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**REPORT No. 209/21**  
**PETITION 1526-10**  
REPORT ON INADMISSIBILITY

JORGE ALBERTO RODRÍGUEZ  
ARGENTINA

Electronically approved by the Commission on September 7, 2021.

**Cite as:** IACHR, Report No. 209/21]. Petition 1526-10. Admissibility. Jorge Alberto Rodríguez. Argentina. September 7, 2021.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Andrés Sergio Marutian
Alleged victim	Jorge Alberto Rodríguez
Respondent State	Argentina
Rights invoked	Articles 8 (fair trial) and 24 (right to equal protection) of the American Convention on Human Rights <sup>1</sup> in relation to its articles 1.1 (obligation to respect rights)

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

Filing of the petition	October 26, 2010
Notification of the petition to the State	December 3, 2015
State's first response	October 4, 2016
Additional observations of the petitioner	August 30, 2017
Additional observations of the State	June 26, 2019

**III. COMPETENCE**

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	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 <i>res judicata</i>	No
Rights declared admissible	None
Exhaustion or exception to the exhaustion of domestic remedies	No, as detailed in Section VI
Timeliness of the petition	N/A

**V. SUMMARY OF ALLEGED FACTS**

1. The petitioner alleges that the State violated the rights of Mr. Jorge Alberto Rodríguez, Minister of Culture and Education of Argentina between 1992 and 1996 and National Chief of Cabinet of Ministers from 1996 to 1999, in the framework of a criminal proceeding for alleged attempt to defraud the public administration.

2. The petitioner narrates that on April 23, 2004 a complaint was filed with the Federal Criminal and Correctional Chamber, noting that in the process followed against a former employee for illicit enrichment, a witness revealed the existence of a parallel system of salary payments, with funds assigned to security expenses of the National State through secret laws, during the two presidencies of Carlos Menem (1989-1999). Within the framework of said case, the alleged victim provided a preliminary statement and was accused of having intervened in the payment of the investigated illegal supplementary payments, by virtue of having assigned secret and/or reserved funds to his Ministry. Subsequently, he was called again to give a preliminary statement, being charged with having redirected reserved funds assigned to the Chief Cabinet of Ministers to a

<sup>1</sup> Hereinafter, "the American Convention", or "the Convention".

<sup>2</sup> The observations of each party were duly notified to the other party.

discretionary system of payment of supplementary salaries to different officials of the National Executive Power.

3. On September 10, 2007, the Federal Judge of First Instance issued an order of lack of merit in relation to the procedural situation of Mr. Rodríguez. Said order was appealed and the matter then went to the Federal Court of Appeals, which, on July 3, 2008, decided to revoke the lack of merit and ordered the prosecution of Mr. Rodríguez, as a direct participant in the subtraction of funds. Mr. Rodríguez filed an appeal for cassation on August 11, 2008, arguing: (1) that the right of the natural judge had been violated, since the Appeals Chamber was not competent to issue an indictment (it would only be responsible for revoking the resolution and order the First Instance Judge to issue a new one); (2) that the right of defense had been violated as he was prevented from appealing the prosecution ruling before a higher court, losing the only ordinary recourse granted by law and removing the guarantee of review of convictions; and (3) that the principle of consistency and, consequently, of defense in court, was violated for having prosecuted Mr. Rodríguez for an act other than the one investigated. The petitioner indicates that at the time the preliminary statement was received, he was charged with *"having applied the reserved funds [...] to a discretionary system for the distribution of sums of money [...] to different officials of the National Executive Power"*, while the Chamber of Appeals processed him for a different fact, which was *"possible participation in the procedure for the distribution of illegal supplementary salaries."* Likewise, he requested the annulment of the judgement because, in his opinion, it lacked motivation.

4. On August 22, 2008, the Federal National Criminal and Correctional Chamber granted the appeal; but on November 10, 2008, Chamber IV of the National Chamber of Criminal Cassation decided to declare the appeal for cassation wrongly granted because it was considered that the indictment was not final or comparable to a definitive sentence, due to the circumstance that it had been directly ordered by the Appeals Chamber. The petitioner party alleges that, as a consequence, the guarantee of review of convictions was not complied with, since, in substance, it was a resolution that rejected the recursive remedy in limine without studying the merits of the matter. Likewise, he alleges that by denying him the right to obtain the review of his indictment, the right to equality before the law was violated, as it is a right ordinarily observed in any other criminal proceeding. Finally, he alleges that the resolution was not validly issued. He indicates that Drs. Augusto Diez Ojeda and Gustavo Hornos rejected the appeal and that Dr. Mariano González Palazzo issued a dissenting opinion. However, Dr. Hornos did not sign the resolution, because he was on leave, resulting in a technical tie where the absolute majority of votes required by law would not have existed, in violation of the right to defense and due process.

5. Therefore, the defense of Mr. Rodríguez filed an extraordinary federal appeal, which was declared inadmissible on September 18, 2009 by the National Chamber of Criminal Cassation of the City of Buenos Aires, for not constituting a definitive judgment ending the procedure or have demonstrated a damage impossible or insufficient to be subsequently repaired. He filed a complaint against this judgment, which was dismissed in limine by the Supreme Court of Justice on May 4, 2010, for not constituting a final or comparable to a definitive judgement, without ruling on the merits.

6. The petitioner indicates that, with said decision, and contrary to what the State maintained, domestic remedies were exhausted, as there is no judicial recourse to challenge said resolution. He argues that Article 8.2 of the American Convention does not require that the decision results in a conviction, and that the Argentine Supreme Court held that the guarantee of review of convictions must be guaranteed in the instances prior to its intervention, for which reason it is the lower courts that have the obligation to guarantee the right to double instance.

7. The petitioner party maintains that an indictment ordered by the appeals chamber, as in this case, that revokes or modifies a merit decision of the judge of appeals to the detriment of the defendant, has the potential to be considered comparable to a definitive decision, and consequently, the merits should have been evaluated with by the intermediate court, in this case: the National Chamber of Criminal Cassation.

8. Lastly, the petitioner argues that although the case was initiated in 2004, the investigated acts were committed between 1996 and 1999, making the purpose of the indictment, in his opinion, anomalous in

order to avoid the statute of limitation of the criminal action, because if the Chamber had followed the legally established procedure, the case would have prescribed during the ordinary routine procedure.

9. For its part, the State alleges that the petition should be declared inadmissible for failure to exhaust domestic remedies. He indicates that from the petitioner's own statements and from the verification of the judicial proceedings, it appears that the claims are still being reviewed before domestic judicial authorities. He reports that on December 16, 2010, the prosecution requested that the petitioner's prosecution be extended, and on July 13, 2011, the court hearing the case decided to declare that the prosecution issued on July 3, 2008 included the fact of having collected monthly sums of money from reserved expenses of the budget during his tenure as Minister of Culture and Education, until 1996.

10. On September 5, 2012, in response to the petitioner's appeal for annulment, Chamber I of the Appeals Chamber decided to declare the annulment of the extension order, so on December 28, 2015, the original Court reformulated the petitioner's prosecution, stating that the prosecution of July 3, 2008 included the fact that he issued monthly payments using reserved expenses between 1983 and until May 2004, time in which he served as National Minister of Culture and Education. On February 4, 2016, the petitioner party appealed that decision. On August 28, 2017, Federal Criminal and Correctional Court No. 6 submitted Mr. Rodríguez's case to partial trial.

11. Finally, it informs that on May 3, 2019, the Federal Oral Criminal Court No. 4 indicated that the case was being processed without the parties having yet been summoned, given that the Court did not have its definitive composition. Thus, the judicial case is in being processed, providing the petitioners with adequate and effective domestic remedies to resolve the grievances that they prematurely raised in the international arena.

12. Likewise, the State argues that the guarantee of review of convictions as set forth in the Convention refers to convictions, not considering said provision to scenarios such as that proposed by the petitioner, which in no way implies a conviction, but rather the prosecution of the accused. It indicates that given the dynamics of the investigation process, both the prosecution and the lack of merit are susceptible to be appealed, and therefore do not cause a status of *res judicata*.

13. Similarly, the State argues that the file shows the complainant's disagreement with the decisions issued in the context of his prosecution, by revoking the order of lack of merit, and the subsequent appeals attempted. It highlights

14. Finally, the State notes with concern that the petitioner's initial presentation, dated October 28, 2010, was forwarded to the State five years later.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

15. The Commission observes that on September 10, 2007, the Federal Judge of First Instance issued an order of lack of merit in relation to the procedural situation of Mr. Rodríguez, which was revoked, and on July 3, 2008, the Federal Court of Appeals ordered the prosecution of Mr. Rodríguez. The petitioning party then presented an appeal for cassation, granted on August 22, 2008, a decision annulled by Chamber IV of the National Chamber of Criminal Cassation on November 10, 2008. An extraordinary federal appeal was then filed, declared inadmissible on September 18, 2009, and then a complaint appeal, dismissed in limine by the Supreme Court of Justice on May 4, 2010. The petitioner party indicates that with said decision the domestic remedies were exhausted, in relation to the violation of the right to the double instance, to the defense, to equality and to the natural judge in relation to the prosecution.

16. For its part, the State argues that the domestic remedies were not exhausted, since the case is still being reviewed. It reports that on December 16, 2010, the prosecution requested that the petitioner's prosecution be extended and on July 13, 2011, and, on December 28, 2015, the Court of origin reformulated the petitioner's prosecution, which was appealed by the petitioner party. The Federal Criminal and Correctional Court No. 6, Secretariat No. 12 reported that the case was partially brought to trial on August 28, 2017. Finally,

on May 3, 2019, the Federal Oral Criminal Court No. 4 indicated that the case was being reviewed without the parties having yet been summoned since the Court did not have its definitive composition.

17. In this regard, the Commission observes, based on the information provided by both parties at the time of this report, that the process is still ongoing before the Federal Oral Criminal Court; and that, on two occasions, the Supreme Court rejected an extraordinary appeal by the petitioner on the grounds that the judgments were not final, or an irreparable damage was not demonstrated.

18. The Commission also observes that on July 13, 2011 and on December 28, 2015, the court of origin reformulated the petitioner's prosecution, modifying the indictment of July 3, 2008. Likewise, the petitioner party presented an appeals against said judgment on February 4, 2016, showing that domestic remedies have not been exhausted. Consequently, the existence of a final decision is not proven, based on the universally accepted principle of *res judicata*, since the process is open. Therefore, the Commission concludes that the requirement of Article 46.1.a) of the American Convention was not met.

19. Furthermore, the IACHR reiterates that the interpretation of the law, the pertinent procedure, and the evaluation of the evidence is, among others, the exercise of the function of domestic jurisdiction, which cannot be replaced by the IACHR.<sup>3</sup> In this sense, the function of the Commission is to guarantee compliance with the obligations assumed by the States parties to the American Convention, but it cannot act as a court of appeal to examine alleged factual and legal errors that may have been committed by national courts that have acted within the limits of their jurisdiction.<sup>4</sup>

## **VIII. DECISION**

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; 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 7<sup>th</sup> day of the month of September 2021. (Signed): Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice-President; Flavia Piovesan, Second Vice-President; Margarete May Macaulay; Esmeralda E. Arosemena Bernal de Troitiño; Joel Hernández García and Edgar Stuardo Ralón Orellana, Members of the Commission.

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<sup>3</sup> IACHR, Report N 83/05 (Inadmissibility), Petition 644/00, Carlos Alberto López Urquía, Honduras, October 24, 2005, par. 72.

<sup>4</sup> IACHR, Report N 70/08 (Admissibility), Petition 12.242. Pediatric clinic of the Lake region, Brazil, October 16, 2008, par. 47.