

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 2/03; Petition 11.306
Session:	Hundred and Seventeenth Regular Session (17 February – 7 March 2003)
Title/Style of Cause:	Jose Eduardo Acurso Marechal and Luisa Celia Esquivel de Acurso v. Argentina
Doc. Type:	Decision
Decided by:	First Vice-President: Marta Altolaguirre; Second Vice-President: Jose Zalaquett; Commissioners: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, Susana Villaran. In accordance with Article 17(2) of the Rules of Procedure of the Commission, Commission Member Juan E. Mendez, an Argentine national, did not take part in the discussion or the decision on the instant case.
Dated:	20 February 2003
Citation:	Acurso Marechal v. Argentina, Petition 11.306, Inter-Am. C.H.R., Report No. 2/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by:	APPLICANTS: Ana María Figueroa and Oscar Manuel Blando
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I. SUMMARY

1. The instant report concerns the admissibility of petition N° 11.306, which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission on Human Rights," "the Commission," or "the IACHR") began processing pursuant to its receipt on January 10, 1994. The petition was filed by José Eduardo Acurso Marechal and Luisa Celia Esquivel de Acurso, represented by attorneys Ana María Figueroa and Oscar Manuel Blando (hereinafter "the petitioners") against the Argentine Republic (hereinafter "Argentina" or "the State").

2. The petitioners allege that Argentina is responsible for the violation of rights recognized in Articles 5, 7(1), 8(1), 8(2), 11(1), 24, and 25(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") during the trial of Police Chief José Eduardo Acurso on the charges of unlawful deprivation of liberty and extortion carried out against Mr. Sergio Luis Luraschi. The petitioners further argue that there was a miscarriage of justice; therefore, under Article 10 of the Convention, the alleged victim was entitled to compensation.

3. In sum, the petitioners claim that, in the aforementioned criminal trial, Mr. José Eduardo Acurso Marechal was convicted without evidence against him, and therefore in violation of his due process guarantees (in particular, the rights to an impartial tribunal and to be presumed

innocent), to judicial protection, and to equal protection. The petitioners further state that the alleged victim's rights to personal liberty and security, humane treatment, and privacy were infringed as a result of an unfair conviction.

4. According to the State, one need only read the court file to see that the proceedings were conducted in keeping with the guarantees of due process. With respect to the alleged miscarriage of justice, the State indicates that, according to the interpretative statement made when Argentina ratified the Convention, in order to be entitled to compensation for a miscarriage of justice, the existence of this circumstance must have been established by a national court.

5. Without prejudging the merits of the matter, the Inter-American Commission on Human Rights concludes in this report that the case is admissible, inasmuch as it meets the requirements provided in Articles 46 and 47 of the American Convention. Based on the foregoing, the Commission decides to notify the parties of its decision and to continue with its analysis of the merits as regards alleged violation of Articles 1(1), 7(1), 8(1), 8(2), 10 and 25(1) of that Convention.

II. PROCESSING BEFORE THE COMMISSION

6. The petition was received by the Executive Secretariat on January 10, 1994. By note of January 11, the petitioners were informed that their petition was under examination. By note of June 16, 1994, the Commission informed the petitioners that it had initiated processing of the petition with the number 11.306, in accordance with its Rules of Procedure, and that the pertinent parts thereof had been sent to the State by means of a note of the same date. The State was requested to present the information it deemed pertinent with respect to the facts alleged in the petition and regarding fulfillment of the requirement of exhaustion of domestic remedies within 90 days.

7. At the request of the State, on September 29, 1994, October 27, 1994, November 17, 1994, and January 17, 1995, the Commission extended the deadline for sending the requested information. On May 5, 1995, the State submitted its reply, which was forwarded to the petitioners by note of May 9, 1995, with a request that they present their comments within 30 days. By note of August 23, 1995, the Commission reiterated its request to the petitioners. On October 23, 1995, the Commission received the comments of the petitioners on the reply presented by the State.

8. By note of November 10, 1995, the comments of the petitioners were forwarded to the State with the request that it submit the observations it deemed relevant. The Commission received the observations of the State on December 21, 1995, and those were transmitted to the petitioners on December 27, 1995. The petitioners presented their comments in that connection on February 5, 1996, and requested a hearing during the 91st session of the Inter-American Commission on Human Rights. In its response of February 6, 1996, the Commission informed the petitioners that the deadline for requesting a hearing had expired on January 29 of that year.

9. On December 2, 1998, the Commission requested the following from the State and the petitioners:

- (a) A copy of page 166 of the court file, which contains an outline of the encounters between the victim and the author of the crime.
- (b) Copies of pages 155 or 158 of the same court file.
- (c) Information as to whether criminal proceedings were instituted against Mr. Luraschi for perjury.
- (d) Information on the outcome of Mr. Acurso's request to litigate free of costs.

On January 14, 1999 the petitioners sent the Commission a brief on the information requested. The State also replied to the request for information by notes of June 4, 1999 and August 27, 1999.

10. By means of a note dated December 8, 2000, the State submitted a communication to the Commission requesting that the latter find the case inadmissible. On December 19, 2000 that communication was forwarded to the petitioners, who, on January 30, 2001 forwarded a brief communication reiterating their position.

11. On January 12, 2000 the petitioners requested that the Commission grant them a hearing during its next session. In a note of February 2, 2000, the Commission informed them that it would be unable to grant the request due to the large number of hearings scheduled.

III. POSITIONS OF THE PARTIES

A. The petitioners

12. On April 27, 1990, Mr. Sergio Luis Luraschi was allegedly the victim of the crimes of unlawful deprivation of liberty and extortion. According to the petitioners, that day three police officers (Mansilla, Godoy and another man) allegedly entered the domicile of Mr. Luraschi, and took him to the Second Sub-Police Station (Sub Comisaría Segunda) of Rosario, Santa Fe Province. There, he was subjected to threats for the purpose of extortion in the presence of a person who said he was the station chief, and Luraschi was forced to sell a machine in order to pay them US\$1,000. The police station chief at the time was Chief José Eduardo Acurso.

13. Criminal proceedings were later instituted against Chief Acurso and police officers César Eduardo Mansilla and Jorge Roberto Godoy. According to the petitioners, Acurso was never incriminated by the testimonies submitted during that proceeding. Furthermore, the petitioners indicate that a witness said he was with Acurso at the time the crime was committed. They also say that no lineup was held, despite the fact that the physical description given by Luraschi did not correspond with Acurso's appearance (bald with eyeglasses); and that he maintained throughout the proceeding that he did not commit the unlawful act in question.

14. The petitioners allege that the Fourth Criminal Court for Rosario, in a judgment of August 1, 1991, sentenced Acurso without any proof whatsoever to five years' imprisonment and declared him ineligible for public office for the crime of deprivation of liberty for the purpose of extortion [privación extorsiva de la libertad]. Mr. Acurso appealed this judgment because he considered that it violated the principles of equal protection, legality, due process, and

presumption of innocence, as well as the right of defense in the proceeding. On March 25, 1992 the Criminal Chamber upheld the judgment at first instance. The petitioners consider that this ruling also violates the fundamental rights of Mr. Acurso, particularly because it mentions in its reasoning that "even if the aforesaid procedure (lineup) had been carried out, regardless of its outcome, as the Chamber Prosecutor rightly says, it would not have significantly altered the situation of the accused or their fate in the proceeding."

15. The petitioners indicate that, on August 5, 1992, Mr. Sergio Luraschi appeared unannounced at the Office of the Duty Prosecutor of Rosario, where he said that after having seen the real author of the offense on the street he went to see the detained man and verified that it was not the latter who had committed the offense. Faced with these facts, the petitioners filed a motion to reopen the case [recurso de revision]. The Supreme Court of Santa Fe rejected the motion in a judgment of April 27, 1993. The petitioners then entered an extraordinary appeal [recurso extraordinario por la vía de queja], which was denied by a decision of August 10, 1993. The petitioners characterize these decisions as a denial of justice.

16. By Decree N° 1.293 of June 7, 1993, the Governor of the Province of Santa Fe discharged Police Chief José Eduardo Acurso Marechal from the Police of the Province-Department of Rosario, in accordance with the Police Personnel Act and the Police Disciplinary Regulations. On the other hand, by Decree N° 1.729, of July 21, 1993, the Governor commuted and reduced the sentence by four months, and Mr. Acurso was released on August 15 of that year on the basis that he had served two-thirds of his sentence.

17. The petitioners argue that the violations alleged in the petition constitute infringements of Articles 5 (humane treatment), 7(1) (right to personal liberty and security), 8(1) (due process guarantees, in particular the right to a hearing by an impartial tribunal), 8(2) (presumption of innocence), 11(1) (protection of the honor and dignity of José Eduardo Acurso and his family), 24 (equal protection before the law), and 25(1) (judicial protection) of the American Convention. Furthermore, they assert that there was a miscarriage of justice for which, under Article 10 of the Convention, the victim is due just compensation. On this point, the petitioners argue that though Argentina presented an interpretative statement on the aforesaid Article –according to which the miscarriage of justice must be established by a national court– such an interpretation is not applicable because reservations cannot be incompatible with the object and purpose of the treaty and because to accept the interpretative statement would be to negate the contents of the conventional provision.

B. The State

18. The State confirms that, on August 1, 1991, the court of first instance did indeed convict Mr. Acurso and sentence him to five years in prison. According to that judgment, three police officers arrived at the house of Mr. Luraschi and extorted money from him because he had been named as a receiver of stolen goods by a detainee named Alaníz. Mr. Luraschi was then apparently taken to the police station where he was presented to Chief Acurso, as a result of which "the possibility apparently arises that four people, not three, were involved in the act." The judgment says that Mr. Acurso was fully identified "although his name was never given, but he was always described physically with features that even the declarer was able to verify at the

visual inspection, and the latter was told he was the Chief of the Second Sub-Police Station, who, according to the report on p. 36 [of the judicial file], is the aforesaid Acurso. And if we examine the guard book, it emerges that Acurso was in the police station until 10:10 hours [...] which means that Acurso was at the police station at the time when Luraschi says he was taken there."

19. The above sentence was upheld by the court of second instance in its judgment of March 25, 1992. In that judgment, the Criminal Chamber determined that there was no violation of any constitutional guarantee based on omission of evidentiary procedures, such as a lineup, "since if such evidence had been deemed of vital importance to the outcome of the trial, it could easily have been carried out at an opportune moment, given that the accused were able to exercise their right of defense from the very outset of the proceeding."

20. Subsequently Mr. Acurso filed an extraordinary appeal to reopen the case based on the statement of Mr. Luraschi, according to which it was not Acurso who committed the crime. With respect to this appeal, the prosecutor held that the evidence put forward by the petitioner was flimsy, given the implausible circumstances of place, time and manner in which Mr. Luraschi purportedly saw the alleged true co-author of the crime of which he was the victim. Moreover, the prosecutor says that on page 166 [of the court file] it emerges that Luraschi would have seen Mr. Acurso in the course of the proceeding.

21. As regards the violation of the right to a fair trial and judicial protection, the State says that one need only read the court file to see that the proceeding was conducted in keeping with the guarantees of due process, so it cannot be sustained that Acurso was subjected to cruel, inhuman or degrading treatment, or that his right to equal protection has been violated. The State says that the right to presumption of innocence has not been infringed since that presumption was overcome in the framework of a trial that spanned every judicial instance and in the light of evidence that was more than conclusive.

22. The State sustains that, while the petitioners claim that Mr. Acurso was wrongly convicted, that does not coincide with the appreciation obtained by the courts in that regard. In that connection, the State indicates that, upon depositing its instrument of ratification of the Convention, Argentina made an interpretative statement that Article 10 shall be interpreted to mean that the "miscarriage of justice" has been established by a national court. The State maintains that the aforesaid Article of the Convention does not authorize the Commission to determine for itself if an error exists, since that would equate to according it the status of an organ of appeal. In this regard, the State argues that it is the petitioners' intention that the Commission act as their "fourth instance," in the hope that their claims will be accepted.

23. The State further maintains that the petitioners have not exhausted domestic remedies in connection with the claim regarding the rights to physical integrity [Article 5] and to honor and dignity [Article 11] of Mr. Acurso and his family. Additionally, as to the right to equal protection, the State argues that all the judicial proceedings connected with the situation of the petitioner were conducted on the basis of the legal provisions in force in the country.

IV. ANALYSIS OF ADMISSIBILITY

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

24. The Commission is competent to take up the instant petition. As far as legal standing is concerned, the petitioners are entitled, under the provisions of Article 44 of the American Convention and Article 23 of the Rules of Procedure of the Commission, to file petitions concerning alleged violations of rights protected under the American Convention. The alleged victim, José Eduardo Acurso Marechal, is a person whose rights were protected by the Convention, the terms of which the State had undertaken to respect. Argentina has been subject to the jurisdiction of the Commission under the terms of the Convention since September 5, 1984, when it deposited the relevant instrument of ratification.

25. Inasmuch as the petitioners have made claims with regard to Articles 5, 7(1), 8(1), 8(2), 10, 11(1), 24, and 25(1) of the American Convention, the Commission has competence *ratione materiae* to examine the petition.

26. The Commission has the competence *ratione temporis* to take cognizance of the petition because it concerns facts that occurred during a judicial proceeding initiated on May 24, 1990. Accordingly, the alleged facts occurred after the obligations of the State as a party to the American Convention entered into force.

27. Finally, the Commission has competence *ratione loci* because the petition states that the alleged victim was subject to the jurisdiction of the Argentine State at the time of the alleged facts, which purportedly took place within the territory of that State.

B. Other admissibility requirements for the petition

1. Exhaustion of domestic remedies

28. In the instant case the alleged violations are said to have occurred during, or as a consequence of, a judicial proceeding in which the petitioners exhausted all the remedies under domestic law. The petitioners appealed the judgment at first instance, alleging violation of the right to a fair trial; they lodged an extraordinary appeal to reopen the case [*recurso extraordinario de revisión*], which was declared unfounded; and, finally, they attempted an appeal against the latter decision [*recurso de queja*], which was also rejected. Indeed, the State indicates in its communication of May 9, 1995, that “from everything stated it may be inferred that the remedies under domestic law have been invoked and exhausted pursuant to the principles of international law, in accordance with Article 46(1) of the Convention.”

29. Regarding the State’s allegation that not all remedies have been exhausted with respect to the claim regarding the rights to physical integrity [Article 5] and to honor and dignity [Article 11] of Mr. Acurso and his family, the Commission finds that to have attempted such a remedy would have served no purpose because the outcome could not have been favorable to the petitioners, as that would have clearly contradicted the ruling in the disputed proceeding.

30. From the foregoing the Commission concludes that the suitable domestic remedies as regards the alleged facts were invoked and exhausted.

2. Timeliness of the petition

31. Under Article 46(1)(b) of the Convention, all petitions must be lodged within a period of six months from the date on which the party alleging the violation of his rights was notified of the final judgment. It may be noted that the six-month rule ensures certainty and legal stability once a decision has been adopted.

32. In the instant case, the judicial proceeding in question concluded on August 10, 1993 and the petition was filed with the Inter-American Commission on January 10, 1994; accordingly, the petition was lodged within the established time period.

3. Duplication of proceedings and res judicata

33. Article 46(1)(c) provides that admission of a petition shall be subject to the requirement that the matter "is not pending in another international proceeding for settlement", and Article 47(d) stipulates that the Commission shall consider inadmissible any petition that is "substantially the same as one previously studied by the Commission or by another international organization." In the case under review none of the parties has argued that either of these two circumstances has occurred, nor does the record indicate as much.

4. Nature of the alleged violations

34. Article 47(b) of the American Convention provides that the Commission shall consider inadmissible any petition that "does not state facts that tend to establish a violation of the rights guaranteed by the Convention." In this respect, the Commission concludes in the instant case that, if the allegations of the petitioners are shown to be true, then that could tend to establish the violation of Articles 7(1), 8(1), 8(2), 10 and 25(1). As regards the alleged violations of Articles 5 and 24 of the Convention, after examining the record, the Commission concludes that the petitioners have not adduced the necessary factual or legal arguments to sustain an alleged violation of the right to humane treatment or of the principle of equal protection.

35. Article 10 recognizes the right of a person to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice. The determination as to whether such a miscarriage existed, which in the instant case must be made in the stage of the proceedings that deals with the merits of the case, is a prerequisite for the possible application of Article 10. Accordingly, the Commission will evaluate the positions of the parties, to the extent necessary, in its analysis of merits.[FN2]

[FN2] Report N° 40/02, Argüelles et al. (Argentina), para. 59.

36. As the Inter-American Commission has held, "in principle, according to the 'fourth instance formula,' the Commission cannot review judgments handed down by domestic courts within their competence and with due judicial guarantees, unless a possible violation of the American Convention has been committed." [FN3] Accordingly, it is the task of this Commission to determine if the alleged nonexistence of evidence to presume that a crime was committed and the possibility of a flaw in the proceedings provided for under domestic law could constitute a violation of the Convention.

[FN3] Annual Report 2000, Case 11.676, "X" and "Z" (Argentina), p. 622, para. 39; and, more extensively, Annual Report 1996, Case 11.673, Santiago Marzioni (Argentina), p. 89, para. 50 et seq.

37. With respect to the allegations concerning the violation of the rights to honor and dignity of Mr. Acurso and his family, the Commission finds that the information provided does not tend to show that the State committed acts that constitute a violation of the Convention.

V. CONCLUSIONS

38. With respect to the alleged violations committed against Mr. Acurso during his prosecution for the offense of unlawful deprivation of liberty and extortion suffered by Mr. Sergio Luis Luraschi, the Commission concludes that it is competent to take up the instant case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention as regards violation of Articles 7(1), 8(1), 8(2), 10 and 25(1), all in connection with the general obligation contained in Article 1(1). The Commission further concludes that the complaints relating to Articles 5, 11(1) and 24 of the Convention are inadmissible.

39. 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 instant case admissible as regards the alleged violation of the rights of José Eduardo Acurso Marechal, recognized at Articles 1(1), 7(1), 8(1), 8(2), 10 and 25(1) of the American Convention. The complaints concerning the violation of Articles 5, 11(1) and 24 of the Convention are declared inadmissible by this Commission.
2. To notify the parties of this decision.
3. To continue with its analysis of the merits of the case.
4. To publish this decision and to 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 Washington, D.C., on this the 20th day of February 2003. Signed: Marta Altolaguirre, First Vice-

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President; José Zalaquett, Second Vice-President; Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts and Susana Villarán, Commission members.