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REPORT No. 221/19
PETITION 1396-10
REPORT ON ADMISSIBILITY

FRANCISCO POMPEYO RAMOS MARRAU
ARGENTINA

Approved by the Commission electronically on October 24, 2019.

Cite as: IACHR, Report No. 221/19, Petition1396-10. Admissibility. Francisco Pompeo Ramos Marrau. Argentina. October 24, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner	Elena Carmen Moreno and Myriam Carsen
Alleged victim	Francisco Pompeyo Ramos Marrau
Respondent State	Argentina
Rights invoked	Articles 1 (obligation to respect rights), 8 (fair trial), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Date of receipt	October 5, 2010
Notification of the petition	January 9, 2017
State's first response	August 3, 2017
Additional observations from the petitioner	January 2 and September 4, 2013; June 5, 2015; June 8, 2016; October 10, 2017; October 3, 2018
Additional observations from the State	November 27, 2017

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (deposit of ratification instrument on September 5, 1984)

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 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Article 1.1
Exhaustion or exception to the exhaustion of remedies	Yes; April 7, 2010
Timeliness of the petition	Yes; October 5, 2010

V. SUMMARY OF ALLEGED FACTS

1. The petitioners argue that the alleged victim, Francisco Ramos Marrau, was forced into exile with his family in the face of threats and harassment during the military dictatorship in Argentina, due to his participation in labor union claims.³

2. The petitioners maintain that Mr. Ramos Marrau participated in several "opposition" activities, in particular as a result of his condition as a worker at *Galletitas LIA* factory demanding better working conditions during 1975. In 1976, due to the threats, disappearances and dismissals of his coworkers and to his own dismissal and arrest, the alleged victim and his family were forced into internal displacement until, according to the information presented, armed persons (state agents allegedly) broke into his home, and burned his property. The petitioners describe that in 1977, the alleged victim and his family moved to

¹ Hereinafter "Convention" or "American Convention."

² The observations submitted by each party were duly transmitted to the opposing party.

³ The petitioners allege violations regarding reparations proceedings.

Sao Paulo, Brazil, where they were arrested and put under house arrest by members of “death squads.” Finally, the petitioners claim that thanks to the Evangelical Church program for the politically persecuted in Argentina, on July 8, 1977, the UNHCR granted refugee status to the alleged victim and his family and resettled them in Germany on September 11, 1977. According to the petition, Mr. Ramos returned to Argentina in July 2004.

3. The petitioners claim that in December 2005 the alleged victim filed an application before the Ministry of Justice seeking compensation under Law 24.043 on the grounds of his enforced exile, which it was dismissed by Resolution No. 830 on April 11, 2008. They argue that in the said decision, the administrative authorities established that from July 8, 1977, to November 13, 1984, the alleged victim was under an international protection scheme. The petitioners explain, however, that the dismissal was based on the Treasury Attorney General’s interpretation of the scope of Law 24.043 in Ruling No. 146-06 which explains that compensation for exile applies only when this has been preceded by a situation of deprivation of liberty, at variance with the Argentine Supreme Court of Justice (“the Supreme Court” or “the CSJN”) interpretation. Therefore, the petitioners contend that the Ministry of Justice and Human Rights disregarded not only the jurisprudence of the CSJN but also the numerous decisions granting compensation for exiles in several cases.

4. The petitioners allege that on May 16, 2008, the alleged victim lodged an appeal before the National Court of Appeals for Contentious Administrative Matters (*Cámara Nacional de Apelaciones en lo Contencioso Administrativo*) to challenge the illegal and arbitrary interpretation of Resolution No. 830 as a matter of law. In this regard, they note that on May 19, 2009, the Chamber IV of the National Court of Appeals upheld the ministerial decision of dismissal which, in its text, disregarded the facts alleged and the probative value of the refugee certificate granted by UNHCR. Lastly, they allege that, as a result, on June 24, 2009, the alleged victim filed an extraordinary federal appeal before the Supreme Court of Justice whereby he raised the scope of Law No. 24.043, as well as claimed various arbitrariness on the part of the administrative officials and the violation of the principle of equal protection of the law, and the right to defense. While on October 8, 2009, the Supreme Court granted the extraordinary appeal, on March 23, 2010, the same court declared that the remedy had been granted wrongly, for it did not meet the requirement on the number of lines per page under article 1 of Rule No. 4/2007. The petitioners were notified on April 7, 2010. They indicate that at the time the complaint was filed –and before the CSJN ruled on the matter—, he presented the same brief of filing the extraordinary federal appeal with the layout of 26 lines per page, without modifying its content or exceeding the length established for the treatment of said judicial appeals. However, the court ordered its return, preventing its correction.

5. In the processing of this petition, Mr. Ramos Marrau informed the IACHR of Resolution No. 324 of March 6, 2015, issued by the Ministry of Justice and Human Rights on the granting of compensation under Law 24.043 and its amendments, by virtue of the application of Law 26.564 and Law 26.913, following his request for compensation for his detention in the periods between August 22, 1972 and March 17, 1973, and between July 11-13, and in October 1977. Therefore, the petitioners affirm that the State declared his persecution proved and granted compensation for one day of detention, postponing “the analysis of the other periods until relevant proof is submitted.”

6. The State expresses its concern over the untimely notification of the petition, as the petition was notified almost six years after the initial filing. It also alleges that the domestic remedies were unduly exhausted, given that the extraordinary federal appeal lodged before the Supreme Court of Justice, despite it being appropriate and effective resource to remedy the alleged violation, was dismissed on account of formal defects exclusively attributable to Mr. Ramos Marrau. The State further claims that the alleged victim had at his disposal the ordinary system of court-ordered reparations through an action for damages against the State. It insists that the alleged victim has not raised any situation that constitutes a violation of a human right protected in the Convention, and that it is evident that he seeks that the Commission work as a fourth instance of jurisdiction.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The State contends that domestic remedies were available and adequate to address the petitioner's complaint, under the applicable law. In this regard, it insists that the complaint filed to the Supreme Court of Justice was dismissed because of formal defects exclusively attributable to the petitioner in accordance with the regulations in force regarding formal requirements for admissibility, which results, therefore, in the non-compliance with the exhaustion of domestic remedies. It alleges that although an extraordinary federal appeal is appropriate taking into account that the petitioner's claim concerns the interpretation of a federal norm such as Law No. 24.043 and its amendments, the brief presented did not meet the requirements demanded its presentation, preventing the State from providing appropriate response for the grievances raised in the domestic courts. It emphasizes that the national jurisprudence includes a clear judicial doctrine regarding forced exile, in that reparations have been granted under Law No. 24.043 in cases when exile was duly proven and preceded by situations of wrongful detention and/or persecution leading to victims' reasonable fear of serious risk to their lives, personal integrity and/or personal liberty, and not in cases where emigration may be considered to have been voluntary.

8. The petitioners argue that the appeal was dismissed due to strictly formal issues; and that, in any case, the dismissed federal appeal is not an ordinary domestic remedy, but extraordinary and limited to the control of the constitutionality of laws and its application. Likewise, they claim that the alleged victim filed it, without prejudice to the result of an appeal of an extraordinary nature, as he deemed it appropriate and effective, although the manner in which it was resolved was in violation of the right of access to substantial justice in matters related to the reparation of human rights violations.

9. With regard to this point, the Commission observes that Law No. 24.043 proposes the filing of an application with the Ministry of the Interior, whose resolution is appealable before the National Court of Appeals for Contentious Administrative Matters of the Federal Capital. The Commission observes that the alleged victim pursued the ordinary remedies established by Law No. 24.043. As to the extraordinary federal appeal, the IACHR has previously established that the said remedy is extraordinary, exceptional, and discretionary in nature⁴ and, as such, it is not a procedural level that is added on to every trial, but rather it operates as a new but reduced and partial instance which exists to ensure constitutional supremacy and whose application is interpreted in a restricted manner.⁵ Consequently, the Commission does not necessarily require exhaustion of such appeals⁶ and, in fact, several petitions have been declared admissible without that remedy having been filed.⁷ In this case, the said appeal was filed, but it appears that the alleged circumstances leading to its dismissal are part of the substance of the complaint.

10. For the purpose of the analysis on admissibility, the Commission understands that the allegations regarding the alleged arbitrariness and excessive formalism that prevented the petitioner from making corrections to the federal appeal may eventually be subject to analysis by the Commission in the merits stage. The undertaking of such an analysis at the admissibility stage would be inadequate.

11. With respect to the ordinary system of judicial redress, the IACHR has established that the requirement to exhaust all domestic remedies does not necessarily mean that alleged victims are obligated to exhaust all remedies at their disposal.⁸ Given that the remedy pursued by the alleged victim is recognized and deemed appropriate, the IACHR considers that, in this case, the alleged victim raised the issue by way of any

⁴ IACHR, Report No. 17/06, Petition 531-01, Admissibility, Sebastián Claus Furlan and Family, Argentina, March 2, 2006, par. 39; IACHR, Report No. 69/08, Petition 681-00, Admissibility, Guillermo Patricio Lynn, Argentina, October 16, 2008, par. 41.

⁵ IACHR, Report No. 55/97, Case 11.137, Juan Carlos Abella, Argentina, November 18, 1997, paras. 264 and 265.

⁶ IACHR, Report No. 26/08, Petition 270-02, Admissibility, César Alberto Mendoza et al., Argentina, March 14, 2008, par. 72; IACHR, Report No. 83/09, Case 11.732, Merits, Horacio Anibal Schillizzi Moreno, Argentina, August 6, 2009, par. 62.

⁷ IACHR, Report No. 46/15, Petition 315-01, Cristina Britez Arce, Argentina, July 28, 2015, par. 42; IACHR, Report No. 12/10, Admissibility, Case 12.106, Enrique Hermann Pfister Frías and Lucrecia Pfister Frías, Argentina, March 16, 2010, par. 39; IACHR, Report No. 117/06, Petition 1070-04, Admissibility, Milagros Fornerón and Leonardo Anibal Javier Fornerón, Argentina, October 26, 2006, par. 42; IACHR, Report No. 17/06, Petition 531-01, Admissibility, Sebastián Claus Furlan and Family, Argentina, March 2, 2006, par. 40.

⁸ IACHR, Report No. 76/09, Petition 1473-06, Admissibility, Community of La Oroya, Peru, August 5, 2009, par. 64; IACHR, Report No. 40/08, Petition 270-07, Admissibility, I.V. Bolivia, July 23, 2008, par. 70.

of the valid and applicable options in accordance with the domestic legal system, and that the State had the opportunity to remedy the matter under its jurisdiction; then, the objective of international law must be considered to have been achieved.⁹ Therefore, the exhaustion of an ordinary trial was not a remedy that had to be exhausted before filing a petition before the Inter-American system of human rights, and the IACHR considers that domestic remedies have been exhausted sufficiently for the purposes of this admissibility stage, thus complying with the what is established by article 46.1.a of the Convention.

12. As for the timeliness of the petition, the Commission observes that the alleged victim was notified of the Supreme Court's final judgment on April 7, 2010, and that this petition was received on October 5, 2010. Thus, the Commission believes that it was filed within a reasonable period and that the requirement of timeliness must be declared met.

13. The Inter-American Commission takes note of the State's complaint alleging the untimely notification of the petition. In this regard, the IACHR states that after a petition has been received, there is no deadline for it to be referred to the State under neither the American Convention nor the Commission's Rules of Procedure. It also affirms that the time periods established in the Rules and the Convention for other processing stages do not apply by analogy.

VII. COLORABLE CLAIM

14. The petitioners argue that the State is responsible for the violation of the alleged victim's human rights¹⁰ and denounce the failure of the Argentine State to comply with the Convention, both as regards to the due process and equal protection of the law as well as the obligation to redress human rights violations perpetrated by the State. Reparation here being understood not only as compensation but also as recognition by the State that the complainant was a victim of political persecution forced to exile leaving his family, university studies, job, and his daily life, as the only way to preserve his life and freedom.

15. The State asserts that the facts alleged here do not constitute human rights violations; and that, on the contrary, the petitioners seek that the Commission work as a fourth instance of jurisdiction to review legal and factual judgments by judicial and administrative domestic courts acting within their jurisdiction that ruled to dismiss the claims, in accordance with due process. It also indicates that the petitioners and the alleged victim recognize that Mr. Ramos Marrau is one of the beneficiaries of laws No. 26.564 and No. 26.913.

16. Based on the legal and factual elements submitted by the parties, the IACHR considers that, if proven, the facts alleged regarding the procedure pursued to seek reparation for the alleged victim for his enforced exile may tend to establish violations of the rights protected by Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Article 1.1, to the detriment of Mr. Ramos Marrau.

17. Regarding the alleged violation of Article 24, the Commission has established that "the right to equal protection of the law cannot be assimilated to the right to equal outcome in judicial proceedings involving the same subject matter."¹¹ The Commission states that a mere reference to other decisions on the same subject matter with a different outcome does not suffice to *prima facie* establish a possible violation of Article 24 of the Convention.

18. As to the claim about the fourth-instance formula, the Commission observes that by admitting this petition, it does not aim to replace the competence of domestic judicial authorities; that instead it means that, in the merits stage, the Commission will analyze whether domestic proceedings were held

⁹ IACHR, Report No. 76/09, Petition 1473-06, Admissibility, Community of La Oroya, Peru, August 5, 2009, par. 64; IACHR, Report No. 57/03, Case 12.337, Marcela Andrea Valdés Díaz, Chile, October 10, 2003, par. 40; IACHR Report No. 12/10, Case 12.106, Admissibility, Enrique Hermann Pfister Frías and Lucrecia Pfister Frías, Argentina, March 16, 2010, par. 10.

¹⁰ See the rights invoked in Section I hereof.

¹¹ IACHR, Report No. 39/96, Case 11.673, Admissibility, Santiago Marzoni, Argentina, October 15, 1996, IACHR Annual Report 1996, par. 43.

pursuant to due process and judicial protection and ensured the alleged victim's access to justice under the American Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 8 and 25 of the American Convention, in connection with Article 1.1 thereof;
2. To declare the instant petition inadmissible in relation to Article 24 of the Convention; and
3. To notify the parties of this decision; to continue with the analysis on the merits; 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 24th day of the month of October, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.