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REPORT No. 39/16
PETITION 196-01
REPORT ON ADMISSIBILITY

JOSÉ ALBERTO PICCIOTTO
ARGENTINA

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Argentina. August 31, 2016.

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I. SUMMARY

4. On February 15, 2001, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition lodged by José Alberto Picciotto (hereinafter, “the petitioner” or “the alleged victim”) against the Republic of Argentina (hereinafter, “Argentina” or “the State”), for alleged lack of access to adequate and effective judicial remedies to challenge a monetary penalty assessed on him for procedural reasons by authorities of the Judiciary of the State.

5. The petitioner claims that the State has violated his right to a fair trial, equal protection and judicial protection, inasmuch as while he was acting as a plaintiff’s legal advisor (*abogado patrocinante*) in the context of a civil suit for damages, he was assessed a fine in the appeals court decision. He further contends that no effective judicial remedy was available for him, to call said decision into question and that he was precluded from introducing evidence in any of the subsequent proceedings before the authorities of the Argentine judiciary. He additionally argues that since no adequate appeals mechanism to the next level of review through ordinary channels (*recurso ordinario*) was available to him, he filed a motion for leave to appeal to the highest federal court (*recurso extraordinario*); however, the Supreme Court of Justice of the Nation (hereinafter “Supreme Court”) denied the motion, without citing sufficient grounds for doing so. Lastly, he notes that in a similar case to his own, the Supreme Court issued a judgment that is different with its decision in his case.

6. In response, the State claims that the IACHR should not admit the petition, because domestic law provides for an adequate and effective remedy, which was not pursued by the petitioner. It further contends that the requisite fair trial rights of the alleged victim were respected, since he had the opportunity to introduce evidence. Additionally, it argues that the petitioner did not submit enough evidence to prove that his case was analogous to the one he claimed to be identical to his own in order, to support a violation of the right to equal protection. Finally, the State asserts that the Commission would be acting as a fourth instance of review, if decides to examine the instant case, on the grounds that it would be reviewing alleged errors of fact or of law committed by a domestic court, that has acted within the purview of its authority and in keeping with the standards of due process of law.

7. Without prejudice to the merits of the claim, after examining the positions of the parties and in keeping with the requirements set forth in Articles 46 and 47 of the American Convention on Human Rights (hereinafter, “American Convention” or “Convention”), the Commission finds the case admissible as to examination of the allegations pertaining to violation of the rights enshrined in Article 8 (Fair Trial) and Article 25 (Judicial Protection) of the Convention. The Commission also decides to serve notice of this decision to the parties, publish it and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE IACHR

8. The IACHR received the petition on February 15, 2001 and on August 20, 2003, forwarded a copy of the relevant portions to the State, granting it a period of two months to submit its observations, as provided for in Article 30 of the Commission’s Rules of Procedure in force at the time. On September 11, 2003, the State requested the documents to be resent because of a copying error; subsequently, it requested an extension to submit its response. Lastly, on August 31, 2004, the State’s response was received and forwarded to the petitioner on November 29, 2004.

9. The petitioner submitted additional observations on March 1, 2005; October 28 and November 12, 2008; on September 24, 2009; on November 14, 2013 and on January 2, 2014. In turn, the State submitted additional observations on April 11 and November 7, 2006; on December 23, 2008; on January 9, 2009; on December 23, 2013 and on March 21, August 8 and October 17, 2014. These communications were duly forwarded to the opposing party.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

10. The petitioner claims that in his capacity as lawyer and legal representative of a client, he filed a law suit for damages with National Trial Court for Civil Matters N° 32, which was dismissed in a ruling of September 7, 1998, in which a fine for 20% of the amount of the claim was also assessed on his client, citing abuse of process (*temeridad*) and engaging in frivolous litigation (*malicia*) for bringing the suit. It is his contention that, as part of his professional obligations, he appealed the judgment. However, for reasons of professional ethics, he subsequently resigned from his position as legal representative of his client, who did not appoint a new representative nor did she press forward with the appeal that had been filed by him and, consequently, the ruling became a final judgment. As these events unfolded, he asserts that the opposing party to the aforementioned civil suit also appealed said judgment, moving for the assessed fine to be increased to 30% and also for it to be extended to the petitioner. Accordingly, Chamber L of the National Appeals Court for Civil Matters (hereinafter, "Court of Appeals") served the petitioner with a copy of the appeal for him to provide his response, which was submitted in a timely manner. The petitioner argues that on September 9, 1999, the Court of Appeals wrongfully ordered the trial court judgment to be changed and to extend the original fine to apply to him.

11. In order to challenge said decision, because no other suitable remedy was available to him, on October 13, 1999, the petitioner filed a motion for leave to appeal to the Supreme Court (*recurso extraordinario*) with the Court of Appeals on the grounds that the decision was arbitrary and moved for the case to be heard and adjudicated by the Supreme Court. Nonetheless, the Court of Appeals denied the motion for leave to appeal to the Supreme Court on December 15, 1999, on the grounds that the assessment of monetary penalties stemming from procedural misconduct is a power reserved exclusively for the judges who take part in the proceedings and is not subject to review by the Supreme Court, inasmuch as it involves issues of fact and procedural law, even when the appeals court has acted ex officio to cite the provisions of law upon which the denial of the motion for leave to appeal was based.

12. The petitioner alleges that because this was the last remedy available to him, on December 28, 1999, he appealed before the Supreme Court the denial of the motion for leave to appeal. The Supreme Court found his appeal inadmissible in a judgment issued on August 2, 2000, and served notice of the judgment to him on August 17, 2000, based on the provisions set forth in Article 280 of the Civil and Commercial Procedural Code of the Nation. This article establishes that: "the Court, at its own reasoned discretion and merely by invoking this provision, may deny the motion for leave to appeal, due to lack of sufficient grounds for federal appeal or when the issues raised prove to be insubstantial or lacking consequence." The petitioner believes that such discretion in its decision enabled the Supreme Court to rule with absolute arbitrariness in his case and, therefore, the remedy was not effective. The alleged victim claims that this ruling is not subject to any further appeal.

13. The petitioner states that the Court of Appeals violated his right to a fair trial, because he was only able to respond to the notice of appeal and did not have the opportunity to introduce evidence, inasmuch as he was not a party to the case. He also believes that the Supreme Court violated his right to due process because it did not allow introduction of evidence and allegedly denied his motion in an arbitrary way.

14. Additionally, the petitioner indicates that the State violated his right to judicial protection because at no time was an adequate and effective remedy available to him to call into question the decision of

the Court of Appeals and also because Argentine domestic law allows the Supreme Court to deny any *in limine* motion at its own reasoned discretion without providing any legal basis.

15. In response to the allegation put forward by the State regarding the ability to file a motion for reconsideration of judgment (*recurso de reconsideración*), as provided for in Decree Law 1285/58 (Law 24.050), the petitioner argues that said law was not applicable to his case, because it regulates disciplinary sanctions for attorneys and not monetary penalties assessed for procedural reasons, which is the subject matter of his petition.

16. Lastly, he argues that his right to equal protection was violated, inasmuch as the Court had ruled in a way that is inconsistent with his case judgment in an analogous case to his. On this score, he claims that, in 1994, the Supreme Court heard a case in which it examined a monetary penalty assessed on a legal representative and ruled in favor of the attorney. His contention is that the only reason that he did not obtain the same result was because of a change in the make up of the members of the Supreme Court.

17. Based on the foregoing reasons, the petitioner argues that the State violated the rights enshrined in Articles 8, 24 and 25 in connection with Articles 1 and 2 of the American Convention, to his detriment.

B. Position of the State

18. The State claims that the petitioner did not adequately exhaust domestic remedies in order to cure the violation alleged by him, because he never pursued a motion for reconsideration of judgment, as provided for in Article 19 of Decree Law 1285/58 (Law 24.050), which is a means to challenge disciplinary sanctions assessed by the courts of justice. Said article establishes that: “disciplinary sanctions assessed by the Supreme Court of Justice of the Nation, by the Federal Chamber of Criminal Cassation [highest court of review on the law], by the National Chamber of Cassation for Criminal Matters, by the federal and national appellate chambers and by the trial courts shall only be appealed by motions for reconsideration of judgment (*recursos de reconsideración*).”

19. Additionally, the State contends that the facts laid out by the petitioner do not tend to establish human rights violations, because at all times he enjoyed due process of law, judicial protection and was guaranteed equal protection to the fullest degree. Specifically, as to the inability to introduce evidence, it argues that the Civil and Commercial Procedural Code of the Nation does not preclude the introduction of evidence during the appeals process.

20. Furthermore, with reference to the alleged preclusion from submitting evidence during the proceeding on the motion for leave to appeal, the State claims that the petitioner could have raised the argument of the unconstitutionality of the provisions of law preventing him from introducing evidence in his defense. Regarding judicial protection, the State asserts that the petitioner had effective and adequate remedies available to him at all times in order to cure any violation of his rights.

21. As for the right to equal protection, the State believes that the petitioner never provided sufficient evidence to prove that an identical legal situation actually existed in another case and, therefore, it is out of order to rule on said alleged violation. Lastly, the State contends that a similar case to the instant matter was found inadmissible by the Commission in 1998 and, therefore, it believes that said legal precedent must be applicable to this petition.¹

22. In conclusion, the State asks the IACHR to find the petition inadmissible because it believes that there is no clear colorable claim to the facts and that the petitioner has failed to properly exhaust domestic remedies.

¹ The State is citing Report N° 6/98 (Inadmissibility), Case 10.382, Ernesto Máximo Rodríguez, Argentina, February 21, 1998.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

23. The petitioner is entitled, in principle, under Article 44 of the American Convention, to file petitions with the Commission. The petition names as alleged victim an individual with regard to whom the Argentine State pledged to respect and ensure the rights enshrined in the American Convention, as of September 5, 1984, the date of deposit of Argentina's instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to entertain the petition, inasmuch as violations of rights protected in American Convention are alleged therein to have taken place within the territory of Argentina, a State Party to said instrument.

24. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention was in effect for the State on the date when the facts alleged in the petition occurred. Lastly, the Commission is competent *ratione materiae* by virtue of the fact that the petition alleges violations of human rights protected under the American Convention.

B. Admissibility Requirements

1. Exhaustion of Domestic Remedies

25. Article 46.1.a of the American Convention requires prior exhaustion of remedies available under domestic jurisdiction, according to generally recognized principles of international law, as a requirement for the admission of complaints alleging violations of the American Convention. This requirement is intended to allow national authorities to consider an alleged violation of a protected right and, when appropriate, to give them the opportunity to correct it before it is heard and decided by an international body.

26. The petitioner alleges that available domestic remedies were exhausted with notification of the Supreme Court's ruling of August 17, 2000, which dismissed his appeal of the denial of his motion for leave to appeal. In response, the State contends that the alleged victim did not exhaust the remedies provided for in the domestic jurisdiction, inasmuch as he did not previously file a motion for reconsideration of judgment and also a motion for relief based on the unconstitutionality of the law (*recurso de inconstitucionalidad*).

27. When deciding whether petitions lodged by petitioners should be considered inadmissible because all remedies available under domestic law have not been exhausted, the Commission cites the basic principles that govern the nature of the remedies that should be exhausted in the Inter-American system, that is, whether they are adequate in addressing an infringement of a legal right, and effective, in that they must be capable of producing the result for which they were designed.²

28. Based on the information provided by the parties, the IACHR finds that the motion for reconsideration of judgment, as provided for in Article 19 of Decree Law 1285/58, cannot legally address the facts alleged by the petitioner as violations of his rights, because this provision was intended for different circumstances than those of the instant case. A reading of the aforementioned Decree Law indicates that it provides for the procedure to challenge disciplinary sanctions imposed on lawyers, prosecutors, litigants and

² IACHR, Report No. 76/07. Admissibility. The Kaliña and Lokono Peoples. Surinam. October 15, 2007, par. 55; IACHR, Report No. 87/12, Petition 140-08. Admissibility. Maya Kaqchikel Community of los Hornos and El Pericón I and its members. Guatemala. November 8, 2012, par. 34; IACHR, Report No. 48/15, Petition 79-06. Admissibility. Yaqui People. Mexico. July 28, 2015, par. 51.

any other persons who obstruct the course of justice in any subject matter of court proceedings³ and makes no mention of monetary penalties assessed for abuse of process or bringing frivolous litigation as provided for in the Code of Civil and Commercial Procedure, which is the reason why the petitioner was sanctioned. The State has not provided information to explain how said provision of the law was applicable to the instant case.

29. As for the motion to challenge the constitutionality of the law, as it pertains to introduction of evidence, the IACHR finds that such a motion would have only been effective to examine compatibility of the law with the Constitution of the State, but not to examine the facts in question. Nonetheless, the Commission notes that because of the assessment of the monetary penalty and the fact that the provisions set forth in Decree Law 1285/58 were not applicable to the case, the petitioner filed a motion with the appellate court for leave to appeal to the federal Supreme Court, which was denied by the Court of Appeals. In light of this denial and under Argentine procedural law, the alleged victim appealed this denial of leave to appeal before the Supreme Court itself, which also denied his appeal. In this regard, as for the motion for leave to appeal (and the subsequent appeal of the denial), the Commission notes that in the instant case this was the available remedy, which was exhausted by the petitioner.

30. Additionally, it must be noted that the State claims that the petitioner should have filed a motion for reconsideration of judgment (which, as explained above, was not legally applicable) and should it have been found that there were sufficient grounds for federal appeal, he could file a federal motion for leave to appeal with the Supreme Court and, therefore, the State recognizes that, for the facts of the case in question, this motion was the remedy available to him to exhaust in the domestic system. Consequently, domestic remedies were exhausted with the ruling of the Supreme Court dated August 2, 2000, notice of which was served on August 17, 2000, dismissing the direct motion to the Supreme Court, stemming from the appellate court's denial of leave to appeal to the Supreme Court.

31. Therefore, the Commission concludes that the petitioner has indeed met the requirement established in Article 46.1 of the American Convention.

2. Timeliness of the Petition

32. Article 46.1.b of the American Convention establishes that, in order for Commission to find the petition admissible, it must be filed within 6 months following the date on which the allegedly injured party has been notified of the final decision.

33. The petition was filed with the IACHR on February 15, 2001, and domestic remedies were exhausted on August 17, 2000, with service of notice of the decision of the Supreme Court of Justice of the Nation denying the appeal (*recurso de queja*) against the denial of the motion for leave to appeal filed by the petitioner. Therefore, the IACHR concludes that the petition meets the requirement set forth in Article 46.1.b of the Convention.

3. Duplication of International Proceedings

34. There is nothing in the case record to indicate that the subject of the petition is pending adjudication in another international proceeding, or that it duplicates a petition already examined by this or another international body. Therefore, the requirements established in Articles 46.1.c and 47.d of the American Convention have been met.

³ Decree Law 1285/58 - Article 18.- Panels of judges and judges may sanction with a disciplinary measure, warning, fine or confinement of up to 5 days, attorneys, prosecutors, litigants and any other persons who may obstruct the course of justice or who commit offenses at hearings, in pleadings or communications of any nature, against their authority, position or decorum.

The fine shall be determined in terms of a percentage of the remuneration that the trial court judge collects for all reasons, up to a maximum of 33% thereof. The confinement shall be served at a facility of the court itself or at the residence of the person involved.

4. Colorable Claim

35. For purposes of admissibility, the Commission must determine whether the acts described in the petition tend to establish a potential violation of rights, as established in Article 47.b of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” in accordance with subsection “c” of said article. The standard for assessing admissibility is different from the one used to judge the merits of the petition, inasmuch as the Commission must make a *prima facie* evaluation to determine whether the petition includes a basis for an apparent or potential violation of a right protected by the Convention. This determination is a summary examination, which does not prejudge or provide an advance ruling on the merits of the matter.

36. Neither the American Convention nor the IACHR Rules of Procedure require petitioners to identify the specific rights allegedly violated by the State in matters submitted to the Commission, even though the petitioners may do so. It is the duty of the Commission, in following the system of legal precedents, to determine in its admissibility reports, what provision of relevant Inter-American instruments is applicable and could be concluded to have been violated, should the alleged facts be proven by means of sufficient evidence and legal argument.

37. The petitioner contends that an adequate and effective remedy was not available to him to challenge the monetary penalty for procedural reasons assessed on him under the ruling of the Court of Appeals. Additionally, he asserts that he was not allowed to introduce evidence in his defense before the Court of Appeals and the Supreme Court. He also argues that the appeal to the Supreme Court was not effective because of the discretionary power granted to it under Article 280 of the Code of Civil and Commercial Procedure, which enabled the Court to rule arbitrarily in his case. Lastly, the alleged victim asserts that his right to equal protection was violated, inasmuch as the Supreme Court did not follow its own legal precedent from 1994, which would have been more favorable to him.

38. In response, the State argues that the facts alleged by the petitioner do not tend to establish potential human rights violations, because his fair trial rights were respected in all of the court proceedings, an adequate and effective remedy was always available to him and he never submitted sufficient evidence to support his claim of unequal protection. It must be emphasized, with regard to the criteria laid out in the inadmissibility report which the State is asking to be applied to this case as a legal precedent,⁴ that the IACHR notes that the purpose of each petitions is different, inasmuch as the petitioner in the aforementioned legal precedent cited by the State, was questioning the legitimacy of a sanction that had been imposed on him under a trial court judgment. In the facts of the instant case, the alleged victim contends that he had no access to adequate and effective judicial remedies to enable him to challenge the monetary penalty for procedural reasons that was extended to him under an appeals court ruling, in other words, a decision of a higher court of review.

39. Based on the available information, it is evident that, because no adequate remedy existed in the Argentine legal system, the petitioner filed an appeal directly to the Supreme Court (*recurso extraordinario*) as the only way to challenge the order of an appellate court to extend to him a monetary penalty for abuse of process and bringing frivolous suit. Said remedy, however, was not effective. Therefore, the lack of an accessible and effective remedy to challenge a monetary penalty for procedural reasons originally assessed at the appellate level, could tend to establish potential violation of the rights protected in Articles 8 and 25 of the American Convention, in connection with Article 1.1 and 2 of said instrument to the detriment of José Alberto Picciotto.

40. Lastly, as to the petitioner’s claim of an alleged violation of the right to equal protection, provided for in Article 24 of the American Convention, the Commission finds that sufficient arguments or evidence have not been provided to be able to reach a *prima facie* determination of a potential violation of said article and, accordingly, the claim is found inadmissible.

⁴ IACHR, Report Nº 6/98 (Inadmissibility), Case 10.382, Ernesto Máximo Rodríguez, Argentina, February 21, 1998.

V. CONCLUSIONS

41. Based on the foregoing considerations of fact and law, the Inter-American Commission concludes that the instant petition meets the admissibility requirements set forth in Article 46 and Article 47 of the American Convention and, without prejudice to the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find the instant petition admissible as to Article 8 and Article 25 of the American Convention, in connection with the obligations established in Article 1.1 and Article 2 of the same instrument;
2. To find the instant petition inadmissible with regard to Article 24 of the American Convention;
3. To Notify the parties of this decision;
4. To proceed to examine the merits of the matter; and
5. To publish this decision and include it in the Commission's Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 31th day of the month of aUGUST, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.