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**REPORT No. 268/20**  
**PETITION 1658-09**  
REPORT ON INADMISSIBILITY

ALEXANDRA GROUCHETSKII LYSENKO  
ARGENTINA

Approved electronically by the Commission on October 7, 2020.

**Cite as:** IACHR, Report No. 268/20, Petition 1658-09. Inadmissibility. Alexandra Grouchetskii Lysenko. Argentina. October 7, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Alexandr Grouchetskii Bechevez
<b>Alleged victim:</b>	Alexandra Grouchetskii Lysenko
<b>Respondent State:</b>	Argentina
<b>Rights invoked:</b>	Articles 3 (right to juridical personality); 17 (right to family); 22 (right to freedom of movement and residence) in conjunction with Article 1.1 of the American Convention.

**II. PROCEEDINGS BEFORE THE IACHR<sup>1</sup>**

<b>Filing of the petition:</b>	December 16, 2009
<b>Additional information received at the stage of initial review:</b>	June 27, 28, 2010, September 1, 21, 2010, January 17, 2011
<b>Notification of the petition to the State:</b>	March 21, 2011
<b>State's first response:</b>	October 4, 2011
<b>Additional observations from the petitioner:</b>	December 20, 2011, April 13, 2012, November 21, 2012, November 17, 2014
<b>Additional observations from the State:</b>	October 17, 2014

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes; American Convention (deposit of ratification instrument on September 5, 1984)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	None, under the terms of section VI
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	No, pursuant to the terms of section VI
<b>Timeliness of the petition:</b>	Inapplicable under the terms of section VI

<sup>1</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. This petition deals with the right to juridical personality together with the issue of Statelessness.

2. This petition is presented on behalf of Alexandra Grouchetskii Lysenko (“the alleged victim”) by her father Alexandr Grouchetskii Bechevez (hereafter “the petitioner”). According to the petitioner, the alleged victim is Stateless and has been denied certain rights (including the right to juridical personality) by the State of Argentina (where she currently resides).

3. By way of background, the petitioner states that (a) the alleged victim was born in Ukraine in 1981 when it was still part of the Union of Socialist Soviet Republics (USSR); and thus was originally a citizen of the USSR; (b) in 1987 the petitioner and his family (including the alleged victim) were granted refugee status in Peru and settled there for 10 years; (c) during this period, the petitioner and his wife were granted Peruvian citizenship and renounced their USSR citizenship; however the alleged victim was not granted Peruvian citizenship because she was a minor; (d) during this period, the petitioner’s wife gave birth to another daughter who was automatically granted Peruvian citizenship; (e) certain actions by the Peruvian government generated a fear of persecution on the part of the petitioner; (f) because of the fear of persecution, the petitioner and his family left Peru in 1997 and initially sought refugee status in Chile, and then subsequently in Argentina. The petitioner states that the alleged victim was issued travel documents by the United Nations Refugee Agency that allowed her to travel out of Peru to Chile and Argentina; however the documents were valid for only one year, expiring in 1998.

4. According to the petitioner, his application for refugee status (on behalf of himself and his family) was rejected by the State of Argentina in 1998<sup>2</sup>; and a subsequent appeal<sup>3</sup> was dismissed by the Minister of the Interior in 2000. Based on the file, it appears that the refusal to grant refugee status referred only to the petitioner and inadvertently omitted the rest of his family, including the alleged victim. The petitioner states that in 1998, he and his family (with the exception of the alleged victim) relocated to Uruguay where they were successful in obtaining refugee status in 1999. In the absence of valid travel documents, the petitioner indicates that the alleged victim was unable to join the family in Uruguay.

5. The petitioner states that upon arrival in Argentina, the State issued a *Certificado de Residencia Precaria de Petición de Refugio* to the alleged victim which simply allowed her to reside in Argentina on a provisional basis. According to the petitioner, this document recognized the alleged victim as Stateless, but did not permit her to work, go to school or to travel, unless accompanied by a separate national identity document (*Documento Nacional de Identidad*) issued by the State. The petitioner further states that the alleged victim was obliged to renew the certificate every 30 days.

6. According to the petitioner, between 2000 and 2010, the alleged victim approached various State entities/institutions with a view to regularizing her immigration status. In 2000, the alleged victim applied to the Minister of Interior for (a) recognition of her Statelessness; (b) permanent residence together with a national identity document. In this regard, the petitioner states that the application was grounded partly grounded in the 1954 Convention on the Status of Stateless Persons (which Argentina had ratified in 1972) which requires State parties to issue identification documents to Stateless Persons. The petitioner also indicates that the application for permanent residence was also based on the domestic law of Argentina that provides for the conferral of the status of permanent residence on persons who have resided in Argentina for a minimum of three years. The petitioner states that the alleged victim received no response to her application; and that she experienced the same non-responsiveness when she wrote to other state entities/functionaries, such as the Department of Human Rights, the Ministry of External Relations, and various presidents of Argentina.<sup>4</sup>

<sup>2</sup> The application was refused by the Refugee Eligibility Committee (*Comité de Elegibilidad para Refugiados*). This body was later replaced by National Commission for Refugees (*Comisión Nacional Para Los Refugiados*).

<sup>3</sup> According to the petitioner, this appeal was filed by his wife Lioudmila Lysenko.

<sup>4</sup> Such as President Eduardo Duhalde (2002); President Nestor Kirchner (2004); and President Cristina Fernández (2008).

7. The petitioner states that in 2001, the alleged victim also applied to the Ukrainian Embassy in Argentina for certification of her Ukrainian citizenship. However, the Embassy declined to certify the alleged victim as a Ukrainian citizen, given that (a) the alleged victim was originally a citizen of the USSR (of which Ukraine was then a part); and (b) the dissolution of the USSR had given rise to an independent State of Ukraine that lacked any legal framework to confer a right of nationality on the alleged victim.

8. According to the petitioner, on June 2010, the National Commission for Refugees (*Comisión Nacional Para Los Refugiados*) of the Ministry of the Interior confirmed that the alleged victim was ineligible for refugee status, upon which the alleged victim was obliged to surrender her *Certificado de Residencia Precaria*. The National Commission for Refugees also advised the alleged victim that the matter of her residence would now be transferred to the National Department of Migration for further consideration. The petitioner claims that this development placed the alleged victim at risk of being detained, and as consequence, applied to the Commission for precautionary measures (to protect the alleged victim's freedom and physical integrity and to procure a national identity document for the alleged victim).<sup>5</sup>

9. The petitioner indicates that on February 11, 2011 his daughter received a national identity document from the State, and that this document also recognized the statelessness of the alleged victim. The petitioner also indicates that the alleged victim was also granted temporary residence for a period of one year. Pursuant to the State's obligations under the Convention on the Status of Stateless Persons, the petitioner contends that the alleged victim was entitled to the timely issue of a document of identification together with the grant of permanent residence. In this regard, the petitioner maintains that the State subjected the alleged victim to a delay of more than 13 years which not only violated the Convention on the Status of Stateless Persons, but also the alleged victim's rights under the American Convention – particularly the right to juridical personality. In the absence of a national identity document for this period, the petitioner maintains that the alleged victim was denied the right to pursue an education, to work, to leave the country, to marry, and to generally enjoy her youth. Finally, the petitioner acknowledges that no judicial remedies were initiated by the alleged victim.

10. The State acknowledges its obligations under the Convention on the Status of Stateless Persons as well as the American Convention. However, the State contends that (a) the *Certificado de Residencia Precaria* issued to the alleged victim did not inhibit her from studying, working, or leaving and re-entering the country; (b) the State took the requisite steps to regularize the immigration status of the alleged victim following the final disposal of the application for refugee status in 2010; and (c) the alleged victim failed to exhaust available judicial remedies.

11. In relation to the application for refugee status, the State indicates that the original dismissal (in 2000) of the application erroneously omitted the name of the alleged victim; and that this partly led to the Refugee Eligibility Committee revisiting the application in 2002. According to the State, the Refugee Eligibility Committee was also persuaded to reconsider the application based on information that it had received that the petitioner was now a refugee in Uruguay, and separated from his wife. The State indicates that the Refugee Eligibility Committee interviewed the alleged victim twice in 2005 and 2009, with a view to determining whether there might be any possible basis to justify conferring refugee status on the alleged victim in her own right. During those interviews, the petitioner asserts that the alleged victim raised the issue of her Statelessness. Ultimately, the National Commission for Refugees (*Comisión Nacional Para Los Refugiados*) concluded in 2010 that there was no ground for conferring refugee status and that it had no power to address the issue of the Statelessness of the alleged victim. As a consequence, the State maintains that the alleged victim was obliged to surrender her *Certificado de Residencia Precaria*, while simultaneously being referred to the National Department of Migration (*Dirección Nacional de Migraciones*) to regularize her immigration/residency status.

12. The State denies that the alleged victim was ever at risk of being detained (following this decision), as claimed by the petitioner. To the contrary, the State indicates that (a) in 2011, the alleged victim was issued with a national identity document together with the grant of temporary residence; (b) that in 2013,

<sup>5</sup> The application for precautionary measures (MC 204-10) was ultimately rejected by the Commission.

the alleged victim was granted permanent residence as well as a special passport (for Stateless persons); and (c) that the alleged victim is now eligible to apply for Argentine citizenship (as of 2014).

13. The State acknowledges that between 2000 and 2008, the alleged victim approached various authorities to obtain a national identity document (in keeping with the Convention on the Status of Stateless Persons). The State also notes that up to 2011, it did not have a national authority with the competence to deal with Statelessness; nor was there a specific procedure to determine this status. According to the State, it has now taken measures to improve this situation. These measures include the creation of program by the Ministry of the Justice and Human Rights to promote and strengthen the rights of Stateless persons, and to facilitate the integration of such persons into Argentinean society. The State also mentions that it is in the process of drafting a law that establishes the procedure for determining Statelessness as well as establishing an authority with the competence to make this determination. According to the State, the National Commission for Refugees (*Comisión Nacional Para Los Refugiados*) has indicated that it now has the capacity to discharge this function.

14. Notwithstanding the foregoing, the State contends that it was open to the alleged victim to initiate and exhaust available judicial domestic remedies to address her complaints, but that she failed to do so. In this regard, the State refers to two remedies: (a) *amparo por mora* – as prescribed by Article 28 of Law 19.549/Law of Administrative Procedures (*Ley 19.549/ (Ley de Procedimientos Administrativos)*) and (b) the action of *amparo* as provided by Article 43 of the National Constitution and Law 16.986/Law on the Action of Amparo (*Ley 16.986/Ley de Acción de Amparo*). The petitioner acknowledges that internal remedies were not exhausted, but contends that the State had an international obligation to regularize the immigration and nationality status of the alleged victim in a timely manner; and that it failed to do so, given the number of years that elapsed before the alleged victim was issued with an identity document and given permanent residence.

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

15. In order for a claim of an alleged violation of the American Convention to be admitted, the requirement of prior exhaustion of available domestic remedies, as set forth in Article 46.1.a of said instrument, must be met in accordance with generally recognized principles of international law. However, Article 46.2 of the American Convention provides that the prior exhaustion of domestic remedies requirement shall not be applicable when (i) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (ii) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or, (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

16. As established in the Rules of Procedure of the Commission and held by the Inter-American Court, whenever a State alleges petitioners' failure to exhaust domestic remedies, it is incumbent upon the State to identify the remedies that should be exhausted and demonstrate that the remedies that have not been exhausted are "adequate" to rectify the alleged violation, that is to say, the function of those remedies within the domestic legal system is suitable to address an infringement of a legal right.<sup>6</sup>

17. In this case, the State has identified two species of the remedy of *amparo* which it contends was available to the alleged victim, but not exhausted. According to the Inter-American Court, the procedural institution of *amparo* has the characteristics necessary to effectively protect fundamental rights, namely, being simple and brief.<sup>7</sup>

18. According to the record, the alleged victim made several complaints to various authorities; however these complaints do not constitute legal remedies for the purpose of the requirement of exhaustion of domestic remedies. The Commission notes that the petitioner has acknowledged that the remedy of *amparo*

<sup>6</sup> See Article 31(3) of the Rules of Procedure of the Commission. Also see I/A Court H.R., Case of Velásquez Rodríguez v Honduras, Judgment July 29, 1988, Series C. No.4, para. 64.

<sup>7</sup> See I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community vs. Nicaragua, Judgment of August 31, 2001, Series C No. 79, para. 131.

was not exhausted. The petitioner gives no reasons for the failure to initiate or exhaust this remedy. Further, the petitioner does not contend that the alleged victim was denied access to this remedy or was otherwise prevented from exhausting this remedy. The Commission finds that *amparo* was an available and effective remedy, which was not utilized by the alleged victim.

19. Accordingly, the available information demonstrates that (a) that the petitioner has not pursued or exhausted the available legal remedies or (b) that an exception to the requirement of exhaustion of domestic remedies is applicable. In light of the foregoing, the Commission concludes that this petition does not meet the requirement of exhaustion of domestic remedies set forth in Article 46.1.a of the American Convention.

20. Given that domestic remedies have not been exhausted and the exceptions to such a requirement are not applicable, the IACHR concludes that this petition is inadmissible in terms of Articles 46.1.a and 47.a of the American Convention and Article 31(1) of the Rules of Procedure. Accordingly, the Commission considers it unnecessary to analyze the other requirements for admissibility.

## **VII. DECISION**

1. To find the instant petition inadmissible;
2. To notify the parties of this decision; and
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 on the 7<sup>th</sup> day of the month of October, 2020. (Signed): Antonia Urrejola, First Vice-President; Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.