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REPORT No. 127/19
PETITION 1804-10
REPORT ON INADMISSIBILITY

NATALIO GUILLERMO PERÉS
ARGENTINA

Approved electronically by the Commission on August 14, 2019.

Cite as: IACHR, Report No. 127/19, Petition 1804-10. Inadmissibility. Natalio Guillermo Perés.
Argentina. August 14, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Natalio Guillermo Perés
Alleged victim:	Natalio Guillermo Perés
Respondent State:	Argentina
Rights invoked:	Article 8 (fair trial), Article 9 (legality and retroactivity), Article 21 (private property), Article 24 (equality before the law), and Article 25 (judicial protection) of the American Convention on Human Rights ¹ in connection with its Article 1 (obligation to respect rights) and Article 2 (duty to adopt provisions under domestic law); and Article XVIII (justice) and Article XXVI (due process of law) of the American Declaration of the Rights and Duties of Man; ² and other international instruments. ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	December 16, 2010
Additional information received at the stage of initial review:	January 13 and April 20, 2011, November 22, 2016, and January 31, 2017
Notification of the petition to the State:	January 31, 2017
State's first response:	June 12, 2017
Additional observations from the petitioner:	October 2, 2017 ⁵
Additional observations from the State:	September 8, 2017, June 29, 2018, and June 3, 2019

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 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:	Yes, on the terms of Section VI
Timeliness of the petition:	Yes, December 16, 2010

V. ALLEGED FACTS

1. The alleged victim reports that he was dismissed from his office as judge of the Court of Auditors of the province of La Pampa, on the basis of a single instance proceeding that did not comply with the guarantees required by the American Convention.

¹ Hereinafter "Convention"

² Hereinafter "Declaration"

³ Articles 10 and 11.1 of the Universal Declaration of Human Rights, and Articles 14.1 and 14.4 of the International Covenant on Civil and Political Rights.

⁴ The observations submitted by each party were duly transmitted to the opposing party.

⁵ The petitioner has subsequently forwarded briefs requesting the petition's admissibility.

2. He points out that, since 1997, he has held various posts in the Judicial Branch, being chosen in 1998 to be the President of the Court of Auditors of the province. He indicates that, on September 29, 2008, impeachment and removal proceedings were filed through an impeachment jury⁶ for the alleged perpetration of the offense of failing to fulfill his duties as a public official.⁷ He alleges that, in the course of the proceedings, there were irregularities. Thus, for example, he indicates that, when one of the attorneys comprising the jury died, attorney Emil Konkurat was appointed to be the alternate replacing him, without resorting to the drawing of lots as required by law and despite the fact that this attorney had previously issued a minority vote in an impeachment jury against authorities of the Court of Auditors. He indicates that he filed an appeal against including Konkurat, which was dismissed on December 16, 2008, because it had been filed 50 minutes late, although the jury subsequently ruled that the time-limits had been suspended that day. He adds that the jury also refused to include the evidence submitted by him to highlight the fact that daily reports were the responsibility of the chambers' rapporteurs and not that of the president.

3. He indicates that, during the trial, he requested that Article 46 of Provincial Law 313⁸ be declared unconstitutional, alleging that it violated the right to a second hearing, and this appeal was dismissed by the jury in the judgment because it believed that it did not have the jurisdictional powers to deal with it. On February 23, 2009, the petitioner requested the jury to issue a judgment of acquittal in his favor on the basis of Article 52 of Law 313.⁹ He alleges that this request was dismissed by the majority of the jury, which considered that the time-limits would expire on March 3, 2009, because the deadlines for proceedings were suspended in the province for various days because of work stoppages and a strike. The petitioner argues that this position was inconsistent with the prior action taken by the jury because, during these days which were supposedly non-working days, the jury carried out various procedural activities,¹⁰ the most noteworthy of which was the return of his appeal filed against the incorporation of the attorney Konkurat because it was late. He indicates that, in the decisions of February 28 and March 1, 2009, the jury concluded the trial by ordering his dismissal for "misconduct in the performance of his duties," but it did not charge him with any criminal offense although it had the competence to do so.

4. The petitioner considers that the above-mentioned trial did not comply with the guarantees required by the American Convention¹¹ because of the following reasons: the right to a second hearing was not respected, the trial jury violated the principles of a natural and competent judge when it illegally incorporated the attorney Konkurat and when the trial continued although the jury had lost its temporal jurisdiction to convict him; the principle of reasonable time was violated because it was set by law at 90 days and the ruling was however issued 142 days (101 working days) after the trial started; and the impeachment jury exercised both investigating¹² and judging duties, in violation of the principle of impartiality.¹³

5. Against the judgment by the impeachment jury he filed an appeal on constitutional grounds¹⁴ and for cassation,¹⁵ which was turned down, first, by the impeachment jury on March 18, 2009 and,

⁶ Process governed by Provincial Law 313, the impeachment jury shall be comprised of the President of the Superior Court of Justice, two federally certified attorneys, and two congresspersons.

⁷ He indicates that the process had its origin in the complaint filed by a prosecutor regarding the failure to audit and monitor the treasury account of the Autonomous Provincial Housing Institute (*Instituto Provincial Autárquico de la Vivienda*) in the Bank of La Pampa.

⁸ Established that "There can be no appeal against the ruling, except for the appeal for clarification."

⁹ Established that "the trial must necessarily end within 90 days after it started. Suspending the trial or the failure to reach a verdict shall lead to an instance of acquittal simply because of the expiration of the time-limits that were established."

¹⁰ Among others, the provision of evidence, authorization of the court recess, and notifications.

¹¹ He also considers that the decision failed to be logical because he was held liable for actions for which the President of the Court of Auditors could not be held liable, according to the internal regulations of this court.

¹² He alleges that the jury did not confine its actions to a minimum investigation to check the reality behind the complaint but rather it also investigated another kind of evidence in participation of the accused. Article 31(3) of Law 313 establishes that: "If the complaint is *prima facie* admissible, the jury will hear the judge or official and then order, if it believes it is advisable, a summary investigation through the Presidency, and depending on the merits it will process the complaint or dismiss it."

¹³ He also specifically questions the absence of impartiality of jury member Konkurat.

¹⁴ Because of the absence of a second instance.

¹⁵ Against the declaration of dismissal, requesting nullification for loss of jurisdiction, impartiality, and absence of the declaration of unconstitutionality *ex officio*.

subsequently, by the Superior Court of Justice of La Pampa¹⁶ on August 20, 2009, indicating the absence of suitable grounds regarding due process of law and the right to a defense, which authorize the filing of appeals. Afterwards, he filed a special federal appeal, which was dismissed by the Superior Court of Justice on October 14, 2009, because he was not able to prove “neatly, unequivocally and conclusively that the standards governing the impeachment were violated.” In the face of this dismissal, he filed an appeal of complaint with the Supreme Court of Justice of the Nation, whose dismissal was notified to him on June 16, 2010. The petitioner says that these appeals cannot be viewed as a second instance because they did not allow the merits of the case to be reviewed.

6. Finally, he points out that proceedings were filed against him in the ordinary criminal justice system for the same incidents on which the impeachment jury had already ruled, although the latter had decided it would not proceed to file criminal charges. He argues that this constitutes a violation of the guarantee *non bis in idem* [double jeopardy], in addition to being an example of political persecution. He also contends that the charges make no sense because he is being accused of failing to exercise controls that did not pertain to his duties and that the judge in charge of the investigation has failed to be impartial.

7. As for the state, it points out that the petitioner had access to remedies under domestic law in which he expounded his case and provided evidence, thus securing responses to all of his arguments with impartiality and absolute respect for the rules of due process. It considers that it is inadmissible for the petitioner to wish the Commission to act as a fourth instance to review decisions with which he disagrees. As for the alleged absence of a second instance, it indicates that the Supreme Court of Justice of the Nation had already determined that the decisions of impeachments are only liable to judicial review when it has been proven that there has been a violation of one of the rights or guarantees set forth in Article 18 of the National Constitution and that, in the present case, that was not the case.¹⁷ Regarding the alleged absence of impartiality of the jury member Konkurat, it points out that the Court of Justice responded to this claim, concluding that disqualifications based on the intervention of the judges in previous decisions corresponding to their legal duties are clearly inadmissible.

8. Likewise, it mentions that impeachment for the removal of judges is a constitutional process which is based on due process of law and has clear-cut stages. Regarding the grievance about the expiration of the legal term for concluding the process, it contends that it was duly dealt with by the Superior Court of Justice of La Pampa, which ruled that Law 313 uses, in its Articles 35 and 36,¹⁸ the terms of “hearings” or “trial” to refer to the same concept, as a result of which the delay had to be calculated as of the plenary hearing and therefore there was no failure to comply with it. As for the alleged unlawful appointment of a member of the jury, it alleges a hearing was held for the purpose of drawing the respective lots to proceed with the appointment of two regular attorneys and four alternates, a situation that was consented to by the petitioner at that time. Regarding the alleged absence of impartiality of the impeachment jury because the same court both investigated and decided the case, it indicates that the impeachment jury itself reviewed this argument and concluded that it had not conducted any investigative action although it was entitled to do so and that there were no elements that could have undermined the impartiality of the acting jury members. This claim was then dismissed by the Superior Court, when it considered that the potential unconstitutionality of Law 313 because of an alleged duality of duties was not filed on the first opportunity that the petitioner had to do so (the response to the accusation). It stressed that the proceedings were also

¹⁶ As for the claim regarding the statutory limits of the temporal competence of the impeachment jury, he considers that the Superior Court of Justice engaged in an unlawful *reformatio in peius* because it determined that the 90-day delay must be calculated as of the start of the oral trial, although none of the parties had appealed the fact that the delay had started to run as of the admissibility of the complaint on September 29, 2008.

¹⁷ In the judgment of the Supreme Court of Justice of the Nation of June 1, 2010, the precedent of “Graffigna Latino” was cited (Rulings: 308:961) on the basis of which said court has invariably supported the doctrine referring to assumptions in which a judicial review of the decisions adopted in so-called impeachment proceedings is admitted.

¹⁸ “Article 35: The president of the jury is entitled to conduct procedures, by summoning the interested parties, at their request, or *ex officio*, that were impossible to carry out in the hearing and to receive any statement or report from the persons who cannot presumably attend the trial.” “Article 36: ... The jury shall set the compensation for witnesses who must appear when they do not reside in the place of the trial and request it.”

reviewed by the Supreme Court of the Nation, which concluded that the petitioner was dismissed by the competent authority after the case was substantiated as envisaged in the provincial legal framework.

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

9. The petitioner indicates that the remedies under domestic law were exhausted when the Supreme Court of Justice of the Nation issued its ruling on June 1, 2010, notified on June 16, 2010. The state, for its part, has no objection to the fact that the domestic jurisdiction has been exhausted, but points out that the appeals regarding the absence of impartiality of the impeachment jury and the unconstitutionality of the provincial law were not presented timely.

10. Regarding the claims about the violations of the petitioner's rights in the context of the impeachment that is being carried out, the Commission considers that the remedies under domestic law were exhausted with the resolution notified on June 16, 2010, issued by the Supreme Court of Justice of the Nation. Therefore, this part of the petition fulfills the requirements of Article 46.1 of the American Convention. The petition was filed on December 16, 2010 and therefore complies with the delay set forth in Article 46.2 of the same legal body and is therefore admissible.

11. The state has alleged that the petitioner did not file, on the first opportunity in the proceedings, its claims regarding the possible unconstitutionality of the provincial law for allegedly attributing to the impeachment jury both investigative and judgment duties in the same trial. Regarding this, the Commission observes that, when it was presented with the possibility of unconstitutionality because of the absence of a second hearing, the impeachment jury concluded that it was not competent to rule on the constitutionality of the law governing its. Therefore, the Commission believes that that this claim made by the petitioner cannot be labelled as untimely because it was not submitted at that stage.

12. Regarding the claim about the alleged absence of impartiality of jury member Konkurat, the Commission observes that there is a controversy between the parties over whether this was filed on time under domestic law, because the relevant remedy was dismissed for its lack of timeliness, but the petitioner alleges that this took place during the days that the impeachment jury subsequently declared were non-working days for the purposes of calculating the 90-day legal term. The Commission considers that it is not necessary for it to define whether domestic remedies were adequately exhausted in relation to this claim, given that the claim is inadmissible under article 47(b) of the Convention as detailed in section VII of this report.

13. As for that part of the petition referring to alleged violations in the context of the criminal proceedings being brought against the petitioner in the ordinary justice system and a possible violation of the principle of *non bis in idem* [double jeopardy], the Commission observes that the petitioner has not alleged nor is there any information on file indicating that these claims have been brought forward at the domestic level. Therefore, the Commission concludes that this part of the petition is inadmissible because it has not met the requirements of Article 46.1(a) of the American Convention.

VII. COLORABLE CLAIM

14. The petitioner has argued that his human rights were violated because the impeachment jury, which ordered his dismissal, did so when its temporal jurisdiction to do so was curtailed, and that the criterion used by the jury to reject his motion pertaining the expiration of the statute of limitations was incongruent in relation to that which have been used by the same jury in a prior stage of the process. With respect to his Claim, the Commission recalls that it has already determined it will not review a judicial decision even when there has been an alleged miscarriage of justice, if it arises from an independent and impartial judiciary, unless the purported miscarriage of justice entails the violation of a right protected by the Inter-American system; As well as that it falls on the petitioning party to prove that the judges' interpretation

ignored the protection underlying those rights.¹⁹ In the instant case, The Commission considers that it does not have elements for even a *prima facie* conclusion that the alleged miscarriage of justice committed by the impeachment jury could, if verified, signify a possible violation to the American Convention.

15. The petitioner has also alleged that his rights were violated because the impeachment process followed against him was of a single instance nature. However, the information on file shows that the petitioner filed remedies against the decision from the impeachment jury before other courts, which were decided. The Commission considers that the information on the case file does not provide *prima facie* indications that rights protected by the American Convention could have been violated in the processes leading to the decisions on those remedies. As to the remaining of the petitioner's claim pertaining possible violations to judicial independence, equality before the law and the legality principle, the Commission concludes that the parties have not provided elements of fact nor of law that indicate their possible violation, not even in a *prima facie* manner.

16. As for the alleged violations of the articles of the American Declaration, this Commission has previously established that, once the American Convention enters into force in connection with a state, the latter and not the American Declaration becomes the primary source of applicable law for the Commission, as long as the petition refers to the alleged violation of identical rights in both instruments and it does not involve a situation of continued violation. In this case, the alleged violations of the American Declaration fall within the scope of protection of Articles 8 and 25 of the American Convention. Therefore, the Commission shall examine these allegations in light of the American Convention.

17. Regarding the alleged violations of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the Commission recalls that it does not have the competence *ratione materiae* to rule on violations of the rights contained in instruments outside the inter-American system, without detriment to the possibility of resorting to the standards set forth in these instruments in order to interpret the norms of the American Convention by virtue of its Article 29.²⁰

18. The Commission would not realize an analysis of colorable claim with respect of those parts of the petition which are inadmissible according to the findings detailed in section VI of this report.

19. For the reasons already detailed, the Commission concludes that the instant petition is inadmissible in accordance with article 47(b) of the American Convention, as this does not state facts that tend to establish a violation of the rights guaranteed by such instrument.

VIII. DECISION

1. To declare the present petition inadmissible in accordance with articles 46.1(a) and 47(b) of the American Convention.

2. To notify the parties of the present decision and to publish the present 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 14th day of the month of August, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.

¹⁹ IACHR, Report No. 104/06, Petition 4593-02. Inadmissibility. Peter Anthony Byrne, Panama. October 21, 2006, para. 34.

²⁰ IACHR, Report No. 26/17. Petition 1208-08. Admissibility. William Olaya Moreno and family. Colombia. March 18, 2017, para. 9.