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REPORT No. 32/18

PETITION 355-08

REPORT ON ADMISSIBILITY

**ALBERTO MIGUEL ANDRADA AND JORGE OSVALDO ÁLVAREZ
ARGENTINA**

Approved by the Commission at its session No. 2125 held on May 4, 2018.
168th Special Period of Sessions.

Cite as: IACHR, Report No. 32/18, Petition 355-08. Admissibility. Alberto Miguel Andrada and Jorge Osvaldo Álvarez. Argentina. May 4, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Alberto Miguel Andrada, Jorge Osvaldo Álvarez and Ezequiel Alfredo Testón
Alleged victims:	Alberto Miguel Andrada and Jorge Osvaldo Álvarez
Respondent State:	Argentina
Rights invoked:	Articles 5 (humane treatment), 11 (privacy), 21 (property) and 24 (equal protection) of the American Convention on Human Rights, ¹ in relation to Article 1.1 (obligation to respect rights) thereof

II. PROCEDURE BEFORE THE IACHR²

Filing of the petition:	March 26, 2008
Notification of the petition to the State:	November 1, 2016
State's first response:	May 2, 2017
Additional observations from the petitioner:	June 2, 2017
Additional observations from the State:	December 18, 2017

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 (deposit of ratification instrument on September 5, 1984)

IV. 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 5 (humane treatment), 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes; February 4 and 6, 2008
Timeliness of the petition:	Yes; March 26, 2008

¹ Hereinafter "Convention" or "American Convention."

² The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. Alberto Miguel Andrada and Jorge Osvaldo Álvarez (hereafter, “the alleged victims”) claim that the State of Argentina violated their rights to property, of equal protection and to non-discrimination, among others. They assert that despite their having been injured while in the performance of duty, the domestic law (Organic Law of the Federal Police No. 21.965) precludes federal police officers from compensation for work-related accidents—which the rest of Argentine workers are entitled to—. They indicate that the domestic courts overturned the remedies the petitioners had opportunely filed to obtain reparation, through the application of the above law and a case law regarding international armed conflicts, which evidences the precedent’s inadequacy both in factual and in legal terms. In addition, they claim that the Supreme Court’s case law on the right to compensation of police officers injured while in the performance of duty has been contradictory, leading to legal uncertainty.

2. Mr. Andrada submits that he was admitted to the Federal Police on August 8, 1994 (Employee File No. 18.719) and worked in the Superintendence of Investigation in the province of Buenos Aires. He indicates that on April 14, 1999 he was working as a machine-gunner in a prevention and surveillance operation, along with two other police officers aboard a police car, and that when they proceeded to arrest someone who had an arrest warrant, said individual started to shoot at them. As a result of the shootings, Mr. Andrada had his left knee and his right hand wounded. For his part, Mr. Álvarez indicates that he was admitted to the Federal Police on September 23, 1986 (Employee File No 50.081) and worked at Police Station No. 18 of the Autonomous City of Buenos Aires. The alleged victim affirms that he participated in two armed confrontations while in the performance of duty. The first time was on January 19, 1997 when he tried to arrest two suspects of a flagrant robbery, and was wounded twice: in his right shoulder and in the abdomen. The second time was on January 6, 1999 when the alleged victim was inside a store and two armed individuals robbed it, a shooting followed, and he was shot in the chest and in the abdomen.

3. Mr. Andrada submits that the Federal Police filed administrative proceedings No. 313-18-00000-3/39, and considered his injuries as “sustained as a result of and while in the performance of duty,” pursuant to article 696, paragraph a) of decree No. 1866/83. The police medical board granted him a sick leave from April 1999 until July 2002, the year when the medical board determined that he suffered from an irreversible personality disorder that permanently disabled him for police duties. Finally, on November 17, 2002, the Head of the Police Department ordered the alleged victim’s compulsory removal in view of his psychological damage, considering him retired, thus, arbitrarily and unilaterally changing the status given to Mr. Andrada in the administrative proceedings. He claims that, later, he brought an action for damages before the First National Federal Trial Court for Civil and Economic Matters to obtain compensation, and that it was settled in his favor. He alleges that the Federal Police challenged said favorable ruling before the Court of Appeals, and that this court rejected the measure to grant compensation, revoking the lower-court’s judgment. The alleged victim claims that the Court of Appeals based its decision on Law 21.965 and asserted that giving that the case involves injuries that are not merely accidental but the result of performance of duty and particular tasks, members of the federal police are not entitled to obtain compensation under the ordinary law, which is known as the “Azzetti” precedent. Finally, the alleged victim submits having filed a special federal appeal before the Supreme Court of Justice, which on February 6, 2008 notified its confirmation of the Court of Appeals’ unfavorable decision based on the same factual and legal grounds.

4. Mr. Álvarez indicates that, concerning his first injuries, the Federal Police filed administrative proceedings No. 218-18-000003/97, which on April 2, 1997 led to the conclusion that his injuries had been “sustained as a result of and while in the performance of duty,” pursuant to article 696, paragraph a) of decree No. 1866/83. In regard to the second event, he indicates that administrative proceedings No. 218-18-000001/99 was filed and his injuries were also considered as “sustained as a result of and while in the performance of duty.” The police medical board granted him a series of sick leaves until it concluded that he suffered from an irreversible mental condition that permanently disabled him for police duties, and applied a 20 per cent permanent partial disability for work. The alleged victim presented an action for damages before the First National Federal Trial Court for Civil and Economic Matters. In the legal proceedings, the medical expert established that his disability reached 90.25 per cent. Both the Trial Court and the Court of Appeals rejected his remedy through the application of law No. 21.965 and the “Azzetti” precedent. Consequently, the

alleged victim filed a federal appeal before the Supreme Court of Justice, which on February 4, 2008 notified him of its confirmation of the court of appeals' decision to overturn the action, based on the same factual and legal grounds.

5. In view of the foregoing, the alleged victims report that the ordinary law is not applicable to their case, that they are not allowed to obtain compensation because neither the organic law of the Federal Police, law No. 21965, nor its decree No. 1866/83 foresee reparations in the form of compensation. They also claim that Law No. 24.557 (Law on Occupational Risks) establishes that the mechanism of compensation for occupational damages and employment-related diseases did not explicitly include Federal Police officers. They allege that the Supreme Court of Justice violated their rights by dismissing their special federal appeals, thus, depriving them of all reparation, as it applied a legal provision under which they are excluded from compensation benefits, and the "Azzetti" precedent. They explain that, under the "Azzetti" precedent, the ordinary law is not applicable when an injury is a mere consequence of the performance of specific operations. They affirm that the precedent was created to deny compensation to a soldier wounded in the Malvinas War because, given the large numbers of soldiers wounded in an international armed conflict, any possible compensation had to be decided by the Congress. Therefore, they claim that their rights were violated, since their claims for compensation for injuries sustained in the performance of police duty were rejected, based on a case law applicable to compensation claims regarding war-related injuries.

6. The State, for its part, asserts that the petition was untimely notified to it and claims that it is inadmissible because the acts presented there did not lead to violations of rights protected by the American Convention. It affirms that the petitioners simply refer to their discontent with the interpretation made by the courts issuing decisions unfavorable to the alleged victims' interests, and that were the Commission to rule on this matter, the IACHR would work as a semi-judicial body of forth-instance. Moreover, it indicates that the actions for damage filed by the alleged victims were settled in conformity with due process of law, under the requirement set forth in Articles 8 and 25 of the Convention. As a result, the State requests that the instant petition be declared inadmissible.

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

7. The petitioners claim having filed a civil complaint for damages before the First Federal Civil Economic Trial Court, which the trial court settled by a favorable decision in Mr. Andrada's case, and by an unfavorable decision in Mr. Álvarez's case. Subsequently, both claims for compensation were rejected by the Civil Economic Court of Appeals. Later, the alleged victims submitted a federal appeal before the Supreme Court of Justice, and said court upheld the Court of Appeals' decision in regard to both cases, based on the same grounds. The State, for its part, did not submit any allegations concerning the exhaustion of domestic remedies or the timeliness of the petition.

8. In this case, the Commission notes, for the purpose of the analysis of admissibility, that the alleged victims exhausted all the remedies available in the domestic legal framework, and that, consequently, the petition meets the requirement established in Article 46.1.a of the Convention. As to the timeliness requirement, the Commission notes that the petition was filed within the six months period following the date of notification of the final decision by which the domestic remedies were exhausted; that is, February 4, 2008 in the case of Jorge Álvarez, and February 6, 2008, in the case of Miguel Andrada. Thus, the requirement set forth in Article 46.1.b of the Convention is declared met.

9. Lastly, about the State's allegation as to the delay in between the filing of the petition and its notification to the State, the Commission reminds that, once a petition has been received, no deadline for transmitting it to the State is established by the American Convention or the Rules of the Commission; and that the deadlines that the Rules and the Convention establish for other processing stages do not apply here.³

³ IACHR, Report No. 20/17, Petition 1500-08. Admissibility. Rodolfo David Piñeyro Ríos. Argentina, March 12, 2017, par. 5.

VII. ANALYSIS OF COLORABLE CLAIM

10. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the IACHR believes that the allegations concerning the purported discrimination sustained by the alleged victims as members of the security forces and the violation of their rights to a fair trial and due process resulting from their alleged deprivation of compensation benefits under the ordinary law, if proved, all could establish violations of the rights enshrined in Articles 5 (humane treatment), 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

11. About the alleged violation of Article 21 (property) of the Convention, the IACHR notes that the petitioners' complaint refers to the alleged impossibility to obtain compensation for work-related damages on a basis of equal conditions regarding the rest of employees, and not to an alleged violation of an acquired right to property. Thus, the Commission believes that the allegations submitted by the petitioners must be analyzed in the merits stage, in the light of the above rights and that, based on the available information, it is impossible to *prima facie* identify a possible violation of Article 21 of the Convention.

12. As to the alleged complaint about the violation of Article 11 (privacy) of the American Convention, the Commission notes that the petitioners did not submit allegations or elements sufficient to *prima facie* determine its violation.

13. Regarding the State's allegation about a fourth-instance body, the Commission recognizes that the IACHR is not entitled to review judgments issued by domestic courts acting within their jurisdiction and in accordance with due process of law and the right to a fair trial. However, the Commission reiterates that, under its mandate, it is competent to declare a petition admissible and, if applicable, decide on the merits of the case when the matter concerns domestic proceedings that may have been contrary to the rights protected by the American Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 5, 8, 24 and 25 of the American Convention, in connection with its Articles 1.1 and 2;

2. To find the instant petition inadmissible in relation to Articles 11 and 21 of the American 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.

Approved by the Inter-American Commission on Human Rights in the city of Santo Domingo, Dominican Republic, on the 4th day of the month of May, 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.