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REPORT No. 193/19

PETITION 1397-10

REPORT ON ADMISSIBILITY

DIEGO PABLO PAREDES

ARGENTINA

Approved by the Commission electronically on December 6, 2019.

Cite as: IACHR, Report No. 193/19, Petition 1397-10. Admissibility. Diego Pablo Paredes. Argentina. December 6, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner	Elena Carmen Moreno and Myriam Carsen
Alleged victim	Diego Pablo Paredes
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 3 and September 4, 2013; June 8, 2016; October 10, 2017
Additional observations from the State	July 17, 2018

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), 24 (equal protection) 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. According to the petition, the alleged victim, Diego Paredes, belongs to a family who was forced into exile to preserve their life and liberty.³ A child then, he was forced to live in exile from December 4, 1978, to December 10, 1984, with his stepfather, Ángel Pérez, his mother, Berta Paredes, and his brother, Alejandro Pérez Paredes. The petitioners explain that the alleged victim's stepfather was a union member — the records clerk of the Association of State Workers (*Asociación de Trabajadores del Estado*) in the city of Ramos Mejía, province of Buenos Aires— and worked at Hospital Posadas. They indicate that in 1976, on being accused of subversion, the stepfather was dismissed from his job. They explain that, consequently, the family was subjected to house searches by the state security forces. They assert that this, along with the military takeover of Hospital Paredes and the numerous detentions of hospital staff, forced the family into internal displacement until due to new attempts by state agents to locate his stepfather, the family had to exile in December 1978. According to the records, the family members were granted refugee status on July 2, 1979, by the United Nations High Commissioner for Refugees Office in Spain and by the government of Spain on October 1 that year.

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.

2. The petitioners sustain that, because of the exile suffered, the alleged victim requested on October 12, 2005, the benefit established under Law No. 24.043 before the Ministry of Justice, which was dismissed by Resolution No. 197 on February 1, 2008. They indicate that the administrative authority recognized that the alleged victim was living abroad in a forced exile but concluded that, following Opinion No. 146-06 of the Treasury Attorney General, under whose interpretation of the scope of Law No 24.043 Mr. Paredes was not entitled to compensation. They allege that on February 20, 2008, Mr. Paredes lodged an appeal before the National Federal Court of Appeals for Contentious Administrative Matters (*Cámara Nacional de Apelaciones en lo Contencioso Administrativo*) claiming, among other points, that the resolution was overtly at variance with the jurisprudence of the Supreme Court of Justice (“Supreme Court” or “CSJN”) and the decisions on several applications regarding situations of exile not preceded by deprivation of liberty.

3. The petitioners affirm that on April 14, 2009, the National Federal Court of Appeals confirmed the resolution issued by the Ministry, on the grounds that the alleged victim’s exile had to be understood as a case of voluntary exile and that there was no proof of his residence abroad, for the UNHCR certificate was insufficient. On May 21, 2009, Mr. Paredes filed an extraordinary federal appeal before the Supreme Court alleging the importance of determining the validity and scope of the provisions of Law No. 24.043, the unconstitutional and arbitrary nature of the resolution, and the violation of the right of defense and the principle of equal protection of the law. Although on October 8, 2009, the Supreme Court granted the extraordinary federal appeal, on March 23, 2010, the same court declared that the remedy had been granted wrongly as it did not meet the requirement on the number of lines per page established in rule 4/2007. The petitioners were notified on April 7, 2010. They explain that before the court heard the appeal, the alleged victim tried to file the same brief but with a different page layout; that, however, the court dismissed it, preventing him from amending the document.

4. The petitioners point out that the Supreme Court of Justice validated this irregular proceeding by omission by not considering the extraordinary appeal due to layout problems. Finally, they allege that several times the State itself (by the Executive and the Judicial branches) has recognized exile as a form of restriction of liberty included in the grounds foreseen in Law No. 24.043, even in the face of the same facts as in the cases concerning the alleged victim’s mother, Berta Paredes, his siblings Alejandro Pérez Paredes and Julia Pérez Paredes, and his stepfather, Angel Paredes.

5. The State expresses its concern over the untimely notification of the petition, as it was notified almost six years after the initial filing. It alleges lack of exhaustion of domestic remedies because the appeal lodged before the CSJN was dismissed on account of formal defects exclusively attributable to Mr. Paredes. It claims that he could have exhausted the ordinary system of judicial redress by filing an action for damages against the State. Likewise, it alleges the inadmissibility of this petition on considering that the alleged victim does not raise any situation that constitutes a violation of a human right protected in the Convention. It claims that it is evident that Mr. Paredes seeks that the Commission work as a fourth instance of jurisdiction.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The State reiterates that a complaint or an extraordinary federal appeal was presented as an available and adequate domestic remedy to respond the alleged victim’s situation. It claims that the alleged victim’s appeal did not meet the applicable requirements; that, therefore, he was unable to have the highest court hear the matter, as remedies concerning the interpretation of federal rules must be filed pursuant to the applicable laws, which are public order and binding laws. The State argues that “*Penette*,” “*Cuesta*,” and “*Bosarelli*” are CSJN precedents proving the effectiveness and adequacy of extraordinary appeals, in that having heard the duly filed remedies and examining the characteristics of each case, the Supreme Court issued a favorable decision as the petitioners expected in this case. The State also indicates that Mr. Paredes’ relatives received compensation because their remedies were analyzed by competent judicial bodies, as the remedies had been presented in a due and timely manner.

7. The petitioners insist that the special federal appeal dismissed is not an ordinary domestic remedy, but an extraordinary appeal limited to ensuring the constitutional nature and application of laws.

They claim that although the alleged victim pursued a special appeal on deeming it appropriate and effective, how it was settled violated the right to access substantive justice in matters concerning reparations for human rights violations, which casts doubt on the effectiveness of this remedy to repair Mr. Paredes' rights. They claim that the said remedy is randomly appropriate and useful for the reparation of rights.

8. The Commission observes that Law No. 24.043 concerns the filing of applications before the Ministry of the Interior, whose decision may be appealed before the National Federal Court of Appeals for Contentious Administrative Matters of the Federal Capital. The Commission observes that the alleged victim pursued the ordinary remedies required 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 that, 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 procedural level needed to ensure constitutional supremacy and whose propriety is interpreted within a restricted scope.⁵ In view of this, its exhaustion is not necessarily required by the Commission and, in fact, taking into account the circumstances of each one, numerous petitions have been filed in the past, declared admissible without such an appeal having been filed. In the instant case, the appeal was lodged, but the alleged circumstances that would have led to his rejection are part of the substance of his complaint.

9. For the purposes of the analysis of admissibility, the Commission understands that the claims regarding the alleged arbitrariness and excessive formalism by which the alleged victim was prevented from amending the extraordinary appeal may eventually be subject to analysis by the Commission at the merits stage. The undertaking of such an analysis at the admissibility stage would be inadequate.

10. As to the ordinary system of judicial redress, the IACHR observes that the requirement to exhaust domestic remedies does not mean that the alleged victims are obliged to exhaust every remedy available to them.⁶ Given that the remedy pursued by the alleged victim is deemed appropriate, the IACHR considers that, in this case, the alleged victim raised the issue by way of any of the valid and suitable options under domestic law, and that the State had the opportunity to correct the situation under its jurisdiction; consequently, the purpose of the international provision must be considered to have been accomplished.⁷ Therefore, the exhaustion of an ordinary trial was not required before filing a petition to the Inter-American system of human rights, and the IACHR considers that domestic remedies have been duly exhausted for admissibility, under Article 46.1.a of the Convention.

11. Concerning the requirement on timeliness, 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 the petition was filed within a reasonable period and that the requirement on timeliness must be declared met.

12. 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.

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. 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.

⁷ 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.

VII. COLORABLE CLAIM

13. The petitioners affirm that the State is responsible for the violation of the alleged victim's human rights.⁸ For its part, the State contends that the facts alleged herein do not establish human rights violations because there are clear legal precedents where reparations have been granted under Law No. 24.043 on account of enforced exile when such a situation was duly proven and preceded by wrongful detention and/or persecution leading to victims' reasonable fear of serious risk to their lives, personal integrity, and/or personal liberty. Therefore, the State explains that according to Resolution MJyDH No. 670 of August 16, 2016, competent bodies in charge of processing applications which, concerned with "enforced exile," are filed under Law No. 24.043 and its amendments, must follow specific criteria. It indicates that compensation is granted provided that supporting evidence demonstrates that a case of enforced exile is substantially similar to the precedent set by the CSJN in the case of "*Yofre de Vaca Narvaja*." Likewise, the State argues that it is evident that Mr. Paredes seeks that an international body review the decisions made by the local courts which, acting in accordance with due process, rejected his claims.

14. Considering the elements of fact and law submitted by the petitioner, the Commission believes that, if proven, the facts alleged regarding the procedure pursued to seek reparations for the alleged victim for his forced exile may tend to establish violations of the rights protected by Articles 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention, in relation to its Article 1.1, to the detriment of Mr. Diego Paredes.

15. Lastly, with respect to the State's fourth instance allegation, the Commission notes that by admitting this petition, it is not claiming to supersede the competence of domestic judicial authorities; rather, it will examine at the merits stage of the instant petition whether domestic judicial proceedings complied with all of the guarantees of due process and judicial protection and offered proper protection of access to justice for the alleged victim, as provided for under the American Convention.

VIII. DECISION

1. To declare the petition admissible with respect to Articles 8, 24 and 25 of the American Convention, in connection with Article 1.1 thereof; and

2. 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 6th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.

⁸ See the rights invoked in Section I hereof.