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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 4/02; Petition 11.685
Session:	Hundred and Fourteenth Regular Session (25 February – 15 March 2002)
Title/Style of Cause:	Ricardo Neira Gonzalez v. Argentina
Doc. Type:	Decision
Decided by:	First Vice-President: Marta Altolaguirre; Commission members: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts. Pursuant to the terms of Article 19(2) of the Regulations of the Commission, its President, Juan E. Mendez, a national of Argentina, did not participate in the discussion or decision on the present case.
Dated:	27 February 2002
Citation:	Neira Gonzalez v. Argentina, Petition 11.685, Inter-Am. C.H.R., Report No. 4/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
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I. SUMMARY

1. The present report addresses the admissibility of petition 11.685. The matter was opened by the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission, “Commission” or “IACHR”) pursuant to the filing by Ricardo Neira González of a petition dated April 17, 1995, and received on May 10, 1995, against the Republic of Argentina (hereinafter “Argentina” or “State”). As from a subsequent communication received on May 6, 1996, Mr. Neira’s mother, Elisa González Brea, was incorporated in the file as a copetitioner. Following notification received on February 28, 2000 that Mr. Neira had died as the result of suicide, the Commission has maintained communication with his mother (hereinafter mother and son shall be referred to as “the petitioner”).

2. The petition alleges that Mr. Neira was prosecuted for aggravated robbery, and absolved at first instance on the basis that the information which led to his arrest was obtained through torture, and that he himself had been tortured in detention for the purpose of coercing a confession. The petitioner maintains that, on the basis of this torture, as recorded in forensic reports, the presiding judge dismissed the evidence proffered by the prosecution in accordance with the doctrine of the “fruit of the poisonous tree.” The decision of acquittal was appealed by both the public and private prosecutors, and was revoked at second instance, through proceedings alleged to have been arbitrary. Mr. Neira sought to appeal the conviction handed down at second instance, but his requests for review were dismissed. The petition contends that, as a consequence of the foregoing, Mr. Neira was subjected to violations of his rights to judicial protection and due process, and to personal integrity as recognized in the American Convention on Human Rights (hereinafter “American Convention”).

3. The State, for its part, maintains that the petition is inadmissible for failing to set forth facts demonstrating the violation of any right protected under the American Convention. It indicates that Mr. Neira received full due process guarantees when tried, and did not refer in his defense to the issue of alleged torture. The State contends that Mr. Neira's petition fails to demonstrate any violation of his right to an adequate legal defense, or that he was in fact subjected to torture. While the State indicates that domestic remedies were fully exhausted with respect to Mr. Neira's conviction, it draws attention to the fact that he never filed any denunciation with respect to alleged torture before the Office of the Procurador Penitenciario.

4. As set forth below, pursuant to its examination, the Commission concludes that it is competent to take cognizance of the petitioner's complaints concerning alleged violations which principally relate to Articles 5, 8, 25 and 1(1) of the American Convention, and that the petition is admissible pursuant to the terms of Articles 46 and 47 of that Convention.

II. PROCESSING BEFORE THE COMMISSION

5. The Commission acknowledged receipt of the petition and the documents submitted as annexes on May 18, 1995. By note of March 28, 1996, the Commission initiated the processing of the matter by transmitting the pertinent parts of the denunciation to the State, with a response requested within 90 days. By a note of June 25, 1996, the State requested an extension of time in which to respond. By notes of June 27, 1996, the Commission granted the State an additional 30 days, and informed the petitioner that this action had been taken. On July 23, 1996, the State requested an additional extension, and by notes of July 26, 1996, the Commission granted another 30 days and informed the petitioner accordingly. A further extension was requested on August 20, 1996. By notes of August 23, 1996, the Commission granted a 30 day extension, and informed the petitioner.

6. On September 24, 1996, the Commission received a brief communication from the petitioner. On September 25, 1996, the State requested a further extension of time to present its response. By note of September 30, 1996, the Commission transmitted the pertinent parts of the petitioner's communication to the State, with the receipt of all information in response requested within 30 days.

7. The State filed its response by means of a communication dated November 8, 1996. The pertinent parts were transmitted to the petitioners on November 13, 1996. The petitioners presented their observations in response with a date of November 25, 1996. The pertinent parts of those observations were transmitted to the State on December 19, 1996, with any response requested within 30 days.

8. By a note of January 15, 1997, the State requested an extension of time to respond. On January 17, 1997, the Commission granted an additional 30 days. On February 17, 1997, the State requested an additional extension. By note of February 21, 1997, the Commission granted another 30 days. The State submitted its observations on March 19, 1997. That submission was transmitted to the petitioners on April 15, 1997, with the presentation of any observations in response requested within 30 days.

9. On January 28, 2000, the Commission addressed the petitioner to ask whether he wished to present additional information. By note of February 16, 2000, Mr. Neira's mother responded with the notification that he had been released from prison on October 6, 1998, and had completed the requirements to receive his title as an attorney. He subsequently died on January 8, 1999 as the result of suicide. This information was transmitted to the State on November 27, 2000, with any further observations requested within 30 days. The State provided further information via a communication dated January 2, 2001. This was transmitted to the petitioner for her information on January 23, 2001. By note of October 18, 2001, the State submitted a brief communication reiterating its position on the inadmissibility of the petition. This was transmitted to the petitioner for her information on October 29, 2001.

III. POSITION OF THE PARTIES

A. The Petitioner

10. For the purposes of this report, which examines the admissibility of the claims raised in the petition, the petitioner's allegations may be summarized as follows. Mr. Neira, a Peruvian citizen and the father of three Argentine children, was subjected to three criminal prosecutions. While he referred to the other two as points of reference, the petition under study concerns only his prosecution for aggravated robbery.

11. That petition indicates that Mr. Neira was charged in process 2915 in connection with an armed robbery that took place on April 23, 1990. Approximately two and a half years later, he was absolved at first instance because the presiding judge excluded the proof against him and his co-accused. The petitioner alleges that this proof was excluded precisely because it had been obtained through torture. The petition contends that Daniel Perrone, the first person detained in presumed connection with that robbery, was tortured to reveal information about the robbery and to implicate Mr. Perrone himself, Mr. Neira and others. The petitioner alleges that, along with Mr. Perrone, he and two others were tortured in detention to coerce confessions, and that this torture was recorded in the respective medical reports.

12. The petition recounts that both the public prosecutor and the private prosecutor appealed the decision of acquittal before the Sala VII de la Cámara de Apelaciones en lo Criminal y Correccional de la Capital Federal. Pursuant to that appeal, the sentence of acquittal was revoked, and Mr. Neira was sentenced at second instance to seven years in prison. The petitioner argues, *inter alia*, that the sentence at second instance ignores the rule under Article 316 of the old Code of Criminal Procedure, applicable during his trial, that required that any declaration taken into account must have been taken before a judge. Further, he maintains that the court of second instance arbitrarily ignored the concerns of the court of first instance with respect to the credibility of the investigating police officers. The judge at first instance reportedly questioned the version asserted by the police that the defendant first detained, Mr. Perrone, was arrested following a traffic stop, with his papers in order, in the presence of his family, when he spontaneously raised the issue of the robbery to the officers reviewing his papers. The petitioner further emphasized that the court of second instance arbitrarily ignored the evidence of torture recorded in the medical reports.

13. The petition alleges that Mr. Neira was notified of this decision while detained, but was not initially provided the reasons issued in support of it. The petition claims that he then petitioned the Sala VII to receive the reasons, and was denied, and was forced to send a family member to the court to obtain a copy of the sentence in time to file his *recurso extraordinario* within the ten days provided by law. The petition recounts that the *recurso extraordinario* was denied, as was his subsequent *recurso de queja* on November 17, 1994. He argued that he was unable to vindicate his charges concerning torture due to lack of adequate legal counsel. He indicated that his main concern at trial and on appeal had simply been defending himself against the criminal charges brought against him, with the limited assistance of a public defender.

14. With his petition, Mr. Neira submitted copies of (1) the sentence of acquittal at first instance, (2) the sentence of conviction at second instance, (3) a medical report concerning his condition on May 2, 1990, (4) his request that the period provided by law to present a *recurso extraordinario* be suspended pending his receipt of the reasons for the decision at second instance, (5) the *recurso extraordinario* he filed on his own behalf, (6) the submission presented by his public defender in relation to that *recurso extraordinario*, (7) the *recurso de queja* he filed on his own behalf, and (8) the rejection of that *recurso de queja* by the Supreme Court with the certificate of notification.

B. The State

15. The State reports that Mr. Neira was prosecuted for the crime of aggravated robbery using an arm in process N° 2915 before Secretariat N° 24 of the Court of Sentencing (Juzgado de Sentencia) Letter “Q.”[FN1] He was absolved on August 28, 1991, and then convicted on appeal on April 15, 1992. The State indicates that it has no record of the filing of any further recourse before the Supreme Court of Justice.

[FN1] The majority of the documents in the record refer to the designation letra “S.” In any case, both parties are clearly referring to the prosecution of process 2915.

16. The State maintains that the court of appeals carried out the process with full respect for the law and especially the applicable guarantees of due process. The State contends that the police complied fully with their duties. If there had been some irregularity, the State argues, Mr. Neira’s defense was perfectly able to raise it before the courts, but failed to allege or establish any such problem at the appeals level.

17. The State maintains that the complaints raised by Mr. Neira in a generic way are not sufficiently explained, that its review of the process reveals no violation of any protected right, that there is no specific argument raised with respect to the right to an adequate legal defense, and that there was no presentation offered before the domestic courts or the Commission as to what Mr. Neira qualifies as torture.

18. With respect to the allegation of torture, specifically, the State reports that Mr. Neira presented no corresponding denunciation before the Office of the Procurador Penitenciario. The State notes that this Office was created specifically to protect the human rights of detainees within the prison system. The State contrasts Mr. Neira's failure to denounce the allegations of torture with the fact that he filed a denunciation with respect to the computation of his sentence and time for release.

19. In summary, throughout its presentations the State indicates that the petition is inadmissible for failing to state facts tending to show a violation of a protected right. On the one hand, the State argues that the petition fails to set forth concrete elements sufficient to support or prove the violations alleged. On the other hand, the State maintains that Mr. Neira enjoyed the full opportunity to litigate his claims before the national courts, and was attempting to relitigate them before the Inter-American Commission. This, the State contends, would place the Commission in the position of acting as a fourth instance of review, a function beyond its mandate.

20. In its final presentations, the State indicates that it regrets the death of Mr. Neira, but reiterates its position as to the inadmissibility of the petition. It argues that, given the failure to state a claim, combined with the procedural inaction of Mr. Neira's mother, who it considers has not insisted on pursuing the petition in her communications subsequent to her son's death, the petition should be declared inadmissible.

IV. ANALYSIS OF ADMISSIBILITY

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

21. The Commission is competent to examine the petition in question. In accordance with the terms of Article 44 of the American Convention, the petitioner has standing to present a claim before the Commission. The petition under study indicates that the alleged victim was subject to the jurisdiction of the Argentine State at the time of the alleged facts. With respect to the State, Argentina is a State Party to the American Convention, having duly deposited its instrument of ratification on September 5, 1984. Accordingly, the Commission has the competence *ratione personae* to examine the claims presented.

22. Insofar as the petition raises complaints concerning rights set forth in Articles 5, 8, 25 and 1(1) of the American Convention, the Commission has the competence *ratione materiae* to review it.

23. Further, the Commission has the competence *ratione temporis* to examine this matter. The petition is based on facts alleged to have occurred beginning in 1990, at which time the obligations undertaken by the State under the American Convention were in full effect.

24. Finally, given that the petition alleges violations of rights protected under the American Convention that have taken place in the territory of a State Party, the Commission concludes that it has the competence *ratione loci* to take cognizance of it.

B. Other requirements for the admissibility of the petition

a. Exhaustion of domestic remedies

25. Article 46 of the American Convention specifies that, in order for a case to be admitted, "remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement exists to ensure the state concerned the opportunity to resolve disputes within its own legal framework. When domestic remedies are unavailable as a matter of fact or law, however, the requirement that they be exhausted is excused.[FN2] Article 46(2) of the Convention specifies that this exception applies: if the legislation of the state concerned fails to afford due process for the protection of the right allegedly violated; if the party alleging violation has been hindered in his or her access to domestic remedies; or if there has been unwarranted delay in the issuance of a final judgment.

[FN2] See IACtHR, Exceptions to the Exhaustion of Domestic Remedies (Art. 46.1, 46.2.a and 46.2.b American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Ser. A No. 11, para. 17.

26. In the present case, the parties agree that the judicial proceedings brought against Mr. Neira have reached the stage of *res judicata*. The documents submitted with the petition reflect that Mr. Neira was tried at first instance in process 2915 before Judge Ricardo José Galli of the Juzgado Nacional en lo Criminal de Sentencia letra "S" and absolved through the sentence issued on September 4, 1992. The sentence issued by Judge Galli reflects that both Mr. Neira and his codefendant Mr. Perrone presented rectifications shortly after their initial statements before the investigating judge, each complaining of having been subjected to physical abuse while in police custody with the objective of coercing them to provide confessions. That sentence reflects the judge's determination that the results of the police investigation were obtained through the physical mistreatment of defendants Perrone and Maffeo, thereby requiring the exclusion of the corresponding evidence.

27. Following the appeal of the public and private prosecutors, Mr. Neira was subsequently condemned at second instance by the Sala VII of the Cámara Nacional de Apelaciones en lo Criminal y Correccional de la Capital, through a decision dated March 8, 1994. The Sala VII determined that the physical mistreatment had not been proven whereas Mr. Neira's responsibility had been established. The petition indicates that he received due notification of that sentence on April 21, 1994.

28. The *recurso extraordinario* prepared and presented by Mr. Neira before the Sala VII sought that his conviction at second instance be overturned by the Supreme Court of Justice on the basis that the evidence utilized to convict him was obtained through torture. Mr. Neira argued that the use of such torture forced those subjected to it, namely his codefendant Mr. Perrone and himself, to declare against their own interests, and violated basic norms of due process recognized in the Argentine Constitution. He argued that both law and practice required that the

evidence thereby obtained be excluded from the process, and that the Sala VII had arbitrarily ignored the medical reports proving the existence of that torture. The Sala VII rejected the recurso extraordinario as inadmissible in a resolution of May 26, 1994. Mr. Neira thereafter presented a recurso de queja before the Supreme Court of Justice. It was dismissed by resolution of November 17, 1994, on the basis that it did not comply with the requirement of fundamentación autónoma. The notification of this decision was dated November 22, 1994.

29. The State indicated in its presentation of November 8, 1996 that it considered the process before its courts to have been finalized with the sentence dated March 8, 1994, and reported that it had no record of any appeal in process 2915 before the Supreme Court of Justice.

30. On this point, the Commission has reviewed the claims of the petitioner, and a copy of both the November 17, 1994 resolution of the Supreme Court rejecting the recurso de queja filed by Mr. Neira in process 2915 and the notification of that decision dated November 22, 1994, both of which appear to be fully in order. While the State indicates it is unable to locate any record of this appeal, neither has it expressly challenged the petitioner's claims or the authenticity of the documents in question. Accordingly, the Commission concludes that domestic remedies with respect to process 2915 were concluded with the denial of the recurso de queja notified with a date of November 22, 1994.

31. Although the State has only expressly contested the admissibility of the petition on the basis that it fails to state a cognizable claim, there are two points in relation to the requirement of exhaustion that may merit comment. First, at several points in its presentations the State notes that while the matter was on appeal before the Sala VII, Mr. Neira's legal counsel did not attempt to demonstrate any irregularities that could have affected his rights, thus presumably arguing by implication that Mr. Neira failed to fully invoke the remedies that were available to him. The State's position in this regard is somewhat unclear, given that it was the prosecution that had sought the review of the decision issued at first instance, not Mr. Neira. In any case, the Commission's review of the documents, including the decisions issued at first and second instance and the recurso extraordinario indicate that the various instances of the judiciary seized with process 2915 were clearly placed on notice of Mr. Neira's claims alleging torture and asserting the consequent nullity of the proceedings against him.

32. Second, the State refers at various points in its presentations to the fact that Mr. Neira never filed a complaint that he had been subjected to torture with the Procurador Penitenciario.[FN3] Pursuant to the terms of Article 46, the remedies relevant for the purposes of the present analysis are judicial remedies. In this regard, the Commission reiterates that its review of the record before it indicates that the claims of torture were placed squarely before the judicial authorities charged with exercising jurisdiction over process 2915. Accordingly, the terms of Article 46 requiring that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law have been met.

[FN3] In this regard, it should be noted that this Office was created in 1993, subsequent to when the initial facts alleged took place, through the issuance of Decree 1598.

b. Time period for submission of the petition

33. In accordance with Article 46(1)(b) of the Convention, a petition must be presented in a timely manner to be admitted, namely, within six months from the date on which the complaining party was notified of the final judgment at the domestic level. The six months rule ensures legal certainty and stability once a decision has been taken.

34. According to the record before the Commission, in the present case the notification that the Supreme Court had rejected Mr. Neira's recurso de queja was issued on November 22, 1994. His petition before the Commission was dated April 17, 1995, and received on May 10, 1995. Consequently, it complies with the requirement of timely presentation.

c. Duplication of proceedings and res judicata

35. Article 46(1)(c) sets forth that the admission of a petition is subject to the requirement that the subject "is not pending in another international proceeding for settlement," and Article 47(d) of the Convention stipulates that the Commission shall not admit a petition which "is substantially the same as one previously studied by" it "or by another international organization." In the present case, the parties have not claimed and the proceedings do not indicate the existence of either of these circumstances of inadmissibility.

d. Characterization of the facts alleged

36. Article 47(b) of the American Convention provides that allegations which do not state facts tending to establish a violation shall not be admitted. The State has presented three basic arguments to support its contention that the petition is inadmissible under this standard. First, it contends that there were in fact no irregularities in the prosecution of Mr. Neira that could have affected his rights. Second, it maintains that Mr. Neira's defense declined or failed to demonstrate any such irregularities during the judicial proceedings, and that he failed to explain or define what he meant by the torture he alleged, either before the domestic courts or in his complaint before the Commission. Third, it argues that what the petition is essentially seeking is that the Commission review a judicial decision with which the petitioner simply disagrees. This would, in the view of the State, require the Commission to act as a "fourth instance" of review, a function beyond the scope of its competence.

37. The first contention is a matter for review at the merits stage of the Commission's examination. In accordance with the terms of the Convention and Commission's Rules of Procedure, the standard to be met at the admissibility stage is not that the violations have been proven, but that the petition states facts which, if eventually shown to be true, would tend to characterize a violation.

38. The second contention was made and repeated in generic fashion, without reference to specific proceedings or other concrete information. From its review of the record, the Commission notes that Mr. Neira declared before the judge in charge of the judicial investigation that he had been beaten repeatedly while in the custody of the investigating police officers, that

the officers had detained his pregnant wife for a short interval, and had thereafter threatened his family. He further alleged that he had been hooded and suffocated, and repeatedly threatened with further harm if he did not cooperate. The record also notes that in his initial declaration, prior to alleging that he was tortured, he indicated that he was in pain, and asked that x-rays be taken. These aspects of his declarations before the investigating judge are reflected in the sentence issued at first instance. These declarations and the sentence at first instance in turn form part of the record upon which Mr. Neira based himself in seeking to overturn the revocation of that sentence by the Sala VII. In this regard, the claims raised before the domestic instances appear to have been defined with sufficient clarity to have enabled the responsible authorities to respond, and with sufficient clarity to indicate that, if shown to be true, they could constitute violations of rights protected under the American Convention.

39. With respect to the third argument, that review of this petition would require the Commission to act as a “fourth instance” beyond the sphere of its competence, it may be recalled that the IACHR is “not competent to review judgments handed down by national courts acting within the scope of their jurisdiction and observing due judicial guarantees.”[FN4] The Commission “cannot serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction.”[FN5] However, within its mandate to ensure the observance of the rights set forth in the Convention, the Commission is necessarily “competent to declare a petition admissible and rule on its merits when it portrays a claim that a domestic legal decision constitutes a disregard of the right to a fair trial,” or alleges other violations of rights protected thereunder.[FN6] The Commission finds in the present case that the petitioner has stated claims concerning alleged violations of the right to judicial protection and guarantees, as well as the right to personal integrity which, if consistent with other requirements and shown to be true, could tend to establish the violation of rights protected under Articles 5, 8, 25 and 1(1) of the American Convention.

[FN4] See generally, IACHR, Report N° 101/00, case 11.630 Arauz et al. (Nicaragua), Oct. 16, 2000, in Annual Report of the IACHR 2000, para. 56, citing IACHR, Report N° 39/96, case 11.673 Marzioni (Argentina), Oct. 15, 1996, in Annual Report of the IACHR 1996, paras. 50-51.
[FN5] IACHR, Report N° 7/01, case 11.716 Güelfi (Panama), Feb. 23, 2001, in Annual Report of the IACHR 2000, para. 20, quoting Marzioni, supra, para. 51.
[FN6] Id.

40. Bearing in mind the claims raised concerning judicial protection and guarantees and the principle of *jura novit curia*, in its decision on the merits the Commission will also address the issue of access to judicial review with respect to a conviction resulting from the revocation of a sentence of absolution issued at first instance.

V. CONCLUSIONS

41. The Commission concludes that it is competent to take cognizance of the instant case and that the petition is admissible, pursuant to Articles 46 and 47 of the American Convention.

42. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible with respect to the alleged violation of the rights recognized in Articles 5, 8, 25 and 1(1) of the American Convention.
2. To notify the parties of this decision.
3. To continue with the analysis of the merits of the case.
4. To make this report public, and publish 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., the 27th day of February 2002. (Signed): Marta Altolaguirre; First Vice-President, Robert K. Goldman, Julio Prado Vallejo, and Clare K. Roberts, Commission members.