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Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 4/04; Petition 12.234  
Session: Hundred and Nineteenth Regular Session (23 February – 12 March 2004)  
Title/Style of Cause: Ruben Luis Godoy v. Argentina  
Doc. Type: Decision  
Decided by: President: Jose Zalaquett;  
First Vice-President: Clare K. Roberts;  
Second Vice-President: Susana Villaran;  
Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez, Florentin Melendez.  
Dated: 24 February 2004  
Citation: Luis Godoy v. Argentina, Petition 12.234, Inter-Am. C.H.R., Report No. 4/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)  
Represented by: APPLICANT: Defensoria General de Camaras de Apelacion de Rosario  
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## I. SUMMARY

1. On October 24, 2000, the Inter-American Commission on Human Rights (hereafter "the Inter-American Commission," "the Commission," or "the IACHR") began processing a complaint submitted by Mr. Ruben Luis Godoy and the Defensoria General de Cámaras de Apelación de Rosario ["Ombudsman of the Appeals Courts of Rosario"] (hereafter "the petitioners"), against the Republic of Argentina (hereafter "the State," "the Government," or "Argentina"). The petition relates to the sentence of life imprisonment with an additional penalty of indefinite imprisonment and payment of 90,000 pesos in compensation issued against Mr. Ruben Luis Godoy (hereafter "the victim") following his confession to the crimes of murder and attempted rape. That confession was allegedly extracted from him under torture by police officers of the Province of Santa Fe. The complaint also alleges the denial of judicial protection and guarantees, through the failure to investigate and punish the officials who allegedly tortured the victim.

2. The petitioners maintain that the State is responsible for violating the rights to humane treatment, a fair trial, equality before the law, and judicial protection, taken in relation with the general obligations to respect and ensure rights and to adapt domestic legislation in keeping with the Convention, as established in Articles 5, 8, 25, 1(1) and 2, respectively, of the American Convention on Human Rights (hereafter "the Convention" or "the American Convention").

3. The State has asked the Commission to declare the petition inadmissible, because, in its assessment, the facts described therein do not characterize violations of rights protected by the

Convention. The State maintains that the allegations have no basis in fact or in law, and that Mr. Godoy has enjoyed all the applicable judicial guarantees.

4. Without prejudging the merits of the question, the Commission concludes in this report that the petition is admissible because it meets the requirements of Articles 46 and 47 of the American Convention. The Commission will therefore continue its analysis of the alleged violations of Articles 5(1) and 5(2), 8, 25, 1(1) and 2 of the Convention. The Commission also decides to notify this decision to the parties, to publish this report and to include it in its Annual Report to the OAS General Assembly.

## II. PROCEEDINGS BEFORE THE COMMISSION

5. The petition was submitted to the Executive Secretariat of the IACHR on October 28, 1998. Pursuant to Article 30(2) of its former Rules of Procedure, on November 20, 1998 the Commission asked the petitioners to expand upon their declaration, specifying the facts that in their opinion constituted the alleged violations.

6. In notes dated October 13, 1999 and October 28, 1999, the "Permanent Assembly for Human Rights -- APDH" (an organization that at that time joined the case as co-petitioner), responding to the Commission's request, provided additional information on the facts denounced. The IACHR acknowledged receipt of those communications on November 8, 1999, and informed the petitioners that the petition was still under study.

7. On October 24, 2000, the Commission informed the petitioners that it had initiated proceedings, and it transmitted the pertinent portions of the petition and its amplification to the State, giving the latter a period of 90 days to provide any information it considered relevant concerning the alleged facts and the exhaustion of domestic remedies. On February 6, 2001, the State requested an extension of the time limit for presenting this information. On March 14, 2001, the Commission granted the State an additional period of 60 days, and at the same time informed the petitioners of that decision.

8. The Government presented its response to the complaint in a communication dated April 12, 2001, the pertinent portions of which were transmitted to the petitioners on June 20, 2001, requesting them to present any observations on the State's response within 60 days.

9. The petitioners submitted their observations on the Government's response on November 30, 2001, and these were transmitted to the State on January 28, 2002, giving the State 30 days to submit any additional information or observations on the petitioners' submission.

10. The State presented its comments on the petitioners' observations on February 27, 2002. The contents of that second submission from the State were transmitted to the petitioners on May 20, 2002.

11. On June 4, 2003, and again on July 6, 2003, the Commission received communications from the petitioners requesting that the complaint be declared admissible.

### III. POSITION OF THE PARTIES

#### A. Position of the petitioners

12. According to the complaint, Mr. Ruben Luis Godoy was sentenced to life imprisonment with an additional penalty of indefinite imprisonment, and payment of 90,000 pesos by way of compensation for material and moral damages, by virtue of a judgment issued on December 22, 1994, by the Second Criminal Court of Appeals of Rosario, Province of Santa Fe, in case number 309/93 of that jurisdiction. He was convicted of criminal homicide and attempted rape, pursuant to Articles 42, 55, 119 (3) and 80 (7) of the National Criminal Code.[FN1]

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[FN1] Those provisions read as follows:

Article 42. Any person who sets out to commit a crime but does not consummate it for reasons beyond his control shall be subject to the penalties established in Article 44.

Article 55. When several independent deeds falling under the same type of punishment are committed, the applicable penalty shall, as a minimum, be the greatest minimum, and, as a maximum, the sum of the penalties for the individual deeds. That sum may not exceed the legal maximum for the type of punishment in question.

Article 80(7). Life imprisonment shall be imposed... on any person who kills... in order to prepare, facilitate, consummate or conceal another crime or to assure its outcome or to achieve impunity for the killer or for another person, or because the other crime did not achieve its objective.

Article 119(3). Any person who sexually abuses a person of either sex, when the victim is under 13 years of age, or when using violence, threats, coercion or intimidation based on the relationship of dependency, authority, or power, or taking advantage of the victim's inability to give free consent, shall be punished by imprisonment of six months to four years..... the prison penalty shall be six months to 15 years when such abuse involves sexual intercourse of any kind.  
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13. According to the petition, prosecution of Mr. Godoy was initiated on the basis of his confession to the crimes of homicide and attempted rape against Silvia Noemi Roldan, 19 years of age, perpetrated in the early morning hours of February 10, 1992, in the garden of a building belonging to Mrs. Gladys Balbuena, located in Almafuerde Street 2832 of the city of Villa Gobernador Galvez, Province of Santa Fe.

14. The petitioners allege that the police investigation of the crime was incomplete and suffered from various technical defects. They also maintain that the witnesses, when confronted with Mr. Godoy, were never able to identify him as the person who attacked Silvia Roldan. The petitioners also claim that the court, in assessing evidence, ignored the various declarations of witnesses and other evidence contradicting his supposed presence at the scene of the crime. They note that the trial court, in its judgment, recognized that there were many shortcomings in the investigation of the case, which, according to the judgment, were denounced not only by the public defender who assisted Mr. Godoy during the proceedings, but also by the public prosecutor and the civil plaintiff (the mother of Ms. Roldan).

15. The petitioners also claim that the judges hearing the case had already expressed an opinion as to Mr. Godoy's guilt before issuing the judgment, and that the principal element of evidence on which the conviction was based was a confession given by the accused, in the absence of an attorney, to the provincial police, after he had been subjected to torture. Specifically, the petitioners complain that, after his arrest, the victim was bound, beaten and insulted by at least six individuals who were trying to have him incriminate himself as the price of ceasing his torment.

16. The complaint claims that this abuse was reported to the Judge of First Instance of the Second Circuit of Rosario on February 19, 1992, when Mr. Godoy appeared to give his statement, but that the judicial authorities failed not only to investigate the allegations of torture, but also to discard as evidence the statement given by the victim to the police.

17. According to the petitioners, during Mr. Godoy's trial, his attorney insisted without success that his statement to the police be excluded as evidence, as well as the initial portion of testimony presented to the investigating judge, until the time the alleged victim reported that he was tortured.

18. The petitioners argue that Mr. Godoy decided to submit himself to oral proceedings pursuant to Article 447 of the Code of Criminal Procedure of the Province of Santa Fe,[FN2] in the hope of achieving speedy acquittal and release from prison by avoiding the time-consuming written proceedings. According to existing procedures, by opting for oral proceedings Mr. Godoy denied himself the possibility of a second judicial hearing by a higher court, but that decision of the victim cannot, in the opinion of the petitioners, be interpreted as renouncing his right to appeal his conviction.

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[FN2] That rule provides: in the case of a crime for which the minimum penalty is five years in prison, the accused has the right, within three days after being ordered to stand trial, to declare whether he prefers to be tried in a single instance, through oral proceedings.  
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19. On February 4, 1995, the Public Defender, on behalf of Mr. Godoy, filed a challenge at the provincial level arguing the unconstitutionality of Article 447 of the Code of Criminal Procedures of the Province of Santa Fe, on the grounds that the judgment was based on tainted evidence, that the judges had not respected the presumption of innocence in favor of the accused, and that the legal impossibility of appealing the conviction was inconsistent with the guarantee of appeal to a higher court enshrined in the Article 8(2) of the American Convention. That challenge was rejected by the Chamber of Criminal Appeals of Rosario on September 13, 1995, on the grounds that the mere fact that the trial judges offered an opinion on Mr. Godoy's guilt before developing the foundations of the conviction did not constitute a violation of the defendant's constitutional guarantees.

20. The petition goes on to relate that, upon rejection of the constitutional challenge, the victim's attorney brought an appeal (recurso de queja) before the Supreme Court of Justice of the Province of Santa Fe, which was rejected on December 21, 1995, on the grounds that the

appellant was seeking a new examination of the facts, the evidence and the law in question, which in that court's opinion has been decided with sufficient justification by the court of first instance. The petition reports that this decision was not notified to the defendant.

21. According to the petitioners, the decision denying that appeal was challenged through an extraordinary federal recourse (*recurso extraordinario federal*), seeking to bring the matter before the Supreme Court of Justice of the Nation. That recourse was rejected by the provincial Supreme Court as having been brought too late, despite the arguments by Mr. Godoy's defense that there was no time limit in such a case, because the judgment of December 21, 1995, had not been notified to Mr. Godoy. In the opinion of the highest court of Santa Fe, personal notification to the accused is not necessary in appeals of this nature.

22. Finally, the petitioners report that Mr. Godoy brought an appeal (“*recurso de queja*”) against the rejection of the extraordinary federal recourse, and that, on June 11, 1998, the Supreme Court of the Nation ratified the decision of the Provincial Supreme Court in the sense that, given the nature of the recourse pursued, notification of the decision to the defendant was not necessary, and it ruled that the challenge had consequently been brought too late. The defense for the accused requested revocation of this last decision, but that request was rejected in limine on August 13, 1998.

23. The petitioners maintain that the complaint meets the admissibility requirements established in the American Convention and in the Commission's Rules of Procedure. They argue that, although the principal evidence submitted in the criminal trial was clearly tainted because it had been obtained under torture, the victim was unable to obtain an acquittal and release because of an evidently discriminatory provision that excludes the right of appeal to a higher court for persons who opt for oral proceedings. They also argue that the competent authorities failed to conduct a proper investigation into the allegations of torture, thereby precluding punishment of those responsible and payment of the appropriate compensation. The petitioners conclude that all these facts constitute violations of the rights protected by Article 5, 8, 24 and 25 of the American Convention, taken in relation to the general obligation to respect and ensure protected rights, to which the Argentine Republic is subject pursuant to Article 1(1) of the Convention.

#### B. The State

24. For its part, the State denies that the principal evidence used in the trial consisted of the confession given by Ruben Godoy to the provincial police of Santa Fe. On the contrary, the State argues that all the items of evidence introduced in the trial convincingly demonstrated Mr. Godoy's involvement in the murder and attempted rape of Silvia Roldan. The Government also denies that it has failed in its obligation to investigate, punish and make reparations for the alleged torture inflicted on the victim.

25. The State initially argued that, if the petitioner was in fact subjected to pressure by the police, he should have asked the court of first instance to order an investigation, or he should at least have filed a criminal report with the authorities. Because he did not do so, the Government contends that it was relieved of its obligation to investigate the events. This notwithstanding, in

its second submission, dated February 27, 2002, the State recognized that the alleged torture had been reported to the investigating judge at the time of Mr. Godoy's sworn statement, and that such abuse could negate the evidentiary value of a police confession. It maintained that it could not negate that of the first portion of the investigation report presented on February 19, 1992, in which the accused confirmed his original version as to responsibility for the deeds, declaring that he did so without pressure of any kind.

26. In its second submission, the State declared, moreover, that the victim could have insisted on his constitutional right to refuse to make a statement before the police, in which case his silence could not have been used against him.

27. The State also maintained that the decision to opt for a one-time oral trial was taken voluntarily by Mr. Godoy, who was fully aware that although the written procedure was slower, it offered the possibility of more rigorous examination of the evidence, and above all gave him the right to appeal the ruling. The State argues that, in consequence, any subsequent demand for a second hearing was out of order.

28. The State also declares that, if Mr. Godoy was aware of conflicting jurisprudence in similar cases, he should have entered a motion to declare the inapplicability of the legal doctrine, instead of challenging the constitutionality of Article 447 of the Code of Criminal Procedures of Santa Fe. The State contends that the reason he did not do so was that the ruling was consistent with existing procedural and substantive provisions.

29. Although it did not expressly make this argument, the State suggests that if the petitioner has evidence to show that he had nothing to do with the murder and attempted rape of Silvia Roldan, he could launch an appeal for review ("recurso de revision"), pursuant to Article 489 of the Code of Criminal Procedure of Santa Fe.[FN3]

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[FN3] That Article provides as follows: an appeal for review may be brought at any time in favor of the convicted person, in order to overturn the definitive judgment.  
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30. The State insists that all the recourses available within the domestic jurisdiction were resolved in a timely manner and consistent with applicable legislation. It argues that the petition is based solely on the fact that the victim does not agree with the ruling, which was issued in the course of a regular process with full observance of judicial guaranties. In the Government's opinion, the complaint fails to describe facts that would tend to characterize violations of the rights protected by the American Convention, and for this reason the Commission must reject the petition pursuant to Article 47(c) of the Convention.

31. Finally, the State maintains that the "formula of fourth instance" must be applied in the present case, because the principal matter in the petition has been duly resolved by the national authorities.

### III. ANALYSIS OF ADMISSIBILITY

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

32. The petitioners are, in principle, entitled under Article 44 of the American Convention to file a petition with the IACHR. The petition identifies as the alleged victim an individual with respect to whom Argentina had undertaken to respect and ensure the rights enshrined in the American Convention. With respect to the State, the Commission notes that Argentina has been a party to the American Convention since September 5, 1984, the date on which it deposited the corresponding instrument of ratification. The Commission is therefore competent *ratione personae* to consider the petition.

33. The Commission is competent *ratione loci* to hear the petition, insofar as it alleges violations of rights protected in the American Convention that are affirmed to have taken place within the territory of a State Party. The IACHR is also competent *ratione temporis*, insofar as the obligation to respect and ensure the rights protected by the American Convention was already in force for the State at the date on which the acts referred to in the petition are alleged to have occurred. Finally, the Commission is competent *ratione materiae*, since the petition denounces violations of human rights protected by the American Convention.

B. Requirements for admissibility

1. Exhaustion of domestic remedies

34. 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."<sup>[FN4]</sup> Both the Inter-American Court of Human Rights (hereafter "the Court") and the Commission have repeatedly held that "under the generally recognized principles of international law and international practice, the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means."<sup>[FN5]</sup> The Court has further established that the objection that domestic remedies have not been exhausted should be raised in a timely manner, during the first stages of the proceeding before the Commission. Otherwise, it will be presumed that the interested State has tacitly waived its use.<sup>[FN6]</sup>

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[FN4] See I/A Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Article 46(1), 46(2)(a) and 46(2)(b), American Convention on Human Rights), Advisory Opinion OC-11/90, August 10, 1990, Inter-Am. Ct. H.R. (Ser. A) N° 11 (1990), para. 17.

[FN5] See I/A Court H.R., Decision in the matter of Viviana Gallardo et al., November 13, 1981, Ser. A No. G101/81, para. 26.

[FN6] I/A Court H.R., Mayagna (Sumo) Awas Tingni Community Case, Judgment on Preliminary Objections of February 1, 2000, (Ser. C) No. 66 (2000), paras. 53 and 54.

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35. In the present case, the petitioners have demonstrated that, on August 13, 1998, the Supreme Court of the Nation rejected the request to overturn the decision on the appeal brought by Mr. Godoy's defense against the denial of the extraordinary federal recourse issued by the Supreme Court of the Province of Santa Fe on November 26, 1997, at which point the remedies available within domestic jurisdiction were exhausted.

36. The State has in no way refuted the arguments of the petitioners to the effect that the remedies of domestic jurisdiction were exhausted. Although the Government suggested that the domestic system offered other potentially applicable remedies, it has never argued that the remedies pursued were inappropriate, or that they were not exhausted through a definitive decision, and it has never challenged the admissibility of the petition on those grounds.

37. Consequently, the Commission considers that those remedies suitable for dealing with the alleged violations have been duly exhausted.

## 2. Time period for submission of the petition

38. 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.

39. In the present case, the Commission notes that the ruling of the Supreme Court of the Nation, rejecting the request to overturn the decision on the appeal brought by Mr. Godoy's defense against the denial of the extraordinary federal recourse issued by the Supreme Court of the Province of Santa Fe, was notified to the victim on August 19, 1988, which means that the petition received by the Executive Secretary of the IACHR on October 28, 1998 was filed within a reasonable time from the date of the violations alleged, in compliance with Article 46(1)(b) of the Convention.

## 3. Duplication of proceedings and res judicata

40. The file contains no indication that the matter is pending in another international proceeding, or that it duplicates a petition already considered by this or another international body. Consequently, the requirements stipulated in Article 46(1)(c) and in Article 47(d) of the Convention are satisfied.

## 4. Characterization of the facts alleged

41. The State contends that the petition is inadmissible because the facts it describes do not characterize the violation of any right protected by the Convention, and that the petitioners are seeking to have the Commission act as a tribunal of "fourth instance," a function beyond the scope of its competence. It has therefore requested the Commission to dismiss the complaint, pursuant to Article 47(c) of the Convention.

42. The Commission considers that it is not appropriate at this stage of the proceedings to decide whether the victim's rights to humane treatment, a fair trial, equality before the law, and judicial protection were violated. For purposes of admissibility, the IACHR must at this time determine only whether the facts as set forth, if proven, could characterize a violation, as stipulated in Article 47.b of the Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” pursuant to Article 47(c).

43. The criterion for assessing these points is different from that which must be followed in deciding the merits of a complaint. The Commission’s duty at this stage is to conduct a prima facie assessment to determine whether the complaint demonstrates an apparent or potential violation of a right protected by the Convention, but not to decide whether such a violation occurred.[FN7] This examination amounts to a summary analysis, which does not imply any prejudgment or opinion as to the merits of the case. The distinction between the examination required for declaring admissibility and that required for determining a violation is reflected in the IACHR's own Rules of Procedure, which clearly differentiate the stages of admissibility and merits.[FN8]

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[FN7] See IACHR, Report N° 128/01, Case 12.367, Herrera and Vargas (“La Nación”), Costa Rica, December 3, 2001, para. 50.

[FN8] See IACHR, Report N° 31/03, Case 12.195, Mario Alberto Jara Oñate et al., Chile, March 7, 2003, para. 41.

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44. With respect to the State’s argument that review of this petition would require the Commission to act as a “fourth instance,” the Commission’s jurisprudence clearly establishes 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. The Commission cannot serve as an appellate court to examine alleged errors of law or fact that may have been committed by the domestic courts acting within their jurisdiction. However, within its mandate to ensure the observance of the rights protected in the Convention, the Commission is necessarily competent to declare a petition admissible and rule on its merits when it is claimed that a domestic legal decision was taken in disregard of the right to a fair trial, or that there have been other violations of rights protected by the Convention[FN9]. While questions relating to the application of domestic law may in principle be beyond the competence of the Commission, in the present case the petitioners have alleged acts of torture, the failure to conduct a proper investigation, and denial of the benefit of appeal to a higher court, to the prejudice of the victim, claims that in no case fall within the doctrine of fourth instance.

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[FN9] See IACHR Report N° 1/03, Case 12.221, Jorge Omar Gutierrez, Argentina, February 20, 2003, para. 46, citing IACHR, Report N° 39/96, Case 11.673 Marzioni, Argentina, October 15, 1996, paras. 50-51.

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45. The Commission considers that the resolution of the arguments presented by the State requires analysis at the merits stage, and that the allegations of the petitioners relative to violations of the rights to personal integrity, and to judicial protection and guarantees would, if proven, tend to characterize a violation of the rights protected under Articles 5(1) and 5(2), 8 and 25 of the Convention, in conjunction with Articles 1(1) and 2 of that treaty. Further, the claims are not manifestly unfounded or out of order. Consequently, the Commission considers that the requirements set forth under Article 47(b) and (c) of the American Convention have been satisfied.

46. In their initial presentation of October 28, 1998, the petitioners also alleged the violation of the rights of the victim under Article 24 of the Convention. However, they did not provide a factual or legal basis to sustain this claimed violation. In consequence, pursuant to its analysis of the facts set forth in the petition, the Commission concludes that this allegation does not characterize a possible violation of the Convention.

## V. CONCLUSION

47. The Commission concludes that it is competent to review this case, and that the petition is admissible, pursuant to Articles 46 and 47 of the American Convention.

48. 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 alleged violations of the rights recognized in Articles 5(1) and 5(2), 8 and 25, in relation to Articles 1(1) and 2 of the American Convention on Human Rights.
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 in the city of Washington, D.C., U.S.A., on the 24th day of the month of February, 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez and Florentín Meléndez, Commissioners.