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**REPORT No. 2/18**  
**PETITION 656-08**  
REPORT ON ADMISSIBILITY

EMILIO PEÓN AND FAMILY  
ARGENTINA

Approved by the Commission at its session No. 2115 held on February 24, 2018.  
167<sup>th</sup> Special Period of Sessions.

**Cite as:** IACHR, Report No. 2/18, Petition 656-08. Admissibility. Emilio Peón and Family.  
Argentina. February 24, 2018.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Maria de los Angeles Sacco <sup>1</sup>
<b>Alleged victim:</b>	Emilio Peon and family
<b>State denounced:</b>	Argentina
<b>Rights invoked:</b>	Articles 2 (Domestic Legal Effects), 3 (Right to Juridical Personality), 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 9 (Freedom from Ex Post Facto Laws), 10 (Right to Compensation) and 22 (Freedom of Movement and Residence), in connection with Article 1.1 (Obligation to Respect Rights) of the American Convention on Human Rights; <sup>2</sup> and another instrument <sup>3</sup>

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

<b>Filing of the petition:</b>	June 3, 2008
<b>Notification of the petition to the State:</b>	May 5, 2014
<b>State's first response:</b>	March 26, 2015
<b>Additional observations from the State:</b>	September 8, 2017
<b>Notification of the possible archiving of the petition:</b>	May 26, 2017
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	June 22, 2017

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (instrument deposited on September 5, 1984)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Article 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention, in light of Article 7 (Personal Liberty) and in connection with Article 1.1 (Obligation to Respect Rights) of the same instrument,
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, on December 11, 2007

<sup>1</sup> The petition was originally lodged by attorney Carlos E. de Urzaza; however, on June 22, 2017, the widow of the alleged victim, Mrs. Maria de los Angeles Sacco, informed the Commission that he had passed away and that henceforth, she would be taking over the filing of the petition.

<sup>2</sup> Hereinafter "the Convention" or "the American Convention."

<sup>3</sup> International Covenant on Civil and Political Rights Articles 1, 2, 3, 9 and 10.

<sup>4</sup> The observations submitted by each party were duly forwarded to the opposing party.

**Timeliness of the petition:**

Yes, on June 3, 2008

**V. ALLEGED FACTS**

1. The petitioner alleges that Mr. Emilio Peon (hereinafter “the alleged victim” or “Mr. Peon”) was arrested on August 6, 1988 for allegedly participating in the theft of property belonging to the Universidad de La Plata; subsequently, without the assistance of an attorney, he was coerced to sign a self-incriminating statement, which he later recanted. The petitioner contends that the alleged victim was illegally held in (*de facto*) detention for seven months until March 22, 1989, when a formal pretrial detention order was issued against him. The criminal case against Mr. Peon was heard before Federal Trial Court No. 3 of La Plata, Province of Buenos Aires.

2. On August 10, 1988, Mr. Peon filed a motion for release, which was denied on August 11, 1988, based on the type of crime he was charged with and the fact that at the time of his arrest, he was under conditional release from a seven-year sentence imposed on him in an earlier case. The Federal Chamber of Appeals upheld the decision to deny release on September 20, 1988. Subsequently, on November 5, 1992, Mr. Peon’s public defender filed a motion for his release; however, this motion was denied by the trial court judge on November 10, 1992, on the following grounds: Mr. Peon had not yet served two thirds of the potential prison term that would be imposed on him in the event of being found guilty; the case was complex; and that his defense had filed a number of motions. This ruling was upheld by the Federal Chamber of Appeals on November 30, 1992.

3. In this regard, the petitioner contends that the abovementioned rulings of the Federal Chamber of Appeals only cited the arguments used by the trial court and did not explain findings of fact and law that were applicable to the case, systematically denying the alleged victim’s motion for release. She believes that as a whole, the courts treated Mr. Peon as guilty before he was convicted and in this way violated his right to the presumption of innocence.

4. Then, on March 25, 1993, Federal Court for Criminal and Correctional Matters No. 3 of La Plata handed down an acquittal of Mr. Peon, finding that he had not participated in the theft of property belonging to Universidad de la Plata. The petitioner alleges that the four years and eight months of pretrial detention in this criminal proceeding ruined the life of her husband; he lost his job; and he was plunged into a depression and ultimately took his own life by shooting himself in the head on November 1, 1995.

5. The petitioner claims there was a violation of the alleged victim’s right to be tried within a reasonable period of time and to be released, without prejudice to the continuation of the trial proceeding, and contends that the law provides for no more than two years of pretrial detention before release is mandatory. She believes that the denials of the motions for release are violations of the principle of legality; and that the dismal conditions of detention in which Mr. Peon was held were an affront to his dignity as a person.

6. The petitioner claims that in 1995 Mr. Peon brought a lawsuit for damages against the national government before Federal Trial Court No. 4 of La Plata, alleging the illegality of his detention. After the alleged victim’s suicide, the petitioner and her children filed a suit for damages before that same court in December 1995, which was joined with the claim originally brought by Mr. Peon. On October 25, 2005, this suit was dismissed because it was found that any illegitimacy or arbitrariness that the plaintiff attributed to the court that heard her husband’s case was groundless. The court also held that any damages stemming from the court proceeding, that are not the result of irregular performance of duty, must be endured by the private individuals, inasmuch as such damages are the unavoidable cost of an adequate administration of justice.

7. The petitioner notes that she appealed this decision to the Federal Chamber of Appeals of La Plata, and the appeal was denied on March 20, 2007, on the grounds that the trial court that heard the case respected the principle of *in dubio pro reo*. The Chamber also held that responsibility for the judicial error is only attributable to the State if the judicial function is performed illegitimately, which is not the case of pretrial detention because that act is not subject to challenge based on the mere fact of a subsequent

judgment of acquittal. The petitioner then filed a motion for leave to appeal to the federal court, which was denied by the Federal Appeals Chamber itself on July 12, 2007; she then filed an appeal against the refusal of leave to appeal on August 6, 2007, with the Supreme Court of Justice of the Nation. This appeal was denied on December 11, 2007 on the grounds that it failed to fulfill the requirements set forth under Articles 5 and 6 of the rules of procedure approved under resolution (*acordada*) 4/2007.<sup>5</sup> The petitioner alleges a violation of her right to be heard on the grounds that she was denied the right to appeal to a higher body to review the judgment, based on a procedural requirement with which, in her view, she did comply.

8. The Argentine State, in turn, argues that the petition was not forwarded to it within the parameters of timeliness, inasmuch as it was served notice of it six years after it was lodged with the IACHR. It further contends that there was no violation of the rights alleged by the petitioner and requests the petition to be found inadmissible. The State claims that the petitioner is merely raising her dissatisfaction with the judicial decisions, which were unfavorable to her, and is attempting to enlist the Commission to act as a fourth instance and, therefore, the requirements of Article 47.b of the American Convention are not met.

9. The State argues that the length of time for pretrial detention has been regulated since 1994, when it was established that such detention may not exceed two years, which is subject to an extension of one additional year, in certain procedural circumstances, such as the situation that arose subsequent to Mr. Peon's acquittal. The State further contends that the alleged victim's release was analyzed in keeping with the particular circumstances of his case, among other circumstances, which was that at the time of the events, Mr. Peon was free on conditional release, previously granted in another criminal proceeding where he was convicted of aggravated armed robbery. It emphasizes that the law allows the judge to deny release when there are circumstances that could lead the judge to presume that the defendant will elude the action of justice.

10. The State argues that the judicial rulings issued in the context of the suit for damages were decided in accordance with judicial protections of due process of law and were issued within the purview of competence of the respective judicial authorities. It also contended that the petitioner did not properly exhaust domestic remedies, inasmuch as she did not meet the requirements set forth in the regulations cited in the Supreme Court of Justice's ruling, by improperly filing her challenge to the denial of leave to appeal.

## **VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

11. Based on the positions of the parties and the information available in the case files, the Commission notes that even though all of the facts raised in the petition are closely linked related, they deal with two clearly distinct judicial proceedings. One proceeding is of a criminal case, which began in 1988 with the detention of the alleged victim and culminated on March 25, 1993 with his dispositive acquittal, which became *res judicata*. And, subsequently, the second proceeding was a civil suit for damages brought against the national government, which began in 1995 and for which the ultimate ruling was issued by the Supreme Court of Justice of the Nation on December 11, 2007. In this regard, irrespective of the dispute between the parties as to the petitioner's failure to comply with the formal requirements of the challenge to the denial of leave to appeal, the Commission notes that she pursued all available ordinary remedies. Additionally, it notes that the claims before the IACHR were also raised in the civil suit for damages and in the appeals filed against

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<sup>5</sup> The IACHR notes that the decision of the Supreme Court cites, without further detail, the following Articles: 5<sup>th</sup> [Rule]. It shall have a cover page on a separate sheet of paper where the information set forth in Article 2, subsections a, b, c, d and e must appear; and, additionally: f) mention of the body, judge or court that issued the denial of the motion for leave to appeal to the federal court, as well as those that have intervened in the earlier stages of the lawsuit; g) the date of the notification of said ruling; h) clarification of whether an extension of the time period set forth in Article 158 of the Code of Civil and Commercial Procedure of the Nation has been granted; i) when applicable, proof that the appellant is exempt from making the deposit set forth in Article 286 of the Code of Civil and Commercial Procedure of the Nation.

<sup>6</sup> [Rule]. On the following pages, the appellant must rebut, in concrete and reasoned form, each and every one of the independent grounds that support the denial ruling. The written submission shall be for that sole purpose and may not introduce therein issues that have not been raised in the motion for leave to appeal.

the denials, and that the Supreme Court of Justice of the Nation does not specify the particular element that the petitioner has not complied with in the challenge to the denial of leave to appeal. Therefore, adequacy of the grounds for denial is an issue, which in the particular circumstances of the instant matter, requires examination at the merits stage. Consequently, the Commission finds that the instant petition does fulfill the requirement of prior exhaustion of domestic remedies set forth in Article 46.1.a of the American Convention.

12. In keeping with the foregoing considerations, the Commission finds that the allegations raised by the petitioner in connection with the facts of the criminal proceeding against Mr. Emilio Peon do not meet the time-based requirement under the provisions of Article 46.1.b of the American Convention, because said proceeding ended almost fifteen years before the petition was lodged before the Commission on June 3, 2008. Notwithstanding, the facts relating to the alleged lack of compensation to the alleged victim for the abovementioned violations of his right to personal liberty are admissible pursuant to Article 46.1.b of the Convention. This is because the final decision in the damages suit was issued on December 11, 2007 and the petition was lodged with the IACHR on June 3, 2008.

13. Lastly, the Inter-American Commission takes note of the State's claim regarding untimeliness in forwarding the petition. The IACHR notes on this score that neither the American Convention nor the Commission's Rules of Procedure establish a time period for forwarding a petition to the State from the time it is received and the time periods established in the Rules of Procedure and in the Convention<sup>6</sup> for other stages of the procedure are not applicable by analogy.

## VII. ANALYSIS OF COLORABLE CLAIM

14. Based on the considerations of fact and law alleged by the petitioners, the Commission finds that the facts raised by the petitioner relating to the lack of reparation to the alleged victim for the damages caused by the alleged illegitimate use of pretrial detention against him for a period of four years and eight months could tend to establish violations of the rights established in Articles 8 (Fair Trial) and 25 (Judicial Protection), in relation to the general obligations to respect rights in Article 1.1, to the detriment of Mr. Emilio Peon and his family. The Commission will also examine whether the civil proceeding was adjudicated within a reasonable period of time, as well as the standards applicable to said case in light of Article 7 (Personal Liberty). In this regard, and in line with the determinations in the analysis of the timeliness of the petition, the IACHR will examine the facts relating to the criminal proceeding against the alleged victim as relevant precedents, which are necessary to properly understand and assess subsequent events.

15. As to the claim of the alleged violation of Article 3 (Right to Juridical Personality), Article 9 (Freedom from Ex Post Facto Laws), Article 10 (Compensation) and Article 22 (Freedom of Movement and Residence) of the American Convention, the Commission notes that the petitioners have not offered arguments or sufficient support to be able to consider *prima facie* potential violations of these articles. As for the allegation of violation of Article 5 (Humane Treatment) of the same instrument, the Commission finds that, with respect to the criminal proceeding and the facts alleged during said period, in keeping with the analysis conducted in the prior section of the instant report, the deadline to have raised this issue has lapsed.

16. Additionally, in relation to the International Covenant on Civil and Political Rights, the Commission is not competent to establish violations of the provisions of said instrument, without prejudice to taking it into account as part of the exercise of interpreting the provisions of the American Convention in the merits stage of the instant matter, as provided for under Article 29 of the Convention.

17. Lastly, with respect to the State's fourth instance allegation, the Commission notes that by admitting this petition, it is not claiming to supersede the competence of domestic judicial authorities; but will examine at the merits stage of the instant petition whether domestic judicial proceedings complied with

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<sup>6</sup> See as an example, IACHR, Report No. 56/16, Petition 666-03. Admissibility, Luis Alberto Leiva, Argentina. December 6, 2016. Also see, IA Court of HR, *Case of Mémoli v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2013. Series C No. 295, pars. 30-33.

all of the guarantees of due process of law and judicial protection and offered proper protection of access to justice for the alleged victim, as provided for under the American Convention.

#### **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 8 and 25 of the American Convention, in light of Article 7 and in connection with Article 1.1 of said instrument;

2. To find the instant petition inadmissible in relation to Articles 3, 5, 9, 10 and 22 of the Convention; and

3. To notify the parties of this decision; to continue with the analysis on the merits; and 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 Bogotá, Colombia, on the 24<sup>th</sup> day of the month of February, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.