law but according to common sense, implies various restrictions of freedom of movement... Consequently... also inherent in the concept of arrest under the law in question is the forced confinement of the entire family... as the only way of avoiding the threat of death that had already taken two of its members.⁷

11. Because of the above, bearing in mind that the petitioners allege circumstances similar to those presented in other cases examined and resolved under said Law, the Commission concludes that Law 24.043 represented a suitable remedy. In addition, the IACHR observes that the alleged victims exhausted a series of remedies that were available to them under domestic law and which were reasonable at the time; and for the purposes of admissibility, the System does not require reiterated attempts, one after the other, as the result of the issuance of new laws.

⁵ IACHR, Report No. 45/14, Petition 325-00, Admissibility, Rufino Jorge Almeida, Argentina, July 18, 2014, para. 57.

⁶ IACHR, Report No. 12/10, Case 12.106, Admissibility, Enrique Hermann Pfister Frías and Lucrecia Pfister Frías, Argentina, March 16, 2010, para. 37.

⁷ Supreme Court of Justice of the Nation, judgment of October 14, 2004, “Yofre de Vaca Narvaja, Susana v. Ministry of the Interior - ruling M.J.H. (case file 443.459/98).” The quote pertains to the ruling of the Office of the Attorney General in this case, which was upheld by the Court. This precedent was reiterated in the following cases of the Supreme Court of Justice: “Cuesta, Lucrecia Silvia v. Ministry of Justice and Human Rights, Article 3, Law 24.043 (ruling 550/01)” of March 28, 2006. The Supreme Court also referred to the passage quoted in “Dragovich, Héctor Ramón v. Ministry of Justice and Human Rights, Article 3, Law 24.043 (ruling 612/01),” judgment of December 2, 2008.

12. The alleged victims exhausted remedies under domestic law as a result of the judgment that was notified to them on November 13 and 14, 2006, pursuant to Article 46.1.a of the Convention and Article 31.1 of the Rules of Procedure and because the petition was filed on May 11, 2007, it meets the requirement set forth in Article 46.1.b of the Convention and Article 32.1 of the Rules of Procedure.

VIII. COLORABLE CLAIM

13. In view of the elements of fact and law set forth by the parties and the nature of the case submitted to its review, the Commission considers that, if the allegations regarding the violation of rights to a fair trial and to judicial protection in administrative and judicial proceedings under domestic law, as well as the alleged authorities' failure to respond to the request of the alleged victims to provide vital documents for taking a decision on the case and the alleged discrimination for having recognized reparations in other analogous cases, prove to be true, they could tend to establish possible violations of rights protected by Articles 8, 13, 24, and 25 of the American Convention in connection with its Articles 1.1 and 2 to the detriment of the alleged victims. Furthermore, with respect to the incidents that led the alleged victims to seek asylum and go into exile in Sweden, which took place before Argentina deposited its instrument ratifying the American Convention, the IACHR deems that, if true, they could tend to establish the alleged violations of the rights enshrined in Articles I and VIII of the American Declaration.⁸ The IACHR shall also consider, in the merits stage of the case, the possible application of Article 22 of the Convention in the context of the allegations set forth in the present case.

IX. DECISION

1. To declare the petitions 589-07, 590-07 and 591-07 admissible with respect to Articles 8, 13, 22, 24, and 25 in connection with Articles 1.1 and 2 of the American Convention and Articles I and VIII of the American Declaration of the Rights and Duties of Man;
2. to notify the parties of the present decision;
3. to continue examining the merits of the case; and
4. to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Panama, on the 6th day of the month of December, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarette May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.

⁸ Regarding the alleged violation of Article 7 alleged by the petitioners, the IACHR observes that the alleged facts took place before Argentina ratified the American Convention; as a result, it does not have jurisdiction *ratione temporis* to hear them in the light of said instrument. Therefore, the IACHR shall examine them on the basis of the American Declaration because, at the time of the incidents, Argentina was a party to the OAS Charter and therefore had obligations to respect the rights protected by the American Declaration.