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REPORT No. 57/24
PETITION 2357-12
REPORT ON INADMISSIBILITY

GUSTAVO ALEJANDRO PAEZ
ARGENTINA

Approved electronically by the Commission on May 13, 2024.

Cite as: IACHR, Report No. 57/24. Petition 2357-12. Inadmissibility.
Gustavo Alejandro Paez. Argentina. May 13, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Martha Ines Miravete Cicero
Alleged victim:	Gustavo Alejandro Paez
Respondent State:	Argentina ¹
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (right to a fair trial), 11 (honor and dignity), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights, ² in relation to Articles 1 (obligation to respect rights) and 2 (domestic legal effects) thereof

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	December 31, 2012
Additional information received at the stage of initial review:	January 2, 2013
Notification of the petition to the State:	February 24, 2016
State's first response:	July 13, 2017
Additional observations from the petitioner:	October 10, 2017; January 26, 2018; March 17, May 6 and December 13, 2020

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. 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	Does not apply
Exhaustion of domestic remedies or applicability of an exception to the rule:	No, under the terms of Section VI
Timeliness of the petition:	No, under the terms of Section VI

¹ In accordance with Article 17.2(a) of the Rules of Procedure of the IACHR, Commissioner Andrea Pochak, an Argentine national, did not participate in the discussion or decision of this case.

² Hereinafter referred to as "the American Convention" or "the Convention."

³ The observations submitted by each party were duly transmitted to the opposing party. In communications dated February 23 and August 13, 2015, the petitioner expressed her interest in the processing of the petition.

V. POSITIONS OF THE PARTIES

1. The petitioner alleges the international responsibility of the Argentine State for the violation of the due process rights of Gustavo Alejandro Paez (hereinafter “Mr. Paez”), in a criminal proceeding against him. She further argues that during his detention, Mr. Paez was subjected to acts of torture; that he did not receive adequate medical attention; and that his public defender failed to act diligently.

2. The petitioner states that on April 8, 2008, a complaint was filed against Mr. Paez for the alleged sexual abuse of his stepdaughter, leading to his arrest (she does not specify the exact date or place of his arrest). She alleges that on April 28, 2010, Mr. Paez was beaten and tortured while in police custody, and that the same police officers transferred him the following day to Police Station No. 4 in Tortuguitas, province of Buenos Aires, to conceal the injuries they had inflicted on him.

3. She asserts that on May 11, 2010, two years after the criminal case was brought against Mr. Paez, the court ordered that he be held in pretrial detention for the alleged offense. On October 25, 2011, Criminal Court No. 6 of the Judicial Department of San Martín sentenced Mr. Paez to ten years in prison for the sexual abuse of a minor, in criminal case No. 2354. She states that this judgment became final on November 3, 2011, because Mr. Paez’s public defender failed to timely and properly file a petition for cassation challenging this decision, leaving Mr. Paez unable to defend himself.

Petitioner’s main allegations

4. The detailed information presented by the petitioner sets out three main points: (i) first, the petition alleges the violation of Mr. Paez’s right to a fair trial and to judicial protection in the criminal proceedings against him, claiming that he was convicted solely on the basis of testimony and without a proper assessment of the evidence presented by defense counsel; (ii) second, it alleges the violation of Mr. Paez’s human rights due to the acts of torture committed against him by the police officers in whose custody he was held, which consisted of blows to different parts of his body; and (iii) third, it cites the prison authorities’ failure to provide medical care to Mr. Paez, who was suffering from a chronic liver disease.

Position of the Argentine State

5. For purposes of procedural transparency, the Commission finds it appropriate to transcribe below the full verbatim text of the Argentine State’s response:

To provide a response to this Illustrious Commission, the Ministry of Foreign Affairs and Worship of the Republic of Argentina has requested the intervention of the Secretary of Human Rights and Cultural Pluralism of the Nation, the state agency with primary competence in the matter, which, in turn, has requested the opinion of the competent authorities of the Province of Buenos Aires.

In response to this request for intervention, the Secretary of Human Rights and Cultural Pluralism of the Nation forwarded Note NO-2017-11272572 APN-DNAJMDH#MJ, enclosing a copy of the record of proceedings in the criminal case against Gustavo Alejandro Paez, in which the human rights violations complained of in this petition by Martha Inés Miravete Cicero, President of the organization Grupo de Mujeres de la Argentina - Foro de VIH Mujeres y Familia [Women’s Group of Argentina - Women and Family HIV Forum] are alleged to have taken place.

The record reflects that Mr. Gustavo Alejandro Paez died on March 19, 2013, as evidenced by a copy of the death certificate.

Therefore, the Commission is asked to request that the petitioner, Marta Inés Miravete Cicero, submit any observations she deems appropriate regarding the effects of Mr. Paez’s death on the possible continuation or dismissal of the complaint.

A copy of Note NO-2017-11272572-APN-DNAJMDH#MJ from the Secretary of Human Rights and Cultural Pluralism of the Nation and its documentary annex is attached.

6. Argentina states that it has not responded to the petitioner's allegations because Mr. Paez died on March 19, 2013. Therefore, in that communication, it requested to know whether the subject matter of the petition was moot.

7. The IACHR forwarded that request to the petitioner on August 2, 2017. On October 10, 2017, the petitioner stated that the violations of Mr. Gustavo Alejandro Paez's rights under the Convention persisted; this information was transmitted to the Argentine State on June 1, 2018. However, as of this report, the IACHR has received no information from Argentina setting forth its specific arguments regarding the facts alleged in the petition; therefore, this report will only consider the copies of the court decisions that have been provided.

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

8. To analyze the exhaustion of domestic remedies in this case, the IACHR recalls its longstanding and reiterated practice of identifying the suitable remedies that a petitioner should have exhausted before turning to the inter-American system; and that the first methodological step in this analysis is to separate the different claims asserted in the petition in order to examine them individually⁴. Here, the petitioner has presented three claims to the Commission: (i) violations of Mr. Paez's right to a fair trial during the criminal proceedings in which he was sentenced to ten years in prison, and the lack of an adequate public defense; (ii) violation of the right to humane treatment, for having been subjected to physical torture by police officers during his detention; and (iii) the prison authorities' failure to provide adequate and timely medical care for various health problems, including a chronic liver disease.

9. In relation to allegation (i), as it has found in previous decisions⁵, the IACHR considers that the appropriate remedies to be exhausted in cases of alleged violations of due process and other human rights during judicial proceedings are, as a general rule, those provided under domestic procedural law that make it possible to challenge—during those proceedings—the actions and decisions adopted therein. This refers in particular to ordinary judicial remedies, or to extraordinary remedies if filed by the alleged victims of due process violations to assert their rights.

10. The Commission notes that on October 25, 2011, Criminal Court No. 6 of the Judicial Department of San Martín sentenced Mr. Paez to ten years in prison after finding him guilty of the offense of sexual abuse of a minor in criminal case No. 2354. The petitioner indicates that the judgment became final on November 3, 2011, due to the fact that the public defender assigned to Mr. Paez failed to timely file a petition for cassation against the decision, leaving him without a defense. The IACHR notes that, in the information she provided to the Commission, the petitioner has not explained why the public defender did not file the petition for cassation to challenge Mr. Paez's conviction. Therefore, the Commission concludes that it lacks sufficient evidence to determine that the failure to file the petition for cassation is, in fact, an omission attributable to the public defender assigned to Mr. Paez. The IACHR thus finds that this element of the petition does not meet the requirement established in Article 46.1(a) of the American Convention or fall within any of the exceptions set forth in Article 46.2 thereof.

⁴ For illustrative purposes, see the following IACHR admissibility reports: Report No. 117/19. Petition 833-11. Admissibility. Freed workers of the Boa-Fé Caru Plantation. Brazil. June 7, 2019, paras. 11-12; Report No. 4/19. Petition 673-11. Admissibility. Fernando Alcântara de Figueiredo and Laci Marinho de Araújo. Brazil. January 3, 2019, paras. 19 et seq; Report No. 164/17. Admissibility. Santiago Adolfo Villegas Delgado. Venezuela. November 30, 2017, para. 12; Report No. 57/17. Petition 406-04. Admissibility. Washington David Espino Muñoz. Dominican Republic. June 5, 2017, paras. 26-27; Report No. 168/17. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, paras. 15-16; Report No. 122/17. Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Peru. September 7, 2017, paras. 12 et seq; Report No. 167/17. Admissibility. Alberto Patisthán Gómez. Mexico. December 1, 2017, paras. 13 et seq; Report No. 114/19. Petition 1403-09. Admissibility. Carlos Pizarro Leongómez, María José Pizarro Rodríguez and their Family Members. Colombia. June 7, 2019, paras. 20 et seq.

⁵ See, *inter alia*: IACHR, Report No. 92/14, Petition P-1196-03. Admissibility. Daniel Omar Camusso and Son. Argentina. November 4, 2014, paras. 68 et seq; IACHR, Admissibility Report No. 104/13, Petition 643-00. Admissibility. Hebe Sánchez de Améndola and Daughters. Argentina. November 5, 2013, paras. 24 et seq; and IACHR, Report No. 85/12, Petition 381-03. Admissibility. S. et al. Ecuador. November 8, 2012, paras. 23 et seq.

11. With regard to claim (ii), concerning the alleged acts of torture against Mr. Paez, the IACHR recalls that, in the case of possible crimes against humanity committed by state agents, the domestic remedies that must be considered for purposes of the admissibility of petitions are those related to the criminal investigation and punishment of the perpetrators.⁶ In this regard, the IACHR has repeatedly held that, whenever the state has knowledge of a crime that can be prosecuted *sua sponte*, it has the obligation to initiate or file a criminal action, as this is the proper means to establish the facts, prosecute the perpetrators, and determine the appropriate criminal penalties, in addition to providing forms of pecuniary reparation. Also, as a general rule, the criminal investigation must be conducted promptly to protect the victims' interests, preserve evidence, and even safeguard the rights of any person considered a suspect during the investigation.⁷

12. Based on the information provided by the petitioner, the Commission notes that, although the petitioner states that Mr. Paez was subjected to acts of physical torture during his detention, she does not say whether these facts were brought to the attention of the courts or any other competent authority; nor do such assertions emerge from the information in the case file. The Commission thus concludes that the petitioner has not presented sufficient arguments with respect to these facts. Moreover, it lacks sufficient information to know whether an investigation was opened into these facts, and if so, how the investigation was carried out and concluded. Therefore, the Inter-American Commission considers, with respect to this part of the petition, that the information provided by the petitioner is patently insufficient for it to verify compliance with the exhaustion of domestic remedies requirement of Article 46.1(a) of the American Convention; the Commission also lacks sufficient information to determine whether any of the exceptions provided for in Article 46.2 of the Convention are applicable with respect to this part of the petition.

13. As for claim (iii), related to the prison authorities' failure to provide adequate and timely medical care for Mr. Paez's chronic health problems, the Commission notes, as in claims (i) and (ii), that the petitioner has not indicated whether any procedural challenge was raised under domestic law in connection with the lack of adequate medical care. Therefore, the Inter-American Commission considers, with respect to this part of the petition, that the information provided by the petitioner is patently insufficient for it to verify compliance with the exhaustion of domestic remedies requirement of Article 46.1(a) of the American Convention; the Commission also lacks sufficient information to determine whether any of the exceptions provided for in Article 46.2 of the Convention are applicable with respect to this part of the petition.

14. Lastly, the Inter-American Commission recalls that, although it is less formalistic than other legal proceedings at the domestic level, a number of minimum requirements and conditions must be met to bring contentious cases before the bodies of the inter-American human rights system; it demands a level of commitment and ethics from the petitioners in regard to the bodies of the inter-American system and, above all, in regard to the victims, whose protection is the ultimate purpose and the reason for international human rights law.⁸

VII. DECISION

1. To find the instant petition inadmissible.
2. To notify the parties of this decision; 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 13th day of the month of May, 2024. (Signed:) Roberta Clarke, President; Carlos Bernal Pulido, Vice President; Edgar Stuardo Ralón Orellana, Arif Bulkan, and Gloria Monique de Mees, Commissioners.

⁶ IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and Family. Guatemala. June 20, 2018, para. 10.

⁷ IACHR, Report No. 159/17, Petition 712-08, Admissibility, Sebastián Larroza Velázquez and Family, Paraguay, November 30, 2017, para. 14; IACHR, Report No. 108/19, Petition 81-09, Admissibility, Anael Fidel Sanjuanelo Polo and Family, Colombia, July 0028, 2019, paras. 17-19.

⁸ IACHR, Report No. 193/22. Petition 1153-12 Inadmissibility. Luis Alejandro Cárdenas Tafur and Family. Colombia. August 3, 2022, para. 15.