

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 30/01; Case 12.298
Session:	Hundred and Tenth Regular Session (20 February – 9 March 2001)
Title/Style of Cause:	Fernando H. Giovanelli v. Argentina
Doc. Type:	Decision
Decided by:	Chairman: Claudio Grossman; Second Vice-Chairman: Marta Altolaguirre; Commissioners: Helio Bicudo, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo. The First-Vice Chairman of the Commission, Juan Mendez did not take part in the discussion and voting on this case, pursuant to Article 19(2) of the Commission's Regulations.
Dated:	22 February 2001
Citation:	Giovanelli v. Argentina, Case 12.298, Inter-Am. C.H.R., Report No. 30/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by:	APPLICANT: Commission of Relatives of Defenseless Victims of Social Violence
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 June 5, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received from the OAS office in Buenos Aires a petition submitted by the Commission of Relatives of Defenseless Victims of Social Violence (COFAVI, hereinafter “the petitioner”), describing alleged human rights violations perpetrated by the Argentine Republic (hereinafter “the State”) against Fernando Horacio Giovanelli, now deceased (hereinafter “the alleged victim”).

2. The petitioner maintains that the alleged victim was detained on October 17, 1991, by officers of the Buenos Aires Provincial Police, and transferred in an unmarked vehicle to the Third Police Station in Quilmes, where he was “brutally beaten”; he was then taken to a public thoroughfare and “thrown onto the footpath and murdered by one of the police officers who discharged a firearm into his head.” The petitioner further states that the police investigation was deliberately oriented toward covering up the truth of the killing and that the ensuing criminal trial, which has been ongoing for nine years, “is almost without activity and is plagued with irregularities” and has failed to identify the perpetrators of the crime.

3. According to the petitioner, the State has thereby violated, with respect to the alleged victim, the following rights enshrined in the American Convention on Human Rights (hereinafter

“the Convention”): to life (Article 4), to humane treatment (Article 5), to personal liberty and security (Article 7), and to a fair trial and judicial protection (Articles 8(1) and 25).

4. The Commission concludes that the case meets the admissibility requirements set in Articles 46 and 47 of the Convention. Regarding the prior exhaustion of domestic remedies, as required by Article 46(1)(a) of the Convention, the Commission believes that the exception provided in Article 46(2)(c)—unwarranted delay in rendering a final judgment on those remedies—applies in this case. Consequently, and without prejudging its merits, the Commission declares this case to be admissible in all regards.

II. PROCESSING BY THE COMMISSION

5. The petition was delivered to the OAS office in Buenos Aires on May 18, 2000; it was then forwarded to the Commission, where its arrival was recorded on June 5. On June 20, the petitioner was told of its arrival and, on June 28, the case was opened, with notice served on the State and notification thereof sent to the petitioner.

6. The State’s reply was received by the Commission on December 5, 2000; receipt of this was acknowledged and the petitioner notified thereof on December 13. The State sent additional information on January 19, 2001, which was forwarded to the petitioner on February 20.

III. POSITIONS OF THE PARTIES

A. The petitioner

7. The petitioner claims that at around 9:45 p.m. on October 17, 1991, the alleged victim left his family residence in the district of Quilmes, Buenos Aires province, with the intention of paying a call on a sick uncle. While still only a few yards from his home, he was confronted by officers of the Buenos Aires Provincial Police inside a vehicle, who demanded that he show them his identification documents. Since he had failed to bring his papers with him and was thus unable to produce them, the alleged victim was arrested and transferred, in an unmarked vehicle, to the Third Police Station in Quilmes.

8. At the police station the alleged victim was “brutally beaten” and then:

taken to the August 14 Bridge (Quilmes district), a few meters from the police station, [where] he was thrown onto the footpath and murdered by one of the police officers who discharged a firearm into his head (the bullet entering through the left earlobe). Later his body was taken to the place known as “Villa Los Eucaliptos” [...], which, while quite distant from the police station in question, still comes under its jurisdiction. Approximately two and a half hours after his death, his body was dumped in front of that shanty town.

9. The petitioner maintains that the version of events contained in the police report, which was used as the basis for the criminal proceedings, is plagued with inconsistencies. According to the police report, the alleged victim was approached and assaulted by four residents of the Los Eucaliptos shanty town, one of whom fired on him when he put up resistance. According to the

petitioner, however, “it is impossible that Fernando [the alleged victim] was in that area at 1:00 a.m. because [...] his plan was to visit his uncle, who lived far away from there, and under no circumstances could he have taken that route to reach a destination that was some 40 blocks from his home.”

10. The petitioner states that the autopsy conducted on October 18, 1991, in the police morgue of the La Plata cemetery describes a series of wounds and bruises inflicted prior to death, indicating that the alleged victim was tortured.

11. On December 17, 1993, the petitioner claims, a forensic report on the alleged victim’s remains was drawn up by three physicians from the La Plata Forensic Service; based on this report, it was concluded that the alleged victim’s corpse was abandoned in a location other than the murder scene. This is indicated by the absence of copious deposits of blood in the samples taken at the place where the body was found. In other words, claims the petitioner, “the clinical report confirms that Fernando Horacio Giovanelli did not die in the place where his body was found [as maintained in the police report]. The blood from his wounds remained in the place where he was tortured, at the site where he was fired upon, and in the vehicle in which he was transported.”

12. The petitioner holds that the version set forth in the police report is also inconsistent regarding the time of day the incident occurred, in that it does not agree with the times given in either the autopsy or the subsequent forensic report. According to the police report, the attack and killing took place at around 1:00 a.m. on October 18, 1991, while the two medical reports agree that death must have taken place between 9:30 and 10:30 p.m. the night before.

13. The petitioner criticizes the fact that “the police investigation was ‘guided’ by an alleged anonymous telephone call [to the Third Police Station in Quilmes] made by a transvestite, [and] a group of youths from Villa Los Eucaliptos were presumed to be the perpetrators.”

14. The petitioner refers in detail to the testimony taken by the police from 14-year-old Angel Leonardo D. Acevedo, an alleged witness:

On 31/Oct/91, at Police Station III in Quilmes, before Station Chief Héctor Omar Amado, a witness statement was rendered by [...] Angel Leonardo David Acevedo, aged 14, who lives with his grandparents in Villa Los Eucaliptos, who stated that on the night in question (17/Oct/91) [...] at “ten to one” on 18/Oct/91 he saw that, on the path opposite [across from where he was spending the night], a young man came running [presumably the alleged victim], that the transvestite Sandra spoke to the young man for five minutes and then the young man walked on, and that later, “Ramonchi” [José Ramón Prado, under the influence of drugs], who had a Versa 22-caliber firearm, confronted him and said, “Be quiet or I’ll shoot,” and, although the young man put up no resistance, “Ramonchi” fired on him.

[...] On November 8, 1991, the minor Acevedo gave a new witness statement [...], this time to Criminal Court No. 1 [...] claiming that the statement taken from him at Police Station III [...] was obtained through torture inflicted by the interrogating officers and that he only learned of the incident under investigation on 29/Oct/91 from remarks made by others.

He also claims [in his new statement] that the police directed him to say certain things and that physical blows were inflicted on him. They told him that if he did not say he had seen the incident, they would hold him guilty and send him to prison.

On the same day that Acevedo gave his statement (8/Nov/91), proceedings No. 2446 were opened before Criminal Court No. 1 in Quilmes to investigate the possible commission of a publicly prosecutable crime.

[...] On December 30, 1992, the minor [Acevedo] elaborated on his statement [...] saying that a few days after Fernando [Giovanelli] was killed, he was detained by three police officers and taken in a van to Police Station III in Quilmes, where they began to interrogate him; the Station Chief asked the questions and they kept him in detention overnight. To secure his statement they hit him, placed a bag over his head (in other words, they tortured him), and tied him to a chair.

The minor's grandmother [...] also gave a statement on 8/Nov/91 [...] at the Court, about the actions of the transvestites [who allegedly witnessed the killing]. She said that the brother of one of them [...] (Peggy), also a transvestite, was killed for giving a statement incriminating a police officer. As a result of that killing, all the homosexuals who frequent that area are terrified and refuse to give evidence against anyone, and certainly not against the police.

15. The petitioner also reports that on October 31, 1991, the police raided the home of the person they had accused of the murder, José Ramón Prado, and arrested him; they kept him incommunicado for the maximum period of 72 hours but did not inform him of the reasons for his detention; and they arrested Cristian L. Carabajal on charges of being an accomplice to the murder. "Almost a month later, on 29/Nov/91, the judge was going to release Prado and Carabajal because of insufficient evidence," but on June 26, 1994, the presiding magistrate of Criminal and Correctional Court No. 1 in Quilmes ordered that they both be kept in preventive custody because he had found them "prima facie" guilty of the crime of homicide. On December 16, 1996, the presiding magistrate of that same court reissued the detention order against José Ramón Prado and ordered the provisional release of Cristian L. Carabajal. "Prado was later released on May 20, 1997, by the decision of Circuit II [of the] Criminal and Correctional Appeals Chamber of the Quilmes Judicial Department."

16. Based on the police investigations, the petitioner reports, on October 18, 1991, criminal proceedings were begun against José Ramón Prado and Cristian Leonardo Carabajal for the murder of Fernando Horacio Giovanelli (case No. 2378).

17. The petitioner maintains that:

Almost nine years after the first steps were taken, little has been done to cast light on this incident; [the different judges who heard the case] merely produced unconvincing evidence to clear up Mr. Giovanelli's death. Moreover, because of the scant evidence that existed, they did not study those elements of the case that appeared to be confusing, suspicious, or contradictory.

After so many years, it is clear that no attempt was made to carry out a fair, swift, objective, and transparent judicial process, as witnessed by the courts' lack of eagerness to discover the truth.

At present, no judicial activity is taking place with respect to case No. 2378/1991, and it is plagued with irregularities.

18. The petitioner concludes:

[that] police personnel attached to the Third Police Station in Quilmes, Buenos Aires province, took part in the illegal arrest, torture, and murder of Fernando Horacio Giovanelli on 17/Oct/91, and in the subsequent cover-up, [and that] both the Buenos Aires Police and the authorities of the Quilmes Judicial Department failed to perform their duty of conducting an exhaustive investigation into the victim's death [and that] both the police and the judicial authorities directed the investigation of the case in such a way as to place the blame for it on individuals whose involvement was not proven [and that] in spite of having been seen by seven judges, practically no progress was made with the investigation of this incident.

19. The petitioner therefore argues that the State has violated, with respect to the alleged victim, the following rights protected by the Convention: to life (Article 4), to humane treatment (Article 5), to personal liberty and security (Article 7), and to a fair trial and judicial protection (Articles 8(1) and 25).

B. The State

20. The State claims that there are a number of contradictions between the petition as placed before the Commission and the case documents used at trial in Argentina, particularly as regards the victim's reasons for venturing out from his home and the courts' treatment of "the irregularities committed in the police investigation."

21. The State suggests that the procedural delays suffered by the proceedings in case No. 2378/1991 arose from the complexity of the crime and from the fact that at first, under Law 3.589, the investigation was conducted by the Buenos Aires Provincial Police, some members of which had been named by the petitioner as the perpetrators of the alleged torture and murder.

22. Under a recent amendment to the procedural law, the State reports, the judicial investigation of the case will continue under the terms of Law 3.589 until January 1, 2002, after which time the provisions of Laws 11.922 and 12.059 will apply.

23. The State confirms that proceedings vis-à-vis the death of the alleged victim continue "in accordance with the hypothesis of police involvement in the incident under investigation, with related proceedings in which the officers involved in the investigation are charged with publicly prosecutable crimes." The State also points out that there is as yet no direct evidence to indicate criminal liability on the part of the police officers.

24. Given this lack of evidence, the State argues, there are no grounds for holding it responsible for the torture and murder of the alleged victim. "Declaring this case admissible

would undermine that standard legal precept under which the individual making an allegation is required to prove it.”

25. The State claims that:

the petitioners only became involved in the proceedings on page 320, where they appear as individuals claiming to be injured parties. This also shows that the petitioners have not made good use of domestic jurisdiction, since, as is well known, an individual appearing in criminal proceedings as an injured party does so in order to provide the evidence necessary to support his claim, irrespective of the formalities required by the public prosecutor.

26. The State holds that:

the case at hand is clearly inadmissible [because domestic remedies have not been exhausted]. Indeed, the investigation is still ongoing, with three submissions made by the injured party in the entire proceedings, and in which he asks for a single piece of evidence [...]. Consequently, the petitioner cannot claim that domestic jurisdiction is ineffective if he has failed to make proper use of it.

27. The State concludes that the Commission must declare this case inadmissible because it fails to meet the requirement that domestic remedies be exhausted and because it does not tend to describe violations of the Convention, pursuant to the terms of Articles 47(a) and 47(b) thereof.

IV. ANALYSIS

A. Competence Ratione Materiae, Ratione Personae, Ratione Temporis, and Ratione Loci

28. The Commission is competent to hear this case, in that it describes alleged violations of rights protected by the Convention (ratione materiae), attributable to the State in that they took place within its territorial jurisdiction (ratione loci), committed against an individual (ratione personae), at a time when it had come into force for the State (ratione temporis).[FN1]

[FN1] The Convention came into force for the Argentine Republic on September 5, 1984, when the State deposited its instrument of ratification.

B. Other Requirements for Admissibility

a. Exhaustion of Domestic Remedies

29. Article 46(1)(a) of the Convention contains the rule requiring the prior exhaustion of domestic remedies, a provision that the State has expressly invoked in requesting that the case be declared inadmissible.

30. However, Article 46(2)(c) of the Convention provides that enforcement of this requirement may be waived when there has been an “unwarranted delay in rendering a final judgment under the aforementioned remedies.” The petitioner has expressly invoked this exception, maintaining that the criminal trial in question has made little progress despite having been opened more than nine years ago.

31. The prima facie assessment of an unwarranted delay in judicial proceedings for determining the admissibility of a case does not demand the level of analysis required to determine whether that same delay constitutes a violation of Articles 8(1) and 25(1). Those provisions are independent of the terms of Article 46 of the Convention and a more exhaustive analytical standard applies to them.[FN2]

[FN2] See: IACHR (2001), Report No. 02/01, Case 11.280, Juan Carlos Bayarri vs. Argentina. Pending publication.

32. The Commission has repeatedly stated then when an admissibility ruling involves one of the exceptions to the prior exhaustion of domestic remedies rule contained in Article 46(2), that ruling shall not be taken as implying any judgment on the merits of the case. The Commission, like other international human rights protection bodies, holds that the correct moment for ruling on the exceptions to the prior exhaustion rule is governed by the individual circumstances of each case.

33. The Commission notes that more than nine years have passed since judicial proceedings into the murder of the alleged victim began, and that the trial has not yet been brought to a conclusion. Under Argentine law, prosecution of this case must proceed on an ex officio basis. In its reply to the Commission, the State provides information that supports the waiving of the requirement of prior exhaustion of domestic remedies; in particular, the fact that the police officers who conducted the murder investigation have been accused of publicly prosecutable crimes related to their alleged attempt to pervert the course of that investigation. Consequently, the Commission believes that the exception set forth in Article 46(2)(c) of the Convention should apply in this case, in light of the “unwarranted delay in rendering a final judgment” under those remedies.

b. Timeliness of the Petition

34. Since the remedies offered by domestic jurisdiction have not been exhausted, the six-month period stipulated in Article 46(1)(b) does not apply.

c. Duplication of Proceedings and Litispence

35. There is no evidence to indicate that the case is substantially the same as one previously studied by any another international body or that it is pending in any other international settlement proceeding.

d. Characterization of the Alleged Facts

36. The State maintains that this case does not meet the terms of Article 47(b) of the Convention, which requires that petitions “state facts that tend to establish a violation of the rights” that it guarantees. In the Commission’s opinion, however, the incidents described, if proven true, could constitute violations of the following rights protected by the Convention: to life (Article 4), to humane treatment (Article 5), to personal liberty and security (Article 7), and to a fair trial and judicial protection (Articles 8(1) and 25). Similarly, they could tend to establish a violation of the obligation to respect the rights enshrined in the Convention set forth in Article 1(1) thereof.

V. CONCLUSIONS

37. The Commission concludes that it is competent to deal with all the allegations of this petition and that the case is admissible under Articles 46 and 47 of the Convention.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible as regards the alleged violation of the following rights and obligations enshrined in the Convention: to life (Article 4), to humane treatment (Article 5), to personal liberty and security (Article 7), to a fair trial and judicial protection (Articles 8(1) and 25), and the obligation of respecting those rights (Article 1(1)).
2. To give notice of this decision to the parties.
3. To continue with its analysis of the merits of the complaint.
4. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed by the Inter-American Commission on Human Rights on the 22nd day of February, 2001. (Signed): Claudio Grossman, Chairman; Marta Altolaguirre, Second Vice-Chairman; Commissioners Hélio Bicudo, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.