

OEA/Ser.L/V/II.163
Doc. 94
7 July 2017
Original: Spanish

REPORT No. 81/17
PETITION 980-07
REPORT ON ADMISSIBILITY

HORACIO ALEJANDRO MARTÍNEZ
ARGENTINA

Approved by the Commission at its session No. 2093 held on July 7, 2017.
163rd Special Period of Session.

Cite as: IACHR, Report No. 81/17. Petition 980-07. Admissibility. Horacio Alejandro Martínez.
Argentina. July 7, 2017.



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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Horacio Alejandro Martínez
Alleged victim:	Horacio Alejandro Martínez
State denounced:	Argentina
Rights invoked:	No articles are specified

II. PROCEDURE BEFORE THE IACHR¹

Date on which the petition was received:	July 30, 2007
Additional information received at the initial study stage:	August 27, 2007
Date on which the petition was transmitted to the State:	September 29, 2011
Date of the State's first response:	October 11, 2012
Additional observations from the petitioning party:	September 5, 2007; March 11, 2011; September 27, 2012; and November 25, 2013
Additional observations from the State:	March 18, 2014 and February 13, 2015

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention on Human Rights ² (ratification instrument was 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 <i>res judicata</i>:	No
Rights declared admissible	Articles 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention in relation to Article 1.1 (Obligation to respect rights) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; May 3, 2012
Timeliness of the petition:	Yes, in the terms of Section VI

¹ The observations presented by each party were duly transmitted to the opposing party.

² Hereinafter "the American Convention" or "the Convention."

V. ALLEGED FACTS

1. Mr. Horacio Alejandro Martínez (hereinafter “the petitioner” or “the alleged victim”), who worked as an officer of the Federal Police in the city of Campana in Buenos Aires Province, claims that he was subjected to criminal proceedings that extended for over eleven years, exceeding any reasonable period. He also claims that he was subjected to pre-trial detention for over two years. He asserts that these facts led to an excessive procedural and personal burden that caused him a heart disease.

2. The petitioner indicates that on June 29, 2011 criminal proceedings No. 3203 were filed against him and other three people for unlawful association and levies. On February 18, 2002, he was arrested and a month later he was sentenced to pre-trial detention. On June 14, 2002, he appealed against the pre-trial detention order, and was eventually released on March 29, 2004.

3. The petitioner claims that on November 23, 2004 he filed a petition to extend his preliminary examination statement. As he did not get an answer, on September 2, 2005 he asked that his petition be answered promptly. However, in view of the lack of an answer, on June 20, 2006 he lodged a complaint for unwarranted delay of justice. On June 29, 2006, the Federal Court of Appeals of San Martín dismissed this complaint. The petitioner asserts that on August 15, 2006 he was finally able to amend his preliminary examination statement. Furthermore, on October 17, 2006 he requested that certain evidentiary procedures were conducted so that the preliminary proceedings would conclude. He claims that, nevertheless, as his request remained unanswered for over six months, on May 22, 2007 he filed another request to conclude the preliminary proceedings. As he did not get an answer, on June 12, 2007 he filed another complaint for unwarranted delay of justice in which he requested the Federal Court of Campana to resolve his petition of October 17, 2006. Finally, on June 16, 2007, the Federal Court of Appeals of San Martín rejected the alleged victim’s complaint and only recommended the 3rd Criminal Secretary of the Federal Court of Campana to promptly resolve the remedy lodged by the petitioner but without conducting the evidentiary procedures requested by him. Subsequently, on June 24, 2009, the Federal Prosecutor leading the investigation requested the Federal Court for Criminal and Disciplinary Matters to proceed to close the preliminary stage and initiate the legal proceedings.

4. In view of the foregoing, on July 30, 2009, the petitioner filed a complaint for unwarranted delay against the Full Judge of the Federal Court of Campana, before the Council of the Judiciary. As a result, on May 6, 2010 the Plenary of the Council of the Judiciary disregarded this complaint on the grounds that the denounced judge had been removed from office on March 25, 2010 by a decision of the Council of the Judiciary. On September 27, 2012, the petitioner states that he was acquitted by a judgment issued on May 3, 2012 by the 2nd Oral Proceedings Court for Federal Criminal Matters of San Martín.

5. In addition, the petitioner filed an administrative lawsuit to request the reimbursement of the salaries corresponding during the time of his prosecution, and his reinstatement. As a result, on April 24, 2014 the Head of the Federal Police ordered the payment of fifty percent of the total of the unpaid salaries to the alleged victim, without his reinstatement. With respect to this, so far the petitioner has not submitted any additional observations.

6. On the other hand, the Argentine State claims that the Inter-American Commission on Human Rights (“the IACHR” or “the Commission”) transmitted this petition four years after its receipt. Likewise, it asserts that the petition does not meet the requirement of prior exhaustion of domestic remedies set forth in Article 46.1.a of the American Convention, since Mr. Horacio Alejandro Martínez allegedly did not exhaust the domestic remedies before filing his petition to the IACHR.

7. Basically, the State claims that the domestic authorities handled the alleged victim’s case in accordance with the rights established in the American Convention, and that he had several opportunities to lodge the remedies necessary for his defense. It submits that, as a result of this, he was acquitted on May 3, 2012 by a judgment of the 2nd Oral Proceedings Court for Federal Criminal Matters of San Martín. The State moreover asserts that the complaint for unwarranted delay lodged by the alleged victim against the Federal

Judge of Campana was an appropriate remedy, as the judge was removed from office by a resolution issued by the Council of the Judiciary on March 25, 2010.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. The petitioner submits that the domestic remedies were exhausted by the judgment issued by the 2nd Oral Proceedings Court for Federal Criminal Matters of San Martín on May 3, 2012, after which he was acquitted, which the State admits. On the other hand, the State alleges the lack of exhaustion of domestic remedies as it believes that said judgment was subsequent to the petition filed to the IACHR. In this regard, the Commission recalls that its analysis of the exhaustion of domestic remedies is not based on their situation at the time a petition is received, but at the time its admissibility is decided on. Likewise, the Commission notes that the judgment that put an end to the criminal proceedings against the alleged victim was issued on May 3, 2012, and that this petition was received by the IACHR on July 30, 2007. Therefore, the Inter-American Commission believes that the instant petition meets the requirements set forth in Article 46.1(a) and (b) of the American Convention.

9. The Inter-American Commission takes note of the complaint of the State concerning the untimely notification of the petition. The IACHR states that after a petition is received, there is no deadline for it to be transmitted to the State neither under the American Convention nor the Commission's Rules of Procedure. It also affirms that the periods established in the Rules and the Convention for other processing stages do not apply by analogy.³

VII. COLORABLE CLAIM

10. The Inter-American Commission notes that, according to the information submitted by the parties, the facts denounced by the petitioner could *prima facie* establish violations of the rights embodied in Articles 7, 8 and 25 of the American Convention, in relation to the general obligations foreseen in Article 1.1 thereof, to the detriment of Mr. Horacio Alejandro Martínez. In the merits stage of this case, the Inter-American Commission will proceed to analyze whether criminal proceedings against the alleged victim, as a whole including his deprivation of liberty, were in accordance with the abovementioned rules of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 7, 8 and 25 of the American Convention, in connection with Article 1.1 thereof;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of Lima, Peru, on the 7th day of the month of July, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.

³ Please see for instance IACHR, Report No. 56/16. Petition 666-03. Admissibility, Luis Alberto Leiva. Argentina. December 6, 2016, par. 29; and I/A Court H. R., *Case of Mémoli v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2013. Series C No. 265, paras. 30-33.