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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 103/99; Petition
Session: Hundred and Fourth Regular Session (27 September – 8 October 1999)
Title/Style of Cause: Bernard Merens and family v Argentina
Doc. Type: Decision
Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated: 27 September 1999
Citation: Merens v Argentina, Petition, Inter-Am. C.H.R., Report No. 103/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)

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I. SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition from Bernard Merens, Genevieve Noget Merens, and Roberto Felipe María Merens (hereinafter "the petitioners") on May 2, 1997, alleging that the Argentine Republic (hereinafter "Argentina" or "the State") had violated the American Convention on Human Rights (hereinafter "the Convention").

2. The petitioners claim to have been denied justice in a lengthy legal case concerning the amount of compensation due for the expropriation by the government of the Formosa province of real property owned by the company GINU S.C.A. The petitioners are a family group comprising all the company's shareholders. They specifically claim to have suffered violations of the right to effective recourse and the right to judicial protection, enshrined in Articles 8(1) and 25 of the Convention.

3. The Commission lacks active competence *ratione personae* to hear this petition because the remedies sought under the domestic laws of Argentina were filed and exhausted by the company GINU S.C.A., which is a legal entity different than the petitioners. Consequently, in compliance with Articles 1(2) and 47(c) of the Convention and Article 31 of its Regulations, the Commission declares this petition inadmissible.

II. PROCESSING BY THE COMMISSION

4. The entire proceedings took place during 1997. The Commission received the petition on May 2 and acknowledged its receipt on May 27. On that occasion the Commission asked the

petitioners for additional information in order to determine whether the acts alleged constituted violations of rights protected by the Convention.

5. The petitioners sent the Commission additional information on June 12, receipt of which was acknowledged on June 17.

6. On September 9, the Commission received additional information submitted by the petitioners and their lawyers. The Commission acknowledged its receipt on December 3.

7. The Commission believes it should first examine whether the petition meets the requirements for admissibility set forth in Articles 46 and 47 of the Convention. Consequently, it has not forwarded the petition to the State nor has it sought the State's opinion on the matter.

III. POSITION OF THE PETITIONERS

8. The petitioners claim they are a family group which simultaneously constitutes the entire universe of shareholders of the company GINU S.C.A. (hereinafter "the company"). In 1974, the company began an urban real-estate development project in the Argentine province of Formosa. In 1975, it began the construction of basic public infrastructure and "had to draw up sales agreements for 243 plots."

9. In December 1976, the Formosa provincial government, under military authorities appointed by the military dictatorship that took power in Argentina that year, enacted Law 447/76, expropriating all the land on which the company was developing its urban development project. The expropriation process began in April 1977, and the last stage in those proceedings under Argentine jurisdiction took place with the notification of the ruling handed down by the Supreme Court of Justice of the Nation (hereinafter "the Supreme Court") on December 5, 1996, i.e., almost 20 years later.

10. The key issue in the judicial proceedings initiated under Argentine law by GINU S.C.A. is the determination of the amount of compensation to which the plaintiff is entitled for the expropriation of the property. The petitioners maintain the following:
The first instance decision was appealed and challenged as null and void since the court had failed to rule on the validity of the sales agreements [essential in determining the amount of compensation claimed by the plaintiff] and the consequent absence of solid evidence for reaching a decision about compensation in the substantive judgment.

11. They object to the Supreme Court's dismissal of the extraordinary remedy filed by the petitioners' company, invoking the prerogative granted to that judicial instance in Article 280 of the National Civil and Commercial Procedural Code (hereinafter "the Procedural Code"), that is, "without any argument whatsoever" and "without examining the evidence submitted [by the company]." They also hold that this Supreme Court ruling "does not meet the terms inherent in any judgment [in that it does not make detailed reference to the background data behind the ruling]."

12. They also maintain that "the length of the judicial proceedings [almost 20 years] undermines the guarantee of a hearing within a reasonable time, as set forth in Article 8(1) of the Convention."

IV. ANALYSIS

A. The competence *ratione materiae*, *ratione personae*, and *ratione temporis* of the Commission

a. *Ratione materiae*

13. The petitioners' allegations involve rights (due process and judicial protection) enshrined in the Convention, to which Argentina is a party. Consequently, the Commission affirms that it has competence *ratione materiae* to hear this petition.

b. *Ratione personae*

14. The petitioners are natural persons. They appear before the Commission as a corollary to a lengthy trial under Argentine law which did not involve them personally, but rather the company GINU S.C.A. (hereinafter "the company"). All copies of judicial proceedings submitted by the petitioners themselves and appearing in the Commission's case file clearly show that the principals in the proceedings are different.

15. The Commission has constantly and invariably established in its jurisprudence the inadmissibility of petitions filed by business entities or cases in which the domestic remedies were exhausted by such entities and not by the persons appearing as petitioners before the Commission.[FN1] The present petition contains no elements that would justify a change in the course taken by the Commission in its jurisprudence.

[FN1] Inter alia, in the following cases: Banco de Lima. IACHR, Report N° 10/91, Case 10.169, Peru, Annual Report 1990-1991, pp. 452 ff. Tabacalera Boquerón. IACHR, Report N° 47/97, Paraguay, Annual Report 1997, pp. 229 ff. Mevopal, S.A. IACHR, Report N° 39/99, Argentina, pending publication.

16. When analyzing its *ratione personae* competence, the Commission bears in mind how this requisite is dealt with by other supranational human rights protection systems. The Commission concludes that the normative frameworks of those systems--i.e. the ones of the International Covenant on Civil and Political Rights, and of the European Convention on Human Rights--are in this regard comparatively different to the one of our Convention.[FN2]

[FN2] The procedure under the ICCPR Optional Protocol article 1 establishes the requisites of human personality ("individuals") and of identity between victim and petitioner. Based on those criteria, the Human Rights Committee has consistently declared the inadmissibility of

communications submitted by corporations due to their lack of locus standi. See U.N. Human Rights Committee, Annual Report 1989. Communication N° 360/1989, p. 308; Communication N° 361/1989, p. 310.

The European system has not adopted the human personality restriction, and thus petitions submitted by corporations are frequent. See European Court of Human Rights, AGOSI case, decision of October 24th., 1986, Series A N° 108; Tre Traktörer AB, decision of July 7th, 1989, Series A N° 159.

17. The present petition contains no elements that would justify a change in the course taken by the Commission in its jurisprudence.

18. In light of these considerations and pursuant to the terms of Articles 1(2) and 47(c) of the Convention and Article 31 of its Regulations, the Commission concludes that it lacks active competence *ratione personae* to hear this petition.

19. For reasons of procedural economy, the Commission will refrain from continuing to analyze the remaining aspects of this petition's admissibility.

V. CONCLUSIONS

20. The Commission concludes that it lacks active competence *ratione personae* to hear this petition under the precedents of its own jurisprudence and pursuant to the provisions of Articles 1(2) and 47(c) of the Convention and Article 31 of its Regulations; said petition is therefore inadmissible.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To notify petitioners Bernard Merens, Genevieve Noget Merens, and Roberto Felipe María Merens of this decision.
3. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 27th day of the month of September 1999. (Signed): Robert K. Goldman, Chairman; Helio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; and Commissioners Carlos Ayala, Alvaro Tirado Mejía and Jean Joseph Exume.