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REPORT No. 178/20
PETITION 668-09

REPORT ON ADMISSIBILITY

DAVID NAZARENO CORONEL *ET AL.*
ARGENTINA

Approved electronically by the Commission on July 7, 2020.

Cite as: IACHR, Report No. 178/20, Petition 668-09. Admissibility. David Nazareno Coronel *et al.* Argentina. July 7, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	CELS, Xumek Civil Association, and Sur Argentina Foundation
Alleged victim	David Nazareno Coronel and others[1]
Respondent State	Argentina
Rights invoked	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 9 (freedom from *ex post facto* laws), 17 (rights of the family), 19 (rights of the child), and 24 (equal protection) of the American Convention on Human Rights,[2] in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof; and other international instruments[3]

II. PROCEEDINGS BEFORE THE IACHR[4]

Date of filing	June 2, 2009
Additional information received during initial review	June 5, 2009
Notification of the petition	March 24, 2010
State's first response	July 8, 2010
Additional observations from the petitioner	December 22, 2010 and February 6, 2012
Additional observations from the State	October 4, 2011 and August 4, 2017

III. COMPETENCE

Ratione personae	Yes
Ratione loci	Yes
Ratione temporis	Yes
Ratione materiae	Yes, American Convention (deposit of instrument of ratification 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 *res judicata*	No
Rights declared admissible	Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 17 (rights of the family), 19 (rights of the child), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion or exception to the exhaustion of remedies	Yes, December 2, 2008
Timeliness of the petition	Yes, June 2, 2009

V. SUMMARY OF FACTS ALLEGED

1. The instant petition concerns a claim about the unlawful and arbitrary detention of several socially vulnerable boys, girls, and adolescents who, being accused of committing a crime before turning 16, are detained in several state public facilities in Argentina, by order of national juvenile courts despite minors' incompetence to stand trial under the law on juvenile delinquency. The petitioners claim violations of the rights to equal protection, personal liberty, due process, and judicial guarantees. They also report that the alleged victims are held in poor living conditions, which contravenes their right to physical integrity.

[1] Juan Manuel Cardozo, Leonardo Ariel Rosales, and others. The other alleged victims' names are listed in the annex attached hereto.

[2] Hereinafter "American Convention" or "Convention."

[3] The petitioners specifically invoked Articles 37 and 40 of the Convention on the Rights of the Child.

[4] The observations submitted by each party were duly transmitted to the opposing party.

2. The petitioners submit that article 1 of Decree-Law 22.278[5] puts juveniles under the age of 16 who are suspected of committing a crime at risk of being deprived of their liberty for an indefinite amount of time despite their incompetence to stand trial. Under this article, if a youth aged under 16 is accused of a crime, the judge hearing the case can, at its discretion and following a hearing with the youth's parents or legal guardians, order that the youth be placed in custody of the State while the judge determines the youth's social background and situation, and how to address it. The petitioners submit that this State intervention takes the form of deprivation of liberty of youth in situation of social vulnerability. They allege that the adoption of this protective measure is part of a guardianship proceeding in which a judge orders the youth's custody based on reports addressing the family, psychological, social, and environmental aspects of the youth and its family but which are fully disconnected from the criminal proceeding following which the youth's case has been dismissed.

3. The petitioners submit that on their visit on April 14, 2009, to the *Instituto General San Martín*, one of the State housing facilities mentioned in the petition, they observed that the minors were held in pavilions with closed, barred doors similar to those found in prisons for adult offenders. They also say that there is no heating system in the cells and that the windows are broken and let the cool air in. They complain about the lack of regular visits from counsels and the lack of rules establishing behavior guidelines and corrective measures since, in case of misbehavior, the minors are isolated in cells without furniture or a toilet. Another factor they mention is the lack of training for the facility's security guards, who do not receive specific course on the matter. They conclude that the living conditions at this facility violate the minors' rights to privacy and physical integrity because of the harsh conditions of living and the maltreatment.

4. The petitioners detail the individual cases of three alleged victims that purportedly represent a universe of juveniles who are in the same situation. They explain that victims Juan Manuel Cardozo (aged 16) Leonardo Ariel Rosales (aged 14), and David Nazareno Coronel (aged 15) were transferred to the *Instituto General San Martín* and illegally deprived of their liberty. They say that on July 11, 2007, Juvenile Court No. 2 declared youth Cardozo incompetent to stand trial, dismissing his case in relation to his alleged commission of a crime at age 16; and that given his economic and socio-environmental background, the said Court provisionally placed him at the *Instituto*—he stayed there for 32 days—before finding an accommodation that best suited his needs. As for youth Rosales, they say that he was deprived of his liberty seven times between 2006 and 2008, for a total of 120 days. They indicate that he was found incompetent to stand trial and referred to the *Instituto* because he came from an extremely large, poor family. Regarding youth Coronel, they say that Juvenile Court No. 2 declared him incompetent to stand trial and referred him to the *Instituto* given his economic, social, and family background and that he stayed there for 102 days. The petitioners claim that none of the alleged victims were appointed a public defender, meaning that these were unable to access their court records, or told how long their time in custody would be. The petitioners claim violations of the right of defense and the rights to a hearing, the presumption of innocence, due process, and public trial. Likewise, they claim violations of the right to humane treatment given the alleged victims' lack of adequate sanitary and education conditions at the facilities they live in, in addition to their deprivation of visits from their respective families.

5. On September 20, 2006, the petitioners filed a *habeas corpus* petition before the National Juvenile Court No. 5 on behalf of all the people who, being accused of committing a crime before age 16, are held in custody in the jurisdiction of the Autonomous City of Buenos Aires, by virtue of national juvenile court orders. According to the petitioners, the alleged victims did not file any remedy themselves; however, at the request of the Supreme Court of Justice, these, along with the rest, were duly identified in the amparo remedy.[6] They emphasize that this remedy is the only one available to access justice in case of illegal, arbitrary detention and thus the only adequate legal remedy. They explain that they filed a joint *habeas corpus* petition because individual petitions would have been insufficient as they would have addressed the right of a few specific minors to protection from arbitrary arrest yet not deal with the issue of the protective measure regarding all the minors in custody. Moreover, they argue that the alleged victims' vulnerable condition, especially given their lack of access to public defenders, prevented them from filing remedies on their own behalf. The remedy was rejected and referred to the National Court of Appeals for Criminal and Correctional Matters for judgment on the lawfulness of youth detention and the elaboration of a plan for the gradual release of the minors, to be included in the Comprehensive Protection System for the Rights of Children and Adolescents. On September

[5] Law on Juvenile Delinquency and Juvenile Correctional Facilities.

[6] The list of the victims included in the *habeas corpus* petition is on Annex 1 of this report.

21, 2006, the said Court upheld the judgment of the Juvenile Court, on considering that the detention of these minors was based on the decisions made by competent authorities; that, accordingly, remedies on the legality of the detention should be filed with the latter. As a result, the petitioners filed, before the National Criminal Court of Appeals, an extraordinary appeal for annulment and unconstitutionality against article 1 of Decree-Law No. 22.278. On December 11, 2007, this Court admitted the appeal, recommended the gradual release of the minors, and ordered the National Legislative Branch to amend accordingly the corresponding law. However, the Attorney General filed a complaint remedy before the Supreme Court of Justice, which admitted it on March 18, 2008, and thus suspended the effect of the judgment by the National Criminal Court of Appeals. Subsequently, on December 2, 2008, the Supreme Court of Justice confirmed the lawfulness of youth detention and article 1 of Decree-Law No. 22.278. Although the Supreme Court's resolution urged the executive and legislative authorities to adopt the necessary measures to modify the internal rules, it did not set any guidelines that were specifically aimed at enforcing the rights embodied in the National Constitution and the international treaties on human rights. The petitioners submit that, to date, there is not a bill aimed at introducing changes to the law at issue, and that none of the measures mentioned by the State have been discussed by the Congress yet.

6. For its part, the State contends that within the *habeas corpus* proceeding, the petitioners claimed the unlawfulness of youth detention from the constitutional point of view but did not refer to the detention conditions as these were not alleged in the petition. The State also claims that their remedy was not appropriate for adjudicating the matter because when it comes to resolutions concerning deprivation of liberty, the interested party must file ordinary appeals and eventually extraordinary remedies like appeals for annulment on the grounds of error, which the alleged victims failed to exhaust. It also indicates that it is not reasonable to expect that a judicial ruling with a provision of general scope will suffice to overcome the deficiencies in a legal system. Similarly, although the State does not dispute the fact that youths Cardozo, Rosales, and Coronel were held at the *Instituto General San Martín*, it claims that the petitioners did not submit enough evidence to demonstrate the alleged isolation of the minors. In accordance with the foregoing, it holds that from the youths' personal and medical records, there is nothing to indicate that the episodes of maltreatment alleged by the petitioners are true.

7. Furthermore, the State says that the Argentine Supreme Court of Justice changed its internal rules regarding juveniles deprived of liberty, claiming that on November 25, 2009, the Upper House of Representatives passed a bill that would change the law appealed by the petitioners about the situation of socially vulnerable minors declared incompetent to stand trial, changing the judicial authorities' approach to the youths' social background and situation. It details that, therefore, whenever a criminal judge dealing with crimes committed by people under the age of 18 notices a situation of threat or violation of the rights of a defendant, they shall report this situation to the local administrative authority for the protection of rights. In accordance with the foregoing, it says that the mechanisms provided by the Constitution for regulating the tensions that the petitioners say exist regarding youth detention, between Law No. 22.278 and the international treaties on human rights ratified by Argentina, are currently in place, in order to remedy the reported situation.

8. Lastly, it notes that the National Ombudsman's Office created a Follow-Up Commission on the Institutional Care of Boys, Girls, and Adolescents to oversee the performance of juvenile detention centers under the National Secretariat, like the *Instituto General San Martín*. It submits that it is based on this work of supervision that observations are made on the overall performance of detention centers. It also contends that judges and defenders often visit these facilities, individually, to interview and examine the minors. It emphasizes that the Security and Surveillance Force of the *Instituto General San Martín* has training sessions provided for by the detention center itself. It highlights that this center ensures access to education through the work of teachers from the National Ministry of Education and the Ministry of Education of the Autonomous City of Buenos Aires. As for the visit of families to the minors, it contends that they can visit them on Wednesdays and Sundays and, should relatives refuse to visit a minor, the center's professional staff intervene to change this situation.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. The Commission observes that on September 20, 2006, the petitioners filed a *habeas corpus* petition with National Juvenile Court No. 5, on behalf of all the detainees under the age of 16. The Juvenile Court rejected the petition, and on September 21, 2006, the National Court of Appeals for Criminal and Correctional

Matters confirmed the decision. Consequently, the petitioners filed an extraordinary appeal for annulment and unconstitutionality against article 1 of Decree-Law No. 22.278. The Third Division of the National Criminal Court of Appeals admitted the appeal. However, on December 2, 2008, the Supreme Court of Justice admitted the complaint filed by the Attorney General and confirmed the lawfulness of youth detention and article 1 of Decree-Law No. 22.278, by revoking the judgment by the National Criminal Court of Appeals. With respect to this, the Commission has established that *habeas corpus* is the appropriate remedy in all cases in which a person believes that he or she has been illegally deprived of his or her liberty.[7] Considering the foregoing, the Commission believes that the instant petition meets the requirement established in Article 46.1.a of the American Convention.[8]

10. The State contends that the alleged victims, including Juan Manuel Cardozo, Leonardo Ariel Rosales, and David Nazareno Coronel, did not file any remedy themselves with the national judicial authorities regarding the lawfulness of their detention and the living conditions at the detention facilities despite the availability of the ordinary appeal and ultimately the extraordinary appeal for annulment on the grounds of error, which it claims is specifically adequate for cases like this. The Commission takes note of the boys' and girls' alleged lack of legal assistance and vulnerable condition, which would have prevented them, *prima facie*, from filing these remedies. The Commission reiterates that under the rule of exhaustion of domestic remedies set forth in Article 46.1.a of the American Convention, petitioners must pursue and exhaust the adequate remedies under national law first. The Commission has established that the requirement to exhaust domestic remedies does not mean that the alleged victims are obliged to exhaust every remedy available to them. Accordingly, if an alleged victim has pursued the matter through one of the valid and appropriate options in accordance with the domestic legal system and the State has had the opportunity to remedy the matter in its jurisdiction, the objective of international law has been met.[9] With regard to this, the Commission observes that through the *habeas corpus* remedy, the authorities became aware of the alleged victims' complaints regarding the lawfulness of their detention, the poor sanitary conditions, and the maltreatment sustained in the detention facilities. In these circumstances, the IACHR deems that since the authorities were aware of the situation of the alleged victims, the instant petition meets the requirements of Article 46 of the American Convention.[10]

11. Concerning the timeliness of the instant petition, the IACHR received it on June 2, 1999; thus, the petition was filed within the six-month period provided by Article 46.1.b of the Convention.

VII. COLORABLE CLAIM

12. The Commission observes that the instant petition involves claims about the unlawful detention of minors, the violation of their rights to due process and to a fair trial in the legal proceedings against them, the poor sanitary conditions, and the maltreatment sustained in the detention facilities. In view of these considerations and having analyzed the factual and legal elements presented by the parties, the Commission deems that the petitioners' claims are not manifestly groundless and require an analysis of the merits. If proven to be true, the facts alleged may constitute violations of Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 17 (rights of the family), 19 (rights of the child), 24 (equal protection), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, regarding Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof.[11]

13. As for the alleged violation of Article 9 (freedom from *ex post facto* laws) of the American Convention, the Commission notes that the petitioners did not submit enough evidence to *prima facie* establish a possible violation.

14. In regard to the alleged violation of Articles 37 and 40 of the Convention on the Rights of the Child, the Commission clarifies that while it is not competent to adjudicate violations of rights embodied in the

[7] I/A Court of H.R., Habeas Corpus in Emergency Situations (arts. 27(2), 25(1), and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, par. 35.

[8] IACHR. Report No. 16/08. Case 12.359. Cristina Aguayo Ortiz *et al*. Paraguay. March 6, 2008, pars. 65, 72-84.

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

[10] IACHR, Report No. 89/17, Petition 788-08. Admissibility. Curtis Armstrong a.k.a. Tyrone Traill. Jamaica. July 7, 2017, par. 10.

[11] IACHR, Report No. 41/99. Case 11.491. Minors in Detention. Honduras. March 10, 1999, par. 57. Report No. 16/08. Case 12.359. Cristina Aguayo Ortiz *et al.* Paraguay. March 6, 2008, par. 92.

Convention on the Rights of the Child, the IACHR is competent to resort to the norms of the latter in order to interpret the rules of the American Convention, under Article 29 of this treaty.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 5, 7, 8, 17, 19, 24, 25, and 26 of the American Convention in relation to Articles 1.1 and 2 thereof;

2. To declare the instant petition inadmissible in relation to Article 9 of the American 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 7th 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.