

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 91/00; Case 11.796
Session: Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause: Mario Gomez Yardes v. Argentina
Doc. Type: Decision
Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
The Second Vice Chairman of the Commission, Juan Méndez, an Argentine national, did not participate in the discussion of and vote on this report, pursuant to Article 19(2)(a) of the Commission’s Regulations.
Dated: 6 October 2000
Citation: Gomez Yardes v. Argentina, Case 11.796, Inter-Am. C.H.R., Report No. 91/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by: APPLICANTS: Diego Lavado and Carlos Varela
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

I. SUMMARY

1. On August 5, 1997, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition from attorneys Diego Lavado and Carlos Varela representing Mario Gómez Yardez (hereinafter jointly referred to as “the petitioners”), alleging violations of the human rights of Mario Gómez Yardez (hereinafter “the alleged victim”) within the jurisdiction of the Argentine Republic (hereinafter “the State”).

2. Mendoza Province police detained the alleged victim on July 27, 1990, and allegedly tortured him for 10 days. Criminal proceedings were instituted against a number of police officers as a result. On August 26, 1995, the judge of the 2nd Lower Court of the First Judicial District dismissed the case against eleven police officers indicted for failure to report torture, on the grounds that the statute of limitations for criminal liability had expired. The petitioners filed and exhausted all remedies within the State’s jurisdiction to challenge that ruling, but did not get it reversed. The other indicted police officers were acquitted in a ruling that the Fourth Criminal Appeals Court of the First Judicial District delivered on September 21, 1998.

3. The petitioners expressly contend that the following rights protected by the American Convention on Human Rights (hereinafter “the Convention”) were violated in respect of the alleged victim: and the right to a fair trial and to judicial protection, articles 8(1) and 25, respectively; the right to equal protection of the law, Article 24. They assert that the State failed to honor its obligation to diligently investigate the crime of torture alleged.

4. The State argues that the case is inadmissible on the grounds that local remedies have not been exhausted.

5. Without prejudging the merits, the Commission finds that the instant case is admissible in respect of the violation of the rights to due process and to judicial protection, articles 8(1) and 25 of the Convention, respectively; it further finds that the case is inadmissible in respect of the allegations of the supposed violation of the right to equal protection of the law (Article 24). The Commission will defer any interpretation and application of the Convention's provisions relative to the rights to humane treatment and personal liberty (articles 5 and 7, respectively) until it examines the merits of the case.

II. PROCEEDINGS BEFORE THE COMMISSION

6. The Commission received the petition by fax on August 5, 1997. The petition was received a second time by mail on August 14. On August 22, the State was notified that the case had been opened. After two extensions, the State sent its reply to the Commission on March 3, 1998. Its receipt was acknowledged and a copy sent to the petitioner on March 18, 1998.

7. On September 18, 2000, attorneys Diego Lavado and Carlos Varela sent the Commission an e-mail message reporting the following: (a) the death of the alleged victim; (b) their willingness to continue to act as co-petitioners in the case, and (c) accreditation of Ms. Gloria Alvarez, companion of the alleged victim and mother of his child, as substitute co-petitioner.

III. PARTIES' POSITIONS

A. The petitioners' position

a. On issues of fact

8. On July 27, 1990, Mendoza province police detained the alleged victim and search his home as part of an investigation into the crimes of aggravated robbery, aggravated rape and attempted murder. Both the detention and the search were purportedly unlawful, since there was allegedly no court order authorizing them. The alleged victim was initially detained by the highway patrol and then taken by the investigations department of the provincial police department. He was then to the Eighth Examining Court, which only then took jurisdiction over his arrest. Finally, he was taken to Lavalle Police Headquarters 17. While in police custody, he was allegedly "brutally tortured for 10 days."

9. The opinion of the Third Examining Attorney's Office of the First Judicial District, dated April 16, 1996, states that the following were the acts of torture that the alleged victim endured: mock execution, kicking, "submarining", and electric shock on various parts of the body. It adds that "Dr. ARMANDO ESPONDA examined the victim's condition and asked that he be given medication and analgesics, which were never supplied."

10. “When [the alleged victim] appeared before the judge again, he was found to have lesions of varying degree but serious enough for him to be hospitalized in the Hospital Lagomaggiore. There, a biopsy was done of the scrotum area to ascertain whether electric shock had been used. The biopsy was then ‘lost’ in several government offices; the report and guard-duty log from the Lavalle Police Station would eventually turn up missing as well.”

11. The alleged victim filed a complaint of torture on September 6, 1990, a few weeks after the events occurred. The Eighth Examining Court instituted criminal proceedings against Deputy Police Chief Enrique Funes on charges of unlawful duress. Later, on December 21, 1992, the judge changed the charge to that of torture and added the names of nine police officers to the list of defendants. The defense attorneys representing the police officers filed a motion for dismissal with the Fourth Criminal Appeals Court. The latter nullified the court order altering the charge to that of torture and adding other police officers to the list of defendants in the case. It also ordered that the case be referred back to the First Examining Court of the First Judicial District. When the judge handling the case disqualified herself, the case was passed to the Second Examining Court.

12. On November 7, 1994, the Second Examining Court handed down an indictment against nineteen police officers. The charges were as follows: authorship of the crime of torture; primary and secondary participants in the commission of torture; unlawful duress or failure to report torture.

13. On August 26, 1995, the Second Examining Court dismissed the case against the eleven defendants charged with the alleged crime of failure to report torture, on the grounds that the statute of limitations for criminal action had expired. On September 11, 1995, the petitioners filed a motion for dismissal for failure to establish sufficient grounds. On September 21, 1995, the judge of the Second Examining Court denied the motion. The petitioners filed an appeal with the Fourth Criminal Appeals Court, which denied the appeal on November 23, 1995. The petitioners filed an extraordinary appeal with the Supreme Court of Mendoza Province, which was denied on February 5, 1997.

14. Citing “lack of evidence,” on September 21, 1998, the Fourth Criminal Appeals Court handed down its ruling of acquittal in the case against the alleged authors of torture. In its pleading, the Office of the States Attorney for the Appellate Court requested the defendants’ acquittal, thereby contradicting what the State’s Attorney with the Third Examining Attorney’s Office had stated in its opinion of April 16, 1996. The criminal case lasted approximately eight years and one month from the date on which the alleged victim filed a complaint with the competent authorities to the effect that he had been tortured.

15. In stating the grounds for its acquittal, the Fourth Criminal Appeals Court stated the following:

In the instant case, more than seven years passed between the preliminary inquiry and the start of oral arguments, something unprecedented in this Court. That alone defeats any chance of arriving at absolute conclusions from the oral arguments phase of a trial [...] [Compounding the excessive delay in the preliminary proceedings] unmistakable evidence of a number of errors,

irregularities and procedural violations has obstructed due process and the quest for the real truth. [Moreover] essential evidence introduced, such as the identifications at Fs. 137/139, has also had to be thrown out [...] owing to a flagrant violation of the laws that guarantee individual rights. In a number of identifications made during the examining phase, there were irregularities that, while not causing nullification, showed that the conditions under which the identifications were made undermined their credibility [for example, the identification rounds or line-ups]. [...] The loss of probative material is but another factor conspiring against any chance of normal trial proceedings [...].

16. The alleged victim was held in the Provincial Penitentiary for 13 months before the First Examining Magistrate ordered that the case alleging his involvement in the criminal acts with which he had been charged be dismissed for lack of evidence.

b. On issues of law

17. The petitioners expressly contend that the following rights protected by the Convention were violated to the alleged victim's detriment: the right to due process and the right to judicial protection, articles 8(1) and 25, respectively, and the right to equal protection of the law, Article 24. They also make implicit reference to other facts that could constitute violations of other rights protected by the Convention.

18. They contend that:

The facts in the instant case show that the "loss" of the Report and Guard Duty Log from the Lavalle Police Station [where the torture is alleged to have occurred] and of the Medical Examination Log was not taken into account. Nor was the fact that MARIO GOMEZ YARDEZ was never taken to a hospital, a fact about which the defendants and witnesses, all members of the Mendoza police, lied. No consideration was given to the fact that because the proceedings took eight years, the statute of limitation against criminal proceedings against some of the defendants expired. These same persons then turned into important witnesses for the court [Fourth Criminal Appeals Court]. This was true in the case of officer ROQUE BEAS and the physician ESPONDA. Also, it appears that the court did not feel it necessary to ask why the biopsy material taken from the victim's scrotum was lost while in the custody of the State (Lagomaggiore Hospital-Forensic Medical Corps) and who the responsible parties are. That material was taken for purposes of a Jelinek study to show that electric shock [which was alleged to be one of the tortures used] had been used.

19. Also supplied to the Commission was a note published in a Mendoza Province newspaper, dated September 19, 1998, which states the following concerning the biopsy material taken from the alleged victim's scrotum: "That biopsy might have been the only irrefutable proof of torture and the courts are wholly responsible for its loss."

20. The petitioners also point out that the provisions of the Convention that the State violated are as follows: the obligation to respect human rights (Article 1); the judicial guarantee of appearance before a court within a reasonable time (Article 8(1)); the right to equal protection of the law (Article 24); and the right to judicial protection (Article 25).

B. The State's position

21. The State spelled out its position on the case only once, in a communication dated February 24, 1998. Since then events have transpired that have superceded aspects of that reply. For example, the State argues that case N° 4250, under cover titled "State's Attorney v. Sánchez et al for torture" is still underway before the Fourth Criminal Appeals Court of the First Judicial District of Mendoza Province. Subsequent to that reply, the criminal trial ended on September 21, 1998, with an acquittal.

22. It argues that the case is inadmissible and adds: "if the Commission persists in its consideration of the complaint, the Government reserves the right to examine each and every question of fact and of law set forth in the petitioners' brief."

23. The State rebuts the petitioners' arguments to the Commission by asserting that "not all the defendants were acquitted; only those who failed to report the facts [...] [and that] the case against those charged with the crime of torture [...], as authors, primary or secondary participants, and with unlawful duress, is still in progress."

24. The State added that because a criminal case is still in progress in the domestic courts, the case is inadmissible under Article 46(1)(a) of the Convention.

IV. ANALYSIS

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

25. The Commission is competent to examine the case. The facts alleged by the petitioners concern a possible violation of rights protected under the Convention, to the detriment of natural persons, by reason of actions attributable to Argentina that allegedly occurred within its territory after the Convention took effect for that State.[FN1]

[FN1] Argentina deposited its instrument of ratification of the Convention with the General Secretariat of the Organization on September 5, 1984.

B. Other requirements for admissibility of the case

a. Exhaustion of domestic remedies

26. The petition refers to a number of alleged violations of rights protected by the Convention that, although arising out of the same situation, must be examined individually to ascertain whether the other admissibility requirements have been met.

27. As for the alleged violation of the right to effective judicial recourse because of the acquittal of the eleven defendants charged with the alleged crime of failure to report torture, the petitioners contend that domestic remedies had been exhausted upon notification of the February 5, 1997 ruling of the Supreme Court of Mendoza Province, which denied the extraordinary appeal that the petitioners had filed with that court. The State has not denied that in this specific aspect of the case, domestic remedies were exhausted. Consequently, on this point, the requirement stipulated in Article 46(1)(a) of the Convention has been met.

28. The State's argument regarding the other supposed violations of rights was that domestic remedies had not been exhausted since the criminal trial for torture was still in progress. However, since the date of the State's reply, those proceedings have concluded (a verdict of acquittal handed down by the Fourth Criminal Appeals Court of the First Judicial District of Mendoza, dated September 21, 1998).

29. The petitioners argue that they did not appeal the verdict or file an extraordinary appeal "[because] the powers of a civil participant in a criminal trial in [the Province of] Mendoza are very limited." Since the proper appeal for purposes of the present analysis is a criminal appeal, the applicable provision is Article 6 of the Mendoza Provincial Code of Criminal Procedure, which stipulates the following: "Only the State's Attorney General Office may bring public actions in criminal cases." This means that only the State's Attorney General Office has the procedural authority to appeal a ruling. The Commission therefore finds that the petitioners did exhaust the juridical remedy available to them in the case of the other alleged human rights violations.

b. Deadline for filing a petition

30. Although the date of notification of the ruling handed down by the Supreme Court of Mendoza Province does not appear in the Commission's case file, it is dated February 5, 1997. Inasmuch as the petition was received by fax on August 5, 1997, the time requirement stipulated in Article 46(1)(b) of the Convention has been met.

c. Duplication of proceedings and litispendencia

31. There is no evidence that the subject of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously examined by the Commission. Therefore, the requirements set forth in articles 46(1)(c) and 47(d) of the Convention have been met.

d. Characterization of the facts alleged

32. The Commission considers that if the facts the petitioners allege prove to be true, they could tend to establish violations of rights protected under the Convention, except for the allegations concerning the supposed violation of Article 24 of the Convention. Consequently, without prejudging the merits of the case, the Commission considers that the requirements established in articles 47(b) and (c) of the Convention have been met.

33. The petitioners allege that in the instant case, the right to equal protection of the law, protected under Article 24 of the Convention, was also violated. The Commission believes that the information the petitioners supplied does show the presence of the elements necessary to tend to establish a violation of the provision of Article 24. Concerning the most relevant issues, unlawful discrimination assumes the presence of an unreasonable distinction between members of the same category of persons. An additional ingredient is the lack of equal treatment under positive law or in the application thereof. For the petitioners' allegation on this point to be substantiated, it would have to be shown that unlawful discrimination occurred within the same category of persons and following from the text of the law or its application. No case for discrimination can be made in the instant case because the alleged acts of torture are so utterly unlawful.

34. Since the petitioners have not supplied information to support this particular allegation, the Commission considers that it does not characterize a violation of the right to equal treatment of the law that Article 24 of the Convention upholds. Consequently, this allegation is manifestly groundless, under the terms stipulated in Article 47(c) of the Convention.

35. In summary, the Commission finds that the instant case is admissible as regards the alleged violation of the rights to due process and judicial protection (articles 8(1) and 25 of the Convention, respectively). It also finds that it is inadmissible as regards the allegations of a violation of the right to equal treatment of the law (Article 24). This determination is made without prejudging the merits of the case.

36. In its decision on the merits, the Commission will also consider the pertinence of interpreting and applying the provisions of the Convention relative to the rights to humane treatment and personal freedom (articles 5 and 7, respectively).

V. CONCLUSIONS

37. Pursuant to articles 46 and 47 of the Convention, the Commission concludes that it is competent to consider the present case and that it is admissible within the terms indicated below.

Based on the foregoing arguments of fact and of law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible insofar as it pertains to the supposed violation of the rights to due process and to judicial protection (articles 8(1) and 25 of the Convention) and inadmissible insofar as it pertains to the allegation of a violation of the right to equal protection of the law (Article 24 of the Convention), and to defer possible interpretation and application of the Convention's provisions on the rights to humane treatment and personal freedom (articles 5 and 7, respectively) until the merits are examined.

2. To notify the parties of this decision.

3. To continue with the analysis of the merits of the case.
4. To publish this decision and include it in its annual report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the sixth day of October of the year 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.