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REPORT No. 19/17
PETITION P-984-07
REPORT ON INADMISSIBILITY

CARLOS JORGE CHÁVEZ
ARGENTINA

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Organization of American States

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JANUARY 27, 2017

I. PETITION INFORMATION

Petitioners:	Carlos Jorge Chávez, Marta García Névez, and Carlos Alberto Baltazar Pérez Galindo
Alleged victim:	Carlos Jorge Chávez
State denounced:	Argentina
Rights invoked:	Articles 2 (duty to adopt domestic legal provisions), 5 (right to humane treatment), 8 (judicial protection), 10 (right to compensation), 11 (protection of honor and dignity), 17 (protection of the family), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights.[1]

II. PROCEDURE BEFORE THE IACHR[2]

Date on which the petition was received:	July 27, 2007
Additional information received during the initial stage:	June 2, 2010; October 3, 2010; February 13, 2011; February 23, 2011; March 2, 2011; August 5, 2011.
Date on which the petition was transmitted to the State:	March 16, 2012.
Date of the State's first response:	December 27, 2013
Additional observations from the petitioners:	February 14 and October 7, 2014
Additional observations from the State:	April 8, 2014

III. COMPETENCE

***Ratione personae* competence:**	Yes
***Ratione loci* competence:**	Yes
***Ratione temporis* competence:**	Yes
***Ratione materiae* competence:**	Yes, American Convention (ratification instrument deposited on September 5, 1984)

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International *res judicata*:	No
Rights declared admissible:	None

[1] Hereinafter "the American Convention" or "the Convention."

[2] All these comments were duly forwarded to the counter-party.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, pursuant to the terms of Section VI
Timeliness of the petition:	Yes, pursuant to the terms of Section VI

V. ALLEGED FACTS

1. The petitioners allege that in May 2002, a criminal proceeding was launched before Trial Court Number 5 of Paraná, Entre Ríos province, against Mr. Carlos Jorge Chávez (hereinafter "Mr. Chávez" or "the alleged victim") for the crime of aggravated sexual abuse of his niece-in-law. The judge in charge of the investigation declared him absentee and issued a warrant for his arrest. On January 23, 2003, he was arrested and turned over to judicial authorities, and his initial statement was taken the next day. Following this, the judge ruled him a flight risk and ordered him held. Then on the following February 10, the first court order was issued ordering he be held in pretrial detention, which kept him deprived of liberty. However, that order was declared partially void and a new one was issued on February 28, 2002, amending the processing and also ordering pretrial detention. He appealed this order on March 13, alleging insufficient evidence and pointing to the mistaken legal categorization under which he was being processed. However, his appeal was denied.

2. On December 13, 2004, the oral trial began even though there was no physical evidence or direct witnesses against him. Also, both he and his defense attorney were not allowed to be present during the girl's testimony. Nevertheless, the Second Court of the Criminal Chamber of Paraná, Entre Ríos province (hereinafter "the Second Court") convicted him and sentenced him to 13 and a half years in prison. He was convicted of the crime of aggravated rape due to the repeated and serious damage to the psychiatric health of the victim as a result of the acts committed between February 12, 1997, and May 21, 1999, as well as sexual abuse with aggravated rape due to the serious damage to the victim's mental health caused repeatedly by acts committed between May 22, 1999 and the end of July 2001. The petitioners also allege that the conviction is based on a criminal offense that does not exist under Argentine law, as consensual sex with a 15-year-old girl is not a crime.

3. They state that they submitted a number of remedies in response to the conviction, but the judgment was never reviewed, due to the fact that it was only in 2014 that a law was put in place establishing a right to appeal in the province, which was not in place at the time of the alleged victim's conviction. On February 1, 2005, they filed a writ of cassation before the Supreme Court of the Province of Entre Ríos (hereinafter "provincial Supreme Court") arguing that the judgment suffered from a number of irregularities, such as the fact that he was convicted without the date on which the crime was said to have occurred having been specified. They state that the writ was rejected on August 29 and that they then filed for an extraordinary federal remedy on October 5 of that year. When they were not notified as to any ruling on that remedy, they went to the Supreme Court of Justice of the Nation (hereinafter "the Supreme Court"). There, they filed an appeal on points of fact on March 16, 2006, which was finally dismissed after the Court found it inadmissible on the grounds of the lack of a federal grievance severe enough to merit the extraordinary remedy, without analyzing the merits of the issue.

4. They also state that while he was serving his sentence, he was found eligible for the benefit of temporary social-family outings. However, over an 18-month period, Mr. Chávez was only taken to his home three times for a period of three hours each time, handcuffed, and accompanied by uniformed police officers, even though this is prohibited in the law in question. They indicate that he complained about this to the prison director. In retaliation, the director assigning disciplinary sanctions and asked the judge to suspend his day release, a request that the judge granted. He appealed the rulings, but the provincial Supreme Court upheld the judge's decision, finding that the sentence execution judge had properly grounded the ruling, basing it on the conclusions of professionals who were interviewed at the prison. They state that from that moment on, the reports of the technical team at the prison on this individual were always negative. They also indicate that once he was convicted, he was ordered to receive psychological treatment in Criminal Unit number 1 of Paraná, where he was held. However, despite repeated complaints, this was never provided, leading to the suspension of his outings and uncertainty as to when he would be released; he did not end up

being released until May 30, 2011. He adds that he was also not granted temporary release for educational purposes.

5. They allege that all this is the result of discriminatory treatment at the hands of prison staff and the judicial officials involved because he had been convicted of sexual abuse, a crime which has a particular impact on society.

6. In response to this, the State holds that the victim was tried and convicted in keeping with due process guarantees for actions established by law as criminal offenses, based on a variety of evidence. It states that the facts alleged are not violations of rights enshrined in the Convention and that Mr. Chávez is appealing to the IACHR as a "fourth instance," or higher court, because he disagrees with the rulings against him in the process.

7. The State adds that Mr. Chávez's allegation that the criminal offense is not established in the law is based on his defense strategy of arguing that the sexual relationship he had with his niece was consensual after she turned 15 However, this argument was rejected by the Second Court, which, based on the consistent testimony of the girl to psychologists, a DNA test confirming that Mr. Chávez was the father of a baby she had had, and the fact that these types of crimes are usually committed in privacy and far from eyewitnesses, convicted him of raping his niece. The court also found that these actions had been repeated since the time the girl was 11 years old, and the judgment indicated the articles of the Penal Code that had been transgressed. It further notes that despite the fact that Mr. Chávez could not be present during the girl's testimony, his defense attorney was present and consented to suspension of the testimony when the girl began crying and was not able to continue. Finally, it indicates that the allegations of damage resulting from this act are new and were not brought in domestic courts, and should therefore be inadmissible.

8. The State also indicates that the petitioner was able to appeal the judgment and the sentence was reviewed following submission of a writs of cassation, the extraordinary federal remedy, and the appeal on point of fact. However, the results of these were not favorable to him, as recorded in the rulings on them, of which he was duly notified.

9. With regard to the pleadings made on sentence execution, the State notes that they do not entail violations of Mr. Chávez's rights, as he was provided with psychological care, his participation in educational programs was authorized, and he was granted a number of social-family outings during the time in which he was serving his sentence.

10. Regarding psychological treatment and social-family outings, the State notes that Mr. Chávez attended individual psychological treatment weekly between 2006 and 2008, and that in December 2008, the Criminal Sentence Execution Judge decided to add him to the temporary social-family outings program. The State indicates that Mr. Chávez was able to go on several outings before they were suspended in April 2009 after an evaluation conducted by the technical team of the Sentence Execution Court found that the alleged victim showed signs of aggression and impulsivity.

11. The State adds that in December 2009, the criminal sentence execution judge again added the alleged victim to the family-social visit program, allowing a 3-hour visit once every 15 days. It notes that on May 27, 2010, the petitioner informed the sentence execution judge that he had only been taken to his home three times. Based on this, the judge urgently requested information on the situation in question. It notes that the Penitentiary Service informed the judge that the visits had been suspended at the request of the alleged victim, who had said that his wife was having problems with the neighbors due to the visits and that he did not want to continue to be transported until he informed them of his new domicile, which he never did.

12. The State adds that in July 2010, based on technical reports, the judge decided not to add the alleged victim to the temporary outings program and ordered he remain in psychological treatment It notes that in October and December 2010, the Psychology Service reported that the request for psychological treatment was a mere formality given that the alleged victim did not show commitment to the treatment. It

states that in April 2011, the sentence execution judge decided once again to add Mr. Chávez to the test period that included social-family outings on weekends for eight hours every 15 days.

13. Finally, regarding access to educational programs and outings, it noted that the legal record is clear that Mr. Chávez was authorized to study history and that the criminal sentence execution judge authorized him on several occasions to leave the penitentiary to take exams or participate in academic events.

14. According to the State, Mr. Chávez was never denied any benefits due to discrimination or persecution of him. It states that the case file clearly indicates that the judge acted in accordance with legally established requirements and that his decisions were also subject to review, as well as examined in higher courts based on the remedy sought by Mr. Chávez. It concludes that the alleged victim turned to the IACHR as a fourth instance because he disagreed with the decisions of domestic courts that were not in his favor.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

15. According to the petitioners, despite the alleged lack of opportunity to appeal the judgment to convict, Mr. Chávez filed for a number of remedies against that judgment and exhausted local remedies before turning to the IACHR. With the exception of the allegation that it prevented Mr. Chávez from being present during the girl's testimony in the oral trial, the State does not argue that internal remedies were not exhausted. On the contrary, it notes that the alleged victim had access to justice and his appeals were duly heard, although with results that were unfavorable to him.

16. The Commission notes that the information provided by both parties is in agreement that internal remedies with regard to the criminal proceeding carried out against Mr. Chávez were exhausted. It further notes that Mr. Chávez argued in his appeal on point of fact that blocking him from being present during the girl's testimony and the malpractice of his private attorney violated his right to defense. Pursuant to the foregoing, the IACHR finds that internal remedies were duly exhausted on May 3, 2007, with the notification of Supreme Court of its rejection of the appeal on point of fact, and that the requirements established in Article 46(1)(a) of the Convention are thereby met. Given that the petition was filed on July 27, 2007, the Commission finds that the requirements established in Article 46(1)(b) of the American Convention have been met.

17. This is also true of the irregularities that the petitioner alleges took place during the execution phase of the sentence, more specifically with regard to the outings. The corresponding court indicates that on a number of occasions, Mr. Chávez appealed the decisions of the judge in charge. Those appeals were heard, notwithstanding the adverse results. All of this took place while the Commission was considering the petition, and therefore, in accordance with IACHR doctrine, the requirement established in Article 46(1)(b) of the Convention has been met.[3]

18. Finally, the Commission notes the State's claim that the petition was forwarded to it in an untimely fashion, but recalls that neither the American Convention nor the Rules of procedure of the Commission establish a deadline for forwarding a petition to a State after it is received, and that the deadlines established in the Rules of Procedure in the Convention for other stages of the process are not applicable by analogy.[4]

[3] IACHR Report No. 15/15, Petition 374-05. Members of the Trade Union of Workers of the National Federation of Coffee Growers of Columbia. Colombia. March 24, 2015, para. 41. Also see Inter-American Court, *Case of Wong Ho Wing v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 30, 2015. Series C No. 297, para. 25-28.

[4] See Inter-American Court, *Case of Mémoli v. Argentina.* Preliminary Objections, Merits, Reparations, and Costs. Judgment dated August 22, 2013. Series C No. 295, paras. 30-33.

VII. COLORABLE CLAIM

19. The petitioners allege that during the process brought against Mr. Chávez and then during the execution phase of the sentence, his rights as established in Articles 5, 8, 10, 11, 17, 24, and 25 of the American Convention were violated when he was not able to review some elements of the evidence. His conviction was thus imprecise and not based on overwhelming evidence, and for a criminal offense not established in Argentine penal law. In addition, these violations intensified while he was serving his sentence, as he was only allowed irregular outings—this, because of discrimination based on the crime for which he had been convicted.

20. For its part, the State indicates that the alleged violations of the rights of Mr. Chávez are without merit, as the judicial authorities acted correctly and with respect for due process guarantees. It also argues that those guarantees included review of the judgment to convict, in accordance with the provisions of the American Convention, but that because the final ruling was against him, the petitioner turned to the Commission as a fourth instance. Finally, regarding the prison benefits, it states that the sentence execution judge acted in accordance with legislation on the subject. Is ruling was well reasoned and respectful of the rights of the petitioner, and the petitioner was once again able to appeal these decisions, in keeping with the provisions of the Convention.

21. As for the alleged violations during the criminal process, the Commission observes that the allegations have to do with determining whether the alleged victim was criminally responsible and weighing the evidence collected, all of which was examined and ruled on by the local judicial authorities involved, as recorded in the copies of the case file sent in their entirety to the IACHR. In this regard, it should be recalled that the Commission does not have authority to review sentences handed down by domestic courts acting within their competence and applying all due judicial guarantees unless it finds that a violation of one of the rights protected by the American Convention has been committed,[5] and in this case, this is not found to be the case. The Commission therefore finds that this case does not include the elements necessary to find a possible violation of the rights guaranteed by the Convention.

22. Likewise, taking into account the arguments on the alleged violation of the right to defense because Mr. Chávez was not able to be present during the testimony of the girl during the trial, it should be noted that from the court documents attached, although he was effectively removed from the room, his private defense attorney was there, and he in fact acquiesced to suspending the testimony. Based on this, the Commission concludes that nothing took place that could be characterized as a violation of the rights enshrined in the American Convention.

23. Likewise, the IACHR notes that Mr. Chávez has not been convicted of a criminal offense that is not described in Argentine criminal law. From the charging document through to later instances, the criminal conduct was identified explicitly and the specific articles of the Penal Code establishing it were identified. Also, the periods of time over which the accused perpetrated such conduct were also identified, as were the places in which the acts took place, leaving only his disagreement with the decisions of the Second Court and the provincial Superior Court to ignore his wishes and rule against him.

24. Also, according to the available information, there is no indication that Mr. Chávez was not able to appeal the judgment to convict. This information indicates that the law implemented in 2014 did not create an appellate court that did not exist up until that moment: rather, it transferred competence to hear such appeals from the provincial Supreme Tribunal to a new Cassation Chamber. Also, the judgment of August 29, 2005, indicates that the First Chamber of Constitutional and Criminal Proceedings of the Superior Court of Justice of the Province of Entre Ríos ruled on the challenges submitted, issuing judgments regarding pleadings of both the plaintiff and the acting prosecutor and ruling on issues of fact and law. The Commission therefore finds that the court documents do not indicate anything that could be a colorable claim of a violation of the rights enshrined in the American Convention.

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[5] IACHR Report No. 88/13, Petition 404-00. Marcelo Fabián Nievas and family. Argentina. November 4, 2013, para. 58.

25. It should be added that although the petitioner alleges he was not notified of the judgment issued by the provincial Superior Tribunal, the judicial case file itself indicates that the parties were indeed notified; based on this, the IACHR does not find a colorable claim of the violation of a violation of the victim's rights.

26. Finally, in response to the petitioners' pleadings regarding sentence execution and irregularities in his outings, all resulting from alleged discriminatory treatment and refusal to provide him with psychological treatment in prison, the Commission finds there is not enough evidence to indicate, *prima facie*, an alleged violation of a right guaranteed in the American Convention. It is thus clear from the criminal sentence execution files submitted that the judge authorized the social-family outings on a number of occasions, including educational outings, and that the competent instances reviewed and responded to the appeals filed during that time.

27. Therefore, based on the considerations described herein, this Commission concludes that the petition does not comply with the requirements established in Article 47(b) of the American Convention because it does not describe events that would *prima facie* represent violations of the rights invoked by the petitioner.

VIII. DECISION

1. To declare this petition inadmissible;

2. To notify the parties of this decision; and

3. To publish this ruling and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of San Francisco, California, on the 27 day of the month of February, 2017. (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.