

OEA/Ser.L/V/II.
Doc. 290
9 October 2021
Original: Spanish

REPORT No. 280/21
PETITION 345-15
REPORT ON ADMISSIBILITY

PRAXEDES CANDELMO CORREA
ARGENTINA

Approved by the Commission electronically on October 9, 2021.

Cite as: IACHR, Report No. 280/21, Petition 345-15. Admissibility. Praxedes Candelmano Correa.
Argentina. October 9, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Praxedes Candelmo Correa
Alleged victim:	Praxedes Candelmo Correa
Respondent State:	Argentina
Rights invoked:	Articles 5 (humane treatment), 10 (right to compensation), 11 (honor and dignity), 13 (freedom of thought and expression), 17 (rights of the family) and 24 (equality before the law) of the American Convention on Human Rights ¹ and articles X, XI, XVII, XVIII and XXIX of the American Declaration of the Rights and Duties of Man ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	April 21, 2015
Additional information received at the stage of initial review:	July 22, 2016, March 9, 2017, May 19, 2017 and September 27, 2017
Notification of the petition to the State:	August 1, 2019
State's first response:	March 22, 2021
Additional observations from the petitioner:	June 8, 2021
Additional observations from the State:	August 2, 2021

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 (instrument of accession deposited on September 5 th 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	Articles 5 (humane treatment), 8 (fair trial), 11 (honor and dignity), 13 (freedom of expression), 24 (equality before the law) and 25 (judicial protection) of the American Convention.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of section VI
Timeliness of the petition:	Yes, in the terms of section VI

¹ Hereinafter "the American Convention".

² Hereinafter "the American Declaration" or "the Declaration".

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

V. FACTS ALLEGED

1. Praxedes Candelmo Correa claims that the State discriminated her in her condition of trans person, in no protecting her from the harassment initiated by a television network against her, due to her gender identity, and for the bad health attention she received in a hospital.

2. From the documentation provided, it is clear that on April 21, 2015 the alleged victim files before the IACHR a claim for lack of protection from the acts of harassment performed by a television program against her. Afterward, on July 22, 2016 she broadens her petition claiming that the medical staff of the Durand Hospital did not provide her a proper health treatment to solve her knee ache. Next, the following situations are specified separately.

First claim: harassment by mass media due to her condition of trans person

3. As background, the petitioner holds that on October 17, 1987 she suffered a rape from a known soccer coach and that, although the Supreme Court of Justice issued a sentence in her favor in said case, ever since, the press began to harass her and chase her, due to her gender expression and public character of her aggressor.

4. After working for some television programs and narrating her personal experiences in some media, in 2004 producers of the television program "*Aunque usted no lo viera*" (Although you haven't seen it), broadcasted by the publicly held network called "Televisión Federal" (hereinafter, "Telefe"), used her image to mock her due to her gender identity. She holds that in spite of sending a letter to the producers of Telefe, the broadcasts continued not only against her, but also her family. She specifies that in one of the transmissions the host of the program made gestures of repulsion towards her, saying "*how gross that way of speaking*", apart from discrediting her for her physical appearance. Likewise, in another emission her image was used, while listening to a voice *in off* saying "*true love exists, unless 'travas' come along*".

5. Upon this, the petitioner holds that in 2005 she filed a claim at the National Correctional Public Prosecutor N° 4, against the producer of "Telefe". Nonetheless, she holds that on November 28, 2006 the prosecutor in charge of said unit dismissed her claim. In view of the alleged victim, said judicial procedure was fraudulent, since the Public Prosecutor wrote that some "N/N" filed the claim, in order to archive it. Subsequently, she holds that she filed a new claim before the Correctional National Court N° 13, yet questions that said authority maliciously modified her identity in order to dismiss the remedy. -The alleged victim provides no information conducive to know whether, afterward, any action was taken in order to continue with the conduction of said casefiles-.

6. In parallel, in 2005 she filed a civil claim for damages against the television producer and others responsible of "Telefe", which resulted in casefile 066860/2005. Nonetheless, she argues -without providing greater detail- that in 2014 the National Civil Court N° 89 dismissed her claim due to expiration of the action, in considering that she had not filed the remedy properly. On this matter, the alleged victim argues that said proceedings incurred in countless irregularities and that the sentence which decreed the expiry of the action was based on false grounds. Although she does not specify the details of the proceedings, she holds that she filed an appeal against said decision and that, to the date of filing of the petition, the proceedings would still be pending of a definitive decision.

7. By virtue of these considerations, the alleged victim claims that said broadcasts not only caused harm on her family, but also conflicts on every day life with the persons of her neighborhood. Likewise, she asserts that said situation has impacted her freedom of expression and to act, pursuant to her gender identity. Consequentially, she claims that the authorities neglected their duty to protect her and that, although she filed several judicial remedies, she has not had an appropriate answer.

⁴ The petitioner explained that "travas" is an aggressive term to refer to trans persons.

Second claim: unbecoming health treatment

8. In addition, the alleged victim holds that in 2013 she requested a magnetic resonance at the Durand Hospital due to pain in one knee. Nevertheless, she holds that the doctor who was attending her limited herself to request X-rays. Likewise, she holds that in spite of the increasing pain, the staff of the hospital did not provide her a proper treatment to recover, but applied therapies which only caused the pain to persist and to further expand to other parts of her body.

9. Upon this, she holds that she filed a claim before the National Institute Against Racism and Xenophobia; however, on July 15, 2015 this authority rejected the claim in considering that the reported facts did not constitute a discriminatory, xenophobic or racist conduct. On this matter, the alleged victim affirms that she submitted several letters before the authorities claiming for what had happened, but that she could not file a judicial remedy, since "*the internal law of the government of the city forbids to take judicial actions against the government*". Consequentially, she holds that the State is responsible for the detriment in her health condition.

Allegations of the State

10. The State contends that the petition is comprised of two claims, referred to different facts. Consequentially, it holds that it shall analyze each one of the allegations by the petitioner separately.

11. In regard to the alleged harassment from several mass media against the alleged victim and her family, it holds that the petition includes scarce documentation concerning the judicial and administrative proceedings initiated. In such sense, it merely indicates that it is evident that there is no verification of the duly compliance of the requirement of admissibility set forth in article 46.1.a) of the American Convention, given the lack of information.

12. In regard to the alleged affectation on her right to health, it highlights that the petitioner admits not having initiated any instance in domestic jurisdiction. Therefore, it also holds that it is clear that it fails to meet the requirement established in article 46.1.a) of the American Convention.

13. The State holds that in both claims, the petitioner resorts to the IACHR intending that the latter act as a higher court for it to analyze each one of the situations for which she considers herself affected, either for disagreement with the reasons for archiving a claim from a prosecutor, or for her disagreement with a first instance resolution or a decision issued by a government body, without said matters representing human rights violations. Consequentially, it requests that the petition be declared inadmissible based on article 47(b) of the American Convention since it regards that the pursuit of the petitioner is that the Commission act as a higher court, countering its complementary nature.

14. Finally, it expresses its concern for the untimeliness in the forwarding of the petition, stressing the time elapsed between its initial filing before the IACHR and its notification to State authorities.

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

15. As for the alleged acts of harassment from the program of "Telefe", upon reading the casefile 066860/2005⁵, the IACHR notes that on November 14, 2018 the Civil Chamber of Buenos Aires revoked the resolution which decreed the expiration of the action, in considering that the alleged victim filed several briefs in order to move the proceedings forward. Along this line, said chamber considered that although the burden to move the proceedings forward befalls mainly upon the parties, the jurisdictional authorities have the obligation to take measures aimed at preventing the halt of the proceedings, for which reason it ordered the competent court to continue with the proceedings for damages. However, the IACHR appraises that, in spite of said decision, sixteen years after the filing of the claim, there is no definitive decision to this date concerning

⁵ Available at the official web page of the Judicial Power of the Nation of the Argentine Republic, at the following link: <http://scw.pjn.gov.ar/scw/home.seam?cid=113550>

said case. Considering also that the State is in a better position to provide this information, it is thus, the State's duty to inform the IACHR as to the progress or eventual conclusion of these proceedings.

16. Consequentially, given the time elapsed between the filing of the referred claim by the petitioner without it reaching a final decision, the IACHR considers the exception foreseen in article 46.2.c) of the American Convention applicable, in regard to this extent of the petition. Likewise, taking into account that this judicial path was initiated by the petitioner in 2005; that the petition was filed in 2015; that in 2018 the expiration of the action was revoked by the L Civil Chamber of Buenos Aires; and that to this date, these proceedings remain unresolved, the Commission concludes that this extent of the petition also meets with the requirement set forth in article 32.2 of its Rules of Procedure.

17. In regard to the alleged lack of provision of suitable health services, the IACHR appraises that the alleged victim admits not having filed judicial remedies against Durand Hospital or its medical staff. As a result, the Commission considers that, in regard to this allegation, the requirement set forth in article 46.1.a) of the Convention is not met.

18. Finally, concerning the claim of the State as to the untimeliness of the forwarding of the petition, the IACHR emphatically recalls that neither the American Convention nor its Rules of Procedure set a time for the forwarding of a petition to the State as of its reception, and that the times set forth in the Rules of Procedure and in the Convention for other stages of the proceedings are not applicable by analogy.

VII. ANALYSIS OF COLORABLE CLAIM

19. On this point, the IACHR has already manifested its concern for the use of discriminatory language, as well as harmful and detrimental stereotypes, in the mass media, since it may prompt violence against LGTBI persons⁶. By virtue of said considerations, and after examining the factual and legal elements set forth by the parties, the IACHR considers that the petitioner's claims, regarding the lack of proper judicial protection before practices of harassment against her by a mass media, are not manifestly unfounded and require a study on the merits, since the alleged facts, if corroborated, may characterize violations of rights established in articles 5 (humane treatment), 8 (fair trial), 11 (honor and dignity), 13 (freedom of expression), 24 (equality before the law) and 25 (judicial protection) of the American Convention, in connection to its article 1.1 (obligation to respect and ensure rights), to the detriment of Ms. Praxedes Candelmo Correa. Moreover, in the merits stage of the present case the IACHR will assess the application of the Convention of Belem do Para.

20. As for the claim concerning a possible violation of articles 10 (right to compensation) and 17 (rights of the family) of the American Convention, the Commission observes that the petitioner has not provided enough allegations or grounds which may allow to consider *prima facie* their possible violation.

21. The Inter-American Commission has previously established that, once the American Convention comes into force in a State, it is the latter and not the Declaration which 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 does not verse about a situation of continuous violation⁷. As a result, the allegations presented by the alleged victim referred to articles of the American Declaration shall be interpreted according to the cited provisions of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 11, 13, 24 and 25 of the American Convention; and;

2. To find the instant petition inadmissible in relation to Articles 10 and 17 of the American Convention; and

⁶ IACHR. Report on violence against LGTBI persons. November 12, 2015, para. 254.

⁷ IACHR, Report No. 180/18. Petition 1616-07. Admissibility. A.G.A. and families. Colombia. December 26, 2018, para. 17

3. To notify the parties of this decision; to continue with the analysis on the merits; 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 9th day of the month of October, 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.