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REPORT No. 145/20
PETITION 1429-08
REPORT ON INADMISSIBILITY

NÉLIDA JUSTINA YAMPE AND DOLFREDO FRANCO
ARGENTINA

Approved electronically by the Commission on June 9, 2020.

Cite as: IACHR, Report No. 145/20. Petition 1429-08. Admissibility. Nélica Justina Yampe and Dolfredo Franco. Argentina. June 9, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	María Alejandra Oyhanarte ¹
Alleged victim	Nélida Justina Yampe and Dolfredo Franco ²
Respondent State	Argentina
Rights invoked	Articles 8 (fair trial) and 11 (privacy) of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Date of filing	December 8, 2008
Notification of the petition	September 27, 2017
State's first response	July 17, 2018
Additional observations from the petitioner	April 11, 2019
Notification of the possible archiving of the petition	January 27, 2017
Petitioner's response to the notification on the possible archiving of the petition	January 30, 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 (instrument of ratification deposited 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	None
Exhaustion or exception to the exhaustion of remedies	Yes, on June 11, 2008
Timeliness of the petition	Yes

V. SUMMARY OF ALLEGED FACTS

1. The petitioner claims that the judicial authorities violated the alleged victims' right of due process and right to privacy due to several court resolutions adopted in a civil action for damages filed for the death of the alleged victims' son, Alejandro Franco. The petitioner recounts that the latter died in a car accident on June 5, 1996, when his car crashed into a truck of the transport company COAMTRA S.A.. Alejandro Franco's parents have consistently argued that the truck, which was carrying a heavy load consisting of a cylinder of nearly 6 meters in diameter, had infringed several traffic rules and regulations because, for instance, its load took a large portion of the opposite lane of the highway, and some basic safety preventive measures had been omitted, thus claiming that this was a case of shared responsibility between both drivers.

2. Given the death of youth Alejandro Franco, a criminal investigation was initiated against the truck driver and the driver of another vehicle also involved in the accident, on the charge of unintentional manslaughter. Following a few investigation proceedings, both defendants were acquitted, and the case was closed with a final resolution passed on July 24, 1997, by Criminal Court of Appeals No. III of the Judicial District

¹ This petition was initially filed by Attorney Miguel Ángel Cardinale; however, due to his passing away in April 2015, he was replaced by Attorney María Alejandra Oyhanarte.

² Mr. Dolfredo Franco passed away on September 13, 2013.

³ Hereinafter "the American Convention" or "the Convention."

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

of Mercedes, Buenos Aires Province. The acquittals were based on the lack of enough evidence to conclude that both defendants were criminally responsible, and on the victim's possible exclusive responsibility. Although the petitioner notes that these judicial decisions lack an adequate evidentiary basis, this petition to the IACHR is not intended to formally challenge them but to denounce the ensuing civil lawsuit.

3. In this sense, on March 24, 1998, the alleged victims lodged a civil complaint for damages against the transport company COAMTRA S.A., owner of the truck, and the truck driver. They essentially claimed that the cause of the accident was a shared responsibility between Alejandro Franco and the truck driver, and requested the court to order and obtain a series of relevant technical items of evidence; however, several of these were not ordered, while others allegedly disregarded in the judgment. Thus, their claims were denied at first instance trial on February 22, 2005, by National Civil Court No. 33, which considered that purportedly, the fatal victim held the sole responsibility for the accident, acquitting the transport company and the truck driver. Though appealed, this judgment was upheld on appeal on November 14, 2005, by Division G of the National Civil Court of Appeals. The alleged victims challenged the decision passed on appeal, by lodging an extraordinary federal remedy alleging arbitrariness. However, on February 2, 2006, the National Civil Court of Appeals dismissed it on considering that the remedy was based on the claimants' mere disagreement with the judgment appealed and that the latter was not arbitrary. Finally, the alleged victims filed a complaint with the Supreme Court of Justice, but it was denied summarily by a decision dated May 28, 2008, and notified to the complainants on June 11, 2008.

4. The petitioner claims there was arbitrariness in the judgments passed in the civil proceeding due to several reasons discussed in depth in the petition. Of those, they emphasize five fundamental reasons: (i) in the judgments, the judges refrained from ordering and considering several technical evidentiary items that would have been essential to prove the share of responsibility of the truck driver and COAMTRA S.A. for the accident; (ii) the judges based their reasoning and decision on many factual and legal conclusions that had no basis on the evidence on the case record but were derived from mere prejudices or arbitrariness; (iii) the judges did not rule on all the relevant matters brought in the lawsuit, in particular failing to rule on the serious infringements of safety rules allegedly committed by the truck driver. (iv) The judge of the court of appeals declared Alejandro Franco exclusively responsible for the accident, arguing that he had participated in the theft of that vehicle and did not know how it worked or knew how to drive it and that, consequently, he had broken the speed limit and lost control of the car. The petitioner maintains that this argument was not based on the evidence, the criminal investigation, or even a previous sentence; thus, she deems these assertions arbitrary, unfair, and inconsistent with the character of late Alejandro Franco as well as damaging to the honor and reputation of his parents, the alleged victims. (v) The Supreme Court of Justice's denial of the complaint lacks adequate justification according to the inter-American standards.

5. The State, for its part, claims that regarding the criminal case on the accident, domestic remedies were not exhausted and that the filing of the petition was overdue as the criminal case for unintentional murder was closed in 1998. As for the civil case, Argentina acknowledges that given the complaint lodged by Alejandro Franco's parents, it opened civil case No. 26.266/1998, "*Yampe Nélide Justina y otro c/COAMTRA S.A. y otros s/ Daños y Perjuicios*," on which the courts effectively adopted the decisions described by the petitioner. The State claims that the petition does not disclose possible violations of human rights protected by the American Convention because—the State asserts—the petition merely expresses the alleged victims' disagreement with the judicial decisions at issue, which they deem wrongful because these were unfavorable to them; yet, they have not submitted allegations tending to establish a possible violation of the human rights within the competence of the IACHR. It asserts in this sense that the petitioning party has appealed to the IACHR as a court of fourth instance of jurisdiction to challenge decisions lawfully adopted by domestic court authorities, which petitioner deems wrongful or unfair for being contrary to the alleged victims' interests. Also, as for the civil proceeding, the State says, "*in light of the legal proceedings under analysis and based on the petition, the claimants have been able to file the remedies provided for in the domestic legislation to bring their claims, which, where appropriate, were solved in due course by independent and impartial court authorities who heard the claims within their jurisdiction, pursuant to the rules of due process.*"

6. Furthermore, the State alleges a significant delay in the Commission's notification of the petition, arguing that this affected the preparation of a reply.

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

7. Firstly, the Inter-American Commission acknowledges the State's claim regarding what the latter describes or qualifies as a tardiness in transmitting the petition. However, the Commission reiterates that neither its Rules of Procedure nor the Convention establish a deadline for the transfer of a petition to the State upon receipt and that the timeliness requirements established in the Rules of Procedure and the Convention for other procedural stages are not applicable by analogy.⁵

8. The petitioner's complaint focuses on the court resolutions adopted in the civil action filed by the alleged victims on the death of their son and not on the previous criminal proceeding. As established in prior decisions,⁶ the IACHR considers that, as a general rule, the adequate remedies to be exhausted in the event of an alleged violation of procedural rights and other human rights in a domestic legal proceeding are those provided for in the domestic rules of civil procedure which allow the parties to question, during the relevant procedure itself, the actions and decisions adopted in the course of such procedure, especially the ordinary applicable judicial remedies, or the extraordinary remedies that the alleged victims of the violation of procedural rights actually file to enforce their rights. In the instant case, there is no question that the alleged victims filed all the legal remedies available under the rules of civil procedure to enforce their procedural rights and other possibly violated rights, and that the case was finally resolved by the Supreme Court's decision of May 28, 2008, which rejected the alleged victims' complaint. The State, for its part, does not controvert the exhaustion of this resource, but rather confirms its full exhaustion and the claimants' ample participation in it.

9. Therefore, the Inter-American Commission concludes that the instant petition meets the requirement established in Article 46.1.a of the American Convention. Besides, bearing in mind that the Supreme Court's decision was notified to the alleged victims on June 11, 2008, and that the IACHR Executive Secretariat received the petition on December 8, 2008, the petition meets the requirement on timeliness established in Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

10. The petitioning party's complaint focuses on the judicial decisions adopted in the civil lawsuit that the alleged victims filed on the death of their son in a car accident. Those decisions are said (i) to have been adopted without consideration or analysis of fundamental evidence included in the case record; (ii) to have been adopted after the judges refrained from ordering and analyzing other indispensable technical pieces of evidence requested by the claimants; (iii) to lack sufficient justification and evidentiary support; (iv) to have been adopted with disregard for the key issues raised by the claimants, including the serious infringements of safety rules committed by the truck driver; (v) to be damaging to the alleged victims' honor and reputation as a public judgment unfairly insinuated that their son had committed an offence of theft and that this was the reason for his sole responsibility for the accident. The State, for its part, submits that this petition should be declared inadmissible since the petitioner has appealed to the IACHR as a court of fourth instance. It further considers that the petition is based on the alleged victims' disagreement with the judgments that were unfavorable to them and, accordingly, they deem wrongful or unfair, yet without claiming possible violations of the American Convention.

11. The Inter-American Commission has adopted a uniform and consistent stance in the sense of affirming its competence to declare a petition admissible, and decide on its subject-matter, in cases related to domestic judicial proceedings which may have violated the rights protected by the American Convention. However, in the instant case, the petitioner has requested the IACHR to review the content of judgments adopted in the course of civil proceedings whose respect for judicial guarantees has not been called into

⁵ See, inter alia: IACHR, Report No. 111/19. Petition 335-08. Admissibility. Marcelo Gerardo Pereyra. Argentina. June 7, 2019, par. 13.

⁶ See, inter alia: IACHR, Report No. 92/14, Petition 1196-03. Admissibility. Daniel Omar Camusso and Son. Argentina. November 4, 2014, par. 68 and subsequent paragraphs. IACHR, Report No. 104/13, Petition 643-00. Admissibility. Hebe Sánchez de Améndola and children. Argentina. November 5, 2013, par. 24 and subsequent paragraphs; and IACHR, Report No. 85/12, Petition 381-03. Admissibility. S. et al. Ecuador. November 8, 2012, par. 23 and subsequent paragraphs.

question. The petitioner's claims are addressed against the sense and the evidentiary support of decisions which were validly adopted by the Argentinean judges, and seek a new assessment of the evidences gathered in the course of those proceedings, as well as a critical examination of said rulings' content and of the judicial reasoning that led to them. Therefore, after having analyzed the information submitted by the parties in the present report, the Commission concludes that the petitioner's arguments, reasonable as they may be, contain no elements which can *prima facie* constitute possible violations of the American Convention in the terms of Article 47.b of said instrument.

VIII. DECISION

1. To declare the present petition inadmissible.
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 9th day of the month of June, 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.