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REPORT No. 145/17
PETITION 72-11
REPORT ON ADMISSIBILITY
C.
MEXICO

Approved by the Commission at its session No. 2104 held on October 26, 2017
165th Regular Period of Sessions

Cite as: IACHR, Report No. 145/17, Petition 72-11. C. Mexico. October 26, 2017.



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I. INFORMATION ABOUT THE PETITION

Petitioner:	Litiga OLE Organización de Litigio Estratégico de Derechos Humanos (Organization of Strategic Human Rights Litigation)
Alleged victim:	C. ²
State denounced:	Mexico
Rights invoked:	Articles 8 (Fair Trial), 17 (Family), 19 (Child) and 25 (Judicial Protection) of the American Convention on Human Rights, ³ in relation to its Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects), and other international treaties ⁴

II. PROCEDURE BEFORE THE IACHR⁵

Date on which the petition was received:	January 26, 2011
Date on which the petition was transmitted to the State:	December 17, 2013
Date of the State's first response:	June 5, 2014

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 (instrument of ratification was deposited on March 24, 1981)

¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the discussion or the decision on this matter.

² The petitioning party requests that the girl's identity be confidential.

³ Hereinafter "Convention" or "American Convention."

⁴ Articles 2, 3 and 12 of the Convention on the Rights of the Child.

⁵ The observations presented by each party were duly transmitted to the opposing party.

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 8 (Fair Trial), 17 (Family), 19 (Child) and 25 (Judicial Protection) of the American Convention, in relation to its Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioning party filed the petition on behalf of C, born on July 8, 2003 in Kansas City, Missouri, United States of America, daughter of Aline Rivas Vera and Didier Louis Combe. On March 15, 2006, the girl was taken by her mother to Mexico; as a result, the father filed a request for the permanent custody of his daughter before the Judge of the District Court of Platte County, Missouri. On July 3, 2006, the remedy was settled in his favor. In Mexico, corresponding order of return was issued by the Twenty-Fifth Judge of the Federal District Family Court. Aline Rivas Vera impugned said order by filing a constitutional appeal to the Thirteenth Judge of the Federal District Civil Court and it was found admissible, denying the return of C.. The father challenged said resolution before the Second Family Chamber of the Superior Court of Justice but the Chamber confirmed the impugned judgment.

2. In view of this, Didier Louis Combe lodged a direct constitutional appeal that was settled in his favor by the Fourth Collegiate Civil Court of the First Circuit, which on March 26, 2009 ordered the return of the girl. The mother challenged said resolution by filing an appeal for review that, on October 12, 2009, the Supreme Court settled in favor of the girl's father, confirming the resolution of return of the girl. Subsequently, on November 4, 2009, the mother lodged an indirect constitutional appeal that the Thirteenth Civil District Court rejected. Then, she filed a judicial review in which she, as a "third party strange to the procedure by comparison," claimed that the proceedings for the return of the child were contrary to the girl's right to a hearing. This remedy was dismissed by the Fourth Collegiate Court on July 13, 2010, on the grounds that although children enjoy rights, they have no legal capacity to enforce them and that, since the girl was represented by her mother, the mother should have appointed another person to legally represent the girl from the beginning of the proceedings and not at the issue of the final judgment ordering the return of the girl.

3. The petitioning party claims that through the whole proceedings for C.'s international return, the judicial authorities did not listen to the girl and that, as a result, the Mexican State violated her right of due process by excluding her from procedures that affected her directly and by depriving her from her right to a hearing, to appropriate legal representation and to effective remedies. The petitioner asserts that the State infringed its duty to protect children by disregarding the principle of participation, since the State failed to ensure that the girl had a representation that was impartial and other than her parents. In this regard, the petitioner adds that the Public Prosecutor's Office never protected the girl's right to a hearing or tried to ensure the rights enshrined in the principle of the child's best interest. In addition, the petitioner submits that the final judgment issued by the Fourth Collegiate Court transferred to C.'s mother the State's obligation of providing C. with a legal representative to defend her rights and interests. Therefore, the petitioner claims that the Mexican State failed to observe its international obligations to protect children, by failing to ensure or adopt the necessary measures to enforce C.'s rights.

4. For its part, the State claims that the petition is inadmissible and groundless. It asserts that a resolution issued as the result of a fair trial, though contrary to the petitioner's interests, is not a violation of rights. It indicates that when the proceedings for the return began, the court ordered the appearance of Aline Rivas together with C., the father and a representative of the Public Prosecutor's Office. The State asserts that

it did take measures to ensure Aline Rivas and the child's appearance in court from the beginning of the trial. Moreover, it submits that the mother filed several remedies before competent bodies and that her rights as a legal representative were respected. Likewise, the State indicates that the IACHR is not competent or entitled to review, interpret or examine evidence or laws of the domestic legal framework, such as the alleged failure on the part of the State to request C.'s appearance at the proceedings. Therefore, the State requests the Commission to find this petition inadmissible in view of its failure to meet the requirements in Article 47.b of the Convention, regarding the failure to state facts that tend to establish a violation of the rights guaranteed by the said instrument, and in view of the IACHR's lack of competence to act as a fourth-instance court.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. The petitioner claims that C.'s mother, as a "third party strange to the proceedings by comparison," initiated a judicial review in order to challenge the Thirteenth Civil District Court's denial to hear proceedings of a direct constitutional appeal. Her review was rejected by the Fourth Collegiate Court on July 13, 2010. Likewise, the petitioner indicates that C. was not provided with effective remedies. For its part, the State does not submit observations concerning the requirement of exhaustion of domestic remedies.

6. The Commission notes that the petition was presented on behalf of C., not her parents, and that the matter of the petition are the alleged violations of due process to the detriment of the girl since she was not listened to or had a representation that was impartial and other than her parents. In this regard, the IACHR notes that, according to the Fourth Collegiate Court's judgment of July 13, 2010, this Court believed that C. had no legal capacity to lodge a remedy that would allow her to enforce her rights or access legal representation other than her parents. Moreover, the Commission notes that the judicial authorities that heard the remedies were aware of the situation described in the petition. As a result, the Commission considers that, for the purpose of the *prima facie* analysis of domestic remedies exhaustion, there were no available remedies for C. to file a remedy to enforce her rights apart from her parents, which means that exception set forth in Article 46.2.a of the Convention applies on this petition.

7. As to the requirement of timeliness, the petition was filed six months following the notification of the final judgment that ruled the return of C. to her father. Therefore, the Commission considers that it was filed within a reasonable period.

VII. COLORABLE CLAIM

8. Considering the elements of fact and law presented by the petitioner, and the nature of the matter brought to its attention, the IACHR considers that the claims are not manifestly groundless and that it must analyze in the merits stage whether the girl's purported lack of direct participation in the legal actions and the facts that the courts reportedly did not listen to her opinion may establish violations of the rights protected by Articles 8 (Fair Trial), 17 (Family), 19 (Child) and 25 (Judicial Protection) of the American Convention, in connection with its Articles 1.1. and 2, to the detriment of C. Likewise, pursuant to Article 29 of the Convention and the body of law on the rights of the child, the Commission may interpret the scope and the content of the rights of the American Convention that were allegedly violated to the detriment of C, in light of the provisions of the United Nations Convention on the Rights of the Child.⁶

9. Lastly, as to the State's claim of the establishment of a fourth instance, the Commission notes that by declaring this petition admissible, it does not seek to replace the domestic authorities' competence. The Commission will analyze in the merits stage whether the domestic legal proceedings conformed to the rights of due process and judicial protection, and ensured C.'s right of access to justice under the terms of the American Convention.

⁶ See IACHR, Report No. 42/08, Petition 1271-04. Admissibility. Karen Atala and daughters. Chile, July 23, 2008, par. 66; IACHR, Report No. 171/10, Petition 578-03. Admissibility. Miguel Ángel Millar Silva. Chile, November 1, 2010, par. 42.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8, 17, 19 and 25 of the American Convention, in connection with its Articles 1.1 and 2;
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.

Done and signed in the city of Montevideo, Uruguay, on the 26th day of the month of October, 2017.
(Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; Paulo Vannuchi y Luis Ernesto Vargas Silva, Commissioners.