

OEA/Ser.L/V/II.
Doc. 140
12 May 2020
Original: Spanish

REPORT No. 130/20
PETITION 939-08
REPORT ON INADMISSIBILITY

BERNARDO VIEITEZ
ARGENTINA

Approved by the Commission electronically on May 12, 2020

Cite as: IACHR, Report No. 130/20, Petition 939-08. Inadmissibility. Bernardo Vieitez.
Argentina. May 12, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Bernardo Vieitez, Faustino Locria, Orlando Daniel Pulvirenti
Alleged victim:	Bernardo Vieitez
Respondent State:	Argentina
Rights invoked:	Articles 8 (judicial warranties), 21 (private property) and 25 (judicial protection) from the American Convention on Human Rights ¹ regarding article 1.1 (obligation to respect rights) and 2 (having to adopt dispositions of internal law) of such instrument.

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	August 7, 2008.
Additional information received at the stage of initial review:	August 13 and September 9, 2008; April 6, 2009; June 10, 2010; March 16, 2010; March 23, 2013; July 21, 2014
Notification of the petition to the State:	February 1, 2016
State's first response:	December 19, 2017
Additional observations from the petitioner:	August 14, 2014; September 30, 2014; September 19, 2018
Additional observations from the State:	March 14, 2019

III. COMPETENCE

Competence <i>Ratione personae</i>:	No, in terms of section V
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (Instrument adopted 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 of domestic remedies or applicability of an exception to the rule:	Not assessed
Timeliness of the petition:	Not assessed

V. FACTS ALLEGED

1. The petitioner party claims that the State of Argentina is liable for breaching the rights in the due process, property and judicial protection versus Bernardo Vieitez (hereinafter "the alleged victim" or "Mr. Vieitez"), within the context of a reorganization proceeding to avoid the bankruptcy of the Pasadena S.A. company, to which he was the main shareholder, which resulted in the loss of all of the alleged victim's assets. Likewise, there may have been a breach of his right to an effective provision, since there was no justification in the decisions from the Supreme Court; and because throughout 19 years, judicial remedies have proven

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

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

inefficient due to the permissive posture from Argentinian authorities towards the aforementioned irregularities.

2. According to the petitioner party, the Pasadena S.A. Company was created in 1960, a publicly listed company, whose main shareholder was the alleged victim and his closest relatives being the remaining shareholders. In December 1988, Pasadena S.A. underwent a bankruptcy process, turned into a preventive reorganization proceeding. Within such proceeding, several creditors came forth, whose credits managed to be differed. In December de 1989 a proposal to pay 100% of the company's liabilities was approved, which established the judicial homologation of the agreement, with due compliance under judicial control. However, the Syndic would have rejected the withdrawal of the proceeding, and up to November 1994 there were still two pending payments, although the proceeding was declared finalized on November 23 1994.

3. Likewise, the petitionary party indicates that once the conclusion of the Syndic's intervention was determined, on November 23 1994, he appealed the decision of the proceeding process and that such provision was ruled by the judge who acted as Pasadena S.A.'s attorney. He also affirms that not all the amount of the Syndic's fees was taken away, and that on March 10 1998 was summoned for a conciliation hearing at which the alleged victim acknowledged that in February 1998 the judge had declared Pasadena S.A.'s bankruptcy by means of Auto 96/98. He claims that authorities of the commercial proceeding, the Commercial Judge and the Syndic, adopted an own tessitura, and despite the fact that the alleged victim paid his liabilities in full plus the Syndic's fees, they carried on with the proceeding.

4. Regarding the bankruptcy process, the petitionary party affirms that on March 5th 1997 a new agreement was subscribed with the Syndic which acknowledged the debt for his fees for US\$ 308,400 and allowed the request for Pasadena S.A.'s bankruptcy, which took place on February 12th 1998. The bankruptcy not only implied the dispossession of the alleged victim's assets, but also that the Syndic and liquidator took over the administration of the assets and the alleged victim was forbidden to leave the country and to perform commerce. As stated by the petitionary party, there was no impartiality in the bankruptcy process and preventive proceeding, once the Syndic who requested the bankruptcy was appointed as liquidator of Pasadena S.A.'s bankruptcy. He also claims that the bankruptcy was declared in December 1998 and that on July 2 1998 the companies Café la Virginia and Micropack had expressed interest in acquiring the assets of Pasadena S.A., particularly the estate in Circunvalación de la Ciudad de Rosario, Argentina; and that neither the Commercial Judge nor the Syndic advised such operation with due diligence, which led to missing the deadline and kept the purchase from happening. In this sense, the petitionary party sustains that it took the Syndic two years to make the "realization of assets" effective. Likewise, he claims that all irregularities were reported in the process, as well as the forgery of public documents and instruments; and that, on its decision of August 26 2004, the Cámara en lo Civil y Comercial [Civil and Commercial Affairs Chamber] reported theft of documents, ideological falsehood to reduce the patrimonial assets of the alleged victim, and that regarded the regulation of maximum fees to the Syndic baseless. And so, the Cámara en lo Civil y Comercial [Civil and Commercial Affairs Chamber] of Rosario withdrew the cause from the Commercial Judge and ordered the penal investigation of such magistrate. The penal cause was dismissed, and the alleged victim appealed to the Cámara Penal [Penal Chamber] of Rosario in 2005; which decided to replace the Commercial Judge. The new Judge did not revise what her predecessor had done and kept on with the proceeding under the principle of the judged matter.

5. The bankruptcy resolutions were appealed before Justice of the Province of Santa Fe. On November 30 2007 the alleged victim filed a nullity action before the Supreme Court of Justice against judicial resolutions delivered by the Commercial Judge, which was rejected *in limine*. An appeal was filed which was rejected on August 7 2006, which led to presenting a constitutional complaint, denied on October 27 2006; and then an extraordinary petition, equally rejected on August 22 2007. Similarly, the alleged victim presented an extraordinary federal petition at which he stated the breach of his rights to defense and property, which was dismissed by the Supreme Court of Justice on November 7 2007 for belated submission. He then filed a complaint petition for denial of extraordinary petition, which was rejected on February 19th 2008 and so notified the alleged victim on March 12 2008. Also, the petitionary party claims that, to the date of submitting the case to the IACHR, the bankruptcy was still open, which implied the dispossession of the alleged victim's assets as well as his prohibition from leaving the country.

6. The state on the other hand, disputes the facts and claims that once the bankruptcy was liquidated and finalized, the judge of the cause regulated in 12% of the realized asset the corresponding fees for the Syndic and other professionals who worked in the process. This decision was appealed before the Cámara de Apelaciones en lo Civil y Comercial [Civil and Commercial Affairs Chamber of Appeals] of Rosario, which annulled the decision of August 26 2004 and pointed out irregularities in the receivership's actions which may be criminally typified. This way, the resolution was forwarded as a complaint to prosecutors for investigation and placed in the Juzgado de Primera Instancia de Distrito en lo Penal de Instrucción No. 12 [District Court of First Instance for Penal Affairs of Instruction No. 12] of Rosario, which decided to archive it. According to the State, the petitioner requested the reopening of the instruction, which motivated the prosecutor to require the indictment on December 29 2004 and the procedure of the measures of proof proposed by the alleged victim; however, the archiving decision was maintained. In response to this decision, on April 15 2005 an appeal petition was filed, which was further dismissed on May 6th because the alleged victim failed to submit new elements of proof or new facts which would enable the revoking of the archiving. The cause was resolved on November 7 2012 and forwarded to the archive.

7. According to the State, with the archive of the penal cause, the substitute judge in the bankruptcy cause again regulated the fees in 4% of the asset; this percentage was increased on August 7 2006 by the II room of the Chamber. Also, the judge approved the final distribution Project on December 26 2006, which Pasadena S.A. agreed with. While the criminal charge was being assessed, the alleged victim submitted before the Supreme Court of Justice of Santa Fe the brief filed before the Fiscalía de Cámara [Chamber Prosecutor] and the Agreement of August 25 2004 of the Cámara de Apelaciones [Chamber of Appeals], in order for proper measures to be taken. The Supreme Court of Santa Fe ordered to initiate an administrative investigation and, after evaluating the acts and listening to all of those involved, on April 11 2006 conclude that there was no irregularity whatsoever in the Judge's conduct; and that the alleged victim had lacked legal assistance, since he never challenged the dictated resolutions on within the corresponding procedural timeframe. Likewise, the State affirms that the nullity action was not favorable because it aimed to challenge consented resolutions, passed on judged matters and against which the alleged victim was able to exercise his right to defense. It points out that versus the rejection *in limine* of the nullity action, Mr. Vieitez filed an appeal and nullity action, rejected on August 7 2006; consequently filed a constitutional complaint, dismissed on October 27 2006. Upon such decision, the alleged victim presented another complaint for denial of constitutional complaint, which was turned down on August 22 2017, which motivated the late submission of an extraordinary federal petition, denied on November 7 2007; and a new complaint action for denial of the extraordinary petition, dismissed on February 19 2008.

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

8. The State affirms that the Commission has no competence on the basis of the person to evaluate the present case, because in the context of the preventive proceeding and further bankruptcy the alleged victim represented the Pasadena S.A. company, and, in such process the individual rights to property of Mr. Vieitez were never under discussion, but the commercial and patrimonial rights of such company. It also affirms that the judicial actions of the present case had Pasadena S.A. as actor, which litigated in defense of its patrimonial interests. In return, the petitioner party states that the alleged victim is nearly Pasadena S.A.'s sole partner, and that in spite of its legal constitution of publicly listed company, it is a family business also comprised by his spouse and children. He claims that the damage to the partnership implied a direct damage upon his person, since the prohibition to leave the country affected him for eight years by limiting his right to free circulation.

9. The Commission has established jurisprudence over the inadmissibility of petitions filed by corporate juridical persons under the condition of direct victims, or where the exhaustion of domestic remedies was carried out exclusively by them and not by the natural persons presented as petitioners before the Commission. Such is the situation in the present case, in which the alleged victim invokes such condition of owner of a juridical person on behalf of which ran out of domestic remedies. Although the alleged victim affirms the actions were taken on his name, from the background of the petition it is clear he acted as Pasadena S.A.'s shareholder and claimed for the company's rights instead of his own.

10. The very petitioner admits that the juridical person is a juridical instrument to develop business activities. One of the reasons for the creation of juridical persons is to separate their patrimony from the one of physical persons who comprise them. Precisely, as the Argentinean legislation so distinguishes, as in the entire hemisphere, juridical persons are different from human persons, physical or natural and therefore, the juridical regime they subscribe to is also different.³ At the present case, the Pasadena S.A. Company is a Company with shares, which had different shareholders, also with a limited liability⁴. Hence, the Commission lacks *ratione personae* competence to resolve on the present case.

VIII. DECISION

1. To find the instant petition inadmissible in relation to Articles 8 (judicial warranties), 21 (private property) and 25 (judicial protection) from the American Convention on Human Rights⁵ regarding article 1.1 (obligation to respect rights) and 2 (having to adopt dispositions of internal law) of such instrument.

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 12th day of the month of May, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.

³ IACHR, Report No. 40/05, Petition 12.139. Inadmissibility. José Luis Forzanni Ballardó. Perú. March 9th 2005, par. 35.

⁴ Ley General de Sociedades No. 19.550/84

⁵ Hereinafter “the American Convention” or “the Convention”.