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REPORT No. 129/24
PETITION 2363-12
REPORT ON ADMISSIBILITY

CARLOS ADÁN DUARTE
ARGENTINA

Approved electronically by the Commission on September 2, 2024.

Cite as: IACHR, Report No. 129/24. Petition 2363-12. Admissibility. Carlos Adán Duarte.
Argentina. September 2, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Carlos Adán Duarte and Julián Horacio Langevin
Alleged victim:	Carlos Adán Duarte
Respondent State:	Argentina ¹
Rights invoked:	Articles 5 (humane treatment), 8 (fair trial), 11 (privacy), 9 (principle of legality), and 24 (equality before the law) of the American Convention on Human Rights; ² and another international treaty ³

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	December 28, 2012
Additional information received at the stage of initial review:	January 10, 2013, February 13, 2013, June 20, 2014, and December 30, 2014
Notification of the petition to the State:	January 28, 2016
State's first response:	March 9, 2017
Additional observations from the petitioners:	March 1, 2018

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, the American Convention (instrument of ratification deposited on September 5, 1984)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, CHARACTERIZATION, 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), and 25 (judicial protection) of the American Convention, in connection with Article 1(1) (obligation to respect rights) thereof
Exhaustion of domestic remedies or applicability of an exception:	Yes
Timeliness:	Yes, on August 13, 2012

V. POSITION OF THE PARTIES

The petitioners

1. The petitioners allege the violation of the rights to the presumption of innocence, to obtain a reasoned judgment, the right to defense, and the right to a comprehensive review of the judgment imposing a life sentence on Carlos Adán Duarte (hereinafter also "the alleged victim") for the crimes of robbery and

¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Andrea Pochack, an Argentine national, did not take part in the discussion or the decision on this matter.

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

³ Articles 7, 10, and 14 of the International Covenant on Civil and Political Rights.

⁴ Each party's observations were duly transmitted to the other party. In addition to the aforementioned communications, on August 7, 2023, the petitioners asked to have the admissibility and merits of the instant case be considered together.

homicide. They further argue that an automatic life sentence without the possibility of review constitutes a form of cruel and inhuman punishment prohibited by the American Convention.

2. The petitioners state that Mariela Frydman, a dentist, was murdered in her residence on November 26, 2007. The first hypothesis was that a family member might have committed the homicide, but later the prosecutor's office began to suspect the painters who were doing work at the residence, prompting the arrest of the alleged victim along with another man. On November 30, 2009, Mr. Duarte was convicted as co-perpetrator of the crime of robbery, in real concurrence with the crime of aggravated homicide *criminis causae*, and was automatically sentenced to life imprisonment, as stipulated under Article 80(7) of Argentina's Criminal Code.

3. Mr. Duarte's defense team filed a cassation appeal as well as a grievance of unconstitutionality challenging the constitutionality of Article 80(7) of the Criminal Code inasmuch as it does not provide for a legal path for regaining freedom. However, both appeals were dismissed on August 30, 2010. The defense then filed a special federal appeal, and after that was denied, a complaint appeal, which Argentina's Supreme Court of Justice ultimately dismissed on August 7, 2012, by means of an order that was notified to the petitioners on August 13, 2012. The petitioners contend that that decision marked the exhaustion of domestic remedies.

4. Regarding the conviction, the petitioners allege violation of Mr. Duarte's rights to the presumption of innocence and the principle of legality, as well as to be apprised of the facts on which his conviction was based and to have a reasoned judgment. In the petitioners' opinion, the conviction was based on mere circumstances of dubious evidentiary value that made it impossible to conclude with any certainty that the alleged victim had committed the crime. The petitioners further allege violation of the prohibition of cruel, inhuman, and degrading punishment, pursuant to Article 5(2) of the American Convention, contending that life in prison without review is incompatible with the right to humane treatment and dignity inasmuch as the punishment ends only with the death of the convicted individual. The petitioners also stress that Article 80(7) of Argentina's Criminal Code stipulates that life imprisonment is the only possible sentence for persons convicted of the crime of homicide *criminis causae*, meaning it is automatically imposed rather than there being a case-by-case examination of the proportionality and suitability of the punishment.

5. Moreover, the petitioners explain that the same regulation holds that persons convicted of this type of crime may not apply for parole until they have served thirty-five years in prison, nor may they apply for any sort of probationary benefit set forth in Law 24.660 (Execution of Custodial Sentences), e.g., supervised release and intermittent incarceration or semi-detention. They assert that it is 'materially' a life sentence, which undermines due respect for the dignity of the person, the principle of social readaptation, and the fact that a punishment should not exceed the crime and that it constitutes cruel and inhuman treatment as well as unjustified differentiated treatment compared to other individuals convicted of aggravated homicide under different circumstances.

6. The petitioners argue that house arrest, subject to certain requirements for special cases, could be granted, but it still entails the confinement of the alleged victim and impedes the realization of goal of social reintegration of the punishment. They emphasize that, even if the alleged victim is allowed to apply for parole after thirty-five years of incarceration, he was convicted at age thirty-eight, meaning he would only be eligible to apply at age seventy-three. They believe it is unreasonable at that age, and closing in on his life expectancy, and therefore contend that for all intents and purposes, his is a life sentence.

7. Lastly, the petitioners argue that the automatic application of this punishment violates the right to due process, protected under Article 8(1) of the American Convention, as it does not permit a defendant's defense to raise arguments to challenge the proportionality or suitability of the punishment on a case-by-case basis. They underscore that the cassation appeal is not a suitable remedy to guarantee review of the conviction since it does not allow the evidence, facts, or conviction to be questioned. They consider this to be a violation of the right to appeal to a higher court provided for in Article 8(2)(h) of the American Convention.

The Argentinian State

8. The State, for its part, posits that the instant petition is inadmissible inasmuch as the petitioner has not exhausted domestic remedies and because, in its opinion, the petition does not contain facts that characterize a violation of the rights enshrined in the American Convention.

9. Regarding the failure to exhaust domestic remedies, the State contends that the petitioners have limited themselves to an analysis of why prison release arrangements would not apply in Mr. Duarte's case. In practice, however, his defense team has not applied for them, but rather, *a priori* alleges their denial. In this connection, the State notes that Law 24.660 provides that the alleged victim may request temporary releases or a semi-release arrangement once he has served fifteen years of his sentence. It further asserts that individuals sentenced to life imprisonment may apply for parole after having served thirty-five years, pursuant to Article 13 of Argentina's Criminal Code. The State notes that since Mr. Duarte has been incarcerated since April 24, 2008, the date for possible access to temporary release is April 24, 2023, and for parole, April 24, 2043.

10. Argentina cites the ruling dismissing the cassation appeal, wherein one of the judges responded to the petitioners' main argument by maintaining that the constitutional system disallows sentences that are materially unending and therefore the harm being argued by the alleged victim would only occur if he were denied the benefits of semi-release and parole once he had served the time required by the legal system, meaning there is no current impairment of the rights invoked. The State also indicates that there are numerous cases in which persons convicted under the same system, and for the same crime as the alleged victim, have been granted parole. Pursuant to Article 99(5) of Argentina's Constitution, Mr. Duarte may request commutation of his sentence.

11. In connection with its argument regarding an absence of evidence to characterize a human rights violation, the State invokes the grounds for inadmissibility provided for under Article 47(b) of the American Convention with respect to four aspects of the petition. The first, regarding the claim of violation of the judicial guarantees of the presumption of innocence, the right to a reasoned judgement, and the right to defense. Argentina asserts that this claim was dismissed domestically, noting that the conclusive evidence of the alleged victim's guilt was a chip corresponding to the cell phone number of the crime victim, which allowed his innocence to be disproven.

12. Secondly, with respect to the alleged violation of the principle of proportionality of punishment and the principle of legality, the State sets forth that life imprisonment is not banned in any international human rights instrument and emphasizes that the Inter-American Court has not *per se* ruled against the use of life imprisonment for persons over eighteen years of age. The State further explains that Argentina's domestic courts have examined the claim that life imprisonment is unconstitutional and concluded that, thanks to special release arrangements such as supervised release, the duration of incarceration may vary based on decisions made during the sentence execution phase, taking into account the special preventive and resocialization aims considered in Law 24.660.

13. Thirdly, as regards the alleged violation of the rights to be treated with dignity while deprived of liberty and to protection of honor and dignity, the State asserts that this argument has already been both addressed and dismissed domestically, as it is based on the petitioners' unfounded proposition that life imprisonment materially constitutes a form of cruel and inhuman treatment. The State also indicates that the alleged victim is enrolled in a penitentiary system educational program, attending the equivalent of fifth grade and engaging in recreational activities, so it cannot be concluded that his prison situation amounts to cruel and inhuman punishment.

14. Finally, the State makes reference to the alleged violation of the right to appeal the judgment to a higher court, which is set forth in Article 8(2)(h) of the American Convention, and argues that, because Mr. Duarte has not applied for prison release benefits, his situation has not been reviewed. Once he does file such requests, however, these will be subject to review at two court levels. The State further argues that the alleged victim filed a cassation appeal against the conviction, which allowed for a comprehensive review

thereof by means of a reasoned opinion, thereby wholly fulfilling the right to challenge the criminal conviction. In this connection, the State explains that Argentina's Supreme Court of Justice implemented significant measures in 2005 to ensure comprehensive reviews of initial criminal convictions by means of cassation appeals, as provided for in the legislation in force at the time. The State therefore concludes that the right invoked was not violated.

15. Lastly, the State complains that the petition was not transmitted to it in a timely manner by the IACHR, since this was done more than three years after it was filed.

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

16. This petition concerns the alleged violation of the right to the presumption of innocence and the right to appeal a judgment to a higher court in the conviction of Carlos Adán Duarte for the crimes of robbery and homicide, as well as the alleged infliction of cruel and inhuman punishment in the form of an automatic sentence of life in prison. The petitioners argue that the alleged victim exhausted domestic remedies upon receiving notification on August 13, 2012 of the decision dismissing his complaint appeal. The State disputes the exhaustion of domestic remedies, maintaining that the alleged victim has not yet applied for the prison release benefits he claims are not available to him. The petitioners reply that such requests, since the alleged victim is barred from making, should not be considered as remedies for purposes of the analysis of the admissibility of the petition.

17. The IACHR has determined in repeated decisions that the appropriate remedies to be exhausted in cases alleging violations of due process, personal liberty, and other human rights in the course of judicial proceedings are, as a general rule, those provided by domestic procedural law to challenge the actions and decisions adopted in the course of the contested proceeding itself.⁵ In similar cases involving single instance criminal proceedings in Argentina, the Inter-American Commission has taken a uniform and consistent position, in the sense that the requirement of prior exhaustion of domestic remedies is considered to have been met with the filing of and resolution of the special appeals.⁶

18. In the instant case, the alleged victim chose to file special cassation, federal, and complaint appeals, the last of which was definitively dismissed by Argentina's Supreme Court of Justice on August 7, 2012. The petitioners were notified of that decision on August 13, 2012. Consequently, and given that the present petition was filed on December 28, 2012, the Commission concludes that it meets the requirements set forth in Articles 46(1)(a) and (b) of the American Convention.

19. With respect to prison release benefits, the Commission observes that, based on the information provided by the parties, the prerequisite for exhausting these remedies is that the alleged victim must serve at least fifteen years in prison. It is therefore not appropriate to consider these remedies as it is materially impossible for the petitioners to exhaust them at this juncture. This is a future event that would take place years after the adoption of the present decision on admissibility. Consequently, the Commission will take up this issue as part of its analysis of the merits of this case when considering the legal consequences of the use of life imprisonment.

⁵ IACHR, Report No. 96/21. Petition 546-13. Inadmissibility. Rafael de Jesús Gómez Gómez. Venezuela. April 29, 2010, para. 10; IACHR, Report No. 346/20. Admissibility. Emilio Palacio Urrutia. Ecuador. November 23, 2020, para. 14; Report No. 108/19. Petition 81-09. Admissibility. Anael Fidel Sanjuanelo Polo and family. Colombia. July 28, 2019, paras. 6, 15; Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, para. 15.

⁶ IACHR, Report No. 2/23. Petition 1848-14. Admissibility. Gustavo Marcelo Fabián Preneste. January 22, 2023; IACHR, Report No. 231/22. P-69-15. Admissibility. Antonino D'Amico and Pascual Isaac Manchineles. September 12, 2022; IACHR, Report No. 20/22. Petition 2002-13. Admissibility. Miguel Ángel Fernández. Argentina. March 1, 2022; IACHR, Report No. 417/21. Petition 638-14. Admissibility. Violetta del Carmen Artymyzyn. Argentina. December 31, 2021; IACHR, Report No. 415/21. Petition 1367-13. Admissibility. Edgardo Luis Pogonza. Argentina. December 31, 2021; IACHR, Report No. 411/21. Petition P-1565-09. Admissibility. Mario Alberto Fleisman. Argentina. December 31, 2021; IACHR, Report No. 272/20. Admissibility. Lidia Fanny Reyes and others. Argentina. October 13, 2020; and IACHR, Report No. 179/20. Petition 232-11. Admissibility. Ernesto Elías Chocobar. Argentina. July 6, 2020.

20. Finally, the Commission takes note of the State's claim regarding the untimeliness of the transmission of the petition. The IACHR notes that neither the American Convention nor the Commission's own Rules of Procedure establish a deadline for transmission of a petition to the State from the time it is received and that the time periods established in the Rules of Procedure and in the Convention for other stages of the proceedings are not applicable by association.⁷

VII. ANALYSIS OF A COLORABLE CLAIM

21. The Commission notes that the petition includes allegations regarding the violation of the rights to the presumption of innocence, a reasoned judgment, and a comprehensive review of Mr. Duarte's conviction, as well as the violation of the rights to humane treatment, the prohibition of cruel and inhuman punishment, human dignity, the family, and equality before the law. The State asserts that the alleged violations do not exist, since the alleged victim will be eligible for parole after serving thirty-five years in prison and given that the cassation appeal allows for a full review of the conviction thanks to measures adopted by the Supreme Court of Justice.

22. Regarding the right to the presumption of innocence, the Commission recalls that it is "*a guiding principle in the trial and a fundamental standard in the assessment of evidence that establishes limits to the subjectivity and discretion of judicial activity, requiring that a person cannot be convicted until there is full proof of his criminal liability.*"⁸ To analyze the State's arguments regarding the lack of violation in this respect, it would be necessary to conduct a detailed study of the judgment at the heart of this petition, in other words, these arguments must be examined during the merits stage.

23. Concerning the automatic sentence of life in prison, the Commission recalls that it raised the legal question of the compatibility of life imprisonment with the American Convention in its merits report in the case of *Alvarez v. Argentina*, wherein it determined that the absence of appropriate consideration of the proportionality of the punishment and its resocialization objective constitutes a violation of Article 5(6) of the Convention.⁹ Although the Inter-American Court did not rule on this matter, the reasoned opinion by Judge Eduardo Ferrer Mac-Gregor Poisot and Judge Nancy Hernández López sets out the reasons why they consider life imprisonment to be incompatible with the resocialization aim of the punishment and with human dignity.¹⁰

24. The Inter-American Court has, nevertheless, recognized that punishments consisting of deprivation of liberty must comply with the purpose set forth in Article 5(6) of the Convention, that is, the reform and social readaptation of the prisoners.¹¹ In this regard, custodial punishments handed down in the context of a criminal proceeding must be proportional to the seriousness of the crime committed,¹² meaning the imposition of a sentence that is grossly disproportionate may therefore constitute cruel treatment.¹³ The Commission does consider that there is still debate surrounding the potential violation of the ban on punishments that exceed the crime and the imposition of cruel and inhuman punishment, which warrants a substantive study of this matter.

⁷ IACHR, Report No. 56/16. Petition 666-03. Admissibility. Luis Alberto Leiva. Argentina. December 6, 2016, para. 25.

⁸ I/A Court H.R., *Case of Zegarra Marín v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 15, 2017. Series C, No. 331, para. 125.

⁹ IACHR, Report No. 237/19. Case 13.041. Merits. Guillermo Antonio Álvarez. Argentina, December 5, 2019, para. 87.

¹⁰ I/A Court H.R., *Case of Álvarez v. Argentina*. Preliminary Objection, Merits, and Reparations. Judgment of March 24, 2023. Series C, No. 487. Reasoned opinion of Judge Eduardo Ferrer Mac-Gregor Poisot and Judge Nancy Hernández López.

¹¹ I/A Court H.R., Differential approaches with respect to certain groups of persons in detention (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24, and 26 of the American Convention on Human Rights and other human rights instruments). Advisory Opinion OC-29/22 of May 30, 2022. Series A, No. 29, paras. 48-51.

¹² I/A Court H.R. *Case of Workers of the Brasil Verde Farm v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 20, 2016. Series C, No. 318, para. 462.

¹³ I/A Court H.R. *Case of Mendoza et al. v. Argentina*. Preliminary Objections, Merits, and Reparations. Judgment of May 14, 2013. Series C No. 260, para. 174; and European Court of Human Rights. Judgment in the *Case of Harkins and Edwards v. United Kingdom*. Cases No. 9146/07 and No. 32650/07. January 17, 2012, paras. 132 and 133.

25. The right to challenge a conviction is a minimum guarantee of the due process of law that seeks to "allow an adverse judgment to be reviewed by a different and higher judge or court,"¹⁴ in accordance with Article 8(2)(h) of the American Convention. To challenge a conviction, a comprehensive review of the decision being appealed must be possible,¹⁵ and to this end, the judgment must be substantiated by a hierarchical superior that can analyze the factual, evidentiary, and legal issues upon which is based.¹⁶ With this understanding, the Inter-American Commission has taken a uniform and consistent position in admitting for an examination of the merits, cases in which the convicted persons allege the violation of their right to appeal judgments in single instance proceedings in Argentina.¹⁷

26. In view of these considerations and after examining the elements of fact and law presented by the parties, the Commission considers that the petitioners' allegations are not manifestly unfounded and require a study of the merits, since the alleged facts, if corroborated, could characterize violations of Articles 5 (humane treatment), 8 (judicial guarantees), and 25 (judicial protection), to the detriment of Carlos Adán Duarte.

27. With respect to the claim regarding the alleged violation of Articles 9 (principle of legality) and 24 (equality before the law) of the American Convention, the Commission notes that the petitioners have not offered sufficient arguments or support to consider *prima facie* a possible violation. As to Article 29 of the Convention, the IACHR clarifies that it refers to the criteria for interpreting the American Convention.

28. Additionally, with respect to the International Covenant on Civil and Political Rights, the Commission lacks jurisdiction to establish violations of the provisions of said treaty, notwithstanding the fact that it may take that instrument into account as part of its interpretation of the American Convention during the merits stage of the instant case, pursuant to Article 29 of the Convention.

VIII. DECISION

1. To declare this petition admissible with respect to Articles 5, 8, and 25 of the American Convention, in connection with Article 1(1) thereof.

2. To declare the petition inadmissible with respect to Articles 9 and 24 of the American Convention.

3. To notify the parties of this decision; to continue its analysis of the merits of the matter; 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 2nd day of the month of Septiembre, 2024. (Signed:) Roberta Clarke, President; Edgar Stuardo Ralón Orellana, Arif Bulkan, and Gloria Monique de Mees, Commissioners.

¹⁴ I/A Court H.R. *Case of Valle Ambrosio et al. v. Argentina*. Merits and Reparations. Judgment of July 20, 2020. Series C, No. 408, para. 42.

¹⁵ I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C, No. 107, para. 165.

¹⁶ I/A Court H.R. *Case of Mendoza et al. v. Argentina*. Preliminary Objections, Merits, and Reparations. Judgment of May 14, 2013 Series C, No. 260, para. 245.

¹⁷ IACHR, Report No. 2/23. Petition 1848-14. Admissibility. Gustavo Marcelo Fabián Preneste. January 22, 2023; IACHR, Report No. 231/22. P-69-15. Admissibility. Antonino D'Amico and Pascual Isaac Manchineles. September 12, 2022; IACHR, Report No. 20/22. Petition 2002-13. Admissibility. Miguel Ángel Fernández. Argentina. March 1, 2022; IACHR, Report No. 417/21. Petition 638-14. Admissibility. Violetta del Carmen Artymyzyn. Argentina. December 31, 2021; IACHR, Report No. 415/21. Petition 1367-13. Admissibility. Edgardo Luis Pogonza. Argentina. December 31, 2021; IACHR, Report No. 411/21. Petition P-1565-09. Admissibility. Mario Alberto Fleisman. Argentina. December 31, 2021; IACHR, Report No. 272/20. Admissibility. Lidia Fanny Reyes and others. Argentina. October 13, 2020; and IACHR, Report No. 179/20. Petition 232-11. Admissibility. Ernesto Elías Chocobar. Argentina. July 6, 2020.