

WorldCourts™

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 31/97; Case 11.217
Session:	Ninty-Seventh Regular Session (29 September – 17 October 1997)
Title/Style of Cause:	Paulo Christian Guardatti v. Argentina
Doc. Type:	Report
Decided by:	Chairman: Ambassador John Donaldson; First Vice Chairman: Dr. Carlos Manuel Ayala Corao; Second Vice Chairman: Professor Robert Kogod Goldman; Members: Ambassador Alvaro Tirado Mejia, Dean Claudio Grossman. Commissioner Oscar Lujan Fappiano, an Argentina national, did not participate in the consideration and vote on this report, pursuant to Article 19(2)(a) of the Commission's Regulations.
Dated:	14 October 1997
Citation:	Christian Guardatti v. Argentina, Case 11.217, Inter-Am. C.H.R., Report No. 31/97, OEA/Ser.L/V/II.98, doc. 6 rev. (1997)
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

1. On October 20, 1993, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a claim from Ms. Hilda Gladys Lavizzari against the Republic of Argentina (hereinafter "the State" or "the Argentine State"). Ms. Lavizzari is the mother of Paulo Christian Guardatti, who--according to eyewitnesses--was handcuffed and taken away by a police officer in the Province of Mendoza on May 23, 1992, following an altercation which had taken place between the two. To the present day, his whereabouts are not known, despite the efforts pursued by the mother through legal channels. Violation of the following rights protected by American Convention on Human Rights (hereinafter "the American Convention") is claimed: the right to life (Article 4); the right to physical integrity (Article 5); the right to personal liberty (Article 7); and the right to a fair trial (Article 8).

I. THE FACTS

2. Early in the morning of May 23, 1992, Paulo Christian Guardatti was at a dance in the Estanzuela area of Mendoza Province, accompanied by a group of friends. He had an argument there with a police officer in uniform, whom he saw later on dressed in sports attire. At that time--4:30 the next morning--a second incident took place. The policeman fired some shots into the air with his revolver, which caused Guardatti's companions to run away. But Guardatti did not move from the spot, and he was immediately approached by the police officer, who took him in handcuffs to a police station three blocks away. A number of witnesses were present, and they provided a description of the policeman.

3. Ms. Lavizzari was informed of the incident the next day and she went to the police station at La Estanzuela, where she was told that Paulo Christian Guardatti was not being held there. In view of the negative response at the Commissariat in charge of that station, Guardatti's mother reported the disappearance of her son to the Second District Court at Mendoza. After visiting the hospitals and the morgue without finding him, she filed a writ of habeas corpus with that court. The writ was rejected when a negative response was received from the security forces in regard to Guardatti's detention.

4. The case acquired public notoriety with the intervention of the mass media and agencies for the defense of human rights, which spurred the investigation and led to the detention of four police officers accused of unlawful deprivation of liberty. The evidence assembled in the file states that the conduct of the captor was befitting to a police officer; that the person who arrested Guardatti was one of the policemen assigned to keep order at the dance, a man named Godoy; and that Godoy had been in an argument with Guardatti. At the home of Walter Rubén Godoy Pérez, who had been on guard duty at the Estanzuela station on the night of the events, sporting garments identical to those described by the witnesses were found. In addition, members of the staff of a local hospital stated that a cadaver labeled "N.N." had been delivered to the morgue that night, and the description and clothing concurred those of Guardatti; that the body had been removed by the police in the early hours of the following day; and that the respective registry file was missing.

5. After seven months of investigation and an abundance of evidence, the conduct of the accused parties was classified as unlawful deprivation of liberty and homicide in "concurso real." [FN1] The charge was appealed by the prosecutor and the defendants, and the Fifth Criminal Court decided to declare the indictment null and void and ordered that the accused parties be released. As a result, none of the incriminating evidence that had been presented was allowed; and the month of November 1993 was set as the deadline for presenting new evidence. If this were not forthcoming, the four defendants would be dismissed.

[FN1] "The combination of series of related criminal acts (resulting in a penalty less severe than the mere summation of penalties of the independent crimes)" according to the Butterworth Legal Dictionary.

II. PROCESSING BY THE COMMISSION

6. The pertinent portions of the claim submitted by Ms. Lavizzari, who was represented by lawyers Carlos Varela Alvarez and Diego Lavado, were transmitted to the State of Argentina on November 30, 1993, along with a request that information regarding that document be provided within a period of 90 days.

7. The response from the State, received on July 15, 1994, contained a summary of the proceeding conducted in Mendoza. It also mentions the administrative measures conducted in the province, such as replacement of the heads of the Investigation Division of the local police force and the instructions requesting court records from various officials. The same note reports that

Walter Godoy was tried and arrested on November 26, 1993; but that on March 16, 1994, the Fifth Criminal Court ordered the dismissal of the police officer, together with that of all the other persons charged in the case. The State's note closes with the statement that further action was being conducted in the case "in order to discover the whereabouts of Paulo Christian Guardatti."

8. The State points out that the events had taken place in a provincial jurisdiction, "which is conducive to action on the part of the provincial authorities, who cannot be dictated to by the National Government." Consequently, the State reserves its opinion on the merits of the claim, and asks that the Commission not reach a decision until all of the legal remedies in process have been exhausted.

9. The claimants' observations concerning that information were received on October 11, 1994. They include the remark that the claim saying that the case was still in process is inaccurate, since action thereon had come to a halt. The courts have indeed acknowledged the responsibility of the Province of Mendoza in regard to the disappearance of Paulo Christian Guardatti. But a final resolution is on record which states that sufficient evidence had not been presented to identify the perpetrators of the crime.

10. The State's reply to the claimants' remarks was received on November 16, 1994. The letter again acknowledges the importance of the case, and reports that it has sent formal notice to the Government of Mendoza Province, thereby complying with Article 28 of the American Convention.

11. A note was received from the claimants on December 12, 1994, in which they designate the Center for Justice and International Law (CEJIL) as co-petitioners in the Guardatti case, and in Case 11.009, which dealt with the disappearance of Adolfo Garrido and Raul Baigorria in the Province of Mendoza. This had taken place in 1990, and was also being addressed by the Commission.

12. On February 8, 1995 a further missive was received from the claimants in which they repeat their statements as to the paralysis of judicial proceedings. It also disputes the State's statement regarding the exceptional nature of the disappearances when referring to the cases of Garrido and Baigorria, and that of Andrés Nuñez (who had disappeared in September of 1990) and Miguel Bru (who had disappeared in 1993). The letter included various pieces of evidence and the statement that the State's arguments "are false, imprecise and clearly intended as a delaying tactic."

13. In its reply dated March 20, 1994, the State explained that although the Guardatti case was not the sole instance of forced disappearance in Argentina, at the same time it represented an exception, inasmuch as no policy was in effect that called for the commission of this type of offense. The State again expressed that renewed efforts were being made to convince the Judicial Powers of Mendoza Province to pursue the investigation.

14. A note from the petitioners was received on May 25, 1995, once again citing the lack of investigation--specifically, the fact that no police commission existed or had been appointed to determine the truth in this case.

15. On September 7, 1995, in the course of its 90th regular meeting, the Commission held a hearing on the present case, with the petitioners and the State taking part. At that time, the preliminary basis for a friendly settlement were set.

16. On December 6, 1995, a deed of agreement was signed by the petitioners and the Undersecretariat of Justice of the Mendoza Governor's Office, in which a deadline of January 31, 1996 was established for setting up an "ad hoc" investigation committee, that was to issue a report within ninety days of that date.

17. On January 24, 1996, the President of the Argentine Republic issued a decree appointing Ambassador Zelmira Mireya Emilse Regazzoli as his agent for negotiating a friendly settlement of Case 11.217 and of Case 11.009 (Garrido and Baigorria). The latter case was being handled by the Inter-American Court of Human Rights in response to the request presented by the Commission on May 29, 1995. The same decree invited the Government of Mendoza Province to take part in the negotiations.

18. A draft of the agreement was drawn up on December 26, 1995 as a basis for the friendly settlement, and on January 29, 1996 the parties sent a request to the Commission, asking that the treatment of both of the cases cited above be suspended so that the negotiations could be continued.

III. FRIENDLY SETTLEMENT

A. The Agreement

19. After a number of meetings held in Argentina, on May 31, 1996 the parties signed a common agreement covering both cases--11.217 and 11.009. It addresses the two major factors: indemnification and investigation. The contents of that agreement are summarized in the following paragraphs.

i. Indemnification: An Arbitral Court is established to determine the amount of compensation. Its members are to be appointed by consensus from among those of the Advisory Committee of the Magistrates Council on Civil and Commercial Matters in the Province of Mendoza. Its decision must be handed down by June 28, 1996, in accordance with "current international standards." The verdict is to be submitted to the intervening international agencies for official approval, and the parties may present objections in the event that a charge of arbitrariness is found.

ii. Investigation: The ad hoc Investigation Committee consists of five members, appointed by consensus. The objective of the ad hoc Committee is to verify the facts in both cases, and to issue an opinion thereon which will suggest the measures to be taken.

B. Compliance with the Agreement

i. Verdict of the Arbitrator

20. The verdict of the Arbitration Tribunal was issued on June 25, 1996. It includes an analysis of the applicable legal system, with the conclusion that it should be guided by the jurisprudence of the Inter-American Court of Human Rights; the principles of compared legislation; and Argentine positive law. The guidelines for the determination of damages took into account the difficulty of the case, and it was determined that the material injuries suffered would include consequential damage, loss of income and mental trauma.

21. The total amount of indemnification awarded to Ms. Hilda Gladys Lavizzari is US\$136,000, distributed as follows:

Consequential Damage	US\$	6,000
Loss of Income	US\$	50,000
Mental Trauma	US\$	80,000

22. Consequential damage was set in common for the two cases (Guardatti and Garrido and Baigorria). Vouchers covering their expenditures come to a total of US\$16,885.27. The resulting amount is earmarked to cover outlays for national and international fares, notary expenses, restaurants and other items.

23. As to the consequential damage, the court of arbitration considered it an established fact that Guardatti's mother was in poor health and had no other children who would be able to help her. Another factor taken into account was that Guardatti did not have a fixed job, and the work he performed in the construction area did not permit an exact determination of an average regular income. A further consideration was his lack of training, since he had completed only six years of primary school. This raised doubts as to whether there might have been any possible improvement in his future economic status.

24. To determine the moral damage, the court took into account the circumstances of the disappearance and the serious pain and suffering caused, together with the impossibility of honoring the memory of her son, who had lived with her.

25. The fees of Carlos Varela Alvarez and Diego Lavado, who were Ms. Lavizzari's attorneys, were set at US\$ 16,500 for each professional. That amount was arrived at by calculating 15% of US\$ 220,000, the total indemnity awarded to the families of the three men who had disappeared.

26. The decision of the arbitration tribunal was rejected by Varela and Lavado in a document submitted to the court on July 2, 1996, alleging "manifest and clear" arbitrariness. They found that the court had violated the norms established for resolving cases, observance of which was compulsory. Varela and Lavado point to the serious nature of the violations, and consider their own interpretation to have been the correct one in light of the jurisprudence of the inter-American system of human rights.

27. The lawyers also believe that the decision overlooked the principle of equity, whereby the amount paid to the families of persons who had disappeared during the military dictatorship from 1976 to 1983 should have been used as a parameter. That sum amounted to approximately US\$ 230,000 per person in today's currency. Applying that same principle, the lawyers pointed to recent cases of unlawful acts committed by the Mendoza police, as a result of which the provincial government had been obliged to pay US\$ 150,000 to one victim and US\$ 120,000 to the other.

28. Varela and Lavado end the aforementioned note with a statement that "acceptance by this party of the miserly sums established by the arbiters would create a serious precedent in favor of a repressive practice which most of us who are Argentine citizens reject." Finally, it should be noted that neither CEJIL (which was the co-petitioner in both cases) nor the Argentine State has expressed any objection to the arbitration court's decision.

ii. Report of the Ad Hoc Committee

29. On August 12, 1996, the Ad Hoc Investigation Committee presented its report to the Supreme Court of Justice in Mendoza and to the Executive Secretary of the Inter-American Commission on Human Rights. The third section of the report addresses the Guardatti case. It examines the circumstances surrounding his detention along with the judicial proceedings of first and second levels of jurisdiction, which culminated in the dismissal of the accused on April 18, 1994.

30. As to the dismissal, the Ad Hoc Committee finds that the Fifth Court had sufficient evidence to try police officers Walter Rubén Godoy, Oscar Ramón Luffi, Walter Rolando Páez and José Antonio Aracena. That position was arrived at by questioning each of the arguments adduced by members of the Court. At the same time, the Ad Hoc Committee cites the fear that affected the witnesses; the conditions under which testimony was given; the evaluation criteria applied by the examiners; and the contradictions apparent in the statements given by the various defendants.

31. The report of the Ad Hoc Committee ends with the following conclusions:

a. The Province of Mendoza is responsible for the forced disappearance of Paulo Christian Guardatti, who on May 24, 1992 was unlawfully deprived of his freedom by police officers Walter Rubén Godoy, Oscar Ramón Luffi, Walter Rolando Páez and José Antonio Aracena. To this day, the victim's whereabouts are not known.

b. The Province of Mendoza has violated the following rights recognized in the American Convention on Human Rights: the right to life (Article 4); to physical integrity (Article 5); and personal liberty (Article 7), all of these in connection with Article 1.1, to the detriment of Guardatti.

c. The Province of Mendoza has also violated the right of Guardatti's family to be heard by a judge or a competent tribunal with due guarantees and within a reasonable time. The failure to discover Guardatti's whereabouts and final fate more than four years after his disappearance was the result of serious flaws in the legal investigation. Those flaws may be summarized as follows: the discretionary and arbitrary autonomy assumed by the police in the course of the investigation;

the assignment of a very complex case to a magistrate without relieving that person of the other duties of the court; and the erroneous juridical assessment of the members of the Fifth Criminal Court, who dismissed the persons charged and made it impossible to continue the investigation.

32. The investigation carried out by the Ad Hoc Committee has led to a number of specific recommendations. Those which concern Paulo Christian Guardatti are summarized below:

a. Forced disappearance of persons: Punishable by a special federal law that covers the different levels of criminal acts and the types of participation which are involved in forced disappearance, the jurisdictional factors, the inapplicability of the statute of limitations, and other items.

b. Complex judicial cases: Greater volumes of human and material resources should be assigned and the judges who are competent to hear this type of case should be relieved from their other responsibilities in order to ensure the efficiency of the investigation.

c. Code of conduct: The "Code of Conduct for Officials Responsible for Ensuring Compliance with the Law" that was approved by the United Nations General Assembly in its Resolution 34/169 of December 17, 1979 should be put into effect to eradicate the corporative tendencies of the police force, which result in the impunity of its members.

d. Attorney General's Office: The norms governing the performance of criminal inspectors should be reformed so as to secure their active and effective participation in the task of judicial investigation. This should be done as part of a sweeping change throughout the administration of provincial penal justice.

e. Investigation: Work should be continued on the investigation to determine the whereabouts of the victims, despite the *res judicata* nature of the decision to dismiss the persons responsible for unlawful deprivation of liberty.

33. Appendix III of the report examines the context of human rights in Mendoza, based on the testimony heard by the Ad Hoc Committee during its mandate. The witnesses produced a series of claims that private citizens had been subjected to violence and abuses by members of the police force. The report also contains a list of other lawsuits presented in the province since 1989, calling for an investigation of the same types of violations. Finally, the Ad Hoc Committee recommends that the report be published and widely disseminated.

IV. FINAL CONSIDERATIONS

34. Pursuant to the provisions of Article 48.1.f of the American Convention, the Commission placed itself at the disposal of the parties and monitored the process described in the preceding pages. The Rapporteur for Argentina made a visit to that country from July 3 to July 8, 1996, during which time he attended numerous working meetings and interviews concerning the present case in the cities of Buenos Aires and Mendoza. While there, he observed the work performed by the Ad Hoc Committee and the active collaboration received from both parties.

35. The Commission has conducted an exhaustive examination of the decision that was handed down on June 25 by the tribunal created for arbitration purposes. It has also performed a detailed review of the arguments mustered by the lawyers who presented the note rejecting the arbitral award.

36. As a result of that scrutiny, the Commission considers that there has been strict compliance with the deadlines, the stages agreed upon and the mechanisms created to define the terms of indemnification. The criteria utilized by the tribunal and the results obtained are deemed acceptable in the context of the present case and the points set forth in the agreement reached for the settlement thereof.

37. The terms of the agreement reached on May 31, 1996 require that the decision of the Arbitral Tribunal be submitted to the intervening international organs; and it states that the parties may object to the award in the event of a charge of arbitrariness.

38. The Commission takes note that two of the petitioners do not accept the interpretation and application of Argentine and international jurisprudence in the tribunal's ruling; it has nevertheless been unable to detect the arbitrariness invoked. In the absence of such findings, the Commission deems it appropriate to state that its purview does not call for a review of the manner in which the norms were interpreted, considering that both parties had voluntarily agreed to submit the case to arbitration. They must therefore abide by the result, regardless of how well founded their expectation of obtaining a larger sum for the victims may have been.

39. Insofar as the investigation is concerned, the Commission finds that the report of the Ad Hoc Committee reflects the excellent work performed by its members and their collaborators. They have conscientiously carried out the points listed in paragraph two of the agreement on friendly settlement with respect to verification of the events; the review of the acts performed in internal jurisdiction; and the consequent criminal responsibility. The conclusions and recommendations of that report are considered to be most timely and valuable, taking into account the serious nature of the acts that had been committed.

40. Pursuant to the provisions established in Article 49 of the American Convention, the Commission concludes that there has been adequate compliance with the points set forth in the two parts of the agreement for reaching a friendly settlement in the present case.

41. However, the Commission notes that, to date, no punishment has been imposed on the persons identified in the Ad Hoc Committee's report of August 16, 1996 as responsible for the violations denounced. On October 16, 1996 the Commission forwarded a letter indicating this circumstance to the Minister of Foreign Affairs of Argentina, requesting also that the Committee's report be made public. Subsequently, the Commission sent a letter on August 27, 1997 to the Ministry of Foreign Affairs of Argentina for transmittal to the Governor of Mendoza. In that letter, the Commission requested specific information regarding the measures taken by the Government of Mendoza toward compliance with the Ad Hoc Committee's recommendations, as well as the status of the investigation to determine the whereabouts of the remains of Paulo Christian Guardatti; it also requested a commitment from the provincial Government for the prompt payment of reparations.

42. On September 15, 1997, Carlos Varela Alvarez and Diego Lavado, legal representatives of Ms. Hilda Lavizzari, forwarded a new letter. On behalf of Ms. Lavizzari, the petitioners

requested that the Commission approve the friendly settlement in this case. The petitioners also said:

Therefore, we believe it is convenient that the IACHR keep the case open until the pending matters are complied with (removal of police officers and payment of compensation).

43. For the reasons stated in the previous paragraphs, the Inter-American Commission finds it necessary to continue to supervise the compliance of this aspect of the friendly settlement reached by the parties in this case.

44. The Commission expresses its appreciation to the State of Argentina for having appointed an agent for friendly settlement of the present case, and for having provided all of the human and material resources for that purpose; and to the Government of the Province of Mendoza for the decisive collaboration it had rendered to that end. Likewise, the Commission extends its thanks to the petitioners for having facilitated compliance with the various stages of the process.

V. RECOMMENDATIONS

45. In view of the considerations and conclusions expressed in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

46. Recommends to the State of Argentina--and, through the offices of that State, to the Government of Mendoza Province--that the report of the Ad Hoc Committee dated August 12, 1996 be published and given widespread publicity.

47. Decides to supervise actions taken by the State of Argentina until such time as there is full compliance with the recommendations of the Ad Hoc Committee report of August 16, 1996; for this purpose, it requests that the State submit follow-up reports to the Inter-American Commission every three months, which shall be counted from the date the present report is forwarded.

48. Decides to make this report public immediately and to include it in its Annual Report to the General Assembly of the OAS.