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REPORT No. 217/20
PETITION 617-08
REPORT ON INADMISSIBILITY

MARÍA VICTORIA MARTÍNEZ PINEDA AND FRANCISCO AYALA VÁZQUEZ
MEXICO

Approved electronically by the Commission on August 29, 2020.

Cite as: IACHR, Report No. 217/20, Petition 617-08. Inadmissibility. María Victoria Martínez Pineda and Francisco Ayala Vásquez. México. August 29, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	María Victoria Martínez Pineda and Francisco Ayala Vázquez
Alleged victim:	María Victoria Martínez Pineda and Francisco Ayala Vázquez
Respondent State:	México
Rights invoked:	Article 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights ¹ and other international treaties ² .

II. PROCEEDINGS BEFORE THE IACHR³

Date of receipt	May 22, 2008
Notification of the petition to the State:	September 6, 2016
Additional information received at the stage of initial review:	February 15, 2011
State's first response:	June 26, 2017
Additional observations from the the petitioners	October 31, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of instrument made 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	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	No
Timeliness of the petition:	Yes

V. FACTS ALLEGED

1. María Victoria Martínez Pineda and Francisco Ayala Vázquez (hereinafter "the alleged victims") denounce that they were victims of a crime and that after an order for freedom was issued in favor of the alleged victimizer, this order was appealed extemporaneously by the Public Ministry, resulting in the appeal

¹ Hereinafter, "Convention" or "American Convention."

² Refers to articles 7 and 8 of the Universal Declaration of Human Rights

³ The observations submitted by each party were duly transmitted to the opposing party.

being rejected. In addition, they claim that, despite being the aggrieved party, the State did not recognize them procedural legitimacy to appeal on their own behalf the aforementioned release order.

2. The alleged victims report that on May 7, 2005, they were victims of defamation perpetrated by an individual⁴. They formulated a criminal complaint and a private criminal accusation, which served as the basis for the Public Ministry to exercise a criminal action. They indicate that on February 22, 2006, the judge in charge of the criminal process issued a formal order of imprisonment against the person accused of probable defamation. However, the defendant filed an appeal for protection before the Third District Court, which would have only required the criminal judge to grant and motivate the contested prison order. They argue that the criminal judge found and motivated the formal prison order on two occasions, despite the fact that the amparo judge introduced up to three times new considerations not originally contemplated in the enforcement of amparo.

3. They also allege that a new judge subsequently took over the criminal court in which the case against the alleged victimizer was being brought forward. They maintain that said judge did not take into account the criminal case and was pressured by the amparo judge, for which he issued a release order in favor of the one denounced on April 18, 2007, after considering that the configuration elements were not accredited for the crime of defamation. They indicate that on April 23, 2007, the agent of the Public Ministry in charge of the release decision was notified and was granted a period of three days to appeal. They argue that said agent initially refused to appeal the liberty order; and that, after several efforts by the alleged victims, he fraudulently filed it out of time, and as a result the appeal was rejected.

4. Mrs. Pineda filed an appeal against the order of freedom for lack of merit. For their part, the Public Prosecutor's Office and Mr. Vásquez, in their capacity as interveners, filed appeals for a denial of appeal against the decision of the Second Juvenile First Instance Criminal Judge; both were denied in a resolution of October 11, 2007 by the First Chamber of the First District of the Superior Court of Justice of the State of Morelos. The Court considered that the representative of the Public Ministry did not have the legitimacy to file an appeal for a denied appeal because his right to appeal had precluded. It also decided that the alleged victims lacked procedural legitimacy to file the aforementioned remedies since, under the Constitution, the exercise of criminal action corresponded exclusively to the Public Ministry; and because the law only authorized the interveners to appeal the decisions that imply the impossibility of obtaining reparation for damages, and these conditions had not been met.

5. On November 5, 2007, the alleged victims filed an appeal for protection against the decision of the First Chamber of the First District, which was rejected as inadmissible by the president of the First Collegiate Court of the Eighteenth District since the conditions for standing were not met by the recurring persons, conditions which were limited to acts emanating from the damage repair or civil liability incident or acts arising within the criminal procedure. The alleged victims indicate that this decision was notified to them on November 26 and 27, 2007, and that it was final according to the provision of December 5, 2007 notified by list on December 6, 2007.

6. The alleged victims consider that the Constitution of the United Mexican States and the laws of the State of Morelos are contrary to the American Convention and the Universal Declaration of Human Rights, since they do not allow persons offended by a crime to file an appeal against acts that grant freedom to the accused person. They also allege that the Public Ministry violated international provisions by not filing the appeal in a timely manner.

7. The alleged victims maintain that they have exhausted all domestic remedies for criminal justice. They allege that the remedy of revision or claim contemplated that articles 103 and 107 of the Constitution is not applicable to their case, because the offended person can only promote protection in an incident of damage repair. Consequently, they consider that a reform is required to extend the protection to

⁴ Specifically, they allege that the alleged victimizer, having a discussion with the mother of María Victoria Martínez Pineda, told her that "get out of my old gossip house, that is what you should say to your black daughter, Indian, daughter of the fuck and her husband the joto-puto".

protect individuals. They also argue that it would be useless to continue civil actions to repair the damage, since the alleged victimizer died several years ago.

8. The State, for its part, points out that the petition must be inadmissible because it does not expose human rights violations; and that the petitioners intent for the Commission act as a fourth instance. It indicates that the competent authorities - the Morelos Attorney General's Office and the state and federal Judiciary - analyzed the claims raised by the petitioners, and that the pertinent determinations were issued in a well-founded and motivated manner. Regarding the omission of the Public Ministry to appeal the liberty order, said decision was taken in exercise of its powers. The State highlights that the legislation contemplates the assumption that the Public Ministry decides not to contest the constitutional term order, which does not constitute a violation of human rights; and that the alleged victims did not have legal personality to file the appeal.

9. The State also alleges that the petition must be inadmissible for lack of exhaustion of domestic remedies by the alleged victims. It highlights that they failed to make their claim through ordinary civil channels, as authorized by the legislation of the State of Morelos; and that this was a suitable and accessible mechanism to claim for possible damages to their legal rights.

10. Likewise, it maintains that the alleged victims failed to file a remedy of complaint against the declaration of inadmissibility of their amparo action, as provided for in article 103 of the amparo law, to which they had access, as this was a remedy allowed against the processing agreements issued by the Presidents of the Collegiate Circuit Courts.

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

11. The Commission observes that the State has referred to the remedy of complaint as a remedy not exhausted by the alleged victims, which could have been suitable to remedy the grievances raised. For their part, the alleged victims have alleged that the remedy of amparo was not applicable to their case because it was only appropriate against incidents of damage reparation. However, they have not provided norms or jurisprudential decisions that endorse said assertion, rather they limited themselves to pointing out that the President of the First Collegiate Court of the Eighteenth District declared there action for amparo inadmissible under these arguments.

12. To determine the possible ineffectiveness of a remedy, the Commission must have before it elements that allow it to effectively assess the probable result of the actions of the petitioner. Merely doubting the prospects of appearing before the court is not enough to exempt the petitioner from exhaustion of domestic remedies⁵.

13. No evidence emerges from the parties' allegations or from the records of the file that allow the Commission to conclude that it was impossible for the remedy of complaint to result in the Collegiate Court reversing the decision of inadmissibility of its President; Consequently resulting in the amparo action filed by the alleged victims being admitted. For this reason, the Commission concludes that failure to exhaust the remedy of complaint makes the petition inadmissible for not complying with the requirements of Article 46.1 (a) of the American Convention.

VII. ANALYSIS OF CHARACTERIZATION OF THE ALLEGED FACTS

14. In view of its conclusions detailed in section VI of this report, the Commission will not carry out an analysis as to whether the facts set forth in the petition could characterize violations of the instruments under its jurisdiction.

⁵ IACHR, Report No. 18/12, Petition 161-06. Admissibility. Adolescents sentenced to life in prison without parole. United States. March 20, 2012, para. 47..

VIII. DECISION

1. To declare this petition inadmissible, pursuant to Article 46.1.a of the American Convention;
and

2. Notify the parties of this decision; 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 29th day of the month of August, 2020. (Signed): Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.