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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 16/06; Petition 619-01
Session:	Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause:	Eugenio Sandoval 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. Commission Member Victor E. Abramovich, who is Argentinean, did not participate in the deliberations or decision of the present case, in accordance with the provisions of Article 17.2.a of the Rules of Procedure of the Commission.
Dated:	2 March 2006
Citation:	Sandoval v. Argentina, Petition 619-01, Inter-Am. C.H.R., Report No. 16/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
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I. SUMMARY

1. This report concerns the admissibility of Petition No. 619/01. Proceedings were initiated by the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission”, “Commission”, or “IACHR”) following receipt of a petition on September 6, 2001, lodged by Marina Sandoval (hereinafter “the petitioner”), against the Republic of Argentina (hereinafter “Argentina”, or “The State”), relating to events surrounding the death of her father, Mr. Eugenio Sandoval, on January 7, 1996.

2. The petitioner claims that due to negligence and omissions during the police investigation and judicial intervention, the circumstances surrounding the death of her father have still not been explained. She says that the state authorities omitted to collect essential evidence and that from the very start of the investigations they had insisted that an accident had taken place, thereby, in her opinion, covering up a murder. She alleges that, because the State was unwilling to investigate, she herself became a complainant and presented evidence, including a private report, which contradicts the State’s versions and instead confirms the murder hypothesis and the existence of inadequacies in the initial investigation. She claims that the events alleged amount to violations by the Argentine State of rights protected by Articles 4.1 (right to life), 8.1 (right to a fair trial), 24 (right to equal protection), and 25.1 (right to judicial protection) of the American Convention on Human Rights (hereinafter “American Convention” or “the Convention”).

3. The State, for its part, claims that there has been no unwillingness by the State to investigate the event and that the investigation into the case remains open, and therefore that remedies available under domestic law have not yet been exhausted. It states that the Province of Rio Negro has established suitable remedies that will enable the alleged victims and their family members to assert their rights and defend them effectively, and that at no time has the petitioner's access to remedies available under domestic law been impeded.

4. Without prejudging the merits of the case, the Commission concludes that it is competent to examine the petition concerning the alleged denial of justice in the investigation into the death of Mr. Eugenio Sandoval with regard to the alleged violations of the right of every person to a hearing with due guarantees and within a reasonable time, by a competent, independent and impartial judge or court, and also of the right of every person to simple, prompt, and effective recourse to the competent judges or courts, for protection against acts that violate his fundamental rights as laid down by Articles 8 and 25 of the American Convention, both in relation to the obligation to respect the rights established in Article 1.1 of the Convention. Furthermore, the Commission decides to notify its decision to the parties, to publish it and to include it in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BY THE COMMISSION

5. The petition was received by the IACHR on September 6, 2001, and its pertinent parts were transmitted to the State on October 12, 2001, with a period of two months being granted for the presentation of observations.

6. On December 20, 2001, and January 17, 2002, the Argentine State presented its observations and supplied information concerning the petition. The Commission transmitted this information to the petitioner. The petitioner, in a communication dated March 7, 2002, received in the IACHR on March 20, 2002, presented her observations, which were transmitted to the State on July 8, 2002.

7. In August 2002, the IACHR carried out a working visit to Argentina in the course of which the delegation traveled to Rio Negro in order to meet the authorities and the petitioners of this and other petitions.

8. The State, on August 23 and September 9, 2002, sent to the IACHR its observations on the petitioner's communication, and these were transmitted to the petitioner on November 19, 2002. The petitioner send the IACHR her observations on the communication from the State on December 12, 2002, and these were received at the IACHR on December 26, 2002 and transmitted to the State on May 6, 2003.

9. On June 2, 2003, the IACHR received the observations from the State on the communication from the petitioner dated December 12, 2002. On January 22, 2004, the Commission transmitted to the petitioner the communication from the State.

III. POSITIONS OF THE PARTIES

A. Petitioner

10. The petitioner, Marina Sandoval, claims that on January 7, 1996, in the area of Chacras de Villa Regina in the Province of Rio Negro, her father, 75-year old Mr. Eugenio Sandoval, was found dead in a shed at the farm he owned. The petitioner claims that she immediately notified the authorities that her father's body had been found, and the authorities came to investigate the scene of these events.

11. The petitioner states that the police investigation was mistaken, the judicial intervention tardy, and the district attorney's intervention non-existent from the beginning. With regards to the police investigation, the petitioner notes that from the time of the first police record of the case made when the authorities arrived at the scene of the events, they had concluded that there was no upheaval or signs of a struggle, in spite of the fact that members of the family had observed several anomalies at the scene of the events, such as the doors being open, the absence of keys, and others. In this regard, the petitioner states that the state authorities omitted to collect essential evidence and insisted that there had been an accident, an attitude that to the petitioner suggests a deliberate cover-up.

12. With regard to the judicial authorities, the petitioner states that they omitted to investigate important pieces of evidence. She says that no investigation was made into her statements describing how the dogs were injured on the day of the events, and how the house keys carried by her father had disappeared, amongst others. Furthermore, a watering can and a cup that figured in the investigation photos disappeared subsequently in judicial headquarters. The watering can is mentioned in the petitioner's early judicial statements because when she found it at the scene of the events it was bloodstained.

13. Furthermore, the petitioner states that the conclusions of the autopsy carried out by the court's forensic doctor, Dr. Andrés Ferreras, on January 8, 1996, are evidence that there has been a deliberate cover-up of the facts in this case. This first autopsy concludes that his injuries were caused when Mr. Eugenio Sandoval fell into the pit where his body was found, causing severe cranio-encephalic trauma that would have given rise to the death of Mr. Eugenio Sandoval.

14. The petitioner, in her role as civil party, presented a new report by criminologist Dr. Enrique E. J. Pruegger. This report concluded that the victim must have been hit by another person and that the event was not an accident but a homicide, indicating that the murderer was left-handed and that the attack must have taken place elsewhere. On the basis of this new report, and at the request of the victim's family, on September 12, 1996, the file was reconsidered, and the event ceased to be classed a "fatal accident" and became an "alleged homicide".

15. On October 5, 1998, the petitioner lodged a complaint with the Rio Negro Ombudsman [Defensor del Pueblo] concerning the handling of the judicial process and the behavior of the police throughout the investigation. On October 21, 1998, the Ombudsman decided that he was not competent to assess complaints concerning alleged irregularities in the criminal process, and only took cognizance of the events associated with the police intervention in the main investigation.

16. The trial judge in charge of the case, Dr. Juan Rodolfo Torres, then ordered the judicial medical team to review the records of the case, in order to determine if the cause of death was accidental or brought about by a third party. This new medical judicial investigation on April 5, 1999, indicated that the police investigation had been incomplete because no inspection was made of the rear of the body, nor were blood-levels of alcohol measured. The new medical judicial investigation concluded that there were several pieces of evidence that cast doubt on the fall hypothesis, in particular, the type of injuries identified in the autopsy that would suggest homicide.

17. Even though the autopsy carried out by the private expert suggested homicide and was confirmed by the judicial expert Scatena, the petitioner states that no investigation was undertaken to establish whether or not the persons that she identified in her statements as possible suspects were left-handed or not. One of the suspects included a Tucumano [a man from Tucumán], or Santiagueño [a man from Santiago del Estero] whom her father had mentioned had been pestering him.

18. According to the petitioner, the irregularities, loss of evidence, useless autopsies, lack of interest in conducting a criminal investigation, and the delays that characterized the whole inquiry, have meant that the murder of Eugenio Sandoval, which took place in January 1996, remains unpunished. In light of the above, she files a complaint to the IACHR alleging violations of the right to life, right to a fair trial, right to equal protection, and right to judicial protection established in Articles 4.1, 8.1, 24, and 25.1 of the Convention.

B. State

19. The State's position is that the steps taken by the justice system demonstrate how the Government was willing to investigate the facts. It states that the government of the Province of Rio Negro demonstrated its desire to throw light on the matter by continuing with its investigation, and that this investigation is inconclusive because of the difficulties of establishing whether it was an accident or homicide.

20. The State points out that on the same day as the event took place, January 7, 1996, a procedural statement was made describing access to the place where the events took place, the discovery of the body, the place where it was found, and the objects located in the same place. It states that all precautions were taken so as not to alter the scene of the event and a guard was posted to protect the scene. The following day, January 8, 1996, a statement was made describing the police inspection, confirming what had been stated in the previous statement, and in addition observing a slip mark in the pit and repeating that no signs of a struggle were found or property missing from the shed where the victim was found. Photographs and maps of the site were included with the statements.

21. The State adds that as soon as the police learned of the event on February 7, 1996, they notified the trial judge, Dr. Juan Rodolfo Torres. The autopsy by Dr. Andrés Ferreras took place immediately after the body was found on January 8, and he concluded that Mr. Eugenio Sandoval's death was due to severe facial and cranio-encephalic trauma. The State states that in

the expert medical report that was carried out at the scene of the event on February 7, 1996, by police doctor Néstor R. Luvelo, no opinion or hypothesis regarding the event was expressed.

22. With regard to the cover page, the State says that initially the cause of death was attributed to “homicide”, but on learning of the results of the autopsy on January 8, 1996, the file was reclassified as “fatal accident”, on the grounds that a number of elements established by law for the definition of a crime were missing from the first stages of the investigation. Trial Judge Juan R. Torres immediately instructed the General Roca Investigative Brigade of the 2nd Regional Unit to allocate personnel in order to carry out an investigation into the cause. On the basis of the above, on October 7, 1996, one superintendent and one sub-inspector were appointed as the only members of an investigating committee to discover the true cause of the death of the person who when alive was known as Eugenio Sandoval.

23. The State also argued that one of the children of the victim, Eugenio Segundo Sandoval, worked as a superintendent in the Lamarque area and would have known the result of the medical investigation and had not expressed any intention to object to this, or to appoint an independent expert.

24. The State also indicates that on December 29, 1998, the petitioner became a complainant. The State says that as a result of the petitioner’s representations to the Ombudsman [Defensoría del Pueblo], the high court of justice in the province of Rio Negro released an official letter on February 25, 1999, to the court dealing with the case, instructing the prosecutor to inform him as soon as possible as to what investigative measures he had instructed from the beginning of the case. This decision was notified to the petitioner so that she could indicate whether or not she wished to register objections regarding the persons appointed to make up the investigating committee. According to the State, this indicates how the civil party had ample opportunity to register her objections to the measures proposed and also to propose measures for the investigation of the events or to have recourse to all the legal provisions adopted if she was of the opinion that they infringed her rights.

25. The State confirms that the report supplied by the petitioner once she had become complainant threw doubts upon the cause of death of Mr. Sandoval. Therefore, on March 3, 1999, Dr. Adolfo Scatena of the Coroner’s office was appointed to determine, on the basis of the evidence in the case, whether or not the injuries incurred by Sr. Eugenio Sandoval were consistent with an accidental cause of death, or one caused by a third party. The report produced on April 5, 1999 by the medical expert Dr. Adolfo Scatena, shows that the confusion that prevailed in the early moments as to whether or not they were dealing with an accident or a homicide was caused by the elements that supported the accident hypothesis. The State reports that in his report, the medical expert concluded that “the injuries revealed in the [1996] autopsy would suggest homicide, although several unanswered questions remain concerning the finding of skin and blood stains on the stairs and in the pit.”

26. According to the State, in order to remove all doubt, a medical board was set up, following notification to the petitioner as private complainant so that she could appoint a private expert to participate in the board, something which she abstained from doing. The State attaches the report from the medical board, dated May 26, 1999, which concludes that the death could

have been accidental. Before reaching this conclusion, the report indicates “how difficult it is to produce a report from statements attached to a file when they are fundamentally insufficient.”

27. In spite of this report, the State alleges, the case is still “unresolved pending the release at the proper time of the investigation of motive,” without specifying whose motive is being investigated. The position of the State is that the petitioner has not exhausted all the remedies available under domestic law or proved the impossibility of so doing. The State points out that the Province of Rio Negro has established appropriate remedies to ensure that the alleged victims and their family members may assert their rights and defend them effectively. Therefore, the State claims that at no time has the petitioner been denied access to remedies under domestic law, but rather that as complainant she has been able to participate in the process and drive it to the point of starting the search for an alleged culprit. According to the State, there has been no unjustified delay because the investigation began the day the event occurred and continues to this day, the case remains open and the investigating committee is still in existence, as is the participation of the upper court, which is the highest body of justice in the Rio Negro Province. According to the State, the fact that up to the moment it has not proved possible to establish how the death occurred, nor who is allegedly responsible, does not mean there has been negligence nor that evidence has been concealed.

IV. ANALYSIS

A. Competence of the Commission

28. The petitioner is empowered by Article 44 of the American Convention to lodge a petition with the Commission. The petition that is the subject of this study indicates that the alleged victim, of Chilean nationality, was subject to the jurisdiction of the Argentine State at the time the events are alleged to have taken place. Concerning the State, the Commission indicates that Argentina is a state party to the American Convention, having duly deposited the instrument of its respective ratification on September 5, 1984. Consequently, the Commission has competence *ratione personae* to examine the denunciations lodged. In addition it has competence *ratione materiae* because the petition alleges violations of rights that are protected under the terms of the American Convention.

29. The Commission has competence *ratione temporis* to examine the complaints. The petition concerns allegations of events that took place following January 7, 1996, the date on which Sr. Eugenio Sandoval died. The events alleged therefore took place after the obligations of the State as party to the American Convention entered into force.

30. Furthermore, the Commission concluded that it has competence *ratione loci* to examine the petition because it alleges violations of rights protected under the terms of the American Convention that took place within the territory of a State Party.

B. Other requirements for admissibility

1. Exhaustion of remedies under domestic law

31. Article 46 of the American Convention states that the admissibility of a petition lodged before the Commission is subject to the requirement that “the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

32. Paragraph 2 of the above quoted Article 46 of the Convention establishes an exception to the exhaustion of remedies under domestic law. This exception applies: when 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; when the party alleging violation of his rights has been denied access to the remedies under domestic law; or when there has been unwarranted delay in rendering final judgment under the aforementioned remedies. In this context, when remedies under domestic law are not available for reasons of fact or of law, it is not necessary to comply with the requirement to exhaust them.[FN2] In this respect, the Inter-American Court has indicated that only those remedies that are adequate for rectifying the violations alleged to have occurred should be exhausted, and that for those remedies to be adequate, they must be suitable to address an infringement of a legal right.[FN3] The remedies that must be exhausted by the petitioners are, therefore, those that are available and effective; those remedies that are not resolved within a reasonable time are not considered either available or effective.

[FN2] See I/A Court of H.R., Exceptions to the exhaustion of remedies under domestic law (Articles 46(1), 46(2)(a) and 46(2)(b) Inter-American Convention on Human Rights. Advisory Opinion AO 11/90 on August 10, 1990. Ser. A, No 11, para. 17.

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

33. The position of the petitioner in this respect is that the remaining legal actions open to her are mere formalities and incapable of preventing the case being filed due to the neglect by judicial and police officials. She alleges that judicial inaction in this case has prevented her presenting other claims because it is not possible to appeal decisions that have not been taken. Therefore she states that the case remains open although no information is available as to any judicial actions that might be underway to identify those responsible for the alleged homicide of Mr. Sandoval. The Commission notes that when a petitioner contends that he or she is unable to exhaust the remedies under domestic law, Article 31.3 of the Rules of Procedure of the Commission states that it shall be up to the State concerned to demonstrate that the remedies under domestic law continue to provide effective reparation for the damages alleged.

34. According to the State, the petitioner has not exhausted all the remedies under domestic law or demonstrated the impossibility of doing so. Furthermore, it alleges that there has been no unwarranted delay as the investigation began the day the event occurred and continues to this day, to the point that the case remains open. The State indicates that the petitioner has been able to become a private complainant.

35. In view of the allegations from the parties, it is right to clarify which are the remedies under domestic law that should be exhausted in a case such as this, in the light of the case law of the inter-American system. The case law of the Commission states that whenever a crime is committed that is officially liable to prosecution, the State is obliged to initiate and advance the penal process to its ultimate consequences, and that, in these cases, this action provides the ideal means by which to establish the facts, judge those responsible and define the appropriate penal sanctions, as well as permitting other means of pecuniary reparation.[FN4] The Commission notes that the events alleged by the petitioner cover the possible infringement of fundamental rights that under domestic law become officially punishable crimes, the investigation and judging of which is the responsibility of the State itself.

[FN4] IACHR, Report N° 52/97, Case 11.218, Arges Sequeira Mangas, Annual Report 1997, paras. 96 and 97. See also Report N° 55/97, para. 392, and Report N° 55/04, para. 25.

36. In this respect, the Commission notes that the State has provided no information regarding the remedies under domestic law that would enable the petitioner to obtain a definitive resolution concerning the circumstances surrounding the death of her father. Furthermore, the State has not identified the specific steps that should be taken by the petitioner in order to exhaust the remedies available under domestic law. Moreover, the State has provided no information concerning the actions it has carried out since May 1999, the date on which the medical board issued its report. Nor has information been received from the State concerning the results or conclusions reached on this case by the investigating commission.

37. The Commission observes that the petitioner established herself as a private complainant[FN5] and as such tried all the remedies at her disposal in order to advance the investigation into her father's death, to the extent of even supplying evidence including an additional report which caused the case to be re-classified and new medical investigations carried out in order to determine the cause and identify those possibly responsible for the death of her father. The petitioner's allegations suggest that she tried to exhaust all remedies available under domestic law and that the State is fully aware of her demands.

[FN5] The Commission observes that Law 3216, which reformed the criminal procedural code in the Province of Rio Negro to enable a legally competent person who is particularly offended by a crime against public order to become a complainant party. In December of the same year, the petitioner became a complainant party.

38. Therefore, the IACHR observes that more than 10 years have passed since the events occurred and that the case remains open, without the petitioner having obtained a response from the authorities regarding the circumstances of her father's death and possible guilty parties, all of which becomes more serious given the indications of possible irregularities during the investigation. The Commission notes also that according to the information presented, there were extensive delays between the investigative operations carried out by the State.

39. Taking into account the arguments presented by both parties, the Commission concludes that there has been an unwarranted delay by the State and that the petitioner is excused from compliance with the requirement to exhaust all remedies available under domestic law in accordance with Article 46.2.

2. Deadline for presentation of petitions

40. With regard to the requirement established in Article 46.1.b of the Convention, the petition must be lodged within a period of six months from the date on which the petitioner was notified of the final judgment at national level.

41. The Commission considers that the present petition constitutes a case where it has not been possible to exhaust remedies available under domestic law, and that therefore the period of six months is not applicable. In cases such as this, where the exceptions to the requirement of prior exhaustion of remedies under domestic law are applicable, in accordance with Article 32.2 of the Rules of Procedure of the IACHR, “the petition shall be presented within a reasonable period of time, as determined by the Commission.” The Article also states that “for this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.”

42. In the present case, the alleged violations occurred following January 7, 1996, the date on which the lifeless body of Mr. Sandoval was found. The petitioner alleges that since that time, both police and judicial authorities have obstructed the investigation of the facts in order to cover them up. The petitioner also alleges that she has tried to seek justice without achieving the desired results and that in spite of the various procedures to which she has had recourse, the events have not been clarified nor responsibility attributed for the death of her father. In spite of the time that has elapsed, the petitioner has received no definition from the State as to whether her father’s death was an accident or a homicide. The petitioner therefore alleges a continued violation of her rights to equal protection under the law and to judicial protection. In view of the above, the IACHR considers that the present petition was presented in timely fashion.

3. Duplication of procedures and res judicata

43. Article 46.1.c states that the admissibility of a petition is subject to the requirement that the subject of the petition “is not pending in another international procedure for settlement,” and Article 47.d of the Convention states that the Commission shall consider inadmissible any petition that “is substantially the same as one previously studied by the Commission or by another international organization.” In the civil case, the parties have not claimed the existence of either of these two grounds for inadmissibility, and nor does it arise from the actions completed.

4. Description of the alleged facts

44. With regard to admissibility, the Commission must decide whether the alleged facts amount to a violation of rights, as laid down in Article 47.b of the American Convention, or

whether the petition is “manifestly groundless” or “obviously out of order” in accordance with paragraph (c) of the above mentioned Article. The criteria for evaluating these requirements differs from that used to pronounce on the merits of a petition; the Commission must make a prima facie evaluation to determine whether the petition establishes the grounds of a possible or potential violation of a right protected by the Convention, but not establish the existence of a violation of rights. This determination amounts to a primary analysis and implies no prejudgment of the merits of the case.

45. The Commission states that in addition to the disagreement as to the causes of the death of Mr. Sandoval, more than ten years have passed without his family receiving from the State any response from the judicial authorities that makes clear the facts and indicates those possibly responsible. In view of these observations that have to do with the duty of the State to carry out a diligent judicial investigation, the Commission notes that the events alleged by the petitioner could be described as violations by the State of the rights to equal protection and judicial protection enshrined in Articles 8 and 25 of the Convention. The Commission also observes that the duty to guarantee life includes the duty to investigate and punish those responsible for the death of a person, and in this sense, the Commission will also examine possible violations of the right to life enshrined in Article 4 of the Convention. Consequently, the Commission will, at the merits stage, examine any possible violations of Articles 4, 8, and 25 of the American Convention, and also the violation of the generic obligation to respect and protect rights stated in Article 1.1 of the Convention.

46. The Commission considers that the facts described in the petition do not suggest sufficient grounds to establish a violation of the right to equality under the law as stipulated in Article 24 of the Convention.

V. CONCLUSIONS

47. The Inter-American Commission concludes that it has competence to examine the civil process and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention.

48. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible in relation to alleged violations of the rights protected in Articles 1.1, 4, 8, and 25 of the American Convention.
2. To declare this case inadmissible in relation to alleged violations of the right protected in Article 24 of the American Convention.
3. To give notice of this decision to the parties.
4. To continue the analysis of the merits of the case.

5. To publish this decision and include 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.