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**REPORT No. 180/20**  
**PETITION 270-11**  
REPORT ON ADMISSIBILITY

MATEO AMELIA GRISELDA  
ARGENTINA

Approved electronically by the Commission on July 6, 2020.

**Cite as:** IACHR, Report No. 180/20, Petition 270-11. Admissibility. Mateo Amelia Griselda.  
Argentina. July 6, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Gloria Oliva
<b>Alleged victim:</b>	Mateo Amelia Griselda
<b>Respondent State:</b>	Argentina
<b>Rights invoked:</b>	Articles 7 (personal liberty), 8 (fair trial), 11 (protection to honor and dignity), 22 (circulation and residence), and 25 (judicial protection) of the American Convention on Human Rights <sup>1</sup> , in relation to its article 1.1 (obligation to respect rights)

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Filing of the petition:</b>	March 3, 2011
<b>Additional information received at the stage of initial review:</b>	March 22, 2011
<b>Notification of the petition to the State:</b>	June 14, 2017
<b>State's first response:</b>	June 8, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of the instrument of ratification done on May 9, 1984)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention according to its articles 1.1 (obligation to respect rights) and 2 (obligation to adopt decisions of internal law)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, on September 9, 2010
<b>Timeliness of the petition:</b>	Yes

**V. FACTS ALLEGED**

1. The petitioner denounces that the Argentinean State is internationally responsible for the violation to the human rights of Mateo Amelia Griselda (hereinafter also "Ms. Griselda") in terms of the inappropriate rejection to her request of economic reparation filed in the time frame of the Law number 24.043 for the arbitrary imprisonment that she suffered during the Argentinean dictatorship.

<sup>1</sup>Hereinafter "the American Convention" or "the Convention."

<sup>2</sup>The observations of each party were duly transferred to the opposing party.

2. She states that on October 25, 1976, the alleged victim was detained in her domicile by the Police of the Province del Chaco following the orders of the chief of the Military Area Number 233 and transferred to the Police City Hall of Roque Saenz Pena, where she was subjected to every type of illegal coercion and tortures. She states that she was released four days later, but that she was under police control in her domicile in Villa Angela through a regime of guarded freedom until December 10, 1983, date of return to democracy. In relation with this context, in which the facts that originated her compensatory claim were originated, the petitioner invokes the rights established in articles 7 (personal liberty), 11 (protection to honor and dignity) and 22 (circulation and residence) of the American Convention.

3. The petitioner states that on April 14, 2004, the alleged victim filed a request of execution of benefit ruled by Law Number 24.043 before the Ministry of the Interior for detention and domicile arrest. She indicates that before the refusal from the police del Chaco to provide information that accredits that alleged violations, her petition was accompanied of the registry of the Precinct of Villa Angela, which certifies the regime of supervised liberty that she suffered and a summary judgment from October 24, 2006 issued by the Judge of First Instance on Civil and Commercial Matters number 2, who accredits her testimony. In spite of this, she denounces that on July 29, 2008, the Ministry of Justice, Security, and Human Rights dismissed the petition through resolution number 2040/08 for not presenting the documentation that accredits that Ms. Griselda was detained at the disposal of some Military Authority or of the Executive Power in the claimed period.

4. On August 28, 2008 the alleged victim appealed before the National Court of Appeals on Contentious Administrative Matters, questioning that the recurred resolution did not consider the pattern of violations committed in El Chaco in said period, and that the control that the chief of the Military Area number 233 exerted in said province, with the purpose of assessing her testimony properly and the provided evidence. Notwithstanding, on December 18, 2018, the National Court confirmed the ministerial negative resolution. This decision showed that the Police City Hall of Roque Saenz Pena informed the impossibility to elevate the list of detained persons by the Military Area 233 due to the fact that in 1990, a riot of interns destroyed all the files and that the Police of the Province del Chaco communicated that the alleged victim is not on the list of detainees at the disposal of the National Executive Power. In proportion to this, the cited Court considered that there was no evidence that duly accredited the compliance of the requirements demanded by Law number 24.043, relative to the required evidence to accredit the denounced facts.

5. Against this decision, on March 3, 2009, the alleged victim filed an federal extraordinary remedy before the Supreme Court of Justice of the Nation, setting out, among others, that the questioned sentence was arbitrary because it would force her to demonstrate with additional documentation her illegal detention, when the entities responsible for what occurred repeatedly deny the existence of detention registries. However, despite the fact that the Supreme Court issued pronouncement on May 14, 2009, granting the extraordinary remedy, on June 29, 2010, the same declared this wrongly granted because it did not meet the requirement linked to the amount of lines per page demanded in article 1 of the agreed regulations 4/2007.

6. The petitioner alleges that if it is true that in some pages of the document presented to the Supreme Court of Justice of the Nation more than 26 lines were included, the sum of the same in the 11 presented pages is "*noticeably inferior to the required by the applied norm as maximum limit which is 40.*" She holds that this decision violates the right to access to justice and fair trial, whereas the judges applied "*a linear interpretation of the regulation text that derives in an excessive formal rigor,*" that should not be applied to a process like the present on which it is demanded the reparation for serious violations to human rights committed by the State. On August 11, 2010, Ms. Griselda filed an appeal for revocation of judgment against said decision, which was rejected on August 31, 2010 for having been presented untimely. This last decision was notified to her on September 9, 2010.

7. For its part, the State insists on what it considers "timeliness in the transfer of the petition," emphasizing the time that went by between the initial presentation of the same to the IACHR and its transfer to the State. At the same time, it requests that the petition is declared inadmissible because it considers that there is a wrongful exhaustion of the remedies in the internal jurisdiction, whereas, the federal extraordinary remedy presented before the Supreme Court of Justice of the Nation that was declared as the proper remedy and effective to offset the alleged violation was rejected by formal defects of exclusive responsibility of the

alleged victim. In the same line, it holds, that without prejudice, the federal extraordinary remedy was ideal to solve the process, the alleged victim did not exhaust properly the appeal for revocation of judgment, whereas, she presented it without complying with the period expected by the legislation.

8. Additionally, it sets out that the petition was presented past the deadline of six months according to article 46.1.b of the American Convention, due to the fact that the sentence that rejected the federal extraordinary remedy was notified on July 13, 2010 and that, according to the documentation sent by the IACHR, the petition was filed by post mail on March 22, 2011, despite of the fact that the alleged victim only had until January 13, 2011 to present the same. Additionally, it claims that if it is true that the remedy of reposition should not be considered as the decision that exhausted the internal jurisdiction, the cited period was not respected in the hypothesis of considering the expected terms as of the notification of its rejection on September 9, 2010.

9. Finally, the State claims that the information presented does not expose facts that characterize a violation to the rights of Ms. Griselda; and that on the contrary, it is clear that she is not content with the valuation of the evidence and with what was resolved by the competent administrative and judicial authorities, expecting that the IACHR acts as a fourth judicial instance and revises the valuations of fact and law carried out by the entities that acted in the sphere of its competence. Besides, it emphasizes that the IACHR does not have temporary competency to analyze the alleged violation to articles 7 and 22 of the American Convention, due to the fact that the alleged detention that the alleged victim would have suffered had happened before the deposit of the referred treaty.

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

10. The petitioner indicates that the internal remedies were exhausted with the decision of the appeal for revocation of judgment, which was notified on September 9, 2010; which means that chronologically, the last judicial decision obtained in the process. For its part, the State replies that the alleged victim exhausted both improperly, the federal extraordinary remedy and the appeal for revocation of judgment, and that only the first one was adequate to resolve the set out merits, and as a consequence, it considers that the petition was presented past the deadline of six months.

11. The Inter-American Commission, for its part, takes note of the plea of the parts. Certainly, as the State affirms, from a formalist point of view, it is correct to affirm that in those cases on which the petitioners have opted to file extraordinary remedies, it is imperative that they exhaust them according to the procedural internal norms, as long as these are reasonable, on the contrary, the petition could be considered inadmissible for having an improper exhaustion of domestic remedies. However, in the present case, the analysis of exhaustion of the domestic remedies that the Commission is responsible for doing goes further the formal considerations and the general criteria mentioned, that is a different thing. It has to do fundamentally with the same substance of the violations to right and access to justice and the judicial protection denounced by the petitioner, object of the present petition, and even with the violations of base that motivated that the alleged victim claimed the benefits of Law number 24.043, that is to say, the nature of the facts that she was a victim of during the dictatorship.

12. In this sense, and without anticipating eventual conclusions over the merits, the Commission observes that from the start of her claims at an internal level, the alleged victim was not granted the police records where the circumstances of her detention in 1976 can be found. Registries that despite of the excuses or the explanations that the State can give on to the loss of this information, it is the State the one that is responsible for providing it, because it is its obligation as responsible for the persons that it sends to prison, and because for private citizens, it would impossible to obtain such registries if it is not done through the authorities of the State. In spite of this, the Ministry of Justice, Security and Human Rights rejected the petition of Ms. Griselda for not having the information that accredits her detention, decision that was confirmed by the same reason by the National Court of Appeals, that is to say, by lacking an element of evidence that was impossible for the victim to obtain. Before this decision, the alleged victim filed a federal extraordinary remedy, same that the State in its response considers as ideal, but it was rejected because in some of the pages, it

exceeded the amount of possible lines, despite of the fact that the total extension of said remedy was inferior to the maximum allowed extension allowed for the same. That is to say, that this last remedy, at the beginning, an ideal procedural means for the attention to a claim that had its origin in plea of serious violations to the human rights was rejected by a formality, which the Commission considers unreasonable.

13. Thus, in attention to these considerations, the Inter-American Commission estimates that the procedural sequence of the internal remedies that were filed had as last decision the one that was obtained in the appeal for revocation of judgment that was rejected on August 31, 2010 and notified to the petitioner on September 9, 2010. Whereas the present petition meets the established requirement in article 46.1.a of the American Convention.

14. Additionally, after observing that the present petition was presented on March 3, 2011, the IACHR concludes that the same was presented within the period of six months established in article 46.1.b of the American Convention.

15. Finally, the Commission takes note of the claim of the State on the alleged extemporaneousness in the transfer of the petition. The IACHR indicates that neither the American Convention, nor the Regulation of the Commission establish a period for the transfer of a petition to the State from its reception and that the established periods in the Regulation and in the Convention for other phases of the process are not applicable by analogy.

## **VII. ANALYSIS OF COLORABLE CLAIM**

16. In attention to these considerations and after examining the elements of fact and law exposed by the parties, the Commission considers that, if the plea relative to the violation of rights and fair trial and to judicial protection in the domestic administrative and judicial procedures can be proven, and the alleged lack of response of the authorities before the request of the alleged victims of producing vital documents for the decision of the case do not result manifestly unfounded and require an in-depth study. If the denounced facts are proven true, these could characterize violations to the protected rights in articles 8 (fair trial) and 25 (judicial protection) of the American Convention in relation to its articles 1.1 (obligation to respect rights) and 2 (obligation to adopt decisions of internal law) of the same instrument. All of this as of the previous facts allegedly committed between the end of the 70's and the beginning of the 80's, that the petitioner presents as information of context to the main claims. These facts will be evaluated as relevant to this case in the phase of merits of the present petition.

17. Finally, regarding the plea of the State of fourth instance, the Commission observes that by admitting this petition, it does not pretend to substitute the competency of the domestic judicial authorities, but that it will analyze the merits of the present petition, if the domestic judicial procedures met the rights to due process and judicial protection, and offered the duly rights to access to justice to the alleged victim in terms of the American Convention.

## **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 8 and 25 of the American Convention according to its articles 1.1 and 2;

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 6<sup>th</sup> day of the month of July, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.