

**REPORT No. 82/11**  
PETITION 616-98  
ADMISSIBILITY  
JOSÉ LUIS HERNÁNDEZ  
ARGENTINA  
July 21, 2011

**I. SUMMARY**

1. On June 30, 1998, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “Commission,” or “IACHR”) received a petition from attorneys Ciro V. Annicchiarico, Tomás Ojea Quintana, and Rodolfo Ojea Quintana (hereinafter “the petitioners”), filed on behalf of Mr. José Luis Hernández against the Argentine Republic (hereinafter “Argentina” or “the State”). The petitioners allege that the State has incurred in responsibility under the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), specifically for the alleged violation of the rights of Mr. José Luis Hernández to personal security, physical integrity, judicial guarantees, the protection of his honor and dignity, equality before the law, and judicial protection contained in articles I, II, V, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man, as well as Articles 5, 7, 8, 11, 17, 24, and 25 in relation to Article 1.1 of the American Convention. They also allege violation of Article 7 of the Inter-American Convention to Prevent and Punish Torture.

2. The petition states that on February 7, 1989, Mr. José Luis Hernández was arrested in Buenos Aires Province, accused of committing a crime. It argues that Mr. Hernández was held in a local jail for 1 year and 6 months under unacceptable conditions and contracted meningitis, for which he never received proper care, causing his health to deteriorate and resulting in permanent damage. The petitioners state that upon his release, Mr. Hernández sued the State for compensation, but the suit was dismissed because the statute of limitations for filing the suit had expired. The petitioners allege that Mr. Hernández was denied the right to judicial protection.

3. The State, in turn, maintains that once his illness was diagnosed, Mr. Hernández was hospitalized on several occasions and received medical care. It alleges that both the lower court and subsequent higher courts dismissed the claim for damages lodged by Mr. Hernández against the State because the two-year statute of limitations for filing the suit established under domestic law had expired. Thus, the State asserts that Mr. Hernández enjoyed all the procedural rights to which he was entitled and that the petitioners’ intent is for the Commission to review domestic rulings that were unfavorable to the alleged victim. Accordingly, the State argues that the case should be declared inadmissible.

4. After examining the positions of the parties, the Inter-American Commission concludes that it is competent to decide on the claim lodged by the petitioners, which is admissible in light of the provisions of Article 46 of the American Convention, under its articles 5, 7, 8, and 25, as well as Article 7 of the Inter-American Convention to Prevent and Punish Torture, but not Articles 11, 17, and 24 of the American Convention. The Commission therefore decides to notify the parties, continue with the in-depth analysis of the alleged violations, publish this Report on Admissibility, and include it in its Annual Report to the OAS General Assembly.

**II. PROCESSING BY THE COMMISSION**

5. The petitioners filed suit on June 30, submitting supplementary information on August 19 of that same year, as well as on August 23, 2000 and August 30, 2001. The IACHR transmitted the pertinent parts of the petition to the Argentine State on April 16, 2003 and requested that it respond within two months. The State submitted its comments through notes dated June 6 and July 21, 2003. The Commission transmitted these responses to the petitioners through a communication dated January 21, 2004. The petitioners, in turn, sent their comments through a communication received on April 28, 2004, which was transmitted to the State on June 23 of that same year.

6. Through communications dated May 14, 2009, the Commission requested both the State and the petitioners to provide updated information on the matter within one month. The State requested an extension, which was granted on July 7, 2009. On August 27, 2009, the Commission received the State's response, which was sent to the petitioners on September 14 of that same year.

### **III. POSITIONS OF THE PARTIES**

#### **A. Position of the Petitioner**

7. According to the statement in the petition, on February 7, 1989, Mr. José Luis Hernández was arrested in the vicinity of Monte Grande, Buenos Aires Province and transferred to the local jail, where that very day he was given a physical examination that showed he was lucid, fit, and autopsychically oriented, with no sign of intoxication or recent traumatic injury.

8. The petitioners state that on March 20, 1989, the Chief of Police of Buenos Aires Province requested the judge handling the case to authorize the transfer of Mr. Hernández in view of the large number of detainees housed in the Monte Grande Jail. On the 29th of that month, the judge issued a writ that he be transferred to Prison No. 1 of the Buenos Aires Penitentiary Service. The petitioners mention that the judicial writ was not obeyed and that Mr. Hernández continued to be detained in overcrowded conditions.

9. They add that on July 6, 1989, after the alleged victim had spent five months in jail, his mother reported that her son was suffering from influenza-like symptoms and an earache and that he was not receiving the medical attention that he needed. She also reported the deplorable state of the jail and requested that her son be transferred to a place where he could be treated. That same day, the judge handling the case ordered that José Luis Hernández be given a medical examination, indicating that if an illness were detected, he receive appropriate care and treatment. The petitioners allege that notwithstanding, José Luis Hernández never received medical attention.

10. On January 16, 1990, the Chief of Police again requested that Mr. Hernández be transferred to a prison. On August 3, 1990, the alleged victim was transferred to Olmos Facility No. 1 of the Penitentiary Service of Buenos Aires Province.

11. The petitioners state that two days prior to the transfer, it was reported to the judge handling the case that Mr. Hernández was suffering from severe headaches, and requested to him that he be given a medical examination, and furthermore, that the health situation at the jail be investigated due to a possible outbreak of hepatitis.

12. On August 14 of that same year, the judge ordered that the alleged victim be given medical care, and on the 16th of that month, the warden of the prison reported that Mr. Hernández had been admitted to the San Juan de Dios Hospital with a diagnosis of "meningitis, of probable TB etiology." In the next few days, he was transferred to the neuropsychiatric ward of the Alejandro Korn de Melchor Romero Hospital, due to the lack of available beds for the specific treatment of acute meningitis. On September 18, Mr. Hernández returned to Prison No. 1.

13. They [the petitioners] state that on September 28, 1990, a ruling was handed down in the case against José Luis Hernández, for which he had been preventively detained. He was sentenced to 5 years in prison.

14. On October 2, 1990, the warden of the prison informed the judge that the Director of the San Juan de Dios Hospital had opposed the admission of Mr. Hernández. The petitioners add that, due to lack of proper treatment, the alleged victim had begun to show serious symptoms, which is why his extraordinary release was requested in several occasions so that he could receive the medical care that he needed, which had not been provided by the Penitentiary Service. The petitioners report that the request for release was denied.

15. They add that on October 24, 1990, the judge again ordered the San Juan de Dios Hospital to readmit the alleged victim, an order that was refused due to the lack of available beds. On November 2 of that same year, Mr. Hernández was admitted to San Martín de La Plata Hospital. They [the petitioners] report that in the next few days, without notifying his family or obtaining authorization from the judge, the hospital performed surgery on Mr. Hernández. Later, he was discharged from the facility and transferred once again to the Olmos Prison. The petitioners state that the meningitis resulted in sequelae that include the complete loss of vision in one eye, partial and permanent disability in one arm, and memory loss.

16. The petitioners indicate, moreover, that the Penitentiary Service of Buenos Aires Province attempted to evade responsibility for Mr. Hernández' critical health condition by claiming that he had the AIDS virus. The petitioners assert that regardless of how he had contracted meningitis, it should have been treated properly, and they furthermore state that the alleged victim does not have the virus and that this false claim has damaged his reputation.

17. They report that José Luis Hernández obtained conditional release on May 29, 1991 and that on April 2, 1993, he filed a civil suit with the courts for damages and injuries. On October 10, 1995, the suit was dismissed because the statute of limitations had expired.

18. The petitioners explain that under Article 4037 of the Civil Code, Argentine law establishes that in cases of extracontractual responsibility on the part of the State, the statute of limitations is two years. The petitioners allege that the judge miscalculated the time from the hypothetical moment that Mr. Hernández contracted the illness: that is, August 16, 1990, the date when the disease was diagnosed. They add that the judge did not consider the fact that the illness continued throughout the time that [Mr. Hernández] was confined and that that very fact prevented him from taking legal action of any sort. Mr. Hernández' legal representative appealed the ruling of the lower court, and on September 12, 1996, the court of appeals upheld the ruling, imposing court costs and fees. The ruling of the higher court was taken to the Supreme Court of Buenos Aires Province, and the suit was dismissed on December 17, 1996. Finally, on December 16, 1997, the National Supreme Court of Justice dismissed the extraordinary remedies complaint that had been lodged.

19. The petitioners therefore affirm that Mr. Hernández availed himself of the legal remedies at his disposal and that the State had committed violations of Articles I, II, V, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man, as well as Articles 5, 7, 8, 11, 17, 24, and 25 in relation to Article 1.1. of the American Convention and Article 7 of the Inter-American Convention to Prevent and Punish Torture.

## **B. Position of the State**

20. The State reports that, indeed, José Luis Hernández was arrested on February 7, 1989 for the crime of armed robbery. The case, No. 24,498, was heard in Criminal Court No. 4 of the Lomas de Zamora Judicial Department.

21. It states that, according to the records, the illness manifested itself on August 16, 1990 and was consistent with the diagnosis of "meningitis, of probable TB etiology" issued by the San Juan de Dios de la Plata Hospital, where Mr. Hernández was hospitalized at the time. It adds that, consequently, there was no accurate diagnosis of the alleged victim's illness prior to that time, and that once hospitalized, his health improved and the judge issued a ruling denying the request for his release, stating "...given the seriousness of the sentence imposed and finding José Luis Hernández to be receiving adequate medical care, it should be concluded that granting the extraordinary release remedy is inappropriate."

22. The State notes that on September 28, 1990 the lower court issued a ruling sentencing Mr. José Luis Hernández to 5 years in prison for armed robbery with a firearm. The Court of Criminal and Correctional Appeals upheld the sentence on May 21, 1991, and Mr. Hernández was granted conditional release on May 29, 1991. The State alleges that Mr. Hernández filed the civil suit for damages and

injuries on April 2, 1993. It explains that, therefore, according to the national legislation in force at the time of the events, which states that lawsuits alleging extracontractual civil responsibility on the part of the State must be filed within two years, the lower-court judge and the judges of the successive higher courts had dismissed the suit because the statute of limitations had expired, since Mr. Hernández had contracted the illness on August 16, 1990.

23. Concerning the petitioner's claim that the alleged victim was in confinement and could not initiate any legal action, the State asserts that, even taking this into account, it should be noted that upon his release on May 19, 1991, there was no impediment whatsoever to filing his complaint before the two-year statute of limitations—that is, August 16, 1992—expire, and yet he did not file it until April 2, 1993.

24. The State adds that the rules governing the statute of limitations are a matter of public law, meaning that it is impossible to alter the deadlines established. The State argues that Mr. Hernández enjoyed the guarantees of due process and availed himself of all the courts. It asserts that the petitioner's intent is for the Commission to act as a fourth body for the review of domestic rulings. Thus, the State requests the Commission to declare the petition inadmissible.

#### **IV. ANALYSIS OF ADMISSIBILITY**

##### **A. Competence of the Commission *ratione personae, ratione materiae, ratione temporis, and ratione loci***

25. The petitioners have a legitimate right to file a petition with the Commission, as provided for in Article 44 of the American Convention. The petition names as the alleged victim an individual for whom the State has assumed the commitment to respect and guarantee the rights recognized by the American Convention. As for the State, the Commission takes note that Argentina has been a State Party to the Convention since September 5, 1984, the date on which it deposited its ratification instrument. The Commission is therefore competent *ratione personae* to examine the petition.

26. The Commission has competence *ratione loci* to consider the petition, since it alleges violations of rights protected by the American Convention committed within the territory of a State Party to it. The IACHR has competence *ratione temporis*, since the State's obligation to respect and guarantee the rights protected in the American Convention existed on the date it is claimed that the violations of rights alleged in the petition occurred. Finally, the Commission has competence *ratione materiae*, because the petition alleges violations of human rights protected by the American Convention.

##### **B. Other requirements for admissibility of the petition**

###### **1. Exhaustion of domestic remedies**

27. Article 46.1 of the American Convention states that for a petition lodged with the Inter-American Commission to be admissible, all remedies under domestic law must have been pursued and exhausted, in accordance with generally recognized principles of international law. The object of this requirement is to enable the national authorities to learn about the alleged violation of a protected right and, if appropriate, have the opportunity to redress it before it is reviewed by an international tribunal.

28. In this case, the parties agree that the alleged victim lodged a series of complaints and requests to secure adequate conditions of detention and medical treatment for his illness. The petitioners state that Mr. Hernández exhausted domestic remedies with the extraordinary remedy filed with the National Supreme Court of Justice. The State, in turn, confirms that with that action, the domestic remedies with respect to Mr. Hernández' efforts to obtain compensation for damages and injuries resulting from the disease he contracted had been exhausted. The Commission finds that he has complied with the stipulations of Article 46.1 of the Convention.

###### **2. Statute of limitations for lodging the petition**

29. According to Article 46.1 of the Convention, for a petition to be admitted, it must be lodged within the stipulated time frame of six months from the date that the party alleging the violation of his rights was notified of the final judgment at the national level.

30. In this case, according to the information provided by the petitioners and not refuted by the State, the judgment of the National Supreme Court of Justice concerning the extraordinary remedy was transmitted to Mr. Hernández in March 1998, and he lodged his petition on June 30, 1998; he was thereby in compliance with the requirement stipulated in Article 46.1.b of the American Convention.

### **3. Duplication of proceedings and *res judicata***

31. Article 46.1.c states that the admission of a petition is subject to the requirement that the subject not be “pending in another international proceeding for settlement,” and Article 47.d of the Convention stipulates that the Commission shall consider inadmissible any petition that is “substantially the same as one previously studied by the Commission or by another international organization.” In the case of record, the parties have not alleged any of these circumstances of inadmissibility, nor have any emerged from the proceedings.

### **4. Characterization of the alleged facts**

32. Article 47.b of the American Convention declares inadmissible any petition that does not state facts that establish a violation of the rights guaranteed by the Convention. In this case, it is not the Commission’s place at this stage of the proceedings to decide whether or not the alleged violations of the American Convention took place. The IACHR conducted a *prima facie* evaluation and determined that the petition makes accusations that, if proven, could tend to establish possible violations of the rights guaranteed by the Convention.

33. From the information and allegations of the petitioners, the Commission finds that Mr. José Luis Hernández had been deprived of liberty for over two years: the first year and a half in a local jail, under allegedly unacceptable conditions of detention. They allege that these conditions had been brought to the attention of the authorities on several occasions without obtaining, according to the petitioners, a timely response. It furthermore observes that Mr. Hernández had been diagnosed with meningitis while he was in preventive detention under the care of the State and, according to the petitioners, despite repeated complaints lodged to obtain medical attention for Mr. Hernández, he did not receive the care that his health condition required, leaving him with permanent physical and mental sequelae. The Commission considers that, if the petitioners’ allegations are proven, they could establish violations of Articles 5 and 7 of the American Convention, as well as 7 of the Inter-American Convention to Prevent and Punish Torture.

34. As to the civil suit for damages and injuries, the State has indicated that there were no irregularities in the procedure and that Mr. Hernández enjoyed all judicial guarantees. It argues that the judges that heard the complaint, both in the lower court and subsequent higher courts, dismissed the suit, in compliance with the law, because it had been lodged after the statute of limitations had expired. Thus, it alleges that the petitioners’ intent is for the Commission to overturn a domestic ruling that was unfavorable to Mr. Hernández; it has therefore requested that the petition be declared inadmissible. In this regard, as indicated in the preceding paragraph, the matter dealt with in this petition is not limited to a claim for damages and injuries, but also to a series of conditions of detention that existed prior to the diagnosis of the illness contracted by the alleged victim and to subsequent consequences. The Commission considers that the relationship between the different claims and denunciations lodged with various authorities requires an analysis on the merits with respect to Articles 8 and 25 as they relate to Article 1.1 of that same instrument.

35. The Commission furthermore concludes that, from the information provided by the parties, it lacks sufficient evidence to infer the supposed establishment of violations of Articles 11, 17, and 24 of the Convention by the Argentine State.

36. Consequently, in the case of record, the Commission concludes that the petitioners have made accusations that, if compatible with other requirements and are proven to be true, could establish a violation of the rights that enjoy protection under the American Convention; more specifically, of those contained in Articles 5 (physical integrity), 7 (personal liberty), 8 (judicial guarantees), and 25 (judicial protection) in relation to 1.1 (obligation to respect and guarantee rights), as well as Article 7 of the Inter-American Convention to Prevent and Punish Torture.

37. The Commission concludes that it is competent to hear the case of record and that the petition is admissible under Articles 46 and 47 of the American Convention.

38. By virtue of the preceding factual and legal arguments, and without prejudging the substance of the matter,

#### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

#### **DECIDES:**

1. To declare the case of record admissible in relation to the alleged violations of the rights recognized in Articles 5, 7, 8, and 25 in relation to 1.1 of the American Convention, as well as 7 of the Inter-American Convention to Prevent and Punish Torture.

2. To declare the petition inadmissible in relation to the alleged violations of Articles 11, 17, and 24 in relation to 1.1 of the American Convention.

3. To notify the parties of this decision.

4. To continue with its analysis of the merits of the case.

5. To make this report public and publish it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 21st day of July 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.