

OEA/Ser.L/V/II.
Doc. 1
3 January 2019
Original: Spanish

REPORT No. 1/19
PETITION 325-07
REPORT ON INADMISSIBILITY

CARLOS LUCIANO MARTINS
ARGENTINA

Approved electronically by the Commission on January 3, 2019

Cite as: IACHR, Report No. 1/19. Petition 325-07. Inadmissibility. Carlos Luciano Martins.
Argentina. January 3, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Carlos Luciano Martins, Alberto A. de Vita, and Marcelo Cueto ¹
Alleged victim:	Carlos Luciano Martins
Respondent State:	Argentina
Rights invoked:	Articles 5 (humane treatment), 8 (fair trial), 9 (freedom from ex post facto laws), 11 (privacy), 19 (child) and 25 (judicial protection) of the American Convention on Human Rights, ² in relation to its Article 1.1 (obligation to respect rights) and other international treaties ³

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	March 30, 2007
Notification of the petition to the State:	June 29, 2011
State's first response:	June 9, 2016
Additional observations from the petitioner:	August 15, 2017
Notification of the possible archiving of the petition:	August 10, 2016
Petitioner's response to the notification regarding the possible archiving of the petition:	August 15, 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. 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:	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on October 10, 2008
Timeliness of submission:	Yes, on March 30, 2007

¹ Mr. Carlos Luciano Martins was initially a petitioner before the IACHR, and then in a brief of August 15, 2017, he became co-petitioner for Mr. Alberto A. de Vita and Mr. Marcelo Cueto.

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

³ Articles 1, 3, 4, 16, and 40 of the Convention on the Rights of the Child and Articles 2, 14, and 24 of the International Convention on Civil and Political Rights.

⁴ The observations presented by each party were duly forwarded to the opposing party.

V. FACTS ALLEGED

1. This petition alleges the violation of the rights of Mr. Carlos Luciano Martins (hereinafter “Mr. Martins”) for irregularities in the criminal proceeding against him for fraud, which was initiated in 1997 and ended in 2008.

2. The petitioners claim that on June 1, 1995, the communication company Telintar SA (hereinafter “the company”) installed call-monitoring equipment in four telephone lines (including Mr. Martins’, which was in the name of his mother), upon the suspicion of fraudulent international calls. They highlight that the intervention was carried out without a judicial authorization and until February 17, 1997, when the company filed a complaint against the people using the telephone lines —among them there was Clotilde Cabrera, the alleged victim’s mother, with whom she lived— to the Fraud and Deceit Division of the Federal Argentinian Police (hereinafter “PFA”), and on February 21 of the same year, to the Criminal Judge on Instruction of the Federal Capital No. 6, so as to constitute the company as plaintiff. The company requested the judicial tapping of the questioned telephone lines, which the judge provided on March 4, 1997.

3. On May 30, 1997, the court issued a search warrant at the locations where the calls were allegedly made, including Mr. Martins’ home, which was carried out on June 2, allowing for the arrest of the investigated fact’s perpetrators. The PFA arrested Mr. Martins and confiscated his computer. He was taken to the Federal Penitentiary Service, where he was designated official defense, to take his statement at a hearing on the same day, but he refused to testify. On June 17, 1997, the court prosecuted Mr. Martins for fraud, without adopting liberty restricting measures. The official defense filed for a motion of appeal, which was decided on November 24, 1997, revoking the prosecution as it was considered that there was no sufficient evidence. Afterward, an expert report was carried out and it was determined that the confiscated equipment had the appropriate characteristics so as to be used to commit the alleged crime, and it was ordered to include the evidence obtained from call-monitoring carried out by the company, since it was considered that it did not violate the right to privacy, as the equipment was only able to identify which line received the call and its length.

4. On November 6, 1998, the investigating judge ordered the prosecution of Mr. Martins for fraud, without preventive custody. The defense lodged an appeal on November 25, and the order was revoked on April 22, 1999 due to insufficient evidence. On May 7, 1999, the investigating judge ordered the installation of call-monitoring equipment in Mr. Martins’ telephone line and on January 18, 2000, he ordered his stay, since three years had passed from his imputation and there was insufficient evidence. The company filed for a motion of appeal on February 3, 2000 and on May 4, 2000, the dismissal order was revoked. On July 24, 2000, the investigating judge ordered the prosecution of Mr. Martins and confirmed his release on bail. The defense filed for a motion of appeal on August 13. On November 28, 2000, the National Court of Appeal confirmed Mr. Martins’ prosecution. The defense filed for a cassation remedy on December 20, 2000, alleging the atypical nature of the conduct and due process violations. On September 28, the court rejected the remedy, since it considered that the indictment is not a decision terminating the proceeding. The defense filed for a protest motion on February 9, and on May 22, 2001, the contested decision was confirmed.

5. On December 22, 2001, the prosecutor requested a trial, classifying Mr. Martins’ conduct as fraud. On that same day, the company was presented as plaintiff. On March 20, 2001, the defense opposed to the request for trial and on August 6, 2001, it requested the annulment of the previously carried out actions. On April 9, the investigating judge declared the end of the investigations, and on May 23, 2001, the case was brought to the attention of the Criminal Oral Court. After analyzing if it was the competence of the Criminal Oral Court’s (hereinafter “TOC”) or the Juvenile Court No. 2 (hereinafter “TOM No. 2”), which was solved by the National Courtroom of Criminal Cassation on October 29, 2003, TOC No. 5 took over the case. On July 7, 2005, TOC No. 5 rejected the appeal for annulment.⁵ The defense filed for a cassation remedy on July 27,

⁵ In the judgment of July 7, 2005, TOC No. 5 declared that “as Martins is being accused of crimes he allegedly committed between June 1, 1995 and September 19, 1996, i.e. when he was a minor (the accused was born on September 18, 1978), it is this Court’s duty to declare itself incompetent in the investigation and send the corresponding statements to the Honorable National Court of Criminal Cassation, so that it appoints at random the Oral Juvenile Court that shall intervene in the judgment.” Consequently, it declared [continúa...]

which was rejected on August 5, 2005, since the judgment did not terminate the proceeding. On August 18, 2005, the defense filed for a protest motion, which was dismissed on September 21, 2005, since it was *inter alia* considered that it did not pose an irreparable damage deserving the courtroom's intervention. The defense filed for a special remedy on October 27, 2005, which was declared inadmissible, by both the courtroom on February 10, 2006, and the Supreme Court of Justice on September 26, 2006. In this judgment, the Supreme Court declared the protest motion submitted by the petitioners inadmissible.

6. Mr. Martins' defense requested TOC No. 5 to suspend the process, through a figure also known as probation in the Argentinian legislation, which was granted on October 26, 2006, establishing the suspension of the proceeding for one year, on condition that during that time, Mr. Martins provided IT services to a State educational institution. On April 10, 2008, the National Criminal Enforcement Court considered the conditions as fulfilled and consequently, on October 10, 2008, TOC No. 5 declared the criminal extinguished action and archived the case.

7. The petitioner alleges that Mr. Martins' human rights were violated based on the following principles: (i) violation of the lawfulness principle for the investigated conduct's atypical nature; (ii) violation of the competent judge's safeguards, as he was not prosecuted by a juvenile judge;⁶ (iii) search and seizure in the absence of his parents, on a non-working day, and his detention at the adults' detention center; (iv) violation of the reasonable period of time for the proceeding; (v) defenselessness for the impossibility of adopting means of evidence, and (vi) continuation of the proceeding without legal motive.

8. For its part, the State alleges that the petitioner wants the Commission to act as a fourth instance, according to which, when a petitioner questions a ruling for personally considering it as unfair or wrong, it is the IACHR's duty to reject the said argument. It is alleged that what the petitioner tries to do is to carry out a revision at internal instance on domestic law matters. It is stated that the judicial instances always acted pursuant to law, respecting the procedural safeguards and due process of the accused, and that Mr. Martins was granted trial suspension, which led to his stay. It indicates that it cannot be concluded that in this case existing domestic remedies in the Argentinian legislation were exhausted, since the proceeding ended due to the effectiveness of probation's fulfillment, and not with a final decision in the last instance.

9. It is also alleged that throughout this process, Mr. Martins had many possibilities of filing for remedies. It is also stated that the fact that the remedies referred to in the petition have been rejected as they did not have federal claims does not constitute a violation *per se* of the guarantees established in the American Convention. Moreover, it is highlighted that the remedies chosen by Mr. Martins during the proceedings, at initial stages and previous to an eventual judgment, were not granted as it was not considered that the alleged irregularities constituted procedural violations of consequent impossible reparation.

10. Finally, the Argentinian State alleges extemporaneousness in the petition's forward to the State, considering that it was submitted on March 30, 2007, after being transferred to the State on June 29, 2011, almost four years later.

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

11. In this case, the petitioners referred in detail to the development of the criminal proceeding initiated against Mr. Martins, according to which the last judicial decision adopted in the proceeding was the termination of the criminal action and the archiving of the cause ordered by TOC No. 5 on October 10, 2008.⁷

[... Continuation]

the "incompetence of this Court to keep analyzing the facts, which are attributed to Carlos Luciano Martins, while he was a minor," stating that the facts occurred as of September 19, 1996 would be disclosed in this tribunal.

⁶ It is indicated that when the investigation was conducted through the monitoring of his telephone line carried out by the company, the alleged victim was 17 years and 8 months old, and he was 19 at the moment of the search and initiation of the criminal case.

⁷ From the information available, it arises that Mr. Martins was originally prosecuted without imprisonment for fraud in 1997. After two repeals of the writ of indictment, the alleged victim was newly prosecuted without imprisonment on July 24, 2000. This

[continúa...]

For its part, the State alleges that the domestic remedies were not exhausted, since the proceeding was suddenly terminated and Mr. Martins was not convicted nor pardoned, with the eventual exhaustion of other subsequent remedies, which, according to it, are necessary for the submission before the Commission.

12. Therefore, considering that the criminal action's archiving in the criminal proceeding initiated against the alleged victim is a final judicial decision ending the proceeding, pursuant to the applicable legislation, the Commission concludes that the petition complies with the requirement established in Article 46.1.a of the American Convention. Likewise, given that the petition was submitted to the IACHR on March 30, 2007, it complies with the requirement established in Article 46.1.b of this instrument.

13. Furthermore, the Inter-American Commission takes cognizance that the State's claim on what it describes or considers as the extemporaneousness in the petition's transfer. Regarding this, the IACHR indicates that neither the American Convention nor the Commission's Rules of Procedures establish a deadline for the transfer of a petition to the State from its reception, and that the periods established in the Rules of Procedures and the Convention for other stages of the procedure are not applicable by analogy.⁸

VII. ANALYSIS OF COLORABLE CLAIM

14. The Commission observes that the petitioner expresses, as the main allegation, that he should have been judged by the criminal juvenile justice, since he was between 17 and 19 years old during the time the alleged facts for which he was prosecuted took place. Likewise, he alleges that the search was carried out in the absence of his parents, when he was 19 years old, that he was in solitary confinement for two days, and that the minors' adviser was not involved. Furthermore, he alleges the violation of lawfulness principle, defenselessness for being unable to adopt means of evidence, and that the appeal of one of the stays leading to his prosecution was illegal. Finally, he alleges that the length of the proceeding exceeded the reasonable period (*supra* para. 7). For its part, the State confirms that, by means of this petition, the petitioner aims at obtaining an international revision on domestic law matter, making use of the Commission as a fourth instance.

15. Regarding the main allegation, the Commission observes that, even though the National Civil Code in force during the time of the facts established legal age at 21, Act 22.278 on Penal Treatment of Minors, in force since 1980, establishes the legal age in criminal matters at 18. From the documents available, it arises that the alleged illegal facts started taking place when the victim was 17 years and 8 months old and continued for two years. It also arises that the competence conflict was solved in favor of the criminal justice for adults and that he was exclusively prosecuted regarding the alleged conduct that took place after he turned 18.

16. In relation to the atypical nature of the conduct at the time of the events, the defenselessness for the impossibility of adopting means of evidence and the prosecution of the proceeding without legal motives alleged by the petitioner, without considering the incident of the domestic criminal proceeding itself, the Commission observes that, considering it as a whole and for the purposes of an admissibility examination of this petition, Mr. Martins had the possibility of submitting his claim before the competent courts, and that it was decided in a motivated way in two instances. Likewise, the Commission observes that the petitioner does not formulate specific allegations nor provides elements which allow *prima facie* identifying that the domestic judicial authorities committed due process violations.

[... Continuation]

decision was confirmed as a final judgment on May 22, 2001. On December 22, 2001, the case's prosecutor requested a trial, and after the resolution of a competence incident, it was transferred to TOC No. 5. Afterward, following an annulment incident indicated by the defense and rejected in all instances, the defense requested the suspension of the probation, which was granted on October 26, 2006. After verifying the fulfillment of the established conditions in the probation's suspension, on October 10, 2008, TOC No. 5 declared the termination of the criminal action and filed the case.

⁸ See for example, IACHR, Report No. 56/16. Petition 666-03. Admissibility. Luis Alberto Leiva. Argentina. December 6, 2016. Also see IAHR Court, *Case Mémoli vs. Argentina*. Preliminary Exceptions, Merits, Reparations and Indemnities. Judgment of August 22, 2013. Series C No. 295, para. 30-33.

17. Regarding the alleged violation of the reasonable delay, from the elements provided by the parties in this petition, and without carrying out an analysis typical of the merits stage of the controversy, the Commission observes that the petitioner had different procedural opportunities to file for remedies both at the investigation and initial stages of the criminal proceeding, which were all solved by the appropriate instances, and that the domestic courts granted Mr. Martins the suspension of the trial on condition that he complies with certain community services, which was fulfilled. As a result, he obtained the stay and termination of the criminal action, as well as the archiving of the case. Taking into consideration the procedural actions took by Mr. Martins, which led to his release, the Commission does not consider *prima facie* that it constitutes a potential violation of a right granted by the American Convention.

18. Accordingly, based on the aforementioned considerations, this Commission concludes that the petition does not comply with the requirement established in Article 47.b of the American Convention, since *prima facie* there are no facts that might constitute violations of the rights appealed to by the petitioner.

VIII. DECISION

1. To declare the present petition inadmissible;
2. To notify the parties of this decision; to publish this decision, and to 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 on the 3rd day of the month of January, 2019. (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.