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REPORT No. 147/17
PETITION 120-09
REPORT ON ADMISSIBILITY

ARNALDO JAVIER CÓRDOBA AND D.
PARAGUAY

Approved by the Commission at its session No. 2104 held on October 26, 2017.
165th Regular Period of Sessions.

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 OCTOBER 26, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	The petitioner's identity is confidential
Alleged victims:	Arnaldo Javier Córdoba and D.
State denounced:	Paraguay
Rights invoked:	Articles 8 (Fair Trial), 17 (Family), 19 (Child) and 25 (Judicial Protection) of the American Convention on Human Rights ² and other international treaties ³

II. PROCEDURE BEFORE THE IACHR⁴

Date on which the petition was received:	January 30, 2009
Date on which the petition was transmitted to the State:	October 27, 2010
Date of the State's first response:	December 30, 2010
Additional observations from the petitioning party:	February 20, July 5 and September 12, 2011; April 18, 2017
Additional observations from the State:	May 6 and November 7, 2011

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 (the ratification instrument was deposited on March 24, 1989)

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	Articles 5 (Humane Treatment), 8 (Fair Trial), 17 (Family), 19 (Child) and 25 (Judicial Protection) of the American Convention, in relation to its Article 1.1 (Obligation to Respect Rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, exceptions set forth in Article 46.2.b and c) of the ACHR are applicable
Timeliness of the petition:	Yes, under the terms of Section VI

¹ The alleged victim (hereinafter "D.") is a child; therefore, his identity is confidential.

² Hereinafter "Convention" or "American Convention."

³ International Covenant on Civil and Political Rights.

⁴ The observations presented by each party were duly transmitted to the opposing party. On October 22, 2009 and September 28, 2017, the Government of the Argentine Republic, as an *amicus curiae*, submitted a document in writing that was forwarded to both parties.

V. ALLEGED FACTS

1. The petitioner claims that Mr. Javier Arnaldo Córdoba (hereinafter “the alleged victim” or “Mr. Córdoba”), an Argentine national, and Mrs. M.R.G.A,⁵ a Paraguayan national, had a child (boy “D.”) in 2004. They assert that on January 21, 2006, Mrs. M.R.G.A. took the boy from his house, in Buenos Aires province, Argentina, without the father’s consent, wrongfully taking the child to Paraguay. They indicate that when this occurred, the child was 1 year and 11 months old, suffered from epilepsy and was under a special medical treatment in Argentina.

2. The petitioning party claims that in view of the facts and in the framework of the provisions of the Inter-American Convention on the International Return of Children, Mr. Córdoba filed proceedings before the Third Court of Caacupe, in the Paraguayan jurisdiction. On June 26, 2006, this Court ruled that D. be returned to Argentina. They submit that the child’s mother impugned the decision and the presiding Judge stayed her own judgment until the appeal was settled, although the Juvenile Code clearly establishes that resolutions adopted are subject to appeal without a stay of execution. On August 14, 2006, the Juvenile Court of Appeals confirmed the judgment establishing the immediate return of the child. Subsequently, Mrs. M.R.G.A. presented a constitutional appeal that the Supreme Court of Justice of Paraguay rejected *in limine* on September 18, 2006 on the grounds that no constitutional safeguard had been violated in the proceedings.

3. The petitioner claims that D.’s mother disobeyed the judgment ruling the child’s return to Argentina and refused to return the child to the father by escaping after the last resolution was issued. They assert that none of the Paraguayan authorities enforced the judgments, thus preventing the reestablishment of the ties between the child and the father. As a result, Mr. Córdoba lodged complaints before the Prosecutor’s Office in Caacupe on October 18, 2006 and the Fifth Prosecutor’s Office in Mercedes on November 6, 2006 for child abduction and concealing. In the framework of the criminal proceedings in the Paraguayan jurisdiction, an international arrest warrant was issued against Mrs. M.R.G.A. in 2008.

4. The petitioning party asserts that despite continuous requests, appearances and petitions, for almost ten years no legal procedures were undertaken to find the child, even though the child’s precise location in Paraguay was known. In this regard, they indicate that the mother had mentioned her address at the legal inquiry, that there were certificates of her participation in domestic elections as well as records of her having been to hospitals where she allegedly went with the boy. Moreover, they stress that the searches made were of questionable efficacy, since when the police arrived at the place, the mother and the child were already gone minutes before.

5. They submit that on May 22, 2015 INTERPOL informed the alleged victim that his son had been found and that the judicial authorities ordered to place Mrs. M.R.G.A under house arrest. They indicate that, in view of this, the Third Court of Caacupe decided to grant the maternal aunt the temporary guardianship of the child despite the parental authority of the father, who had requested the return of the child since 2006. In addition, as a precautionary measure, the Court established an arrangement for the gradual restoration of the family ties with Mr. Javier Córdoba. However, the petitioning party indicates that there has not been an actual reestablishment of the contact with the child because the Judge granted few hearings for the father to meet with his son, disregarding the necessary periods of time and because the continuous presence of third parties (maternal relatives) prevents that the child and the father interact with each other in a context of trust. Therefore, the petitioning party asserts that, though it has been two years since D. was found, his return has not taken effect.

6. The petitioner explains that in 2016 the Argentine judicial authorities who had heard the case forwarded two letters rogatory to the First-Instance Juvenile Court No. 1 in the roster of Caacupe to request that the child be immediately returned to his country of origin, and that there was no reply to them. Furthermore, they indicate that on February 4, 2016, the Children’s Rights Ombudsman of Paraguay requested that a series of requirements be met prior to the return of D., such as a domicile guaranteed for a

⁵ To protect D.’s identity, their mother’s name is kept confidential.

minimum term of 6 months, school enrolment, health insurance, a livelihood, payment of travel expenses to the country. They submit that the alleged victim presented all these requirements on February 20, 2016 and that the Judge, nevertheless, failed to enforce the judgment of the child's return.

7. They claim that on March 31, 2017, again, to the detriment of Mr. Javier Cordoba's legal safeguards, the Third Court of Caacupe granted a new precautionary measure consisting in that the boy remain in Paraguay, contradicting not only international rules but also its own judgment ruling the return of the child. As to this, they submit that the child's best interest has been damaged due to the refusal to enforce the judgment, the subsequent issue of precautionary measures that prevent a father-son relationship, and the additional efforts to legitimize the judicial delay and errors in Paraguay.

8. For its part, the State claims that the petition is inadmissible as there is no violation of the alleged victims' rights. With respect to this, it submits that since 2006 several procedures were undertaken to enforce the judgment of return of the child and to finally arrest the mother. It indicates that the Paraguayan authorities undertook procedures of house searches and of searches in different parts of the country, and that the different courts ruled in favor of the alleged victim. Finally, as to the boy's health, it asserts that in Paraguay there are hospitals and health centers offering universal and free-of-charge services; therefore, the mother and the child can receive immediate assistance anytime.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. The petitioner claims that the proceedings for the international return is the appropriate remedy, but that although more than 11 years have passed since the judgments were issued, none of them have been enforced. The State, in turn, does not submit any observations on the exhaustion of domestic remedies or the timeliness of the petition.

10. The requirement concerning the exhaustion of domestic remedies, set forth in Article 46.1.a of the American Convention, establishes that first the remedies under domestic law must be pursued and exhausted. These remedies must be safe enough, both formally and materially; that is to say, they must be available and effective to settle the reported situation. Thus, concerning effectiveness, the Commission analyzes whether the alleged victim did everything reasonably expected from them to exhaust domestic remedies⁶ or if there was a factual obstacle for said exhaustion.

11. The Commission notes that, in this case, the parties have focused their claims on the proceedings undertaken before the civil jurisdiction for the international return of child D., which is the appropriate remedy. In this regard, the IACHR takes into account that since 2006 Mr. Javier Córdoba has filed numerous requests before the Paraguayan judicial authorities to have the judgment for the return of his son enforced. However, his efforts have been unsuccessful in view of the alleged escape of the mother and other actions to avoid the return, and in view of the legal resolutions of temporary guardianship and stay in Paraguay, issued in 2015 and 2017, respectively. In addition, on October 18, 2006, the alleged victim reported the child's abduction before the criminal jurisdiction and has continuously filed requests seeking the enforcement of the international arrest warrant to establish the whereabouts of the mother and the child. In this context, the Commission deems that Mr. Javier Córdoba did everything that is reasonably expected from him to exhaust domestic remedies. In light of the foregoing, the IACHR believes that the exceptions concerning the exhaustion of domestic remedies set forth in Article 46.2.b) and c) of the American Convention apply on this case.

12. Furthermore, the petition to the Commission was received on January 30, 2009 and the purported events matter of this complaint occurred in June 2006 and their effects regarding the alleged denial of justice reportedly persist to date. Therefore, in view of the context and the characteristics of this

⁶ ECHR, Case of P.P. v. Poland (Application No. 8677/03), Admissible, Decision of Court (Fourth Section) of January 24, 2006; page 12.

case, the IACHR considers that the petition was lodged in a reasonable time and that the timeliness requirement is met.

VII. COLORABLE CLAIM

13. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the Commission believes that, if proved, the purported failure to enforce the judgment establishing the international return of boy D., the alleged failure to observe the principle of the child's best interest and the lack of judicial protection regarding the facts may establish possible violations of Articles 5 (Humane Treatment), 8 (Fair Trial), 17 (Family) and 25 (Judicial Protection) of the American Convention in connection with its Article 1.1 (Obligation to Respect Rights), in light of the Inter-American Convention on the International Restitution of Children and the *corpus jure* on children, to the detriment of the alleged victims. Likewise, the facts might also establish a possible violation of Article 19 (Rights of the Child) of the Convention, in connection with its Article 1.1 to the detriment of child "D."

14. Also, as to the International Covenant on Civil and Political Rights, the Commission is not competent to determine violations of the rules of said instrument. However, the IACHR may consider it for interpretation purposes of the American Convention at the merits stage of this case, pursuant to Article 29 of the Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 5, 8, 17, 19 and 25 of the American Convention, in connection with its Article 1.1;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. 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 Montevideo, Uruguay, on the 26th day of the month of October, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.