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REPORT No. 91/17
PETITION 1400-07
REPORT ON INADMISSIBILITY

ADRIANA SONIA PERALTA
ARGENTINA

Approved by the Commission at its session No. 2093 held on July 7, 2017.
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Argentina. July 7, 2017.

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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Adriana Sonia Peralta ¹
Alleged victim:	Adriana Sonia Peralta
State denounced:	Argentina
Rights invoked:	Articles 8 (Right to a Fair Trial), 21 (Right to Property), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	October 25, 2007
Additional information received at the initial study stage:	April 9, 2010
Date on which the petition was transmitted to the State:	September 30, 2010
Date of the State's first response:	July 23, 2013
Additional observations from the petitioning party:	April 29, 2015
Additional observations from the State:	April 15, 2016

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 (ratification instrument deposited on September 5, 1984)

IV. ANALYSIS OF 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:	Yes; April 24, 2007
Timeliness of the petition:	Yes; October 25, 2007

¹ This petition was initially filed by Adriana Sonia Peralta, Juan Carlos Vega and Christian Guillermo Sommer. On April 29, 2015 Ms. Peralta informed the IACHR that only she would appear as a petitioner.

² Hereinafter "the American Convention" or "the Convention."

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

V. ALLEGED FACTS

1. Ms. Sonia Adriana Peralta (hereinafter “the petitioner,” “the alleged victim” or “Ms. Peralta”) alleges that she filed a suit against her employer, *Automóvil Club Argentino, S.A.* (hereinafter “Automóvil Club” or “the company”) on the grounds that she suffered from severe health conditions as a result of her work for ten years. According to the available information, the petitioner suffers from injuries to her cervical spine, lumbar spine, wrist and knees. She stresses that she was deprived of appropriate judicial protection by the domestic courts. Likewise, she asserts that the compensation scheme established in the Law No. 24557, known as the Labor Risks Law (hereinafter “LRL”) is contrary to the American Convention provisions since the LRL *a priori* excludes the possibility that a large number of people can exercise the right to obtain compensation for occupational diseases.

2. As a result of the initial lawsuit filed by Ms. Peralta, the Tenth Chamber of the Labor Court of Córdoba declared Articles 6.2 and 39.1 of the LRL⁴ unconstitutional for excessive restriction of Ms. Peralta’s access to compensation for occupational accidents and diseases, deprivation of her right to resort to a civil court to request reparation. The first-instance court established a cause relationship between the alleged victim’s work at the company and her health conditions, and sentenced the company to pay a specific sum in compensation for damages of partial and permanent occupational disability and moral damages. According to the information submitted, the compensation sum ordered was of 151,675.91 Argentine Pesos (equivalent to the same amount in dollars). The company appealed against this ruling.

3. As a result, on August 24, 2004 the Labor Chamber of the Higher Court of Justice of Córdoba annulled the judgment that had been fully appealed against, and sentenced the petitioner to pay the costs of the proceedings. The court revoked the first-instance judgment on considering that there was no causal link between Ms. Peralta’s health decline and her work at the company, and that the illnesses or health conditions she suffered from were not included in the list of the LRL. The court moreover ruled that, although the LRL could be eventually applied, said law was not unconstitutional and that the company had not incurred into any malicious conduct such that could have generated its civil liability.

4. The alleged victim filed a special appeal against the resolution of the Labor Chamber of the Higher Court of Justice of Córdoba, before this court; but it was rejected. Consequently, she filed an appeal to the refusal before the Supreme Court of Justice of Argentina. However, on April 24, 2007, the Supreme Court dismissed the appeal. The alleged victim indicates that this appeal was rejected without sufficient legal grounds as the Supreme Court merely established that “the special appeal, whose denial gave rise to this appeal of complaint, is inadmissible (Art. 280 of the National Code of Civil and Commercial Procedure). Therefore, the appeal of complaint is dismissed”; thus it confirmed the lower judgment.

5. The petitioner claims that by dismissing her appeal of complaint, the Supreme Court of Justice violated her rights to non-discrimination, justice and a fair trial, which are enshrined in the American Convention. In addition she asserts that it also violated her right to equal protection established in Article 24 of the American Convention, since she claims that the Supreme Court of Justice had already established the un-constitutional nature of Articles 6.2 and 39.1 of the LRL in the framework of the Aquino⁵ and the López⁶ cases, by resolutions prior to the dismissal of her appeal.

6. The petitioner furthermore submits that, as opposed to the State’s observations, she was not in any way assisted with the treatment of her illnesses nor was she compensated for the damages as her

⁴The petitioner cites Article 6.2: “Occupational diseases are those included in the list of occupational diseases to be made and reviewed annually by the Executive Power, under Article 40 par. 3 of this law. The list must identify risk factors, symptoms and activities, to determine an occupational disease. Article 39.1: The benefits established by this law exempt employers from any civil liability concerning their employees and the rightful successors of the latter, with the sole exception established in Article 1072 of the Civil Code.

⁵The petitioner cites a resolution by Argentina’s Supreme Court of Justice (CSJN): CSJN. *AQUINO, Isancio v. Cargo Servicios Industriales S.A. on accidents law 9888*. September 21, 2004.

⁶The petitioner cites CSJN. *López Carlos Manuel v. Benito Roggio e Hijos, S.A.-Ormas SAICIC UTE (CLIBA)*. August 8, 2006.

health conditions were not listed in the LRL then in force. Likewise, she claims that her petition's assessment by the Inter-American Commission on Human Rights ("the Inter-American Commission" or "the IACHR") is not a fourth-instance procedure as the legal actions described in this petition concern the non-compliance with several provisions of the American Convention.

7. On the other hand, the State claims that it was notified of the petition four years after the petitioner had filed it to the IACHR. It indicates that it is inadmissible since it is not related to facts that may establish violations of the rights embodied in the American Convention. It believes that *prima facie* there are no violations of the alleged victim's right to due process or other rights protected by the Convention.

8. It submits that the lawsuit between Ms. Peralta and *Automóvil Club* was lawfully conducted by the courts established by the legal system and that a final resolution was issued by the National Supreme Court of Justice, in accordance with both the alleged victim and the company's right to a fair trial. Moreover, it claims that the second-instance judgment partially annulled the first-instance ruling but did not deprive the alleged victim of her right to compensation. It also submits that the alleged victim resorted to the appropriate legal remedies foreseen by the legal framework and that in every case she got a specific ruling from the competent courts. It asserts that the petitioner therefore seems to request the Inter-American Commission to act as a fourth instance in relation to domestic legal decisions.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. The petitioner asserts that the domestic remedies were exhausted by the decision issued by the Supreme Court of Justice on April 24, 2007, which was notified on May 2, 2007. In turn, the State does not allege lack of exhaustion of domestic remedies. Therefore, in view of the information available in the petition's file and given that the parties do not controvert in this respect, the Inter-American Commission believes that the domestic remedies were definitely exhausted through the Supreme Court's decision. Consequently, this petition meets the requirement set forth in Article 46.1(a) of the American Convention.

10. On the other hand, the State claims that it is not certain that the petition was lodged within the six-month period established in the American Convention, as it ignores the specific date when it was filed to the IACHR. In this regard, the IACHR confirms that the instant petition was received by its Executive Secretariat by e-mail on October 25, 2007. As a result, the IACHR concludes that the petition meets the timeliness requirement established in Article 46.1(b) of the American Convention.

11. The Inter-American Commission takes note of the State's complaint concerning the untimely notification of the petition. In this regard, the IACHR states that after a petition has been received, there is no deadline for it to be transmitted to the State under neither the American Convention nor the Commission's Rules of Procedure. It also affirms that the periods established in the Rules and the Convention for other processing stages do not apply by analogy.⁷

VII. COLORABLE CLAIM

12. The petitioner submits that the lack of a substantial judicial review concerning the unfavorable decision made by Tenth Chamber of the Labor Court of Córdoba as well as the application of Articles 6.2 and 39.1 of the LRL to the specific case of the complaint she filed in the domestic framework may establish violations of the rights embodied in Article 8 (Fair Trial), 21 (Property), 24 (Equal Protection) and 25 (Judicial Protection) of the American Convention. On the other hand, the State particularly claims that the complaint that the alleged victim filed in the domestic legal framework was heard by all the corresponding judicial instances, in accordance with due process of law and the right to a fair trial, and that a clear judgment was issued in each of the remedies lodged.

⁷ See for instance IACHR, Report No. 56/16. Petition 666-03. Admissibility, Luis Alberto Leiva. Argentina. December 6, 2016, par. 29; and I/A Court H. R., *Case of Mémoli v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2013. Series C No. 265, paras. 30-33.

13. In this respect and in view of the information submitted by the parties, the nature of this case and its own precedents, the Inter-American Commission notes that the alleged victim was able to file her petition to the competent courts, that the petition was settled in a justified manner by two courts, and that the second-instance ruling was unfavorable to the petitioner's interests. The Commission considers that the fact that the unfavorable decision that the petitioner got in the second-instance civil proceedings was not subjected to a substantial review by a third instance does not *prima facie* establish a violation of the American Convention. Moreover, the Commission notes that the petitioner does not present specific pleadings nor submit elements that at least *prima facie* indicate that the domestic judicial authorities infringed due process of law.

14. As to the alleged violation of Article 24 of the Convention, the Inter-American Commission has established that "the right to equal protection of the law cannot be assimilated to the right to have the same resolution granted in all the proceedings concerning the same matter." According to the instant petition, the petitioner claims that Argentina's Supreme Court of Justice denied her access to the compensation requested as it did not admit the appeal of complaint she filed, as opposed to similar cases in which it did issue a favorable decision in relation to the matter at issue. In this regard, the Commission considers that the mere citation that other decisions made on the same matter had a different result does not suffice to *prima facie* establish a possible violation of Article 24 of the Convention.

15. Consequently, based on the foregoing, the Commission concludes that the instant petition does not meet the requirement set forth in Article 47(b) of the American Convention, as *prima facie* there are no facts that may establish violations of the rights invoked by the petitioner.

VIII. DECISION

1. To find the instant petition inadmissible;
2. To notify the parties of this decision;
3. 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 in the city of Lima, Peru, on the 7th day of the month of July, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, and Luis Ernesto Vargas Silva, Commissioners.