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REPORT No. 83/17
PETITION 151-08
REPORT ON ADMISSIBILITY

JOSÉ FRANCISCO CID
ARGENTINA

Approved by the Commission at its session No. 2093 held on July 7, 2017.
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Organization of American States

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I. INFORMATION ABOUT THE PETITION

Petitioner:	Diego Ignacio Palavecino Cervera
Alleged victim:	José Francisco Cid
State denounced:	Argentina
Rights invoked:	Articles 8 (fair trial), 10 (compensation), 19 (rights of the child), 24 (equal protection), 25 (judicial protection) y 29 (interpretation) of the American Convention on Human Rights[1]; and articles II (equality before law), VII (protection for mothers and children), XVIII (fair trial) and XXIV (petition) of the American Declaration of Rights and Duties of Man[2]; and articles 3, 4, 5, 18 and 24 of the Convention on the Rights of the Child

II. PROCEDURE BEFORE THE IACHR[3]

Date on which the petition was received:	February 11, 2008
Additional information received at the stage of initial review:	September 25, 2012 and December 14, 2012
Date on which the petition was transmitted to the State:	July 1, 2013
Date of the State's first response:	January 8, 2014
Additional observations from the petitioning party:	April 1, 2014 and November 17, 2014
Additional observations from the State:	August 27, 2014

III. COMPETENCE

Competence *Ratione personae:*	Yes
Competence *Ratione loci*:	Yes
Competence *Ratione temporis*:	Yes
Competence *Ratione materiae*:	Yes, American Convention (instrument of ratification deposited 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 *res judicata*:	No

[1] Hereinafter, "the American Convention" or "the Convention".

[2] Hereinafter, "the Declaration" or "the American Declaration".

[3] The observations presented by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 5 (humane treatment), 8 (fair trial), 19 (rights of the 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, October 9, 2013
Timeliness of the petition:	Yes, in the terms set forth in Section VI

V. ALLEGED FACTS

1. The petitioner asserts that the Argentine State is internationally responsible for violating the human rights of Mr. José Francisco Cid (hereinafter "Mr. Cid" or "the alleged victim") because of the unwarranted delay by the judicial authorities in resolving a case aimed at obtaining reparation for the alleged victim when he was a child for grave harm done to him by third parties that required specialized treatment.

2. He states that in December 1987, Mr. Cid, then 13 years old, was shot in the face by another minor. That shot left him with 42.27 percent physical disability, as a result of which he had to undergo surgery four times up to 1992 and between three and five operations since then. The petitioner points out that the alleged victim had no means with which to pay for those operations and in 1990, through his parents, who qualified for cost-free litigation, filed an action for damages (hereinafter "the Cid v. Flores case") before the 21st Court of First Instance for Civil and Commercial Matters against Jorge Flores, the father of the minor who fired the shot, Camilo Borros, the guardian of the minor who fired the shot, and the retired sergeant of the Buenos Aires Province police, who had allegedly provided the firearm. On July 10, 1996, the Court found Messrs. Jorge Flores and Camilo Borros responsible, but not the sergeant, the only solvent accused, because it understood that the weapon was not registered under his name.

3. Faced with that resolution, Mr. Cid turned to the First Court of Appeals in Civil and Commercial Matters in La Plata, which confirmed the contested judgment on December 18, 1997. In February 1998, Mr. Cid filed an appeal (*recurso de inaplicabilidad de la ley*) with the Supreme Court of Buenos Aires (hereinafter "the SCBA") for reversal of the decision on the grounds that it contradicted doctrine established in an earlier decision. In May 1998, the SCBA demanded that the alleged victim deposit the sum of $10,120 Argentine pesos within five days corresponding to judicial fees or else accredit that he qualified for cost-free litigation, on pain of having his appeal rejected. The petitioner indicates that on June 16, 1998, the SCBA dismissed the appeal for failure to comply with that order.

4. The petitioner indicates that one of the judges that dismissed the appeal, Judge Lázzari, had intervened in the same case as the attorney for the Buenos Aires Province police sergeant. He adds that following a report by the rapporteur on that judge, Judge Lázzari indicated that he had signed the resolution denying the appeal by mistake, not remembering that he had acted as the retired sergeant's attorney. For that reason, on April 21, 2001, he disqualified himself and on April 25, 2001, the SCBA accepted his self-disqualification and set aside the resolution of June 16, 1998 that had rejected the appeal. Furthermore, on June 6, 2001, the other judges of the SCBA also disqualified themselves, so that the tribunal was formed by lot with the President of the Court of Criminal Cassation and with the Division I judges in that tribunal, leaving the appeal ready for resolution.

5. The petitioner affirms that Mr. Cid filed an action with the Supreme Court of Justice of the Nation (hereinafter "the CSJN") against the Province of Buenos Aires ("Cid v. Province of Buenos Aires") for damages done to him by the deficient service provided by the judiciary. The suit was contested in 2001 and in October 2002 the CSJN was sent the court file in the "Cid v. Flores" case. The CSJN heard the appeal and on August 7, 2007, rejected the suit for lack of prejudice (*falta de agravio*) and of final judgment. The court took the view that Judge Lázzari's intervention has been remedied with his self-disqualification and that no final judgment had been handed down by the SCBA because the appeal was still pending. It also ruled that the SCBA had to resolve on the appeal for reversal of the decision on the grounds that it contradicted doctrine

established in an earlier decision (*recurso de inaplicabilidad de la ley*), with the new membership of the ad hoc tribunal that had been formed and, in August 2010, it returned the "Cid v. Flores" case to the SCBA.

6. On September 21, 2011, due to a change in the case law criterion, the SCBA set aside the demand of May 5, 1998 that Mr. Cid pay the judicial fee in order for the reversal appeal to go forward, inasmuch as it understood that the cost-free litigation benefit originally granted to the parents of the alleged victim could be extended to Mr. Cid, even though he had reached adulthood during the proceedings, and it ordered the case to be resolved.

7. The petitioner indicates that the appeal was rejected on October 9, 2013, without Mr. Cid being notified of that decision. Regarding the failure to notify, the petitioner states that although the person officially responsible for notifications asserts in the "Cid v. Flores" casefile that Mr. Cid was notified by means of a notice posted on the entrance to his lawyer's studio in 2013, he was not in fact notified and only became aware of the resolution via the IACHR.

8. The petitioner asserts that the deficient judicial service provided by the Province of Buenos Aires constitutes a denial of justice and resulted in violations of Mr. Cid's human rights. In that regard, he states that the delay in the proceedings and the lack of compensation all these years has damaged his development due to his being unable to obtain timely and appropriate treatment for his disability and has seriously impaired his day-to-day life. He adds that, as ascertained by expert medical examinations, the more than 20 years of litigation and more than 10 years without his reversal appeal (*recurso de inaplicabilidad de ley*) being resolved have caused the alleged victim psychological and emotional suffering.

9. Moreover, he points out that the initial decision by the SCBA not to extend to the alleged victim the cost-free litigation benefit originally granted to his parents went against the best interests of the child and constitutes discrimination against Mr. Cid. On this last matter, he states that in other cases the SCBA had recognized the extension of that benefit in situations like that of Mr. Cid.

10. The State argues that the service provided by the judiciary was not deficient and that the petitioner is using the IACHR as a fourth instance. It affirms that what the petitioner is really questioning is the justice of the judgment of the Court of Appeals, the treatment accorded the evidence submitted and its juridical criterion in excluding the sergeant from responsibility: all issues confirmed in the provincial cassation with the judgment of the SCBA. The State maintains that it is not within the competence of the Commission to revise judgments handed down by national courts and, were it to do so, it would be contradicting its fourth instance doctrine.

11. The State maintains that the initial decision by the SCBA not to extend to the alleged victim the cost-free litigation benefit initially granted to his parents and to deny the reversal appeal was not discriminatory because the decision was based on mainstream doctrine at that time. Furthermore, it adds that Judge Lázzari's mistaken participation had been remedied internally, because he had subsequently disqualified himself and the resolution rejecting the reversal appeal had been annulled.

12. As for the delay in issuing a new resolution, the State indicates that the alleged victim is to blame because, after the SCBA could have resolved with its new membership, Mr. Cid opted to make use of the original jurisdiction of the CSJN when he filed suit against the Province of Buenos Aires on account of alleged irregularities in the provincial proceedings. It indicates that this prevented the SCBA from issuing a new resolution because the file on the case was sent to the CSJN at the request of the alleged victim so that it could be taken into consideration as evidence. According to the State, this triggered a delay of more than eight years for the decision by the SCBA. It further asserts that once the SCBA had possession of the "Cid v. Flores" case, it issued the resolution of September 21, 2011, setting aside the demand for payment of judicial fees, and that of October 9, 2013, which resolved on the appeal for reversal, rendering Mr. Cid's petition currently groundless ("*abstracta*").

13. The State argues that the alleged victim consented to the October 9, 2013 resolution by not filing the federal extraordinary appeal on time and that the arguments as to failure to notify should be

handled internally, not before this international body. In addition, it adds that notification was conducted correctly.

14. Finally, it adds that the petition was transmitted to the State by the IACHR extemporaneously: five years after it was lodged.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

15. The petitioner maintains that internal remedies were exhausted on August 7, 2007, with the judgment handed down by the CSJN, which rejected the action for damages against the Province of Buenos Aires and that the petition was lodged within the time allowed under Article 46.1.b of the Convention. For its part, the State maintains that that action was brought incorrectly because the proceeding before the SCBA for the adoption of a new resolution on the reversal appeal (*recurso de inaplicabilidad de la ley*) was still pending. It adds that that proceeding resumed and that the SCBA issued a new resolution on October 9, 2013, which could have been appealed by the alleged victim through a federal extraordinary appeal. It therefore maintains that internal remedies were not exhausted.

16. The IACHR reiterates its view that analysis of the requirements set forth in Articles 46 and 47 of the American Convention should be conducted in light of the situation given at the time a pronouncement is made regarding the admissibility or inadmissibility of the petition. The Commission notes that the "Cid v. Flores" case, which is the subject of the alleged victim's claims, did not end in 2007 with the CSJN decision referred to by the Parties, because subsequent to the receipt of the present petition in 2008, the case was taken up again and decided upon by the SCBA on October 9, 2013.

17. Regarding the State's argument concerning failure to file a federal extraordinary appeal against said judgment, the IACHR recalls that when a State argues failure to exhaust domestic remedies, it itself has to indicate the remedies not exhausted and demonstrate their suitability. The Commission observes that the State has not indicated how the federal extraordinary appeal, exceptional and discretionary, would have been suitable for solving the lack of timely reparation for the alleged victim after 20 years of processing of the "Cid v. Flores" case. Therefore, taking into account the exceptional nature of the remedy and the time that has elapsed, the IACHR considers that the need to exhaust this remedy in order to resort to the IACHR has not been demonstrated. At the same time, the State has not submitted the certificate of notification of the decision of October 9, 2013 in order to substantiate its claim that notification was properly made and that the alleged victim had had the opportunity to file the aforementioned federal extraordinary appeal. The Commission considers that the above suffices for prima facie review of the case at the admissibility stage; to the extent that it is relevant, it may address that matter in greater detail at the merits stage.

18. In light of the above, the IACHR consider that domestic remedies were exhausted on October 9, 2013, and that the requirement of Article 46.1.a of the Convention has been met. Likewise, considering that the exhaustion of domestic remedies occurred while the case was being studied in respect of its admissibility, the IACHR also considers that the requirement of Article 46.1.b of the American Convention has also been met.

19. Finally, as regards the State's argument concerning the delay in lodging the petition and its forwarding to the State, the Commission points out that neither the American Convention nor the Commission's Rules of Procedure set a deadline for forwarding a petition to the State once it has been received.[4]

VII. COLORABLE CLAIM

20. In view of the arguments presented by the Parties, the Commission considers that, if proved, the facts relating to the alleged 20 years of litigation taken to resolve the proceedings initiated by the parents

[4] IACHR, Report No. 56/16. Petition 666-03. Admissibility. Luis Alberto Leiva. Argentina. December 6, 2016, para. 29.

of the alleged victim and the alleged defects of due process, which resulted in the impossibility of obtaining timely and appropriate reparation for treating the serious harm suffered by the alleged victim when he was a child, as well as the alleged negative impact of that on his life and development, could characterize a violation of the rights enshrined in Articles 5 (personal integrity), 8 (fair trial), 19 (rights of the child), and 25 (judicial protection) of the American Convention, in conjunction with Articles 1.1 and 2 of that instrument.

21. Nevertheless, the Commission finds no facts constituting a possible violation of rights upheld in Articles 10 and 24 of the Convention.

22. As regards the allegations of violations of the American Declaration, the IACHR has previously established that once the American Convention enters into force with respect to a State, it is that instrument, and not the Declaration, that becomes the specific source of law to be applied by the Inter-American Commission, provided that the petition alleges violations of rights of identical substance upheld by both instruments.[5] In this petition, the Commission has analyzed the American Declaration rights invoked by the petitioners in light of the American Convention.

23. Finally, the Commission recalls that it is not competent to declare violations of rights enshrined in the Convention on the Rights of the Child, but it is empowered to resort to its standards for the purposes of interpreting the provisions of the American Convention by virtue of Article 29 of the Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 19 and 25 of the American Convention, in conjunction with articles 1.1 and 2 of that treaty;

2. To find the instant petition inadmissible in relation to Articles 10 and 24 of the American Convention;

3. To notify the parties of this decision;

4. To continue with the analysis on the merits; and

5. 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 Lima, Peru, on the 7th day of the month of July, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, and Luis Ernesto Vargas Silva, Commissioners.

[5] IACHR, Report N° 47/10, Petition 1325-05: Admissibility Masacre Estadero "El Aracatazzo". Colombia. March 18, 2010, par. 43.