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REPORT No. 192/19
PETITION 1547-10
REPORT ON ADMISSIBILITY

SILVIA MÓNICA SEVERINI
ARGENTINA

Approved electronically by the Commission on December 6, 2019.

Cite as: IACHR, Report No. 192/17. Petition 1547-10. Admissibility. Silvia Mónica Severini.
Argentina. December 6, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Elena Carmen Moreno and Myriam Carsen
Alleged victim:	Silvia Mónica Severini
Respondent State:	Argentina
Rights invoked:	Articles 8 (right to a fair trial), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention on Human Rights ¹ , in relation to its Article 1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	November 4, 2010
Additional information received at the stage of initial review:	January 2, 2013 and January 8, 2016
Notification of the petition to the State:	February 14, 2017
State's first response:	November 27, 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 (deposit of instrument of ratification made 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 (right to a fair trial), 24 (right to equal protection) and 25 (right to 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, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

V. FACTS ALLEGED

1. The petitioners claim that the State of Argentina is internationally responsible for the violation of Ms. Silvia Severini's human rights in relation to the unlawful rejection of her request for compensation filed under Law No. 24,043, as a consequence of her forced exile.³

2. The petitioners indicate that Silvia Severini was forced to leave Argentina in 1976, together with her family, as a result of the circumstances and as the only alternative to safeguard her freedom and integrity.⁴ The petitioners submit that before her exile, the alleged victim had been subject to persecution and threats by the military dictatorship as a consequence of her political activism, her husband's and of their

¹ Hereinafter "the Convention" or "the American Convention".

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

³ In the petition there are no allegations on violations perpetrated prior to the request for reparations.

⁴ They indicate that the Security Forces searched intensely for Mrs. Silvia Severini, her husband Alfredo Juan Falú and the other members of their families. They point out that her husband's brother, Luis Eduardo Falú Baaclini, and her sister's husband, Luis Rómulo Giuffra Calvo, were victims of forced disappearances, and that the alleged victim, her husband and their youngest son were forced to leave the country in October of 1976 for Brazil and that they stayed there until their return to Argentina in 1983.

families. In this regard, they point out that Silvia Severini was detained twice because of her role as a student and political activist: the first in 1972 when she was prosecuted under Law No. 17.401, and in 1974, when she was arrested and prosecuted for the alleged commission of criminal damage offenses and resistance to authority in the context of a protest held at the Universidad Tecnológica Nacional. In addition, she had been dismissed from her position at the School of Philosophy and Letters of the National University of Buenos Aires, threatened and her application for a passport had been denied.

3. On November 30, 2004, Ms. Silvia Severeni filed an application before the Secretariat on Social and Human Rights of the Ministry of Justice, Security and Human Rights, seeking compensation under Law No. 24,043 and its extension Law 24,906 on the ground of her forced exile. This request was filed in light of the broad interpretation adopted by the Argentine State on the scope of the provisions of the law and the fact that it had paid numerous compensation claims "to persons who were forced into exile [...] according to the criteria established by the National Supreme Court of Justice in the *Yofre de Vaca Narvaja* decision". However, the petitioners point out that on March 31, 2009, the Human Rights Secretariat dismissed her application by resolution No. 966/09, "because the requirements [for granting compensation] had not been met" pursuant to the analysis of the National Procurator of the Treasury in opinion No. 146-06 of June 2006.⁵

4. Although the resolution found that the alleged victim was out of the country as a forced exile and that the provisions of Law No. 24,043 and its extension Law 24,906 must be read as assigning to the concept "illegal detention" a comprehensive coverage of the situation of forced exile, the Secretariat established that exiles not preceded by a deprivation of liberty should not be compensated.

5. The petitioners point out that on May 13, 2009, the alleged victim filed an appeal before the National Court of Appeals for Contentious Administrative Matters (*Cámara Nacional de Apelaciones en lo Contencioso Administrativo*), questioning, *inter alia*, the arbitrariness of the decision, as well as the opinions of the Treasury Procurator and the effect thereof on the principle of equality before the law, and its arbitrary nature. However, the National Court upheld the ministerial refusal on June 23, 2009. The petitioners argue that, although the issue was a matter of law, as far as whether or not Law No. 24,043 included exile as a ground for compensation, the intervening Chamber of the Court of Appeals rejected the request for compensation on the grounds that the forced exile had not been proven, only merely Ms. Silvia Severini's residence in Brazil, and thus this was insufficient for granting the benefit provided for in Law No. 24,043 and its amendments.

6. They point out that on August 7, 2009, an extraordinary federal appeal was filed against this decision with the National Supreme Court of Justice, raising, among other issues: the scope of Law No. 24,043 and the areas covered by the international provisions regarding violations of human rights, refugee status and accreditation, lack of analysis of the evidence, arbitrariness of the actions of the administrative authorities, and incongruity due to excessive jurisdiction. However, despite the fact that in principle the Supreme Court issued a ruling on October 27, 2009, granting the extraordinary appeal, on April 20, 2010, the Court declared it ill founded as it failed to comply with the requirement relating to the amount of lines per page required in Article 1 of the rules No. 4/2007. The petitioners point out that "at the moment in which [the Court] started adopting this interpretation, and before it ruled on the matter—the petitioner filed the same brief before the Supreme Court with the required layout, and the Court ordered its return." In this sense, they highlight the violation of the guarantees of due process, as the justices "acted with excessive jurisdiction, ignored facts that had been expressly recognized, ignored the existence of relevant evidence, and that there had been a lack of access to justice due to excessively imposed formalities."

7. For its part, the State expresses its concern about the extemporaneous nature of the transfer of the petition, by highlighting the time elapsed between the initial filing of the petition before the IACHR and its transmission to the State. At the same time, the State requests that the petition be declared inadmissible on the grounds that there has been incorrect exhaustion of domestic remedies, as the extraordinary federal

⁵ According to the petitioner, the National Procurator of the Treasury established in this opinion, and subsequently confirmed in opinion No. 7-08, that "no economic compensation should not be paid" as a result of forced exile not preceded by a deprivation of liberty, in light of the fact that Law 24,043 failed to cover this situation.

appeal filed before the National Supreme Court of Justice was dismissed due to formal defects solely attributable to the alleged victim, Ms. Severini. It stresses that Ms. Severini could have filed an action for damages before the ordinary jurisdiction, which does not appear to have been attempted from the records of the case file.

8. The State adds that the information presented fails to state facts characterizing a violation of the rights of Ms. Silvia Severini. On the contrary, it shows that she is dissatisfied with the evaluation of the evidence and with the decisions of the competent administrative and judicial authorities and that she seeks for the IACHR to act as the fourth judicial instance and review the findings of fact and of law made by those acting within the sphere of their competence.

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

9. In this regard, the Commission observes that the aim of the present petition is the alleged discrimination for a failure to provide compensation under Law No. 24,043 for the forced exile to which Mrs. Silvia Severini was subjected and for the alleged violations of due process and judicial protection in the context of these proceedings. In view of the arguments of the State regarding the exhaustion of domestic remedies, the Commission highlights some considerations.

10. The Commission has already determined that the extraordinary federal remedy available in the legal system of Argentina is extraordinary, exceptional, and discretionary in nature⁶ 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.⁷ Consequently, the Commission does not necessarily require exhaustion of such remedy⁸ and, in fact, taking into account the circumstances of each one, several petitions have been declared admissible without that remedy having been filed.⁹ 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.

11. 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.

12. As regards the action for damages, the IACHR observes that the State does not allege the lack of suitability of Law 24,043 for similar circumstances, but rather the availability of the ordinary system of reparation in the courts. The Commission has established that the requirement for the exhaustion of domestic remedies does not mean that the alleged victims necessarily have an obligation to exhaust all available remedies. Consequently, the IACHR has taken the view that if the alleged victim raised the issue by one of the valid and adequate alternatives according to the domestic legal system and the State had the opportunity to remedy the matter in its jurisdiction, the purpose of the international standard is fulfilled.¹⁰

13. In previous cases, the Commission, without assessing issues of domestic law, has taken into account that with respect to the scope of Law 24,043, Argentine courts have over time developed

⁶ IACHR, Report No. 17/06, Petition 531-01, Admissibility, Sebastián Claus Furlan and Family, Argentina, March 2, 2006, para. 39; IACHR, Report No. 69/08, Petition 681-00, Admissibility, Guillermo Patricio Lynn, Argentina, October 16, 2008, para. 41.

⁷ IACHR, Report No. 55/97, Case 11.137, Juan Carlos Abella, Argentina, November 18, 1997, paras. 264 and 265

⁸ IACHR, Report No. 26/08, Petition 270-02, Admissibility, César Alberto Mendoza and others, Argentina, March 14, 2008, para. 72; IACHR, Report No. 83/09, Case 11.732, Merits, Horacio Anibal Schillizzi Moreno, Argentina, August 6, 2009, para. 62.

⁹ IACHR, Report No. 46/15, Petition 315-01, Cristina Britez Arce, Argentina, July 28, 2015, para. 42; IACHR, Report No. 12/10, Admissibility, Case 12.106, Enrique Hermann Pfister Frías and Lucrecia Pfister Frías, Argentina, March 16, 2010, para. 39; IACHR, Report No. 117/06, Petition 1070-04, Admissibility, Milagros Fornerón and Leonardo Aníbal Javier Fornerón, Argentina, October 26, 2006, para. 42; IACHR, Report No. 17/06, Petition 531-01, Admissibility, Sebastián Claus Furlan and Family, Argentina, March 2, 2006, para. 40.

¹⁰ IACHR, Report No. 16/18, Petition 884-07, Admissibility, Victoria Piedad Palacios Tejada de Saavedra, Peru, February 24, 2018, para. 12.

jurisprudential approaches on the extensive interpretation of the law in order to provide reparations for other types of restrictions on freedom.¹¹ Thus, and taking into account that the petitioner alleges circumstances similar to those presented in other cases analyzed and resolved under said Law, the Commission concludes that Law 24,043 established an appropriate remedy. Therefore, the IACHR considers that domestic remedies have been sufficiently exhausted for the purposes of the admissibility stage, in compliance with the provisions of Article 46.1.a of the Convention.

14. Regarding the timeliness of submission, the Commission observes that the final decision issued by the National Supreme Court of Justice was served on the alleged victim on May 4, 2010, and this petition was filed on November 4, 2010. Therefore, the Commission considers that the petition was filed within a reasonable time and that the admissibility requirement is fulfilled.

15. On the other hand, 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. ANALYSIS OF COLORABLE CLAIM

16. In view of the factual and legal elements alleged by the petitioner, the Commission considers that, if proven, the alleged facts related to the procedure followed to obtain reparation for the alleged victim as well as the arbitrariness of the actions of the administrative authorities, could characterize violations of the rights established in Articles 8 (right to a fair trial), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention in relation to its Article 1.1, to the detriment of Mrs. Silvia Severini.

17. Finally, with regard to the argument of the State as the fourth instance formula, the Commission observes that by admitting this petition it does not intend to replace domestic judicial authorities in the exercise of their jurisdiction. However, at the merits stage of the present petition, the Commission will examine whether the domestic judicial proceedings complied with due process guarantees and afforded judicial protection to the alleged victim in light of the terms of the American Convention.

VIII. DECISION

1. To find the petition admissible in relation to Articles 8, 24 and 25 of the American Convention, in relation to Article 1.1 of the same instrument; 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.

¹¹ IACHR, Report No. 57/16, Petitions 589-07, 590-07 and 591-07, Admissibility, Julio César Rito de los Santos and others. Argentina. December 6, 2016, para. 10; IACHR, Report No. 45/14, Petition 325-00, Admissibility, Rufino Jorge Almeida, Argentina, July 18, 2014, para. 57.