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Title/Style of Cause:	Pablo Jose Goncalvez Gallarreta v. Uruguay
Doc. Type:	Decision
Decided by:	First Vice-President: Clare K. Roberts; Second Vice-President: Susana Villaran; Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez and Florentin Melendez.
Dated:	13 October 2004
Citation:	Goncalvez Gallarreta v. Uruguay, Petition 12.064, Inter-Am. C.H.R., Report No. 47/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
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I. SUMMARY

1. On September 9, 1998, Pablo José Gonçalves Gallarreta (hereinafter “the petitioner”) filed, on his own behalf, a petition with the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) against the Republic of Uruguay (hereinafter “the State” or “Uruguay”). In his complaint, the petitioner alleges that the following rights protected under the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) were violated: the right to personal liberty (Article 7(2)) and the right to due process (Article 8(3)), by virtue of a number of acts committed by a government agency (the Ministry of the Interior) and a court (the Supreme Court of Justice) in Uruguay, all in violation of the Article 1(1) obligations that the State undertook when it ratified the Convention.

2. The petitioner alleges that the decisions handed down by the courts of first and second instance and the judgment delivered by the Supreme Court were in violation of the system of judicial guarantees recognized in the American Convention and in the Uruguayan Constitution and Code of Criminal Procedure now in force. The petitioner states that he is seeking to correct the misapplication of the standards of evidence by the courts that heard his case. The petitioner alleges that the courts hearing his case admitted evidence that did not rise to the standards required under the Constitution and the law. The State denies the main argument in the petition, i.e., conviction of an innocent person, and contends that the overwhelming evidence against the petitioner demonstrates that the allegations of torture and lack of due process are merely a procedural gimmick calculated to nullify the proceedings and secure the petitioner’s release from prison. The State is asking that the petition be declared inadmissible.

3. In this report, the Commission examines the information presented pursuant to the American Convention and finds that the petition does not meet the admissibility requirements established in Article 46 of that Convention. Specifically, the Commission finds that the petition does not present evidence to support the claim that the facts alleged tend to establish a violation of the American Convention. Therefore, pursuant to Article 47(b) of the American Convention, the Commission decides to declare the petition inadmissible, to notify the parties of its decision, and to include this report in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On November 18, 1998, the Commission forwarded to Uruguay the complaint the petitioner had filed on September 9, 1998. It asked that Uruguay respond within the 90-day period prescribed in Article 34(5) of the Rules of Procedure in force at that time. The Commission's Rules of Procedure were amended on May 1, 2001.

5. On January 13, 1999, the Commission received a communication from the State wherein the latter advised the Commission that its November 18, 1998 communication had not yet been processed. For administrative reasons, the pertinent parts of case No. 12,064 were sent again to Uruguay's Foreign Office. Uruguay was given 90 days to provide the Commission with any information it deemed relevant.

6. On February 25, 1996, the State filed its response to the allegations contained in the petition and asked the Commission to declare the petition inadmissible for being manifestly groundless. The State's response was sent to the petitioner on March 2, 1999 and he was asked to submit his observations within one month. On May 27, 1999, the petitioner's attorneys submitted their observations on the response received from the State. The Commission sent the petitioner's observations to the State on August 2, 1999, with the request that it send any additional observations it might have to the Commission within one month's time.

7. On March 11, 2000, the petitioner presented additional observations to the State's response, which were directed to the State on May 25, 2000. On July 3, 2000, the Commission received the State's observations on the Commission's May 25 note. There, the State reasserted what it had said in its original response, adding that the petitioner was acting as if filing an appeal with a domestic court. The State requested that the case record be filed and that the case be closed once and for all. On July 6, 2000, the State's observations were sent to the petitioner, who was given 45 days to present his observations.

8. On September 7, 2000, the Commission received a communication from the petitioner where he confirmed the statements made in other communications and added that no witness or evidence had been introduced against him in the criminal trial that convicted him. On October 27, 2000, the Commission again received more information from the petitioner, this time in the form of court documents involving another case in the Uruguayan courts, documents that the petitioner claimed fully supported his statements about the torture inflicted by certain Uruguayan police officers to coerce a confession. The petitioner states that "when these two police officers were prosecuted for having tortured Mr. Carmona, my attorneys filed a brief suggesting that additional evidence be obtained, specifically that the testimony of the torture inflicted on Mr.

Carmona while in custody be sent to the Judge hearing my case,” but that the Judge refused to admit these documents. The petitioner does not indicate that he ever sought to file his own action against these same police officials with regard to the torture that he alleged to have suffered. The petitioner’s observations were forwarded to the State on November 30, which was given 30 days to file any observations it might have.

9. On January 9 and 19, 2001, respectively, the Commission received a note from the State reasserting the position it had taken in its earlier responses. The State repeated its request that the Commission issue a finding declaring the petition out of order.

10. On February 7, 2001, the Commission received a communication from the petitioner informing it of his poor health and his claims that he had been attacked by other inmates in prison. On April 30, 2001, the Commission received another communication from the petitioner that was similar in content to his earlier communications.

11. On June 2, 2003, the Commission received a memorandum from the Office of the General Secretariat of the Organization of American States in Uruguay, dated May 28, 2003, wherein it reported that Mrs. Reina Gallarreta, mother of the petitioner, had appeared at that Office that very day and had delivered a note from her son about his case, dated May 5, 2003. The Commission acknowledged receipt on June 4, 2003.

III. POSITION OF THE PARTIES

A. The petitioner’s position

12. The petitioner alleges that he was convicted of a crime he did not commit. Applying the sentencing guidelines known as *concurso formal* and *reiteración real*,^[FN1] the court sentenced him to thirty years in prison for multiple crimes, specifically the crimes of rape and the commission of obscene acts in a public place –both crimes having been committed in the course of a single act-, plus two counts of murder, one of them very heinous (judgment No. 3 of February 9, 1996, Criminal Court Examining Judge, 21st Rotation). On appeal, the lower court’s ruling was upheld by the Appellate Court, First Rotation (judgment No. 156, August 28, 1996). In its judgment No. 423 of December 24, 1997, the Supreme Court dismissed the writ of cassation seeking reversal of the lower court’s judgment.

[FN1] Note: *concurso formal* is the sentencing guideline applied when more than one criminal law is violated in a single act; *reiteración real* is the sentencing guideline applied when a defendant is convicted of more than one crime but not more than three.

13. From the very outset of the proceedings, the petitioner contends, rights and guarantees upheld in higher laws such as the Constitution of Uruguay, regional and international conventions that were part of Uruguay’s domestic legal system, and procedural laws embodied in the Code of Criminal Procedure, were violated; he also alleges that the many arguments he

brought through every avenue available under domestic procedural law were all disregarded in the above-mentioned rulings.

Right to personal liberty

14. The petitioner is alleging a violation of Article 7(2) of the American Convention and a number of articles in the Uruguayan Constitution. The petitioner points out that under Article 15 of the Uruguayan Constitution, “No one may be held in custody unless caught in flagrante delicto or by written order of a competent judge armed with prima facie evidence.” Article 16 of the Constitution elaborates upon Article 15, and provides that “In either of the two circumstances provided for in the preceding article, the judge’s duty shall be to take a statement from the arrested party within twenty-four hours, and shall institute summary proceedings within forty-eight hours. The accused’s statements shall be taken in the presence of his defense counsel. The latter shall have the right to attend all summary proceedings.” The petitioner contends that these deadlines were not observed in the present case, nor was the guarantee of a written order issued beforehand by a competent judge.

15. The petitioner says that he was detained on February 20, 1993, at around 1:00 a.m. in the city of Chuy, department of Rocha, near the border with the Brazil. At the time, he was returning of his own volition from Porto Alegre, Brazil, having learned that the house he lived in had been searched by the police.

16. After being detained, the petitioner was transferred, “hooded”, some 350 kilometers from the place of his arrest in the city of Chuy to Montevideo. He was logged in at Police Precinct 14 at around 8:15 a.m. that same day -Saturday, February 20, 1993- whereupon his interrogation got underway.

17. Around noon that same day, the petitioner was moved to Montevideo Police Headquarters, where the interrogation continued throughout that afternoon. At around that time, the judge with jurisdiction over the case -Dr. Rolando Vomero, then a Criminal Court Judge of First Instance, First Rotation, for the city of Pando, department of Canelones- appeared at Police Headquarters and was told what the police were doing. According to the petitioner, rather than take the statement from the petitioner himself, the judge allowed the police interrogation to continue until the next day.

18. The petitioner insists that throughout the entire period, police were subjecting him to undue physical and psychological duress, and succeeded in forcing a confession from him in the early morning hours of Sunday, February 21, 1993. According to the petitioner, the undue physical and psychological duress consisted of being “hooded” for the 350-kilometer trip from the city of Chuy to Montevideo Police Precinct 14, being subjected to questioning for the duration of the trip and thereafter, and being beaten on the head and verbally abused.

19. The petitioner was not taken to the Pando Courtroom until around 5:00 p.m. on Sunday, February 21, 1993 (some 17 hours past the statutory 24-hour time period required by the Constitution and the law). This was his first appearance in court, but he was not represented by

counsel. The judge ordered him to make a sworn statement as a “witness.” In this new statement, the petitioner repeated what he had told the police.

20. By the time the Sunday hearing ended, it was late at night. Still, the judge ordered that the petitioner be sent back to Montevideo Police Headquarters and that he appear for court at 8:00 a.m. the following day, Monday, February 22, 1993. A reconstruction of the crime was staged at the police station that morning; the preliminary hearing was held that afternoon, with a defense attorney present (this was after 55 hours of detention and constant police interrogation).

21. According to the petitioner, “in addition to the fact that the constitutional time periods were not observed, the advance written arrest warrant unequivocally required by the Constitution and the law never existed, as is evident from the record of the hearing at page 73 of the case file. The presiding judge learned of any suspicions that the police might have had about the individual who appeared before him only after that individual was already in custody at Montevideo Police Headquarters.”

22. The petitioner asserted that after being taken to Police Headquarters, he was interrogated yet again using threats and verbal abuse. He was warned that he was “not on the list”, i.e., that no one knew where the petitioner was; that if they wanted, the police could kill him and nothing would happen, as they could easily find a witness to testify that they had released him. The petitioner stated that he was slapped with either the open hand or latex gloves and rubber sticks, made to stand for long periods with his legs spread and his hands cuffed, followed by interrogations in which his head was covered with a cloth hood and even nylon bags that almost asphyxiated him. He said that the physical abuse increased in intensity, reaching its peak when they applied the cattle prod.

23. The petitioner emphasizes that the evidence of the abuse was not properly weighed in the decisions handed down during the course of the trial, “as they violated the rule that principles of sound reasoning, based on the rules of logic, psychology and common experience, should be brought to bear when weighing the evidence; they also disregarded the physical and psychological coercion used to extract the statement made by the petitioner under questioning.”

24. The petitioner argues that in the various court judgments, the judges accepted the arguments regarding violations of due process. The petitioner cites the Appellate Court ruling, which went into the merits of the case only after pointing out that the defense “has dwelled on formalities, without addressing the merits of the case, namely the facts.” The judgment went on to say that the Defense “does not proclaim Pablo Gonçalves’ innocence; that it harps on problems of formalities in the evidence;” and that it wonders whether, “given the problems with the evidentiary formalities, shouldn’t Pablo Gonçalves be acquitted even if he is the author of a rape and two murders?”

25. According to the petitioner, “it is unacceptable to suspect someone of a crime without first putting together, in a lawful manner, the evidence that would support a finding of guilt. Hence, the ineluctable consequence of the absence of legally compiled evidence must be acquittal, a verdict of innocent. This is how every person accused of a crime is entitled to be

regarded until a final, legally sound conviction establishes otherwise, and provided that all judicial guarantees have been fully respected.”

26. The petitioner concludes that: “The verdicts of the lower court and the Appellate Court and the Supreme Court’s ruling were all in violation of the system of judicial guarantees recognized in the American Convention on Human Rights and in Uruguay’s Constitution and Code of Criminal Procedure. They violated every principle governing the weighing of evidence. The courts saw the illegalities surrounding the statement taken by the police, which was intrinsically unlawful, the failure to bring the petitioner before a judge within the statutory 24-hour time period, the statement the petitioner was ordered to make as a legally-sworn “witness,” and the physical and psychological abuse that clearly attended the statements; these and others were violations of articles 173 and 174 of the Code of Criminal Procedure.”

B. The State’s position

27. In its January 29, 1999 response, the State reported that the petitioner is a young man from a well-to-do family. His educational background is typical of his socioeconomic class. He commands more than four languages. Because his father was a diplomat, the petitioner spent his childhood and adolescence in various countries of the world. He has no prior criminal record.

28. The State wrote that in 1993, the petitioner was the accused in a criminal proceeding. All the legal guarantees provided under Uruguayan law were observed. In the end, he was found guilty of “two particularly heinous murders, plus two crimes committed in the course of a single act –rape and obscene acts in a public place.

29. The State alleged that Pablo Gonçalves’ victims were very young women, all virtual strangers to him. A.C. was fifteen years old when she went to a discothèque to go dancing on September 20, 1992; twenty days later her lifeless body was found buried in the sands at the Punta del Este beach resort. The autopsy revealed the cause of death to be compression of the neck with a concomitant inhibitory reflex. In 1993, M. V. W., just over 20 years old at the time, lived in the petitioner’s neighborhood and was tricked into entering Pablo Gonçalves’ house when the latter claimed his grandmother was suffering a medical emergency. Once inside the house, he put ether and alcohol into the victim’s nose and then caused her death by asphyxiation. Finally, V.G., the petitioner’s only victim to survive, was raped after being forced to get into a vehicle driven by Pablo Gonçalves, who was posing as a Brazilian tourist.

30. The State categorically rejects what it calls the main argument put forward by the prestigious attorneys representing Pablo Gonçalves, i.e., the claim that violations of due process have caused an innocent man to be convicted. The State argues that the claim is baseless.

31. As to the manner of the detention, the State argues that the petitioner is trying to give the Commission the impression that the criminal judge was unaware of the police inquiries into the murder cases. According to the communication from the petitioner, everything appears to indicate that prior to his detention in February 1993, he had never been a suspect in these cases. The State contends that this is false since, as the lower-court ruling states, there were clues that warranted Gonçalves’ detention.

32. In 1991, V. G. accused the petitioner of rape. She filed a formal complaint using documents that she took from the criminal when he was momentarily distracted, at the very time the rape occurred. Then there was the murder of A.C. in 1992, who was last seen alive in the company of the petitioner. Then M.V.W., who lived in Mr. Gonçalves' neighborhood, was murdered in 1993. On October 14, 1992, a number of witnesses, Mr. Gonçalves among them, were questioned in court as part of the investigations conducted into the murder of the young A.C..

33. On February 17, 1993, the Criminal Judge, Seventh Rotation, issued a warrant authorizing a search of the petitioner's house, basically in order to locate the vehicle he used to transport A.C.'s body and to find in it evidence of the murder.

34. As Judge William Corujo wrote at page 64 of his judgment, in [Uruguay's] judicial system the search warrant issued functions as a legal means to proceed with the suspect's arrest. That written order from the magistrate functioned as a means to proceed with Mr. Gonçalves' arrest on February 18, 1993. The petitioner could not be detained at that time, because he had traveled to Brazil. The arrest was finally made on February 20, 1993, two days after the warrant was issued. “

35. From the foregoing the State concluded that the arrest was lawful because it was carried out by the competent authorities, with the knowledge of the judicial authorities, for the purpose of investigating what was described in the law as a crime and following the statutory procedures set forth in Uruguayan law.

36. As to the allegation that the detention was arbitrary, the State wrote that a written order from a competent judge functions primarily as a means to safeguard the individual against administrative or police abuse. In the petitioner's case, there was nothing arbitrary about the arrest, because it had the support of the judicial system in the person of the intervening magistrates. The police were acting as an arm of the courts when they arrested Mr. Gonçalves. The State contends that there was no judicial abuse either, as the volume of evidence about Mr. Gonçalves, the suspect, was more than sufficient to authorize the search and the arrest as well. The State concludes by asserting that all the substantive guarantees of the right to personal liberty were respected in the manner prescribed in Uruguayan law. There was nothing unlawful or abusive about it.

37. As regards the issue as to whether the alleged violations of statutory time periods set forth in Uruguayan and international law constitutes “arbitrary” detention, the State acknowledges that “the number of hours that passed before the police brought the petitioner before a judge was in excess of the number that duty and Uruguayan law require.” However, the State cites the jurisprudence of the Inter.-American Commission to the effect that “the term ‘immediately’ must be interpreted according to the special characteristics of each case.”

38. The State argues that the prolongation of the period that Gonçalves was in custody before his appearance in court was not too much of a sacrifice to reasonably demand of someone who is presumed innocent, basically for two reasons: 1) because the number of hours he was held in

custody before his appearance in court exceeded the statutory limit only by a matter of hours, and the presiding judge so ruled, and 2) because the magistrate had so much evidence that Mr. Gonçavez was far more likely to face prosecution than to be released. As the criminal proceedings amply demonstrated, the State concludes, Mr. Gonçavez was no innocent; instead, under criminal law, he was responsible for the crimes for which he was detained in 1993.

39. The State adds that the petitioner received a just, impartial and speedy trial. Mr. Gonçavez testified in the presence of his attorneys, reconstructed the events with legal counsel present, and notification of the indictment was sent to his defense counsel, which raised no objection. It points out that Mr. Gonçavez' right to be heard by an independent and impartial judge was respected; his right to defend himself was recognized; his defense attorneys had the time and the guarantees necessary to prepare their work and exercised their right of appeal with the appellate courts and then the Supreme Court. The State makes the point that the Uruguayan judiciary is impartial and independent, and has determined that any procedural problems or irregularities in the proceedings that Mr. Gonçavez' defense counsel raised were not persuasive enough to make the case that either the defense or its client was denied basic guarantees. Citing the Inter-American Court in its judgment on Preliminary Objections in the Cayara Case, the State concludes by stating that: "It is generally accepted that the procedural system is a means of attaining justice and that the latter cannot be sacrificed for the sake of mere formalities. Keeping within certain timely and reasonable limits, some omissions or delays in complying with procedure may be excused, provided that a suitable balance between justice and legal certainty is preserved."

40. As to the petitioner's claim that his confession was coerced, the State points out that in his first appearance before the judge on February 22, 1993, Mr. Gonçavez, assisted by two attorneys, said nothing about any undue pressures and confessed in court to having committed the two murders attributed to him. That same day, Mr. Gonçavez was examined by a forensic physician whose report states unequivocally that the physical examination found nothing in the way of torture or recent blood wounds.

41. The State wrote that apart from Mr. Gonçavez' confession, many pieces of evidence substantiated the guilty verdict. In the final analysis, the confession was not the main piece of evidence that convicted the petitioner. The confession in question was made before the judge and in the presence of Mr. Gonçavez' private defense attorney. Ultimately, the suspect's statements to the police carried no more legal weight than mere circumstantial evidence. Some details recounted in the confession were facts that not even general practitioners could have known (for example, the immediate change that the face undergoes after death by asphyxiation, the condition of the body 34 hours after death). The lower court judge came to the following conclusion: Mr. Gonçavez could have known these facts had he been a medical technician, but he was not; or he could have learned them by experience, in other words, by murdering the victims.

42. In addition to Mr. Gonçavez' confession, the magistrate had actual pieces of material evidence (e.g. such as his handcuffs, which he used to constrain the woman he raped, and the man's tie that was around A.C.'s neck when her body was discovered buried in the sand at Punta del Este). This material evidence definitively tied Mr. Gonçavez to the crimes in question.

43. It was not until 1994 that the accused' defense began to claim that the accused had been mistreated at the time of his arrest. The Uruguayan courts investigated these claims and concluded that the abuse had not occurred. As regards the allegations by the petitioner that the allegations of torture that allegedly occurred in the same penitentiary in August 1993 presented by Mr. Walter Carmona against two police officers, conclusively proved that the petitioner had also been tortured, the State points out that these police officers were acquitted of the charges by the Appeals Court. The State's argument is that given the circumstances of the investigation, Mr. Gonçavez' confession was secondary; even if he had not confessed, the weight of the evidence against him was so overwhelming that the outcome would have been the same. The State is asking that the Commission declare the petition inadmissible. In the State's opinion, the allegation of torture seems to be a procedural gimmick that Mr. Gonçavez' defense counsel is using to have the proceedings nullified and their client released from prison.

IV. ANALYSIS OF ADMISSIBILITY

A. The Commission's competence *ratione personae*, *ratione loci*, and *ratione temporis* and *ratione materiae*

44. Under Article 44 of the American Convention, the petitioner is entitled to file petitions with the Commission. The petition names Mr. Pablo Gonçavez Gallarreta as the alleged victim, in accordance with Article 1(2) of the American Convention. The respondent State, namely the Republic of Uruguay, ratified the American Convention on April 19, 1985. Hence, the Commission has competence *ratione personae* to examine the petition.

45. As for the Commission's competence *ratione loci*, all the violations being alleged were supposedly committed within the jurisdiction of the Republic of Uruguay.

46. As for the Commission's competence *ratione temporis*, the violations being alleged were said to have occurred subsequent to Uruguay's ratification of the American Convention on April 19, 1985.

47. The Commission is competent *ratione materiae* to take up the present petition because it alleges violations of rights protected under the American Convention.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

48. Pablo Gonçavez Gallarreta was convicted on February 9, 1996, having been found guilty of the crime of rape committed concomitantly with the crime of commission of obscene acts in a public place, plus two counts of murder, one of them very heinous" [using the sentencing guidelines known as *concurso formal* and *reiteración real*]. That ruling was upheld on appeal by the Appellate Court, 1st Rotation, on August 28, 1996. In ruling No. 423 of December 24, 1997, the Supreme Court dismissed the writ of cassation challenging the Appellate Court's ruling.

49. The conclusion is that the rule contained in Article 46(1)(a) of the Convention requiring exhaustion of local remedies was fulfilled with the ruling handed down by the Supreme Court on December 24, 1997, notification of which was sent to the petitioner on March 11, 1998.

2. Timely presentation of the petition

50. Because the petition was lodged with the Commission on September 9, 1998, six months from the date on which he was notified of the final judgment (March 11, 1998), the petition comes within the time period established in Article 46(1)(b) of the Convention.

3. Duplication of proceedings and international res judicata

51. The Commission understands that the subject of the petition is not pending in another international proceeding for settlement and is not substantially the same as one previously studied by the Commission or by another international organization. Thus, the requirements set forth in articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the facts alleged

52. Article 47(b) of the American Convention states that the Commission shall consider inadmissible any petition or communication that “does not state facts that tend to establish a violation of the rights guaranteed by this Convention”.

53. The petitioner alleges violations under Article 7 of the American Convention regarding personal liberty and under Article 8 regarding substantive due process guarantees. Under the rubric of Article 7, the petitioner’s claims involve alleged procedural violations (e.g. that the arrest of the petitioner took place without a judicially authorized arrest warrant, that statutory time periods were ignored); under Article 8, they involve much more serious allegations of a substantive nature (e.g. that the petitioner’s confession was obtained by means of torture and, therefore tainted, and must be considered inadmissible as evidence in the judicial proceedings).

54. As regards the alleged violations under Article 7 of the American Convention, the petitioner states that his arrest violated Article 7(2) of the American Convention, Articles 15 and 16 of the Uruguayan Constitution and also the relevant provisions of the Uruguayan Code of Criminal Procedure. He states that his detention on February 20, 1993 was without a judicially authorized arrest warrant and that he was transferred, “hooded”, from the place of his arrest in the city of Chuy, some 350 kilometers, to Montevideo, where he was taken to a police station and interrogated. The petitioner also claims a violation of Article 7(5) of the American Convention in that he was not brought before a judge until February 21, 1993, some 17 hours after the statutory time period (the Constitution of Uruguay and Uruguayan laws require that the detainee be taken before a Judge within 24 hours of arrest). On February 21, 1993, the petitioner was brought before the Judge as a “witness”. The Judge ordered that he be taken back to the Montevideo Police Headquarters and be brought back to the Court on the following day, February 22, 1993. On the following day, a reconstruction of the events was carried out and the hearing was conducted in the presence of a defense lawyer.

55. The Commission considers the response to the petitioner's alleged violation of Article 7 of the American Convention to be persuasive. The State replied that on February 17, 1993, the Criminal Court Judge, Seventh Rotation, "issued a warrant authorizing a search of the petitioner's house, basically in order to locate the vehicle he used to transport A.C.'s body and to find in it evidence of the murder." This search warrant served as the legal basis for proceedings which culminated in the arrest of the petitioner. As the State writes in its response, "As Judge William Corujo wrote at page 64 of his judgment, in our judicial system the search warrant issued functions as a legal means to proceed with the suspect's arrest. That written order from the magistrate functioned as a means to proceed with Mr. Gonçavez' arrest on February 18, 1993. The petitioner could not be detained at that time, because he had traveled to Brazil. The arrest was finally made on February 20, 1993, two days after the warrant was issued " The State, by means of its courts, concluded that the detention was legal, because it was carried out by the competent authorities, with the knowledge of the judicial authorities, for the purposes of investigating what was described in the law as a crime and following the statutory procedures set forth in the domestic law.

56. Time and time again the practice of the Commission has been not to substitute its own assessment of the facts for the assessment of the domestic courts. As general rule, these courts are called upon to weigh the evidence presented to them. The Commission's job is to determine whether the judicial proceedings, when taken as a whole, provided the judicial guarantees inherent in due process of law. As a consequence of the above considerations, the Commission concludes that the petitioner has not presented information sufficient to substantiate his claims that the State violated his right to personal liberty under Article 7 of the American Convention and is of the opinion that the petitioner's claims do not warrant a reexamination of the judicial proceedings conducted at the national level.

57. As regards the alleged violations under Article 8 of the American Convention, the petitioner states that his confession was obtained by means of torture and, therefore, is inadmissible in any judicial proceeding. As a consequence, the petitioner maintains that his conviction is illegal. The Commission considers this the most serious complaint raised by the petitioner and must be examined carefully. The State alleges that the petitioner's lawyers invented the argument that Mr. Gonçavez was tortured since they did not raise it during the petitioner's first appearance before the judge on February 22, 1993, where it should have been raised since he was assisted by two lawyers at that hearing. Furthermore, the State notes that the petitioner was examined by a medical doctor on that same day and there is no information in the doctor's report of the petitioner having suffered any mistreatment while in police detention.

58. The State notes further that there is evidence, other than the petitioner's confession, that supports his guilt and that the confession is only one element which motivated the conviction. Furthermore, the confession to which reference is made, the State emphasizes, was rendered before a judge and in the presence of the petitioner's own defense lawyer, and consequently the declarations which the petitioner made to the police did not have legal force and did not form the basis for the conviction. Furthermore, the State added, certain details of the confession could not have been known unless the petitioner was the actual perpetrator of the crime. In addition, corroborating evidence, such as the testimony of the petitioner's brother, for example, that the

man's tie that was hanging on the neck of the deceased young woman, A.C., belonged to the petitioner's father, underscore the credibility of the confession and the petitioner's culpability.

59. The Commission considers that the petitioner has not substantiated his allegation that the State violated his right to due process in that it convicted him on the basis of evidence obtained illegally, by means of torture. Furthermore, the petitioner in subsequent information, but not in the original complaint presents evidence that a certain Mr. Walter Carmona, whom the petitioner does not know, but who was detained in the same penitentiary that he was, in 1993, brought an action against two police officers for having tortured him (Mr. Carmona). The petitioner claims that he was tortured (in March 1993) by the same police officers that Mr. Carmona charges tortured him in August 1993. The petitioner's lawyers filed a brief suggesting that additional evidence be obtained, specifically that the testimony of the torture inflicted on Mr. Carmona while in prison be sent to the Judge hearing the petitioner's case. The Judge did not permit these documents to be introduced into the petitioner's file which the petitioner alleges caused him a great injustice.

60. The petitioner presented the evidence of Mr. Carmona's legal action against the two police officers that Mr. Carmona claims tortured him, but when the Court refused to allow the petitioner to introduce into his case the testimony from Mr. Carmona's suit, there is no information to the effect that the petitioner sought to bring his own legal action for torture against the two police officers. In addition, the Uruguayan Court of Appeals acquitted the police officers who had been charged with torture. The failure of the petitioner to pursue his own legal action against the perpetrators is evidence of a failure to exhaust domestic remedies on the issue as to the allegation of torture. Having failed to pursue his domestic remedies in order to substantiate the allegation that he was tortured, the petitioner has failed to substantiate his claim that the State violated his right to due process in that it convicted him on the basis of evidence obtained illegally.

61. Consequently, the Commission concludes that the petitioner's failure to substantiate his claims regarding a possible violation of Article 7 or 8 of the American Convention, falls within the grounds, pursuant to which the Commission is mandated to declare a petition inadmissible, set forth in Article 47(b) of the American Convention, for failure to state facts that tend to establish a violation of the rights guaranteed by the Convention.

V. CONCLUSION

62. Based on the arguments of fact and law set forth above, the Commission considers that the petition is inadmissible based on the requirements set forth in Article 47(b) of the American Convention on Human Rights, inasmuch as it does not state facts that tend to establish a violation of the rights guaranteed by this Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition inadmissible because it does not state facts that tend to establish a violation of the human rights protected by the American Convention.
2. To notify the parties of this decision.
3. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C, on October 13, 2004. (Signed): Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commission members: Evelio Fernández Arévalos, Paulo Sérgio Pinheiro, Freddy Gutiérrez and Florentín Meléndez.