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REPORT No. 97/20
PETITION 217-09
REPORT ON ADMISSIBILITY

LAURA VERONICA BRUSA
MEXICO

Electronically approved by the Commission on May 13, 2020.

Cite as: IACHR, Report No. 97/20. Petition 217-09. Admissibility. Laura Verónica Brusa. Mexico.
May 13, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Laura Verónica Brusa
Alleged victim	Laura Verónica Brusa
Respondent State	Mexico ¹
Rights invoked	Articles 1 (obligation to respect rights), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 11 (privacy) of the American Convention on Human Rights. ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition	February 25, 2009
Notification of the petition	August 10, 2016
State's first response	May 8, 2017
Additional observations from the petitioner	May 30, 2018

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 March 24, 1981).

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 7 (personal liberty), 8 (fair trial), 22 (movement and residence) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion or exception to the exhaustion of remedies	Yes, exception under Article 46.2.b of the American Convention
Timeliness of the petition	Yes, February 25, 2009

V. SUMMARY OF ALLEGED FACTS

1. Laura Verónica Brusa, an Argentinean national (hereinafter “the petitioner”) claims that the Mexican State is internationally responsible for the violation of her human rights, alleging that she was deprived of her liberty by members of the National Institution of Immigration (hereinafter, “NII”), without being informed of the reasons for her detention nor brought before any competent judicial authority, being prevented from seeking legal assistance and from communicating with her family members or her country’s consulate. She points out that, without applying judicial guarantees, she was expelled from the territory and subjected to the prohibition to return to Mexico for a period of 20 years. She also claims that during her detention she was subjected to inhuman and degrading treatment.

2. The petitioner explains that in 2003 she entered Mexico with a job offer to work at a Mexican marketing firm, securing a FM3 document which allowed her to perform such activity, which she later quit to start her own corporation. In 2004, she was granted a non-immigrant FM3 immigration document for a one year term to develop activities related to her textile sector project, which she used to set up the legal entity ALLAPARI SPORTIVO SA de CV. This document was renewed on July 6, 2005, authorizing her to fulfil her functions as administrator and legal representative of her company for one additional year.

¹ In accordance with Article 17.2.a of the Rules of Procedure of the Commission, Commissioner Joel Hernández García, a Mexican national, did not take part in the debate or decision of the instant matter.

² Hereinafter, “the American Convention” or “the Convention”.

³ The observations from each party were duly transmitted to the other party.

3. The petitioner then explains that on May 17, 2006, she arrived at the Bonn Hotel in Mexico City to meet a person which was interested in her products. She points out that, when she was about to enter the room where that person was waiting, she was immediately arrested by surprise by agents of the NII and accused of being engaged in for profit activities for which she had no authorization. The petitioner points out that at that time she did not had with her the documents that proved her residence in Mexico and that, for this reason, she requested the agents an opportunity to clarify the situation, which was flatly denied. She alleges that she was taken to the NII facilities, where she was detained without being informed of the reasons for her arrest. She adds that, while she was deprived of her liberty, she was prevented from contacting family members, persons of trust or the Argentinean consulate⁴, and that at no time was she brought before any judicial authorities. She alleges that, abusing their authority, the migratory authorities forced her through stress measures, threats and unlawful pressure, to sign a statement that they had prepared⁵. She highlights that, when signing the statement, she was surrounded by 9 police officers who mocked and disparaged her. She holds that she was transferred to a migratory station where she was held for 10 days in a room, in solitary confinement, without warm clothing and where she had “only the occasional company of rodents”⁶. She also claims that she was treated as a criminal, forced to undress for the purposes of determining the presence of tattoos in her body and that she was fingerprinted and photographed at the Office of the Deputy Prosecutor for Specialized Investigation of Organized Crime. Finally, she tells that on May 26, 2006, she was expelled from the Mexico International Airport to Argentina, without her passport being stamped and with the authorities retaining her FM3 form.

4. The petitioner points out that on June 12, 2006, she filed a request for readmission at the Mexican Embassy in Argentina and that on August 1, 2006, she requested from her consul a notarized copy of the resolution that ordered her deportation. On August 10, 2006, the request for readmission was rejected by a resolution from the Commissioner of the NII. The Commissioner considered that “the repeal of the authority act consisting of the deportation from the national territory cannot proceed, as the exit from the country has turned the question moot and the act being challenged was executed on May 26, 2006, making the effects of such act impossible to repair”. The Commissioner also pointed out that the order that was challenged had no defects as the sanction imposed on the petitioner was lawful as the petitioner had “engaged in for profit activities for which she was not authorized, and which were also contrary to morals and decency”. She also filed a written complaint before the National Commission of Human Rights of Mexico, claiming alleged violations of her human rights. On November 10, 2006, she was notified that the assessment of the complaint had been closed and concluding that the national organism did not have sufficient elements to establish violations of her human rights. She then filed a motion to vacate before the Federal Court of Administrative and Fiscal Justice of Mexico against the order of August 10 which had affirmed the order of deportation against her (in this complaint it was mentioned that the original decision ordering her deportation was not known to her and that the petitioner had not had access to it). On June 22, 2008, she desisted from the motion, which was dismissed on August 18, 2008. On November 29, 2007, she filed a second request for readmission before the National Institute of Immigration, which was rejected on May 12, 2008. On December 4, 2008, she requested readmission to the Mexican State for the third time, before the National Institute of Immigration. On December 24, 2009, the NII adopted a resolution reducing the prohibition of reentry to 10 year, as it considered that the 20-years prohibition of reentry had been excessive in relation to the violation committed by the petitioner.

5. The State, for its part, considers that the petition is inadmissible as the petitioner did not exhaust the domestic remedies set forth in Mexican law. It highlights that the petitioner desisted from the motion to vacate that she filed against the deportation order, which was the adequate means of defense against an administrative resolution that caused her harm. In addition, it points out that the petitioner had access to the actions of administrative appeal and revision against the order that dismissed the motion to vacate. It also highlights that, when the petition was filed, the third request for readmission filed by the petitioner was

⁴ The petitioner submitted a copy of a note filed on June 12, 2006, addressed to the Consul of the United Mexican States in Argentina in which it points out that she was only allowed one phone call for her passport and FM3 to be brought to her.

⁵ The petitioner submits a copy of the resolution from NII, dated August 10, 2006, in which this body mentions her statement and points out that in it the petitioner “manifests to be an independent sexual worker as she manages her times and engages in such activity to pay for her expenses”.

⁶ She considers that what happened implied that she was technically “disappeared”, with the connotation that this has for a person of Argentine nationality.

pending and that the petitioner did not file a complaint about the alleged cruel and degrading treatment mentioned in the petition before the relevant ministerial authorities.

6. The State also alleges that the facts described in the petition do not constitute human rights violations, given that the restriction on readmission placed upon the petitioner has expired and that she may reenter the territory of the State as long as she fulfills the legal requirements for her lawful stay. The State points out that on May 17, 2006, when the petitioner statement was received, she was informed that she had the right to communicate with her consular authority and/or person of trust and to appoint a person of trust to assist her during the proceedings, as well as of her right to provide the evidence that she deemed convenient and to propose two persons to bear witness of the proceeding (which would be appointed by the authority if she did not do so); but the petitioner did not exercise these rights. The State highlights that the National Commission of Human Rights concluded that it did not possess sufficient elements to establish violations of the rights of the petitioner and that, while she alleges that she was forced to sign a statement where she indicated that she was engaged in for profit activities for which she was not authorized, in her second request for readmission the petitioner explicitly said that she had engaged in these activities due to economic difficulties.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The Commission notes that the petitioner has not developed a position concerning whether her petition meets the requirement of exhaustion of domestic remedies or whether an exception to this requirement is applicable. Likewise, it notes that the State has alleged that the petitioner has not exhausted the domestic remedies because she desisted from the motion to vacate that she had filed against the deportation order, because at the time of filing the petition her third request for readmission was pending and because the petitioner did not file criminal complaints with regards to the degrading treatment which she alleges she was a victim of.

8. The Commission notes that the petitioner has not submitted information pointing out that she communicated to any domestic authority her claim of being subjected to cruel and degrading treatment. Likewise, and in relation to the prohibition of reentry to which she was subjected to, the Commission notes that the petitioner has submitted documentation confirming that she desisted from the motion to vacate that it had filed against the resolution confirming the resolution that ordered her deportation and imposed such sanction on her. The petitioner has not alleged or submitted information that may suggest that this dismissal was not a voluntary act. For these reasons, the Commission concludes that these claims are inadmissible as they do not meet the requisites of Article 46.1(a) of the American Convention.

9. With regard to the allegation that the petitioner was unlawfully and arbitrarily deprived of her liberty and deported from Mexican territory in violation of due process and judicial protection, the Commission notes that the petitioner has claimed that, since the moment in which she was arrested and until she was deported, she was deprived of her liberty without being able to contact a person of her trust or her country's consulate. Likewise, she alleged that while being deprived of her liberty she was never brought before a judicial authority, a claim about which the State has not filed allegations or provided information to the contrary. While the State has referred to the decision by the petitioner to desist from the motion to vacate the deportation order, the Commission considers that this remedy would not have been adequate to provide reparations for the consequences of the deportation that had already been executed⁷. In this sense, the Commission recalls that, following its repeated criteria, "the right to submit arguments against deportation is even prior to the right to have a decision revised"⁸. The Commission takes note that the State has indicated that the petitioner was informed of her right to contact the consulate of her country and or a person of trust and to appoint witnesses.

10. The Commission notes that in the instant case the parties have submitted factual allegations that are incompatible with each other with regard to whether, prior to her deportation, the petitioner had the opportunity to establish communication to request legal counsel or the assistance of her country's consulate.

⁷ See, IACHR, Report No. 146/17. Admissibility. Orosmán Marcelino Cabrera Barnes. Mexico. October 26, 2017, paras. 10 and 11.

⁸ IACHR. Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. OEA/Ser.L/V/II.Doc. 46/15 para. 310; see also, IACH, Merits Report No. 49/99, Case 11.610, Loren Laroye Riebe Star, , Jorge Barón Guttlein and Rodolfo Izal Elorz (Mexico); April 13, 1999, para 55; IACHR, Report on Admissibility No. 68/05, Case 11.495, Juan Chamorro Quiroz (Costa Rica), October 5, 2000, paras. 32-36.

In these circumstances, the Commission considers that the applicability of the exception to the requirement of exhaustion of domestic remedies set forth in Article 46.2(b) of the American Convention is inextricably linked to the factual dispute brought forth by the parties; therefore, the Commission, in accordance with Article 36.3(a) of its Rules of Procedure, will join the study of issues concerning the exhaustion of domestic remedies and timelines of the petition with the study of the merits of the case⁹.

VII. COLORABLE CLAIM

11. The Commission notes that the instant petition includes allegations suggesting that the petitioner was unlawfully and arbitrarily deprived of her liberty for 10 days and deported from the territory of the State (without her passport being stamped with the exit order), without being brought to a judicial authority and without having the opportunity to contact the consulate of her country, defend herself and be heard with due guarantees.

12. In light of these allegations, the Commission recalls that the inter-American jurisprudence has been emphatic in pointing out that migratory proceedings must follow due process guarantees, regardless of whether they involve migrants in a regular or irregular situation. This principle is evidently also applicable to cases in which proceedings are undertaken in relation to migrant persons in regular situation for the breach of the conditions imposed to preserve their status.

13. In light of these considerations and after examining the factual and legal elements submitted by the parties, the Commission considers that the allegations of the petitioner are not manifestly groundless and that they require a study of the merits because the alleged facts, if corroborated as true, could constitute violations of Articles 7 (personal liberty), 8 (fair trial), 22 (movement and residence) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

14. The Commission will not undertake an analysis of colorable claim with regards to the allegations of the petitioner that the Commission deemed inadmissible in section VI of this report.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 7, 8, 22 and 25 of the American Convention in relation to its Articles 1.1 and 2;

2. To find the instant petition inadmissible in relation to the claims that refer to the alleged cruel and degrading treatment to which the petitioner was subjected while detained and to the sanction of prohibition of reentry that was imposed on her.

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 13th day of the month of May, 2020. (Signed): Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

⁹ IACHR. Report No. 121/06 (Admissibility). Petition 554-04. John Doe and Others. Canada. October 27, 2006, paras 62 and 63.