

OEA/Ser.L/V/II.
Doc. 151
20 November 2018
Original: Spanish

REPORT No. 134/18
PETITION 1820-12
REPORT ON ADMISSIBILITY

MARGARITA ELENA LÓPEZ BEUZENGER AND CHILDREN
CHILE

Approved electronically by the Commission on November 20, 2018

Cite as: IACHR, Report No. 134. Petition 1820-12. Admissibility. Margarita Elena López Beuzengerg and children. Chile. November 20, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Margarita Elena López Beuzengerg and the Human Rights Office of the Corporación de Asistencia Judicial
Alleged victim:	Margarita Elena López Beuzengerg and children ¹
Respondent State:	Chile ²
Rights invoked:	Articles 8 (fair trial), 17 (family), 19 (rights of the child), and 25 (judicial protection) of the American Convention on Human Rights ³ in conjunction with its Article 1(1) (obligation to respect rights)

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	September 24, 2012
Notification of the petition to the State:	December 12, 2014
State's first response:	August 22, 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 (instrument deposited on August 21, 1990) and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ⁵ (instrument deposited on November 15, 1996)

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), 17 (family), 19 (rights of the child), 24 (equal protection), and 25 (judicial protection) of the American Convention, in conjunction with its Article 1(1) (obligation to respect rights); and Article 7 of the Convention of Belém do Pará
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioner alleges that the Chilean State violated the rights of Margarita Elena López Beuzengerg (hereinafter also "the alleged victim" or "Ms. López") and her children Samir Naghip and Luna Almendra, who were arbitrarily declared eligible for adoption. It adds that the public defender acted negligently and that the judicial authorities granted the adoption of Samir and Luna without taking into consideration the

¹ Samir Naghip Atuán López and Luna Almendra Atuán López.

² Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate in the deliberations nor in the decision in this case, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

³ Hereinafter the "Convention" or the "American Convention."

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

⁵ Hereinafter the "Convention of Belém do Pará"

efforts made by Ms. López to recover custody, issuing a ruling that was based on stigmatizing and profoundly discriminatory arguments.

2. The petitioner explains that toward the beginning of July 2009, Jorge Atuán San Martín, the father of Samir (born January 2, 2008) and Luna (born July 4, 2009), with Ms. López being their mother, was discovered by police in the company of his son outside the Municipal Stadium of Coquimbo, evidently inebriated. Following his detention, the police authorities reported the facts to the National Minors Service (SENAME), which filed a request for protection to the benefit of Samir and Luna before the Juvenile Court of Coquimbo (285-2009). On July 17, 2009, both were ordered placed in SENAME's network of foster home facilities in the city of La Serena, and a series of steps were ordered taken to assess the capacity of the mother, the father, and the grandparents to care for the children. Likewise, Ms. López and Mr. Atuán were ordered into treatment for their alcohol abuse. The alleged victim maintains that she followed all the recommendations by seeking treatment for her alcohol dependency at the *Fundación Casa de la Esperanza* and visiting her children regularly. The visits were described by psychologists as "regular and good quality, demonstrating the existence of an important emotional relationship and a good level of contact."

3. The petitioner states that, without taking this background into account, SENAME began the judicial process to put Samir and Luna up for adoption through the Family Court of La Serena (27-2010), a process that was joined with the proceeding begun before the Juvenile Court of Coquimbo (285-2009). It adds that on January 26, 2011, the Family Court found that Samir and Luna were eligible for adoption. The petitioner alleges that the judge overstepped the stringent framework established by law of grounds for finding parents incompetent—grounds which also must be grave and permanent in nature—when he ruled that Ms. López was physically and morally incompetent due to chronic alcoholism, lack of willingness, and lack of responsibility to fulfill this role. In the sentence, the judge found that Ms. López was far along in a pregnancy and had been incapable of complying with the order to stay separated from Jorge Atuán after he tried to murder her in April 2010, which was an indication of her "incapacity to take measure to protect herself, her children, or the child about to be born." The judge also found that the father and maternal grandparents were likewise incompetent to care for Samir and Luna.

4. The petitioner states that the judge found that Samir and Luna were eligible for adoption without taking into account the efforts made by Ms. López to recover custody, especially the treatment she underwent to overcome her problems with alcohol consumption. Likewise, the petitioner holds that the judge did not take into account the quality of the visits or the connection between the alleged victims, in violation of the higher interests of the children; nor the principle of the primacy of the biological family, in violation of Article 7 of the Adoption Law, which requires the exhaustion of all prior relationships between children and their families of origin, including encouraging a relationship even if it did not exist before the process. Only if the family refuses to continue the family relationship can a judge declare children eligible for adoption. The petitioner adds that the alleged victim lives in her own home, with water and electricity. She has also received a grant for arts materials under a State program that has provided her with economic independence.

5. The petitioner states that, on disagreeing with the resolution, the alleged victim filed an appeal before the Appellate Court of La Serena. The appeal was rejected on April 1, 2011, making final the ruling finding Samir and Luna were eligible for adoption. The petitioner holds that the alleged victim was prevented from filing the corresponding cassation remedy needed to annul the sentence of the Appellate Court because the legal counsel provided to her free of charge by the State did not submit that remedy or inform her that this was a possibility. Additionally, it indicates that the remedy must be filed by an attorney, and she did not have the financial resources to hire one.

6. Because of this, on April 13, 2011, Ms. López filed for a remedy of protection for herself and her children before the Appellate Court of Santiago (3713-2011), asking that the lower court's sentence be overturned and declared arbitrary and illegal and granting her personal custody of Samir and Luna. She filed this remedy with the support of the Human Right Office of the *Corporación de Asistencia Judicial*, which only has national offices in the city of Santiago. Due to lack of competence, the remedy of protection was remitted to the Appellate Court of La Serena (2049-2011), which rejected it on March 26, 2012, on finding *res judicata* had been reached on the matter and the remedy was not the proper one for challenging a matter that the judiciary

had already settled. Lastly, the petitioner states that during the final months of 2011, the alleged victim was banned from approaching her children, and that she learned unofficially that the adoption took place in 2012.

7. For its part, the State alleges that the petition was submitted outside the period of time established by the Convention for doing so, as the petition must be presented within six months of the date on which petitioners have been notified of the final judgment. In this regard, the State holds that this period of time must be counted starting from the date on which the sentence of the Appellate Court of La Serena was executed, on April 1, 2011, not the date of the ruling rejecting the remedy of protection, as this is a constitutional remedy whose purpose is to stop illegal acts, not annul final judicial rulings. Therefore, emphasizing that the petition was filed on September 24, 2012, it asks that the petition be declared inadmissible on failing to meet the requirements of Article 46(1)(b) of the American Convention, as the exceptions to the rules established in Article 46 of the Convention do not apply.

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

8. The petitioner states that the alleged victim was blocked from filing a cassation remedy against the appellate court sentence upholding the ruling that Samir and Luna were eligible for adoption due to the negligence of the free legal counsel provided to her by the State. It alleges that the domestic remedies were exhausted with the denial of the remedy of protection filed in response to the ruling of the appellate court. For its part, the State does not allege that suitable remedies still exist that were not sought. Rather, it holds that presentation of the petition is time-barred, arguing that the period after exhaustion of remedies should be counted from the date of execution of the appellate court sentence, not the date of rejection of the remedy of protection.

9. Regarding compliance with the requirement of exhaustion of domestic remedies, the Commission finds that *prima facie*, for the purposes of analysis of admissibility, the alleged negligent actions of the legal counsel provided free of charge by the State and the alleged victims lack of financial resources to hire a specialized defense attorney prevented Ms. López and her children from independently accessing all the remedies available in domestic jurisdiction to claim her rights, thus triggering the exception to exhaustion of domestic remedies as established in Article 46(2)(b) of the Convention.

10. As far as the filing period, as the petition was received on September 24, 2012, with the alleged material facts of the claim beginning on April 1, 2011, and its effects extending to the present, the Commission finds, in light of the context and characteristics of this case, that the petition was presented within a reasonable period of time and that the admissibility requirement of reasonable period of time should be considered satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

11. In light of the elements of fact and law presented herein and the nature of the matter before it, the IACHR concludes that should the alleged violations and obstacles to access to justice for Ms. López and her children -who were declared eligible for adoption as a result of judicial proceedings during which they allegedly did not have access to a specialized defense attorney, in which judgements were rendered without taking into account the higher interest of the children or their right to live with their families and be cared for by them, as well as the State's duty to protect families and enable them to carry out its functions fully⁶- the aforementioned grounded in arguments that reflect and perpetuate gender arguments and stereotypes in the context of discrimination and gender-based violence) be proven, the facts alleged could represent a violation of articles 5 (humane treatment), 8 (fair trial), 17 (family), 19 (rights of the child), and 25 (judicial protection) of the American Convention, in conjunction with Article 1(1), as well a violation of Article 7 of the Convention of Belém do Pará and Article 24 of the American Convention.

⁶ IACHR, Fulfillment of Children's Rights, November 30, 2017, paras. 388-408; IACHR, The Rights of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas, October 17, 2013, paras.49-64.

VIII. DECISION

1. To find the instant petition admissible in relation to articles 5, 8, 17, 19, 24, and 25 of the American Convention, in relation to Articles 1(1) the American Convention; and in relation to Article 7 of the Convention of Belém do Pará;

2. To notify the parties of this decision; continue with analysis of the merits of the matter; 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 on the 20th day of the month of November, 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, and Flávia Piovesan, Commissioners.