

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 15/06; Petition 618-01
Session: Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause: Maria Emilia Gonzalez, Paula Micaela Gonzalez and Maria Veronica Villar v. Argentina
Doc. Type: Decision
Decided by: President: Evelio Fernandez Arevalos;
First Vice-President: Paulo Sergio Pinheiro;
Second Vice-President: Florentin Melendez;
Commissioners: Clare K. Roberts, Freddy Gutierrez, Paolo G. Carozza.
Pursuant to Article 17.2.a of the Rules of Procedure of the IACHR, Commissioner Victor E. Abramovich, an Argentine National, did not participate in the discussion or decision in the present case.
Dated: 2 March 2006
Citation: Emilia Gonzalez v. Argentina, Petition 618-01, Inter-Am. C.H.R., Report No. 15/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by: APPLICANT: Fernando Dalmazzo
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I. SUMMARY

1. The instant report concerns the admissibility of petition 618/01. Proceedings were initiated by the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission”, “Commission”, or “IACHR”) after it took receipt of a petition on September 6, 2001, lodged by Susana Guareschi de González, Juan Villar, Ofelia Mosconi de Villar, and their lawyer Fernando Dalmazzo (hereinafter “the petitioners”), against the Argentine Republic (hereinafter “Argentina” or “the State”), in connection with the deaths of their daughters María Emilia González, age 24; Paula Micaela González, age 17; and María Verónica Villar, age 22, whose dead bodies were discovered on November 11, 1997, in Cipolletti, Río Negro Province, Argentina.

2. The petitioners hold that since the start of the investigation a series of events have occurred that suggest the existence of a police cover-up in the case. They allege that the initial search for the bodies was diverted to places away from where they were found, and that, following their discovery, the investigations led to the arrest of two suspects who were later released for lack of evidence. The witness to the arrest of these two suspects was allegedly murdered, and one of the officers involved in the investigation reportedly committed suicide, leaving the names of several persons, including that of the judge presiding over the case, written on the walls in blood. They add that, while two persons have been convicted as co-perpetrators in the main proceeding in the triple homicide, according to the judgment in that proceeding there

are three other participants who could not be identified. In the opinion of the petitioners, despite the time elapsed, as well as the initiation of several related proceedings to investigate the alleged cover-up by the authorities, the motives of the crime have still not been explained, nor has it been possible to identify all those responsible, either for the crime or for the alleged cover-up by the police and political authorities. They hold that the alleged acts constitute violations of human rights guaranteed by the American Convention on Human Rights (hereinafter the “American Convention”).

3. The State, for its part, argues that it has adopted all the measures necessary to get to the bottom of the crime as well as the alleged police conspiracy, and that the allegations of the petitioners with respect to the lack of a judicial and administrative response to the actions of the accused police officers are groundless. As regards the triple crime, the State argues that two individuals were found guilty by an independent tribunal following their trial with full observance of their procedural guarantees and within a time that allowed no suggestion of controversy. Furthermore, in connection with the related proceedings, the State says that it initiated several judicial and administrative proceedings to investigate the conduct of the persons named by the petitioners, and maintains that as a result, the former Police Chief of Río Negro was convicted and the discharge was ordered of two Deputy Commanders involved in the investigation in the case. Based on the foregoing, the Government considers that there are no grounds to support the petition under review.

4. The Commission concludes that it is competent to take up the petition. Without prejudging the merits of the complaint. In the merits stage the Commission will voluntarily analyze if a possible violation exists of Articles 4, 5, 8, 19, and 25 of the American Convention, in connection with a violation of the general obligation to respect and ensure rights contained in Article 1.1 of the Convention, given that violations of those articles are implied in the description of the allegations contained in the complaint despite the fact that the petitioners have not expressly invoked them. The Commission, furthermore, decides to inform the parties of this decision, make it public, and include it in its annual report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. The petition was received at the IACHR on September 6, 2001, and the pertinent portions transmitted on October 12, 2001, to the State, which was given two months to submit its observations.

6. On December 14, 2001, and January 17, 2002, the Argentine State presented its observations and submitted information on the petition. The Commission forwarded this information to the petitioners on January 31, 2002.

7. In August 2002, the IACHR conducted a working visit to Argentina, in the course of which the delegation traveled to Río Negro to meet with the authorities and the petitioners in this and other complaints.

8. On August 10, 2002, the petitioners delivered general information to the IACHR on the situation of human rights in Río Negro Province and ratified the terms of their complaint.

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The petitioners say that María Emilia González, age 24; Paula Micaela González, age 17; and María Verónica Villar, age 22, disappeared in the afternoon of Sunday, November 9, 1997. According to statements of witnesses, the victims were last seen walking along San Luis Street, in Cipolletti, Río Negro Province. The petitioners say that on that same day, when they went to file the respective report, they encountered reluctance on the part of the police, who only agreed to enter the report of the petitioners after a great deal of insistence, which afterward fueled their suspicions of the possibility of alleged complicity or a cover-up in the case on the part of the police and political authorities.

10. The dead bodies were reportedly discovered on Tuesday, November 11, 1997, with clear signs of physical mistreatment and sexual assault. The cause of death of the González sisters was allegedly caused by bullet wounds to the head, while the death of Villar reportedly resulted from asphyxiation caused by obstruction of the upper air ways.

11. According to the petitioners, right from the start of the investigation there were facts that suggested to them the existence of a police cover-up in the case. They say that Deputy Commander Luis Seguel, who was in charge of the initial search for the three victims, directed the search towards areas away from where the girls disappeared, thereby diverting the attention of the large number of members of the local community who volunteered to help in the search.

12. The petitioners also allege that the area where the bodies were found was inadequately and poorly cordoned off. They say that on that same morning the police station received a supposedly anonymous telephone tip-off that the persons responsible for the crime were Hilario Sepúlveda and Horacio Huenchumir.

13. According to the petitioners, there are various facts that suggest the possibility of a cover-up on the part of other authorities, and they mention by way of example that the police doctor, Gustavo Montelpare allegedly planted evidence in order to show that he had found hairs belonging to the victims in a medical examination of Mr. Sepúlveda. Moreover, in the course of searching the area where the bodies were found, a wallet was found that the petitioners allege was planted by Deputy Commander José Luis Torres. They say that this fact is being investigated in an enquiry into aiding and abetting after the fact.

14. The petitioners say that the police arrested the two suspects and in so doing almost caused the death of the first of these. This arrest was allegedly witnessed by Mr. Carlos Aravena, who testified against the way the police acted. In August 1998, Mr. Carlos Aravena was found dead, his body mutilated and decapitated.

15. Furthermore, the petitioners say that Deputy Commander Torres, who was in command of the policemen who arrested Messrs. Sepúlveda and Huenchumir, allegedly said in the presence of Juan and Laura Villar (father and sister of Verónica), that when the police squad

under his command went to arrest Sepúlveda they had been unable to kill him. Rubén Elosegui, the Río Negro Police Chief at the time, was reportedly convicted of the offence of failure to report what Deputy Commander Torres said.

16. In addition, the petitioners say that the Deputy Commander of the Neuquén Police, Bachelor of Criminalistics Javier Pérez Calvo, who was working on the case together with Judge Pablo Iribarren, apparently committed suicide in his apartment, on whose walls the names of the presiding judge in the case and other individuals were found written in blood.

17. The presiding judge, Dr. Pablo Iribarren, reportedly tried Messrs. Hilario Sepúlveda, Horacio Huenchumir, and José María Fernández as the persons responsible in this case. However, these persons were later dissociated from the proceeding. According to the petitioners, Claudio Rodolfo Kielmasz and Hugo Guillermo González Pino were prosecuted: the former allegedly said that he knew where the weapon supposedly used to kill the girls was hidden, while the latter was implicated by a statement made by his former common-law wife.

18. The petitioners attach the judgment of July 5, 2001, in which Claudio Rodolfo Kielmasz was sentenced to life imprisonment as co-perpetrator on three counts of the crime of abduction with aggravating and further aggravating circumstances (secuestro agravado y reagravado); and Hugo Guillermo González Pino, to 18 years' imprisonment as co-perpetrator on three counts of the crime of aggravated abduction. The aforementioned judgment says that Kielmasz and González Pino acted in the company of three other individuals whom it has not been possible to identify. Said judgment also mentions that the crimes that gave rise to the trial also brought to light alleged irregularities and wrongdoings on the part of certain members of the police, a number of whom have been prosecuted or are under prosecution. An example of the foregoing is that of the witness Miguel Jiménez, who reportedly amended his testimony, explaining that he had been coerced by the police to testify against Hilario Sepúlveda. The judgment also orders the referral to the Examining Court of the pertinent parts of the statements of six witnesses, in order to investigate if they committed perjury and if any of them might be eligible for grounds for pardon; at the same time the judgment refers to the lower court the pertinent parts of the testimony of two other witnesses, in order to investigate if Deputy Commander Luis Alberto Vacas and Deputy Commander Rodolfo Artese committed a publicly actionable offense.

19. The petitioners say that despite the time elapsed and the extensive court file, as well as the initiation of several related proceedings, to date it has not been possible to determine the motives for the crime or identify all the perpetrators and participants in the act; nor has it been possible to expose the conspiracy behind the police cover-up or the extent of responsibility of the political and provincial authorities. Thus, according to the petitioners, the case of the triple crime is one more in a long list of cases that have gone unpunished in Río Negro Province, without the State taking the appropriate steps to investigate and punish those allegedly responsible, either for the crimes or for the presumed police cover-up. In their opinion, while a judgment has been issued in the case and there are persons in custody, the crime has not been cleared up and the trials pending will not yield conclusive evidence to establish the identities of the true culprits and the persons responsible for the cover-up.

B. The State

20. The position of the State is that the allegations of the petitioners with respect to the lack of a judicial and administrative response to the actions of the accused police officers are groundless. The State argues that it adopted all the measures necessary to clear up the alleged police conspiracy, institute the respective criminal proceedings, and open the necessary administrative investigations to determine responsibilities, as appropriate.

21. The State says that it initiated several court proceedings to investigate the conduct of the persons named by the petitioners in their complaint. As a result, the former Chief of Police of Río Negro, Rubén Elosegui, was convicted in a final judgment of the crime of aiding and abetting after the fact; Deputy Commander Luis Seguel is on trial for the crime of breach of public duty; the indictment and preventive detention has been ordered of police doctor Gustavo Montelpare for the crime of necessary participation in the crime of falsification of public documents technically overlapping with aiding and abetting after the fact, although the order has reportedly been overturned by the Third Chamber for lack of merits; furthermore, Deputy Commander José Luís Torres has allegedly been put on trial for aiding and abetting after the fact, but was acquitted of the crime by the Second Chamber. The State adds that administrative proceedings have also been initiated, leading to the discharge of Deputy Commanders Seguel and Torres on November 3, 1998.

22. As regards the criminal proceeding, the State considers that it has activated every mechanism at its disposal to get to the bottom of the facts. Two individuals have reportedly been found guilty by an independent tribunal, with full observance of their procedural guarantees and within a time that is beyond any controversy, given that the crime allegedly occurred on November 9, 1997, and Kielmasz and González Pino were convicted on July 5, 2001. The State considers that the local courts acted with due promptness and diligence, bearing in mind the complexity of the case. It says, furthermore, that the parties appeared as plaintiffs in the litigation and, as such, made submissions, offered evidence, and attended hearings without any obstruction from the court in the exercise of their rights. The state mentions that the petitioners did not oppose the actions of the court in the domestic jurisdiction, and therefore, in its opinion, the complaints of the petitioners are inadmissible.

23. The State also reiterates that Kielmasz and González Pino have been convicted. According to the State, the charges of abduction with aggravating and further aggravating circumstances pursued by the court against Kielmasz corresponds to the kidnapping, holding, and concealment of the victims, with the aggravating circumstances that the victims were women and that there was intent to violate not only the sexual integrity but also the physical integrity of the young women, with the "further aggravating" circumstance that the persons abducted were killed. Accordingly, the State argues that the judges who presided over the case arrived at the conviction that Kielmasz was the person who carried out the homicide, but considered that González Pino could only have been involved in the abduction, and not the killing, of the victims. The State considers that the fact that the lawyers of the petitioners sought the conviction of Kielmasz and González Pino indicates that they considered the evidence obtained in the investigation to be sufficient and valid.

24. Against the allegation of failure to identify all those responsible for the crime, the State notes that the assertions of the petitioners to the effect that Sepúlveda and Huenchumir have been dissociated from the case are inaccurate, since both of them, together with a third individual by the name of José María Fernández, still stand accused in the main proceeding, currently without merits.

25. In addition to the main proceeding, the State mentions that four other related proceedings are ongoing to determine any alleged responsibilities that might have existed: Deputy Commander Luis Seguel is being prosecuted on the charge of aiding and abetting after the fact; Luis Minirvine has been acquitted in the case against him for aiding and abetting after the fact; Nancy Miriam Sorbazo and Elsa Honoria Molina are on trial for perjury; and Deputy Commander José Luis Torres has been acquitted in the proceeding against him for aiding and abetting after the fact.

26. The State adds that a few days after the “triple crime” occurred, the Interior Minister of the Province, issued resolution 413, creating an Evaluation Commission on the Investigation of the Triple Crime in Cipolletti, which was later ratified by the Governor of the Province in decree 1494. The State considers this measure to be evidence of the high degree of commitment on the part of the Government, particularly since the parents of the young women were included as members of the Evaluation Commission. The State, however, did not submit any information on the activities of the Evaluation Commission.

27. Based on the foregoing, the Government considers that there is nothing in the proceeding to support the petition under review.

IV. ANALYSIS

A. Competence of the Commission

28. In accordance with the terms of Article 44 of the American Convention, the petitioners have standing to present a petition before the Commission. The petition under study indicates that the alleged victims were subject to the jurisdiction of the Argentine State at the time of the alleged facts. With respect to the State, the Commission observes that Argentina is a State Party to the American Convention, having duly deposited its instrument of ratification on September 5, 1984. Accordingly, the Commission has the competence *ratione personae* to examine the claims presented. The Commission is competent *ratione materiae* because the petitioners allege violations of rights protected under the American Convention.

29. The Commission has temporal jurisdiction to review the claims. The petition is based on allegations concerning facts that date from November 9, 1997, the day that María Emilia, Paula Micaela, and María Verónica disappeared. The facts alleged thus arose subsequent to the entry into force of the State’s obligations as a Party to the American Convention. Furthermore, given that the petition alleges violations of rights protected under the American Convention that have taken place in the territory of a State Party, the Commission concludes that it has the competence *ratione loci* to take cognizance of it.

B. Other admissibility requirements for the petition

1. Exhaustion of domestic remedies

30. Article 46 of the American Convention provides that admission of a petition shall be subject to the requirement that "the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."

31. Article 46.2 of the Convention establishes an exception to the rule of exhaustion of domestic remedies. Said exception applies when: i) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; ii) the party alleging violation of his rights has been denied access to the remedies under domestic law; or, iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. In that connection, when domestic remedies are not available either as a matter of law or as a matter of fact it is not necessary to meet the requirement to exhaust them.[FN2] In this respect, the Inter-American Court has ruled that it is only necessary to exhaust those remedies that are adequate, and that adequate domestic remedies are those which are suitable to address an infringement of a legal right.[FN3] The remedies that petitioners must exhaust, therefore, are those which are available and effective; remedies that are unable to be resolved within a reasonable time cannot be considered either available or effective.

[FN2] See I/A Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46 (2)(b) of the American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990, Ser. A No. 11, para. 17.

[FN3] I/A Court H.R., Velasquez Rodriguez Case. Judgment of July 29, 1988, Ser. C No. 4, para. 63.

32. The position of the petitioners in this regard is that they have sought to exhaust domestic remedies but have been unable to do so due to a cover-up of the facts by the authorities as well as obstruction of justice. According to their allegations, the responsibilities of all the accused in the main proceeding have not been established, despite the fact that the judges are convinced that at least five persons took part in the crime. Furthermore, the full extent of responsibility for the alleged cover-up on the part of the police and judicial authorities has not been determined. In this connection, the Commission notes that pursuant to Article 31.3 of its Rules of Procedures, when a petitioner alleges that he or she is unable to exhaust domestic remedies, the burden then shifts to the Government to demonstrate which specific domestic remedies continue to offer effective relief for the harm alleged.

33. In this respect, the State considers that the petitioners have not submitted information that justifies an exception under Article 46.2. It says, furthermore, that the petitioners have had the opportunity to appear as private plaintiffs. The State also argues that a judgment in the main proceeding in relation to the investigation of the triple crime was issued on July 5, 2001. That judgment convicted two individuals for the abduction, and one of them of the murders. According to the State, the convicted men appealed the judgment before the Superior Tribunal of

Justice of the Province, and therefore domestic remedies have not been exhausted. Based on the foregoing, the State has expressly requested that the petition be declared inadmissible on the grounds of failure to exhaust domestic remedies.

34. In light of the allegations of the parties, a clarification is in order as to which domestic remedies must be exhausted in the instant case, in the light of the jurisprudence of the inter-American system. The jurisprudence of the Commission holds that when a crime that can be prosecuted on an ex officio basis is committed, the State is obliged to bring and pursue criminal proceedings to their final consequences and that, in such cases, this is the best way to clear up the facts, judge the guilty, and set the corresponding criminal punishments, in addition to enabling other forms of monetary compensation to be established.[FN4] The Commission notes that the allegations of the petitioners include the possible violation of fundamental rights, such as the rights to life and to humane treatment, which are offences subject to prosecution on an ex officio basis under the domestic law of Argentina and whose investigation and trial the State has the duty to initiate. Furthermore, the Commission finds that the petitioners appeared as private plaintiffs and, as such, have pursued every available recourse to expedite the investigation and prosecution of those responsible for the deaths of their daughters as well as for the alleged cover-up. Moreover, the State has not provided information as to which domestic remedies the petitioners should attempt in order to obtain a final decision on the diverse responsibilities to which the killing of their children gave rise.

[FN4] IACHR, Report N° 52/97, Case 11.218, Arges Sequeira Mangas, Annual Report 1997, paras. 96-97. See also Report N° 55/97, para. 392 and Report No. 55/04, para. 25.

35. Therefore, IACHR notes that more than eight years have elapsed since the crime without the petitioners having received a definitive response from the authorities, given that the main proceeding and a number of the related proceedings are still open. The State has not provided the Commission with specific information on what concrete steps, if any, the petitioners must take to exhaust domestic remedies in the main proceeding as well as in the related proceedings. The State has also failed to supply sufficient information to explain or justify the delay in rendering a decision in the various cases that remain pending.

36. In light of the arguments of the parties, the Commission concludes that there has been unwarranted delay on the part of the State and that the petitioners are excused from meeting the requirement to exhaust domestic remedies pursuant to Article 46.2.

2. Deadline for lodging the petition

37. Pursuant to Article 46.1.b of the Convention, a petition must be lodged within six months after the petitioner has been notified of the final decision at the domestic level.

38. The Commission finds that the instant petition constitutes a case in which it has not been possible to exhaust domestic remedies, and on that basis the six-month rule does not apply. In cases such as the present one, in which the exception to the requirement of prior exhaustion of

domestic remedies are applicable, in accordance with Article 32.2 of the IACHR Rules of Procedure, “the petition shall be presented within a reasonable period of time, as determined by the Commission.” Said article further specifies that “[f]or this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.”

39. In the instant case, the alleged violations started with the disappearance of the alleged victims on November 9, 1997, and the discovery of their corpses two days later. The petitioners allege that following those events, rather than conduct an effective investigation, the police and judicial authorities obstructed the clarification of the facts in order to cover them up. The complaint also contend that the petitioners encouraged the search for justice but were unable to secure the necessary outcomes since, despite the petitions filed, neither the facts nor the responsibilities of all the accused have been clarified. In this connection, they argue that the proceedings remain open but that the necessary measures to clear up the facts and punish those responsible have not been adopted, which constitutes a continued violation of their rights to judicial protection and a fair trial. In light of the foregoing, the IACHR finds that the instant petition was lodged in a timely fashion.

3. Duplication of proceedings and *res judicata*

40. Article 46.1.c of the American Convention provides that admission of a petition is 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 not admit a petition which “is substantially the same as one previously studied by” it “or by another international organization.” In the present case, the parties have not claimed and the proceedings do not indicate the existence of either of these circumstances of inadmissibility.

4. Nature of the allegations

41. For the purposes of admissibility, the Commission must decide if the events can be characterized as a violation, as stipulated in Article 47.b of the American Convention, or if the petition is “manifestly groundless” or “obviously out of order,” pursuant to subparagraph (c) of that Article. The standard for evaluating these requirements is different from that for deciding on the merits of a petition; the Commission must conduct a *prima facie* evaluation to determine whether the petition establishes grounds for the apparent or potential violation of a right guaranteed by the Convention, but not to establish the existence of a violation. This determination involves a summary analysis that does not imply a prejudgment on the substance of the matter.

42. In this petition, the State contends that it has adopted all the measures necessary to get to the bottom of the crime as well as the alleged police conspiracy, and it claims that the allegations of the petitioners are unfounded. In this respect, the Commission finds nothing in the petition to suggest that the claims of the petitioners are groundless or out of order, but that the allegations could tend to establish violations of rights protected in Articles 4, 5, 8, 19, and 25 of the American Convention.

43. Based on these observations, the Commission concludes that it is competent to examine the complaints presented by the petitioners. In the merits stage, the Commission will voluntarily analyze if a possible violation exists of Articles 4, 5, 8, 19, and 25 of the Convention, in conjunction with the violation of the general obligation to respect and ensure rights provided in Article 1.1 of the American Convention.

V. CONCLUSIONS

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

45. Based on the factual and legal arguments given above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible with respect to the alleged violation of the rights recognized in Articles 1.1, 4, 5, 8, 19, and 25 of the American Convention.
2. To notify the parties of this decision.
3. To continue with the analysis of the merits of the case.
4. To make this report public, and publish it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 2nd day of the month of March, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez, and Paolo G. Carozza Commissioners.